

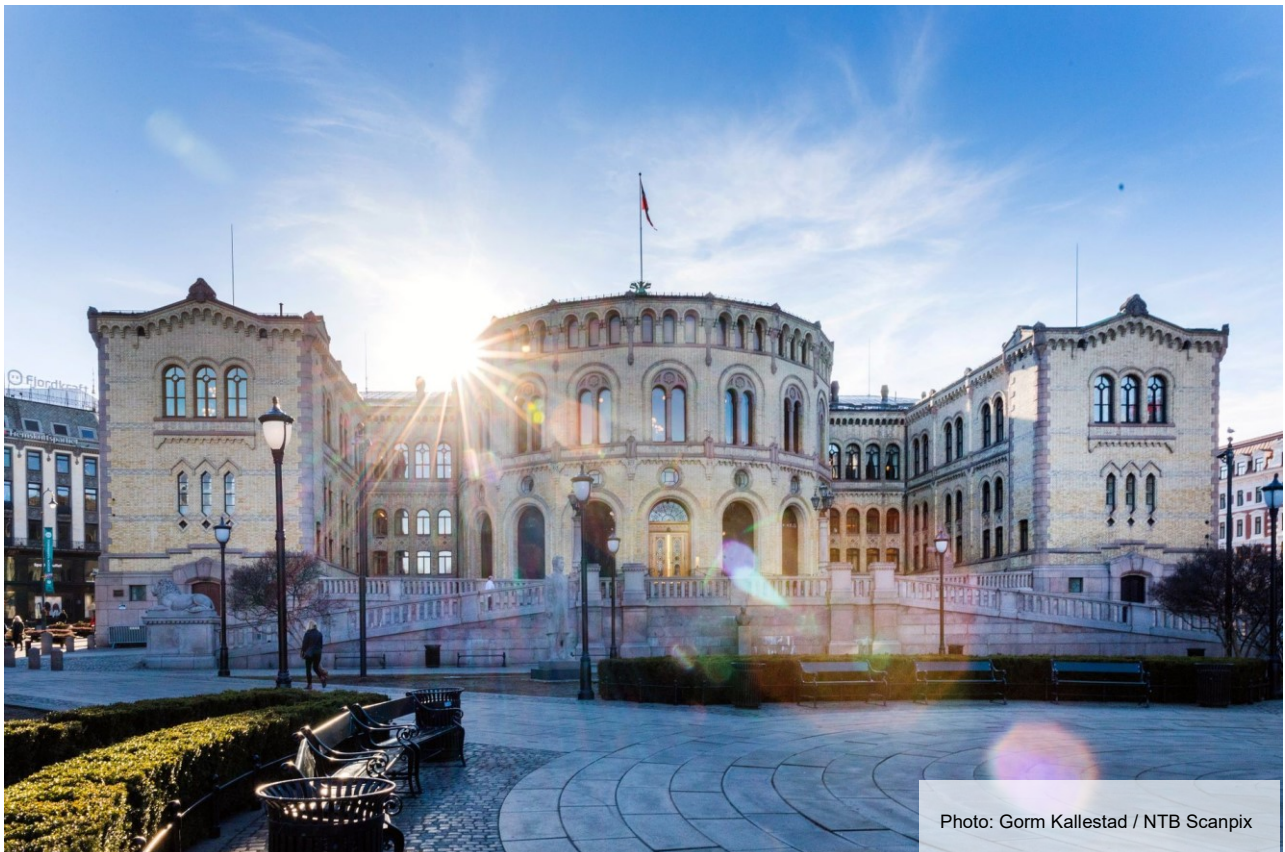
Official Norwegian Report (NOU) 2020: 6

# Free and secret elections

## *New Election Act*

**Report from the Commission appointed by Royal Decree of 21 June 2017.  
Submitted to the Norwegian Ministry of Local Government and Modernisation on 27 May  
2020.**

*Translation from Norwegian. For information purposes only.  
If discrepancy in meaning the Norwegian version applies.*



## *To the Norwegian Ministry of Local Government and Modernisation*

The Election Act Commission was appointed by Royal Decree of 21 June 2017 to propose a new Election Act. The Commission hereby presents its report.

	Oslo, 27 May 2020	
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*Part I*  
*Introduction*

# 1 The Commission's mandate and work - summary

## 1.1 The composition, mandate and work of the Commission

### 1.1.1 The composition of the Commission

The Election Act Commission was appointed by Royal Decree on 21 June 2017. The composition of the Commission has been as follows:

- Ørnulf Røhnebæk, Appellate Judge, Hamar (Chair)
- Anders Anundsen, The Progress Party, Attorney, Larvik, (from 12 July 2018 until handover)
- Dag Arne Christensen, Research Manager, Bergen
- Johan Giertsen, The Conservative Party, Professor, Bergen
- Anne K. Grimsrud, The Centre Party, Special Adviser, Lier
- Janne Merete Hagen, Special Adviser, Nordre Follo
- Kristin Taraldsrud Hoff, Director, Oslo
- Eirik Holmøyvik, Professor, Bergen
- Heikki Eidsvoll Holmås, The Socialist Party, Head of Section, Oslo
- Sofie A. E. Høgestøl, The Liberal Party, Associate Professor, Oslo
- Hanne C. S. Iversen, The Progress Party, deputy representative to the Storting, Harstad (from appointment to 11 July 2018)
- Thomas Nygreen, The Red Party, Senior Engineer, Oslo, (from 21 November 2017 to handover)
- Sigrid Stokstad, Researcher, Oslo
- Knut Storberget, The Labour Party, County Governor, Elverum
- Øyvind Strømme, The Green Party, Information Adviser, Samnanger
- Bjørg Tørresdal, The Christian Democrat Party, Headteacher, Levanger
- Bernt Aardal, professor, Bærum
- Kari Aarnes, Office Manager, Steinkjer
- Tom Refsum Aatlo, Senior Adviser, Oslo

The members of the Commission's secretariat have been as follows:

1. Jan Morten Sundeid, Executive Manager (Chair)
2. Marie Svendsen Mjøsund, Executive Manager (Deputy Chair)
3. Ingvild Kristine Lysne, Adviser (from 1 January 2018)
4. Øyvind Bugge Solheim, Adviser (from 13 November 2018 to 31 March 2020)
5. Annie Magnus, Senior Adviser (from 1 February 2018 to 28 February 2019)

Senior Adviser Cathrine Sørlie, employed in the Ministry of Local Government and Modernisation has also been periodically associated with the secretariat.

### 1.1.2 The Commission's mandate

The Commission was given the following mandate:

#### 1. The background for the appointment of the Commission

A well-functioning democracy requires a high degree of trust and confidence in political institutions. The legitimacy of democracy depends on the people elected representing the will of the people and elections being conducted properly and in a way that inspires confidence. In recent

years, there has been international debate on whether public confidence in important institutions in politics is declining or not. In Norway, there is relatively high confidence in the electoral process and political institutions.

The Storting has adopted a regional reform to reduce the number of counties to around ten. This raises questions about changing the electoral system, as the current counties are the constituencies for parliamentary elections. It is important to ensure that the changes in the county structure are incorporated in a good way.

The last Election Act Commission was appointed 20 years ago. In the intervening years, extensive changes have been made in how elections are conducted in Norway, including increased use of technology, stricter accessibility requirements, and a higher degree of standardisation and professionalisation. The Government has assumed a larger role in several areas through the development of an IT system for administration of elections, increased guidance and greater use of centralised systems.

## **2. The Commission's mandate**

The Commission's work shall ensure continued high confidence in the electoral system and the conduct of elections in the future. The Commission shall provide an account of elections as a cornerstone of democracy, both centrally and at the local level. Through its work, the Commission shall help ensure good framework conditions for democracy in the coming years.

### *2.1 New Election Act*

There have been several amendments to the Act and the Regulations since the previous Election Act Commission. The amendments have been piecemeal and need to be considered from a comprehensive perspective. The Commission shall submit a comprehensive proposal on a new Election Act. Simplification, transparency, readability and practical applicability must be central considerations in the drafting of the new Act. Importance must be attached to creating clear rules that are easy to implement and ensuring that the provisions are largely technology-independent. The Commission shall assess the relationship between what is regulated by law and what should be regulated in regulations and shall also submit a proposal on new regulations. The Commission shall assess which provisions ought to be included in the Constitution and what can be regulated in the Election Act.

### *2.2 The electoral system*

The Storting has adopted a new county structure. The Commission will examine how the new county structure affects the electoral system, including whether the current division into constituencies shall be continued or whether the number of constituencies shall be reduced in line with the new county structure. The Commission shall also report on a new preferential voting system at parliamentary elections. The Commission is free to study other aspects of the electoral system, and also to look at the electoral system for local government elections (county and municipal). The electoral system should be easy to grasp, seem fair, have legitimacy and ensure good political and geographical representation. In the report, the Commission shall look at how the electoral system contributes to important elements of democracy, such as predictability, participation, trust and legitimacy. The new electoral system must be able to take effect from the 2025

parliamentary election. Any need for amendments to the Constitution as a result of a new electoral system must be identified.

### *2.3 Conducting elections*

The Commission shall undertake a comprehensive review of how elections are conducted. The Commission shall specifically review the following issues:

a. Roles and responsibilities.

There are electoral authorities at the municipal, county and national level in Norway, and the local electoral authorities have a high level of autonomy. There have been several changes in the distribution of tasks between the different levels in recent years. The Commission shall consider whether the current distribution of roles and responsibilities is appropriate and how local autonomy will be affected by increased government facilitation. Among other things, the Commission shall look at the responsibility for receiving and counting votes and approving elections.

b. The voting process.

In Norway, it is possible to vote from 1 July until Election Day in September, which is a very long voting period by international standards. There are several phases in the conduct of elections, each of which is governed by different rules. The way elections are conducted and the different election phases are important for deadlines and how long it takes to prepare for an election. Compared with countries that have the opportunity for new elections, the election preparation phase in Norway is very long and resource-intensive. The Commission shall also look at how the municipalities organise polling stations, polling station security and accessibility, opening hours, and the need for special working hour provisions for election staff in the municipalities.

c. Forwarding ballots cast in advance.

All ballots cast in advance in a municipality other than the one in which the voter is registered are forwarded to the appropriate municipality by post for verification and approval. The Norwegian postal sector is changing. These changes have already had consequences for the time it takes to send ballots cast in advance. Consequently, in 2016, the deadline for when votes had to be received by the Electoral Committee to be approved was moved to the Tuesday after Election Day. However, this will not be sufficient in the long term. The Commission shall consider future methods of sending ballots cast in advance to ensure that votes are not rejected.

d. Practical matters related to conducting the Sami Parliament Election.

The Sami Parliament Election is held at the same time as parliamentary elections, and the municipalities are responsible for the practical implementation. It is important to ensure that the implementation of Sami Parliament Elections and parliamentary elections is seen in context. The rules on the practical implementation of the Sami Parliament Election are regulated by the Regulations for Sami Parliament Elections. The Commission shall consider whether, for practical reasons, the rules on the practical implementation of parliamentary elections should also apply to Sami parliament elections. The Commission shall not consider Sami political issues or

matters that affect overarching aspects of the electoral system of the Sami Parliament, such as the principles for the distribution of seats, the allocation of seats among districts and the division into constituencies.

#### *2.4 The appeals system*

In connection with observation of the elections in 2009 and 2013, the OSCE criticised the Norwegian system for complaints and appeals related to elections stating that the appeals system is not in compliance with 3 international conventions. Under the current system, it is not possible to appeal a decision in an appeal case relating to the election before the courts. Following the OSCE's criticism, Norway requested an opinion from the Council of Europe's advisory body on legal matters, the Venice Commission. The Venice Commission supported the OSCE's assessment and issued a statement recommending that Norway amend the appeals system. The Commission shall investigate the issue related to the appeals system for matters relating to elections. In this context, the Commission shall consider legislation and practices in other comparable countries.

#### *2.5 Provision for national emergencies*

Under the Election Act, the Storting may only order a new election if the election in a municipality or a county has been declared invalid due to an error that is thought to have influenced the outcome of the election. It is not possible to postpone Election Day. It is conceivable that major natural disasters, terrorism or other extraordinary circumstances could impact people's ability to participate in an election in such a way that there will be a need to postpone Election Day or order a new election if the incident occurred on Election Day. In such a serious situation, the legal basis and decision-making procedure should be in place. The legal basis must have strict conditions, and it must be ensured that the legitimacy of the decision is not called into question. The Commission shall investigate this issue. As part of the work, the Commission will also gather information on international experiences with similar issues and legislation in other countries.

### **3. Organisation of the Commission's work**

The Commission shall base its work on research and empirical knowledge and shall contribute to increased understanding of democracy and elections. In its work, the Commission shall ensure that relevant input from affected stakeholders is appropriately taken into account. Information on international experiences shall be obtained where relevant. The Commission may request special in-depth information and/or reports in individual areas. In accordance with the Instructions for Official Studies and Reports, the Commission shall provide an account of the short and long-term financial and administrative implications and any other significant consequences of the proposals and identify the need for any further studies, surveys, etc. The Commission shall submit its report to the Ministry of Local Government and Modernisation by 31 December 2019.

In a letter of 8 March 2019, the deadline for submitting the report was extended to 31 May 2020.

#### **1.1.3 The Commission's work**

The Commission held its first meeting on 16 October 2017. In total, the Commission has had 19 meetings, of which 10 were two-day meetings and 1 a three-day meeting. Most of the meetings

have been in the Oslo area, but the Commission has also held meetings in Os (Hordaland) and Karasjok.

The Commission has met with various interest groups and experts. When it comes to the practical election process, Commission member Kari Aarnes from Steinkjer municipality, Bjarne Christiansen from Hedmark county authority and Karina Miller from the City of Oslo presented experiences from the 2017 election, The Norwegian Directorate of Elections and the Ministry of Local Government and Modernisation (KMD) have presented the EVA system and the evaluation of the 2017 Parliamentary Election, Ingrid Sand from the Constitutional Department of the Storting has explained the role of the Storting in elections, Stian Innerdal from the Norwegian Association of the Blind and Partially Sighted and Cato Lie from the Norwegian Federation of Organisations of Disabled (FFO) have presented issues related to accessibility at elections. The Norwegian National Security Authority and the Ministry of Local Government and Modernisation held a presentation on security during the election process.

When it comes to voter turnout, the Commission has met with Rode Hegstad and Andreas Borud from the National Council for the Norwegian Children and Youth Organisations (LNU), who gave a presentation on the participation and role of young people in a democracy. Research on voter turnout and what affects this has been presented by Johannes Bergh, Head of the National Election Survey (the Norwegian Institute for Social Research)

As regards the electoral system, the Commission has met with Jørgen Elklit, Emeritus Professor at the University of Århus and John Högström, Associate Professor at Mid Sweden University in Östersund, who presented the electoral systems in Denmark and Sweden to the Commission. The Commission has also met with Tarjei Jensen Bech (County Deputy Chairperson), Remi Strand (Group Leader, The Labour Party) and Jo Inge Hesjevik (Group Leader, the Conservative Party) from Finnmark county authority. The Commission has also met with Tove Anti from the administration of the Sami Parliament.

The Commission has also met with international experts on electoral law. Representatives from the Venice Commission attended the meeting: Oliver Kask, a judge at the Court of Appeal in Tallinn and member of the Venice Commission, Gaël Martin-Micallef and Victoria Lee. Jan E. Helgesen, Norway's representative in the Venice Commission, was also present at the meeting. A member of the Council of Europe's Working Group on the Development of Standards for Electronic Voting, Ardita Driza Maurer, and representatives from the Office of Democratic Institutions and Rights (ODIHR) in the Organisation for Security and Cooperation in European (OSSE) also attended the meeting: Steven Martin, Tatyana Hilshcer-Bogussevich and Oleksii Lychkovakh.

The Commission has prepared several reports on various topics, which accompany the report as annexes. Eirik Holmøyvik, a member of the Commission and professor at the University of Bergen, has written about the appeals system at parliamentary elections.<sup>1</sup> Yngve Flo, Associate Professor at the University of Bergen, has written about the constituency structure from a historical

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<sup>1</sup>Eirik Holmøyvik, "Klageordning for stortingsval", Annex 1 of the report, 2020.

perspective.<sup>2</sup> Bjørn Erik Rasch, Professor at the University of Oslo, has written about the importance of the division into constituencies.<sup>3</sup> Light has been shed on the connection between the electoral system and voter turnout in the memo from Johannes Bergh and Atle Haugsgjerd, both researchers II at the Norwegian Institute for Social Research.<sup>4</sup> Johannes Bergh and Jo Saglie, researcher II and I at the Norwegian Institute for Social Research, have examined the consequences of various preferential voting systems at parliamentary elections.<sup>5</sup> Finally, the security of democratic processes in Norway has been assessed by Proactima AS represented by Anne-Kari Valdal, Hermann S. Wiencke, Chris Dale, Svein Tuastad, Trine Holo, Willy Røed and Bjørg Sandal.<sup>6</sup>

During the Commission's work, the members of the Commission have attended various conferences and seminars where they have explained their work and received input on this. The Commission has also received various written input.

The Commission has emphasised the need to draft a legal text with a clear and comprehensible language. Therefore, the Commission established a separate legal text group together with the Language Council of Norway to work on the legal text. Aud Anna Senje and Kjetil Aasen represented the Language Council of Norway. The group held seven meetings. Bård Eskeland also assisted with drafting the proposed constitutional amendment.

## 1.2 Key proposals from the Commission

The Commission has considered various aspects of the Norwegian electoral system and how elections are conducted in Norway. The Commission finds that the current regulations generally work well. The Commission finds it is important to continue to build on what works and therefore proposes changes to the current electoral system instead of a completely new electoral system. No major reorganisation of the practical implementation of elections is proposed.

However, in some areas, the Commission proposes some significant changes. Among other things, the Commission proposes the introduction of an independent legal appeal system.

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<sup>2</sup>Yngve Flo, "... en naturlig inndeling med sterk forankring i livsforholdene i landet". Dei historiske føresetnader for valdistriktinndelinga ved stortingsval", Annex 2 of the report, 2018.

<sup>3</sup>Bjørn Erik Rasch, "Betydningen av inndeling i valgdistrikter", Annex 3 of the report, 2018.

<sup>4</sup>Johannes Bergh and Atle Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme? Om sammenhengen mellom valgordninger og valgdeltakelse", Annex 5 of the report (the Norwegian Institute for Social Research, 2018).

<sup>5</sup>Johannes Bergh and Jo Saglie, "Personvalg ved stortingsvalg: Konsekvenser av ulike valgordninger", Annex 4 of the report (the Norwegian Institute for Social Research, 2018).

<sup>6</sup>Anne-Kari Valdal et al, "Sikkerheten i demokratiske prosesser i Norge", Annex 6 of the report (Proactima, 2019).



On some points, the Commission has been divided into a majority and a minority. In the summary here and the Commission's draft legal text, only the majority's draft bill has been discussed. The minority's proposals have been discussed in the individual chapters.

### **1.2.1 The electoral system at parliamentary elections**

The Commission mainly proposes to continue the current electoral system. However, there are three elements of the electoral system that the majority of the Commission wants to amend: the method of allocating seats among the constituencies, the proportionality of the electoral system and the preferential voting system.

#### ***1.2.1.1 A more proportional electoral system with a lower electoral threshold***

The majority of the Commission finds that the Norwegian electoral system should be more proportional than it is today. There is currently a large proportion of the votes that do not lead to representation on the Storting and there is a significant difference in the extent to which the parties achieve the representation they should have had measured by the proportion of the votes. The majority finds that the parties should, to a greater extent than today, receive the same percentage of representatives in the Storting as the percentage of the votes they receive.

The Commission has considered various ways of making the electoral system more proportional. In the view of the majority, the most appropriate measure is to reduce the electoral threshold for seats at large to three per cent. Today, the electoral threshold has a significant impact on how large the correlation is between votes and representation for small parties. By lowering the electoral threshold, more of the parties that already today receive direct seats will come above the threshold and gain greater representation. At the same time, the threshold for being represented will, in practice, not be lower than today.

#### ***1.2.1.2 A fairer allocation of seats among the constituencies***

Today, the surface area is used in the allocation of seats among the constituencies. This is justified by a desire to ensure peripheral constituencies greater representation and thus greater influence than they would otherwise have. At the same time, it leads to some constituencies that are not necessarily very centrally located, losing seats they would otherwise have received, due to limited surface area. The over-representation of Finnmark in particular is also very large in an international context.

The impact of the current allocation method with a surface area factor is significant and arbitrary. The majority finds that although it is important to take regional considerations into account in the allocation of seats among the constituencies, both the size of the positive effects and the arbitrariness in which constituencies lose the most from the system means that it does not function satisfactorily. Therefore, the majority proposes introducing a system that gives smaller constituencies representation at the expense of the larger ones, and which also ensures the smallest constituencies a minimum of four representatives. In this system, all the constituencies are first allocated one seat before the other seats are allocated according to the population, but no constituencies are allocated fewer than four seats in total. Thus the system ensures the smaller constituencies representation and does not have the arbitrary impact of the current system.

### **1.2.1.3 Introduction of a preferential voting system**

The majority finds a preferential voting system should be introduced at parliamentary elections. It is an extension of democracy that the voters have influence over which representative is to be elected, as well as which party should have a representative. The current system at parliamentary elections is problematic because it gives the impression that it is possible to influence who is elected, even if this is only a theoretical possibility. The majority finds that the municipal council electoral system, i.e., a system where the parties can give an increased share of the poll and the voters can cast personal votes, should be introduced at parliamentary and county council elections. This system balances voter influence and the parties' role in a good way and allows the parties to decide how much influence the voters should have on their lists. Norwegian voters are familiar with the system and introducing similar systems at all elections may help to increased participation in the preferential voting. The Commission does not propose the introduction of cross-party votes at parliamentary and county council elections.

### **1.2.1.4 Retain 19 constituencies**

The Commission has considered whether the new counties should function as constituencies. Since 1953, the counties have constituted the Norwegian constituencies and it can be argued that it would be natural to use the counties when determining the constituencies. However, the constituency structure has implications for the extent to which the whole country is represented by its own representatives. The current 19 constituencies ensure to a greater extent representation from the whole country than the new counties do. Therefore, the majority finds that it is better to retain the current 19 constituencies than to follow the new county structure. The majority also finds that in any case, some of the 11 new counties are not suitable as constituencies. The majority finds that Viken will be too large a constituency. If the county is divided into several constituencies, it will prevent the constituency from becoming larger than the other constituencies. This will help give an electoral system that works as equally as possible throughout the country.

### **1.2.1.5 Compromise models**

In an attempt to find models where the members support all the elements, the Commission has come up with two solutions, hereinafter referred to as "model-19" and "the county model". As the names suggest, the starting points for the two models have been the current 19 constituencies and the constituencies that follow the applicable county structure. The majority of the Commission supports model-19.

## **1.2.2 Voting rights for 16-year-olds at municipal and county council elections**

The majority proposes lowering the voting age at municipal and county council elections to 16 years. This will give young people a practical experience of democracy, which can increase future voter turnout. The county and municipal councils deal with many issues that concern young people and which young people should be allowed to influence through the ballot paper. The majority of the Commission does not want to lower the voting age at parliamentary elections.

## **1.2.3 New appeal system**

The Commission proposes important changes to the appeal system.

First, the Commission proposes changing the National Election Committee into an independent appeal body made up predominantly of judges. The National Election Committee shall deal with

appeals against the preparation and implementation of all three elections. The Storting shall appoint the members of the National Election Committee. This will ensure an independent legal review of election appeals.

Secondly, the Commission proposes extending the right of appeal somewhat. Among other things, the Commission proposes that persons who have or have attempted to vote in advance outside the constituency in which they are registered shall be able to appeal the implementation of the advance voting in the municipality where they voted or attempted to vote in advance. The Commission also proposes granting those who put forward list proposals a separate right of appeal.

Thirdly, the Commission proposes a right of appeal against the Storting, county and municipal council's decision on whether the election is valid. At parliamentary elections, the appeal shall be dealt with by the Supreme Court. At municipal and county council elections, the appeal shall be dealt with by the National Election Committee.

The election can only be deemed invalid if there is a preponderance of evidence that the error has affected the allocation of seats.

#### **1.2.4 Provision for national emergencies**

The Commission proposes that provisions for national emergencies are included in the Election Act and the Constitution. Under these provisions, the election proceedings may be postponed or extended if something extraordinary has occurred that prevents a significant portion of the electorate from voting. The Commission also proposes that a new election should be held if something extraordinary has happened that has prevented a significant portion of the electorate from voting. There are strict conditions for being able to use the proposed legal instruments and postponement, extension or new election are only possible if it is necessary to ensure the voters the opportunity to vote.

At parliamentary elections, the authority to decide on a postponement, extension or a new election at parliamentary is assigned to the Storting. Since such measures will only be relevant in extraordinary situations and because it may be of crucial importance to make the decision quickly, the Commission proposes that the King in Council shall be able to postpone or extend the election if it is not possible to convene the Storting. At municipal and county council elections, the Commission proposes that the authority is assigned to the King in Council.

#### **1.2.5 No electronic elections**

The Commission has considered the possibility of introducing electronic elections.

In principle, the majority finds that the voters should vote at a polling station. This is because the principle of free and fair elections will not be adequately safeguarded if the voters vote outside a polling station. It will also not be possible to fully control that no one is subjected to undue pressure as long as the voting does not take place at a polling station.

The majority also finds that the security of electronic elections is not good enough today, regardless of where the voting takes place. To maintain a high level of confidence in the election and to ensure that the elections proceed correctly, the security and reliability of the voting system are very important. The majority points out that it is important to build expertise in electronic voting to be able to make good assessments of the opportunities and risk associated with electronic voting.

The Commission finds that the possibility of developing secure solutions for electronic voting at the polling stations should be explored, to improve the facilitation for voters with disabilities, among other things.

### **1.2.6 Legislate the use of ICT systems for the implementation of elections**

The Commission finds that the use of a government ICT system for conducting elections, similar to what is currently EVA, should be legislated. By legislating the use of a government ICT system, the municipal and county authorities will have to use this system. At the same time, the government will be responsible for offering an election implementation system that has been tested and secured to the required extent, as well as offering training, support and guidance to this system. It is an important national goal to ensure election implementation and establishing by law the obligation to use a government ICT system is a means of achieving this goal.

### **1.2.7 A continued requirement of two independent counts**

The Commission finds that it should be legislated that all votes shall be counted in two independent ways at Norwegian elections. In recent years, there has been extensive use of scanners to count and it is important to ensure that the outcome of the election cannot be influenced or questioned as a result of errors in or attacks on these machines. Legislating that the counting shall be done in two different ways, ensures that it is not the same machines (or machines with the same software) that count the ballot papers twice. This helps to secure the count against this type of attack.

### **1.2.8 Assistance to voters with disabilities**

The Commission has considered the current rules whereby voters can bring helpers into the polling booth with them. Today, any voters who need it may bring an election official into the polling booth with them and voters with a severe mental or physical disability may themselves choose a helper in addition to the election official. The Commission finds that anyone who cannot vote alone due to mental and physical disability should be entitled to assistance from a self-selected helper. It is proposed that the current requirement regarding severe disability is removed.

The Commission has also considered whether the current rule that there shall always be an election official in addition to the self-selected helper should be continued. This is a balance between the consideration of counteracting undue influence and the voter being able to choose who shall know what he or she has voted. The Commission finds that consideration for the dignity of the voters and the possibility to choose who they shall receive assistance from, can be decisive for the voter to freely vote for the party he or she wants. Therefore, the Commission proposes that voters who, due to disability, need assistance to vote, should be able to choose to have only their assistant with them in the polling booth.

## **1.3 Summary**

### **1.3.1 Introduction**

The Commission provides here a summary of the proposals in the individual chapters.

The report has been divided into five parts. The first section, *Introduction*, includes Chapters 1 to 4. This section addresses the basis of the Commission's work.

Part two, *The Electoral System*, reviews the Commission's recommendations related to the electoral system. This covers the various elements of how votes are converted to representation in the three different types of elections, as well as preferential voting, referendums and rules related to the right to vote, eligibility and the duty to accept election.

The third section, *The Implementation of Elections*, covers the implementation of the election itself. Rules for putting forward list proposals, rules of order and rules for identification and facilitation, as well as rules for the counting the votes are discussed here. This section also has chapters on the use of technology and election to the Sami Parliament.

The fourth section, *Approval of the election*, discusses the rules of approval and appeal, for a new election and emergency provisions.

The fifth section, *the Draft Bill with comments*, addresses the Draft Bill and the comments on the various provisions as well as financial and administrative consequences.

### **1.3.2 Principled considerations – statutory objective**

In Chapter 2, the Commission explains the key national and international principles for elections. It is proposed an adjustment of the statutory objective. This means that the principle of "direct" elections, which is enshrined in several other provisions in both the Constitution and the Election Act, is no longer emphasised in the statutory objective. The overarching consideration emphasised in the Constitution and the Election Act is that the elections shall be "free and fair".

### **1.3.3 Voter turnout**

In Chapter 3, the Commission reports on the voter turnout in Norway and factors that affect the turnout.

### **1.3.4 Technology and security**

Chapter 4 discusses technology and security when conducting elections. The Commission looks at the security of democratic processes and special considerations related to the election area. The Commission also discusses the issue of whether electronic voting should be introduced in Norway and concludes that such voting should not be allowed.

### **1.3.5 The electoral system at parliamentary elections**

The Commission discusses the various parts of the parliamentary election system in Chapter 5.

The Commission has first looked at how the seats are allocated among the various constituencies. The majority proposes abolishing the surface area factor and introducing an allocation of the seats where each constituency is first allocated one seat before the remaining seats are allocated according to the population. This means that the small constituencies to a certain extent receive seats at the expense of the large constituencies. The Commission also proposes introducing a minimum limit of four seats per constituency, which ensures the smallest regions representation without excessive overrepresentation.

The majority proposes increasing the proportionality of the electoral system. The majority finds that the best way to increase the proportionality from the current level is to lower the electoral threshold to three per cent. This provides more proportional representation of several parties at

the same time as it does not allow parties that are not currently represented to become members of the Storting more easily. The majority proposes retaining the current first quotient.

In this chapter, the Commission also discusses whether the current constituencies should be changed so that they follow the new county boundaries. The majority proposes retaining the current 19 constituencies because this ensures representation from the whole of the country.

The Commission has also discussed various models for how an electoral system can be organised so that the members of the Commission can either primarily or alternatively endorse all the elements of the models.

### **1.3.6 The electoral system at municipal and county council elections**

In Chapter 6, the Commission discusses the electoral system at municipal and county council elections and finds this should follow the parliamentary election system where appropriate. The Commission has discussed four elements of the electoral system in particular; division into constituencies, a minimum number of members of the county and municipal councils, majoritarian elections at municipal council elections and a joint election day. However, the Commission finds the current regulations are appropriate and the majority proposes only some minor amendments to the current legislation.

### **1.3.7 Preferential voting**

The Commission discusses the three preferential voting systems at Norwegian elections in Chapter 7. The majority proposes introducing the current preferential voting system at municipal council elections to parliamentary and county council elections but with no cross-party votes and restrictions on how many candidates can receive an increased share of the poll. This will give the voters greater influence over who will represent them, without undermining the parties' key role in Norwegian democracy. As regards municipal council elections, the majority proposes continuing the current rules on an increased share of the poll, cross-party votes and personal votes. The majority does not want to introduce deletions at any election.

### **1.3.8 Referendums**

In Chapter 8, the Commission discusses national and local referendums. The Commission has considered whether separate provisions should be laid down for how consultative national referendums are to be conducted. However, the majority finds that the current practice of establishing separate laws for each referendum works well and sees no need to enshrine general principles in the legislation. When it comes to local referendums, the majority emphasises that Norwegian democracy is a representative democracy and not built around referendums. The majority also finds that the municipalities and county authorities should have the freedom to facilitate referendums. Therefore, the majority does not propose regulating local referendums by law but that a guide should be drawn up for the municipalities and the county authorities.

### **1.3.9 The right to vote**

In Chapter 9, the Commission discusses the right to vote and eligibility for 16-year-olds, the right to vote for voters with a severe mental impairment or reduced level of consciousness, compulsory voting and the requirement to be registered with the Population Registry in Norway to have the right to vote. The majority proposes lowering the voting age at local elections to 16 years but does not propose reducing the eligibility age. The Commission also proposes repealing Article 50,

subsection 3 of the Constitution that rules may be laid down for persons who on election day are obviously suffering from severe mental impairment or a reduced level of consciousness. The majority wants to continue the rule that to vote at parliamentary elections, a person must be a Norwegian citizen. The majority does not want to introduce compulsory voting. The requirement that to be eligible to vote a person must be registered in the Population Registry in Norway is proposed removed for parliamentary elections, but not for local elections.

### **1.3.10 Eligibility**

The Commission discusses the rules on eligibility in Chapter 10. The majority proposes that there should be no restrictions on eligibility for civil servants in the ministries or members of the diplomatic corps and consular service at parliamentary elections.

As regards Justices of the Supreme Court of Norway, the Commission proposes that these should still not be eligible for election to the Storting. To be eligible, Justices of the Supreme Court of Norway must have resigned from their position before the list proposals are approved.

The Commission does not propose amendments to the rules on eligibility at county and municipal council elections, as this was recently considered in the discussion of the new Local Government Act.

### **1.3.11 Duty to accept election**

In Chapter 11, the Commission considers the rules concerning the duty to accept election and the loss of the right to elected positions. Among other things, the Commission discusses the Government's right to bring members of the Storting to the government apparatus, leave of absence from the Storting, the obligation to be on a list and to accept election.

The Commission points out that the Storting has recently removed the obligation to be on a list at parliamentary elections because it is problematic that unwilling candidates, in practice, must join another party to be exempted from being on a list. The Commission finds it is correct to introduce the possibility of exemption from being on a list without a requirement for justification and finds that the other grounds for exemption can thus be removed. Since it is possible to obtain an exemption regardless of the grounds, the Commission finds it should not be possible to refuse to accept election. When a candidate has agreed to be on a list, the candidate should not be able to breach the contract with the voter if he or she is elected. Therefore, the Commission proposes abolishing the right to refuse to accept election.

The majority finds that the rules on leave of absence from the Storting should be enshrined in the Constitution. Therefore, the majority proposes including in Article 71 of the Constitution that the Storting may issue rules on welfare leave and short leave for other reasons but that a leave of absence from the parliamentary office should only be granted to execute other tasks of national interest.

The majority proposes that members of the Storting should not be able to be appointed as state secretary or employed as a political adviser. The majority proposes introducing a provision in Article 14 of the Constitution to prevent the Government from influencing in this way the composition of the Storting and breaching the contract between the voter and the representative. If state secretaries or political advisers are elected to the Storting, the majority finds that it is only when they

resign as state secretaries or political advisers that they must take up office as members of the Storting.

As regards the current narrow opportunity to deprive members of the Storting of office under section 56 of the Penal Code, the majority finds that this possibility should be continued. Therefore, the majority proposes that a provision is included in Article 53 of the Constitution concerning the right to deprive members of the Storting of office so that the provision of the Penal Code is ensured a legal basis enshrined in the Constitution. The majority does not want to make it easier to deprive a member of the Storting of his or her post than today.

The Commission will not allow for the suspension of members of the Storting.

As regards the loss of the right to vote to go into the service of a foreign power, the Commission finds such a rule is intrusive – especially because it is now possible to have dual citizenship – and that it is difficult to control. Therefore, the Commission proposes removing this provision.

The Commission has not considered amendments to the rules for county and municipal council representatives and points out that this matter has recently been discussed in the work on the new Local Government Act.

### **1.3.12 The use of technology during the election process**

In Chapter 12, the Commission discusses how technology is used during the electoral process today. The Commission appreciates that an ICT system, EVA, has been developed, which all municipalities and county authorities can use. The Commission wants to legislate the use of the government ICT system during the election process. At the same time, it is proposed that the Ministry may lay down regulatory requirements concerning the use and protection of the system. The Commission is also positive to the use of electronic electoral registers and polling cards and finds these should be used to a greater extent than today but does not propose legislating a requirement that it must be done in this way.

### **1.3.13 List proposals**

The Commission discusses the current rules for list proposals in Chapter 13. In particular, the Commission has considered the requirements for the number of names on the lists, what happens if there are not enough names on the lists, the possibility to stand as an independent candidate, the requirement for written signatures and the number of signatures required to become a political party.

The majority finds the requirement for the number of names on the lists is too strict in all three elections today. All groups must be allowed to put forward lists and the current rules affect the smallest parties in particular. Today, these parties must put forward lists with many more candidates than they can expect to be elected. Therefore, the majority proposes a new minimum requirement for all three elections. At parliamentary elections, a flat requirement of five candidates is proposed and at county and municipal council elections a requirement that varies according to the size of the county or municipal council but which for several categories will be lower than today.

The Commission finds it is not desirable to allow independent candidates.



The Commission proposes that it shall be possible to sign list proposals digitally. At the same time, the Commission proposes increasing the requirement for the number of signatures to put forward a list at parliamentary elections but allowing the requirement to vary according to the population. The Commission also proposes lowering the percentage requirement for the number of signatures at municipal council elections but the majority wants to increase the number of signatures that will always be sufficient to put forward a list. The majority also proposes increasing the number of signatures required to register a party in the Party Register from the current 5,000 to 10,000 signatures.

#### **1.3.14 Rules of order**

In Chapter 14, the Commission discusses the current rules of order during the election process, including the rules on canvassing in and close to the polling station during the advance voting period and at the election proceedings. The majority proposes to a large extent to continue the current rules of order but proposes limiting the ban on canvassing to the polling station itself and for the entire voting period. In the opinion of the majority, the ban on canvassing at the election proceedings in the rooms that voters must pass through on their way to the polling station should be abolished.

#### **1.3.15 Identification**

In Chapter 15, the Commission discusses the identification requirements of the current legislation. The Commission proposes that the main rule shall be that all voters shall provide proof of identity when they vote. The current main rule that voters who are known to the returning officer do not need to provide proof of identity should be continued as an exception to the main rule. The Commission emphasises that anyone who has the right to vote must be allowed to obtain identification.

The Commission finds that the current requirements for what is valid identification should be continued and that these should be included in the regulations. It is important to safeguard against electoral fraud.

#### **1.3.16 Accessibility and facilitation**

In Chapter 16, the Commission considers the current regulations on accessibility and facilitation so that the voters can vote. The Commission proposes to continue the requirements for accessibility to the polling stations but will clarify that the Electoral Committee cannot delegate the authority to designate polling stations. The Commission also proposes legislating that the municipalities must announce which polling stations do not satisfy the accessibility requirements. The Commission finds it should be reported on how blind and partially sighted people can be allowed to cast personal votes on their own, e.g. through electronic voting at the polling station.

The Commission also proposes that all voters, who cannot vote alone due to physical or mental disability, shall be entitled to assistance from a self-selected helper and that the voters can allow a self-selected helper to step in for the election official. The Commission will continue the rules on ambulatory voting and legislate the right to vote in prisons.

#### **1.3.17 Voting, validation and counting**

In Chapter 17, the Commission discusses measures to ensure that the advance votes arrive in time to be approved. The Commission finds that at future elections, special dispatch agreements should be entered into to ensure that the votes arrive on time.

The majority also proposes that the advance voting shall be concluded no later than 6 p.m. on the last Friday before Election Day, which will help the votes to arrive on time.

The Commission also discusses whether it should be possible for voters to vote outside their municipality on Election Day but the majority finds this should not be allowed.

The majority proposes to continue the possibilities for early voting in Norway, except on Svalbard and Jan Mayen and to postal voting abroad.

The Commission proposes that the ballot papers shall be counted twice at all elections. At parliamentary and county council elections, the municipalities shall only count the ballot papers once, not twice as today. The ballot papers shall be counted in two ways that are independent of each other.

To ensure good control and that it is not the same person who counts the votes in the first and second count, amendments are made to the counting rules. All votes shall be counted by a polling committee in the first count. The advance votes are counted by a new body, the central polling committee in the municipality. The ballots cast at election proceedings are counted by the polling committee at the polling station, unless the Electoral Committee has decided not to count by constituency. In that case, the central polling committee is responsible for counting the ballots cast at election proceedings as well.

No changes are made to who will be responsible for the final count. At parliamentary elections, the Commission proposes that a District Electoral Committee shall be appointed to replace the County Electoral Committee. A new name for the body is proposed to clarify the distinction between tasks related to parliamentary elections and county council elections. This is also because the Commission proposes that a county authority can be responsible for several constituencies at a parliamentary election.

The Commission further proposes that there should no longer be a joint crossing off in the electoral register at municipal and county council elections but one cross if the voter votes at the county council election and one cross if the voter votes at a municipal council election.

### **1.3.18 Practical matters related to the conduct of elections to the Sami Parliament**

In Chapter 18, the Commission considers the various aspects of conducting elections to the Sami Parliament. The Commission finds that the Sami Act should be amended to include provisions on the population register authority's duty to provide the necessary information at Sami parliamentary elections and that sanctions should be introduced for breaches of the prohibition on publication of the election result. The Commission also finds that the counting committees should have their expenses at elections covered to a greater extent. The Commission also finds linguistic and technical amendments should be made to the Sami parliamentary election regulations in line the new Election Act and regulations.

### **1.3.19 Other topics**

In Chapter 19, the Commission proposes regulating matters that do not naturally belong in other chapters and that under applicable law are largely regulated in Chapter 15 of the Election Act.

The Commission proposes that there are regulatory exemptions from the working hour provisions for election staff in the municipalities and county authorities who have overall responsibility for the implementation of the election, as well as for those who work on Election Day/Night and for those who count the ballot papers. Similar exemptions should be made for employees in the Norwegian Directorate of Elections, the Ministry of Local Government and Modernisation and the Storting who have tasks at the election.

The majority also proposes that the media no longer shall have access to election results before 9 p.m. when the last polling stations close.

### **1.3.20 Approval and appeal**

The Commission discusses the rules on approval in Chapter 20. The Commission proposes new rules in several areas.

The Commission proposes that the National Electoral Committee shall deal with appeals against errors in the preparation and implementation of parliamentary elections, county and municipal council elections, not only during parliamentary elections as it is under applicable law.

The Commission proposes comprehensive regulations for the composition and eligibility of the National Electoral Committee to ensure an independent legal review of the appeals. According to the Commission's proposal, the National Electoral Committee shall be composed of five members, of which three shall be judges. The Commission further proposes it not being possible for members of the Government, the Storting, county and municipal councils, as well as state secretaries and political advisers in the ministries and at the Storting to be appointed as members of the National Electoral Committee.

According to the proposal, the county and municipal councils shall be bound by the National Electoral Committee's decisions in appeal cases when they decide whether to approve the election. For the Storting, this only applies if the decision of the National Electoral Committee deems the election invalid. The Storting may conclude that the election is invalid even if the National Electoral Committee has reached the opposite conclusion.

The Commission proposes allowing the right of appeal against the Storting, county and municipal council's decisions regarding whether the election is valid. According to the proposal, at parliamentary elections, such appeals shall be dealt with by the Supreme Court in plenary session. The National Electoral Committee is the appeal body at county and municipal council elections.

### **1.3.21 New election**

In Chapter 21, the Commission largely proposes to continue the new election regulations.

The Commission proposes that a new election can only be conducted if there is a preponderance of evidence that the errors have affected the distribution of mandates between the lists. If the errors have only affected the returning of members, the condition for a new election under the proposal has not been met, contrary to the applicable law at a parliamentary election today.

The Commission proposes clarifying that the conditions for a new election may be present if the objective conditions in sections 151 to 154 of the Penal Code have been met.

The Commission finds that the scope of any new election should be as small as possible. Therefore, the Commission proposes that a new election can only be conducted in the municipalities where there is a preponderance of evidence that the number of votes to the various lists have been affected by unlawful circumstances.

### **1.3.22 Provision for national emergencies**

In Chapter 22, the Commission proposes a whole new set of rules for situations where something extraordinary has happened that is suitable for preventing a significant portion of the voters from voting. In such cases, the election proceedings can either be postponed or extended for up to one day. The election proceedings shall nevertheless be completed within one month of the original Election Day.

The Commission also proposes that a new election should be held if something extraordinary has happened that has prevented a significant portion of the voters from voting.

The election proceedings can only be postponed or extended and a new election can only be held to the extent necessary to ensure that the voters have the opportunity to vote.

The proposals apply to all elections, but the authority to make decisions based on the provisions has been delegated to various bodies at parliamentary, county and municipal council elections.

At parliamentary elections, the authority is assigned to the Storting, where decisions on postponement or extension of the election or a new election require the votes of two-thirds of the Storting's members to be adopted. An exemption from this is proposed if the Storting cannot be convened. If so, the King in council may decide to postpone or extend the election.

At municipal and county council elections, the authority under these provisions has been assigned to the King.

## **1.4 Regulations**

In the mandate, the Commission has been requested to consider the relationship between what is regulated by law and what should be regulated in regulations and has also been requested to draw up new regulations. The Commission has considered the relationship between the Election Act and the Regulations and on several points has considered that regulation can be done through regulations. In accordance with this, the Commission proposes regulatory provisions in several areas of the Election Act. However, the Commission has not drawn up draft regulations. In several places in the report, the Commission has been divided into a majority and a minority and some input on the proposals the Commission has made must also be expected. The Commission considers it more appropriate to draft regulations following the adoption of a new Act. This has also enabled the Commission to prioritise a thorough report on the other topics in the mandate.

## 2 Principled considerations – statutory objective

### 2.1 Democracy, human rights and constitutional government

*Democracy* means “government by the people”. This is the system of government in Norway and is set forth without reservation in Article 49, subsection 1, first sentence of the Constitution; “The people exercise the legislative power through the Storting.”

The constitutional provision then states that “The representatives of the Storting are elected through free and fair elections”. In short, this implies that the purpose of the other provisions on elections in the Constitution, formal law and regulations is to transform the votes of the people into legitimately elected members of the Storting.

Elections to the municipal councils are indirectly enshrined in Article 49, subsection 2, first sentence: “The inhabitants have the right to govern local affairs through local democratically elected bodies.”

Therefore, it will also be the task of the election provisions to “channel the will of the people” in such a way that the correct democratically elected representatives are appointed. The county authorities have no corresponding foundation in the Constitution.

The task of the Election Act Commission is to consider the applicable rules of law for election to the Storting and the county and municipal councils. If required to ensure good framework conditions for democracy in the future, the Commission shall propose regulatory amendments.

Several principles have been developed nationally and internationally for election to national assemblies and regional democratically elected bodies. The Commission will first look at the principles set out by the current Constitution and international conventions to which Norway is bound. To gain a wider perspective, the Commission will also include some non-binding principles and objectives for elections in a democracy. These principles and objectives are important both in assessing the applicable law and for the amendment proposals being submitted.

In addition to democracy, modern western democracies are based on two other fundamental principles; first, protection of and respect for human rights and second, that the state shall be based on the rule of law. These two principles are not a direct topic for the Election Act Commission but are a legal framework around the election rules enshrined in Article 2, second sentence of the Constitution.

### 2.2 The election principles of the Constitution

Article 49, subsection 1, second sentence, states that “the members of the Storting are elected through free and fair elections”. Two widely recognised principles follow from this:

- The election shall be free
- The ballot shall be secret.

Article 54 of the Constitution states that there shall be elections every four years and Article 58 states that votes shall be cast directly for representatives to the Storting. This is also according to the generally recognised principles

- that the election shall be direct
- that elections shall be held at regular intervals

Article 57, subsection 2 of the Constitution states that the realm is divided into 19 constituencies, while in Article 57, subsection 3, a division has been made between direct representatives and seats at large. This refers to two other widely recognised principles, which may contradict each other:

- The electoral system must ensure geographical representation.
- Each vote shall have the same weight.

No corresponding principles for elections at the county and municipal level are found in the Constitution. However, several of the principles have also been applied to local elections in section 1-1 of the current Election Act, which reads: “The purpose of this act is to establish such conditions that the citizens shall be able to elect their representatives to the Storting and the county and municipal councils at free, direct and fair elections.”

### **2.3 International obligations**

The right to participate in decision-making and free and fair elections and to form political parties are key rights in modern, western democracies. Article 21 of the UN Universal Declaration on Human Rights states:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The Declaration is – by virtue of being a declaration and not a convention – not directly binding on Norway. However, similar provisions are followed up in Article 25 of the UN Covenant on Civil and Political Rights (CCPR):

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

The citizens' democratic rights related to elections are further enshrined in the European Convention on Human Rights (ECHR) in Article 3 of Protocol 1:

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

Both of these conventions are binding on Norway and apply as Norwegian law, cf. Article 92 of the Constitution and Section 2 (1) and (2) of the Human Rights Act. Both conventions will also be indicative of the interpretation of Article 49, subsection 1, first sentence of the Constitution.<sup>7</sup>

In 2002, the Venice Commission drafted the<sup>8</sup> “Rules for Good Practice in Electoral Matters”. The recommendations are based on five principles drawn from the pan-European electoral tradition:

- *Universal suffrage*. Everyone shall have the right to vote and stand for election. This right will be subject to conditions related to age, nationality and place of residence.
- *Equal suffrage*. Each voter shall have one vote and equal voting influence. This means that the seats shall be distributed almost equally among the constituencies according to the population, citizens or number of voters. The deviations should not be more than 10 per cent and never more than 15 per cent, except to protect a concentrated minority or sparsely populated administrative unit. Equal suffrage means that everyone shall have equal opportunities to participate in elections.
- *Free elections*. The voters shall be free to express their opinions and to vote. The voting rules shall be simple and the counting transparent. Electoral fraud shall be combatted actively.
- *Direct election*. The eligible voters vote for candidates to the democratically elected assembly.
- *Secret ballot*. It is the right of the voters, but also their duty, to keep the ballot secret. It is not just about what a voter has voted for but also information about who actually votes.

The guidelines also state that elections must be held periodically and that the legislative assembly shall not sit for more than five years. The Venice Commission’s guidelines are not directly legally binding on Norway, but are considered a pan-European standard.<sup>9</sup>

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<sup>7</sup>Article 49, subsection 1, first sentence of the Constitution was adopted in connection with the constitutional reform in 2014 and modelled on CCPR Article 25 and in particular ECHR protocol 1 Article 3, see Document no. 16 (2011–2012) pages 251–255 and Innst. 186 S (2013–2014) (Recommendation to the Storting) page 32. In several judgments, the Supreme Court has ruled that similar constitutional provisions shall be interpreted in light of the models of international law and practice by the international enforcement bodies, primarily the European Court of Human Rights, see for example Supreme Court Report Rt. 2014 page 1105, section 28, Rt. 2015 page 93, section 57, Rt. 2015 and HR-2016-2554-P, section 81. The same was concluded by the Human Rights Committee and the Storting in connection with the constitutional reform in 2014, see respective Document no. 16 (2011–2012) pages 89–90 and Innst. 186 S (2013–2014) (Recommendation to the Storting) page 20.

<sup>8</sup>The European Commission for Democracy through Legislation, also called the “Venice Commission”, is administratively subordinate to the Council of Europe. The Commission, which also provides legal assistance to member and observer countries in the Commission, is composed of highly qualified lawyers from the 61 member states.

<sup>9</sup>The Venice Commission’s “Rules of Good Practice in Election Matters” are also emphasised by the interpretation of ECHR Protocol 1 Article 3, see for example the Grand Chamber judgment *Hirst vs. United Kingdom (no. 2)*, no. 74025/01, section 71, and *Grosaru vs. Romania*, no. 78039/01, section 56.

## 2.4 Principles particularly emphasised in the mandate

The Commission's mandate does not specifically list the principles and objectives that form the basis of the Commission's work. However, the mandate is nevertheless characterised by several of the principles stated above

In the mandate, the Commission has been requested to ensure "continued high confidence in the electoral system" and the Commission shall "provide an account of elections as a cornerstone of democracy". Furthermore, the Commission's proposed electoral system shall be "easy to grasp, seem fair, have legitimacy and ensure good political and geographical representation".

## 2.5 The fundamental legal principles

The following principles for the electoral system itself can be established from the Constitution, Norway's international human rights obligations and the principles from the Venice Commission:

- The election shall be free
- The ballot shall be secret.
- The election shall be direct.
- The right to vote shall be universal and equal.
- Elections shall be held periodically.
- Everyone with the right to vote shall have the opportunity to vote.
- Everyone with the right to vote shall be able to be elected.
- Each vote shall have equal weight.
- The electoral system shall ensure geographical representation.

It is important to note that these are principles and therefore that there may be room for limited exceptions if the principles should conflict with each other. Reasonable and sensible balancing between the principles – where they conflict with each other – will be democratically justifiable.

## 2.6 The limitations of the Election Act

In addition to the above principles, which are directly related to the electoral system itself and the conduct of the election, one can look at the ideal objectives related to the outcome of the election. An electoral system alone cannot guarantee a stable and governable democracy and a consequence of having democracy as a form of government is necessarily that the outcome of the election is unknown. Democracy has ultimately no other protection than the people's support and collective reason. However, it is possible – when drafting an electoral system – to be concerned that the system can contribute to a stable democratic system. This is also stated in the Commission's mandate: The electoral system shall be "perceived as fair" and "have legitimacy".

The purpose of the electoral provisions of the Constitution, the Election Act and Regulations is to facilitate a well-functioning political democracy with high confidence. However, the rule of law cannot guarantee this end product alone. No matter how an electoral system is organised, it will also depend on how the voters, parties and the public otherwise act. The electoral provisions can only create the legal framework – what goes on within this framework is decided by the people.

It is a question of an interaction between a legal framework that has great legitimacy and a civil society that wants to maintain this legitimacy because the citizens experience that the problems to be solved within a democracy can be solved with the framework of the electoral provisions.



All the objectives there should be for democracy cannot be solved through the electoral provisions. And some of these objectives depend primarily on the behaviour of the voters and the parties. For example, there are limits to how much the electoral system can provide guidelines on to ensure that the democratically elected body is a “mirror image” of the population, taking into account markers such as age, gender and class. Where the line goes between legislation and the power of the electorate will be an ongoing topic of discussion.

In continuation of this, a distinction must be made between principles that must be used unconditionally as a basis in the electoral provisions and ideal objectives that can only be objectives. Regarding the ideal objectives, the legislation may try to contribute but it is what the voters and the parties do that will be decisive.

It is also worth noting that the electoral provisions in the Constitution, formal Act and regulations apply to the political democracy where each voter has one vote. All power does not lie with the Storting. The room for manoeuvre that the Storting has is limited by international treaties, private economic power, the power and influence of organisations, media and cultural power, etc.<sup>10</sup> This is mainly outside what the Election Act Commission shall consider but nevertheless it is the case that when considering the geographical distribution of seats in the Storting, there is a tradition of emphasising that other power other than political power is often concentrated in the capital and other densely populated parts of the country.

## **2.7 Relatively conflict-free principles**

The first seven principles of section 2.5 – all of which must be regarded as fundamental and undisputed today – are well observed in the current election legislation in Norway. These seven principles are to a small extent in conflict with other principles or objectives. The Election Act Commission agrees with the principles and they have provided guidance for the specific proposals that the Commission puts forward.

### **2.7.1 Free elections**

The fact that the election is free means that the voters have the freedom of opinion and freedom to express their wishes. This is a cornerstone of democracy. It is not enough to have rules on how to conduct elections to ensure free elections, it also requires freedom of expression, real choices (a multi-party system or several lists) and legal protection. The regulations shall ensure a secret ballot through procedures that ensure that the voter votes on his or her own and that this is done without others being able to control what the voter votes.

The principle of free elections requires that the polling station appears neutral and that the voter is left in peace while voting.

The principle of free elections also requires active combating of electoral fraud. The Election Act contains several procedural requirements, including that the requirement that votes shall be counted in several rounds and the keeping of a record. This is intended to counter electoral fraud

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<sup>10</sup>In Official Norwegian Report (NOU) 2003: 19 *Power and Democracy* Chapter 2, a distinction is made between political, economic and ideological power.

and enable control. The Penal Code also has provisions on electoral fraud but in practice, these have been applied to a limited extent.

It falls outside the mandate of the Election Act Commission to look at the rules on covert influence of the voters until the voting takes place, although the issue is both important and very relevant.

### **2.7.2 Secret ballot**

A secret ballot is basically a right of the voter. No one can demand to know what a voter has voted. If the voter so wishes, he or she may voluntarily disclose this to anyone. However, this does not apply at the polling station. There is also a duty of secrecy there. At the polling station, a voter cannot – even if he or she wants to – show other voters what he or she has voted. For example, if a voter does not fold his or her ballot paper correctly so that the name of the party is visible, the voter shall be sent back to the polling booth by an election official.

A secret ballot reduces the risk of buying and selling votes or that a family member or a domineering person decides over others. The principle ensures that each voter can vote freely based on his or her opinions.

During the election process, several factors must be considered specifically to ensure secrecy. The Election Act and the Regulations have several provisions intended to ensure secrecy. First and foremost, the rules of order have great importance for ensuring a secret ballot and avoiding pressure and influence. Among other things, there are rules here that it is not permitted for unauthorised persons to control who turns up and votes and that unauthorised persons must not gain knowledge of how many of the ballot papers for the various electoral lists have been used.

The rules on counting are largely designed to ensure secrecy. For example, it is only permitted to count ballot papers according to the constituency when there are more than 100 voters in the electoral register. The provisional count of advanced votes can only be started when it can be done without conflicting with the principle of free and fair elections. This means that if a municipality has few advance votes, these cannot be counted until all the advance votes have been approved. The same consideration is behind the provision that the municipalities must withhold some votes in the provisional count of advance votes and mix these with advance votes that may come in later. This is done to ensure that the advance votes remain anonymous at the time of counting.

Rules on the counting being transparent can also be included under the principles of free and fair elections. The rules on the electoral bodies shall ensure transparency and democratic control. The same consideration lies behind the requirement that the Electoral Committee meetings shall be open to the public and the requirement to keep a record. The Election Act also has some provisions that directly address security, such as the emergency procedure related to electronic crossing off in the electoral register and the requirement for storage and transport of election materials.

Transparency leads to ownership, proximity and confidence. That the voters understand – or at least have the opportunity to understand – the election process is important. It is of value that the crucial processes can be observed and controlled without the need for specialist expertise.

Transparency and security are considerations that have top priority. Both have importance for the confidence that the election is proceeding correctly. However, it is not always possible to ensure both considerations are taken into account. If parts of the election process require complex

technical solutions and the need for encryption and security clearances, it will lead to less transparency and loss of public confidence in the election process. This can also have an impact on the legitimacy of the election and people's confidence in the election process.

### **2.7.3 Direct election**

Direct election means that the voter decides directly who shall be elected to the democratically elected body.

This is in contrast to indirect elections, e.g., when using "delegates" as in Articles 57 and 58 of the 1814 Constitution. Before 1975, county council elections were held as indirect elections, where the municipalities appointed their representatives to the county council.

### **2.7.4 Universal and equal suffrage**

Extension of the suffrage rules, from only a few chosen men having the right to vote, to all adult women and men having it, has taken place gradually in most countries, including Norway. There is a consensus that there must be an age limit for voting in elections but what that limit should be is a topic for discussion. Norwegian citizenship is required for voting at parliamentary elections while citizens without Norwegian citizenship can vote at local government elections (if the period of residence requirement has been met).

Equal suffrage means that no voter shall have more votes than others. In our system, this has been regulated by each voter only having one vote.

The suffrage rules as well as the electoral register rules and display of the electoral register are intended to ensure that universal suffrage works.

### **2.7.5 Elections shall be held periodically**

The principle is outlined in section 54 of the Constitution and section 9-4 of the Election Act.

### **2.7.6 Everyone with the right to vote shall have the opportunity to vote**

It is generally agreed that regardless of disabilities, everyone who has the right to vote shall have the opportunity to vote at elections. Voting in Norway is well organised and everyone who wants to vote has ample opportunity to do so through a long period of advance voting, among other things. The provision on the division into polling districts shall ensure equal accessibility and opportunity to vote. The identification requirements must balance between everyone's right to vote and the risk of electoral fraud.

Voters with disabilities may find it more difficult to vote than other voters and not everyone can vote without the assistance of others. Therefore, some voters may find that in practice, equal suffrage for all does not apply to them. When a voter in need of assistance is accompanied by an election official (and possibly by a personal assistant) into the polling booth, this person will know what the voter is voting. This may be perceived as problematic, especially in smaller municipalities where a voter possibly knows the election official.

In many countries, postal voting is widespread and several countries allow a person to be authorised to vote on behalf of another. In such cases, the principle of accessibility takes precedence over the principle of secrecy. Also in Norway, postal voting is possible in a few cases: This only

applies to voters living abroad and who have no other way to vote. Thus, it is a narrow exception provision.

Accessibility would have been better if the voter could vote from home. However, problems with a secret ballot then arise. In the pilot scheme with electronic voting in 2011 and 2013, a key question was whether a secret ballot was a right for the voter or whether it was also a duty. Furthermore, it was discussed who is responsible for keeping the ballot secret. When the voter votes elsewhere than at a polling station (for example through electronic or postal voting), it is the voter who is responsible for keeping secret the list that the voter in question has chosen.

### **2.7.7 Everyone with the right to vote shall be eligible for election**

In Norway, there are low formal requirements for standing for election and only a certain level of prior support is required for a list to be put forward. The prior support requirement must be set so low that the right to stand for election is safeguarded. Without rules on a certain amount of prior support, the election could be very over-complex. Therefore, the principle that everyone with the right to vote shall be eligible for election – which would have been fully taken care of if there were no qualification requirements for putting forward a list – can be said to conflict to a certain extent with the principle that the electoral system shall be simple and understandable.

Norway has been criticised by OSCE for not allowing certain individuals to stand for election. OSCE finds that it is contrary to Section 7.5 of the Copenhagen Document.<sup>11</sup> In its reply to OSCE, the Ministry has pointed out that it is not only political parties that can stand for election but that a list with more than one candidate must be drawn up. The reason for this requirement is that the electoral system in Norway has been based on party lists.

## **2.8 Principles in conflict**

The principle that all votes shall have the same weight must necessarily be very strong. Any difference in weight undermines the principle that all voters have equal suffrage. In the current electoral system, the principle contradicts somewhat the principle of geographical representation.

It is difficult to achieve an electoral system that ensures broad geographical representation without making the voting weight somewhat relative. The current surface area factor when calculating seats per constituency, which gives a certain overrepresentation to sparsely populated areas that often have a long distance to the capital, also contradicts the principle of equal suffrage.

The greatest equality in voting weight at parliamentary elections would probably be achieved if Norway was one constituency and with no electoral threshold. When allocating 169 seats under such conditions, it would be sufficient to receive around 0.4 per cent support to win a seat. Therefore, in addition to the 9 parties that were elected in 2017, the Pensioners' Party with 12,855 votes

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<sup>11</sup>The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, section 7.5, reads as follows:

To ensure that the will of the people serves as the basis of the authority of government, the participating States will – respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.

(0.44 per cent) would have won a seat in the Storting and the Health Party with 10,337 votes (0.35 per cent) would almost have won a seat.

The 30,865 voters (1.05 per cent) who voted for the 13 smallest parties in 2017 would still have been without representation but the explanation for this would be that they did not receive enough support individually. In any case, the electoral system would have been as proportional as possible with the relevant number of votes in 2017.

Such an electoral system with no constituencies would have given no guarantee that the whole of Norway was represented or that the various regions, counties, cities or regions were represented fairly proportionally according to the population. The responsibility for ensuring representation from the whole country could have been assigned to the parties and their list proposals but this has never been a Norwegian tradition. The principle of constituencies to ensure geographical representation is strong.

Within the constituency, the parties' nomination meetings are responsible for further geographical representation. In most local government parties, there is a tradition that the top places on the list shall be allocated to the various areas within the county. It shows that the current division into 19 constituencies is not refined enough to ensure the desired geographical representation. The parties do not cooperate and therefore, the final result can be – especially in constituencies with few seats and where none of the parties receives more than 1-2 seats – that all the representatives come from the same municipality/city or region or “bailiwick” within the constituency. If the number of constituencies is reduced from the current 19, the challenge of ensuring broad geographical representation will be greater for the parties.

In the current electoral system, consideration for the outlying districts – meaning sparsely populated areas with a long distance to the central power – is taken care of by the so-called surface area factor. The number of seats per region is currently a ratio of the population and the surface area of the constituency, cf. section 57, subsection 5 of the Constitution.

In the current electoral system, the reduction in equal voting weight resulting from the division into constituencies and the desired overrepresentation from outlying areas – in terms of proportionality – is somewhat compensated for with the help of the seat at large system. If one disregards the consequences of the electoral threshold for being included in the allocation of seats at large, the current system means that the representatives come from other geographical areas than they would have done if all votes had equal weight. The distributions between the parties – based on the national number of votes – are less affected.

The desire that the election should produce a governing majority is in itself hardly disputed. And a governing majority may also be the election result in a system with almost ideal proportionality. The problem is to what extent it is legitimate to use electoral techniques to favourise the major parties at the expense of the smaller parties. The stance taken here will be related to how important one thinks this objective is, as well as how likely one generally considers it to be that many parties in the Storting provide less stability and governance than when fewer parties are elected. Also, the words one uses and how one describes the considerations that stand against each other can have a major impact on the choice one eventually makes.

It is a general assumption that the possibility of compromise and effective governance is reduced by the number of parties entering the Storting. This may be a particular problem if no government options are possible without concessions being granted to groups that represent very few voters, including situational special groups. The long-term confidence in the system may be weakened if – as a result of such negotiations – decisions are made that only have marginal support among the population. Against the principle of proportionality between the national number of votes and representation, it could be argued that a large number of parties may lead to a weak parliament.

The question of government may be more important to many voters than the exact composition of the Storting. With a larger number of parties to choose from and that possible government constellations will not be known until after the election result is presented, it may be difficult for the voters to foresee which party they shall vote for to achieve the desired government. When the situation is such, the principle of equal voting weight may conflict with the objective of a simple and understandable electoral system and the voter's ability to hold parties and candidates accountable.

In the current electoral system, both the first quotient – of 1.4 – when allocating constituency seats and the electoral threshold of 4 per cent for participation in the competition for the seats at large, contribute to the voting weight being unequal. The systems favour the larger parties and are often referred to as a “majority bonus”. How skewed this majority bonus turns out depends on the election results from election to election. In particular, the division into constituencies means that the representation for parties achieving less than 4 per cent is not proportional. An illustration of this is taken from the 2017 election, where the Christian Democrat Party (KrF) that received 122,797 votes (4.2 per cent) was allocated 8 seats while the Green Party (MDG) that received 94,778 votes (3.2 per cent) was allocated 1 seat. The details of this will be reviewed further in Chapter 5 on the electoral system at parliamentary elections. The first quotient – 1.4 – is also used to calculate mandates at county and municipal council elections.

Most parties emphasise that the nominations shall take into account gender, age, minority representation and the representation of all parts of the constituency. Depending on the degree of preferential voting in the electoral system, the voters can weaken and strengthen the considerations that the parties want to safeguard with their list proposals. The same applies if one wants to ensure the representation of other types of groups, such as social class, business affiliation and ideological belief. Many of today's parties have a historical origin in such a division and it may affect the background of the candidates on the electoral lists even today. Once again, it is the parties and the voters who must take care of this consideration, not the electoral system.

The objective of a simple and understandable electoral system may be contrary to several other considerations. A system of individual constituencies is easiest to understand – the person who receives the most votes is elected. However, this gives limited representation and few voting options for the voters. The more considerations to be taken into account in an electoral system, the more complicated it will be to understand how the number of votes polled is converted into seats. In the current electoral system, the provisions on how the seats at large are allocated in a constituency and the use of “list votes” at municipal council elections appear to be particularly challenging. It is also a challenge when the rules differ for the various elections, as is the case for the preferential voting rules.

The goal of a high election turnout can be challenged from several sides. The introduction of compulsory voting would increase voter turnout but conflicts with the principle of free elections if the freedom also includes the right not to participate. There is probably also a limit to how much the electoral authorities can encourage individual groups to vote if this can affect the distribution of votes between the various parties.

A complex electoral system – which is necessary to take care of other considerations – may have as a consequence that some people abstain from voting. The political situation in question is probably what has the greatest impact on voter turnout. The tasks of the democratically elected body in question, and the expertise it has, will also play a role. When the voter knows that a specific question the voter is concerned about is decided after the election of the municipal council, it is more relevant to vote than when it is unclear what influence the body has. Today, the county authority may suffer under this and in general, government oversteering can reduce interest in local elections.

Among other possible objectives for a good electoral system is a desire for those elected to be well-suited persons. It is difficult to imagine that the legislation can ensure this without getting into serious conflict with more fundamental principles.

Furthermore, an objective could be that the electoral system should contribute to power balancing in society. Neither the financial nor the cultural power is evenly distributed in Norway. However, it is difficult to imagine that a system with one person – one vote can contribute to this. The system with a certain overrepresentation from the outlying districts and sparsely populated areas draws in such a direction, but more important measures to curb the political power that may result from unequal economic power seem to be the significant public party support and the demand for transparency regarding the parties' sources of income, among other things.

## **2.9 Statutory objective**

In 2014, the Storting decided to constitutionalise civil and political human rights, which included the principles of free and fair elections, cf. Article 49, subsection 1 of the Constitution.

The reason for the constitutional amendment was the report from the Human Rights Committee. The Committee stated that constitutionalising these two principles will highlight that “free and fair elections are an overriding value and of fundamental importance to Norwegian government”.

The Human Rights Committee emphasised that the individuals are entitled to their vote being secret and that their vote is an expression of their own free will. The committee pointed out that the elections held today are undoubtedly free and fair and that constitutionalising this would not lead to another legal amendment than the constitutionalising itself. A constitutionalisation will be a guarantee that a small majority cannot tear down or fundamentally weaken democracy.

The Human Rights Committee further stressed that although they agreed to constitutionalise the right to free and fair elections, they did not consider how good the security for ensuring secrecy would be for alternative forms of conducting elections. For example, they found that the question of whether electronic elections could be conducted with sufficient secrecy was something they did not necessarily have the technical insight to be able to assess. Nevertheless, the Committee emphasised that it is important to maintain the requirement of a secret ballot, even if the procedures for conducting elections should change.

### **2.9.1 Applicable law**

Section 1-1 of the Election Act states that the purpose of the Act is to establish such conditions so that citizens shall be able to elect their representatives to the Storting and the county and municipal councils at free, direct and fair elections. The provision was incorporated as a result of a proposal from presented the previous Election Act Commission. The then Election Act Commission pointed out that it might be appropriate to establish the fundamental principles of the electoral system in a separate section, the statutory objective. The content of the statutory objective is based on principles that also previously guided how the provisions on elections were formulated, even though these were not included in the legislation.

The Ministry adopted the proposal and pointed out that it is an advantage that the overriding principles – such as free, direct and fair elections – are expressed in a separate statutory objective. The Ministry also pointed out that such constitutionalisation will have independent significance in two contexts: First, it will tell which principles the provisions of the Act are based on. Secondly, it will have relevance in the interpretation of other provisions of the Election Act, for example, which pilot schemes can be implemented under the Election Act's provision on pilot schemes.

### **2.9.2 The Commission's evaluation**

Today, three of the five principles highlighted by the Venice Commission have been incorporated in the statutory objective of the Election Act. This applies to the principles of free, direct and fair elections. The principles that elections shall be free and fair have also been included in Article 49 of the Constitution, as these two principles have special importance and are fundamental to being able to conduct democratic elections.

A statutory objective in the Election Act that sets forth the most important principles can help ensure that the electoral authorities consider these principles in all aspects of the election process. The election process is decentralised in Norway and local Electoral Committees have a good deal of freedom to decide how the election is to be conducted in practice. It may be argued that it is sufficient that the principles of free and fair elections are included in the Constitution and it is not necessary to have them included in a statutory objective, but when the statutory objective was included in the Election Act there was no such provision in the Constitution. Therefore, consideration for the users of the Act dictated that the principles should be included in the Election Act: Many non-lawyers read and use the Election Act and it may be useful that the key principles behind the Act are clearly stated in subsection 1.

Unlike Article 49 of the Constitution, the statutory objective of the Election Act states that the elections shall be direct. Article 58 of the Constitution states the requirement of direct elections. It is not clear why the previous Election Act Commission proposed to include "direct" in the statutory objective. It is known that the provision has been drafted along the lines of Article 31 no. 2 of the Danish Constitution and that the Human Rights Committee did not discuss this principle of constitutionalisation.

The Commission has considered removing the word "directly" from the statutory objective because the fact that the elections are direct follows from the electoral system and the structure of our political system. The principle of direct elections is also not challenged by other principles. Thus, including the principle of direct elections in the statutory objective has less purpose than having the principles of free and fair elections.



It can be questioned why the principle of direct elections has been raised instead of the principles of universal and equal suffrage. When it comes to universal suffrage, many of the same assessments as for the principle of direct elections will apply. The principle is not challenged and does not conflict with other principles. When it comes to the principle of equal suffrage, the situation differs somewhat. Although it is clear that everyone only has one vote in Norway, Norway has received international criticism both in terms of equal voting influence (allocation of seats) and considering that everyone should have equal opportunities to participate in elections (accessibility for voters with disabilities). However, on the question of allocation of seats, it can be said that this is political and better regulated through the electoral system than in a statutory objective – the international standards will apply regardless. On the other hand, accessibility and equal opportunity to participate in elections are very important and relevant considerations. The question is whether this is best ensured through including the principle of equal suffrage in the statutory objective or whether this is a topic that must be approached in others way in the regulations.

*The majority of the Commission (Anundsen, Christensen, Giertsen, Grimrud, Hagen, Hoff, Holmøyvik, Høgestøl, Røhnebæk, Stokstad, Storberget, Tørresdal, Aarnes, Aardal and Aatlo)* points out that in general, there should be agreement between the statutory objective of the Constitution regarding elections and the corresponding wording of the Election Act. If the Election Act differs and states more and other principles, it may give rise to uncertainty and unnecessary interpretative disputes. Based on this, the majority proposes that the statutory objective of the Election Act is amended so that it is only the principles that the elections shall be free and the ballots secret that shall be retained in the text and that the word “direct” is removed from the Election Act.

*A minority of the Commission (Holmås, Nygreen and Strømmen)* points out that for democratic solutions to have a high level of legitimacy, those who make the decisions must be perceived to be legitimate. An important basis for legitimacy is that the decision-makers have received the support of a certain number of people and consequently, the voter turnout will have an impact on the legitimacy of the elected representative. Therefore, to facilitate a continued high level of confidence in the electoral system it is important to ensure a high voter turnout. Therefore, these members find that the objective of a high voter turnout should be included in the statutory objective of the Election Act.

### 3 Voter turnout

#### 3.1 Introduction

Elections are the primary form of participation in modern democracies.<sup>12</sup> In Norway, there is broad agreement that a high voter turnout is an objective. The reason for this is that voter turnout is an expression of the extent to which the population is interested in politics. A high voter turnout also gives a clear mandate to elected politicians and legitimacy to political decisions and the democratically representative government. A high voter turnout can also indicate that the voter turnout is more or less the same across different groups and thus means that the political influence is equal.<sup>13</sup>

In Europe, the voter turnout has decreased noticeably since the 1990s.<sup>14</sup> In Norway, however, voter turnout in recent elections has been relatively stable. However, voter turnout is still significantly higher at parliamentary elections than at municipal and county council elections. The voter turnout also varies between different groups in society. This may be problematic compared with the aspects behind the objective of a high voter turnout.

This chapter discusses voter turnout and the measures that can increase voter turnout. Initially, an overview will be provided on the status of the voter turnout in Norway. Then various factors will be presented that can affect the voter turnout. The factors are divided into the voter's characteristics, the social and political context and, finally, the institutional framework for the electoral system and election implementation. The Commission's mandate is related to election implementation and the electoral system and therefore, the main emphasis in the presentation is on these factors.

#### 3.2 Status – voter turnout in Norway

##### 3.2.1 Parliamentary elections

The voter turnout at parliamentary elections has been relatively stable for several years. At the last two parliamentary elections in 2017 and 2013, 78 per cent of the people eligible to vote participated, while the voter turnout in 2009 was 76 per cent. In comparison, 84 per cent participated in the 2018 Swedish parliamentary election. In 2019, the voter turnout at the Danish parliamentary election was 85 per cent.

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<sup>12</sup>Emilee Booth Chapman, «The Distinctive Value of Elections and the Case for Compulsory Voting», *American Journal of Political Science* 63, no. 1 (January 2019): 101–112, <https://doi.org/10.1111/ajps.12393>.

<sup>13</sup>Johannes Bergh and Atle Haugsgjerd, «Hvilken valgordning får flest velgere til å stemme? Om sammenhengen mellom valgordninger og valgdeltakelse» (Annex 5 of the report, 2018) and Johannes Bergh and Dag Arne Christensen, «Hvem er hjemmesitterne?», i *Lokalvalget 2015: et valg i kommunereformens tegn?*, Jo Saglie and Dag Arne Christensen (Oslo: Abstrakt forlag, 2017), pages 61–78.

<sup>14</sup>Abdurashid Solijonov, «Voter Turnout Trends around the World» (Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), 2016), s. 24, <https://www.idea.int/sites/default/files/publications/voter-turnout-trends-around-the-world.pdf>.

The statistics from the last three parliamentary elections show that the voter turnout has been around 25 percentage points higher among those with higher education than among those with only a primary and lower secondary school education (see table 3.1). The difference in voter turnout between these groups has increased since the 1990s, where the turnout at elections was around 10 percentage points lower among those with a primary and lower secondary school education compared with those with a university or college education.<sup>15</sup>

*Table 3.1 Voter turnout at parliamentary elections as a percentage*

	2009	2013	2017
<i>Gender</i>			
Both sexes	76	78	78
Men	76	77	77
Women	77	80	80
<i>Age</i>			
18–19 years	62	70	73
20–24 years	53	63	64
25–44 years	76	76	74
45–66 years	83	83	84
67–79 years	83	88	86
80 years or older		71	69
<i>Education</i>			
Primary and lower secondary school	64	65	64
Upper secondary school	79	79	80
University and college education	87	90	90
<i>Immigrants and Norwegian-born with immigrant parents</i>	52	53	55

Source: Statistics Norway.

Voter turnout among immigrants entitled to voter and Norwegian-born to immigrant parents is significantly lower than in the general population. This group mainly has a background from countries in Asia and Africa.<sup>16</sup> At the last parliamentary election, the turnout among immigrants and

<sup>15</sup>“Unge menn med lav utdanning bruker stemmeretten minst”, Statistics Norway, 7 December 2017, <https://www.ssb.no/valg/artikler-og-publikasjoner/unge-menn-med-lav-utdanning-bruker-stemmeretten-minst>.

<sup>16</sup>Immigrants from the Nordic countries, North America, Oceania and labour immigrants who have arrived since 1989 rarely change nationality and thus have no right to vote at parliamentary elections. See “Stadig lavere andel som tar norsk statsborgerskap”, Statistics Norway, 7 December 2015, <https://www.ssb.no/befolkning/artikler-og-publikasjoner/stadig-lavere-andel-som-tar-norsk-statsborgerskap>.

Norwegian-born to immigrant parents increased slightly.<sup>17</sup> The turnout has increased from 52 per cent in 2009 to 55 per cent in 2017.

### 3.2.2 Municipal and county council elections

The voter turnout at municipal and county council elections is significantly lower than at parliamentary elections. The turnout at the municipal and county council elections in 2019 was respectively 13 and 17 per cent lower than the turnout at the parliamentary election in 2017. Since the beginning of the 1960s, the main tendency has been that the voter turnout at municipal and county council elections is decreasing. The voter turnout at the municipal council election fell from 64 per cent in 2011 to 60 per cent in 2015, before increasing again to 65 per cent in 2019. The county council elections have consistently had a lower turnout than the municipal council elections. The voter turnout has fallen from 70 per cent since the first county council election in 1975 to 61 per cent at the county council election in 2019.

As the voter turnout at the parliamentary election, the difference is great between how many voters with university and college education and voters with primary and lower secondary education that vote. At the last 3 elections, the voter turnout was almost 30 percentage points lower among those with only primary and lower secondary school education than among those with higher education.

In the same way as at parliamentary elections, the percentage of immigrants who vote at municipal and county council elections is much lower than in the population in general. In 2019, 45 of immigrants with Norwegian citizenship voted. In the same year, the voter turnout among foreign nationals was 31 per cent.

An overview of the total voter turnout at municipal and county council elections has been included in table 3.2, based on the number of crosses on the electoral register.

*Table 3.2 Voter turnout at municipal and county council elections as a percentage.*

	2011	2015	2019
<i>Gender</i>			
Both sexes	65	60	65
Men	63	57	62
Women	67	62	67
<i>Age</i>			
18–19 years	49	48	58
20–24 years	40	36	47
25–44 years	58	52	56
45–66 years	72	68	72
67–79 years	76	76	79

<sup>17</sup>“Valgdeltakelsen blant innvandrene økte svakt”, Statistics Norway, 8 December 2017, <https://www.ssb.no/valg/artikler-og-publikasjoner/valg-deltakelsen-blant-innvandrene-okte-svakt>.

<i>Level of education</i>			
Primary and lower secondary school	51	45	51
Upper secondary school	66	61	67
University and college education	79	75	79
<i>Immigrants, Norwegian citizens</i>	43	40	45
<i>Foreign nationals</i>	32	29	31

Source: Statistics Norway.

### 3.3 General information about factors affecting voter turnout

The level of participation is influenced by individual, social, political and institutional factors. There is not one single factor that determines the level of turnout but the various factors work in a complex interaction.<sup>18</sup> Therefore, a single amendment to the Election Act alone is unlikely to have decisive consequences for voter turnout.<sup>19</sup>

The assumed most important factor influencing the level of turnout is the content of the policy.<sup>20</sup> The voter turnout increases when there is uncertainty related to the election outcome, the government options are clear and the voters perceive that a lot is at stake.<sup>21</sup> This illustrates that the *social and political context* plays a role. Other factors within the social and political context are the level of unemployment and where you live in the country. Some studies have shown a correlation between the population of the county or municipality and the voter turnout.<sup>22</sup> It has been argued that residents in small political entities have the opportunity for greater proximity, a better overview and greater influence.<sup>23</sup> However, in its study of the municipal and county council election in 2011, based on the register data, Christensen and Arnesen found that the correlation between municipal size and voter turnout was not caused by the municipalities being small but rather that the voters

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<sup>18</sup>Bernt Aardal, red. *Voter turnout and local democracy*. Oslo: Kommneforlaget, 2002.

<sup>19</sup>Bergh and Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme?"

<sup>20</sup>Bergh and Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme?"

<sup>21</sup>André Blais, *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory* (Pittsburgh, Pa.: University of Pittsburgh Press, 2000), Daniel Stockemer, "What Affects Voter Turnout? A Review Article/Meta-Analysis of Aggregate Research", *Government and Opposition* 52, no. 4 (October 2017): 698–722, <https://doi.org/10.1017/gov.2016.30> and Bernt Aardal and Henry Valen, *Konflikt og opinion* (Oslo: NKS-forlaget, 1995).

<sup>22</sup>Lawrence Rose, "Normer og roller – borgerpliktens endelikt?", i *Valgdeltakelse og lokaldemokrati*, red. Bernt Aardal (Oslo: Kommneforlaget, 2002), J. Eric Oliver, «City Size and Civic Involvement in Metropolitan America», *American Political Science Review* 94, no. 2 (June 2000): 361–73, <https://doi.org/10.2307/2586017>, Dag Arne Christensen et al, "To valg med ny personvalgordning – Kontinuitet eller endring?", Report 9 (Bergen: Rokkansenteret, 2008).

<sup>23</sup>Rose, "Normer og roller – borgerpliktens endelikt?" and Oliver, "City Size and Civic Involvement in Metropolitan America".

in these municipalities distinguished themselves in other characteristics related to voter turnout.<sup>24</sup> The small municipalities did not have a higher voter turnout because they were small but rather because the unemployment rate was lower in these municipalities.

*Individual characteristics* of the individual voter may be the level of education, where table 3.1 and 3.2 show that people with higher education have a significantly higher voter turnout than people who do not have an education beyond primary and lower secondary school. Furthermore, based on an analysis of the four elections from 2011 to 2017, Bergh and Christensen have shown that in particular, it is young people, people without higher education and immigrants who remain sitting at home over several elections.<sup>25</sup> The study also shows that ten per cent of the eligible voters have sat at home for four consecutive elections. Other main categories within individual factors are the voter's resources (cognitive and financial), self-interest (the cost-benefit perspective) as well as a perceived civic duty and social norms.

### 3.4 Institutional factors in particular

The mandate specifies that the Commission should look at how the electoral system contributes to voter turnout. Furthermore, the mandate states that the Commission shall “undertake a comprehensive review of how elections are conducted”. Therefore, on this point, the Commission will review the effect that various institutional factors have on the voter turnout. In a memo written for the Commission, Bergh and Haugsgjerd have reviewed research on the effect *institutional factors* have on voter turnout, see Annex 5.<sup>26</sup>

#### 3.4.1 The electoral system

##### *Majoritarian elections vs. proportional representation elections*

There is a fundamental distinction between electoral systems with majoritarian elections and proportional representation elections. At majoritarian elections, there is usually only one seat per constituency and the largest party in each region wins the seat. Therefore, majoritarian elections involve few parties and the party that is largest nationally often wins many extra seats. In proportional representation elections, there are always several seats per district and these are allocated proportionally according to the parties' support in the district. Proportional representation elections

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<sup>24</sup>Dag Arne Christensen and Sveinung Arnesen, “Deltakelsen ved kommunestyrevalget 2011”, i *Et robust lokaldemokrati – lokalvalget i skyggen av 22. juli 2011*, red. Johannes Bergh and Dag Arne Christensen (Oslo: Abstrakt forlag, 2013) and Dag Arne Christensen et al, “Valgdeltagelsen ved kommunestyrevalget 2011”, Report 1 (Oslo: Norwegian Institution for Social Research, 2013).

<sup>25</sup>Johannes Bergh and Dag Arne Christensen, “Hvem er hjemmesitterne?”, i *Lokalvalget 2015: et valg i kommunereformens tegn?*, red. Jo Saglie and Dag Arne Christensen (Oslo: Abstrakt forlag, 2017) and Johannes Bergh and Dag Arne Christensen, “Sporadiske velgere eller permanente hjemmesittere? Om sosiale forskjeller i valgdeltakelse og velgermobilisering”, i *Velgere og valgkamp: A study of the parliamentary election in 2017*, red. Johannes Bergh and Bernt Aardal (Oslo: Cappelen Damm Akademisk, 2019).

<sup>26</sup>Bergh and Haugsgjerd, “Hvilken valgordning får flest velgere til å stemme?”, pages 4–7.

usually lead to more proportional parliaments where the parties' share of the representatives reflects the share of the votes to a greater extent than at majoritarian elections.<sup>27</sup>

On average, the voter turnout is slightly higher in countries with proportional representation elections than in countries with majoritarian elections. Although it is uncertain whether proportional representation elections, in general, will have such an effect, the majority of studies in western democracies shows a positive correlation between proportional representation elections and voter turnout.<sup>28</sup> Nevertheless, it is difficult to establish for sure that it is the electoral system – and not other factors in the country – that have affected the turnout. Some studies on this point show that proportional representation elections have a certain positive effect on the voter turnout.

### *Degree of proportionality*

The voter turnout is relatively higher in more proportional systems. A high degree of proportionality means that a party gains about as many seats as the party's share of the votes would imply. More than proportionality itself, it seems that it is the size of the constituencies that matters.<sup>29</sup> This is probably due to large constituencies providing more voters with more options, makes it less often given who takes the seat and provides a more diverse group of candidates from the parties.<sup>30</sup> As with majoritarian elections, the research finds that the degree of proportionality and the positive impact on voter turnout do not apply in all parts of the world. It is also uncertain here whether other factors than the degree of proportionality may have led to the impact on voter turnout in western countries. A high degree of proportionality probably results in a higher voter turnout in western countries.<sup>31</sup>

### *Preferential voting and deletions*

The effect of the voters being able to influence who is elected is uncertain. The few empirical studies on the topic that exist show divergent results. In essence, the studies show no systematic correlation between preferential voting and voter turnout. Blais and Aarts compared voter turnout in countries with proportional representation elections and preferential voting (Finland, Ireland, Luxembourg, the Netherlands, Poland and Switzerland) with voter turnout in systems with proportional representation elections without the possibility to influence the preferential voting (Bulgaria,

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<sup>27</sup>Sven G. Simonsen, *Over sperregrensen: hvordan verdens valgordninger gjør stemmer til politisk makt* (Oslo: Universitetsforlaget, 2019), page 40.

<sup>28</sup>Bergh and Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme?", pages 4–7.

<sup>29</sup>Stockemer, "What Affects Voter Turnout?", page 704–705. At the same time, the voter turnout in systems that have many parties is lower than in systems with fewer parties, see Bergh and Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme?", page 7.

<sup>30</sup>Daniel Stockemer, "District Magnitude and Electoral Turnout: A Macro-Level Global Analysis" *Acta Politica* 50, no. 1 (January 2015): 84–85, <https://doi.org/10.1057/ap.2013.35>.

<sup>31</sup>Bergh and Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme?", page 9.

Norway, Portugal, Spain and Romania).<sup>32</sup> The result showed that the average voter turnout is almost the same (66 per cent in systems with preferential voting and 67 per cent without). Renwick and Pilet also did not find sure signs that the introduction of preferential voting increases the voter turnout.<sup>33</sup> In the same way, the evaluation of the attempt to directly elect mayors in 48 Norwegian municipalities in 2007 found that providing the voters with such an opportunity did not lead to a higher turnout.<sup>34</sup>

A related question is whether deletions at municipal council elections will increase the voter turnout. Bergh, Christensen, Hellevik and Aars have analysed the effects of reintroducing deletions at municipal council elections in Norway.<sup>35</sup> According to the analysis, reintroducing deletions could have a short-term positive effect on voter turnout. This is because such a change may contribute to a generally positive attitude to the upcoming election. According to the analysis, there is little reason to expect a sustained increase in the voter turnout.

### 3.4.2 How easy it is to vote

How easy it is to vote can have an impact on the voter turnout. However, Bergh and Haugsgjerd conclude that “in Norway, we have probably come so far towards making voting accessible that there is little more to gain”.<sup>36</sup> The authors point out that researchers who analysed the effect of two-day elections in Norway with data from the local election in 2011, found no effect on voter turnout at a municipal level.<sup>37</sup> Similarly, the trial with electronic voting in Norway in 2011 and 2013 did not lead to a higher voter turnout, despite the trial making it very easy to vote.<sup>38</sup> While there

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<sup>32</sup>André Blais and Kees Aarts, “Electoral Systems and Turnout”, *Acta Politica* 41, no. 2 (July 2006): 180–96, <https://doi.org/10.1057/palgrave.ap.5500148>.

<sup>33</sup>Alan Renwick and Jean-Benoît Pilet, *Faces on the ballot: The personalization of electoral systems in Europe*, First edition (Oxford, United Kingdom: Oxford University Press, 2016), pages 251–265.

<sup>34</sup>Marcus Buck, Helge O. Larsen, and Tord Willumsen, “Når folket får velge: forsøkene med direkte valg av ordfører som deltakelses- og styringsreform” (Oslo: Kommuneforlaget, 2006) and Dag Arne Christensen and Jacob Aars, “Valg av ordfører ved supplerende stemmegivning – En empirisk analyse av ordførervalgene i 48 norske kommuner i 2007”, Report 2 (Bergen: Rokkansenteret, 2008).

<sup>35</sup>Johannes Bergh et al, “Effekter av en eventuell gjeninnføring av strykninger ved kommunestyrevalg”, Report 5 (Oslo: The Norwegian Institute for Social Research, 2009).

<sup>36</sup>Bergh and Haugsgjerd, “Hvilken valgordning får flest velgere til å stemme?”, page 13.

<sup>37</sup>Dag Arne Christensen et al, “Valgdeltagelsen ved kommunestyrevalget 2011”, Report 1 (Oslo: The Norwegian Institution for Social Research (ISF), 2013). The analysis of the voter turnout in Norwegian municipalities at the 1997 parliamentary election had similar findings, see Dag Arne Christensen and Tor Midtbø, “Norsk valgdeltakelse i et makro-perspektiv”, Annex to NOU (2001: 3) *Voters, electoral system, elected representatives*, 2001.

<sup>38</sup>Signe Bock Seggaard et al, “Internettvalg – Hva gjør og mener velgerne”, ISF report 2014:07 (Oslo: The Norwegian Institute for Social Research, 2014), page 46, and Signe Bock Seggaard, Harald Baldersheim, and Jo Saglie, “E-valg i et demokratisk perspektiv”, ISF report 2012:5 (Oslo: Norwegian Institution for Social Research (ISF), 2012).



have been no effects of making it easier to vote in these cases, it may be that it would have had a negative effect on voter turnout to make it harder to vote than today. A study of the voter turnout at the Sami parliamentary elections in Norway supported this.<sup>39</sup>

When the Norwegian electoral system is compared with the systems of other Nordic countries, there also seems to be no direct correlation between the length of the advance voting period and voter turnout. Both Denmark and Sweden have a significantly shorter period of advance voting than Norway. In Denmark, you can usually choose to vote in advance in the last three weeks before Election Day. In Sweden, the advance voting period started at the election in 2018 on 22 August and lasted until Election Day on 9 September. However, both countries have a higher voter turnout than in Norway.

On the other hand, voter registration has a negative effect on voter turnout. Similarly, the strict identification requirements will reduce voter turnout and affect the voter turnout among minorities in particular.<sup>40</sup>

### 3.4.3 Joint Election Day

Because the voter turnout is higher at parliamentary elections, there is reason to believe that introducing a joint Election Day would lead to a higher voter turnout at municipal and county council elections. A meta-study from 2016 found that ordinarily, the joint Election Day factor positively affects the voter turnout in local government elections.<sup>41</sup> Denmark is illustrative of this as it has separate election days for national and local elections. In 2001, the Prime Minister called new elections to the Danish Parliament so that the timing of the national election coincided with the timing of the local elections. The voter turnout that year around 15 per cent higher than the average voter turnout for municipal elections. Sweden has a joint Election Day for the three elections and also has a relatively high voter turnout at the local government elections.

See the Commissions review in Chapter 6 regarding the issue of introducing a joint Election Day.

### 3.4.4 Compulsory voting

Research shows that compulsory voting undoubtedly has a positive effect on voter turnout. Compared with countries that do not practice compulsory voting, according to IDEA, the voter turnout was on average 8.7 per cent higher in countries with compulsory voting.<sup>42</sup> However, the positive

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<sup>39</sup>Bergh and Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme?" and Johannes Bergh and Jo Saglie, "Valgdeltakelsen ved sametingsvalg: hvor viktig er tilgjengelighet?", i *Sametingsvalg: velgere, partier, medier*, red. Eva Josefsen and Jo Saglie (Oslo: Abstrakt forlag AS, 2011).

<sup>40</sup>Bergh and Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme?"

<sup>41</sup>João Cancela and Benny Geys, "Explaining Voter Turnout: A Meta-Analysis of National and Subnational Elections", *Electoral Studies* 42 (June 2016): 264–275, <https://doi.org/10.1016/j.electstud.2016.03.005>.

<sup>42</sup>Abdurashid Solijonov, "Voter Turnout Trends around the World" (Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), 2016), <https://www.idea.int/sites/default/files/publications/voter-turnout-trends-around-the-world.pdf>, s. 37.

effect of compulsory voting varies between countries. The voter turnout can be lower if the compulsory voting is not sanctioned, as is the case in Paraguay with a less than 70 per cent turnout. In Belgium, failure to participate in elections results in fines and voter turnout has traditionally been over 90 per cent,

Compulsory voting leads to greater similarity in the voter turnout across various socioeconomic groups. This may mean that the political influence between groups in society is similar. However, although compulsory voting leads directly to a higher voter turnout, the effect of the measure on involvement and knowledge about political governance is unclear. Some studies show negative effects, such as politically disinterested Belgian voters who to a small extent cast their votes in line with their political preferences.<sup>43</sup> This shows that the political representation is not necessarily the same even with compulsory voting. Other studies show positive effects of compulsory voting. In a US study, a random group of voters in San Francisco were paid if they voted, while a control group was not paid.<sup>44</sup> Admittedly, the measure is not compulsory voting and can rather be termed an incentive scheme and not surprisingly, led to a sharp increase in voter turnout. However, it is interesting that the measure resulted in voters who were offered the incentive wanted to find out more about political issues and updated themselves more on the election campaign than voters in a control group.

The Commission considers the issue of introducing compulsory voting in section 9.6.

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<sup>43</sup>Peter Selb and Romain Lachat, "The More, the better? Counterfactual Evidence on the Effect of Compulsory Voting on the Consistency of Party Choice", *European Journal of Political Research* 48, no. 5 (August 2009): 591, <https://doi.org/10.1111/j.1475-6765.2009.01834.x>.

<sup>44</sup>Victoria Anne Shineman, "If You Mobilize Them, They Will Become Informed: Experimental Evidence That Information Acquisition Is Endogenous to Costs and Incentives to Participate", *British Journal of Political Science* 48, no. 1 (January 2018): 189–211, <https://doi.org/10.1017/S0007123416000168>.

## 4 Technology and security

### 4.1 Introduction

The Election Act Commission will make proposals for an Election Act that facilitate continued high confidence in the election process. To shed light on the current situation and what should be done in the future not to jeopardise this confidence, the Commission has had meetings with several security experts and key entities. The Commission has also prepared an external report into the security of democratic processes.<sup>45</sup>

Technology currently plays a key role in the election process in Norway and contributes to the election being conducted in a good and efficient manner. In Norway, we use more technology at elections than in most other comparable countries. In particular, we are at the forefront of using electronic electoral registers and machine counting, which is discussed further in Chapter 12, which deals with the use of technology during the election process.

In recent years, the security of the election process has received increased attention, both internationally and in Norway. In several other countries, there have also been cases of various forms of covert influence, cyber-attacks and adverse events in connection with elections. In addition to the 2016 US presidential election, the Brexit vote and the French presidential election in the same year, there have also been events in the Nordic countries. At the 2018 Swedish parliamentary elections, several attempts were made to covertly influence the political processes.<sup>46</sup> There was a lot of activity on social media and the Swedish electoral authorities received an unusually large number of complaints about the election. There was also a lot of media attention directly related to the practical election process and the electoral authorities locally and centrally were under a lot of pressure. Finland also faced attacks against the election process at the spring 2019 elections. The central website with election results was repeatedly subjected to major service denial attacks.<sup>47</sup>

It is not the first time that elections are an important process that can be interesting for various actors to influence the outcome of. The use of digital technology in the election process exposes this to random errors and targeted cyber attacks from actors inside and outside Norway. When the election process is digitised, it entails a changed need for expertise among election staff and voters and that the electoral authorities must work purposefully to secure the digital systems that support the election process.

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<sup>45</sup>The assessment of the threat to Norway has been made by Proactima, see Anne-Kari Valdal et al, "Sikkerheten i demokratiske prosesser i Norge". Annex 6 of the report (Proactima, 2019). The evaluation of actors is based on open intelligence sources/threat assessments from, for example the Norwegian Police Security Service (PST) and the Norwegian Intelligence Service and it is also referred to continuously in the text of other sources of information.

<sup>46</sup>Chloe Colliver et al, "Smearing Sweden: International Influence Campaigns in the 2018 Swedish Election" (London: Institute for Strategic Dialogue (ISD) og LSE Institute of Global Affairs, 2018), <https://www.isdglobal.org/isd-publications/smearing-sweden-international-influence-campaigns-in-the-2018-swedish-election/>.

<sup>47</sup>Kati Pohjanpalo, «Finland Detects Cyber Attack on Online Election-Results Service» (Bloomberg, 10 April 2019), <https://www.bloomberg.com/news/articles/2019-04-10/finland-detects-cyber-attack-on-online-election-results-service>.

In this chapter, the Commission has looked at the impact the use of technology has on security and vulnerability. As part of this process, the Commission has studied the security of the democratic process in Norway. A key question for the Commission has been whether electronic voting should be allowed. The conclusion to this question will have a major impact on the drafting of a new Election Act and therefore, the Commission has found it appropriate to clarify this question initially.

## 4.2 Security in democratic processes

### 4.2.1 Digital vulnerability in general

In today's society, the internet and ICT systems are integrated into almost every part of society. It has led to a strong dependence on ICT and a high level of complexity in the form of long and complex digital value chains. Complexity and interconnected systems make it difficult to secure against intentional and unintentional events. In complex systems, both technology and humans should work together and both technology and humans will be able to err. The consequences can affect the system's functionality.

In recent years, there have been several Norwegian reports on digital vulnerability. The Vulnerability Commission's report from 2000 establishes that the ICT systems have become one of the cornerstones of society and that society has become more vulnerable to failures in these systems.<sup>48</sup> The Infrastructure Commission followed up with a report in 2006 mapping the country's critical infrastructure and social functions.<sup>49</sup> The Digital Vulnerability Commission from 2015 conducted a comprehensive study of society's digital vulnerability, including several important sectors of society. The Commission recommended 10 cross-sectoral measures to reduce digital vulnerability and 40 other measures specifically aimed at certain sectors of society, including electronic communications and common components, such as public records. In general, the report emphasises the description of the digital value chains and the vulnerabilities that come with these.<sup>50</sup>

According to the Digital Vulnerability Commission, digital value chains are characterised by errors propagating instantaneously and sometimes in unpredictable ways. The services included in the digital value chains tend to span several sectors and they are subject to different legislation and supervisory regimes. For those who develop a service at the top of such a value chain, it is very challenging to gain an overview of all the digital vulnerabilities to which the service is exposed further down the value chain. Just as no sector can control its vulnerability alone – all inherit vulnerabilities from other sectors – few countries can control their digital vulnerability alone: The vast majority inherit vulnerabilities from other countries. The dependence on ICT makes society more vulnerable to unintended failure and attack due to inadequate ICT security. While digitisation, on the

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<sup>48</sup>Official Norwegian Report (NOU) 2000: 24 *A vulnerable society. Challenges for the security and emergency preparedness work in society.*

<sup>49</sup>Official Norwegian Report (NOU) 2006: 6 *When security is most important. Protection of the country's critical infrastructures and social functions.*

<sup>50</sup>Official Norwegian Report (NOU) 2015: 13 *Digital vulnerability – secure society – Protecting individuals and society in a digitalised world.*

one hand, has contributed to more efficient communication and access to information for everyone, the negative consequences of digitisation have often been possible to detect only after prolonged use. Official Norwegian Report (NOU) 2015: 13 says the following about the development:<sup>51</sup>

This [digital] vulnerability is further exposed when new software is connected to old systems in combination with the use of the internet as an infrastructure. Many ICT systems represent a significant degree of uncertainty and vulnerability because of this. From a vulnerability perspective, one might ask whether there has been an unintended acceptance of risk in the private and public sector.

According to several different reports on vulnerabilities and adverse events, there is little evidence that the amount of digital vulnerability is decreasing or that cyber-attacks as a political instrument are in decline.<sup>52</sup> This picture is also confirmed by the Norwegian Intelligence Service in their reports *Fokus 2018* and *Fokus 2019*. In the reports, they describe the sustained intelligence activity against Norway and an escalation of Russian influence activity against democratic process and public opinion.<sup>53</sup> They also point to the continued development of capacities for digital sabotage. In the 2020 report, the Norwegian Intelligence Service confirms that the threat to democracy is still present and that attacks against digital systems and critical infrastructure are a persistent risk.<sup>54</sup>

In its threat assessment for 2020, the Norwegian Police Security Service (PST) points out that an increasing amount of the threat activity targeting basic national interests is taking place in the digital space. A digitized society and its dependence on electronic communication also lead to increased vulnerability and provide opportunities for espionage, manipulation and sabotage. Computer network operations can inflict significant harm on the government and society, economically and politically, as well as from a security perspective. PST considers that, overall, the potential for damage caused by the digital threat activity is great.<sup>55</sup>

The outcomes of elections can have major commercial and political consequences. Therefore, it may be assumed that there may be actors who have a great interest in influencing the outcome of

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<sup>51</sup>Official Norwegian Report (NOU) 2015: 13, page 26.

<sup>52</sup>Reports from, for example, US-CERT, NSM, NorCERT, Norwegian security authorities and the Norwegian Business and Industry Security Council (NSR).

<sup>53</sup>*FOKUS 2018: The Norwegian Intelligence Service's assessment of current security challenges* (The Norwegian Intelligence Service, 2018) and *FOKUS 2019: The Norwegian Intelligence Service's assessment of current security challenges* (The Norwegian Intelligence Service, 2019).

<sup>54</sup>*FOKUS 2020: The Norwegian Intelligence Service's assessment of current security challenges* (The Norwegian Intelligence Service, 2020).

<sup>55</sup>*National Threat Assessment 2020* (The Norwegian Police Security Service (PST), 2020).

democratic elections in their favour. The risk is also significant when the opportunity for profit, motive and capacity are present.

The Digital Vulnerability Commission writes that “today’s ICT systems are still immature and the risk of unauthorised access to sensitive information has increased as digitalisation increases. There are still flawed mechanisms for verifying identity over digital communication channels”.<sup>56</sup>

Secure identification and verification of the identity of the voter, as well as one voter – one vote, are a prerequisite for confidence in the electoral system. Biometrics, such as fingerprints, facial recognition, etc., have been adopted in many countries for the identification and verification of voters. So far, the technology has the greatest prevalence in Asia and Africa. Use of biometrics can prevent double votes and streamline the efforts to register voters. However, the technology has weaknesses that could result in voters who should have been registered not being verified and those voters who should not have been registered being mistakenly verified. There is also a risk of binding oneself to one technology provider. However, the number of countries using biometrics and electronic registration equipment is steadily increasing.<sup>57</sup> In Norway, work on electronic ID card has been underway since 2007, and national ID cards have been promised to be introduced by the end of 2020.<sup>58</sup>

ICT security is about protecting ICT and the information in information systems from undesirable events. The question is then what objectives – security objectives – we have to protect us. The three most well known are confidentiality, availability and integrity.

*Confidentiality* implies protection against information becoming known to unauthorised persons, and thus only those we allow to see the information will actually see it. It is worth noting that in practice, a breach of confidentiality causes irreparable harm to those who own the information.

*Accessibility* means that information and services are available when needed. Downtime can occur as a result of a breach in infrastructure, technical error or due to denial of service where large volumes of fake traffic paralyse access to the digital service.

*Integrity* means that information is to be trusted and that systems and services work as intended. For example, integrity breaches can occur when an unfaithful servant with broad powers manipulates the system or modifies the data stored in the system. If the system becomes infected with malware, the malware can change the data or algorithms.

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<sup>56</sup>Official Norwegian Report (NOU) 2015: 13 page 31.

<sup>57</sup>Peter Wolf, “Introducing Biometric Technology in Elections” (Stockholm: International Institute for Democracy and Electoral Assistance, 2017).

<sup>58</sup>“Status for prosjektet nye pass og nasjonale ID-kort”, Politiet, 16 August 2019, <https://www.politiet.no/aktuelt-tall-og-fakta/aktuelt/nyheter/2019/08/16/status-for-prosjektet-nye-pass-og-nasjonale-id-kort/>.

Related to integrity, we have *authenticity*, which is about securing the origin of the information, such as verifying the identity of a sent message. Closely related, we also have *non-denial*, which is about a digital action not being able to be denied after it has been taken.

#### Box 4.1 Examples of risk

- Systems may be physically compromised while on their way to the recipient. Packaging may be opened, machines opened up and bugging devices installed, without the recipient thinking to check inside the machines. This will breach confidentiality as a security objective, but may also affect the integrity if, for example, the counting rules are changed (vote counting).
- Software may be provided with backdoors that allow the supplier to access at a later date. This will breach confidentiality as a security objective if the provider managing the system can read the data. The solution is to encrypt data (the votes) so that only the voter and the program that counts the votes can read them.
- All systems that communicate over a wireless network will try to connect to the strongest antenna. For example, this physical quality is used in cases of false base stations, cf. the case in the *Aftenposten* newspaper in 2014. In 2018, this possibility to tap was also used many times in Norway by the police.<sup>1</sup> If such technology is used on electronic election machines located at polling stations it would breach confidentiality as a security objective if the voting has not been encrypted.
- An ICT system could be supplied with a default administrator password. If the buyer does not change this, it is a possible way in for unauthorised persons who know the default passwords. This will breach confidentiality as a security objective.
- Attackers can let the recipient open their systems by opening attachments or clicking on links in e-mails. This is called phishing or spear-phishing when the e-mail is targeted at certain recipients. This attack vector is aimed at people and is the most common today.
- Attackers can use websites that the owner of the election machine visits, such as a vendor website, and installs malware on this so that the election machine is infected with malware when the owner visits the website. This type of attack is referred to as a watering hole attack. This will breach confidentiality as a security objective and possibly also integrity and availability if the malware is installed and manipulates the system so that it is no longer available.
- Attackers can infect ICT systems with malware through fake software updates. This method of attack goes right to one of the basic ICT security measures recommended by the National Security Authority – namely, to always have updated operating systems and software. This attack will breach confidentiality as a security objective and possibly also integrity if the malware is installed and this manipulates the data or algorithms in the system.
- Attackers, often advanced with good resources, can exploit insiders with broad powers and access so that these give rights to attackers, which, in turn, can be exploited from the outside. Insiders can be own employees, hired consultants or other partners with access to the system.
- A local ICT system that relies on communicating with a central server outside the premises relies on the internet being up and running and that the entire digital value on which this hangs is supplied with electricity.

<sup>1</sup> Andreas Bakke Foss, “Kraftig vekst i politiets rapportering om bruk av falske basestasjoner”, *Aftenposten*, 22 January 2018, <https://www.aftenposten.no/article/ap-zLrGr9.html>.

#### 4.2.2 Regulation of security

Two key reports have been prepared on the regulation of ICT security in critical infrastructure in Norway. The Security Commission (the Tråvik Commission) reported on a new Security Act and gave its recommendation in Official Norwegian Report (NOU) 2016: 19 *Interaction for security*.

The new National Security Act came into force on 1 January 2019. The purpose of the Act is to safeguard Norway’s sovereignty, territorial integrity and democratic form of government and other national security interests, to prevent, uncover and counter security-threatening activities and to ensure that security measures are implemented in accordance with fundamental principles of law and values in a democratic society.

The Security Act applies to government, regional and municipal bodies and to suppliers of classified procurements. The Security Act is cross-sectoral but it is each specialist ministry that is responsible for preventive security in its own sector. This responsibility also includes the responsibility to select entities and systems to be covered by the Act. The Security Act further imposes on the authorities a duty to advise the enterprises covered by the Act and a duty to facilitate the sharing of security-relevant information.

The national security interests are safeguarded through protecting basic national functions (GNF). Such functions are services, production and other forms of business where a complete or partial loss of the function will have consequences for the government’s ability to safeguard national security interests. The Ministry of Local Government and Modernisation has considered conducting elections a basic national function. In 2020, the Norwegian Directorate of Elections has been tasked with carrying out a damage assessment as a basis for the work on the classification of shielding-worthy objects and infrastructure under the Security Act.

The ICT Security Commission (the Holte Commission) reported on and recommended a new cross-sectoral ICT Security Act that would apply to vital functions in society.<sup>59</sup> However, elections and conducting elections has not been listed among the 14 stated vital functions in society included in this Commission’s report. The vital functions in society have been developed by the Directorate for Civil Protection (DSB) through the KIKS project.

The ICT Security Commission recommended a risk-based approach to ICT security. The security work shall be aligned so that significant risk is given priority. Since risk changes over time, it must be evaluated regularly. Furthermore, the ICT Security Commission recommended that there must be flexibility in the regulation and that ICT security should be balanced against the economy and basic human rights. At the time of writing, no legal text has been developed based on the Commission’s work.

The *National Strategy for Cybersecurity* came in 2019. The strategy aims to ensure that it shall be safe to use digital services in Norway. Private persons and entities shall have confidence that the national security, the welfare and democratic rights of the individual are safeguarded in a digitised

<sup>59</sup>Official Norwegian Report (NOU) 2018: 14 *ICT security at all levels*.



society. The primary target group of the National Strategy for Cybersecurity is authorities and entities in the private and public sectors, including the municipalities. The strategy has several objectives, including ensuring that the authorities have frameworks and methods of identifying critical digital infrastructure. The strategy also outlines a goal that public and private entities that own critical digital infrastructure, conduct risk assessments to identify vulnerabilities and interdependencies between infrastructures. The objective is to achieve comprehensive protection of digital value chains. The authorities shall also impose security requirements in critical digital infrastructures, guide and supervise that the security is sound. Public and private entities that own critical digital infrastructure shall take measures to ensure proper security in these. It is also a goal that public and private entities participate in emergency drills related to critical digital infrastructure.<sup>60</sup>

#### **4.2.3 Special considerations when using technology in the election process**

Transparency is an important element of the election process. Facilitating election observation contributes to increasing transparency and confidence in the election. Technology and security are complicated and it is demanding to ensure that all citizens have a full understanding of the security elements. This has also been viewed as a problem by international election observers.

The degree to which a system involves cryptography or sophisticated, distributed software and hardware architecture decreases the prospects that voters can take part in the verification and validation process. Some technical concepts are too complicated for an average voter to be expected to understand.<sup>61</sup>

Another factor that makes elections somewhat different than some other tasks is that elections are only conducted every two years. This means that competence is not automatically maintained in the same way as if it were a daily task. The systems are not in continuous operation and there are fewer opportunities to detect errors through actual use. Testing in test environments cannot fully replace experience from the use of the system. The fact that there are only elections every two years also has implications for which investments can be defended to spend on equipment and system development.

Elections are also tied to a specific schedule where it is not possible to change the deadlines. This imposes special demands on the development and testing and if a major error/fault is detected shortly before the election, it will be difficult to solve.

The fact that the municipalities are responsible for conducting the election also means a lot for the security assessments. The municipalities are responsible for equipment, procedures, storage, securing of networks, etc. Conducting elections is also a highly decentralised process, where it is election staff around the country who perform the tasks. This requires expertise and organisation.

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*The* <sup>60</sup>*National Strategy for Cybersecurity* (the Ministries, 2019).

<sup>61</sup>"Internet Voting Pilot: Norway's 2013 Parliamentary Elections", Expert Study Mission Report (The Carter Center, 19 March 2014), [https://www.regjeringen.no/globalassets/upload/krd/kampanjer/valgportal/valgobservatorer/2013/rapport\\_cartersenteret2013.pdf](https://www.regjeringen.no/globalassets/upload/krd/kampanjer/valgportal/valgobservatorer/2013/rapport_cartersenteret2013.pdf).

The use of technology during the election process, such as digital election machines, scanners connected to the internet, voting outside the polling station over the internet, etc., in addition to their built-in vulnerabilities, will inherit vulnerabilities from other systems and digital infrastructure that they rely on to function. The systems are further linked to digital value chains that can span national borders, such as providers and subcontractors. Often errors and vulnerabilities are not detected until after prolonged use. The Digital Vulnerability Commission pointed out that vulnerabilities in digital value chains could be a security challenge.

#### 4.2.4 Threat assessment and security report

In *the National Threat Assessment 2019*, PST writes that the current threat picture is characterised by stable and relatively lasting trends. At the same time, they point out that individual incidents and episodes can suddenly occur and have a great and often unpredictable influence on society.<sup>62</sup>

It is possible to envision several reasons why it is not attractive to influence election results and elections in Norway. Norway is a small country with limited influence and power in many international fields. Foreign policy is characterised by a high level of consensus so that there is little to gain from changing the composition of the Storting. Norwegian society is characterised by a high level of confidence in democracy, the process around elections and politicians – which makes it more challenging to influence through, for example, fake news. There is a limited presence of radicalised groups and there is also a high level of transparency in such a small society – which also makes influence campaigns harder to implement.<sup>63</sup>

At the same time, Norway and the Nordic countries are some of the foremost examples of liberal democracies. Several countries with completely different forms of government may have an interest in demonstrating how unsuitable this is as a system of government. Norway is a member of the United Nations and NATO and thus is a part of international involvement. The Norwegian involvement in the High North and the Arctic is of interest to several actors, both for political and commercial reasons. An almost entirely digital society gives threat actors a large area of attack on social media and in cyberspace in general. In combination with what is often described as low vigilance in security issues (“naivety”), it can provide a potential for influence.

In *the National Threat Assessment 2020*, PST points to a growing concern about free speech that nurtures government hatred and the use of violence against politicians. Hate speech, harassment, online shaming and threatening language against individuals on social media have become an everyday occurrence. Young politicians or politicians engaged in immigration, environmental and taxation policy particularly exposed. Local issues or issues that affect only a few individuals may result in pressure, threatening language and/or unlawful acts directed at the person of the dignitary or politician. The accumulation of negative attention and behaviour has become a heavy burden for certain dignitaries and politicians and ultimately leads to some refraining from running for election, quitting politics or being influenced to make decisions they otherwise would not have

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<sup>62</sup>*The National Threat Assessment 2019* (The Norwegian Police Security Service (PST), 2019).

<sup>63</sup>Valdal et al, “Sikkerheten i demokratiske prosesser i Norge”.

made. It can also result in politicians declining invitations to take part in a public debate on topics they know to be inflammatory. PST considers this a threat to democracy.<sup>64</sup>

When it comes to the threat assessment related to the election process itself, it is mainly threats and attacks aimed at social actors and influence operations that the national security authorities are concerned about. There have been no specific threats to the technical implementation of the Norwegian election.

The work on security during the election process has become increasingly more important and there is currently cooperation between various agencies and the specialist ministry. In the spring of 2019, the Government set up an inter-ministerial working group to coordinate measures to increase security during the election. The Ministry of Local Government and Modernisation led the working group, which was made up of representatives from the Ministry of Justice, the Ministry of Defence, the Ministry of Foreign Affairs, the Norwegian Media Authority, the Directorate of Elections, the Directorate of Public Safety and Emergency Planning, the National Security Authority (NSM) and the Norwegian Police Security Service (PST). In the last two elections, NSM, the Norwegian Intelligence Service and PST have prepared a brochure, which was sent to all list candidates, with specific tips on how to avoid influence and prevent sensitive information from going astray. Other measures have been holding a dialogue meeting with the media and announcement of a research project related to mapping possible foreign influence. The Norwegian Media Authority also has campaigns to raise awareness about the possibility of fake news.

To shed light on security-related issues related to elections, the Commission has commissioned a survey of the security of democratic processes in Norway, including the practical implementation and security of the technical solutions used.<sup>65</sup> The report identifies and assesses threats, vulnerabilities and risk associated with political protest campaigns, the actual election process, vulnerabilities in the digital value chain and the consequences of the use of technology in the election process.

Valdal et al shows that the systems used, including the election management system EVA, are well secured. Despite this, there are vulnerabilities in the digital value chain that are linked to technological changes, complexity, challenges with expertise and long value chains. Nevertheless, the risk in this area is considered to be limited, largely because there is a significant element of manual processes in the election process that allow for control. The requirement that all votes are to be counted manually in the provisional count is an example of this. Manual processes also help reduce the dependence on technology.

The assessment of Valdal et al is that the greatest risk associated with the democratic election process is the influence of candidates and voters in advance of the election process.<sup>66</sup>

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<sup>64</sup>*National Threat Assessment 2020* (The Norwegian Police Security Service (PST), 2020).

<sup>65</sup>See Valdal et al, "Sikkerheten i demokratiske prosesser i Norge".

<sup>66</sup>See Valdal et al, "Sikkerheten i demokratiske prosesser i Norge".

A challenge pointed out by Valdal et al, and which has been discussed by the committee of representatives from NSM, is that the municipalities are not required to use EVA. Another challenge they point out is that the Ministry and the Directorate do not have the opportunity to set requirements for the technical equipment in the municipalities.

In their report, Valdal et al also point that if more technology is introduced in the election process, possibly in the form of electronic voting or that the requirement for manual processes is removed, then it will open up for more risk. This is supported by the recommendations NSM has made to the Security Commission.

## 4.3 Electronic voting

### 4.3.1 Different kinds of electronic voting

In Norway, the voters cast their votes using paper ballots. In some other countries, various kinds of electronic voting are used. The voter then votes digitally either using the internet or voting machines.<sup>67</sup>

There is a significant distinction between solutions where the voter votes via stationary voting machines or internet solutions inside the polling station and solutions that allow the voters to vote outside the polling station using the internet. If the voter votes electronically at a polling station, the polling takes place in a controlled environment. This largely ensures that the voter votes alone and is not subject to undue influence. In uncontrolled environments, voting takes place over the internet away from an established polling station, such as, via a home computer.<sup>68</sup> In an uncontrolled environment, the electoral authorities cannot ensure that the polling takes place in accordance with the law. Key factors here are whether it is the right person who is voting, that the voting takes place in private and that the voter is not under pressure.

Electronic voting has many advantages. Electronic voting can help automate the counting of votes. That may explain why countries with large populations, such as India and Brazil, choose to use electronic voting machines at the polling stations. With a user-friendly design, electronic voting will make it easier for some voters with various disabilities to vote. Electronic voting machines at the polling station will be able to ensure that voters with disabilities can vote alone.

Both electronic voting at the polling station and electronic voting from home pose security challenges. A common security challenge lies in the software and hardware used in the electronic voting systems. The challenges that cannot be avoided are related to the lack of transparency and the possibility for people to verify the security of the system and thus also for voters to check that their vote has been cast and counted correctly. Thus, the question of confidence quickly arises.

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<sup>67</sup>In some contexts internationally, the term electronic voting is used in a wider sense than here. The use of machine counting and scanning will then also be included. The term is used here only for the use of technology the actual voting.

<sup>68</sup>It is also possible to have a paper ballots from uncontrolled environments, such as through a postal vote. In some countries, this is a widespread way to vote. It is also possible cast a postal vote in Norwegian elections but then only for voters who are living abroad and cannot vote in the ordinary way. This options is used very little and must be regarded as a safety valve to ensure everyone an opportunity to vote. At the 2017 election, a total of 762 postal votes were cast.

Testing of several voting machines to be used in the 2020 US elections had vulnerabilities with passwords and weak encryption.<sup>69</sup> If the election official made a mistake or took shortcuts, the machines could also be infiltrated by hackers outside the polling stations where the machines are located.

Another challenge is related to the ease of use and functionality of the voting application or voting machine, which for some voters may appear good and intuitive but for others appears incomprehensible.

The benefits and challenges are also related to where the voting takes place, from home or at a polling station. For some voters, the possibility to vote from home over the internet will be a great improvement in accessibility. Such solutions will also involve a generally increased accessibility. However, voting at the polling station or from home also has an impact on the authorities' ability to ensure that the voter votes alone. This consideration can only be taken into account if the voting takes place at a location and on systems for which the authorities are responsible.

#### **4.3.2 Pilot schemes with internet voting in Norway**

Pilot schemes with electronic voting have been conducted twice in Norway at the municipal and county council elections in 2011 and the 2013 parliamentary election. A separate regulation, issued pursuant to section 15-1 of the Election Act, regulated the pilot schemes.<sup>70</sup> The pilot schemes allow the voters to vote over the internet, from any computer. Electronic voting was only a supplement to the standard paper voting and was only available during the advance voting period.

Ten municipalities were selected to carry out the first pilot scheme at the municipal and county council elections in 2011.<sup>71</sup> Four of the municipalities participated simultaneously in the pilot scheme with a lower voting age. When the second pilot scheme with electronic voting was carried out, two larger municipalities participated<sup>72</sup> in addition to the ten municipalities that had participated in 2011.

To ensure that the voting took place without pressure or coercion, several security mechanisms were put in place. These included the possibility of re-voting over the internet several times during the advance voting period and that a paper ballot cast at a polling station (either in advance or on the Election Day) would always override an electronic vote. The idea behind these mechanisms was that if a voter was subjected to pressure or coercion when he or she voted, the person in question could vote again and ultimately at a polling station with the electoral authorities present. It

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<sup>69</sup>Christine Fisher, "Researchers Easily Breached Voting Machines for the 2020 Election", Engadget, 27 September 2019, <https://www.engadget.com/2019/09/27/us-voting-machines-hackers-2020-election/>.

<sup>70</sup>Section 15-1, subsection 1 of the Election Act allows "pilot schemes in which elections under this Act are conducted in other ways than those the follow from this Act".

<sup>71</sup>Bodø, Bremanger, Hammerfest, Mandal, Radøy, Re, Sandnes, Tynset, Vefsn and Ålesund.

<sup>72</sup>Larvik and Fredrikstad.

was also intended as insurance against purchase and sale of votes. Since a buyer would never be able to know if the vote cast was the final and counting vote, paying for it would have no value.

The existing ID port (which is used for bank login and by the Norwegian Tax Administration) was used to authenticate the voters who participated in the pilot scheme.

The vote was encrypted as the voter submitted it. This meant that it was unreadable to both humans and computers. To reassure the voter that the vote was registered correctly in the computer system, the voter received a “receipt” in the form of a text message with a personal return code, which showed that the vote had been registered and with the correct contents. The code provided no information in itself but could be checked against a purpose-made polling card. The vote remained encrypted up until counting on election night. To secure the electronic votes against cyberattacks from the outside during the count, the whole count was carried out on machines that were or had not been connected to the internet. However, this is no guarantee that the machine cannot be manipulated during transport from the supplier to the customer.

In 2013, an Internet Election Committee was set up with the responsibility to ensure that the voting and counting was done correctly. The Internet Election Committee was also responsible for stopping the possibility to vote over the internet if an incident occurred which meant that the election could not be conducted in accordance with the regulations.

### 4.3.3 Experience from the pilot schemes

The two pilot schemes were thoroughly evaluated by several independent research environments.<sup>73</sup> The evaluations examined, among other things, the impact internet voting had on accessibility and voter turnout, whether the voters had confidence in the pilot scheme and the attitudes the voters had to secret ballots and internet voting. Part of the evaluation project examined further whether the pilot scheme led to a more efficient vote count and faster election result and reported on international experiences with internet voting.<sup>74</sup>

#### *Voter turnout and support for the pilot scheme*

A key finding was that voter turnout did not increase as a result of the possibility to vote over the internet. In other words, the pilot scheme did not lead to increased turnout despite the increased accessibility it gave the voters. The researchers found that those who voted over the internet were largely the same people who usually voted with paper ballots. This corresponds to research in the field and findings from other countries, which show similar results: It is not the abstainers who are

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<sup>73</sup>A research team composed of researchers from the Institute of Social Research (ISF), in cooperation with the Norwegian Institute for Urban and Regional Development, the Uni Rokkan Centre, the University of Oslo and the Norwegian Computing Centre were tasked with carrying out the evaluations. Findings from the evaluations were summarised in two final reports. Signe Bock Seggaard, Harald Baldersheim, and Jo Saglie, “E-valg i et demokratisk perspektiv”, ISF report 2012:5 (Oslo: Institutt for samfunnsforskning, 2012) and Signe Bock Seggaard et al, “Internettvalg – Hva gjør og mener velgerne”, ISF report 2014:07 (Oslo: The Norwegian Institute of Social Research, 2014).

<sup>74</sup>This part was conducted by the International Foundation for Electoral Systems (IFES).

mobilised to vote by introducing electronic voting but rather the people who usually vote in a traditional way.<sup>75</sup>

Differences in the voter turnout related to variables such as education, income and ethnic background were not amplified nor evened out by the possibility to vote over the internet. The percentage who voted over the internet rose in line with rising incomes and people with little or no education voted to a far lesser extent over the internet than people with higher education.

The pilot schemes showed that many wanted to test the possibility of voting over the internet. In 2011, this was 26 per cent, while in 2013, it increased to 37 per cent in the “old” pilot scheme municipalities and 33 per cent in the two new pilot scheme municipalities. This is a high percentage compared with other countries with similar experiences.

As four of the pilot scheme municipalities also participated in the pilot scheme with reduced voting, this enabled more targeted studies on voting behaviour among 16 and 17-year-olds. The evaluation showed that several of the youngest voters chose to vote on paper compared with other young voters. To them, voting was a social act that they wanted to do at a polling station. Eighteen-year-old, first-time voters also preferred to vote in a traditional way.

Although voter turnout increased, there was a clear increase in the number of people who voted in advance in the pilot scheme municipalities, both compared with previous elections and with the country as a whole. Of those who voted in advance, more than 70 per cent voted via the internet.

### *Accessibility*

To investigate whether voting via the internet led to greater accessibility for people with disabilities, in 2013, the researchers conducted a user study of 30 people. Several of the participants found that the technical solution was not easy to use and some even thought it was inaccessible. Some experienced that the font size of the guidance text was too small and others found that there was a lack of compatibility with their ICT aids. Despite practical obstacles, more people were willing to spend time managing to vote electronically in their homes. Therefore, the majority wanted to vote via the internet. According to the researchers, one explanation for this was that many people with disabilities found that for the first time they were able to vote on their own and alone. Voting via the internet gave them a kind of dignity that they had not experienced before at a polling station, as they could now vote without the assistance of others.

### *Attitudes towards internet voting*

The evaluation showed that a large majority of the voters were positive toward the pilot scheme with internet voting, especially those who had taken part in the pilot schemes. The support for electronic voting remained strong, even when there were counterarguments to the question

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<sup>75</sup>For example, in Estonia, which is one of the few countries that has introduced electronic voting over the internet, it is also primarily people who already tend to vote who vote over the internet. See: Mihkel Solvak and Kristjan Vassil, *E-Voting in Estonia: Technological Diffusion and Other Developments Over Ten Years (2005–2015)* (Tartu, Estland: Johan Skytte Institute of Political Studies University of Tartu in cooperation with Estonian National Electoral Committee, 2016), <http://citis.ut.ee/articles/other/book-e-voting-in-estonia>.

formulation. Well over 70 per cent of those asked in the pilot scheme municipalities said that they somewhat or completely disagree with the claim that the “[p]rinciple of fair elections is so important that e-elections should not be introduced”. However, more than half of those surveyed agreed somewhat or completely that “[v]oting at the polling station has a value in itself”. There were minimum party political differences between the voters’ attitudes to internet voting.

At both elections, an overwhelming majority of those surveyed said that a key reason why they voted via the internet was that it was an easy way to vote. A large percentage also said that they were curious about this way of voting or that they were supporters of electronic voting. Four per cent of those who voted over the internet said they did so because they had a disability or illness that made it difficult for them to get to the polling station.

Of those who chose to vote at a polling station, the majority stated that an important reason for this was that they liked to vote in a traditional way. Many also stated that they lived near a polling station. Far fewer said that they voted at a polling station, were opposed to electronic voting or that they experienced practical obstacles around the internet voting.

#### *Fair elections*

In the regulations relating to the pilot scheme with internet voting, it was stated that “the voter shall ensure that the voting takes place in private and without others being able to see what is written”. If they voted via the internet, it was the voters’ responsibility to ensure that no one can see how he or she has voted and that they were alone when they voted. However, a large majority of those surveyed in the pilot scheme municipalities agreed somewhat or completely with the claim that it was the government and not the individual voter that had to ensure that the ballot was secret.

A quarter of those who voted via the internet stated in the evaluation that they did so with other people present in the room. Whether the voting took place without others watching is not known. Around half of those who responded to the survey agreed that there should be *no* other persons in the room when voting via the internet. Less than a half per cent of those who voted over the internet stated that other people in the room tried to influence their vote.

The security mechanisms added to the system were a prerequisite for safeguarding the principle of free and fair elections. However, less than half of those surveyed gave the correct answer to what was the last counting vote. In other words, key security mechanisms for safeguarding fair elections were not known to many of the voters who participated in the pilot scheme, despite information about this on the polling cards and in the solution itself, among other things.

#### **4.3.4 Conclusion of the pilot scheme**

After the second round, the Ministry decided that a pilot scheme with internet voting should not be continued due to lack of political consensus regarding internet voting. The press release stated:

The Government wants to ensure the high confidence that exists for the election process in Norway and finds that political disagreement regarding the election process is unfortunate. [...] The pilot schemes conducted in 2011 and 2013 have provided interesting and valuable knowledge and experience. When there is no broad political desire to introduce electronic voting, the



Government has concluded that it is not appropriate to send money and time on more pilot schemes.<sup>76</sup>

There was no subsequent debate in the Storting when dealing with the issue. In its recommendation, the Standing Committee on Control and Constitutional Affairs noted that the evaluation report had concluded that it was not possible to ensure a secret ballot over the internet.

[...] the Standing Committee [has] noted the main conclusion that it is not possible to adequately ensure secure environments for a secret ballot over the internet – precisely because there is no control nor does anyone want a society that controls the voting conditions in Norwegian homes. So the Standing Committee thereby assumes that internet voting as a general alternative to advance voting and attendance during the election proceedings is currently not feasible and takes note of the Ministry's assessment.<sup>77</sup>

#### **4.3.5 The Council of Europe's recommendations and international experience**

The Council of Europe has issued international standards for electronic voting. They are not legally binding but provide some general guidelines. An important prerequisite is that the system shall be as reliable and secure as democratic elections held without the use of electronic aids. The purpose of the guidelines is to provide countries wishing to introduce electronic elections with some standards to ensure that the principles for conducting democratic elections are observed.

When the recommendations from the Council of Europe were issued in 2004, few countries in Europe had experience with electronic voting. The recommendations were thus based more on theoretical principles than on practical experience. As more countries gained experience, either through pilot schemes (as in Norway and Switzerland) or through full introduction (as in Estonia), the standards needed to be updated in light of the developments that had taken place. In 2017, an updated version came that expanded the definition of electronic elections to include machine counting of votes (scanning). New, strict risk management requirements have been incorporated, and new solutions are now required to allow for both universal and individual verifiability.<sup>78</sup> The standards also recommend that electronic voting systems are introduced gradually, with a feasibility study and thorough testing before being used in elections.

Voting machines in controlled environments are used today in some countries, such as the US, Brazil and India. Elections in uncontrolled environments over the internet have also been tested elsewhere but so far very few countries have introduced this as a permanent solution. International experiences with the various kind of electronic voting have been explained further in text box 4.2.

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<sup>76</sup>“Ikke flere forsøk med stemmegivning over Internett”, Press release, Ministry of Local Government and Modernisation, 23 June 2014, <https://www.regjeringen.no/no/aktuelt/ikke-flere-forsok-med-stemmegivning-over-internett-/id764300/>.

<sup>77</sup>Innst. 287 L (2014–2015) (Recommendation).

<sup>78</sup>This was something Norway, as the first country in Europe, tried to incorporate into the e-voting solution used in 2013.

### **Box 4.2 Experience with internet voting and other kinds of electronic voting internationally**

#### *Estonia*

Estonia was the first country in the world to offer all eligible voters the possibility to vote over the internet at elections. It was introduced as a permanent part of the election system at the local elections in 2005, without the country having had any pilot scheme with this type of election in advance. Since then, the scheme has been extended to apply to national elections and elections to the European Parliament. Internet voting is only a supplement to ordinary elections with paper ballots and is only allowed during the advance voting period (of seven days). The share of votes over the internet has increased gradually from just under 2 per cent of the votes at the local election in 2005 to 32 per cent at the local election in 2017. The share of the votes over the internet at parliamentary elections has also increased from around 5 per cent at the election in 2007 to about 44 per cent at the 2019 parliamentary elections.<sup>1</sup>

The introduction of electronic voting in Estonia must be seen in context with the country's technological development. Ever since the early 1990s, Estonia has been at the forefront of the development of technological infrastructure. Today, the country is considered one of the most advanced in the world in terms of information technology. In 2002, digital ID cards were introduced and are now mandatory for all Estonians. The cards are used for electronic voting, among other things.

#### *France*

In 2012, French people living abroad were allowed to vote electronically over the internet for the first time at the national elections (only parliamentary not presidential elections). Electronic voting was a supplement to using paper ballots but the voters were only allowed to vote once. In 2017, the possibility of internet voting for people living abroad was suspended after concerns about the security of the system and the risk of hacker attacks and manipulation of the election.<sup>4</sup>

#### *Switzerland*

Switzerland has had a pilot scheme with internet voting in uncontrolled environments. But unlike Norway, the pilot scheme in Switzerland has been in up and running for almost 15 years. Switzerland differs significantly from Norway in terms of the frequency of elections and the use of voting methods. In Switzerland, postal voting is common and they have elections in the form of referendums or ordinary elections several times a year.

The Federal Election Act allows for introducing internet voting as a pilot scheme for the cantons that want it, as a supplement to the use of paper ballots. Several cantons have tested electronic voting over the internet for Swiss citizens living abroad, and in some cantons, eligible voters living in Switzerland have been allowed to use this method.<sup>2</sup> In the spring of 2019, there were plans to implement e-elections as one of three ways to vote in Switzerland. After major weaknesses were found in a system developed at the behest of the Swiss postal service, raising concerns about election fraud, the Government chose nevertheless not to proceed with this legal amendment but rather to proceed with the testing of e-elections until the end of 2020.<sup>3</sup>

### *Germany*

Germany started pilot schemes with electronic voting machines in 1998. Seven years later, after the 2005 elections, a case was brought before the German Constitutional Court regarding the legality of such voting machines. In the judgment of 2 March 2009, the Court concluded that the use of electronic voting machines was contrary to section 38 of the Constitution, cf. section 20.<sup>5</sup> The German Constitution states that all elections must be public and that the central parts of an election, from the voting to the counting, must be easy to grasp and observable for any voter. The Court held that the use of the voting machines did not meet these requirements and thus did not comply with the provisions of the Constitution.<sup>6</sup>

### *The Netherlands*

In the Netherlands, voting machines were common at the polling stations from the end of the 1990s to 2006. In 2006, citizens living abroad were also allowed to vote over the internet.<sup>7</sup> However, after major weaknesses regarding the security of multiple voting machines were discovered in 2006, the Government set up a Commission to consider the use of electronic voting systems. The report is highly critical of the Government's handling of electronic voting. Based on this and a subsequent report on the election process in the Netherlands, the Government decided in 2007 to ban all kinds of electronic voting and only have paper ballots. At the 2017 elections, following new concerns about computer security, further steps were taken to secure the election against cyberattacks and all use of technology was forbidden three months before the election.<sup>8</sup>

### *Sweden*

In 2013, an Official Swedish Report (SOU) was released: *E-voting and other election issues*. According to the report, it was

a value in itself to make it easier and less costly for the voters to exercise their democratic rights. One way of achieving this goal is – providing that the high security requirements that must be set for the election process can be met – to allow e-voting over the internet from other locations than polling stations.<sup>9</sup>

The report, written by a parliamentary committee appointed by the Government, recommended that a closer look be taken as soon as possible at the conditions that must be in place for the introduction of electronic voting over the internet in uncontrolled environments. The committee also recommended that the organisation of the work should be done so that a pilot scheme with internet voting could take place at the elections in 2018 in a representative sample of municipalities. The report found that internet voting could give voters with disabilities more equal conditions to participate in elections and make it easier for voters who voted outside their home municipality or from abroad. However, the proposal was not followed up by the Government.

Today, there is no discussion about the introduction of electronic voting. On the contrary, new reports on the state of democracy in Sweden emphasise that their electoral system is robust, because it is manual, decentralised and transparent.<sup>10</sup>

### *Åland*

At the 2019 county and municipal council elections in Åland, electronic voting over the internet was to be allowed for the first time for all voters who lived outside Åland. The Election Act was

amended to introduce this as a permanent arrangement. The solution that was to be used corresponded to the one that was used in the Norwegian pilot schemes and voting over the internet was only to take place in the advance voting period. The day before the internet voting was due to start it was decided not to conduct electronic voting over the internet after all. The reason was that several errors were discovered and there was inadequate testing and uncertainty related to the security of the scheme.<sup>11</sup>

### *Finland*

In December 2017, a feasibility study on electronic voting in Finland was published. It was written by a working group appointed by the Ministry of Justice. The working group concluded that the risks of introducing electronic voting outweighed the benefits, and in particular that confidence in the electoral system and its implementation could be lost if something went wrong. Therefore, they advised against the introduction of internet voting at elections. The working group pointed out that the technology is still not at a sufficiently high level to be able to meet all the security requirements that the election process must meet. They also thought it would be difficult to ensure correct identification without the use of electronic ID cards.<sup>12</sup>

### *Denmark*

In Denmark, there has been little interest in electronic voting. Electronic voting has been tried out in local referendums and in 2012, the Government came up with a proposal to allow the municipalities that wanted it to have such voting as a supplement to using paper ballots in elections to the Danish parliament, the European Parliament and municipalities and regions. However, the proposal did not receive support in the Danish Parliament.<sup>13</sup> Although electronic voting is discussed in Denmark, there are currently no plans to introduce electronic voting.<sup>14</sup> Machine counting of votes is also not relevant in Denmark.

<sup>1</sup> See “Statistics about Internet Voting in Estonia”, Elections in Estonia, opened 31 January 2020, <https://www.valimised.ee/en/archive/statistics-about-internet-voting-estonia>.

<sup>2</sup> “Swiss e-Voting Poised for Expanded Roll-Out”, SWI swissinfo.ch, 5 April 2017, [https://www.swissinfo.ch/eng/politics/digital-democracy\\_swiss-e-voting-poised-for-expanded-roll-out/43087404](https://www.swissinfo.ch/eng/politics/digital-democracy_swiss-e-voting-poised-for-expanded-roll-out/43087404).

<sup>3</sup> “e-Voting: Federal Council to reframe trial phase and delay introduction as a regular voting channel”, 27 June 2019, <https://www.bk.admin.ch/bk/en/home/dokumentation/medienmitteilungen.msg-id-75615.html>.

<sup>4</sup> “France Drops Electronic Voting for Citizens Abroad over Cybersecurity Fears”, *Reuters*, 6 March 2017, <https://www.reuters.com/article/us-france-election-cyber-idUSKBN16D233>.

<sup>5</sup> BVerfG, Urteil des Zweiten Senats vom 03. März 2009 - 2 BvC 3/07.

<sup>6</sup> “The Constitutionality of Electronic Voting in Germany”, National Democratic Institute, 25 November 2013, <https://www.ndi.org/e-voting-guide/examples/constitutionality-of-electronic-voting-germany>.

<sup>7</sup> Leontine Loeber, “E-voting in the Netherlands; past, current, future?” (Proceedings of the 6th international conference on electronic voting (EVOTE). TUT Press, Tallin, 2014).

<sup>8</sup> Presentation from J.G.C. (Jan-Kees) Wiebenga, leader of the Netherlands Electoral Council, given at the EMB conference in Oslo 19 and 20 April 2018.

<sup>9</sup> SOU 2013:24 *E-röstning och andra valfrågor*.

<sup>10</sup> “Strategi för en stark demokrati – främja, förankra, försvara” (Regeringskansliet, 2018), <https://www.regeringen.se/49f2a8/contentassets/64308b0cc8a14ddb8532ff541369c602/strategi-for-en-stark-demokrati---framja-forankra-forsvara.pdf>.

<sup>11</sup> “Rösta via internet – om du är bosatt utanför Åland”, Ålands landskapsregering, opened 5 November 2019, <https://www.val.ax/sa-har-rostar-du/rosta-internet-om-du-ar-bosatt-utanfor-aland>.

<sup>12</sup> “Nettiäänestys Suomessa. Esiselvitys» (Nettiäänestystöryhmä, 2017), <http://jul-kaisut.valtioneuvosto.fi/handle/10024/160413>.

<sup>13</sup> L 132 (2012–2013), the Bill on the amendment of the Act relating to elections to the Danish Parliament, the Act on election of Danish members to the European Parliament and the Act on Municipal and Regional elections. (Digital voting and vote counting, etc.). Proposed 31 January 2013 by the Minister of Economic Affairs and the Interior Margrethe Vestager.

<sup>14</sup> Jakob Skaaning, «Derfor kommer du ikke til at stemme digitalt de næste mange år», DR, 21 November 2017, <https://www.dr.dk/nyheder/politik/kv17/derfor-kommer-du-ikke-til-stemme-digitalt-de-naeste-mange-aar>.

### **4.3.6 The Commission’s evaluation of electronic voting**

The Commission has discussed the possibilities and consequences of electronic voting against four key aspects of elections: accessibility, security, secrecy and transparency. The Commission has considered the possibilities for electronic voting in and outside the polling station.

#### **4.3.6.1 Accessibility**

Accessibility is about allowing the voters to have the opportunity to vote. In today’s system, the voters vote either by personal attendance at the polling station or elsewhere where votes can be cast, by postal voting (abroad) or by ambulatory voting. Accessibility to elections is also about facilitating so that groups with special needs can vote without the assistance of others.

The Commission has noted that the Norwegian Blind Association and the Association of Disabled People (FFO) finds that electronic voting can increase accessibility for more user groups. The Commission finds it is important to be able to facilitate so that all persons, including those with disabilities, can vote alone. The Commission finds that electronic voting can enable blind and partially sighted people to vote alone. However, it assumes that the digital design is user-friendly and compatible with various ICT aids. The Commission is also committed to facilitating a high voter turnout. However, research and experience show that internet voting does not – as one might assume – increase the voter turnout.

#### **4.3.6.2 Security**

Security at elections means that the voters should be confident that the votes are not manipulated in any way, that the ballot is secret, that sensitive data is not disseminated and that all votes are counted as they are cast. The Commission considers the security of the election process to be absolutely essential for a democratic, free and secure election. If the security around the election process is weakened, it will have very serious consequences both for the election as a central democratic process, for the confidence in the election process and the election result. The Commission points out that there are security challenges related to voting electronically both at the polling station and from home.

ICT systems are vulnerable to cyberattacks. Attacks from external and internal sources can plant malware (computer viruses) in the system, which, in turn, will be able to manipulate and change or delete data. Sensitive data may be lost, stolen, modified and/or disseminated. The potential for harm from such attacks is great and could affect individuals and society as a whole. The

Commission stresses that errors are also made in the current paper-based system that can affect the election result. However, there is a vast difference between random errors and systematic manipulation towards a particular outcome. Errors must normally be made by several election officials for these to affect the election result. In case of doubt, the result may be checked by recounting the paper ballots. During electronic voting, it only takes one person to hack the system for the election to be affected. As such, the damage potential and scope is much greater in digital voting systems than with manual systems.

The security challenges of a digital voting system not only apply to the central system but also the various links of the supply and management chain, including the devices (PCs, phones, etc.) connected to the system and the communication between them. With electronic voting, it becomes impossible for the authorities to ensure security at all levels and thus there is an increased risk that the system may be exposed to undesirable events without this being detected.

At the International Conference of Electoral Authorities in Europe, the EMB Conference, which in 2018 was about election security, several experts on computer security and cyberattacks argued that the security of digital voting systems could never be guaranteed.<sup>79</sup> This is because the technological developments are happening so quickly that the authorities and technology experts will find it difficult to create a system that can securely withstand or repel an attack. In practice, this means that the security ultimately rests on the possibility of detecting and responding to attacks and having good manual emergency procedures and measures. This recognition was based on the Norwegian pilot scheme and the Estonian solution. It is also expressed in the Council of Europe's recommendation on electronic voting.

The Commission stresses that it is not only specific cyberattacks that can inflict harm. If someone *claims* to have gained access to the system in an unauthorised way, it may be enough to weak or undermine confidence in the election process. It will be difficult to prove that nothing has happened without through and time-consuming analyses and even then the damage can already be done. The Commission finds that electronic voting is to be allowed, the authorities must be prepared to face the security challenges that will emerge, real or alleged and willing to bear the risk of such challenges.

The Commission points to research and international experience showing that electronic voting over the internet will only be a supplement to using paper ballots at present, and that paper ballots and polling stations will still be needed. This is because the security mechanisms available so far to avoid undue influence during internet voting assume the possibility of going to a polling station and that not all voters will want or have the opportunity to vote over the internet. The Commission stresses that there must still be good manual emergency procedures. In such a situation, a "paper-based system" must be dimensioned to deal with all the voters at short notice. Therefore, the municipalities must maintain their staffing, training and satisfactory, adapted polling stations.

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<sup>79</sup>Information taken from presentations by several security experts who attended the EMB Conference (15th EMB Conference) in Oslo 19 and 20 April 2018. The Venice Commission organised the conference in cooperation with the Ministry of Local Government and Modernisation.

#### **4.3.6.3 Fair elections and undue influence**

The Commission points out that it is a fundamental principle that the election shall be fair. Similarly, it is a principle that each voter shall only have one vote. In the current system, the electoral authorities shall guarantee these principles. At a polling station, an election official will be able to report if a person comes along with another person and wants to cast a vote for this person or accompany them into the polling booth and thus avert such an event. The moment the voting is moved away from controlled environments, it will no longer be possible for the electoral authorities to check that the voting takes place in private and unseen. When voting over the internet, the voter must ensure that she or he votes so that no one can see (as is the case when the voter casts a postal vote). Therefore, it will be difficult to prevent people from voting together.

The Commission sees that voting in uncontrolled environments challenges the principle of fair elections. The risk of someone being affected unduly, or that there is buying and selling of votes will also increase if the voting takes place without supervision from the electoral authorities. The pilot schemes with electronic voting in Norway sought to reduce these challenges through a variety of security mechanisms. The interest in buying votes is thought to depend on the ability to receive a “receipt” for the vote so that the buyer knows he is getting what he is paying for. In the Norwegian pilot schemes, mechanisms were introduced to prevent the possibility of giving such a receipt through it being possible to vote several times on the internet in the advance voting period. In addition, a paper ballot cast at a polling station (either in advance or on Election Day) always overrides any electronic votes. Therefore, any buyers of votes would never know if the vote they had bought was “valid”. These mechanisms were also intended as a security mechanism to avoid people voting under pressure. Persons who were afraid they would be subjected to coercion could vote on paper in advance or afterwards, without this being detected by the person who exercised coercion. However, the evaluation showed that it was difficult to communicate the security mechanisms to the voters and that few people were familiar with them.

#### **4.3.6.4 Transparency and responsibilities**

The Commission finds it is important for democracy that elections are conducted in a transparent and observable way that is easy to grasp for most people. This was something the Constitutional Court in Germany emphasised when it concluded that electronic voting machines are contrary to the country’s Constitution. The Venice Commission’s new standards for electronic voting emphasise transparency and the possibility to observe all parts of an electronic voting system.

In the case of electronic voting, people without special knowledge can understand to a small extent what happens to their vote after it has been cast. It will not be possible for the general voter to understand the algorithms and security elements that are embedded in the electronic system. Special expertise is required to observe and verify that the voting and counting takes place correctly. When votes are cast in a computer system, with data files as the only source of verification, only a few technology experts will genuinely understand the technical mechanisms behind the system and be able to verify the results. This is unlike paper-based elections, where the vote is physically traceable and the counting of the ballots is observable and can be checked. Moreover, the votes can be counted against in case of doubt, the counting is simple and does not require special expertise.

Electronic voting over the internet has been compared with online banking in that is a place where you disclose sensitive (personal) information in a computer system over the internet. Most people

who use online banking feel confident that the security around personal data and their money is safeguarded. This is largely because each individual has the opportunity to check his or her online bank and thus be able to monitor and discover if anything is wrong. It will also be possible afterwards to correct any errors detected. Should an error in the electronic voting system be detected, it may be impossible to correct and even though errors can be correct, they could have a major impact on confidence in the election.

In the Norwegian pilot schemes, several mechanisms were introduced to allow the voter to check whether his or her vote was cast correctly. However, the evaluation showed that the voters did not understand how these mechanisms worked. To check if the vote was counted correctly required special expertise. In total, the potential for damage is far greater if something goes wrong when voting than if an error occurs in connection with a personal service over the internet.

In Norway, there is a long tradition of decentralised responsibility in the field of elections. It is local, democratically elected bodies that are responsible for ensuring that the election is conducted correctly and that approve the final election results. The introduction of internet voting challenges this division of responsibility. Local election officials would have to hand over authority and responsibility to another body, as a central internet election committee with assistance from technology experts. Votes cast over the internet will be transferred to the municipalities' final election result but without the local electoral authorities being able to have control or can check or assess whether the votes have been cast correctly. If an error or an attack occurs, the technical experts will likely discover the error/breach first. Responsibility and control are largely transferred from the electoral authorities to the technology experts employed by private companies that provide the technology. The Commission finds that the impact this may have on the confidence in the election if electronic voting is introduced should be examined further.

#### **4.3.6.5 The Commission's evaluation of whether electronic voting should be introduced in Norway**

The Commission finds that the high level of confidence we have in the electoral process in Norway today is of great value and that it is necessary to maintain and protect it. Confidence takes a long time to build up but can be undermined rapidly, which experiences from other countries show. To maintain a high level of confidence in the election and to ensure that the elections proceed correctly, the security and reliability of the voting system are very important. It is equally important to be able to check that no manipulation or security breaches have occurred during the voting.

*The majority of the Commission (everyone except Aarnes) finds it is important to gain more knowledge about electronic voting to be able to make good assessments of the opportunities and risk associated with electronic voting. However, these members find that the security of electronic voting over the internet is not good enough to introduce such a way of voting in Norway at present. That votes are cast on paper, which is stored, checked and counted several times, is a fundamental element that makes the election more secure. This is also supported by assessments made by Valdal et al and NSM.<sup>80</sup>*

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<sup>80</sup>Valdal et al, "Sikkerheten i demokratiske prosesser i Norge".



Technology is moving at a fast pace and these members cannot disregard the fact that technical solutions can be developed that are sufficiently secure to be used in voting. These members find that secure solutions should be found that enable electronic voting at the polling stations to facilitate better for voters with disabilities. Before a possible introduction, through feasibility studies must be carried out in line with the Council of Europe's recommendations and security analyses of the entire value chain must also be carried out.

*Five members of the majority (Christensen, Holmås, Storberget, Aardal and Aatlo)* find that in the long-term, electronic voting over the internet where the voter can vote from home should be considered to be introduced when the security is good enough. Furthermore, these members find that the solution used must include mechanisms to ensure that the voter votes secretly. For example, it should be possible for the voter to vote electronically several times and to vote on paper at a polling station. Internet voting should also take place in the advance voting period.

*Twelve members of the majority (Anundsen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Høgestøl, Nygreen, Røhnebæk, Stokstad, Strømmen and Tørresdal)* find that in principle, voting should take place at a polling station and that in the long term, voting from home should not be allowed. These members find that ensuring fair elections will be challenging if the voting is moved out of the polling stations and into private homes. It is the authorities that must ensure that the principle of fair elections is followed and it will not be possible to ensure this with electronic voting from home. These members find it will not be possible to make sure that no one is pressured into voting against their will, as long as the voting does not take place at a polling station.

*Commission member Aarnes* finds that the data security is good enough today for electronic voting over the internet to be introduced in Norway at present. This member finds that the time has come to introduce an easier way of conducting elections and points out, among other things, that technology is used in many other important areas of society. This member also points out that the voters expect to be able to vote over the internet, especially voters with disabilities, and that the electoral authorities in the municipalities are ready to meet the challenge of dealing with a secure electronic voting system.

#### *Pilot schemes with electronic voting for selected voters*

The Commission finds that it is very important to ensure good availability and emphasises that several user groups have stated that electronic voting over the internet can help increase their accessibility during elections. However, the Commission finds that such benefits must be weighed against other considerations, such as the security at the election and the principle of free and fair elections.

*The majority of the Commission (Anundsen, Grimsrud, Hagen, Hoff, Holmøyvik, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal and Aatlo)* finds that providing electronic voting over the internet only for a few voter groups will be problematic based on practical as well as principled considerations. These members point out that electronic voting over the internet will encounter the same security challenges and dilemmas related to ensuring that the ballot is secret, regardless of whether it is only offered to a select group of voters or the entire population. Based on data protection considerations, it will also be very difficult to check off on the electoral register the individual who due to their special needs are entitled to internet voting. Moreover, offering electronic voting over the internet only to a select few user groups will be contrary to the principle of universal design. These

members further point out that it will also be about as costly and risky to introduce electronic voting over the internet, whether the option is offered to all or only a few selected groups of voters.

*The minority of the Commission (Christensen, Giertsen, Holmås, Høgestøl, Storberget, Aardal and Aarnes)* finds that it should already be considered at this time whether it is possible to implement pilot schemes with electronic voting over the internet for certain groups of voters. This may be a way to learn more and reap experiences. The principle of fair elections is not followed for voters who cannot vote alone without help. These members also find that the system of postal votes from voters abroad is less secure than a solution with electronic voting could be. Therefore, this type of voting is not suitable for pilot schemes.

*Commission member Giertsen* will recommend that initially, any pilot schemes are implemented at municipal council elections in a small number of municipalities.

## **4.4 The Commission's evaluation of technology and security**

### **4.4.1 Confidence and transparency**

Confidence that elections are conducted correctly in accordance with the regulations is fundamental to having a well-functioning democracy. Voters and the political parties have a justified need to be able to rely on the electoral authorities and this also includes the technology used. In Norway, the population has a relatively high level of confidence in the electoral process and the political institutions. This is an important value and makes it easier to conduct elections and to facilitate for the voters.

When international election observers visit Norway, the first thing they point out is the high level of confidence. In many other countries, there is not the same level of confidence and this leads to the need for several other control mechanisms that have not been needed in Norway. In Norway, the Electoral Committees can be made up of politicians without any political parties raising doubts about whether the Electoral Committee makes the right decisions without taking party political considerations. In many other countries, it is not possible to vote in advance, as no one has confidence that the electoral authorities store the votes securely. This is not an issue in Norway. Many countries have transparent ballot boxes so that everyone can see that no one in the electoral administration has cheated and filled up the ballot box before the voting began.

Transparency has been an important cornerstone of the election process in Norway and an important prerequisite for the high level of confidence. In Norway, much of the responsibility for the election process is decentralised. The municipalities have the greatest responsibility for the practical implementation, most of which is done by the Electoral Committee of the municipality. All the Electoral Committee's meetings are open and this also applies to the meeting where the counting of the ballots takes place. This facilitates good control at a local level, from both local media and the population. The Commission finds it is important that increased use of technology does not lead to less transparency.

The local responsibility also means that solutions can be adapted to local needs. This is practical and necessary, as long as there is a significant difference between the municipalities in terms of the surface area and population. Among other things, the municipalities can choose to organise the counting in each district or centrally for the entire municipality. The municipalities can also choose whether they only want to count manually or using scanning. Therefore, voting, counting

and control are carried out in different ways in different municipalities. The Commission sees that there may be a conflict between local responsibility and the possibility of local adaptations and necessary measures to make the use of technology more secure, including the need to be able to set technical requirements for the equipment to be used.

#### 4.4.2 Risks and vulnerabilities

The Commission points out that there are some special issues related to elections. This distinguishes elections from other areas. One factor that makes security particularly important and challenging at elections is that there is not necessarily enough that the error is detected if it is detected too late. If it is the case that it emerges one year after the election that someone has somehow managed to gain access to or possibly influence the technical systems, and it is not the right candidates who have been elected to the Storting, this will cause major problems for the confidence in democracy and the legitimacy of the decisions this Storting has made. Another challenge is that it is not only genuine breaches of security that could lead to less confidence. If someone manages to prove that they *can (or have) gained* unauthorised access to the system, it may undermine confidence in the system.

Based on the discussions the Commission has had and the input the Commission has received from the security authorities, among others, the Commission finds that the security of the election process is good. The Commission notes that NSM and the report from Proactima clearly express that in general, the introduction of electronic voting, whether it takes place over the internet or via voting machines at the polling station, will increase the vulnerability. The Commission also notes that the importance of having manual processes in addition to the technical solutions contributes to better control and increased security, but also reduces the reliance on technical solutions.

The Commission finds that an important challenge to our democratic processes is disinformation and covert influence on candidates and voters before the election process. Experiences from elections in other countries show that disinformation concerning elections is a challenge.<sup>81</sup> The techniques used include automated robot networks, human-controlled social media accounts and hybrids of the two. In the future, propaganda techniques and algorithms can be expected to be developed further using artificial intelligence and the internet of things.<sup>82</sup> However, there is so far little evidence of the effect in practice disinformation and covert influence has had on elections.

Furthermore, the Commission argues that measures against disinformation or covert electoral influence are legally demanding. It is difficult to draw a clear distinction between influences that take place through democratic participation and freedom of speech and influences that take place through disinformation, polarisation and amplification of hate speech and that may detrimental to

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<sup>81</sup>A report showed that in as many as 70 countries, algorithms and targeted propaganda campaigns via social media have been used to polarise political opinions, reinforce opinions, create distrust or weaken democracy. See Samantha Bradshaw and Philip N. Howard, «The Global Disinformation Order: 2019 Global Inventory of Organised Social Media Manipulation», Working Paper 2019.3 (Oxford: The Computational Propaganda Project, 2019), <https://comprop.oii.ox.ac.uk/research/cybertroops2019/>.

<sup>82</sup>The Internet of Things (IoT) is a network of identifiable objects equipped with electronics, software, sensors, actuators and networks that enable the objects to connect to each other and exchange data.

democratic processes. Both the use and regulation of social media as arenas for political influence also raise the question of data protection.

The Commission finds the Government must look at how disinformation affects the risk to the election process itself and society and democracy as a whole. It is a paradox that political TV advertising is prohibited whether it is disguised or not, while it is allowed to buy political advertising from large technology companies that reach out to many people and that can be targeted at individual level.

Therefore, knowledge of and defence against disinformation is necessary for people to have confidence in democracy. The Commission is aware that different approaches related to disinformation and elections have also been worked on in other countries and finds the Government must study experiences from this work. The Commission also finds it is important to have more knowledge about the effect disinformation and protests actually have. While some people want to influence the voter to change their view or not to use their right to vote, it is not given that the influence techniques always work. When it comes to the influence of candidates running for election, the Commission finds it is essential for our democracy that people want to stand for election and are not pressurised or threatened to silence and passiveness. For this reason, it is important to work to reduce hate speech and threats against candidates and politicians in general.

The Commission is positive to the cross-sectoral work on these issues. Through training and raising awareness, voters and candidates can be made more resistant to disinformation and information operations. Disinformation and influence operations in general are a complicated issue that the authorities in several countries are now working to secure against. It is outside this Commission's mandate and expertise to propose regulation by law and specific measures to counter fake news and other kinds of influence operations, threat and pressure.

The Commission is concerned that election data can be linked to other types of information. Such linking of information will affect data protection and could be used for political influence. The Commission is aware that the Government is working to set up a data protection Commission and recorded this issue for this work.

#### **4.4.3 Regulation of security**

The Commission finds it is important to ensure that the digital security of democratic process is properly safeguarded and covers the entire value chain. The Commission observes that the Security Act and the national digital security strategy specifically refer to democratic processes.

The municipalities in Norway are independent legal entities and a democratically elected level with responsibility for their electoral organisation and ICT security. The Commission finds that it makes sense to legislate general ICT security requirements in the entire value chain for the election process. Such statutory requirements would help reduce the risk of unwanted ICT events and strengthen confidence in the democratic processes and the digital infrastructure that underpins these processes. They will also help to clarify responsibilities related to security and the use of ICT systems in the election process. Such statutory requirements would also underpin the national digital security strategy.

As there is currently some uncertainty about the consequences a new Security Act will have for electoral matters, the Commission has chosen not to draft a bill for a statutory requirement for ICT

security. The Commission finds it is important to identify the consequences of such a statutory requirement and considerations related to supervision, control and any sanctions must be made. Therefore, the Commission asks the Ministry to consider this issue further. The Commission also refers to the discussion of the use of EVA in the election process in Chapter 12.

The Commission points out that if it were to be decided in the future that more of the election process is to be digitised than today, it will be important to have regulation of the ICT security in place in advance.

#### **4.4.4 Technology-neutral Act**

The Commission finds technology is a key part of today's election process and that it is necessary to monitor what opportunities new technology can offer. The Commission wants to create an Election Act that can last a long time and therefore finds it is important not to impose unnecessary restrictions in the legislation on how certain tasks should be solved. In the mandate, the Commission has been requested to draft a technology-neutral Act. However, the Commission finds that the choice between digital or manual procedures in some cases has implications for the security of the election process. The Commission thinks that in such areas, the Act cannot be technology-neutral.

Since it is the majority of the Commission who currently do not want to introduce electronic voting, in the further discussion, the Commission will assume that in future, elections will be conducted using paper ballots. This is also reflected in the bill the Commission puts forward.

*Part II*  
*The electoral system*

## 5 The electoral system at parliamentary elections

### 5.1 Introduction

The Norwegian electoral system enjoys a high level of legitimacy among the population and functions well. The Commission has been requested to consider the electoral system in light of the new county structure. The Commission finds that a discussion about changing the electoral system should start by finding out what one wants to achieve. One issue that has been central to the discussions of previous Election Act Commissions and which the changes in the country structure have made current is the balancing between regional considerations and that each vote shall have equal weight. This problem also concerns issues related to additional votes, proportionality, fragmentation and accountability.

#### 5.1.1 Democratic considerations

A key democratic principle is that everyone shall have an equal opportunity to participate in shaping society.<sup>83</sup> This applies to participation in the discussion about how society should be and the very shaping of society.<sup>84</sup> This principle dictates that the influence each voter has in elections shall be equal regardless of other matters. In other words, all voters shall have the same opportunity to influence elections and each vote shall count equally. Although the principle forms the basis of Norwegian democracy, other considerations and practical reasons have led to the electoral system not fully following this principle.

The following discussion is based on the principle that all votes shall have equal weight, before addressing some of the limitations set for this principle in the Norwegian electoral system.

Completely proportional representation leads to the representation of many different interests and that the votes have equal weight. This ensures that the voters' preferences are largely mirrored in the parliament. Voters also have plenty of options to choose from. Therefore, this makes it easier for voters to find a party that stands for the same issues as themselves. The lower the threshold to be represented, the greater the breadth of representation there will be and changes in the thresholds have implications both for how many parties are trying to win seats and how small parties the voters are willing to vote for.<sup>85</sup>

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<sup>83</sup>David Held, *Models of Democracy*, 3rd edition. (Cambridge: Polity Press, 2006), pages 263–264, and Mark E. Warren, “Democracy and the State”, in *The Oxford Handbook of Political Theory*, red. John S. Dryzek, Bonnie Honig, and Anne Phillips (Oxford: Oxford University Press, 2009), page 386.

<sup>84</sup>The rights and obligations of individuals also place limits on how society *can* be shaped.

<sup>85</sup>The effect of the constituency structure has on the party system is discussed in Bjørn Erik Raschs note: Bjørn Erik Rasch, “Betydningen av inndeling i valgdistrikter”, Annex 3 of the report, 2018. See also John M. Carey and Simon Hix, “The Electoral Sweet Spot: Low-Magnitude Proportional Electoral Systems». *American Journal of Political Science* 55, no. 2 (April 2011): 383–397. <https://doi.org/10.1111/j.1540-5907.2010.00495.x> and Matthew Singer and Zachary Gershman, “Do Changes in District Magnitude Affect Electoral Fragmentation? Evidence over Time at the District Level”, *Electoral Studies* 54 (August 2018): 172–181, <https://doi.org/10.1016/j.electstud.2018.06.003>.

Proportionality and fragmentation will often make it harder to achieve viable coalitions. With more parties and more proportional representation, it is often necessary to include more parties in a coalition to achieve a majority in parliament and there will be more to agree on in the negotiations. Thus, Government formations become more complicated and building a majority behind decisions can be more challenging.<sup>86</sup> This can affect the ability to implement the necessary political initiatives and at the same time make it difficult for the voters to hold politicians accountable for the policies being pursued.

The political culture may be decisive for whether this becomes a challenge or not. Whether the political culture is oriented towards consensus and broad majorities or is more conflict-oriented is of great importance. If there are major differences between the parties, it can also be more complicated to find compromises than if several parties have fairly similar values and only differ from each other on certain issues. The Norwegian political culture is consensus-oriented and together with other similar northern European democracies, Norwegian democracy has proved to be viable despite a more fragmented political landscape than, for example, the country with two-party systems.<sup>87</sup> When political decisions are made as compromises with broad support in the Storting, a more stable policy is also being pursued than in political systems where the policy being pursued is determined by the ruling majority at any time and where there are constant shifts in the direction of the politics.<sup>88</sup>

Another challenge with having a large number of parties may be that it becomes difficult to decide which party “wins” the election. This can make it more difficult for the voters to imagine how their vote will affect which parties end up in the government and make it more difficult to hold the parties accountable. An important principle of representative democracies is that the voters point out representatives who are given the mandate to make decisions *on their* behalf. If the representatives do not do this in a good way, at the next election, the voters may give their vote to others. For this to be possible, the voters need to know who is responsible for political decisions. This is more challenging for the voters when there are broad coalition governments with many participants or minority governments with varying support in the Storting.

There is a long tradition in Norway of taking regional policy considerations in the allocation of seats. In today’s electoral system, population and surface area are used in the allocation of seats among the constituencies to ensure regional considerations. This means that there are fewer voters behind the seats in the constituencies with the largest area than in constituencies with a small surface area. Thus, one vote in constituencies with a large surface area may have greater significance than one vote in constituencies with a small surface area. The aim has been to ensure representation from all over the country and to ensure that the population living further away from the

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<sup>86</sup>Rasch, “Betydningen av inndeling i valgdistrikter”.

<sup>87</sup>Arend Lijphart, *Patterns of democracy: Government forms and performance in thirty-six countries*, 2nd ed (New Haven: Yale University Press, 2012).

<sup>88</sup>Norwegian governments do not have the opportunity to dissolve the Storting and call new elections, which is common in other countries. Thus, the Storting is forced to find a government solution regardless of the election result and it is possible that this contributes to the consensus culture.



capital is compensated for the distance to the centre of power. In 2009, OSCE stated that Norway should consider changing the rules for the allocation of seats to ensure that the principle of equal voting rights is respected, with reference to the overrepresentation of Finnmark.<sup>89</sup> However, as is discussed below, the most important consequence of the scheme is that the representatives come from other geographical areas than they would have done if all votes counted equally.

In many democracies, including Norway, the desire to secure governing parliaments and coalitions has led to the electoral systems favouring large parties and there is a threshold to being represented to prevent fragmentation.<sup>90</sup> Nevertheless, in representative democracies, only groups of a certain size will be represented. In addition to this natural threshold, there are additional elements of the scheme that make it more difficult for small parties to be represented in the Norwegian electoral system, such as a higher first quotient and division of the country into constituencies. This prevents there from being very many parties in the Storting and gives major parties a certain number of additional votes.

The majority bonus in today's Norwegian electoral system works in two ways. Firstly, the parties that come above the electoral threshold (almost always) will have a better result for their votes than parties that are below the electoral threshold. Thus, this electoral threshold deprives the smallest parties of representation.

Secondly, large parties will win more direct seats due to the division into several constituencies and an elevated first quotient. Parties that are strong in the constituencies that are overrepresented, such as Finnmark, can also be overrepresented. These additions had a greater impact before the introduction of seats at large and were further reduced by the increase to 19 seats at large in 2005.<sup>91</sup> Today, the electoral system provides a certain majority bonus to very large parties. This has less significant in today's political landscape where none of the parties is very large. If we only look at the parties above the electoral threshold, the allocation of seats among these parties will be identical with what the allocation of seats would have been if the whole country was one constituency in the last two elections. The last time a party won more seats than the party should have had in such an allocation was when the Norwegian Labour Party received an extra seat in 2009.<sup>92</sup> In other words, the majority bonus has less significance as long as the largest parties are not very large and as long as neither party has a skewed geographical distribution of the votes in favour of constituencies with many direct seats per vote.

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<sup>89</sup>"Norway Parliamentary Elections 14 September 2009", OSCE/ODIHR Election Assessment Mission Report (Warsaw: The Organisation for Security and Cooperation in Europe, 2009), page 5.

<sup>90</sup>Rasch, "Betydningen av inndeling i valgdistrikter".

<sup>91</sup>Bernt Aardal, "Den norske stortingsvalgordningen og dens politiske konsekvenser", *Norwegian Political Science Journal* 26, no. 02 (2010): 75–103.

<sup>92</sup>The election result compared with an election result in which the seats are distributed among the parties over the electoral threshold with the country as one constituency. At this election, the Norwegian Labour Party had the support of 35 per cent of the voters.

That the voters understand the electoral system is also key to allowing the voters to participate on an equal basis in elections. To be able to participate in elections, the voters must understand how they can express their opinions by voting. Therefore, it should not be too complicated to vote. The voters should also have an overall understanding of how the votes turn into representation. At the same time, detailed knowledge of all the elements of the electoral system is not necessary for participating on equal terms.

### **5.1.2 The electoral systems in the other Scandinavian countries**

The Norwegian electoral system is similar to the electoral systems in the other Scandinavian countries but each country has some distinctive elements. Compared with Sweden and Denmark, the Norwegian system is less proportional, it gives greater emphasis on regional considerations and gives the voters less opportunity to influence the composition of the parliament.

The threshold for representation varies, it is lower in Denmark and higher in Sweden than in Norway. Denmark and Sweden have more proportional electoral systems than Norway but all three countries have relatively proportional systems in an international context.

In Denmark, the high level of proportionality is due to a combination of a low threshold for seats at large (the electoral threshold for seats at large is 2 per cent)<sup>93</sup> combined with a large number of seats at large. The threshold for running for election in Denmark is also high. The parties must collect signatures from about as many voters as is required to win one seat in the Danish parliament. Therefore, Danish parties cannot stand for election without documenting a relatively good chance of being elected. As a result, few votes go to parties that are not elected to the Danish parliament.

In Sweden, the threshold for winning seats is higher. Only parties that achieve more than 4 per cent of the votes nationally (or more than 12 per cent in the constituency) become members of the Swedish parliament. The distribution is very proportional among the parties that win seats. The first quotient is 1.2 and parties that have been overrepresented in the allocation of seats in the constituencies lose these seats in the allocation of seats at large. The Swedish electoral system also leads to fewer “wasted votes” than the Norwegian but in a different way than in Denmark. In Sweden, parties that are below the electoral threshold of four per cent find it difficult to survive over time because they do not achieve representation at all. Parties can win almost 4 per cent of the votes nationally without being represented.<sup>94</sup> Voters are also less willing to vote for parties that are far achieving the electoral threshold, because these votes will not lead to representation. Thus, fewer votes go to parties that do not achieve proportional representation and this gives a high level of proportionality.

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<sup>93</sup>Parties can also gain seats at large if they win a constituency seat or if in at least two out of three regions they have received the same number of votes as on average in a constituency seat.

<sup>94</sup>For example, Feminist initiative received 3.1 per cent of the votes in 2014 and thus did not achieve representation in the Swedish parliament.

The standard measure used in the professional literature to measure the degree of proportionality is Gallagher's least-squares method, LSq.<sup>95</sup> It measures deviations from full proportionality in a way that causes large deviations to count more than small deviations. The higher the LSq, value the greater the deviation from full proportionality. However, it is not only the electoral system that determines how proportional an election result is but also the party system and the actual election result. The election in Denmark in 2019 is an interesting example. Two parties were close to achieving the electoral threshold and since the parties did not meet any of the other two criteria for seats at large, they did not enter parliament. As figure 5.1 shows, the disproportionality increased from 0.79 to 2.39. This is the highest disproportionality at a Danish election since the 1990 election. Therefore, LSq can vary between elections even if the electoral system is the same.

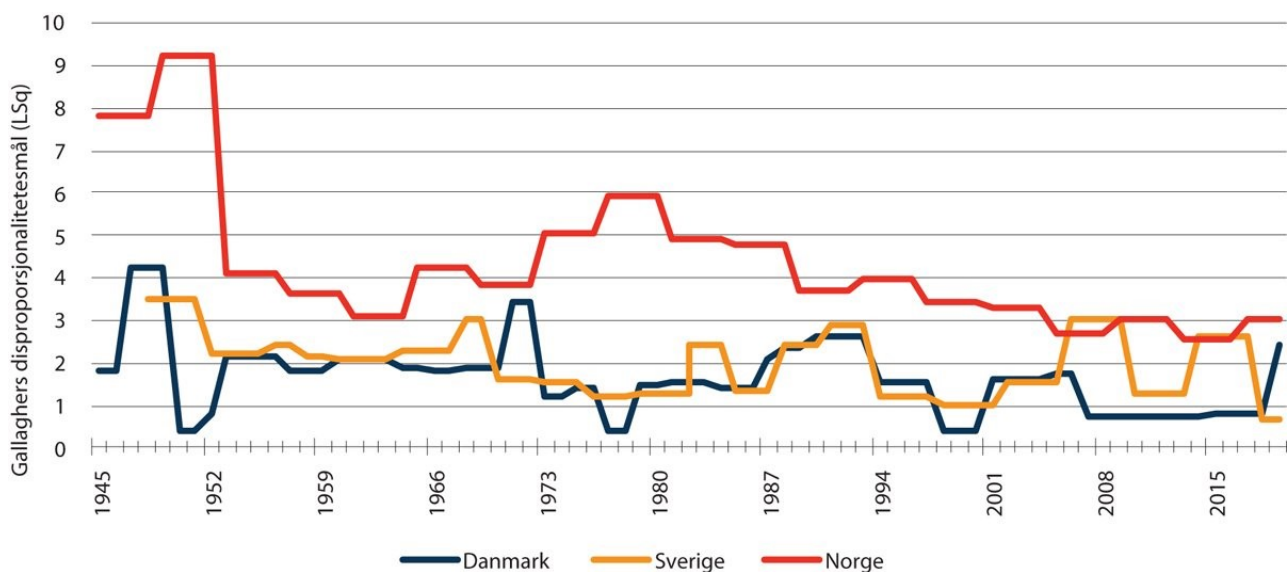


Figure 5.1 The disproportionality of the Norwegian, Swedish and Danish electoral systems (1945-2019).

Source: The figures are taken from Michael Gallagher's list of "election indices" on his website [https://www.tcd.ie/Political\\_Science/people/michael\\_gallagher/](https://www.tcd.ie/Political_Science/people/michael_gallagher/). In this figure, the disproportionality is calculated based on the number of votes of all the parties. In other calculations in this report, the number of votes of the parties that do not win seats are added together to a joint total for "other parties". When unrepresented parties are added together, these parties gain greater importance and LSq is higher. LSq for the Norwegian parliamentary election in 2017 was 3.0 (if all the parties are counted individually) and 3.2 (of non-represented parties are counted together) respectively.

The developments in Norway over time have moved towards more proportionality and since the changes made by the previous Election Act Commission, LSq has been between 2.8 and 3.2.

The Norwegian system, with the surface area being a significant criterion in the calculation of seats, is a special case. Sweden allocates seats between constituencies based only on population

<sup>95</sup>Michael Gallagher, "Proportionality, Disproportionality and Electoral Systems", *Electoral Studies* 10, nr. 1 (March 1991): 40–41, [https://doi.org/10.1016/0261-3794\(91\)90004-C](https://doi.org/10.1016/0261-3794(91)90004-C).

while Denmark also has a low surface area factor that has little impact. However, both countries also have special constituencies that are secured a given number of seats regardless of the population.

While the electoral system and Norwegian parliamentary elections have only a theoretical element of preferential voting, the voters in Sweden and Denmark can influence who is elected at parliamentary elections. In Sweden, a system similar to the Norwegian county council system is used for elections to the Swedish parliament. This gives voters some influence but does not lead to major shifts in which candidates are elected. In Denmark, the parties have some room to manoeuvre in the choice of preferential voting scheme but most parties use systems with a strong element of preferential voting also for elections to the Danish parliament. This, it is primarily the voters' priorities that determine which politicians on each will be elected in Denmark.

The other Scandinavian countries have preferential voting all elections and the electoral systems for elections to the various levels in these countries are thus more similar than is the case in Norway. The preferential voting systems at elections to all three democratically-elected levels in the other two Scandinavian countries are essentially the same. It is assumed that this can make it easier for the voters to understand these systems than it is in Norway, where each of the three elections has different preferential voting systems.

## **5.2 Constituencies**

Before the new county structure, the constituencies were divided according to the county boundaries. The changes in the county structure as a result of the structural reform made it necessary to decide whether the number of constituencies should be changed or whether the constituencies should be detached from the county structure.

Below is an account of the historical development in Norwegian constituencies. The structural reform in Norway and other countries' division into constituencies is also presented. Following this, is a discussion of key considerations and consequences of the division into constituencies before the Commission's evaluation is presented.

The dynamic allocation of seats between constituencies will lead to changes before the next parliamentary election in 2021. First and foremost, this is based on changes in the population since 2012. The structural reform also means that some constituencies have changed their boundaries. The discussion in this chapter is based on an allocation of seats calculated based on the population as of Q2 2019 in the changed constituencies. This creates some changes in relation to what was the case at the last election in 2017. There may also be deviations from the actual allocation of seats that was determined in the spring of 2020 and that will apply at the parliamentary election in 2021.

### **5.2.1 Applicable law**

Article 57, subsection 2 of the Constitution states that there shall be 19 constituencies at parliamentary elections. Furthermore, the Constitution states that 19 representatives shall be chosen through the seat at large system and that each region shall have one seat at large, cf. Article 57, subsection 3 and 4 of the Constitution. The Constitution does not regulate what should constitute the constituencies.

In section 11-1 of the Election Act, the country is divided into 19 constituencies and following the amendment of the law in 2018, each constituency is stated by name. The Ministry issues regulations concerning which municipalities constitute the different constituencies.

The Constitution also contains provisions on how many seats are to be elected and how the seats are to be distributed among the constituencies. The surface area and number of inhabitants are taken into account in the distribution. To take into account demographic changes, the 169 seats are re-distributed every eighth year, cf. Article 57, subsection 5 of the Constitution. The next time this will be done is in 2020 with effect from the parliamentary election in 2021.

### 5.2.2 Historical development

Since 1814, Norway has been divided into constituencies with several seats per region, except for the period with single-member constituencies from 1906 to 1921. From 1921 to 1952, the country was divided into 29 constituencies where the counties made up 18 of the constituencies and where the last 11 were urban constituencies that partly consisted of several cities joined together. This system was based on an assumption of a fundamental clash of interests between city and country.<sup>96</sup>

The majority of the Parliamentary Electoral System Commission of 1948<sup>97</sup> proposed to change the division into the following counties, but not include Stavanger and Trondheim together with Oslo and Bergen, which were already separate counties. The Storting decided that the counties would form the basis for the constituencies and have been ever since. The number of constituencies was reduced from 29 to 20. Since then, no changes have been made to the division into constituencies except that the merger of Bergen and Hordaland in 1972 led to the number of constituencies being reduced from 20 to 19.

Apart from the fact that the counties existed as administrative units, it is difficult to find clear justifications for them becoming constituencies at parliamentary elections.<sup>98</sup> Since then, it has been argued that linking the constituencies to the counties can strengthen the sense of identity of the county.<sup>99</sup> Today, Norway is the only country in the Nordic region where there is complete agreement between the counties and the constituencies.

From 1919 until 2003, the constituencies were stated by name in the Constitution together with the number of seats to be elected from each region. Therefore, there was no dynamics that could adjust for changes in the demographics and it was difficult to change the allocation of seats. In 2003,

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<sup>96</sup>Yngve Flo, “... en naturlig inndeling med sterk forankring i livsforholdene i landet’. Dei historiske føresetnader for valdistriktsinndeling ved stortingsval”, Annex 2 of the report, 2018.

<sup>97</sup>“The constitutional electoral system”, Recommendation I, the Parliamentary Electoral System Commission appointed by the Storting’s decision of 6 February 1948, 4 April 1949.

<sup>98</sup>Flo, “... a natural division with a strong foundation in the circumstances of the country”.

<sup>99</sup>See St.meld. no. 64 (1969–70) (white paper) pages 50–52 and Flo, “... a natural division with a strong foundation in the circumstances of the country”.

the name of the constituencies and how many seats each constituency should have, were removed from the Constitution. The number of constituencies is still specified.

### 5.2.3 The Venice Commission's Code of Good Practice in Electoral Matters

The Venice Commission's Code of Good Practice in Electoral Matters states that "seats must be evenly distributed between the constituencies".<sup>100</sup> The document emphasises that the allocation of seats among the various regions must follow clear and objective criteria (e.g., based on population citizens or eligible voters).<sup>101</sup> Geographical considerations, considerations for administrative structure and in special cases also considerations for historical division can be taken. The Venice Commission also recommends that the constituencies should coincide with administrative boundaries.

The Venice Commission has prepared a report on constituency structure and allocation of seats.<sup>102</sup> Manipulation of the boundaries to achieve a desired political result is a challenge in several countries. The report discusses the problem of such manipulation, so-called *gerrymandering*, and what can be done to avoid this. Use of administrative divisions and enshrining the constituency structure in the Constitution is highlighted as being important to protect against manipulation. The Venice Commission also points out that changes in the population should lead to a new allocation of seats rather than a new division into constituencies.

### 5.2.4 Structural reform in Norway

In June 2017, the Storting adopted a new regional structure. From 1 January 2020, there are 11 counties in Norway instead of the previous 19.<sup>103</sup> The merger of Nord and Sør-Trøndelag was adopted in the spring of 2016 and took effect on 1 January 2018.<sup>104</sup> Only four counties were not affected by the reform: Oslo, Rogaland, Møre & Romsdal and Nordland.

The municipal reform has led to several municipal mergers and some of these are across constituencies and are of significance to the delineation of the constituencies. These changes are included when a new allocation of seats is calculated in 2020. It has been determined for all municipalities affected by this to which constituency the new municipality shall belong, as the 19 former counties shall be used as constituencies at the parliamentary election in 2021.

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<sup>100</sup>"Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report" (Venezia: European Commission For Democracy Through Law (Veneziakommisjonen), 2002), CDL-AD(2002)023rev2-cor, page 6.

<sup>101</sup>This is not a legally binding document but an agreed professional standard based on European democratic tradition.

<sup>102</sup>"Report on Constituency Delineation and Seat Allocation" (Venice: European Commission For Democracy Through Law (the Venice Commission), 2017), CDL-AD(2017)034-e.

<sup>103</sup>Prop. 84 S (2016–2017)(white paper) *New structure of the regional democratically elected level*, Prop. 128 S (2016–2017) (white paper) *relating to the Municipalities Proposition 2018*, Innst. 385 S (2016–2017) (Recommendation), adopted by the Storting on 8 June 2017.

<sup>104</sup>Prop. 130 LS (2015–2016) (*Bill and draft resolution*) *the Merger of the counties of Nord-Trøndelag and Sør-Trøndelag into Trøndelag county and amendments to the Act on changing the names of the realm's counties*.

### Box 5.1 County border adjustments

Rissa municipality (from Sør-Trøndelag county) and Leksvik municipality (from Nord-Trøndelag county) were merged into Indre Fosen municipality with effect from 1 January 2018. If the former county structure is used as constituencies, the new municipality will belong to Sør-Trøndelag. In June 2017, the Storting adopted seven municipal mergers that will have an impact on the county boundaries:

- Rømskog was merged with Aurskog-Høland and moved from Østfold to Akershus.
- Røyken and Hurum are merged with Asker and moved from Buskerud to Akershus.
- Svelvik is merged with Drammen and Nedre Eiker and is moved from Vestfold to Buskerud.
- Hornindal is merged with Volda and is moved from Sogn & Fjordane to Møre & Romsdal.
- Halså is merged with Hemne and parts of Snillfjord and is moved from Møre & Romsdal to Trøndelag.
- Tjeldsund is merged with Skånland and is moved from Nordland to Troms.

On<sup>1</sup> June 2018, the Storting decided that the municipalities of Lunner and Jevnaker (both in the county of Oppland) were to be transferred to the new county of Viken and that Rindal municipality (in the county of Møre & Romsdal) was to be transferred to the county of Trøndelag. If the former county structure is to be used as constituencies at the parliamentary election in 2021, Lunner will become part of Akershus, Jevnaker of Buskerud and Rindal of Sør-Trøndelag.

<sup>1</sup> The reason for the decision is proposals from the Ministry in The Municipality Bill for 2019. The matter was discussed in the Storting on 10 June. In the Local Government Bill for 2019, the Government also announced that the Ministry will initiate a process to consider further county border adjustments with a view to any changes being implemented from 1 January 2024.

The change in the regional structure has direct consequences on the electoral system at parliamentary elections, as the counties have been constituencies. In its proposed new county structure, the Ministry stated that the issue should be thoroughly considered and that the various considerations should be weighed against each other.

In the spring of 2018, the Ministry put forward a Bill with proposed amendments to the Election Act. Here the Ministry pointed out the need for early clarification of the question of what will constitute constituencies at the 2021 parliamentary election. The Ministry pointed out that it is important to set aside sufficient time for adjustments to the regulations, procedures and the election administration system used in the election process and advised that by the spring of 2018 the Storting should have clarified what the constituencies at the 2021 parliamentary election would be.

The Ministry also pointed out that the division into constituencies is a fundamentally important issue and that a thorough report was important. Therefore, the Election Act Commission was appointed to report on the electoral system. The report from the committee is sent for a broad consultation, before the Ministry sends the proposed amendments to the Election Act to the Storting. This will facilitate a transparent and predictable process that will help ensure legitimacy and confidence in the electoral system. Pending the Election Act Commission's recommendation, the Ministry found that it was appropriate to conduct the 2021 parliamentary election with 19 constituencies.

The Storting agreed with the Ministry's evaluation and the proposed amendments were adopted unanimously. In his speech, the spokesman stated:

Now that this matter has been unanimously adopted, it facilitates that we can conduct the parliamentary election, also the next time, using the same constituencies, so that there is time to see how this should be done in the future, as there is no locking of the situation itself. The intention is to consider this thoroughly with a view to what it will be like in the future.<sup>105</sup>

During the committee's work, several factors have changed and may affect the view of how permanent the new county structure will be. First, a large minority of the Storting has made it clear that they want to retain the applicable county structure. Secondly, politicians in the county councils both in Viken and Troms and Finnmark have stated that they intend to apply for the counties to be divided as soon as there is a majority in the Storting who will be able to accept such an application. The committee points out that the uncertainty associated with the future county structure complicates the question of how the constituencies should be divided at parliamentary elections.

### 5.2.5 The regional structure in other Nordic countries

In the last 10–15 years, all the Nordic countries have made adjustments to the division into constituencies to a greater or lesser extent, either due to changes in regional structure or as a result of demographic developments. In both Denmark and Finland, changes have been made to the regional organisation in the last ten years but there is great variation in the consequences this has had for the division into constituencies. In Denmark, the number of constituencies was reduced from 17 to 10 but the constituencies do not fully follow the regional structure. In Finland, the regions were changed but not the constituencies. On Iceland and in Sweden, the demographic development has been the cause of the changes. The review also shows that in the other Nordic countries there is no complete correlation between democratically-elected regional division and constituencies.

#### *Denmark*

Historically, the counties have been the central level of the Danish electoral system and after 1920, they also constituted the constituencies.<sup>106</sup> In 2007, Denmark changed its regional structure and went from 14 counties to 5 regions. At the same time, the county was divided into three main provinces.

As a result of the reform, the constituencies were also changed. The Danish Parliament appointed a parliamentary working group to draft a bill for new constituencies in connection with the form. The condition was used was that all other aspects of the electoral system should be as before, except for changes that were necessary due to the structural reform. The changes in the division into constituencies should not make it easier or more difficult to achieve representation.

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<sup>105</sup>Spokesman Svein Harberg, parliamentary deliberation on 29 May 2018 of Prop. 76 L *Amendments to the Election Act*, cf. Innst. 291 L (2017–2018) (Recommendation).

<sup>106</sup>There were 14 counties. Since 3 constituencies covered Copenhagen and Frederiksberg, there were 17 constituencies in total.



This work led to a reduction in the number of constituencies from 17 to 10. Only two of the five new regions were used as constituencies, Sjælland and Nordjylland, while the remaining three regions were divided into several constituencies. Copenhagen was divided into four constituencies, while the other two regions were divided into two constituencies each.<sup>107</sup>

The change from 17 to 10 constituencies would make the electoral system more proportional and it would be easier to be elected from the constituencies. Therefore, in line with the condition that the change should make it easier to be elected, the distribution method was changed from the modified Sainte-Laguë method to d'Hondt. This distribution formula favours the major parties to a greater extent and helped to curb the increased proportionality that followed from larger constituencies.

The constituencies in Denmark have only partially followed the administrative division. However, there are no constituencies that cross the administrative boundaries. There are 135 constituency seats divided among the 10 constituencies. Bornholm is also a separate constituency and is the region with the fewest seats. Under the Election Act, Bornholm is guaranteed to have at least two seats and thus is ensured a high level of overrepresentation.<sup>108</sup> The other constituencies have been 10 and 20 seats each.

### *Sweden*

Up until 1909, Sweden held majoritarian elections and in principle, this took place in single-member constituencies. However, some constituencies were larger than others and in these several representatives were elected. In 1911, proportional representation elections were introduced with small constituencies. From 1921, the counties were used as constituencies and in principle, there have been few changes since then.

Sweden currently has 29 constituencies,<sup>109</sup> while they have 21 counties. Thus, there is no concurrence between the counties and the constituencies. Several counties have been divided into constituencies, for example, Stockholm has been divided into two. There are 310 fixed seats and 39 seats at large.

There is a significant difference in the size of the constituencies in Sweden. Gotland is the smallest constituency with 46,000 inhabitants and 2 fixed seats. The largest regions are Stockholm county, which has over 900,000 inhabitants and 38 seats and Stockholm municipality, which has around 650,000 inhabitants and 29 seats.

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<sup>107</sup>The three new main provinces are used in the allocation of the 40 seats at large.

<sup>108</sup>In 2015, there were 31,439 eligible voter in Bornholm. The average number of eligible voters per seat in the Danish parliament is around 30,000.

<sup>109</sup>In Swedish, the term "valkrets" is used for what in this report is called in Norwegian "valgdistrikt" (an area that constitutes an entity with a joint final election result). "Valgdistrikt" is used for what we in Norway call "stemmekrets" (an administrative division for practical implementation, not a separate final election result). For the sake of context, we use here constituency as a term for what corresponds to the Norwegian constituencies.

### *Finland*

The current division into constituencies in Finland is based on the division into counties that was abolished in 1997. In recent years, a regional reform has been adopted in Finland, where 18 directly-elected regions will be developed from the current 18 *regions*. There has been no adjustment in the constituencies as a result of this reform. The most recent changes came in 2015, when four constituencies were merged into two.

There are twelve constituencies in Finland in addition to a separate constituency for Åland. There are 200 seats in total and all are allocated as constituency seats. There is no correlation between the regions and the constituencies. Some regions have their constituency (six), some constituencies cover two or three regions (five), and one region has been divided into two constituencies.<sup>110</sup>

The number of seats per constituency varies between 35 and 7, except for Åland, which has 1 fixed seat. Two constituencies have more than 20 seats and 3 that have 10 or fewer (in addition to Åland).

The number of citizens also varies widely between the regions. In the largest constituencies, Nyland and Helsinki, there are 920,000 and 565,000 citizens respectively.<sup>111</sup> The 3 smallest constituencies have between 180,000 and 270,000 citizens, in addition to Åland which has 26,000 citizens.

### *Iceland*

Historically, there were 20 single-member constituencies on Iceland. From 1959, the country was divided into eight large constituencies and up to 2003, there was a correlation between the regions and the constituencies. The division into constituencies was then changed to ensure a better balance between the various regions and as a result of major demographic changes. There are significant differences in population density and the population is increasingly concentrated around the capital city. The eight regions are used primarily for statistical reasons and do not constitute a separate democratically-elected level.

Since 2003, Iceland has had six constituencies, three in the metropolitan area and three covering the rest of the country. A total of 63 seats are elected and 9 of these are seats at large. There is little difference between the number of seats the various regions have. The largest has eleven, while the smallest has 7.

However, there is a significant difference in how many voters live in the various regions. In the largest region, there are around 4,800 voters behind each seat, while in the smallest region there are only 2,600 voters behind each seat. There are most voters in the three metropolitan constituencies and these constituencies are underrepresented.

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<sup>110</sup>Nyland region, which covers the Helsinki area, is divided into two constituencies (Helsinki and Nyland).

<sup>111</sup>Figures as of 31 December 2014.

## 5.2.6 The importance of constituency structure

### 5.2.6.1 Introduction

At elections to national assemblies, it is common to divide the country into constituencies and allocate the seats to be elected between these. This ensures that different parts of the country get their “own” representatives in parliament and facilitates the proximity between voter and representative. The division into constituencies also has practical and administrative consequences.

There is a fundamental distinction between electoral systems with single-member constituencies and electoral systems where there are several representatives from each region. In systems with proportional representation elections, there will also be more than one seat in the constituency. However, when it comes to majoritarian elections, there are examples of single-member and multi-member constituencies. There are also some countries with electoral systems that combine these two systems and have single-member constituencies and multi-member constituencies (so-called mixed electoral systems, for example, as used in Germany and Italy). Constituencies are usually geographical, but do not have to be. For example, in Croatia and Slovenia, there are separate regions that ensure representation for minority groups. There are also examples of countries that do not use constituencies and where the whole country is one constituency, such as Israel, the Netherlands and Slovakia.<sup>112</sup>

The constituencies vary along two axes. One axis represents how many regions there are and the other how many seats are to be elected in each constituency. The combination of these two elements has important consequences for how the electoral system works.<sup>113</sup> In the following, various considerations that may have implications for the division into constituencies are discussed.

### 5.2.6.2 Geographical representation and proximity between voter and representative

The main motivation behind the division of the country into constituencies is the desire to ensure representation from the entire country and to facilitate greater proximity between voter and representative. Dividing the country into many constituencies ensures representation of the various part of the country through the electoral system itself.

A key question is whether the division used is suitable and whether it is fine-meshed enough to intercept relevant considerations. The current division into constituencies and the new county structure constitute relatively large areas, which, in turn, consist of several smaller units. If the whole were to be covered, the municipalities would be a more suitable unit as constituencies. Such smaller divisions are found in countries that use majoritarian elections in single-member constituencies, which also shows that significant emphasis is placed on geographical representation.

The size of a constituency is also important for the closeness between the voters and the representatives. That the voters feel that they have an affiliation with the political authorities is found to have a significant impact on the confidence in the entire political system. Research has found that

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<sup>112</sup>Sven G. Simonsen, *“Over sperregrensen: hvordan verdens valgordninger gjør stemmer til politisk makt”* (Oslo: Universitetsforlaget, 2019), page 46.

<sup>113</sup>Rasch, “Betydningen av inndeling i valgdistrikter”.

the larger the constituencies the less the representatives emphasise representing the constituencies relative to representing the party.<sup>114</sup> Similarly, several studies have shown that the voters' knowledge of the candidates running for election increases the smaller the constituencies are. The fact that the use of personal votes at municipal council elections is higher in smaller municipalities than in larger municipalities also reflects this.

### 5.2.6.3 *Political proportionality*

How politically proportional an electoral system shall be is a key issue in the design of electoral systems. A high level of proportionality means that a party receives almost the same share of the seats as the party's share of the votes would imply. The degree of proportionality that is considered to be fair or legitimate varies from country to country and over time. The tendency in most democratic countries has moved towards increasingly proportional systems. The reforms under the previous Election Act Commissions have all led to more proportional electoral systems.<sup>115</sup>

The number of constituencies and seats per constituency is of importance for how politically proportional an electoral system is. The relationship between proportionality and district structure is simple in systems with proportional representation elections. The more seats per constituency (i.e., fewer constituencies), the more proportional the system. Here, the Netherlands and Israel, which do not divide the country into constituencies, are an extreme point, while the small constituencies in Spain are an extreme point in the other direction. The number of seats in itself is also of importance. This is illustrated by the fact that the Dutch system is more proportional than the Israeli as there are more seats to be elected there.<sup>116</sup>

However, division into constituencies is only one of the factors that determine how politically proportional an electoral system is. In the current system, seats at large in particular play an important role. Table 5.1 calculates what the 2017 election result would have been with the various constituency structures. This has been calculated with an updated allocation of seats (population from Q2 2019 and with approved changes to the constituency structure resulting from the county and municipal border adjustments) and from the number of seats at large following the number of constituencies. The Commission later considers in the chapter (see section 5.2.8) several different constituency structures. Therefore, the table lists the consequences of 19, 13, 12 and 11 constituencies.<sup>117</sup>

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<sup>114</sup>John M. Carey and Matthew Soberg Shugart, "Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas", *Electoral Studies* 14, no. 4 (December 1995): 417–439, [https://doi.org/10.1016/0261-3794\(94\)00035-2](https://doi.org/10.1016/0261-3794(94)00035-2).

<sup>115</sup>Bjørn Erik Rasch, "Politiske valg, maktspredning og folkevilje", in *Velkommen til statsvitenskap*, red. Raino Malnes (Oslo: Gyldendal akademisk, 2016), pages 204–218.

<sup>116</sup>In Israel, there is also an electoral threshold on constituency seats, which the Netherlands does not have.

<sup>117</sup>19 constituencies corresponds to the current constituency structure and 11 corresponds to the current county structure. With 12 constituencies, Viken is divided into 2 constituencies and with 13 constituencies, Troms and Finnmark are also divided into 2 constituencies.

Table 5.1 shows that the updated allocation of seats will lead to a slightly better proportionality with 19 constituencies as LSq at the 2017 parliamentary election was 3.2. As the table also shows, the relationship between the size of the constituency and proportionality is not equally as clear when the number of seats at large also varies. Gallagher's disproportionality index is greatest (has the least proportionality) in a system with 13 constituencies and then gradually lower with 12, 19 and 11 constituencies. This is primarily about the Green Party (MDG) receiving 1 extra seat in the models with 19 and 11 constituencies and that the Labour Party loses 1 seat (and is more proportionally represented) with 12 and 11 constituencies. When the disproportionality is calculated for elections backwards in time, a division with 19 constituencies is the least proportional system and the systems become more proportional the fewer the constituencies there are.<sup>118</sup>

*Table 5.1 The 2017 election results with 19, 13, 12 and 11 constituencies, 1 seat at large per constituency.*

	Updated allocation of seats and number of votes <sup>1</sup>			
	19 constituencies	13 constituencies	12 constituencies <sup>2</sup>	11 constituencies
The Labour Party	50	50	49	49
The Conservative Party	45	45	45	45
The Progress Party	27	28	28	28
The Centre Party	18	18	18	18
The Socialist Left Party	11	11	11	11
The Liberal Party	8	8	8	8
The Christian Democrat Party	7	7	8	7
The Green Party	2	1	1	2
The Red Party	1	1	1	1
LSq <sup>3</sup>	3.1	3.4	3.3	3.0

<sup>1</sup> Population numbers from Q2 2019 have been used. The population and number of votes have been corrected for approved changes in the municipal and county structure.

<sup>2</sup> Here, Viken has been divided into Øst-Viken and Vest-Viken.

<sup>3</sup> Gallagher's disproportionality index.

The change in proportionality is primarily because the small parties that do not end up above the electoral threshold for the seats at large, win. Because MDG is allocated more direct seats in the system with 19 constituencies, the party is more proportionally represented and the system is more proportional. At the same time, changes to the constituency structure will not affect whether

<sup>118</sup>Simulations of the 2017 election produce similar results. The system with 19 constituencies is particularly vulnerable to parties that all below the electoral threshold. At the 2017 election, both the Christian Democrat Party and the Liberal party came close to the threshold and these parties will be allocated more direct seats than systems with fewer constituencies. In other words, 11–13 constituencies provides better representation of these parties below the electoral threshold.

these parties come above the electoral threshold and thus the constituency structure will have a limited effect on the proportionality compared with the current electoral system.

However, the relationship between seats per constituency and proportionality depends on other factors. The proportionality increases with more seats per region but this applies as long as the parties and the voters do not change behaviour. As discussed below, the parties and voters cannot be expected to adapt to a change in the electoral system that makes it easier to win seats. Thus, new parties will emerge and small parties will win more votes. As these parties will not necessarily manage to win direct seats and will also not come above the electoral threshold, this could lead to a larger number of “wasted votes” and thus to a reduction in the proportionality. Therefore, the effect of changing the number of constituencies cannot be calculated based on an historical election result alone.

Rasch discusses the research in this field in his memo to the Commission and shows that previous reforms have led to a higher proportionality in the short term but there has subsequently been a reduction in proportionality over time as voters and parties have adapted to the changes.<sup>119</sup> International research has also pointed out that in the trade-offs related to constituency size, it may seem appropriate to have medium-sized constituencies with between four and eight seats per region because this gives a relatively good proportionality without excessive fragmentation.<sup>120</sup> Thus, today’s Norwegian constituencies are already somewhat larger than what in this research is considered the most appropriate. This research indicates that having larger regions than today will stimulate increased list proposals and then often lists that receive some support but without being represented. In this case, the latter will lead to more “wasted votes” and counteract the increase in proportionality that comes as a consequence of it being easier to win constituency seats.

#### **5.2.6.4 Width of representation and number of parties**

As the example with MDG above shows, the size of the constituencies also has implications for the breadth of interests being represented. The number of seats in a region determines the proportion of the voters that must vote for a party for that party to sine one of the seats. On the one hand, this has a direct impact on how many parties can be represented in that there cannot be more different parties than there are seats. In Sogn & Fjordane, a maximum of 3 parties can come in on direct seats, while in Oslo, in principle, 18 different parties can be represented, though this is not realistic.

On the other hand, the number of seats also has implications for the amount of support the parties must have to achieve a mandate. This ratio is illustrated in Figure 5.2 based on a single calculation.<sup>121</sup> Here, Oslo and Sogn & Fjordane, the largest (18 direct seats) and smallest (3 direct seats) constituencies respectively in 2017, have been drawn in. A line has also been added to show the

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<sup>119</sup> Rasch, “Betydningen av inndeling i valgdistrikter”.

<sup>120</sup> Carey and Hix, “The Electoral Sweet Spot”, page 395.

<sup>121</sup>A simple formula for this is the effective electoral threshold =  $75/(1+\text{no. of seats})$ . See Arend Lijphart, “The Difficult Science of Electoral Systems: A Commentary on the Critique by Alberto Penadés», *Electoral Studies* 16, no. 1 (March 1997): 74, [https://doi.org/10.1016/S0261-3794\(96\)00058-3](https://doi.org/10.1016/S0261-3794(96)00058-3).

number of direct seats (35) Viken would have been allocated with the current surface area factor and the population from Q2 2019. The figure shows that a party will need 18.5 per cent of the votes in Sogn & Fjordane to be elected, but only 3.9 per cent of the votes in Oslo. If Viken becomes one constituency, this effective electoral threshold will be 2.1 per cent.

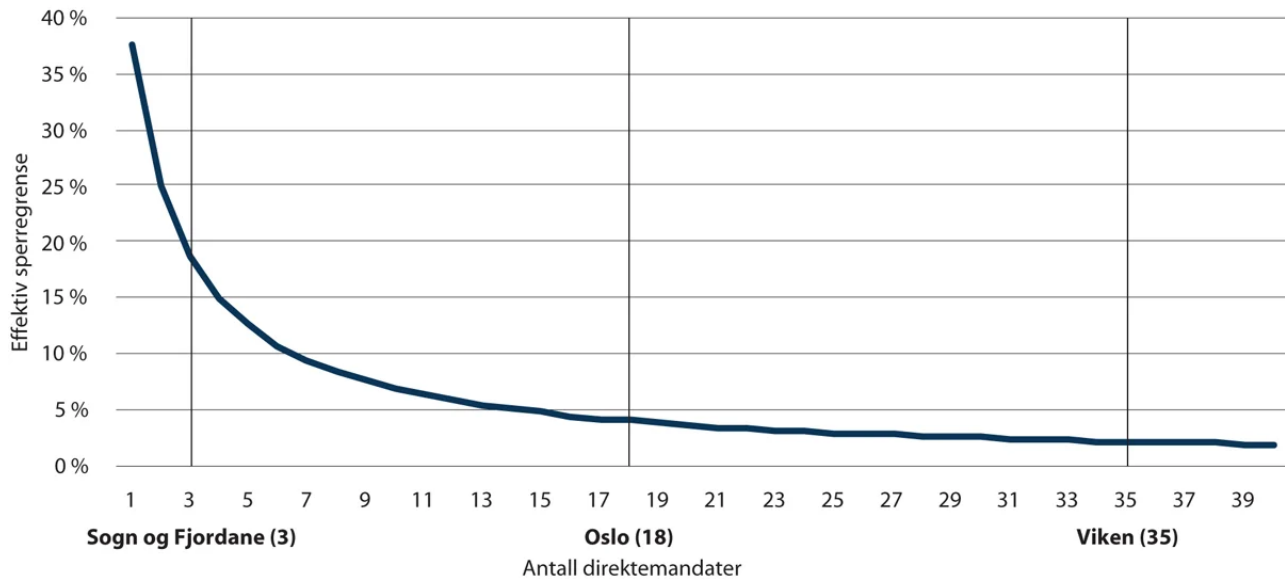


Figure 5.2 Effective electoral threshold

A change from today's constituencies to constituencies divided according to the new county structure has consequences for the size of the constituencies. The smallest constituencies will have more seats in such a model. Møre & Romsdal is likely to be the smallest region with seven direct seats and more of the new constituencies will thus be medium-sized compared to the division we have today. At the other end of the spectrum is Viken.

The new county of Viken has just over 1,200,000 inhabitants, which will give approximately 35 directly-elected seats. If the county is to be a constituency, it will be twice as large as the current largest constituency, Oslo.<sup>122</sup> Such a large constituency will cause the effective electoral threshold to be significantly reduced. Thus, it will be easier for small parties to enter from Viken than it is today from Oslo and the other constituencies. As discussed above, the calculations show that as long as no one changes his or her vote, this system gives relatively similar results as the electoral system with 19 constituencies. However, this is an unlikely result. A large volume of research shows that voters and parties adapt to changes in the size of constituencies.<sup>123</sup>

It can be assumed that such an adaptation happens in two ways: through the parties' list proposals and how the voters vote. Interest groups that were previously not large enough to win a

<sup>122</sup>Vestland constituency would also have been the size of Oslo with slightly fewer inhabitants, but 20 seats in total. This means an effective electoral threshold of 3.8 per cent.

<sup>123</sup>Rasch, "Betydningen av inndeling i valgdistrikter", pages 8–9, and Singer and Gershman, "Do Changes in District Magnitude Affect Electoral Fragmentation?".

seat will see that this may now be possible. Therefore, new groups and parties will see that the threshold for being elected has fallen and thus be more willing to propose lists and make an effort to be elected. The voters are also more willing to vote for parties that have a chance of being represented, than “wasting” their vote on parties that are so small they don’t win seats anyway. It is likely that a good number of voters today do not vote for their first choice, either because they know that this person is not going to be elected or because a possible first choice does not exist as a party. When the threshold for being elected falls, it also reduces the voters’ objections to voting on lists with little support and more voters will vote for small parties.

Viken as a constituency will thus lead to greater freedom of choice for the voters and broader representation (but only in Viken). New small parties will emerge more easily in the constituency. In countries with a low threshold for being represented, such as the Netherlands, some parties represent more interests than is the case in Norway. In the Netherlands after the 2017 election, there are a total of 13 parties in parliament (Tweede Kamer). Among these are a pensioners’ party (50PLUS) and an animal welfare party (Partij voor de Dieren). Viken as one constituency will give political voices that are not currently represented in the Storting, the opportunity to step forward and shape politics on the national arena. This will help expand democracy by giving more political directions an outlet within parliamentarianism and can thus act as a democratic valve that captures new political movements. In the long term, this can also simplify the process for a party to grow at a national level because members of parliament from Viken will be able to make the parties more visible nationally.<sup>124</sup> The representation thresholds in Viken can thus make the Norwegian party system more dynamic and more able to identify new trends in society. A challenge with the emergency of new parties is that they reduce the power of the Storting. There will be more parties to form coalitions with and the new parties are likely to be relatively small. While this does not necessarily affect the opportunities to form coalitions, it is a likely consequence.<sup>125</sup> As mentioned above, it is also likely that this will counteract some of the increase in proportionality because several of these new parties will not be represented.

As Viken will be so large, the effect of the majority bonus will also be reduced. The system with an elected first quotient makes it harder for a party to take its first seat than the subsequent seats. Thus, the parties that receive more than one seat (the largest parties), receive seats at the expense of the smallest parties. The higher first quotient will have less significance in a unified Viken than in today’s constituencies. In Viken, more parties will receive enough votes to gain at least one direct seat. In other words, there will be less to gain from being a large party in Viken than in constituencies where there are fewer seats and a higher threshold for being represented.

A key feature of the Norwegian electoral system is that the parties retain the overrepresentation they achieve at a regional level. Parties that are allocated more seats from the regions than they would have if Norway was one constituency, retain these when calculating seats at large. Unlike in Sweden, the seats at large only even out in cases where parties have received too few seats and

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<sup>124</sup>At the same time, research shows that parties that are emergency in large constituencies often have trouble winning seats in small constituencies. Joan Barceló and Taishi Muraoka, “The Effect of Variance in District Magnitude on Party System Inflation”, *Electoral Studies* 54 (2018): 54, <https://doi.org/10.1016/j.electstud.2018.04.016>.

<sup>125</sup>Rasch, ”Betydningen av inndeling i valgdistrikter”.



not in cases where parties have received too many seats. Consequently, the parties that receive a majority bonus keep this bonus in the final returning of members.

### **5.2.6.5 *The similarity in how the electoral system works***

The number of seats to be elected in a constituency has an impact on the proportion of votes a party must have to be elected. As shown above, a greater portion of the votes is required to be elected from small constituencies.

There is a significant difference between constituencies and this means that the parties' opportunities are not the same in the various constituencies. For example, in the 2017 election, the Conservative Party received 14.4 per cent of the votes in Finnmark without this being sufficient for them to receive a constituency seat. At the same election, the Liberal Party received one constituency seat in Hordaland after winning 4.4 per cent of the votes.

How many seats there are in a constituency also matters to the voters' options. If the party the voter wants to vote for has no real opportunity to achieve a constituency seat, it may be perceived as wasting his or her vote, provided that the voter does not also think that his or voter has an impact on the possibility to achieve a seat at large. That could lead to the voter not voting or voting tactically.

The fact that the constituencies are fairly similar in terms of the number of inhabitants means that there are similar conditions and that the electoral system works similarly in all parts of the country. However, it is not easy to achieve, as long as the population is distributed unevenly across the country and there is a desire to safeguard the geographical dimension. Today, there are large differences in the effective electoral thresholds between Norwegian constituencies.

In some Nordic countries, such as Iceland and Denmark, there is almost the same number of seats in all the constituencies, while in Sweden there is a significant difference. The smallest constituencies there have 4 seats, while the largest has 38 seats.<sup>126</sup> Sweden has a national electoral threshold for constituency seats and a seat at large system that ensures that no party receives more constituency seats than it would have had if the votes were distributed nationally. Therefore, the different size of constituencies has less significance in Sweden.<sup>127</sup>

### **5.2.6.6 *Practical and administrative consequences***

The constituency structure also has practical consequences for the election process. The municipalities are responsible for the election process and it is the municipal affiliation that determines where a voter shall be registered on the electoral register and where the person in question is entitled to vote. This is of importance for constituency boundary can go. A constituency structure that

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<sup>126</sup>In addition, Gotland has only two seats but special geographical considerations have been taken there.

<sup>127</sup>For parties that do not come above the national electoral threshold of 4 per cent, the regional electoral threshold in Sweden is relatively high at 12 per cent. Without such an electoral threshold, the largest region would otherwise have had an effective electoral threshold of 1.9 per cent.

crosses municipal boundaries will complicate the election process and entail a need to change the local responsibility for the election process and the seat allocation rules.

The counties also have several tasks at parliamentary elections. The county Electoral Committee, which is elected by the county council, has the following tasks at a parliamentary election:

- process and approve list proposals
- ensure production and distribution of ballot papers in the county
- count ballot papers, including registering and reporting corrections on ballot papers made by voters
- allocate the constituency seats on the lists and the candidates
- check and keep a record of the parliamentary election, both the election process and the final election result

To carry out the check, the county Electoral Committee receives material from all the Electoral Committees in the county. Among other things, the county Electoral Committee shall check whether the Electoral Committee of the municipality has made the correct approval and rejection of voting and ballot papers, and it shall correct any errors.

### **5.2.7 More on the consequences of a new county structure**

The Commission has discussed the new county structure in particular. On the one hand, the Commission finds that it is positive that there will be fewer small constituencies. If the new county structure also becomes the constituencies, no constituencies will have fewer than eight seats and the new constituencies will thus more equal in size. On the other hand, Viken will become a very large constituency that will receive many more seats than the largest constituencies have today. The Commission has considered whether Viken County can function as one constituency. It is also possible to view Finnmark's status as a problem. The area has long been overrepresented in the Storting for various reasons, and some considerations that support the constituency being merged with Troms constituency and also that Finnmark should be preserved as a separate constituency.

#### *Finnmark*

The Commission sees that there are several reasons to discuss Finnmark in particular. Historically speaking, Finnmark has been overrepresented in the Storting and there seems to be agreement – also far back in time – that there is a need to secure the area representation. The Commission refers to the discussion of regional considerations in section 5.4. Overall, the committee finds that Finnmark has a special need for representation but is divided on how this can best be ensured.

In the debate about whether Troms and Finnmark in the long-term should be one constituency, several have raised the possibility that there will be no representatives from Finnmark in the Storting. The Commission finds that the parties have a great responsibility to ensure that candidates from Troms and Finnmark are nominated on the lists.

Finnmark has a large surface area measured in square kilometres, while it only has around 76,000 inhabitants. If only the population is taken into account, this means that Finnmark will receive very few seats and would today have been underrepresented (see section 5.4). An important question for the Commission has been whether Finnmark's special needs are best taken care of in a

merged and larger constituency with Troms (with more seats) or whether it is best done by remaining a separate but smaller constituency.

### *Viken*

The Commission has also considered whether Viken as a constituency would be too large. The effective electoral threshold in Viken will be lower than today and this has implications for the threshold for being represented. The “Viken bench” in the Storting will also be very large. Therefore, the Commission has considered whether Viken County should be divided into two constituencies if the constituency structure is to be based on the new counties. Such a division would give the two constituencies a size that is more comparable with the other constituencies. The new effective electoral threshold in the largest of the two regions, Øst-Viken, will be 3.3 per cent.<sup>128</sup> Although this is lower than the effective electoral threshold in Oslo is today (3.9 per cent), it is still much higher than it would have been for Viken alone (2.1 per cent). If Viken is divided into several constituencies, the competition for the seats in these constituencies will be more similar to the competition in the other constituencies.

Today, the members of parliament sit according to the constituencies. If Viken were to become one constituency, it would have a significant position in the Storting. The Commission finds that a division of the county into two constituencies would prevent Viken from gaining too much weight in voting in the chamber of the Storting.

One objection to this division is related to identity and to the desire for people to feel an affinity to their constituency. By dividing Viken into two in the proposed way, two new units are created that do not necessarily correspond to people’s identity. Therefore, the Commission has considered dividing Viken into three constituencies in line with the previous county structure. However, this structure will also no longer be relevant and will only be maintained through the electoral system. By using the Viken name in the name of the constituencies, it also becomes apparent that they are parts of this county rather than the old counties. It may be argued that a pragmatic division of Viken is more neutral concerning regional reform.

Lunner and Jevnaker municipalities have changed county affiliation from Oppland to Viken. A consequence of the decision is that Viken County now forms a whole county around Oslo. The Storting has decided that if the previous county structure is to be used in the election process, Lunner shall belong to Akershus and Jevnaker to Buskerud. In line with this, Viken will be divided so that Lunner belongs to Øst-Viken and Jevnaker to Vest-Viken. This is illustrated in Figure 5.3.

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<sup>128</sup>The figures here have been based on an allocation of seats using surface area factor. If only the population is used or a calculation method where all the constituencies receive a seat of large regardless of population, the figures will be 3.0 and 3.1 per cent respectively for the Øst-Viken constituency. The corresponding figures for a constituency that includes the whole of Viken County are 1.9 and 2 per cent.

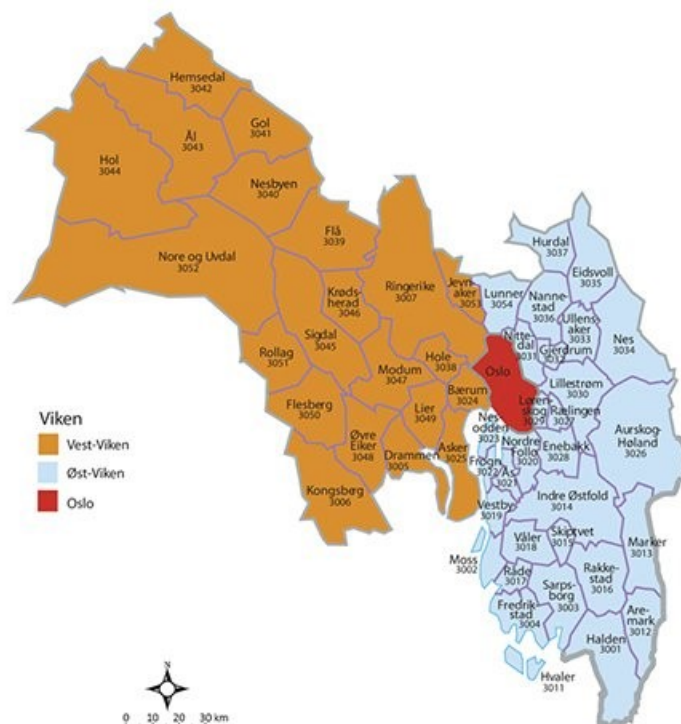


Figure 5.3 Map of the municipalities in Viken and the proposed division into two constituencies.

## 5.2.8 The Commission's evaluation

### 5.2.8.1 Principled considerations

The Commission has assumed that the current electoral system has a high level of legitimacy and works well. Thus, there is no reason to make extensive changes to the electoral system. The Commission is keen to find a system that can last for a long time and for which there may be a broad political consensus. The Commission also finds it is important to facilitate a division into constituencies that have legitimacy in the population and are perceived as reasonable.

As regards the practical aspects of the election process, the Commission does not disregard that one county can be responsible for two or more constituencies, as long as this is done in an orderly manner and the election results are kept separate.

However, the Commission finds that one constituency should not include several counties, as it will be difficult to share the responsibility for a constituency between several county Electoral Committees. For the sake of the municipalities' responsibility for the voting, the Commission finds that a prerequisite must be that a municipality shall not be divided into different constituencies. Such a condition also seems to be the basis of the other Nordic countries.

The Commission has considered creating a completely new division into constituencies. A division that is not based on either new or old county boundaries may be aligned solely to achieve the desired effects in the electoral system. It may also be easier to continue such a division if the county structure is changed again, or if the county authorities are discontinued. One possibility could be to ensure that all parts of the country are represented by dividing the country into more constituencies than 19. Such a division can either be based solely on size to achieve as equal constituencies

as possible or in areas that share identity and affiliation. Many small constituencies with a few seats each will lead to high and effective electoral thresholds but will ensure good geographical representation and proximity between the voter and representative. Another possibility is to create an electoral system with a low representation threshold by dividing the country into fewer constituencies. If this is the most important criterion, the constituencies may be divided so that they are as equal in size as possible. However, there will still be some difference in size due to geography.

The Commission finds that it is important to assume that the current electoral system is well-functioning and therefore does not want to propose major changes. Consequently, the Commission does not agree to draw up completely new constituencies disconnected from today's constituencies or the new county boundaries.

The Commission has considered several possible divisions based on the previous or new county structure and is divided in its view of which division is most appropriate. Some members of the Commission find the current system with 19 constituencies should remain as it is today. Other members of the Commission find that the change in the administration division into counties should have consequences for the division into constituencies, but are divided in the view of how best to do this. In the following, the opinion of the majority is discussed first and followed by the opinion of the minority. The entire Commission has then considered what the constituencies should look if they are based on the new counties.

If today's constituencies are retained, the Commission finds that it is not appropriate to merge individual constituencies. The Commission finds that it is difficult to find good principles for such mergers and that it may lead to pressure for mergers of several constituencies in the long term. This is problematic because it can lead to an unstable electoral system.

#### **5.2.8.2 The majority's opinion – a continuation of the existing constituencies**

*The majority of the Commission (Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Nygreen, Røhnebæk, Stokstad, Tørresdal and Aarnes) finds today's constituency structure with 19 constituencies should be continued. According to these members, today's division, which has been used since 1952, works in a good way and therefore there is little reason to change it. This division ensures representation from a large part of the country and will, to a greater extent than a division that follows the new counties, ensure dispersed geographical representation. More and smaller constituencies will also facilitate proximity between the voters and representative to a greater extent than larger constituencies would do. In the opinion of the majority, this is an important consideration to take care of.*

Larger constituencies can provide a greater distance between voters and representatives. This can, especially if it coincides with parts of a county not being represented, mean that some voters find that they are not being heard and represented in the same way as before. The majority of the Commission finds that proximity between voter and representative, and ensuring that as many areas as possible are represented, supports retaining the current division into 19 constituencies. By using the existing constituency structure, some of the new counties will consist of several constituencies. The solution will thus break with the current practice where each county is a constituency. The majority of the Commission finds that the division into constituencies is about more considerations than county boundaries and it is not given that the new county structure will also be the most appropriate constituency structure.

The majority of the Commission points out that the previous Election Act Commission also dealt with questions about the relationship between constituencies and administrative units, and that it then stated that “[in] the opinion of the committee it is quite possible to have a different structure of the constituencies than the administrative units and regions”.<sup>129</sup> Practical and administrative conditions related to the organisation of the election and the parties’ local organisation may be resolved regardless of whether the constituency structure follows administrative units or not. The majority of the Commission points out that in neither Denmark nor Sweden is there complete agreement between administrative units and constituencies.

### **5.2.8.3 The minority’s point of view – constituencies based on the new county structure**

*The minority of the Commission (Hoff, Holmøyvik, Holmås, Høgestøl, Storberget, Strømmen, Aardal and Aatlo)* finds fundamentally that the constituency structure should be based on the county structure. That the constituencies follow the administrative structure has been a rule since 1952 (and for the rural districts since before this). This section of the Commission emphasises that the counties have traditionally made up the constituencies, something that had consequences when Hordaland and Bergen were merged into one county in 1972. A correspondence between constituencies and county boundaries may contribute to identity building in the new counties. In the opinion of these members, this supports reducing the number of constituencies as a result of the new county structure.

Following the new county structure may contribute to better coordination of the politics and highlight the counties’ interests. In addition, it will be easier for the voters to orient themselves and see who is responsible for the nomination processes. It will also be easier for the political parties, who have already organised their county teams according to the new county structure. At the same time, the minority of the Commission also finds that the parties will be able to adapt to other structures and therefore, have not put decisive emphasis on this.

A reduction in the number of constituencies has an impact on geographical representation as fewer parts of the country are secured representation through the electoral system. This was also discussed by the previous Election Act Commission, which pointed out that a reduction in constituencies would have a major impact on the geographical representation. However, the minority of the Commission finds that this is something the parties will take care of through the nomination processes and points out that the parties are already keen to have broad geographical representation on the lists. As the merged constituencies become larger, there will also be more parties that have more than one representative, making it easier for the local government parties to ensure representation of several different groups within the region.

*Six Commission members (Hoff, Holmås, Høgestøl, Strømmen, Aardal and Aatlo)* find a reduction in the number of constituencies will help to increase the proportionality of the election. However, the members do not agree on how many constituencies there should be. *Holmås and Høgestøl* want eleven, *Holmøyvik, Storberget and Aatlo* want twelve constituencies by dividing Viken, *Strømmen* wants twelve by dividing Troms and Finnmark, and *Hoff and Aardal* find that both Viken and Troms and Finnmark should be divided. As the effective electoral threshold in each region is reduced, it will be easier for the parties and the lists to have representatives elected. This will increase the

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<sup>129</sup>Official Norwegian Report (NOU) 2001: 3 page 79.

representation of the parties that have support below the electoral threshold. Several constituency seats in each region will allow multiple parties to be represented by a direct seat rather than being represented by a seat at large. This will lead to more top candidates from this group of parties being elected, which could provide an opportunity for several parties to have representatives that represent the constituency over a long period.

#### **5.2.8.4 The Commission's evaluation of Viken and Finnmark**

Regardless of the members' primary views, the entire Commission has discussed the impact of the constituency structure on Viken and Troms and Finnmark. The reason why separate evaluations are made of these two areas is first that Viken is something completely new in a Norwegian context in terms of the surface area and the number of seats. Secondly, Finnmark has a large surface area and few inhabitants and has previously been in a special position in the constituency structure.

*The majority of the Commission (Christensen, Grimsrud, Hagen, Hoff, Holmøyvik, Nygreen, Røhnebæk, Stokstad, Storberget, Aardal, Aarnes and Aatlo)* finds that Viken County will be too large to constitute a separate constituency and agree that the county is divided into several constituencies. This will prevent the constituency from becoming much larger than the other constituencies. Such a structure will help give an electoral system that works as equally as possible throughout the country. For the sake of identity building in the new county, these members find that it is less problematic to divide Viken into two constituencies than it is to keep the current constituencies, the former counties. The majority also points out that several central government regional structures distinguish between east and west of Oslofjorden and there are few examples of central government regional structures covering the whole of Viken. The majority of the Commission finds the most obvious way to divide Viken into two constituencies is to draw the divide east and west of Oslo. This means that the former counties of Østfold and Akershus, except for the municipalities of Asker and Bærum, belong to Øst-Viken, and that the former county of Buskerud, as well as the municipalities of Asker and Bærum, belong to Vest-Viken.

*The minority of the Commission (Anundsen, Giertsen, Holmås, Høgestøl, Strømmen and Tørresdal)* finds that Viken county should be one constituency. *Members Holmås, Høgestøl and Strømmen* find that the constituency boundaries should follow the county boundaries, and that it is natural that changes in the county structure also read to new constituencies. These members find it is an advantage that the threshold for being represented in the Storting is lowered and want an electoral system that gives the most proportionality and makes it as easy as possible to be represented.

*Members Anundsen and Giertsen* find that if the constituencies are to be based on the new counties, it should be the actual county structure that is followed. These members also point out that a unified constituency for Viken will have positive consequences for identity building in the new county. By introducing an electoral threshold on constituency seats, the representation threshold will not necessarily be lowered. These members find it is better to introduce such an electoral threshold than to divide the county into two constituencies.

The Commission is also divided when it comes to Troms and Finnmark. *The majority of the Commission (Christensen, Grimsrud, Hagen, Hoff, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aardal and Aarnes)* finds that Finnmark is best protected by maintaining this area as a separate

constituency. These members point out that this guarantees that representatives from Finnmark become members of the Storting.

*The minority (Anundsen, Giertsen, Holmøyvik, Høgestøl, Storberget and Aatlo)* finds that a joint constituency for Troms and Finnmark will be able to meet Finnmarks special need for representation in a good way. These members also find that a special arrangement for Finnmark is not appropriate. With several representatives being elected from the merged constituency, the area's needs will be able to have greater support in the Storting. These members emphasise that the parties can ensure that Finnmark is represented.

*Commission member Holmås* finds that Troms and Finnmark should be one constituency as long as Troms and Finnmark are one county.

### **5.3 Technical allocation of seats among the constituencies**

This section discusses several issues related to how many representatives are to be elected from each constituency. First, the Commission discusses the population basis for the allocation, whether it is the number of inhabitants, the number of eligible voters or the number of citizens that should be the basis. It is then discussed whether there should be a dynamic in the seat allocation as today and how often new allocations should be implemented. Geographical considerations (regional considerations) in the allocation of seats are discussed in section 5.4.

#### **5.3.1 Basic data**

##### **5.3.1.1 Applicable law**

How the seats are allocated among the various constituencies is regulated by Article 57 of the Constitution. Subsection 5 of the provision states that the number of seats each constituency shall have is determined based on a "calculation of the ratio between each constituency's number of inhabitants, as well as surface area, and the number of inhabitants of the realm as well as its surface area".

Further provisions on the allocation of the seats among the constituencies are determined in the Election Act. Section 11-3 of the Election Act states that it is "the number of inhabitants in the constituency at the end of the penultimate year before the parliamentary election in question" that is to be used.

##### **5.3.1.2 Internationally**

Equal voting power is a fundamental principle and follows from the Venice Commission's Code of Good Practice in Electoral Matters, among other things. To ensure compliance with this, the allocation of seats among the constituencies is of central importance. The Venice Commission highlights four possible grounds for allocating seats among regions: the number of inhabitants, the number of citizens, the number of registered voters/eligible voters or the number of people who actually vote. It is also possible to use a combination of these criteria. According to the Venice



Commission, using the number of inhabitants is most common, while there are a few countries that use the number of citizens.<sup>130</sup>

In Denmark, a combination of the number of inhabitants and the number of eligible voters is used, while in Sweden and Iceland, the number of eligible voters is used. In Finland, the number of citizens is decisive.

### **5.3.1.3 A possible basis for calculation**

#### *Population*

Under the Constitution, the basis for seat allocation is “the number of inhabitants in each region”. In Official Norwegian Report (NOU) 2001: 3 *Voters, electoral system, elected* there was no further discussion about the use of “inhabitants” or any further definition of what should “inhabitants” should include. The Ministry that has carried out the calculation has collected data on the number of inhabitants per county from Statistics Norway (SSB).

SSB collects data from the central population register and thus it is the population registration legislation that determines who is included in the Norwegian population and where in the country they are registered as living. The main rule on who should be registered as a resident in Norway follows from section 4-1 of the Population Register Act, which reads: “any person, who is legally resident in a Norwegian municipality for at least six months, is registered as a resident of Norway”.

As regards moving to Norway, persons must be registered when they have been granted a residence permit in a Norwegian municipality and intend to stay in that municipality for at least six months. Persons who need a residence permit cannot be registered as a resident until they have been granted a resident permit for at least six months.<sup>131</sup> Persons who change their place of residence in a Norwegian municipality or between Norwegian municipalities are obliged to report this to the Tax Office within eight days, cf. section 6-1 of the Population Register Act. Exceptions have been made to the rule that a person must be registered in the municipality in which he or she is living, for students. The exemption applies to those who reside in a municipality to receive an education beyond a ten year primary and secondary school education. Civilian workers and conscripts serving their compulsory military service are registered as residents of the municipality in which they were resident when the service started.

Statistics Norway publishes updated population data as of 1 January each year, which usually comes at the end of February.

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<sup>130</sup>The Venice Commission, “Report on Constituency Delineation and Seat Allocation”. When it comes to using the number of voters who participated in the last election, there are no examples of countries using this criterion.

<sup>131</sup>Special rules apply to whether/when Norwegian sailors, persons on Svalbard, etc. Norwegian diplomats and military, as well as foreign diplomats and NATO personnel shall be considered as residents in Norway. As a general rule, neither foreign diplomats posted to Norway nor foreign nationals serving in NATO in Norway are registered as being resident in Norway. The Norwegian Directorate of Taxes, “*Håndbok i folkeregistrering*”, version 2.1, 2018.

### *Eligible voters*

The number of eligible voters may also be the basis for the allocation of seats. The decisive factors will then be from which elections these data will be collected. An electoral register is generated before each election based on the information in the Population Register. The preliminary electoral register placed at the electoral authorities' disposal on 2 January of the Election Year is the first extract of the electoral register to be made. If the allocation of seats is to be done before this, either the electoral register from the last election must be used, or a separate extract of the electoral register must be made for this purpose based on who will have the right to vote at the next parliamentary election. There will be some changes in this electoral register leading up to the election, for example, due to deaths, relocation between constituencies and foreign nationals who meet the suffrage requirements.

### *Citizens*

SSB is also responsible for creating statistics according to citizenship. This is generated only once a year, but Statistics Norway informs that it may be possible to generate it more often and that as long as the distinction is only made up of the categories of Norwegian and foreign, it will not be too demanding. Statistics Norway informs that at any given time there may be someone with the wrong nationality in the Population Registry but that corrections are made on an ongoing basis. Most of the changes probably apply to young children.

#### **5.3.1.4 *The importance of choosing basic data***

Whether it is the population, eligible voters or citizens who should be used in the allocation of seats has not been discussed explicitly in either the Recommendation of the previous Election Act Commission or in the Bill that followed up the Recommendation.

Changing the calculation basis has been discussed several times, recently through a proposed constitutional amendment put forward by representatives of the Progress Party and the Centre Party:<sup>132</sup>

Under the Constitution, only Norwegian citizens can be elected as members of the Storting and only Norwegian citizens can vote at parliamentary elections. However, when calculating the allocation of seats to the Storting, foreign nationals registered as residents in Norway are also included in the calculation basis. The number of foreign nationals and the distribution of these among the constituencies then affect the allocation of seats among the regions. Those behind the proposal find it is fundamentally wrong that people who are not eligible to vote at parliamentary elections affect the allocation of seats among the constituencies just because they are resident in Norway. Those behind the proposal find this is a democratically unfortunate inconsistency in the Constitution that should be corrected regardless of the opinion on the consequences the amendment will have for the allocation of seats.

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<sup>132</sup>Document 12:38 (2015–2016) Proposed constitutional amendment if Article 57, subsection 5 (foreign nationals shall not be included in the allocation of seats to the Storting) from Per Olaf Lundteigen and Helge Thorheim. See also Innst. 128 S (2019–2020) (Recommendation).

Those behind the proposal find the calculation basis for the allocation of seats to the Storting must be the same group that is eligible to vote at parliamentary elections.

The proposal states that the calculation of seats shall be done based on the number of *Norwegian citizens*. However, it is also pointed out in the arguments of the proposal that the desire is a correspondence between who has the right to vote and who shall count in the allocation of seats. The proposal was considered in the Storting in January 2020 and was not adopted.

Population, the number of eligible voters and the number of citizens are not equally distributed. Thus, the choice of calculation basis is important to the allocation of seats and may be used to achieve a specific emphasis on different regions. However, the effect of this is limited. The effects for 19 constituencies is illustrated in table 5.2, which has been adjusted to take into account the electoral boundary adjustments adopted in connection with the municipal and regional reform. Please note that no surface area factor has been included in this calculation.

*Table 5.2 Structure with 19 constituencies – allocation of seats, calculated without surface area factor.*

Constituencies	Seats based on population as of Q2 2019	Seats based on citizens 2019	Seats based on eligible voters 2017
Østfold	9	10	10
Akershus	21	21	20
Oslo	22	20	21
Hedmark	6	7	7
Oppland	6	6	6
Buskerud	8	8	8
Vestfold	8	8	8
Telemark	6	6	6
Aust-Agder	4	4	4
Vest-Agder	6	6	6
Rogaland	15	15	14
Hordaland	17	17	17
Sogn & Fjordane	3	3	3
Møre & Romsdal	8	8	8
Sør-Trøndelag	11	11	11
Nord-Trøndelag	4	4	4
Nordland	8	8	8
Troms	5	5	6
Finnmark	2	2	2

Table 5.2 shows that in a structure with 19 constituencies, the choice of the number of inhabitants, eligible voters or citizens is of limited significance. Østfold, Hedmark and Troms receive one seat more if eligible voters are used as a basis, and Rogaland, Akershus and Oslo receive one seat less. If the number of citizens is used, Oslo loses two seats, while Østfold and Hedmark each receive one seat.

The importance of the basic data in a structure with eleven constituencies has been shown in Table 5.3.

*Table 5.3 Structure with 11 constituencies – allocation of seats, calculated without surface area factor.*

Counties	Seats based on population Q2 2019	Seats based on citizens 2019	Seats based on eligible voters 2017
Oslo	21	20	21
Innlandet	12	12	13
Viken	39	39	38
Vestfold and Telemark	13	14	14
Agder	10	10	10
Rogaland	15	15	14
Vestland	20	20	20
Møre & Romsdal	8	8	8
Trøndelag	15	15	15
Nordland	8	8	8
Troms and Finnmark	8	8	8

Also in a structure with eleven constituencies, it has relatively little importance which basis is chosen. By going from inhabitants to eligible voters, Viken and Rogaland will lose one seat each, while Innlandet and Vestfold and Telemark will gain one seat each. Going from inhabitants to citizens only moves one seat from Oslo to Vestfold and Telemark.

### **5.3.1.5 The Commission's evaluation**

The basic data used may have an impact on how the seats are allocated. The Commission finds this should not be given too much weight, as it concerns limited effects. It is the principled aspect of the matter that has been decisive for the Commission in the discussion. In the evaluation of what should be used when the seats are to be allocated to constituencies, the Commission has discussed *who* should be represented. Is it only those who have the right to vote? Or should children and adolescents under the age of 18 be counted? And what about foreign nationals?

*The majority of the Commission (Christensen, Giertsen, Hagen, Hoff, Holmås, Høgestøl, Nygreen, Røhnebæk, Stokstad, Storberget, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo) finds that it is the*

number of inhabitants in the constituencies that should be used. The representatives shall represent all the inhabitants of the region and their needs, not just those entitled to vote. The number of inhabitants says something about the need for representation. These members also point out that the basis for the allocation of seats has a certain signal effect and emphasises that the Storting shall represent and safeguard the interests of all inhabitants of Norway.

A minority of the Commission does not share the majority's evaluation. *Members Grimsrud and Holmøyvik* find that the allocation of seats should ideally be based on who participates in the election and thus, it is the eligible voters who should be used as a basis. *Member Anundsen* finds in principle that it is natural to use citizens as a basis. By using citizens, children who use the services will also be included. However, the minority of the Commission support the majority's proposal alternatively. Therefore, the wording of the Act and other proposals are based on the number of inhabitants being the basis for the allocation of seats.

### **5.3.2 The implementation of the allocation of seats**

In this section, the Commission discusses whether there should still be a dynamic in the allocation of seats, how often new seat allocations shall be calculated, and at what time should it be done. The Commission also discusses who will carry out the allocation of seats.

#### **5.3.2.1 Applicable law**

Article 57, subsection 5 of the Constitution states that the calculation of the number of Members of Parliament to be elected from each constituency shall be carried out every eight years.

Section 11-3 of the Election Act has further provisions on how this shall be done. The Ministry makes the allocation and informs the Storting of the outcome. Furthermore, section 11-3 also states that it is the number of inhabitants in the constituency at the end of the *penultimate years before the parliamentary election in question*, which is to be used. Previous calculations have been carried out in May 2004 and April 2012. This means that the allocation of seats will be ready in about one year and four to five months before the election.

These provisions were introduced after the previous Election Act Commission and mean that a dynamic was introduced in the allocation of seats among the constituencies that captures population changes. Normally, there are few changes in the surface area but if boundary changes are made between the constituencies, corrections are also made for this in new allocations of seats.

#### **5.3.2.2 Internationally**

The Venice Commission's Code of Good Practice in Electoral Matters states that to ensure such equal voting power, the allocation of seats between constituencies should be reviewed at least every ten years. The purpose of this is to avoid changes in the demographics leading to bias in the influence of voters.

#### **5.3.2.3 The Commission's evaluation**

##### *Dynamics of the allocation of seats*

The Commission finds it is important that there is a dynamic in the distribution of the seats to detect changes in the population in the various regions.

Up to 2003, there was no such dynamic in the Norwegian electoral system, and the introduction of regular reviews of the allocation of seats was one of the major innovations in the applicable Election Act. Since then, four general elections and two seat calculations have been held – one in 2004 with effect for the parliamentary elections in 2005 and 2009 and one in 2012 with effect for the parliamentary elections in 2013 and 2017. In the spring of 2020, a new allocation of seats was carried out with effect for the 2021 parliamentary election. There have been changes in how many seats the various constituencies have received, in all these calculations. In the view of the Commission, this underpins that such a dynamic is needed.

The Commission has debated whether a new allocation of seats should be done every four years instead of every eight years. In Sweden, Finland and Iceland, the seats are allocated before each election while in Denmark, an allocation of seats is carried out every five years with effect for the following elections.

The argument that eight years may be sufficient is that there is unlikely to be major changes in the composition of the population in four years. It has also previously been used as an argument that it will be a resource-demanding task. Not changing the allocation of seats before each election also provides an element of stability and predictability. Implementing allocation of seats every eight years is within what international standards recommend (minimum every ten years).

What supports reducing the interval to four years is that it is a simple procedure and thus easy to do before each election and not a resource-demanding task that someone has used as an argument against doing this every four years. If the allocation of seats is carried out regularly, there will also be small changes at each election rather than major changes at longer intervals. In connection with the municipal and regional reform, boundary adjustments have also been made that have an impact on the allocation of seats (see box 5.1). However, this illustrates another argument that also suggests that calculations are made before each parliamentary election, namely that any changes in the administrative boundaries should be reflected in the allocation of seats. If it is desirable to have the most updated basis for the allocation of seats, this supports distributing the seats before each election.

The Commission finds that the allocation of seats should be based on the most up-to-date basic data and therefore, it is natural to adjust the distribution before each election. Thus, the Commission will amend the regulations so that a new allocation of seats among the constituencies is carried out every four years. The Commission also pointed out that new adjustments are made before each Sami parliament election and cannot see why this should not also be done at parliamentary elections. The amendment the Commission advocates will require an amendment to Article 57, subsection 5 of the Constitution.

#### *Timing of the allocation of seats*

Today, the population at the end of the penultimate year before an election is used when calculating a new allocation of seats every eight years. The previous Election Act Commission proposed that the allocation of seats should be published in the January of the election year (alternatively when the population statistics are published in the election year). In the consultation process, Statistics Norway commented that the final population statistics (at the time) were published mid-April, while the provisional figures were published mid-February. The Ministry also found that it would at the eleventh hour to publish the allocation of seats in January of the election year. The Ministry

pointed out that the number of seats in each constituency would be decisive for the minimum requirement for the number of candidate names on the list proposals and that this should be ready before the parties make their nominations. Therefore, the Ministry proposed that the allocation of seats should be completed in good time before the end of the penultimate year before the election and that the basis for this should be the population of the constituency.

The Commission has assessed two considerations against each other. One is the desire to have the most up-to-date data, which supports the calculation being made closer to the election. As these data have a direct effect on how many seats a constituency should have in the next four years, this should be given considerable weight.

The other consideration is that affected parties have a justified need to know the allocation of seats in good time. It may be necessary for the political parties to know this to plan nomination and campaigning, political commentators will benefit from this to make forecasts and the voters may also have an interest in knowing how many candidates will be elected from a region.

In Sweden, the seats shall be allocated according to the population as of 1 March in the election year, while in Finland the basis for the allocation of seats is registrations six months before the election. In Denmark, the allocation of seats is made based on data as of 1 January every five years.

In Norway, the preparations for the election start further ahead of the election than in most other countries. The parties have their first nomination processes in the spring of the year before the election and it may be a good thing to have the allocation of seats ready at an early stage. At the same time, interested parties will nevertheless be able to make their calculations in advance of the formal allocation of seats.

Another argument that supports having a deadline well before the election is that speculation and debate about the allocation of seats could be reduced. It is also important that, in the event of doubt or disagreement over the allocation of seats, it will be possible to clarify the question well in advance of the election. Regardless of the timing, there will usually only be minor adjustments and if the calculations are to be made every four years, there will be minor adjustments each time.

Basic data must be ready before the calculations can be made. Today, the number of inhabitants at the end of the penultimate year before the parliamentary election in question is used as the basis. These data are normally available at the end of February the year before the election. As long as there is a direct correlation between the number of seats to be elected from each region and requirements for the number of names on the list proposals, the calculation must be ready at the latest before the deadline for submitting the list proposals (currently 31 March).

The Commission finds it is important that the allocation of seats is determined well before the election for the sake of the nomination processes in the constituencies and to ensure predictability. The Commission has weighed this against the consideration of having the most up-to-date data as a basis for the allocation but concluded that this is taken care of in a good way if the allocation of seats is done before each election. Therefore, the Commission proposes no amendments on this point.

### *Responsibility for the allocation of seats and right of appeal*

Today, the Ministry makes the calculation of the allocation of seats and informs the Storting of the result. The Commission has discussed whether it is problematic that the Ministry carries out this task if the Ministry is politically led. The Commission finds that clear requirements must be set for announcing the distribution where information is provided about what data has been used and that there is a right of appeal against the calculation.

The Commission has considered whether the National Electoral Committee or the Storting's administration should make this calculation instead. Since the aim is that the National Electoral Committee shall purely be an appeal body, the Commission does not consider it desirable for them to make first-instance decisions like this. Calculating the allocation of seats is not a major job and needs only to be done every four years. This indicates that it will be possible to transfer the task to the Storting's administration. What supports the task remaining in the Ministry is that it may be appropriate to gather national tasks in the field of elections in one body.

The Commission finds that the allocation of seats must not be based on discretion but that the Act must have clear and unambiguous rules on which data to use and how the calculation shall be carried out. In the opinion of the Commission, this, combined with it believing that a right of appeal should be introduced, indicates that it is not as decisive which body makes the calculation. There will also be plenty of time between the calculation and the implementation of the election itself. Therefore, the Commission supports that it is still the Ministry that shall make these calculations.

The Commission finds that a right of appeal should be introduced against the calculation of the allocation of seats and refer to Chapter 20 where the National Electoral Committee is proposed as an appeal body for all electoral matters. The Commission finds it is natural that appeals against the allocation of seats are also dealt with by the National Electoral Committee.

## **5.4 Regional considerations in the allocation of seats**

### **5.4.1 Applicable law**

Article 57 of the Constitution states that 169 representatives shall be elected from 19 constituencies. The rules on the allocation of seats among the various regions are stated in Article 57, subsection 5:

The number of members of the Storting to be chosen from each constituency is determined based on the calculation of the ratio between the number of inhabitants and the surface area of each constituency and the number of inhabitants and the surface area of the realm, in which each inhabitant counts for 1 point and each square kilometre counts as 1.8 points. The calculation shall be made every eight years.

Section 11-3 of the Election Act gives the Ministry the responsibility for making the calculation every eight years and notifying the Storting. Section 11-3 of the Election Act states further rules on how the proportional distribution shall take place. First, a quotient number is calculated for each constituency. This is done by adding together the population of the constituency with the number of square kilometres in the constituency multiplied by 1.8. The quotients are then divided by 1–3–5–7, etc. In other words, the pure Sainte-Laguë method is used (the modified method is used in the final election result).



The previous Election Act Commission did not comment on how the proportional distribution should be done and in the preparatory works of the Act, the Ministry justifies the choice of the pure Sainte-Laguë's method as follows:

The Ministry will propose using the pure odd number series (St. Laguë's pure method), with divisors 1,3,5,7, etc. to distribute the seats among the constituencies. The pure odd number series, with the first quotient 1, has the abilities to equate small and large entities. In the *geographical distribution of seats* that is to take place here, there are no arguments for favouring large entities, for example, compared with the *political* allocation of seats where the first quotient is 1.4 – and where it is accepted in wider circles – both nationally and internationally – that the largest entities can be favoured to a certain extent.<sup>133</sup>

It has not been legislated what definition of the surface area is to be used. Part of the reason for this is that the surface area was chosen as an indicator of the distribution that the previous Election Act Commission thought was reasonable. Information on surface area has been obtained from the Norwegian Mapping Authority and includes "the mainland with islands, including freshwater, but without territorial waters", see box 5.2.

#### **Box 5.2 The basic data on the surface area**

Information about the counties' surface area has been collected from the Norwegian Mapping Authority. In data that was used for the allocation of seats carried out in 2012, it has been specified that there is data on "the mainland with islands, including freshwater, but without territorial waters". This corresponds to the surface area statistics that the Norwegian Mapping Authority submits to Statistics Norway annually. The surface area statistics are submitted annually and updated data are submitted in February each year. The surface areas are obtained from N50 Map Data, which contains data on the following units:

- total surface area including territorial waters
- mainland and islands
- sea area (territorial waters)
- open area
- snow, ice and glaciers
- lakes
- rivers with foreshore
- marsh
- forest
- cultivated land
- urban and densely populated areas
- industrial area
- other

When asked about changes in the surface area, the Norwegian Mapping Authority states that the surface area per county authority will constantly change in line with the 1: 50 000 map. Much of the data contained in N50 Map Data is still older and less accurate than is possible to produce today. There is continuous work to improve the data basis and therefore, the surface areas will

<sup>133</sup>White paper Ot.prp. no. 45 (2001–2002).

change as the quality improves. However, the Norwegian Mapping Authority points out that in terms of the size of the land area (mainland and islands) relative to the size of the sea area, in theory, it should not change must from year to year. However, a few years ago there was a change in the coastal contour where the boundary between the sea and rivers was significantly changed and since rivers are calculated as a part of land area, the land/sea area was affected.

The Norwegian Mapping Authority states that when it comes to units such as land area, the figures are relatively stable. N50 Map Data is the most accurate map database and covers the whole of Norway with relatively equal quality. N50 Map Data has been generalised, which means that not all of the data is included and therefore is not 100 per cent accurate, but the selection is relatively similar for the whole country and therefore the best basis for this use.

Source: The Norwegian Mapping Authority.

### 5.4.2 Historical development

In Norway, the allocation of seats has been solved in various ways over time. Although the distribution has to some extent followed the population size, it has been a tradition to also take other considerations in the allocation of seats. After 1814, the constituencies were divided into separate regions for the cities and rural areas. In the Constitution, it was established that the urban areas should have a third of the seats and the rural districts two thirds but the method chosen for calculating seats gave an even stronger overrepresentation of the cities. In 1859, this distribution formula was adopted once again. Although this has become known as the “peasant clause” and the rural districts increased their number of seats relative to the cities, the distribution formula ensured an overrepresentation of the cities until the system was abolished following the election in 1949.<sup>134</sup> This system was not dynamic and to increase the number of seats in a region, the Constitution had to be amended. Following the recommendation of the Electoral System Commission of 1948, the Constitution was amended and the “peasant clause” was removed. From the 1953 election, the counties were constituencies and an allocation of seats was introduced that gave an overrepresentation of peripheral areas. This system was not dynamic and had to be changed by the Storting if some of the constituencies were underrepresented. The system was retained until the recommendation of the previous Election Act Commission but some changes to the seat figures were made when the Storting considered that the population changes had made some constituencies underrepresented.

The previous Election Act Commission discussed to what extent the various parts of the country were proportionally represented and whether there should be a geographical evening out of the seats in the individual constituencies. The Commission discussed three considerations that together support changing the allocation of seats. First, the Commission pointed out that major technological changes have occurred which mean that the same weight cannot be attached to problematic communication conditions due to large geographical distances. It could be said that this argument has gained reinforced validity since the Commission put forward its recommendation.

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<sup>134</sup>Aanund Hylland, “Stortingets geografiske sammensetning” (Manuskript, 2001).

The second consideration the Commission discussed is related to the distance to political power being more complex than just geographical distance. The Commission stated:<sup>135</sup>

It is not given that there is a connection between geographical distance and proximity to the political centre of power. In other words, it may as far to the Storting from Oslo inner east as from the three northernmost counties.

Resourceful groups and interests have significant clout regardless of geographical location. This argument also has validity today. At the same time, there is still debate about how much power is concentrated in Oslo and whether the regions do not have enough influence.

The third aspect the Commission addressed is that if regional policy considerations are to be taken into account first, this should be done according to certain logic. The allocation of seats at the time did not have clear logic and the Commission questioned why there were to be two representatives more selected from Nordland than from Møre & Romsdal when there were more inhabitants in Møre & Romsdal, and why Troms should choose six representatives fewer than Nordland.<sup>136</sup>

The Commission ended up by proposing that the seats should be distributed based on a formula that combined the constituency's population and surface area. The Commission pointed out that a distribution based on population alone would lead to a significant geographical shift in the seats. The combination of population and the surface area, in turn, would be slightly less effective but also this calculation method would produce a more proportional result than with the then allocation of seats.

### **5.4.3 International standards and Nordic law**

Taking into account other elements than only the population (or eligible voters) has been accepted in international standards. The Venice Commission's Code of Good Practice in Electoral Matters states that "[c]onstituencies can also be divided based on geographical conditions and administrative or absolute historical boundaries, which are often based on the geography". However, there is a limit to how much weight can be attached to such criteria.

The maximum permissible departure from the norm depends on the individual situation, although it should rarely exceed 10% and never 15%, except in special circumstances (a demographically weak administrative entity of the same importance as others with at least one representative from a lower chamber or concentration of a particular national minority).<sup>137</sup>

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<sup>135</sup>Official Norwegian Report (NOU) 2001: 3 page 81.

<sup>136</sup>Official Norwegian Report (NOU) 2001: 3 page 81.

<sup>137</sup>The Venice Commission, Code of Good Practice in Electoral Matters.

OSCE has stated that Norway should consider amending the rules on the allocation of seats to ensure compliance with the right to equal suffrage.<sup>138</sup>

In Denmark, the distribution of seats takes into account population density. Here the seats are distributed based on the population, the number of eligible voters at the last election and the surface area. However, calculations have shown that the use of the surface area in the distribution has little significance and in 1995, only 3 out of 175 seats were allocated differently if the surface area as not taken into account.

Another way to take geographical considerations is to ensure a small geographical area representation by allowing it to be its own constituency. This is done in Sweden, Denmark and Finland. In Finland, Åland is guaranteed one seat, in Sweden Gotland has two fixed seats and in Denmark, Bornholm is guaranteed two seats. The Faroe Islands and Greenland are also given two representatives each in the Danish Parliament. Whether this constitutes an overrepresentation varies; Bornholm's two seats involve a large degree of overrepresentation, while for Gotland and Åland it involves no overrepresentation.

#### **5.4.4 The consequences of taking regional considerations**

By dividing the country into constituencies, the different parts of the country are ensured representation. The importance of the constituency structure is also reflected in the representatives in the chamber of the Storting sitting according to the constituency and not party affiliation. The number of constituencies determines where large parts of the country are guaranteed representation. The political significance of such representation depends on how many seats the constituency has. There may be good fundamental reasons for taking special consideration for geographical representation in the allocation of seats. In the past, it has been emphasised that peripheral areas have a greater distance to the Storting in Oslo and thus have more difficulty influencing decisions through other channels than via Members of the Storting. An overrepresentation of peripheral areas will also ensure that all parts of the country are heard in political decisions. Because there are more representatives who have ties to the smaller constituencies it can be assumed that the needs of these constituencies presented to a greater extent in the Storting than the size of the region would indicate. Finally, it can be emphasised that no region should be so small that it does not have real political competition between the different parties. If there are very few direct seats from a constituency, only the largest parties will have the opportunity to win a direct seat and the voters will thus have few options if they want to vote for a party that can win representatives from the constituency. These are considerations that support the seats not only being distributed according to population.

The electoral system introduced after the previous Commission's report balances two considerations. On the one hand, there is a desire for the party proportionality to follow the votes at the national level. The 19 seats at large in the current system ensure that parties<sup>139</sup> that do not achieve the representation they are entitled to in the individual constituencies, win representation through

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<sup>138</sup>"Norway Parliamentary Elections 14 September 2009", OSCE/ODIHR Election Assessment Mission Report (Warsaw: The Organisation for Security and Cooperation in Europe, 2009), page 6.

<sup>139</sup>Only registered political parties that win a larger share of the votes than the four per cent electoral threshold.

the seats at large. On the other hand, the representatives are distributed among the various constituencies in a way that allows some areas to have more members of the Storting than they would have had according to the population.

#### **5.4.4.1 Representation and influence**

It is necessary to distinguish between two types of overrepresentation in the current electoral system. First, a constituency can receive more seats *in total* than the population of the region implies. This means that there are more members of the Storting elected from the constituency and thus that the constituency is represented in the Storting to a greater extent. In the current electoral system with area factor, this will take place in constituencies with a large surface area relative to the population. These regions can be assumed to have a stronger voice in the Storting than they would have had without surface area factor. Secondly, some constituencies may have a greater influence on the composition of the Storting. This is not given from the total number of seats the constituency has but is determined by how many *direct seats* are selected from the constituency. In constituencies that have more direct seats than the number of seats the constituency would have had if all the 169 seats in the Storting were divided according to the population, the inhabitants may have a greater influence over the compositions of parties in the Storting than the inhabitants of other parts of the country have.

With an allocation of seats calculated using surface area factor, based on the population from 2Q 2019, there will be two constituencies that have a greater influence on the composition of the Storting than the other constituencies. Finnmark's direct seats make up 3 per cent of the total number of seats in the Storting but the constituency only has 1.4 per cent of the population. This means that the constituency will have more influence over the composition of the Storting than the other constituencies. The difference is very small for Nordland. Nordland has 4.6 per cent of the population but 4.7 per cent of the seats.

Which of these overrepresentation measurements it is relevant to look at depends on what is emphasised. Is it the power of the residents of Finnmark relative to the residents of Oslo? Or is it the share of the representatives that are from Finnmark relative to the share of the representatives from Oslo? While it may seem problematic that residents in some areas have more power than others over the composition of the Storting, it may seem less problematic that some constituencies have more representatives than the population dictates.

#### **5.4.4.2 Party political breadth**

The number of direct seats has a bearing on how much political breadth there will be from a constituency. There cannot be more members from various parties in a constituency than there are seats. The number of seats determines how what share of the votes a party must have to achieve representation. This "effective electoral threshold" is higher in small constituencies than in large ones. Thus, small constituencies will have representatives from fewer parties and less political breadth than the larger constituencies have. Similarly, the voters will face different elections in constituencies with many or few seats. In small constituencies, small parties are less likely to achieve representation. Voters who want to influence who will represent the constituency will thus have to choose between the largest parties in the constituency. If they vote for other parties, this will only affect the composition of the seats at large. In large constituencies, this will not be the case to the same extent as more parties will have the opportunity to achieve representation and come above the effective electoral threshold.

The current system with surface area factor means that the smallest constituencies receive no less than three direct seats and one seat at large. This is not due to the system but to the surface area and the current population of the regions. Both Sogn & Fjordane and Finnmark would have less than four seats in total if only population figures were taken into account. However, the surface area factor does not guarantee that these (or other) constituencies will have at least three direct seats. Changes in the population over time can (at least theoretically speaking) lead to both Sogn & Fjordane or Aust-Agder receiving fewer than four seats in total.<sup>140</sup> Thus, the surface area factor is no guarantee that the constituencies receive a certain party political breadth even if that is the case today.

#### **5.4.4.3 Proportional representation of the parties**

Emphasis on constituency representation can have consequences for the composition of the Storting. Since some constituencies have more influence over party composition than others, some parties may receive a disproportionate representation. Among the parties that come above the electoral threshold, the electoral system at the two previous elections has nevertheless given equal representation as if the seats were distributed in one joint constituency at a national level. However, at the 2009 election, one seat would have changed the party if all the seats had been distributed in one constituency among the parties above the electoral threshold rather than following the electoral system, but this was more related to the constituency structure itself than just the allocation of seats.<sup>141</sup> On the other hand, if small parties below the electoral threshold win seats in the constituencies that receive more direct seats than the average, the allocation of seats among the parties will not follow the national vote distribution. This has happened in some previous elections.<sup>142</sup> The electoral system is thus proportional as long as the parties that win seats locally also receive votes nationally and participate in the contest for seats at large. This shows that regional considerations in the allocation of seats and constituency structure have little party political significance for the parties above the electoral threshold. This most important effect of taking the regions into account is that more representatives are elected from the overrepresented constituencies.

#### **5.4.5 Mechanisms that can be used to take geography/region into account**

There may be good fundamental reasons for taking special consideration for geographical representation in the allocation of seats. There are two means of doing this. On the one hand, the

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<sup>140</sup>Aust-Agder's four seats are already a certain overrepresentation relative to the constituency's total population plus surface area factor (2.4 and 2.3 per cent respectively).

<sup>141</sup>The reason why there was only overrepresentation in 2009 was that the party that was overrepresented (the Labour Party) had greater support at this election, 35 per cent, than at the other elections. In the distribution of seats among the regions, the party won more direct seats than it would have been entitled to if the whole country had been one constituency. The combination of constituencies and seats at large gives a certain majority bonus to large parties, but this is primarily true for very large parties.

<sup>142</sup>In 1989, Anders Aune was elected from Finnmark on the Future for Finnmark list with just under 9,000 votes and in 1997, Steinar Bastesen was elected from Nordland on the Cross-party Elected Representatives list with just over 9,000 votes. Bastesen was then re-elected in 2001 as the only representative of the Coastal Party with more than 14,000 votes in Nordland and more than 40,000 nationally.

surface area can be used. This can be done as is done in Norway today, with a surface area factor of 1.8, or lower factors can be used or calculated in other ways. On the other hand, another distribution formula can be used that gives peripheral constituencies seats at the expense of more central regions. For example, this can be done by giving small constituencies seats at the expense of large ones. Furthermore, special constituencies can also be given a specific number of seats, such as Bornholm, Gotland and Åland have in Denmark, Sweden and Finland respectively. Another possibility is that the smallest regions can be secured by setting a general requirement for a minimum number of seats per constituency. The Commission has discussed whether to continue to take into account geography in the allocation of seats and how this can best be done.

#### **5.4.5.1 Surface area factor**

Today, geographical considerations are taken into account in the allocation of seats through the surface area factor. The system has received criticism, from OSCE, among others, for leading to significant differences from a distribution based on population. In the choice of surface area as a component, it has been emphasised in Official Norwegian Report (NOU) 2001: 3 that it is not surface area in itself that is to be emphasised but that the “surface area captures relevant regional considerations in a way that has been broadly endorsed by previous electoral system reforms”.

The high weighting of surface area in the system means that the population, especially in Finnmark, but also in Nordland to a certain extent, have more influence over the composition of the Storting than residents in other constituencies, it can be viewed as a problem that some votes then count more than others and that can lead to deviations from the proportional representation of the parties in the Storting.

When it comes to the total number of seats from each constituency, some constituencies are underrepresented without there being any clear justification for it. For example, at the allocation of seats in 2012, Vestfold was underrepresented by one seat, which meant that there were 14 per cent more inhabitants behind each seat in Vestfold than on average. Except for Vestfold and Finnmark, no constituencies had deviations greater than around 10 per cent from the average number of inhabitants per seat. Of the underrepresented constituencies, Akershus had 10.9 per cent more inhabitants per seat and Oslo had 9.5 per cent more. There were also more constituencies that were overrepresented, Oppland had 9.4 per cent fewer inhabitants behind each seat than the average, Nord-Trøndelag 9.6 per cent fewer, Nordland 10.2 per cent fewer and Troms 10.4 per cent fewer.

By having the same surface area factor throughout the country – regardless of the settlement pattern – large outlying areas can provide increased representation to a constituency where the concentration of the population cannot be said to live in the “regions” and where the areas that gave increased representation are still not represented in the Storting. An example here may be Buskerud, where neither Numedal nor Hallingdal is represented in the Storting in the current period.

As the surface area does not change (except for boundary adjustments), the area factor may also have a greater impact over time due to population changes. For example, Finnmark has increased relative representation over time. That the surface area factor today ensures political breadth from the smallest constituencies is also not given over time. The area factor in itself does not guarantee that no constituencies receive fewer than, for example, four seats. This depends on how the population patterns change in the future.

### 5.4.5.2 *Minimum number of representatives*

To ensure that more perceptions are represented from a constituency, a certain number of seats is needed. The previous Election Act Commission found that no regions should have fewer than four seats. This is not guaranteed with a surface area factor but is possible to ensure in other ways, for example, by introducing a minimum requirement for the number of seats per region.

If the minimum requirement for the number of seats per region is greater than the number the smallest regions would otherwise have received, it will lead to an overrepresentation of these regions. If only the population is used, Finnmark will receive two seats. This will be an actual underrepresentation of 20 per cent and lead to a large share of the votes in the constituency only going to seats at large. A minimum requirement of four seats would give Finnmark an overrepresentation of 40 per cent, see table 5.4.

*Table 5.4 Allocation of seats in Finnmark.*

No. of seats included in the seats at larger	Under/overrepresentation (population 2019)
2	–20 per cent
3	+20 per cent
4	+40 per cent
5	+52 per cent

The advantage of a requirement for a minimum number of seats is that this does not affect randomly, only those constituencies with the fewest seats received extra representation. It will also not be necessary to rank considerations for the various constituencies. The rationale that a certain number of seats is necessary to ensure that several parties have the opportunity to fight for seats will apply regardless of geographical location.

Internationally, it is not uncommon for some areas with special historical or cultural conditions to be secured representation by setting aside a fixed number of seats. As mentioned, both Sweden, Denmark and Finland have small constituencies but only one or two seats, due to special considerations.

### 5.4.5.3 *Give all the constituencies one seat regardless of the population*

It is possible to use other mechanisms to give the smaller constituencies some overrepresentation. One way to do this is to give all the constituencies one seat each, regardless of the population, and allocate the remaining seats according to the population. This ensures that the smallest constituencies are slightly overrepresented and that the largest ones are slightly underrepresented.<sup>143</sup>

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<sup>143</sup>As the seats at large make up 19 of the 169 seats, the constituencies will lose on average 19/169 (11 per cent) of their direct seats. In return, the constituencies get one seat at large. This gives overrepresentation to constituencies where 11 per cent of the regions' seats are less than 1 seat. Constituencies that would have received fewer than nine seats if only the population



As long as there is one seat at large from each constituency, the number of voters behind each direct seat in this distribution method will be as similar as possible. The distribution method gives equal direct influence over the Storting's composition throughout the country. In this distribution method, the seats at large ensure some overrepresentation to the smallest constituencies but these seats are elected based on votes throughout the country.

Giving all the constituencies a seat (the seat at large), regardless of population, gives an allocation of seats that lies between allocating the seats according to the current surface area factor and allocating according to population only.

#### 5.4.6 Specific systems

Besides the mechanism reviewed, an alternative is to combine a minimum requirement for the number of seats each constituency receives with a separate distribution of the seats at large.<sup>144</sup> Table 5.5. and 5.6 present three different systems that can be used to distribute the seats among the constituencies. The first is the current system with surface area factor 1.8. Then there is a system where the constituencies receive one seat at large first and the remaining seats are allocated according to the population but with a requirement that all the constituencies shall have at least four seats in total. In the last system, the seats are distributed only based on population.

In addition to the number of seats each constituency receives with the system, a measure of over/underrepresentation is also shown, namely how many inhabitants there are behind the seat relative to the average.<sup>145</sup> When this figure is negative, there will be fewer inhabitants behind a seat than there are on average. A negative figure thus means that the constituency is overrepresented. A positive figure means that there are more inhabitants behind each seat than there are on average. In other words, these are underrepresented constituencies.

Table 5.5 shows a structure with 19 constituencies. As shown in the column showing how the allocation of the seats will be with surface area factor 1.8, the updated population will lead to changes from the current allocation of seats.<sup>146</sup> With the population from Q2 2019, an allocation of seats based on surface area factor will give Akershus two more seats and Oslo one more seat in relation to the current allocation of seats.<sup>147</sup> It is Buskerud, Møre & Romsdal and Oppland that lose one seat each. The table also shows the percentage deviations from the average number of

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was used to distribute seats, are thus overrepresented, and this overrepresentation is greater the smaller the constituencies are.

<sup>144</sup>This is a combination of the mechanisms reviewed in sections 5.4.5.2 and 5.4.5.3, and is a system that was first proposed by Thomas Nygreen.

<sup>145</sup>See also Bernt Aardal, "Den norske stortingsvalgordningen og dens politiske konsekvenser", *Norsk statsvitenskapelig tidskrift* 26, no. 02 (2010): 89.

<sup>146</sup>A new allocation of seats will be done in the spring of 2020, which will apply at the 2021 parliamentary election. The previous allocation of seats was done in 2012.

<sup>147</sup>The adopted boundary changes were also taken into consideration here.

inhabitants per seat. When the surface area factor is used to distribute the seats, in Finnmark it leads to 52 per cent fewer inhabitants per seat than the average. Thus, the constituency is overrepresented to a great extent. Other constituencies are also overrepresented, Nord-Trøndelag and Nordland have 15 per cent, Sogn & Fjordane 14 per cent and Troms and Hedmark 11 per cent fewer inhabitants per seat than the average.

Vestfold and Akershus are underrepresented and have 11 per cent more inhabitants than the average behind each seat. Oslo and Rogaland are also underrepresented and both have 8 per cent more inhabitants behind each seat.

The next column in table 5.5 shows the allocation of seats if the seats at large are allocated with one to each constituency regardless of population and if a minimum limit of four seats per region is introduced. The allocation of seats this gives is somewhat similar to the one resulting from an allocation with surface area factor. Here there are more inhabitants behind each seat in densely populated constituencies than there are in constituencies with fewer inhabitants. However, there is less underrepresentation than there is in the distribution using surface area factor. The largest effects of underrepresentation are in Oslo and Rogaland where there are 8 per cent more inhabitants behind each seat than the average and Akershus, which has 6 per cent more inhabitants behind each seat than the average. At the same time, the smallest constituencies here also have overrepresentation. Finnmark has the largest overrepresentation where there are 40 per cent fewer inhabitants behind each seat than the average. Other constituencies are also overrepresented, Nord-Trøndelag has 15 per cent fewer inhabitants behind each seat than the average, corresponding figures for Sogn & Fjordane are 14 per cent and 11 per cent for Hedmark and Troms.

*Table 5.5 The allocation of seats among 19 constituencies with different seat distribution methods. Based on the population for Q2 2019.*

	Surface area factor 1.8		One seat at large for each constituency and a minimum of four seats		Population only	
	Seats	Over/underrepresentation <sup>1</sup>	Seats	Over/underrepresentation <sup>1</sup>	Seats	Over/underrepresentation <sup>1</sup>
Østfold	9	5%	9	5%	9	5%
Akershus	19	11%	20	6%	21	1%
Oslo	20	8%	20	8%	22	-2%
Hedmark	7	-11%	7	-11%	6	4%
Oppland	6	-8%	6	-8%	6	-8%
Buskerud	8	5%	8	5%	8	5%
Vestfold	7	11%	8	-3%	8	-3%
Telemark	6	-9%	6	-9%	6	-9%
Aust-Agder	4	-7%	4	-7%	4	-7%
Vest-Agder	6	-1%	6	-1%	6	-1%
Rogaland	14	8%	14	8%	15	1%

Hordaland	16	4%	16	4%	17	-2%
Sogn & Fjordane	4	-14%	4	-14%	3	15%
Møre & Romsdal	8	5%	8	5%	8	5%
Sør-Trøndelag	10	5%	10	5%	11	-4%
Nord-Trøndelag	5	-15%	5	-15%	4	6%
Nordland	9	-15%	8	-4%	8	-4%
Troms	6	-11%	6	-11%	5	7%
Finnmark	5	-52%	4	-40%	2	20%

<sup>1</sup> Over and underrepresentation has been measured in whether the constituency has a higher or lower percentage of inhabitants behind each seat than the average. A negative number means that the constituency has fewer inhabitants behind each seat than the average and thus is overrepresented. A positive number means that the constituency is underrepresented.

A distribution based only on the population differs more from the other two distributions and is shown in the last column. Compared with the distribution using surface area factor, Hordaland, Rogaland, Sør-Trøndelag and Vestfold receive one extra seat each, while Oslo and Akershus receive two extra seats. Hedmark, Sogn & Fjordane, Nordland, Nord-Trøndelag and Troms each lose one seat, while Finnmark loses three seats. Both Finnmark and Sogn & Fjordane will then receive fewer than four seats.

This system also provides a lesser degree of over and underrepresentation than the distributions that take into account conditions other than population. Finnmark and Sogn & Fjordane are now underrepresented, with 20 and 15 per cent more inhabitants respectively behind each seat than the average. These constituencies also receive so few direct seats that the breadth of representation is limited.

Table 5.6 shows the allocation of seats with eleven constituencies. Compared with a distribution that takes into account population, five seats receive a different position as a result of a surface area factor of 1.8. Oslo, Viken and Rogaland receive fewer seats using an area factor, while Innlandet, Nordland and Troms and Finnmark receive more. The table also shows the percentage deviations from the average number of inhabitants per seat (over/underrepresentation). Negative figures mean that the constituency is overrepresented, while positive figures mean that the constituency is underrepresented.

The size of over and underrepresentation is lower with 11 constituencies than with 19 constituencies when using the surface area factor. Under this system, in Troms and Finnmark there are 30 per cent fewer inhabitants behind each seat than on average (if Finnmark is a constituency alone, the figure is 52 per cent fewer), then follows Nordland with 15 per cent and Innlandet with 10 per cent fewer inhabitants per seat on average. Viken, Oslo and Rogaland are underrepresented and all have 8 per cent more inhabitants behind each seat than the average. Using the surface area factor, it has little significance whether there are 11 or 12 or 13 constituencies. However, Viken receives 1 extra seat at the expense of Oslo if the county is divided into 2 constituencies.

Table 5.6 also shows the allocation of seats for a distribution where all constituencies first receive one seat at large regardless of the population and are also secured at least four mandates in total.<sup>148</sup> Compared with the distribution using a surface area factor of 1.8, this gives Møre & Romsdal, Oslo and Rogaland one seat and Viken three seats extra. Troms and Finnmark lose three and Innlandet and Nordland lose one seat each. This means that Møre & Romsdal is the constituency with the largest overrepresentation (seven per cent fewer inhabitants behind each seat than the average). The other constituencies have relatively similar representation.

*Table 5.6 The allocation of seats among eleven constituencies with different seat allocation methods. Based on the population for Q2 2019.*

	Surface area factor 1.8		One seat at large for each constituency and a minimum of 4 seats		Population only	
	Seats	Over/underrepresentation <sup>1</sup>	Seats	Over/underrepresentation <sup>1</sup>	Seats	Over/underrepresentation <sup>1</sup>
Agder	10	-3%	10	-3%	10	-3%
Innlandet	13	-10%	12	-2%	12	-2%
Møre & Romsdal	8	5%	9	-7%	8	5%
Nordland	9	-15%	8	-4%	8	-4%
Oslo	20	8%	21	3%	21	3%
Rogaland	14	8%	15	1%	15	1%
Troms and Finnmark	11	-30%	8	-3%	8	-3%
Trøndelag	15	-2%	15	-2%	15	-2%
Vestfold and Telemark	13	2%	13	2%	13	2%
Vestland	20	0%	20	0%	20	0%
Viken	36	8%	38	3%	39	0%

<sup>1</sup> Over and underrepresentation has been measured in whether the constituency has a higher or lower percentage of inhabitants behind each seat than the average. A negative number means that the constituency has fewer inhabitants behind each seat than the average and thus is overrepresented. A positive number means that the constituency is underrepresented.

<sup>148</sup>with 11 constituencies, there are no constituencies that receive fewer than 4 seats regardless but when Finnmark stands alone in a system of 13 constituencies, this will be of significance.

Calculations show that a division with 12 constituencies (where Viken is divided into 2 constituencies) gives the same allocation of seats as 11 constituencies, except that Viken's 38 seats are divided between Øst and Vest-Viken with 14 and 24 seats respectively. Similarly, calculations show that in a division into 13 constituencies (where Viken is divided into 2 constituencies and where Troms and Finnmark are also 2 constituencies) Finnmark and Troms receive 4 and 6 seats respectively and are thus overrepresented with 40 and 11 per cent fewer inhabitants per seat than the average.

An allocation of seats based only on population means that Troms and Finnmark lose 3 seats and Innlandet and Nordland lose 1 seat relative to an allocation of seats using surface area factor. Oslo and Rogaland receive 1 of these seats each and Viken receives 3. This gives a low degree of over and underrepresentation with 11 constituencies. With 13 constituencies, Finnmark and Troms have an underrepresentation of 20 per cent and 7 per cent more inhabitants behind each seat than the average.

#### 5.4.7 The Commission's evaluation

The Commission finds it is a democratic value that all regions are taken care of and have their interests represented but emphasises that it is not only the law that can ensure this. The parties also have an important responsibility. *The majority of the Commission (everyone except Anundsen)* finds that it is legitimate to take regional policy considerations into account in the allocation of seats and to compensate for sparsely populated areas and areas that are far from the centre of power. The majority finds that such considerations are particularly relevant to Finnmark and also point out here that this has been done for a long time in Norway.

The starting point in the electoral system and the allocation of seats is that all votes count equally. *The majority* would also like to point out that the system of seats at large at the last two elections has meant that all votes count equally in the party political composition of the Storting for the parties that come above the electoral threshold. When the majority considers continuing regional considerations in the allocation of seats this will primarily affect where the representatives come from in the country and not how much influence each voter has on the party structure of the Storting.

*The majority* sees more arguments in favour of taking the smallest constituencies into special consideration. Small constituencies can prevent a breadth of representation from a region and the Commission finds this is unfortunate. As far as Finnmark is concerned, a system that only takes into account the population will mean that the constituency is underrepresented relative to the population. *However, the majority* finds today's overrepresentation of more than 50 per cent is excessive.

*The majority of the Commission (Christensen, Hagen, Hoff, Holmøyvik, Høgestøl, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo)* finds there must be weighty reasons for a skewed distribution of the seats. The smallest constituencies must be secured several seats that provide the opportunity for breadth of representation, and which ensure that the constituency is heard. This is particularly relevant with 19 constituencies because there will be several small constituencies. The majority finds that this indicates that there should be at least four seats in all constituencies. When the seats at large are distributed as today, the smallest constituencies have less influence over the direct seats than the largest constituencies. Therefore, the majority proposes allocating a seat at large to each of the constituencies without taking into

account the population. This will give the smaller constituencies some overrepresentation. This system gives less impact than today but ensures the smaller constituencies slightly more representation at the expense of the larger ones. The mechanism used is objective, has less impact than today and is more viable over time than a system that takes surface area into account. *The majority of the members who are of this opinion (Christensen, Hagen, Holmøyvik, Høgestøl, Røhnebæk, Strømmen, Aardal, Aarnes and Aatlo)*, finds this system will work well regardless of the number and size of the constituencies. *The minority of the members with this view (Hoff, Nygreen, Stokstad and Tørresdal)* finds this system works with today's constituencies but does not take sufficient regional considerations when there are fewer and larger constituencies. Therefore, if the constituencies are divided according to the new counties, these members will retain the current surface area factor of 1.8.

*One Commission member (Anundsen)* finds that the electoral system should have citizens as a criterion for the allocation of seats. Therefore, this member wants to abolish the surface area factor and not introduce any system to ensure the smallest constituencies. The member also supports the model where the surface area factor is discontinued and replaced by a minimum number of representatives for each constituency.

*A minority of the Commission (Giertsen, Grimsrud, Holmås and Storberget)* wants to retain the current surface area factor of 1.8. These members find that distance from the centre and low population density are increasingly important considerations that can support overrepresentation. Therefore, there should still be mechanisms in the allocation of seats that take general regional considerations. These members find that regardless of the number of constituencies, a surface area factor will help ensure such constituencies higher representation in a good way. The members emphasise that the area factor is an objective mechanism and that it leads to reasonably good safeguarding of regional considerations. The surface area factor does not have a dramatic impact in any of the various constituency divisions and it is mainly Finnmark that is ensured a greater overrepresentation and then at the expense of Oslo and Akershus.

*Commission member Holmås* is also wary of introducing criteria that will provide incentives to divide constituencies. With a system such as a majority proposes, the constituencies in the county of Vestland will achieve greater representation by being divided into Sogn & Fjordane and Hordaland. Similarly, Finnmark and Troms will lose significantly in total representation by merging into one constituency.

## **5.5 Selection of constituency seats**

### **5.5.1 Applicable law**

Article 57, subsection 3 of the Constitution states that 150 of the members of the Storting shall be elected as constituency seats. Article 59 of the Constitution states the provisions on how the constituency seats shall be elected. It states here that the election of representatives is based on proportional representation elections and that the method used to distribute the seats among the parties is the Sainte-Laguë's method with 1.4 as the first quotient. It also states in this provision that list alliances are not permitted.

Section 11-4 of the Election Act also has provisions on the distribution of constituency seats. In addition to the rules stated in the Constitution, there are also provisions on what happens if two

electoral lists have the same quotient or number of votes. In the event of the same quotient, it is the list with the highest number of votes that receives the seat while in a situation where the number of votes is also the same, lots will be drawn.

### **5.5.2 Number of representatives**

The Commission has discussed the number of members of the Storting to be elected and agreed not to propose changing the number of representatives and retaining the current 169.

### **5.5.3 Distribution method**

Norway has used the Sainte-Laguë's method with 1.4 as the first quotient since 1953. Sweden introduced the same distribution method in 1952. However, Sweden recently amended the Election Act with effect from the 2018 election. One of the amendments they made was to lower the first quotient from 1.4 to 1.2,

The pure Sainte-Laguë's method with first quotient 1 gives a very proportional distribution of the seats. It was a desire to limit the number of parties becoming members of the Storting that was the reason for the modified method of 1.4 being chosen as the first quotient in Norway and Sweden. The system of using 1.4 as the first quotient is advantageous for large and medium-sized parties and makes it difficult for the smallest parties to win their first seats.

It may be contested that parties that receive sufficient support to be elected should be treated equally and that it is unfortunate that large parties should receive more reward for their votes than the smaller parties. This seems to be the basis for the amendment to the quotient in Sweden. There is a national electoral threshold of 4 per cent that prevents small parties from gaining seats, while the quotient has been changed to 1.2 to ensure that parties who come above this threshold compete on relatively equal terms for the seats.

In Norway, there has been little debate about the method used to distribute the constituency seats and the use of 1.4 as the first quotient. This is one of the elements that may have implications for the proportionality of the electoral system.

The Commission points out that the previous Election Act Commission made a thorough assessment of the various distribution methods. The Sainte-Laguë's method is incorporated in Norway and is a system that has worked well. Through a change of the first quotient, it is possible to increase the proportionality of the electoral system without changing the distribution method itself. The Commission finds that there is no reason to change the very principle of the allocation of seats and finds Sainte-Laguë's should be the distribution method used.

### **5.5.4 First quotient**

Today, the Sainte-Laguë's method with 1.4 as the first quotient is used to distribute the seats among the parties. By reducing the first quotient, the advantage to the largest parties will be less. Table 5.7–5.10 show the distribution of seats among the parties with different quotients and the number of constituencies based on the election results in 2017.<sup>149</sup>

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<sup>149</sup>The calculations take into account the adopted changes to the municipal and country structures.

*Table 5.7 The distribution of seats with 19 constituencies and different first quotients Based on the population from Q2 2019.*

First quotient:	1.4	1.2	1
The Labour Party	50	49	49
The Conservative Party	45	45	45
The Progress Party	27	27	27
The Centre Party	18	18	18
The Socialist Left Party	11	11	11
The Liberal Party	8	8	8
The Christian Democrat Party	7	8	7
The Green Party	2	2	3
The Red Party	1	1	1
LSq <sup>1</sup>	3.1	3.0	2.7

<sup>1</sup> Gallagher's disproportionality index.

*Table 5.8 Distribution of seats with 13 constituencies and various first quotients. Based on the population from Q2 2019.*

First quotient:	1.4	1.2	1
The Labour Party	50	49	49
The Conservative Party	45	45	45
The Progress Party	28	27	27
The Centre Party	18	18	18
The Socialist Left Party	11	11	11
The Liberal Party	8	8	8
The Christian Democrat Party	7	7	7
The Green Party	1	3	3
The Red Party	1	1	1
LSq <sup>1</sup>	3.4	2.7	2.7

<sup>1</sup> Gallagher's disproportionality index.

*Table 5.9 Distribution of seats with 12 constituencies and various first quotients Based on the population from Q2 2019.*

First quotient:	1.4	1.2	1
The Labour Party	49	49	49
The Conservative Party	45	45	45
The Progress Party	28	27	27
The Centre Party	18	18	18
The Socialist Left Party	11	11	11
The Liberal Party	8	8	8



The Christian Democrat Party	8	7	7
The Green Party	1	3	3
The Red Party	1	1	1
LSq <sup>1</sup>	3.3	2.7	2.7

<sup>1</sup> Gallagher's disproportionality index.

*Table 5.10 Distribution of seats with 11 constituents and various first quotients. Based on the population from Q2 2019.*

First quotient:	1.4	1.2	1
The Labour Party	49	49	49
The Conservative Party	45	44	44
The Progress Party	28	27	27
The Centre Party	18	18	18
The Socialist Left Party	11	11	11
The Liberal Party	8	8	8
The Christian Democrat Party	7	7	7
The Green Party	2	3	3
The Red Party	1	2	2
LSq <sup>1</sup>	3.0	2.4	2.4

<sup>1</sup> Gallagher's disproportionality index.

The main pattern of the tables is clear: The Green Party receives 1 or 2 extra seats respectively with the first quotient of 1.2 or 1. With 11 constituencies, the Red Party also receives 1 seat. Compared with the first quotient of 1.4, it is only with the first quotient of 1 that the Green Party receives 1 seat (from the Christian Democrat Party) with 19 constituencies. In a model with 12 or 13 constituencies, the Green Party receives 2 seats both with 1 or 1.2 as the first quotient relative to 1.4. These 2 seats come from the Progress Party and either the Labour Party or the Centre Party. In a model with 11 constituencies, the Green Party and the Red Party both win 1 seat each with a lower first quotient. These 2 seats come from the Progress Party and the Conservative Party.

These distributions also hide a major change in which parties win the direct seats and the seats at large. While the Labour Party receives a few seats at large and the Conservatives Party takes 3 with the first quotient of 1.4, both parties receive between 5 and 8 seats at large with the first quotient of 1. In other words, because the smaller parties win direct seats, the larger parties become underrepresented and dependent on receiving seats at large.

In terms of proportionality, this generally increases with a lower quotient. The effect of reducing the first quotient varies slightly with the number of constituencies. Reducing the first quotient has the greatest consequences when Viken is one joint constituency in the model with eleven constituencies. Then the Red Party also receives an extra seat. A lower quotient also gives more parties the possibility to achieve direct seats from constituencies where they have strong support, rather than seats at large.

### 5.5.5 The electoral threshold on constituency seats

Unlike the seats at large, there is not electoral threshold on constituency seats in the Norwegian electoral system. However, the number of seats to be elected from each region involves an “effective electoral threshold). As the size of the constituencies varies, the real threshold for being elected will vary from region to region.

It is possible to introduce an electoral threshold for constituency seats. The parties will then have a larger share of the votes in the constituency than the electoral threshold. Unlike today’s electoral threshold, such a regional threshold will be based on the number of votes in the region.<sup>150</sup> Such a regional electoral threshold only matters when it is higher than the effective electoral threshold in the region. Thus, the significance a regional electoral threshold has will vary between constituencies as it is higher or lower than the effective electoral threshold set by the number of seats.

The purpose of having an electoral threshold is to prevent fragmentation and thus too many parties in parliament. Although the threshold is high, it does not mean that new parties cannot establish themselves. For example, in Sweden, some new small parties have emerged and achieved representation in the Swedish Parliament, despite the high formal electoral threshold.<sup>151</sup> At the same time, it may be possible that several parties had succeeded or tried if the threshold for representation had been lower.

An argument often made against lowering the threshold to win seats is the possibility of fragmentation, i.e., that many very small parties are elected. However, this can be prevented, not only through a distribution that favours large parties but also by having an electoral threshold on constituency seats. In this way, parties over a certain size can be treated with a high degree of proportionality but without parties that only have marginal support in the population gaining representation.

An electoral threshold in the constituencies may be a way of preventing the threshold for representation in Viken being very low. With the 2017 poll, the Christian Democrat Party would have received one direct seat from Viken with 2.7 of the votes in the region. If the quotient is lowered

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<sup>150</sup>In Sweden, there is a different type of regional electoral threshold. There, a party must win at least 4 per cent of the national votes to be elected to the Swedish Parliament with either constituency seats or seats at large. However, parties that are below this threshold nationally can get representatives from the constituencies where they have won at least 12 per cent of the votes in the region.

<sup>151</sup>Dag Arne Christensen, “Hovedtyper av valgordninger. Proporsjonalitet eller politisk styring?” (Note 26-2002, Stein Rokkan Centre for Multidisciplinary Social Studies, University Research in Bergen, 2002).

from 1.2 to 1, the Red Party will receive 1 seat in the region with 1.7 per cent of the vote. Outside Viken, the effective electoral threshold is just under 4 per cent with 1.4 as the first quotient.

### **5.5.6 The Commission's evaluation**

The Commission will not increase the number of representatives in the Storting and will retain the Sainte-Lagüe's method of distributing constituency seats regardless of the constituency structure.

#### **5.5.6.1 First quotient**

*The majority of the Commission (Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo) supports the continuation of the first quotient of 1.4.*

*The minority of the Commission (Holmås, Høgestøl, Nygreen and Strømmen) wants to lower the first quotient to 1.2 to make it easier for small parties to be represented and to increase the proportionality for the smallest parties.*

#### **5.5.6.2 Regional electoral threshold**

The Commission is also divided on the question of whether there should be an electoral threshold on constituency seats.

*The majority of the Commission (Christensen, Giertsen, Hagen, Holmås, Høgestøl, Nygreen, Røhnebæk, Strømmen, Aarnes and Aatlo) finds that a regional electoral threshold should not be introduced if the division into 19 constituencies is continued. Members Christensen, Giertsen, Hagen, Røhnebæk, Aarnes and Aatlo point out that the effective electoral threshold will then be so high that a low regional electoral threshold will not be of significance. Members Holmås, Høgestøl, Nygreen and Strømmen are opposed to a regional electoral threshold, regardless of how large the constituencies are.*

Viken county will receive significantly more seats than today's largest constituency if the county becomes one constituency. Therefore, if Viken county becomes one constituency, the majority of the Commission (Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo) finds that it is necessary to introduce an electoral threshold on constituency seats. These members find the effective electoral threshold in a joint Viken is too low and that an electoral threshold on constituency seats is necessary to prevent small parties from being represented. While *the majority of these members (Christensen, Giertsen, Hagen, Hoff, Holmøyvik, Stokstad, Tørresdal and Aardal)* supports an electoral threshold of three per cent, the *minority of the members (Anundsen, Grimsrud, Røhnebæk, Storberget, Aarnes and Aatlo)* supports a threshold of four per cent in the constituency.

*The minority of the Commission (Anundsen, Grimsrud, Hoff, Holmøyvik, Stokstad, Storberget, Tørresdal and Aardal) finds that it is also appropriate to have an electoral threshold on constituency seats with the current regional structure. These members see that today this will have little significance but find that it is good insurance to have for the future. Population growth is greatest in the major cities and it cannot be disregarded that the largest constituencies will receive more seats in the years ahead and that it may then be necessary to have an electoral threshold on the constituency seats. While members Hoff, Holmøyvik, Stokstad, Tørresdal and Aardal want an electoral threshold*

of three per cent in the constituency, members *Anundsen, Grimsrud and Storberget* support an electoral threshold of four per cent.

*Another minority of the Commission (Holmås, Høgestøl, Nygreen and Strømmen)* do not want a system with an electoral threshold on constituency seats even if Viken is one constituency. These members find it is positive for democracy that several parties have the opportunity to be represented.

## 5.6 Seats at large

The purpose of the seats at large is to create more agreement between the distribution of votes and the allocation of seats than what results from the constituency seats. The effect the seats at large has on the proportionality depends on how many seats at large there are and whether there is an electoral threshold attached to them.

### 5.6.1 Applicable law

Article 57 of the Constitution states that 19 representatives shall be elected as seats at large and each constituency shall have 1 seat at large. Article 59 of the Constitution lays down further provisions on how the seats at large are to be distributed among the parties “in the hope of achieving the greatest possible proportionality between the parties”. Article 59, subsection 5 of the Constitution states that only parties that receive at least four per cent of the total votes cast for the entire realm are included in the competition for seats at large. It is the number of approved votes, i.e., approved ballot papers, which shall be used when determining whether a party has reached the four per cent threshold.<sup>152</sup> It is only parties registered in the Party Register under section 2 of the Party Act that can receive seats at large. This is evident from the word “party” in the Constitution and has been clarified in the preparatory works.<sup>153</sup>

Section 11-6 of the Election Act states that the National Election Committee allocates the seats at large. This is done in accordance with the provisions of Article 59 of the Constitution. A final election result is produced with the whole country as one constituency and it is differences between this result and the result for each constituency that determines which parties receive seats at large and how many they receive. If one party has received more seats than it should have had under the national distribution, it retains these seats and a new distribution is carried out where this party’s votes and seats are disregarded. If two or more parties have the same quotient, the seat

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<sup>152</sup>This follows from Innst. O. no. 35 (1988–1989) (Recommendation) and has also been expressly stated by the Preparatory Authorisation Committee on several occasions. This is based on the logic of the election result where only approved votes are taken further. Blank and rejected votes are not included in the final election result, nor when determining the electoral threshold.

<sup>153</sup>The Committee on Foreign and Constitutional Affairs Committee stated in Innst. O. no. 35 (1988–1989) (Recommendation) that in the view of the Committee, only registered parties can participate in the competition for seats at large, individually or by joint list. The Committee further clarified that a joint list (among registered parties) must be regarded as a separate party during allocation of the seats at large, separate from any pure list put forward by the participating parties. See Oddvar Overå, Steinar Dalbakk, and Jan-Ivar Pavestad, “*Valglovgivningen: valg til storting, fylkesting, kommunestyre og sameting*” (Oslo: Kommuneforlaget, 1997).

goes to the party with the largest number of votes. If two or more parties have the same number of votes, lots are drawn.

Section 11-6, subsection 3 of the Election Act describes in more detail how the parties' seats at large are distributed among the constituencies and thus which candidates are to be elected. One objective of the distribution is that the parties each receive their seats at large in counties where they have relatively strong support. To achieve a measure that can be compared across constituencies with a significant difference in the number of votes and seats, a weighted residual quotient. This residual quotient is the party's number of votes divided by the quotient, which, in turn, is divided by the number of voters there were per seat in the constituency. The party with the largest residual quotient receives the first seat at large in the constituency it has the largest residual quotient. The constituency is then disregarded in further calculations and the party with the second-largest residual quotient receives the next seat at large, etc. Since each constituency only has one seat at large, the seat may be taken by another party and the seat at large is given in a constituency further down the list. Therefore, there will be few constituencies for the last seats at large to be allocated and one party may receive seats at large in a constituency where it has little or no support.

### **5.6.2 Historical development**

The seats at large were discussed repeatedly in the first half of the 1900s. While the Parliamentary Electoral System Commission of 1927 in Recommendation II of 1929 stated that seats at large were not appropriate for practical reasons, the Parliamentary Electoral System Commission of 1935 propose an equalisation system with a national list. The Parliamentary Electoral System Commission of 1948 proposed in 1949 to introduce a system of equalisation in individual constituencies reminiscent of the current system. However, the seats at large were not introduced until 1988. The introduction of 8 seats at large led to an increase in the total number of members of the Storting from 157 to 165. The seats at large then constituted around 5 per cent of the total number of seats. The parties received their seats at large where they had most "unused" votes left and therefore, the seats often went to the largest constituencies. The previous Election Act Commission proposed introducing 19 seats at large distributed as a seat per constituency and this was introduced and applicable from the 2005 election. The total number of seats was then increased to 169 and the 19 seats at large make up about 11 per cent of the total number of seats. The seats at large are distributed among the parties that have not received proportional representation nationwide. After it has been clarified which parties will have seats at large, the seats are distributed among the constituencies according to which parties are relatively close to winning a seat in the constituency, limited to one seat for each constituency.

In Ot.prp. no. 45 (2001–2002) (white paper) the Ministry stated that it is not given that the number of seats at large shall correspond at all times to the number of constituencies. If in future there is a significant reduction in the number of counties – and thus the number of constituencies – a new debate on the electoral system may be necessary. The need for seats at large and in case, the number required to ensure the desired proportionality in the electoral system, must then be reviewed.

### **5.6.3 Nordic law**

Both Sweden and Denmark have a system with seats at large. In Sweden, there are 39 seats at large out of a total of 349 representatives in the Swedish parliament (about 11 per cent). There is

an electoral threshold to be able to obtain seats at large of 4 per cent at a national level. The allocation of seats at large follows the same logic as in Norway in that seats are distributed among the parties as if the country was one constituency. Unlike the Norwegian system, the parties that have also received too many seats lose the extra seats. It is the seats with the lowest quotient (number of votes divided by the quotient) that lose the seat. If a party is entitled to a seat at large, this will be allocated to the constituency where the party has the largest quotient based on a pure version of the Sainte-Laguë's method, i.e., with 1 as the first quotient.

In Denmark, there are a total of 40 seats at large of 175 seats (about 23 per cent). To win a seat at large, a party must either have 1) achieved at least one constituency seat, 2) in two of three regions have achieved the same number of votes as the average number of votes behind a constituency seat, 3) achieved at least 2 per cent of the votes in the whole country.

Iceland introduced seats at large in 2003. Of 63 representatives, 9 are elected as seats at large (about 14 per cent) with an electoral threshold of 5 per cent.

#### **5.6.4 Thresholds for receiving votes at large**

The seats at large system was introduced to ensure a more proportional distribution of the seats among the parties. The degree of proportionality created by the system depends on several factors. First, it is a question of how much disproportionality is created by the distribution of direct seats. If these are proportionally distributed already, there is no need for the seats at large. Secondly, it is a question of how many parties are allowed to compete for seats at large and – perhaps more importantly – how many parties are not allowed to take part in the competition for seats at large. Today, this is determined by the electoral threshold, and the Norwegian electoral system is very proportional for the parties over this threshold. Finally, it is a question of how many seats at large there are to allocate. The more seats at large, the more proportional the system will be for the parties involved in the competition for the seats at large. The importance of this depends on how proportionally divided the directly elected seats are. The following discusses the electoral threshold and the number of seats at large.

##### **5.6.4.1 Electoral threshold**

The criteria for obtaining seats at large are of great importance to the proportionality of the electoral system. As previously shown, the disproportionality of the Norwegian electoral system is primarily due to the parties that do not come above the electoral threshold and are underrepresented in the Storting.

In recent elections, a great deal of attention has been paid to the electoral threshold of four per cent and it has been argued that the government issue is decided on the basis of which parties have come above or below the electoral threshold.<sup>154</sup> This creates unpredictability and a breeding ground for tactical voting to help a party over the electoral threshold. To some extent, this may give the impression that the smallest parties have a greater influence than they have, because the government cooperation depends on whether they come above the electoral threshold or not. For voters who want to vote for parties close to the electoral threshold, it may be uncertain whether

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<sup>154</sup>Bjørn Erik Rasch, "Lotteridemokrati? – Om det manglende samsvaret mellom velgerflertall og stortingsflertall", *Norsk statsvitenskapelig tidsskrift* 26, no. 2 (2010): 168–181.

their vote will be wasted or not. This is unfortunate. The Commission sees that the consequences of coming above or below the electoral threshold are major.

The electoral threshold is of great importance for the degree of proportionality in the electoral system. At the 2017 election, the Green Party and the Red Party received fewer seats than the number of votes would suggest, and this is the main reason for the disproportionality. The Green Party received 94,000 votes and 1 seat. By comparison, the Christian Democrat Party received 8 seats with almost 123,000 votes, i.e. about 30,000 more votes. Changing the electoral threshold or introducing other rules for seats at large is thus a possible solution to improve the proportionality of the electoral system.

The Commission has considered changing the electoral threshold for seats at large. This is illustrated in tables 5.11–5.14. In these tables, the 2017 election result has been used to calculate the consequences of different regional structures and electoral thresholds.<sup>155</sup> An adjustment of the electoral threshold so that more parties come above the electoral threshold will have a major impact on the degree of proportionality of the electoral system.

*Table 5.11 The election result with 19 constituencies and a varying number of seats at large per constituency and electoral threshold.*

The number of seats at large per region <i>(poll from 2017 and the allocation of seats based on the population from Q2 2019)</i>	One seat at large per region		Two seats at large per region	
	4%	3%	4%	3%
Electoral threshold	4%	3%	4%	3%
The Labour Party	50	50	49	48
The Conservative Party	45	43	45	44
The Progress Party	27	26	27	26
The Centre Party	18	18	19	18
The Socialist Left Party	11	10	11	11
The Liberal Party	8	8	8	8
The Christian Democrat Party	7	7	8	7
The Green Party	2	6	1	6
The Red Party	1	1	1	1
No. of direct seats	150	150	131	131
LSq <sup>1</sup>	3.1	2.5	3.2	2.2

<sup>1</sup> Gallagher's disproportionality index.

<sup>155</sup>The calculations take into account the adopted changes to the municipal and country structures. A surface area factor of 1.8 has been used.

*Table 5.12 The election result with 13 constituencies (Viken divided into two constituencies and Troms and Finnmark are each their own constituency) and a varying number of seats at large per constituency and electoral threshold.*

The number of seats at large per region <i>(poll from 2017 and the allocation of seats based on the population from Q2 2019)</i>	One seat at larger per region		Two seats at large per region	
Electoral threshold	4%	3%	4%	3%
The Labour Party	50	50	49	48
The Conservative Party	45	43	45	44
The Progress Party	28	28	27	26
The Centre Party	18	18	19	18
The Socialist Left Party	11	10	11	11
The Liberal Party	8	7	8	8
The Christian Democrat Party	7	7	8	7
The Green Party	1	5	1	6
The Red Party	1	1	1	1
No. of direct seats	156	156	143	143
LSq <sup>1</sup>	3.4	2.6	3.2	2.2

<sup>1</sup> Gallagher's disproportionality index.



*Table 5.13 The election result with 12 constituencies (Viken has been divided into two constituencies) and a varying number of seats at large per constituency and electoral threshold.*

The number of seats at large per region (poll from 2017 and allocation of seats based on the population from Q2 2019)	One seat at larger per region		Two seats at large per region	
Electoral threshold	4%	3%	4%	3%
The Labour Party	49	49	49	48
The Conservative Party	45	44	45	44
The Progress Party	28	28	27	26
The Centre Party	18	18	19	18
The Socialist Left Party	11	10	11	11
The Liberal Party	8	7	8	8
The Christian Democrat Party	8	7	8	7
The Green Party	1	5	1	6
The Red Party	1	1	1	1
No. of direct seats	157	157	145	145
LSq <sup>1</sup>	3.3	2.5	3.2	2.2

<sup>1</sup> Gallagher's disproportionality index.

*Table 5.14 The election result with 11 constituencies and a varying number of seats at large per constituency and electoral threshold.*

The number of seats at large per region (poll from 2017 and allocation of seats based on the population from Q2 2019)	One seat at larger per region		Two seats at large per region	
	4%	3%	4%	3%
Electoral threshold	4%	3%	4%	3%
The Labour Party	49	49	49	48
The Conservative Party	45	43	45	44
The Progress Party	28	28	27	26
The Centre Party	18	18	18	18
The Socialist Left Party	11	10	11	11
The Liberal Party	8	7	8	8
The Christian Democrat Party	7	7	8	7
The Green Party	2	6	2	6
The Red Party	1	1	1	1
No. of direct seats	158	158	147	147
LSq <sup>1</sup>	3.0	2.4	3.0	2.2

<sup>1</sup> Gallagher's disproportionality index.

The first column in each table shows a party distribution based on the election result in 2017 with an updated allocation of seats, the electoral threshold here is 4 per cent and there is one seat at large per constituency. Table 5.11 shows that 19 constituencies would give the Green Party (MDG) and the Labour Party one seat at the expense of the Centre Party and the Christian Democrat Party (KrF) with an updated allocation of seats, compared with the 2017 election result. This improves the proportionality somewhat, from 3.2 to 3.1. The corresponding figures for 13 and 12 constituencies are shown in tables 5.12 and 5.13. The proportionality is slightly worse here as long as the electoral threshold is 4 per cent. With 11 constituencies, the Green Party again wins 1 extra seat but not the Labour Party and there will be slightly better proportionality, cf. table 5.14.

The tables also show that when the electoral threshold is lowered there are major improvements in the proportionality. The Green Party receives between five and six seats regardless of the

constituency structure, which is more the current one seat. In other words, with a lower threshold, MDG and KrF achieve a number of seats that shows more clearly that the two parties had similar support. Since the Red Party does not come above an electoral threshold of three per cent, the party is not allocated seats in any of the tables. With a different number of constituencies, there is some variation in who loses out at a lower threshold. This depends in part on how many seats the parties are allocated with an electoral threshold of four per cent. The parties that have seats at large, and which are overrepresented, lose to MDG.

Alternatively, questions may be asked about whether the electoral threshold should be *raised*. If the electoral threshold is raised to 5 per cent, MDG not unexpectedly loses its gain. Based on the 2017 election result, the Liberal Party and KrF will also come below the electoral threshold and lose 3 seats in each in a system with 12 (13) constituencies. These seats will go to the Labour Party and the Conservative Party. The reason for raising the threshold may be to limit the fragmentation of the party system and to limit the influence of the “small parties”.

One challenge in raising the electoral threshold is that it can lead to a significant number of “wasted” votes. As tables 5.11–5.14 show, the lack of representation for parties under the electoral threshold in particular drives the high degree of disproportionality. The number of parties whose votes count for very little will increase and this has an impact on how many votes that have no significance.

#### **5.6.4.2 Other ways to qualify for seats at large**

An alternative to lowering the electoral threshold can be to introduce another way of qualifying for seats at large. One of the considerations behind an electoral limit on the seats at large is to prevent excessive fragmentation and that more parties gain a place in the Storting. In light of the argument, the Commission has considered whether parties that win at least one direct seat – and thus and thus are already represented in the Storting – should be able to be allocated seats at large despite receiving less than four per cent of the votes. A similar system was proposed by the Parliamentary Electoral System Commission of 1948.<sup>156</sup> The Commission proposed that only parties that had received direct seats in three constituencies should be allowed to be allocated seats at large.<sup>157</sup> Since the party with such a system is already represented in the Storting, the consequence will mainly be that the party will be represented in line with the voters’ interests, rather than more parties entering the Storting. In other words, it is of importance to the proportionality without increasing the number of interests represented. In Denmark, this is a possibility but the rule has little practical importance as the electoral threshold for being allocated seats at large is two per cent. Few parties receive less support than this and at the same time win a constituency seat and are entitled to seats at large.

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<sup>156</sup>The Parliamentary Electoral System Commission of 1948 (Recommendation I 1949), page 37.

<sup>157</sup>The Parliamentary Electoral System Commission of 1948 (Recommendation I 1949), page 35, also proposed that there should be a national electoral threshold on constituency seats of three per cent, but that constituency seats could also be allocated if the party receive the share of the votes that corresponded to the total poll in a region divided by the number of seats in the region (the Commission proposed to use the largest fraction method where this figure is of relevant in the calculation).

Such a solution could make it easier for parties that have geographically concentrated support to be allocated more seats in the Storting than for equally large parties that have even support across the country. At the same time, it takes a lot for such regional parties to have such strong support that they are entitled to seats at large in addition to the direct seats. Whether it is easier to be allocated seats at large or direct seats varies between the constituencies based on how over or underrepresented the constituency is. In constituencies that have more seats than the population alone suggests, it will be easier to be allocated a direct seat than a seat at large. On the other hand, in regions that are allocated fewer seats, it will be easier to be allocated a seat at large.

If the constituency seats have given the possibility of being allocated seats at large at the last election, the result would be equivalent to an electoral threshold of two per cent. In other words, it is MDG and the Red Party that benefits from such a change at the expense of the larger parties and the system would be more proportional than the current system.

#### **5.6.4.3 The number of seats at large**

The number of seats at large has an impact on the disproportionality in the distribution of constituency seats that can be weighed up through seats at large. Since the Commission agrees that the total number of seats should not be changed, an increase in the number of seats at large will mean that there are fewer constituency seats. If the number of seats at large does not correspond to the number of regions, the seats at large cannot be allocated among the counties in the same way as today. To illustrate the effect of the different number of seats at large, the calculation in tables 5.11–5.14 has still used one or two seats at large per region as a basis. The tables show hypothetical results with different electoral thresholds and number of seats at large and how this affects the proportionality based on the 2017 election result.<sup>158</sup>

If we begin with the columns for a four per cent electoral threshold, we see that a reduction in the number of constituency seats has consequences. As stated above, MDG will be allocated 1 extra constituency seat with an allocation of seats based on the current population and with 11 or 19 constituencies. If the number of seats at large is increased to 2 constituencies, MDG will lose this seat in a model with 19 constituencies. With 19 constituencies, the system will be more disproportional as MDG would not come above the electoral threshold at the 2017 election. When more seats are allocated as seats at large there will be fewer direct seats for MDG to fight for. In addition, 2 seats at large per constituency also mean that the Labour party loses some of its overrepresentation with 19 constituencies.

If the electoral threshold is changed to 3 per cent and the number of seats at large is increased to 2 per constituency, there will be even greater changes. The Progress Party and the Conservative Party lose 1 seat with 11, 12 and 13 constituencies and the Labour Party loses a further seat with 19 and 13 constituencies.

In other words, increasing the number of seats at large seems to have major consequences without changing the electoral threshold at the same time. As long as the electoral threshold is 4 per cent, there are very small differences in the distribution of seats in a system with 19 constituencies

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<sup>158</sup>As an updated allocation of seats has been used (the population from Q2 2019 and with adopted structural changes), it will nevertheless differ from the actual election result in 2017.

and certain redistribution among the largest parties in a system with fewer constituencies. The disproportionality is reduced somewhat.

The same is true if the electoral threshold is changed to three per cent. Reducing the electoral threshold significantly improves the proportionality. Increasing the number of seats at large also leads to some improvement but this is less. However, if the electoral threshold is lowered to two per cent, the number of seats at large has more to say because it will then be another party competing for seats at large.

### **5.6.5 Allocation of seats at large**

It is not possible in advance of the election to predict in which constituency a party can have a representative elected through the seat at large system. This creates unpredictability for the parties and the candidates. The smaller parties, in particular, are vulnerable to small margins determining whether key candidates are elected to the Storting or not. Which parties are allocated seats at large in which regions also depends entirely on the other parties' support.

The principle of the current allocation of seats at large is simple: The parties are allocated their seats at large in constituencies where they were relatively speaking closest to winning a constituency seat. So that this does not affect the geographical composition there is one seat at large per constituency. Thus, the last seat at large could be placed in regions where the parties have limited support. This could happen because the seats in the constituencies in which the parties have greater support have already been allocated to other parties.<sup>159</sup> The Commission finds there is reason to discuss whether it is possible to allocate the seats at large in a more predictable way for the parties and voters.

One way to create a more predictable system is that the seats at large are elected from a "national list". This has been discussed several times before and was proposed by the Parliamentary Electoral System Commission of 1927. The Commission finds that the members of a "national list" could represent national interests and would be very competent candidates.<sup>160</sup> The Storting did not allow this.

The current seats at large system emphasises the geographical allocation of the seats. The fact that the seats at large do not upset the balance between the constituencies is thus a central criterion. However, it is also possible to take other considerations into account if a national list is introduced. It may be desirable that the parties have more influence, that the voters have more influence or that the system is easier to understand. If the parties or the voters are to have more power over the allocation of the seats at large, it will be difficult to maintain the regional considerations in the same way as today. It is the limitation in the number of seats at large from each constituency that can have unfortunate consequences for the last parties who are allocated seats at large.

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<sup>159</sup>In 2005, the Liberal Party was allocated one seat at large from Finnmark even though the party received only 826 votes (2.2 per cent support) in the constituency.

<sup>160</sup>See the discussion Innst. no. 9 (1938) (Recommendation) page 184.

There are several ways in which a national list can work. The parties will nevertheless initially have to put forward a list of candidates for seats at large. This should be made up of people who are already candidates in the various constituencies. When the constituency seats have been allocated and it is clear how many seats at large a party can be allocated, the selection of candidates on the national list can begin. There are two possible ways here of implementing the allocation depending on whether only the parties or also the voters shall influence who is elected. The candidates can either be first selected from the regions or the national list.

The first system will resemble the current system. The returning of members takes place in all the constituencies and it is then calculated how many seats at large each party shall have. The candidates who have already been selected from the regional lists are removed from the national lists. The seats at large are then selected from the national list the parties have put forward in advance. It is difficult to see how the system can be combined with a preferential voting system. Since the candidates who have already been selected are removed from the national list, it will be difficult for the voter to know which candidates have the opportunity to be elected. In order to not to go too far and introduce too many new elements, it may be appropriate that the electoral authorities publish the national lists before the election but that they are not printed on the ballot papers and that preferential voting is not allowed. To ensure that there are not too few candidates on the national list, there should be no limit on the number of candidates each party can put forward.

In the other system, the national lists can take precedence over the regional lists and thus preferential voting on the national lists can also be allowed. In the same way as above, the allocation of seats will be carried out in the constituencies and the number of seats at large each party is entitled to will be calculated. The national representatives are elected before the returning of members takes place in each constituency. When a candidate has received a seat at large, the candidate is removed from the regional lists. After the seats at large have been chosen, the returning of members takes place in each region. With this system, it is possible to have a preferential voting system as proposed in Chapter 7. Then the national list can be printed on the ballot paper together with the local lists and the voters can cast personal votes on both the lists. Then the candidates on the national list who have the most personal votes will be elected. Since the national list will be printed on the ballot papers and have the same system as for preferential voting, it will be easier for the voter to know who is elected on the national list and to influence this election. Especially for voters in constituencies where a party has no real chance of being elected, this will give the voters an influence over which candidate should represent them as seats at large. If the name of all the candidates is to be printed on the ballot papers, the number of candidates the party can put forward must be limited. This is important for the voters to have the opportunity to understand who can be elected on the national list and for the national list to be printed on the ballot sheets. Any preferential voting on the national list should follow the rules on preferential voting at the other elections.

The question of whether seats at large shall be selected from a national list or each of the constituencies is about what is most important of geographical representation, the parties and the voters' influence and the simplicity of the electoral system. The current distribution of the seats at large is unpredictable and difficult to understand but ensures geographical representation. A system where the representatives are first elected from the regions and then from a national list will give the parties power over who is elected. At the same time, the system may be less transparent to the voters because the national list will not be printed on the ballot paper and because there may

be candidates further down the national list that are allocated seats at large if candidates further up the list have already been elected directly. A system with a national list that takes precedence over the regional lists will enable preferential voting and be transparent to the voters. Because seats on the national list will come in addition to directly elected seats, there may be more seats from the same constituency. This may impair the geographical representation. The preferential voting system will also give the parties less power over who is elected than in a system without preferential voting.

#### **5.6.6 Requirements for putting forward a list**

In the current system, parties may be entitled to seats at large in a constituency where they have not put forward a list. Neither the Constitution nor the Election Act regulates such a possibility. The Commission has discussed how such a situation can best be resolved.

One possibility is that there is a requirement that the parties must put forward a list in all the constituencies to participate in the contest for the seats at large. Even without such a requirement, all parties that have participated in the competition for seats at large, have done so thus far but it is not given that this will also be the case in the future. By including this as a requirement, the problem of a party being able to be allocated a seat at large in a constituency in which they have not put forward a list will be solved. Seats at large should be used to even out the result at a national level and thus it would be reasonable to require that the parties who can be allocated seats at large are national parties. This will also act as an incentive for national parties and against entirely regional parties.

Alternatively, a rule may be introduced that the parties lose their seat at large if they do not put forward a list in the constituency where they are allocated the seat at large. This will give the parties a strong incentive to put forward lists in all constituencies. It is possible to put forward identical lists in several constituencies and thus there should be a reasonable opportunity for all relevant parties to put forward a list throughout the country.

#### **5.6.7 The Commission's evaluation**

The Commission has considered whether seats at large are a desired part of the electoral system or whether the desired proportionality can be achieved in other ways. The system is a complicating element, which in itself can be said to be unfortunate. The Commission points out that the allocation of seats at large between the constituencies can be difficult to understand and through the media, votes can get the impression that coincidences and very small margins decide.

However, the Commission finds that the seats at large have contributed positively to the electoral system by ensuring that the parties are allocated the number of seats that they would have had from the national poll. Thus, this weighs up for the disproportionality that is a result of the division into constituencies. Therefore, the Commission agrees that there should still be a system of seats at large in the new electoral system but have discussed whether it is possible to improve the organisation of the system.

##### **5.6.7.1 The number of seats at large**

The Commission has considered how many seats at large there should be and finds this is related to how the seats are distributed and with how many constituencies there are. In Norway, the share of the seats at large today is about 11 per cent.

If the number of constituencies is reduced and there is still 1 seat at large in each constituency, there will be fewer seats at large. In a structure with 11 constituencies, the seats at large will amount to 6.5 per cent. This may reduce the effect of the seats at large. At the same time, fewer and larger constituencies can contribute to increased proportionality and thus reduce the importance of the seats at large. Therefore, the Commission finds that the number of seats at large must be seen in context with other elements of the system such as the number of constituencies and their size.

With today's 19 constituencies, the Commission has concluded that there should still be 19 seats at large. This allows each constituency to receive 1 seat at large each and thus also ensures the geographical distribution of the seats. The Commission emphasises that the system works well and that 19 seats at large have proven to ensure the proportionality of those parties that come above the electoral threshold in a good way. By allocating each constituency a seat at large, the total allocation of seats among the constituencies is predictable. The Commission also finds that in a structure with 11–13 constituencies there is a value that the total allocation of seats is predictable and each constituency should have the same number of seats at large.

The Commission has discussed whether there should be one or two seats at large per constituency. This has limited significance as long as the electoral threshold is kept at four per cent. If the electoral threshold is lowered and several parties are entitled to seats at large, the number of seats at large will have greater significance. One seat at large per constituency will then not be sufficient to create a proportional distribution among the parties above the electoral threshold.

However, the Commission has concluded that it does not want a strong redistribution of the seats than the one that the change in the electoral threshold creates alone. As one seat at large per constituency has a sufficiently good effect for creating proportional results, the Commission does not want to increase the number of seats at large. By increasing the number of seats at large, the direct seats will decrease and the Commission finds this will not be a good thing. Therefore, the Commission proposes that there shall be one seat at large per constituency.

#### **5.6.7.2 Thresholds for receiving votes at large**

The Commission finds that the electoral threshold for seats at large can be the same regardless of the number of constituencies. The Commission also agrees that only political parties pursuant to section 2 of the Party Act shall be able to be allocated seats at large. When it comes to what is required to be able to compete for the number of seats at large, the Commission is divided.

*The majority of the Commission (Christensen, Hagen, Hoff, Holmøyvik, Holmås, Høgestøl, Nygreen, Stokstad, Strømmen, Tørresdal and Aardal) finds that the electoral threshold should be reduced to three per cent. This will make the difference between parties above and below the electoral threshold somewhat less and reduce the most extreme outcomes of the electoral threshold. At two-thirds of the elections since World War II, there have been parties in Norway with a turnout of between three and five per cent. Therefore, the electoral threshold is of major importance and small margins around the electoral threshold could have a major impact. These members find that the electoral system will be more predictable if the electoral threshold is somewhat lower than today. Such a system will also be more proportional, lead to fewer wasted votes and provide better correspondence between votes and seats.*



*The minority of the Commission (Giertsen, Grimsrud, Røhnebæk, Aarnes and Aatlo) finds the electoral threshold should be continued at the current four per cent. These members find this provides a good balance between preventing fragmentation and ensuring good proportionality in the electoral system. Two Commission members (Anundsen and Storberget) find primarily that the electoral threshold should be raised to five per cent but support a four per cent threshold. These members find that a higher electoral threshold will better ensure stable governments.*

*Six Commission members (Holmås, Høgestøl, Nygreen, Røhnebæk, Strømmen and Aardal) also want to allow parties that win a direct seat to participate in the competition for seats at large.*

### **5.6.7.3 Allocation of seats at large**

The Commission has considered whether the seats at large should be allocated from a national list and not individual constituencies as today. *The majority of the Commission (Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Nygreen, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo) finds the current system works satisfactorily.*

*The minority of the Commission (Holmås, Høgestøl and Strømmen) wants to introduce a national list. The parties centrally compiled a national list consisting of candidates who are already on the regional lists. When all the constituency seats have been allocated, the elected candidates will be removed from the national list. When a party is allocated a seat at large, it then goes to the top candidate on the national list who has not already been elected to a constituency seat.*

*Commission members Holmås and Nygreen find that the current system with seats at large should contribute to balancing the gender composition of the party groups. Norway has a Gender Equality Act that allows for preference for underrepresented gender and has a tradition of using quotas as a tool, including a requirement of at least 40 per cent representation of each gender in public committees and public limited companies. In the current period, the percentage of women in the Storting is 40 per cent. Apart from the two one-man groups in the Storting, there is more than 40 per cent of each gender in most party groups.*

An adjustment of the allocation of seats at large so that a check is made of the gender of the candidate on the list that is allocated a seat at large and that it is allocated to the next candidate of the underrepresented gender if the party group in the Storting has less than 40 per cent of one gender, will help to balance the skewed gender composition of the Storting. That will make it less likely for women to be represented by less than 40 per cent. For parliamentary groups with fewer than ten representatives, the method from Regulations on representation of both sexes on government councils and boards, delegations, etc., must be used.<sup>161</sup> If a list checked for gender, does not have candidates with the underrepresented gender, the original candidate will be selected.

The seats at large are all candidates who do not have sufficient votes to be elected. Party balancing is the main purpose of the system of seats at large. The purpose is not to ensure all candidates who were closest to being elected or having had the most votes, a seat at large. Such considerations are stopped by the fact that the seats at large are allocated with one from each

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<sup>161</sup>Regulations on representation of both sexes on government committees, boards, councils, delegations, etc. – rules on enforcement and reporting.

constituency. Therefore, the proposal to add gender as a control criterion when allocating seats at large will not challenge the main purpose of the current seats at large, but will give an additional dimension with gender balancing that is very strong in society and the legislation but has never been applied to the allocation of seats at a parliamentary election.

#### **5.6.7.4 Requirements for putting forward a list**

When it comes to the requirement to put forward lists throughout the country, the majority of *the Commission* (Anundsen, Christensen, Grimsrud, Hagen, Hoff, Holmøyvik, Høgestøl, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo) finds that this should be a requirement for being allocated seats at large. *The minority of the Commission* (Giertsen, Holmås, Nygreen, Røhnebæk and Strømmen) finds this is unnecessary and that a system where the parties risk losing the seat if they have not put forward a list, gives the parties enough incentive to put forward lists in all constituencies.

## **5.7 Enactment**

### **5.7.1 Applicable law**

Today, the central parts of the electoral system for parliamentary elections are regulated in the Constitution. The central provisions are Article 57 of the Constitution (number of seats, constituencies and seat allocation among constituencies), Article 58 (direct election) and Article 59 (distribution of the seats among the parties). The Constitution states the number of constituencies but it is the Election Act that specifies what constitutes the various constituencies. Pursuant to Articles 57 and 59 of the Constitution, provisions on the electoral system are also laid down in Chapter 11 of the Election Act.

Unlike the provisions that are of importance to the distribution of parties in the Storting, the preferential voting system is not regulated by the Constitution.

### **5.7.2 Background**

The provisions of the Election Act and the Constitution have varied significantly over time.<sup>162</sup> The previous Election Act Commission was requested to look at the relationship between the provisions laid down in the Constitution and what is regulated by the Election Act.

The Commission pointed out that the fact that provisions on constituency structure and allocation of seats among the regions are laid down in the Constitution has been a historically strong tradition in Norwegian electoral law. The Commission agreed to continue this but was sceptical about whether it was appropriate to specify the name of the constituencies and the number of seats per region in the Constitution.

Before 2003, the Constitution's provision on constituency structure (then Article 58) read as follows:

Each county constitutes a constituency.

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<sup>162</sup>Aanund Hylland, "Valgordning, grunnlov og lov", *Nytt Norsk Tidsskrift*, 1989: 73–77.

One hundred and fifty-seven of representatives of the Storting are elected as representatives of constituencies and the remaining 8 representatives are elected to achieve a greater degree of proportionality.

Representatives of constituencies are distributed among the constituencies of the realm as follows: 8 are elected from the county of Østfold, 15 from Oslo, 12 from the county of Akershus, 8 from the county of Hedmark, 7 from the county of Oppland, 7 from the county of Buskerud, 7 from the county of Vestfold, 6 from the county of Telemark, 4 from the county of Aust-Agder, 5 from the county of Vest-Agder, 10 from the county of Rogaland, 15 from the county of Hordaland, 5 from the county of Sogn & Fjordane, 10 from the county of Møre & Romsdal, 10 from the county of Sør-Trøndelag, 6 from the county of Nord-Trøndelag, 12 from the county of Nordland, 6 from the county of Troms, and 4 from the county of Finnmark.

As a result of the Commission's work, the Constitution was amended so that only the number of constituencies there should be and the method to be used to distribute the seats among the constituencies are stated.<sup>163</sup>

The previous committee also proposed repeating key provisions on the electoral system in the Election Act to create a whole. Several provisions were included in the Constitution's rules on the electoral system, which shows that further rules are established by law.

The Election Act includes rules on the electoral system and the constituency structure in Chapter 11. Section 11-1 deals with the constituencies at parliamentary elections. Until 2018, the section read as follows: "The country is divided into 19 constituencies. Each county constitutes a constituency."

As a result of the county structure, section 11-1 of the Election was amended and it now states the name of each of the 19 constituencies. The provision has also been given a second subsection that grants the Ministry the right to issue regulations on which municipalities are included in the various constituencies. For all municipalities where there may be doubts about this due to merging or transitioning to another county, in connection with the parliamentary deliberations on the boundary changes, it has been established to which constituency the municipalities belong.

### 5.7.3 The importance of constitutionalisation

Whether the rules on the electoral system shall be laid down in the Constitution must be considered against the need for flexibility and stability. Sufficient flexibility is needed to be able to create rules that work even when society changes. Historically, this need for change is seen by the fact that about one-third of the 300 constitutional amendments since 1814 concern the rules on the Storting's election and composition.<sup>164</sup> For example, the necessary flexibility can be achieved by not stating the names of the constituencies in the Constitution as these can be changed, or by

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<sup>163</sup>The provision has been removed from Article 58 of the Constitution and the constituency structure and allocation of seats is now included in Article 57.

<sup>164</sup>See Eirik Holmøyvik, "Article 121", of the *Constitution – Historical comment edition 1814–2016*, red. Ola Mestad and Dag Michalsen, 2020, pages 21–38.

specifying a distribution method that takes into account population development rather than specifying a specific number of seats per constituency.

At the same time, a certain degree of stability is necessary. Rules on the number of seats, seat distribution, seats at large and how the seats are allocated are of central importance to how the preferences are converted into a democratically elected assembly. The division in constituencies will also have a bearing on how the other elements of the electoral system work. Overall, the division has implications for the political balance of power in the Storting and there is a need to ensure that there is a broad majority behind amendments. At the same time, it is also important to ensure that the key elements of the electoral system are seen in context. The need to see different elements in context and investigate the overall consequences of the electoral system is part of the reason why this Election Act Commission has been set up.

Political disagreement on how elections are conducted, particularly related to the constituency structure, is not good for the legitimacy of the electoral system. It supports the constituency structure also being given special protection against in the future. Therefore, the Venice Commission recommends anchoring the constituency structure in the Constitution to protect against manipulation.<sup>165</sup>

In addition to preventing a small majority from changing the “rules of the game”, constitutionalisation entails a “waiting time” requirement. Proposals to amend the Constitution must be submitted in good time before they can come into effect. In an election context, this is also an important point. It is not a good idea to change the constituency structure shortly before an election – both for the sake of the voters, the political debate and for the parties that put forward lists. There are also many practical and administrative considerations supporting that the constituency structure must be ready in good time before an election, e.g. considerations for amendments to other regulations, training and adaptations to ICT systems used. The Venice Commission’s “Code of Good Practice in Electoral Matters” advises against changes to the constituency structure less than one year before an election.

It can be argued that a sitting Storting alone should not be able to change the rules on how the next Storting shall be elected. The requirement of an intermediate election before a constitutional amendment can be adopted is intended to address this. However, proposed constitutional amendments are not considered in the Storting when they are put forward. Therefore, little attention is paid to the proposals and the parties’ view on the proposed amendments is usually unknown. As it is not possible to amend or correct a constitutional amendment after it has been put forward, it is not possible to correct any errors. A consequence of this is that constitutional amendments are normally presented with many options and it is unclear which alternatives are most realistic. This means that the democratic effect of the requirement for an intermediate election is reduced.<sup>166</sup>

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<sup>165</sup>The Venice Commission, “Code of Good Practice in Electoral Matters”, Guideline II 2.b.

<sup>166</sup>See Holmøyvik, “§ 121”, Hylland, “Valgordning, grunnlov og lov”, pages 73–77, and Eivind Smith, “Er Høyesterett en konstitusjonsdomstol?”, *Jussens Venner* 52, no. 02 (2017): 98–122, <https://doi.org/10.18261/issn.1504-3126-2017-02-02>.

## 5.7.4 Boundary changes

### 5.7.4.1 *Constituencies defined by county boundaries*

Until the Election Act was amended in 2018, the constituencies were connected to the counties. Changes to the county structure thus automatically had an impact on the constituency structure. The county structure can be changed both by merging or dividing the counties and through changes to the municipal structure. If one or more municipalities are moved from one county to another or if two municipalities in each county are merged, the county boundaries will be changed.

The Local Government Boundaries Act has provisions on who can adopt various boundary changes. The Storting shall adopt the merger and division of counties. The merger and division of municipalities can be adopted by the King as long as the changes are voluntary. Boundary adjustments between counties and municipalities may be adopted by the King. If the boundary adjustment between the counties applies to more than one municipality, the matter shall be presented to the Storting.

The reason why county boundary adjustments concerning more than one municipality shall be presented to the Storting relates to the constituency structure. Until 2014, this was directly expressed in section 6 of the Local Government Boundaries Act, which read:

The King makes decisions on the adjustment of boundaries between municipal areas and counties. Where any boundary adjustment between counties affects a greater number of inhabitants than the number represented by each member returned to the Storting for the county, the matter shall be submitted to the Storting for decision.

The Local Government Boundaries Act was passed in 2001, i.e., before the current Election Act. The allocation of seats among the constituencies was then fixed and the Constitution did not state anything about the criteria on which the allocation of seats was based. When the current Election Act was passed, a dynamic allocation of seats was introduced that would be recalculated according to clear criteria every eight years.

As a result, section 6 of the Local Government Boundaries Act was amended from 1 January 2014. The purpose was to establish a clear and unambiguous rule for when the King could adopt boundary adjustments and it was pointed out that it can be difficult to predict which county boundary adjustments could have a consequence for the allocation of seats. The provision was thus amended to allow the Ministry to decide to move one municipality from one county to another, but if this involves more than one municipality, the Storting must decide the matter.

### 5.7.4.2 *Constituencies defined by municipalities*

If in future the constituencies are linked to municipalities rather than counties, it will be constituency boundaries themselves that are decisive for the constituencies and not the county boundaries. It will then be possible to change the number of counties without this necessarily having consequences for the number of constituencies. It will also be possible to set the boundaries of the constituency more accurately.

The boundary changes that affect the constituency boundaries will depend on whether the change occurs within a constituency or across constituencies. Some changes to county boundaries will

also have an impact on the constituencies as the Commission finds it is not relevant to allow there to be more counties in the same constituency.

In Table 5.15, the different types of boundary changes that exist have been presented with information about who has the authority to make decisions and about the impact of the boundary change on the constituencies. The boundary changes that affect the constituencies have been illustrated in figures 5.4–5.8.

*Table 5.15 Different boundary changes and the importance for constituencies.*

Type of boundary change	Adopted by	Where	Importance for constituencies
<i>Municipal mergers</i> Section 3, subsection 1 of the Local Government Boundaries Act. Two or more municipalities are merged into a single new unit.	The King where there is agreement, the Storting by force. Section 4 of the Local Government Boundaries Act	Within a constituency	No
		Across constituencies	Yes. It must be decided to which constituency the new municipality shall belong (Figure 5.4).
<i>Municipal division</i> Section 3, subsection 2 of the Local Government Boundaries Act. a) A municipality is divided into two or more new units, or b) A municipality is divided and the individual parts are aggregated with other municipalities.	The King where there is agreement, the Storting by force. Section 5 of the Local Government Boundaries Act	Within a constituency	No
		Across constituencies	a) Cannot happen across constituencies b) Yes. It must be decided to which constituency the new municipalities belong (Figure 5.5).
	The King.	Within a constituency	No

<p><i>Municipal boundary adjustment</i> Section 3, subsection 3 of the Local Government Boundaries Act. A part of a municipality is transferred to another municipality. The number of municipalities is the same.</p>	<p>Section 6 of the Local Government Boundaries Act</p>	<p>Across constituencies</p>	<p>Yes. It must be decided to which constituency the municipalities that have received inhabitants belong (Figure 5.6).</p>
<p><i>County merging</i> Section 3, subsection 1 of the Local Government Boundaries Act. Two or more counties are merged into one new unit.</p>	<p>The Storting. Section 4 of the Local Government Boundaries Act</p>	<p>Within a constituency</p>	<p>Cannot happen, as a constituency cannot belong to two counties.</p>
		<p>Across constituencies.</p>	<p>No. May have several constituencies in a county.</p>
<p><i>County division</i> Section 3, subsection 2 of the Local Government Boundaries Act. a) a county is divided into two or more new units, or b) a county is divided and the individual parts are aggregated to other counties.</p>	<p>The Storting. Section 5 of the Local Government Boundaries Act</p>	<p>New county boundaries correspond to the constituency boundaries (e.g. a county with two constituencies is divided into two counties according to the boundaries of the constituencies)</p>	<p>No. May have several constituencies in a county.</p>
		<p>New county boundaries cross the constituency boundaries (e.g. a county consisting of one constituency is divided into two counties or a county with two constituencies is divided but not along the same boundary as the constituencies)</p>	<p>Yes. Must be decided where the constituency boundaries will be (Figure 5.7).</p>
<p><i>County boundary adjustment</i></p>	<p>The King, the Storting if more than one</p>	<p>Coincidence with constituency</p>	<p>No</p>

Section 3, subsection 3 of the Local Government Boundaries Act. a) an area is moved from one county to another, or b) an entire municipality is moved to another county	municipality is moved. Section 6 of the Local Government Boundaries Act	No coincidence with constituency	Yes. It must be decided where the constituency boundaries will be (Figure 5.8). (Will often also be a municipal merger or municipal boundary adjustment.)
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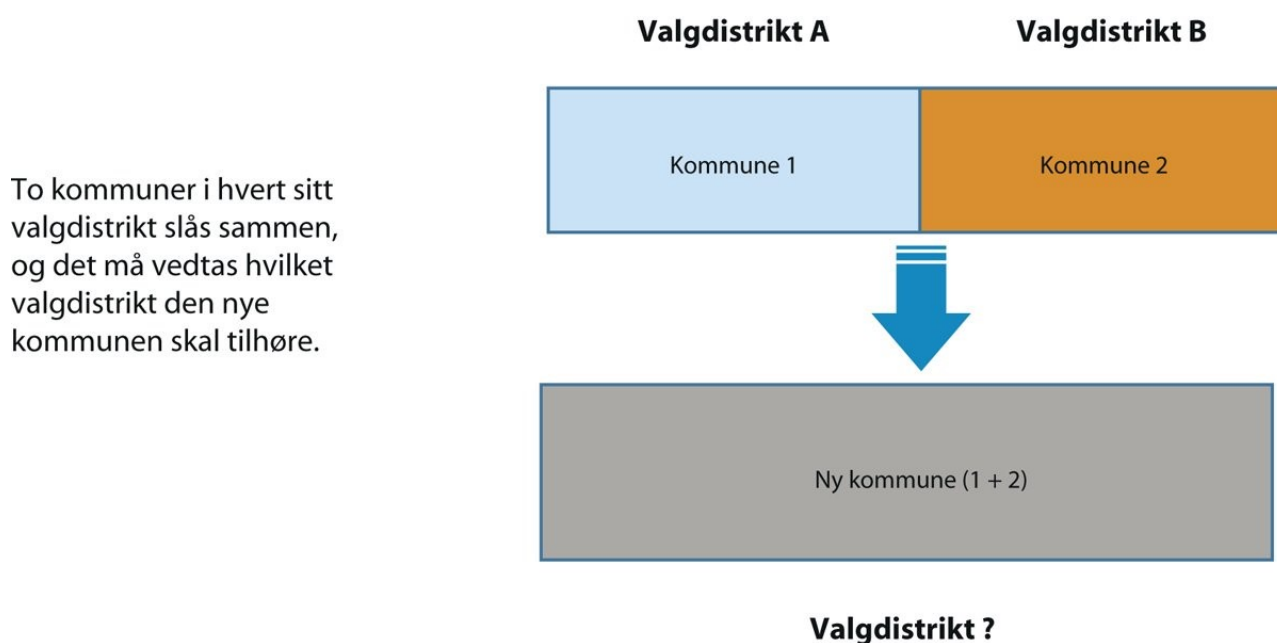


Figure 5.4 Municipal merger across constituencies.

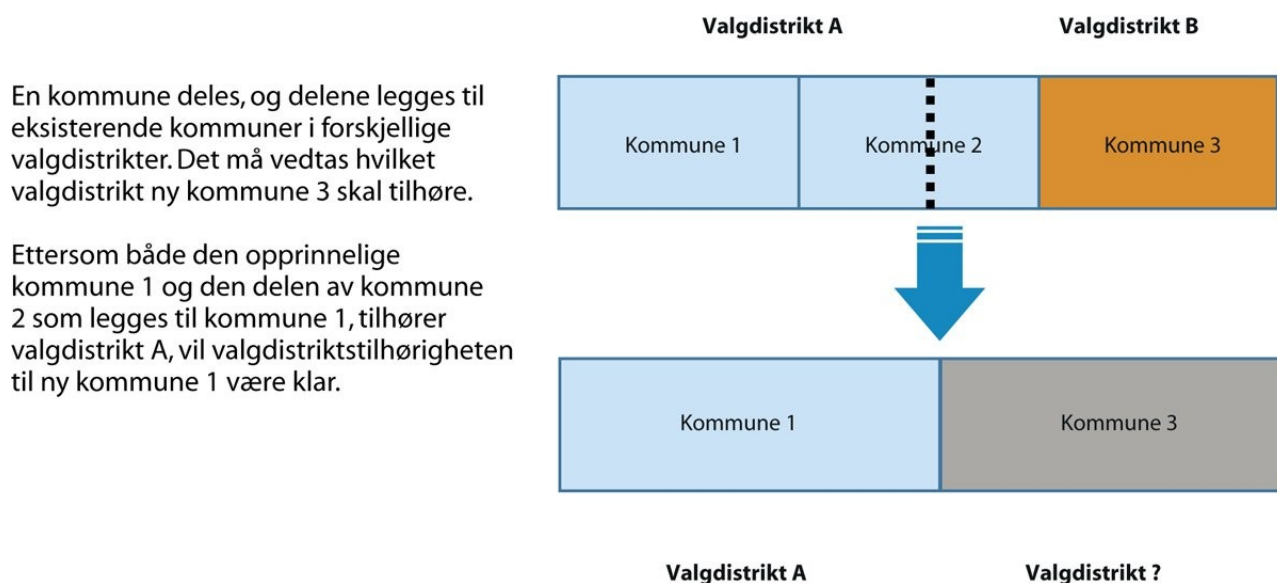


Figure 5.5 Municipal division when the parts are aggregated with existing municipalities in different constituencies.



En del av en kommune flyttes til en annen kommune i et annet valgdistrikt. Det må vedtas hvilket valgdistrikt kommune 2 skal tilhøre.

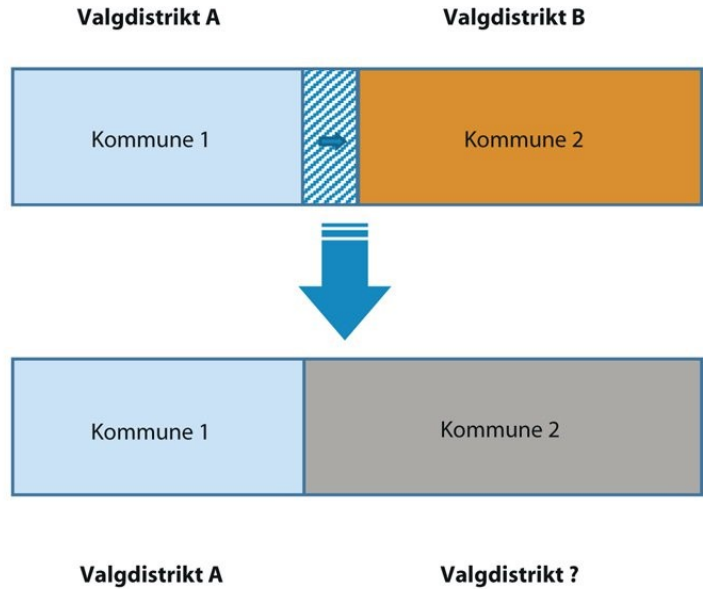


Figure 5.6 Municipal boundary adjustment across constituencies.

Fylke 2 deles i to, og de enkelte delene blir lagt til henholdsvis Fylke 1 og Fylke 3. Den nye fylkesgrensen går på tvers av valgdistriktsgrensene, da Fylke 2 var et eget valgdistrikt.

Her må enten antall valgdistrikter reduseres, eller så må grensene for de tre valgdistriktene endres.

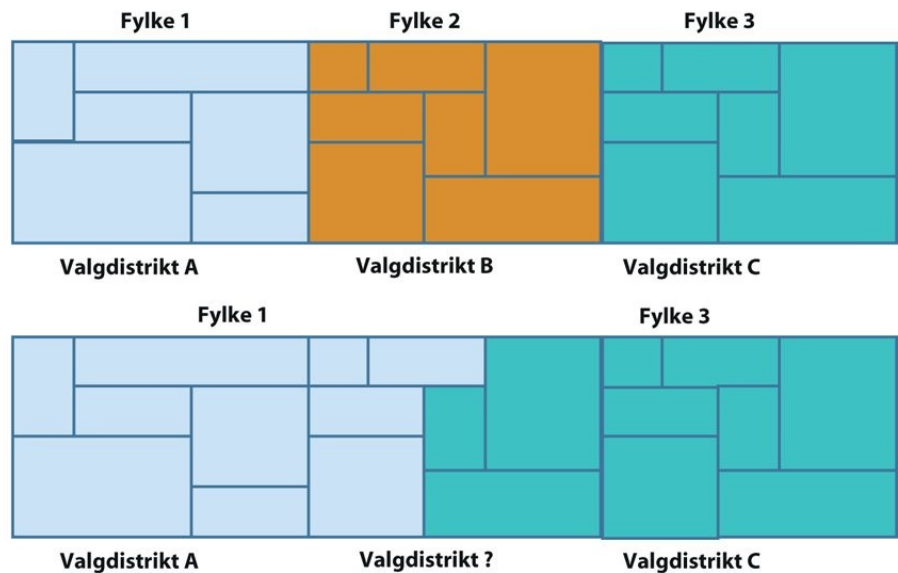


Figure 5.7 County division.

En hel kommune flyttes fra et fylke til et annet fylke.

Det må avgjøres hvor valgdistriktsgrensene skal gå.

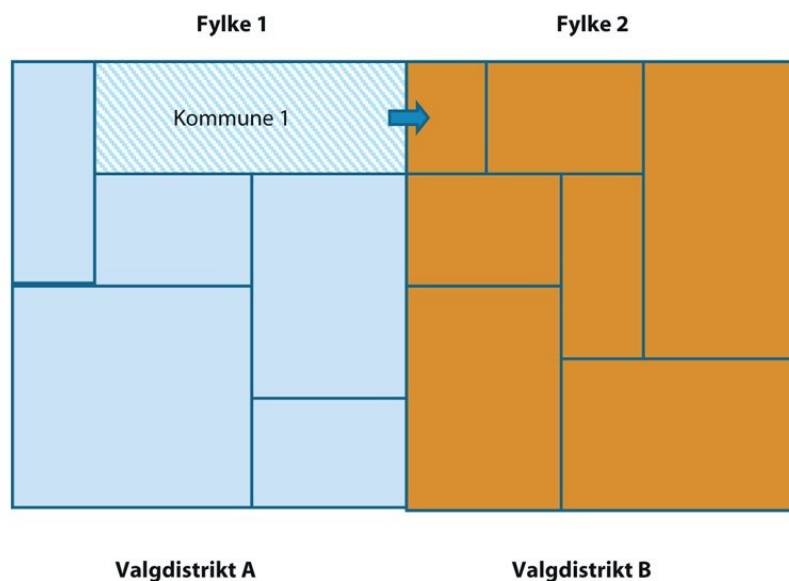


Figure 5.8 County boundary adjustment.

### 5.7.5 The Commission's evaluation

The Commission has considered all the elements of the electoral system that are currently regulated by the Constitution. The Commission has also considered especially how the constituency structure shall be legislated. Establishing the number of constituencies by law, how the boundaries of the constituencies should be regulated and how the boundaries can be changed are considered here.

#### 5.7.5.1 The main elements of the electoral system

The Commission finds the central parts of the electoral system currently regulated by the Constitution, i.e., the number of seats, the method of distribution, electoral threshold and rules for seat allocation, should still be regulated by the Constitution. These are elements that are key to how the electoral system works and that should not be changed without a broad majority. The Commission cannot see that it has been problematic that these provisions are in the Constitution today and therefore, propose to continue this regulation.

#### 5.7.5.2 Number of constituencies

The Commission finds that the number of constituencies is important in the electoral system and that there are good reasons for having a special regulation that prevents the number from being changed by a simple majority. At the same time, the Commission sees that there is a constant discussion about the county structure and finds that changes must be taken into account in the years ahead. This may have implications for how many constituencies it is appropriate to have. The Commission finds that the constituency structure must be predictable and not linked to speculation about political gains. No changes should be made to the structure so close to an election, both for the sake of the voters and the political parties and others who want to put forward a list at elections.

*The majority of the Commission (Anundsen, Grimsrud, Hagen, Hoff, Holmøyvik, Holmås, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aarnes and Aatlo) finds that the number of constituencies should still be regulated by the Constitution. As long as it is possible to specify in the Election Act what will constitute the constituencies, it will provide the necessary flexibility. Experiences*

made in recent years show that having rules on the number of constituencies in the Constitution has also worked at a time of major structural changes.

*The minority of the Commission (Christensen, Giertsen, Høgestøl, Storberget and Aardal)* finds that there is a need for more flexibility in the regulations because new changes in the county structure may occur in the years ahead. Therefore, these members find that it is not appropriate to constitutionalise the number of constituencies. Instead, these members propose that the number of constituencies is regulated by the Election Act but that a special requirement is set for changing the number. This can be done by ensuring that a provision is adopted in the Constitution that decisions on or changing the number of constituencies must be made with a two-thirds majority. Furthermore, the Constitution should also require that changes in the constituency structure must take place during the second parliament after an election in order to take effect at the next parliamentary election. Such rules will give the Storting the flexibility to make the desired changes and at the same time protect against changes being made by a simple majority shortly before an election.

Such a semi-constitutional rule level exists in other European countries by will be a new element of the Norwegian constitution.<sup>167</sup> A certain parallel exists in section 1, subsection 3 of the Parliamentary Ombudsman Act, which requires a two-thirds majority in the Storting to deprive him of his office. However, the difference is that the Storting can circumvent the requirement of a qualified majority in the Parliamentary Ombudsman Act by making a new statute that only requires a simple majority. Such circumvention will not be possible if the qualified majority requirement follows from the Constitution. The difference to the current regulation of the constituencies in the Constitution is that a system with the regulation of the constituencies by law with a qualified majority requirement allows a proposal to amend the law to be put forward and adopted in the same parliamentary period.

### **5.7.5.3 Constituency boundaries**

The Commission finds that the constituency boundaries should be stated in the Election Act. This can be done by regulating the municipalities that belong to each constituency by law. If the boundary changes lead to a need for changes to the constituencies, there will be a clear and open process about the changes. And it will be the Storting that considers the consequence of the constituency structure. It must be subordinate that the law must be updated in the event of any boundary or name changes. It is not so often municipalities change names and boundary changes of this nature are nevertheless such a comprehensive process that it is not unreasonable that the Election Act must also be amended to reflect any changes in the constituencies. The Commission also emphasises that there should be a connection between the different rules and finds it may be difficult to explain that rules on the electoral system shall be established in the Constitution but that the actual division follows from a regulation, as the rules are today.

The Commission has also discussed whether special qualified majority requirements should be set to change to which constituency a municipality should belong.

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<sup>167</sup>Eirik Holmøyvik, "Reform av grunnlovprosedyren", *Kritisk juss* 56, no. 1 (2018): 5–34, <https://doi.org/10.18261/issn.2387-4546-2018-01-02>.

*The majority of the Commission (Anundsen, Christensen, Giertsen, Holmås, Høgestøl, Røhnebæk, Storberget, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo)* finds it is sufficient that legislative amendments to the constituency structure are made with a general majority. The majority finds that the requirement of a two-thirds majority will, in reality, mean that some boundary changes will be very difficult to implement. For example, when it has been decided to merge two municipalities each in their constituency, a decision on to which constituency the municipality shall belong is necessary. The requirement of a two-thirds majority could lead to none of the possible constituencies achieving the necessary majority. It would be very unfortunate if a long and broad process to adopt a municipal merger is stopped by the Storting's inability to agree on to which constituency the municipality shall belong. The majority also emphasises that the allocation of seats is now proposed to be updated before each parliamentary election. Thus, the boundary changes will be embodied in a new allocation of seats and therefore, can be abused to a small extent. The fact that the boundaries of the constituencies are embodied in the law is a significant change from previous regulations where the boundary changes adopted by the King have automatically had a bearing on the constituencies without the Storting being involved.

*The minority of the Commission (Grimsrud, Hagen, Hoff, Holmøyvik, Nygreen and Stokstad)* finds that a two-thirds majority should be required for decisions on changes to the constituency boundaries. The minority finds it unfortunate that a general majority can move as many municipalities as they want from one constituency to another. The minority proposes that a provision is included in the Constitution that the division into constituencies is regulated by the Election Act but that the provision must be adopted with a two-thirds majority.

The Commission has also discussed whether a time limit is needed for when decisions on changing the constituencies can be made to be of importance at the next parliamentary election. The Commission points out that a new allocation of seats shall be calculated at the end of the year before the election year. After this time, it will not be possible to change the allocation of seats and the Commission finds therefore that no changes should be made to the constituencies for parliamentary elections after this time.

#### **5.7.5.4 Decisions on boundary changes with significance for constituencies**

Municipal boundary changes may have importance for the county boundaries. That there is not always a requirement for parliamentary decisions to make such changes, the Commission finds it is not problematic as long as it is the Storting that decides which consequences the boundary change will have for the constituencies. The Commission also stresses that it is unlikely that anyone will change the municipal boundaries to deliberately seek to influence the constituency structure.

To ensure that it is clear at all times which municipalities belong to which constituency, the Commission proposes that a provision is included in the Local Government Boundaries Act that no municipal boundary changes across constituencies come into effect before the Storting has decided to which constituency the affected municipalities shall belong.

When it comes to changing the county boundaries, the Commission finds that there is a need to look more closely at who can make decisions. As the Commission has concluded that there should be no more than one county in a constituency, some of the changes of the county boundaries will have to be followed-up by changes in the constituencies as well. The merger and division

of counties shall be adopted by the Storting. For the Storting to have a real opportunity to determine to which constituency a new or adjusted unit should belong, the Commission finds that the county boundary adjustments should also be decided by the Storting. Therefore, the Commission proposes that the King should no longer be able to decide on county boundary adjustments.

County boundary adjustments that only include surface area, not population, will not have an impact on the constituencies. Therefore, exceptions should be made for such adjustments so that they can still be decided on by the King.

## **5.8 An overall assessment of the electoral system at parliamentary elections**

The Commission has not agreed on proposed changes to the electoral system at parliamentary elections. However, some elements are fixed for all members of the Commission. The Commission finds that there should still be 169 representatives in the Storting and that the number of seats at large should follow the number of constituencies. The Commission has not reached a consensus on the other elements of the electoral system.

However, the majority of the Commission agree on three key changes to the electoral system. First, a majority of the members of the Commission finds that the proportionality of the electoral system should be increased. This majority finds that the electoral threshold should be lowered to three per cent to ensure that fewer votes are wasted and that there is a greater agreement between a party's share of the votes and the party's share of the representatives in the Storting. This will have small consequences for how easy it is to become a member of the Storting with at least one seat. Secondly, a majority of the members of the Commission want to remove the surface area factor in favour of a system that ensures the constituencies a minimum representation. This will remove the arbitrary and greatest effects of the current surface area factor. Finally, a majority of the members of the Commission finds that the counties should no longer be constituencies. This majority finds that the current eleven counties ensure geographical representation to a very small extent and to make to too great an extent easy to be represented than today. Therefore, the majority finds that the current 19 constituencies should continue to be constituencies even with fewer counties.

In other areas, a majority of the members of the Commission support continuing the current rules. There is a major that finds 1.4 should still be the first quotient, there is a majority that finds that there is no need for a regional electoral threshold with 19 constituencies, there is a majority for retaining the number of constituencies in the Constitution and there is a majority for retaining the current method of distributing seats at large among the constituencies.

In an attempt to create models where the members stand behind all the elements of the models, through various compromises, the Commission has arrived at two models. These two models are presented in section 5.8.2.

### **5.8.1 Summary of the Commission's primary points of view**

The Commission has considered various aspects of the electoral system. The most important proposals and conclusions of the Commission are presented below.

### 5.8.1.1 Constituency structure

Due to the new county structure, it has been necessary for the Commission to look at how the country will be divided into constituencies in the future. Before the new county structure, the constituencies followed the county boundaries. With the new counties, the constituencies will either be detached from the county boundaries or be changed in line with the regional reform. The Commission is divided on the assessment of which of the two systems is most appropriate. *The majority of the Commission (Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Nygreen, Røhnebæk, Stokstad, Tørresdal and Aarnes)* wants to leave the current constituencies as they are. *The minority of the Commission (Hoff, Holmøyvik, Holmås, Høgestøl, Storberget, Strømmen, Aardal and Aatlo)* finds the constituency structure should be based on the county structure.

The Commission has discussed how Viken county will be able to function as a constituency if the new county structure is the starting point for the constituency structure. *The majority of the Commission (Christensen, Grimsrud, Hagen, Hoff, Holmøyvik, Nygreen, Røhnebæk, Stokstad, Storberget, Aardal, Aarnes and Aatlo)* finds that Viken should be divided because this constituency will be too large and different from the other constituencies in size. Such a large constituency will lower the representation threshold significantly relative to today. *The minority (Anundsen, Giertsen, Holmås, Høgestøl, Strømmen and Tørresdal)* finds it is less problematic that Viken is one constituency. These members find that a reduced representation threshold is positive or that the threshold may be maintained through introducing a threshold on constituency seats.

The Commission has also discussed that historically speaking, special considerations have been taken to ensure Finnmark representation in the Storting. The Commission has considered whether it will be possible to take these considerations into account in one constituency where both Troms and Finnmark are included. *The majority of the Commission (Christensen, Grimsrud, Hagen, Hoff, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aardal and Aarnes)* finds that Finnmark has a special status that dictates that the region must be ensured representation and that this should be done by continuing as a separate constituency. *The minority of the Commission (Anundsen, Giertsen, Holmøyvik, Holmås, Høgestøl, Storberget, and Aatlo)* finds that the new county of Troms and Finnmark can function as one constituency and that it is up to the parties to take into account geographical considerations in the constituency.

### 5.8.1.2 Allocation of seats among the constituencies

As regards the allocation of seats among the constituencies, the Commission has assessed the current solution with surface area factor. The Commission has considered the over-representation that the surface area factor gives to some areas as problematic, given the objective that the votes shall have equal weight. At the same time, the Commission sees that some of the constituencies can be very small if only the population is used to calculate the allocation of seats.

*The majority of the Commission (Anundsen, Christensen, Hagen, Hoff, Holmøyvik, Høgestøl, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo)* therefore finds it is appropriate to introduce a minimum number of four seats. This will ensure that all the constituencies have a certain breadth of representation. The majority also finds that all the constituencies should be allocated one seat first before the remaining seats are allocated using the Sainte-Laguë method. This will mean that the smallest constituencies are somewhat over-represented relative to the largest constituencies. As the effects of being underrepresented are greater for these constituencies, this means that no constituencies are dramatically underrepresented. *A minority of these members*

(*Hoff, Nygreen, Stokstad and Tørresdal*) finds this system works with the current constituencies but does not take sufficient regional considerations when there are fewer and larger constituencies. Therefore, if the constituencies are divided according to the new counties, these members will retain the current surface area factor of 1.8.

*The minority of the Commission (Giertsen, Grimsrud, Holmås and Storberget)* wants to retain the current system with surface area factor of 1.8 regardless of the number of constituencies.

### **5.8.1.3 First quotient and regional electoral threshold**

The Commission has discussed the electoral system for constituency seats and agrees that the number of Members of the Storting should remain fixed. When it comes to the distribution method, the Commission wants to retain the Sainte-Laguë's method and *the majority of the Commission (Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo)* wants to retain the current elevated first quotient of 1.4, while a *minority (Holmås, Høgestøl, Nygreen and Strømmen)* want to lower this to 1.2.

As regards the threshold on constituency seats, the *majority of the Commission (Christensen, Giertsen, Hagen, Holmås, Høgestøl, Nygreen, Røhnebæk, Strømmen, Aarnes and Aatlo)* finds that this is not necessary for a system with 19 constituencies or a system where Viken is divided. *Members Christensen, Giertsen, Hagen, Røhnebæk, Aarnes and Aatlo* point out that the effective electoral threshold will then be so high that a low regional electoral threshold will not be of significance. *Members Holmås, Høgestøl, Nygreen and Strømmen* are opposed to a threshold, regardless of how large the constituencies are.

If Viken becomes one constituency, the *majority of the Commission (Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo)* finds that a threshold on constituency seats is necessary to prevent very small parties from being represented and thus preventing fragmentation. *The majority of these members (Christensen, Giertsen, Hagen, Hoff, Holmøyvik, Stokstad, Tørresdal and Aardal)* wants a threshold of three per cent, while a *minority (Anundsen, Grimsrud, Røhnebæk, Storberget, Aarnes and Aatlo)* wants a threshold of four per cent.

*The minority of the Commission (Anundsen, Grimsrud, Hoff, Holmøyvik, Stokstad, Storberget, Tørresdal and Aardal)* finds a threshold on constituency seats is appropriate regardless to ensure the current thresholds for representation and are divided between a threshold of four and three per cent.

*Another minority of the Commission (Holmås, Høgestøl, Nygreen and Strømmen)* finds that no threshold regardless of regional size is required because it is positive if more parties are allowed to be represented.

### **5.8.1.4 Seats at large**

The current system with seats at large has been discussed by the Commission. Key questions are the number of seats at large, the threshold for being allocated seats at large and how candidates should be elected. The Commission has considered it appropriate to retain the current system with one seat at large per constituency even if the number of constituencies should be changed. As regards the threshold, the *majority of the Commission (Christensen, Hagen, Hoff, Holmøyvik, Holmås, Høgestøl, Nygreen, Stokstad, Strømmen, Tørresdal and Aardal)* finds that this should be lowered to

three per cent. A reduction in the threshold will limit the difference between ending up above and below the threshold and give a more proportional representation of the parties. *A minority (Giertsen, Grimsrud, Røhnebæk, Aarnes and Aatlo)* wants to retain the current threshold of four per cent and *two members (Anundsen and Storberget)* want to increase the threshold to five per cent. *Six Commission members (Holmås, Høgestøl, Nygreen, Røhnebæk, Strømmen and Aardal)* also finds that parties that win at least one direct seat should be allowed to participate in the competition for seats at large.

*The majority of the Commission (Anundsen, Christensen, Grimsrud, Hagen, Hoff, Holmøyvik, Høgestøl, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo)* also finds that it should be a requirement to put forward lists throughout the country to be included in the competition for seats at large, while a *minority (Giertsen, Holmås, Nygreen, Røhnebæk and Strømmen)* does not want to introduce such a requirement.

Finally, the Commission has discussed whether the returning of members at large should be changed to a system that is more predictable for the parties. *The majority of the Commission (Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Nygreen, Røhnebæk, Storberget, Stokstad, Tørresdal, Aardal, Aarnes, Aatlo)* wants to retain the current system, while *the minority of the Commission (Holmås, Høgestøl and Strømmen)* finds a national list for seats at large would have given the parties a more predictable system.

#### **5.8.1.5 Enactment of the constituency structure**

As regards enactment of the constituency structure, the *majority of the Commission (Anundsen, Grimsrud, Hagen, Hoff, Holmøyvik, Holmås, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aarnes and Aatlo)* finds that the number of constituencies should still be regulated by the Constitution. *The minority of the Commission (Aardal, Christensen, Giertsen, Høgestøl and Storberget)* finds that there is a need for more flexibility in the regulations because new changes in the county structure in the years ahead and therefore, that it is not very appropriate to enshrine the number of constituencies in the Constitution. These members want to have the same qualified majority requirement as for constitutional amendments but will regulate this in the Election Act.

#### **5.8.2 The Commission's secondary points of view**

A review of the primary points of view of the members of the Commission provides the electoral system presented in section 5.8.1. It is not the same persons who make up the majority behind each of the elements of the electoral system. In an attempt to create models where the members support all the elements of the models, through various compromises, the Commission has come up with two models, hereinafter referred to as "model-19" and "the county model". As the names suggest, the starting points for the models have been the current 19 constituencies and constituencies that follow the applicable county structure.

*The majority of the Commission (Christensen, Grimsrud, Hagen, Hoff, Holmøyvik, Nygreen, Røhnebæk, Stokstad, Tørresdal, Aarnes, Aardal and Aatlo)* proposes a model based on the current 19 constituencies, model-19. *The minority of the Commission (Giertsen, Holmås, Høgestøl, Storberget and Strømmen)* proposes a model based on the current counties, the county model.

*Members Anundsen, Hoff, Holmøyvik, Holmås, Røhnebæk and Strømmen* find that both models are good starting points for the Storting's further work.



Model-19 is very similar to the model that appears from the majority points of view as they have been set up in the previous chapter, except for the regional electoral threshold of 3 per cent. Compared with the current electoral system, model-19 also involves two important changes:

- The threshold for seats at large is lowered from 4 to 3 per cent.
- The surface area factor is replaced by a system where each constituency is allocated 1 seat first, while the remaining seats are allocated according to the population but with a minimum of 4 seats in all constituencies.

Compared with the current electoral system, the county model involves major changes. The starting point for the model is today's eleven counties, at the same time as the model takes into account that it does not appear entirely unlikely that some of the county mergers may be reversed after the next parliamentary election. Therefore, the members behind this compromise find that the model will also apply even if Viken should be split into three counties and Troms and Finnmark are split up.

In the county model, the first quotient is reduced from the current 1.4 to 1.2. Thus, the system lowers the threshold for winning the first seat. This is in addition to the thresholds being lowered because the constituencies are growing larger. *Commission member Storberget* supports the county model as a secondary point of view with the reservation that the first quotient should be set at 1.4.

Those of the Commission's members that primarily support the county model as a compromise proposal want to retain the surface area factor.

An overview of the key elements of the two compromise models and the majority's primary point of view has been shown in Table 5.16.

*Table 5.16 Key elements of the models.*

	The majority's primary points of view	Model-19	The county model
Constituencies	Today's 19 constituencies	Today's 19 constituencies	The counties (11 constituencies)
First quotient	1.4	1.4	1.2
Electoral threshold for seats at large	3 per cent	3 per cent	4 per cent
The electoral threshold on constituency seats	None	3 per cent	3 per cent
Method of seat distribution among the constituencies	All the constituencies are allocated one seat first and there are a minimum of	All the constituencies are allocated one seat first and there are a minimum of	Surface area factor

	four seats per constituency.	four seats per constituency.	
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### **5.8.2.1 The consequences of the two compromise models**

There are major differences between the two models. The Commission has made calculations of the consequences of the two models. In addition, the consequences of a model based on the primary points of view of the Commission members have been calculated. The county model has as a principle that the constituencies shall follow the county boundaries but to make calculations of the consequences, a number must be used as a basis. Because the current county structure is made up of eleven counties, this is what has been used. However, many of the Commission's members consider it less realistic for the number of counties to remain so low.

Both model-19 and the county model increase the proportionality of the system but achieve this differently. Model-19 gives parties that come above the electoral threshold of 3 per cent, proportional representation. This means that more parties than today achieve representation that corresponds to the share of the poll they have received, but does not mean that more parties gain representation.

The county model combines larger constituencies with a lower first quotient. Both these solutions make it easier for the parties to win their first seats and they reinforce each other. This lowers the threshold for small parties to be allocated a seat and increases the representation of all small parties. At the same time, some of the majority bonus to the largest parties is reduced.

As referred to in Chapter 5.2.6.3, it is difficult to calculate the total effect of such a system because it will mean that parties and voters act differently than today. Small parties will stand for election and campaign to a greater extent than before because they can win a seat. The voters will also be more willing to vote for these parties because there is a greater chance that their vote will not be wasted. It is difficult to study the effects of this with the number of votes from elections that have been held with another electoral system where the number of parties running for election, and that receive votes, is given.

The number of votes from the 2017 parliamentary election has been used to calculate the consequences of the three electoral systems. The last municipal council and the penultimate county council elections have also been included.<sup>168</sup> At these elections, there are much lower representation thresholds, and the voters are thus more willing to vote for small parties. The results of these elections can thus illustrate what can happen when voters and parties change the way they act, as a consequence of a lower representation threshold.

As stated in the analyses below, there will be more proportionality in all these systems than with the current system. The county model also allows more parties to be represented.<sup>169</sup> The

<sup>168</sup>All the calculations have taken into account adopted changes in municipal and county structure.

<sup>169</sup>It is not Viken's large size that has led to the increased number of parties. Thus, splitting up Viken in itself will not prevent more parties from being represented. However, it may be possible that there will be slightly less proportionality with more constituencies.

calculations indicate that this may be the main difference between the two models, if it is disregarded that the risk of poorer geographical representation increases when there are fewer constituencies. The consequences of the three models have been summarised in Table 5.17.

*Table 5.17 The consequences of the different models.*

	The majority's primary points of view	Model-19	The county model
Proportionality	<b>Greater</b>	<b>Greater</b>	<b>Greater</b>
No. of parties	As today	As today	<b>More</b>
Majority bonus	As today	As today	<b>Less</b>

#### *Greater proportionality and more parties*

When calculating the consequences of the various systems, the effects of the systems resulting from the majority model and model-19 are identical. At the 3 elections used in the calculations here, having a regional electoral threshold of 3 per cent has had no consequences as long as there are 19 constituencies.<sup>170</sup>

As expected, all the systems provide greater *proportionality*. However, it is the county model that leads to the largest increase in the proportionality, and gives the highest proportionality at all 3 elections in Table 5.18. Model-19 and the majority model are somewhat less proportional and such a change had little to say for the proportionality at the last parliamentary election.

*Table 5.18 No. of parties with the different models.*

	Current	Model-19	The county model
2017 parliamentary election	9	9	9
2019 municipal council election	10	10	11
2015 county council election	9	9	10

However, the proportionality figures hide quite different distributions of seats among the parties. This is reflected in the fact that based on the number of votes from the 2019 municipal council election and the 2015 county council election, one additional party would have entered the Storting if the county model had been used (see Table 5.19). This is not the case when the poll from

<sup>170</sup>A regional electoral threshold in a model with 19 constituencies will only matter when the largest constituencies are allocated more seats than today.

the parliamentary election is used but the data from the county council and municipal council election is more realistic for studying the voters' willingness to vote for relatively small parties.

*Table 5.19 The number of Members of the Storting calculated from the results of the 2017 parliamentary election.*

	Percentage support	Current	Model-19	The county model
The Labour Party	27.4	50	52	49
The Progress Party	15.2	27	26	27
The Conservative Party	25.0	45	43	45
The Christian Democrat Party	4.2	7	7	7
The Green Party	3.2	2	5	3
The Red Party	2.4	1	1	1
The Centre Party	10.3	18	18	18
The Socialist Left Party	6.0	11	10	11
The Liberal Party	4.4	8	7	8

Tables 5.20, 5.21 and 5.22 show the parties' seat distribution. The tables clearly show the difference between the different systems. When the electoral threshold is lowered to 3 per cent in Model-19, it means that the parties above 3 per cent receive more proportional representation but the change does little for the parties that are below 3 per cent. Thus, the Red Party had not received more seats at the previous parliamentary election with this model, while the Green Party wins three seats relative to the current electoral system.<sup>171</sup> When the representation threshold is lowered as it is in the county model, the Green Party only wins one additional seat, while the Red Party also receives one additional seat.<sup>172</sup>

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<sup>171</sup>The change in the seat distribution method also has results in greater representation to the Labour Party because the party receives more seats in the constituencies that are allocated more seats with this seat distribution method.

<sup>172</sup>The Labour Party will become less overrepresented here since the majority bonus will be less with 1.2 as the first quotient.

*Table 5.20 The number of Members of the Storting calculated from the results of the 2019 municipal council election.*

	Percentage support	Current	Model-19	The county model
The Labour Party	24.8	49	49	47
The Democrats	0.4	–	–	1
People's Move, No to more road tolls	2.4	4	4	4
The Progress Party	8.2	16	13	16
The Conservative Party	20.1	39	36	38
The Christian Democrat Party	4.0 <sup>1</sup>	3	6	3
The Green Party	6.8	13	11	13
The Red Party	3.8	2	6	5
The Socialist Left Party	6.1	12	9	11
The Centre Party	14.4	29	29	27
The Liberal Party	3.9	2	6	4

<sup>1</sup> The Christian Democrat Party's vote count is below the electoral threshold of four per cent even if it is rounded up to four per cent here.

*Table 5.21 Disproportionality with the different models.*

	Current	Model-19	The county model
2017 parliamentary election	3.1	3.1	2.7
2019 municipal council election	6.6	5.4	5.2
2015 county council election	4.2	3.6	2.5

*Table 5.22 The number of Members of the Storting calculated from the elections results at the 2015 county council election.*

	Percentage support	Current	Model-19	The county model
The Labour Party	33.6	65	63	59
The Progress Party	10.3	17	17	18
The Conservative Party	23.5	39	40	40
The Christian Democrat Party	5.6	9	9	10

The Green Party	5.0	8	9	9
The Nordmør list	0.4	–	–	1
The Red Party	2.2	1	1	1
The Centre Party	8.0	15	15	15
The Socialist Left Party	4.0	7	7	7
The Liberal Party	5.0	8	8	9

With data from the 2019 municipal council election, the differences in the models are greater. At this election, the Liberal Party, the Red Party and the Christian Democrat Party would have been below the electoral threshold of 4 per cent, but above the Model-19 threshold of 3 per cent. When the electoral threshold is lowered to 3 per cent in Model-19, these parties receive greater representation. It is the parties immediately above the electoral threshold in the current electoral system (the Socialist Left Party and the Green Party) that lose seats to the parties that come above the electoral threshold with this system. The Christian Democrat Party, the Red Party and the Liberal Party win fewer seats in the county model. The constituencies in which the parties are strongest are also of great importance and the Red Party does best even if the party has the lowest national support. The Red Party receives five seats and the Liberal Party three seats even though the Red Party has slightly lower support nationally. The Democrats are also large enough in Agder to win one seat. The party receive 0.4 per cent of the votes nationally but 5 per cent of the votes in Agder (or about 7,600 votes). Thus, a regional electoral threshold of 3 per cent does not have consequences for the party.

With data from the 2015 county council election, there are no parties that have almost reached the electoral threshold. Thus, the difference between the current electoral system and Model-19 is less even if Model-19 is still more proportional.<sup>173</sup> The county model again gives 1 extra party, the Nordmør list, which wins 1 seat with 0.4 per cent of the vote nationally or 7.5 per cent of the vote in Møre & Romsdal (about 7,900 votes).<sup>174</sup> With the election result from the 2015 county council election, the Labour Party would have lost seats with the county model. This is because the party does not receive the same majority bonus in the county model as in the current model and (somewhat reduced) in Model-19.

In other words, there is a difference in how Model-19 and the county model lead to higher proportionality. Model-19 ensures this through providing a more proportional representation to parties over a certain size (above 3 per cent of the poll). This gives a bonus to the parties above this electoral threshold. The county model provides proportionality by giving small parties a better chance to win direct seats.

It is important to note that the two new parties that win seats with the county model do not come from the largest constituencies. Agder and Møre & Romsdal with their ten and eight seats are among the three smallest constituencies (together with Nordland). Møre & Romsdal also already has eight seats with the current electoral system. In other words, it is not Viken's large size that

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<sup>173</sup>This is due to the allocation of seats among constituencies and that the Labour Party has fewer seats with this distribution.

<sup>174</sup>Once again, a regional electoral threshold will not be of importance.

leads to these extra parties in the calculations and they would have won seats if Viken or Troms and Finnmark were divided. Therefore, in the largest constituencies, where the threshold percentage is lower, such parties are also likely to win seats, even if that does not happen in the calculation here. It is the low first quotient that gives these parties a direct seat.

## 6 The electoral system at municipal and county council elections

### 6.1 Introduction

The electoral systems at Norwegian elections have varied since the beginning of the 20th century. Although there have been adjustments over time that have made the electoral systems more similar, for example, that the Sainte-Laguë's method is now used for distribution of seats at all types of elections, they still differ from each other in several ways. This chapter discusses the electoral systems at municipal and county council elections. The preferential voting system in all three types of elections is discussed separately in Chapter 7.

#### 6.1.1 Applicable law

Since 1985, there has been a common electoral law for all types of election, the Election Act. There are also provisions in the Local Government Act that have significance in municipal and county council elections.

At municipal council elections, the municipal is the constituency and at county council elections, the county is the constituency. Thus, the representatives of the county council and municipal council represent the entire county or municipality. The final election result takes place pursuant to section 11-12, subsection 1 of the Election Act. The distribution of seats among the lists is done using the Sainte-Laguë's method with the first quotient of 1.4 in the same way as at parliamentary election pursuant to section 11-4. The preferential voting system, which is discussed in the next chapter, differs for the three elections.

It is the county council itself that decides how many members the county council shall have, and it is the municipal council that decides how many members the municipal council shall have, cf. section 5-5 of the Local Government Act.<sup>175</sup> However, the Local Government Act contains minimum requirements for how many members the county council and municipal council shall have, based on population.

Pursuant to section 9-1 of the Election, the timing of parliamentary elections on the one hand and municipal and county council elections, on the other hand are separate. Election of representatives to the Storting shall be held on the same day in September in the final year of the electoral term of each Storting. Election of representatives to the municipal councils and county councils shall be held on the same day in September every four years. The elections are held in the second year of each Storting's term of office.

#### 6.1.2 Historical development

There have been major changes in the municipal council electoral system over time. Between 1837 and 1921, two assemblies were elected in the municipality, the executive committee of the local council and the supervisory committee.<sup>176</sup> Eventually, from 1896, the executive committee was elected by and from among members of the municipal/city councils (formerly called the

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<sup>175</sup>The decision must be made by the end of December in the penultimate year of the election period to have an effect on the upcoming election period.

<sup>176</sup>This presentation is based on the historical review in Official Norwegian Report (NOU) 2001: 3.



supervisory committees). At the same time, it became possible to use proportional representation elections to elect the representatives but only if a certain number of voters so required. After 1925, proportional representation elections were introduced at all municipal council elections according to the applied largest fraction method and this was retained even after the more proportional Sainte-Laguë's method was introduced at the 1953 parliamentary election.<sup>177</sup>

It was not until 2001 that the distribution of seats among the parties changed so that it followed the same system as at parliamentary elections and county council elections (the Sainte-Laguë's method with first quotient 1.4). This had also been discussed by previous Election Act Commissions. In Official Norwegian Report (NOU) 1982: 6, this was discussed as a possibility but only the minority of the Commission supported the change at the time. However, in Official Norwegian Report (NOU) 2001: 3, the majority was in favour of such a change. This reason for this was that it would simplify the final election result, provide common rules for all elections and a better proportionality in the composition of the municipal council.

From the establishment of the county councils<sup>178</sup> in 1837 to 1975, representation on the county councils was indirect and the county councils were composed of delegates from the individual municipalities in the county. The representatives were responsible for the municipal councils, not the voters in the county. From 1975, direct elections to the county councils were introduced with elections every four years and using the Sainte-Laguë's method with the first quotient 1.4. Thus, the county council's representatives became accountable to the county authority's voters instead of the voters in the municipality from which they came.

Until the county council election in 2003, there was a kind of equalisation system to ensure that all municipalities – as far as possible – had at least one representative on the county council. The system did not affect the party distribution, only which people were elected from the various parties. The equalisation system was abolished after the previous Election Act Commission's work. The Commission emphasised that this system could help weaken the county authority as a political unit by allowing the representatives to perceive themselves as representatives of the municipality rather than seeing the totality of the county authority policies. The Commission also emphasised that the system was introduced as a transitional arrangement upon the introduction of directly elected county councils and that it was time for it to be abolished.

The Ministry supports the evaluation of the Commission and also added that the existing system could contribute to a debate on local policy assessments and priorities being moved into the regional policy body. This could create an unfortunate combination of the two political levels.

As stated below, the Norwegian electoral system differs from the other Nordic countries in that there are different electoral systems for elections at different levels, while Finland, Denmark and Sweden all have relatively similar systems for the various types of elections.

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<sup>177</sup>See Official Norwegian Report (NOU) 2001: 3 "*Voters, electoral system, elected*" page 33 and pages 174–176, for a description of the previous electoral system at municipal council elections.

<sup>178</sup>The county councils were called "*amtformannskap*" and then "*amtsting*" before they were called "*fylkesting*" from 1919.

The interest in regional democracy has proved to be less than the interest in local democracy. Over time, the election turnout has been slightly lower at county council elections than at municipal council elections, despite the elections being held at the same time.<sup>179</sup> The gap has mostly been between two and four percentage points.

### 6.1.3 Local elections in other Nordic countries

#### *Sweden*

In Sweden, the rules for election to the Swedish Parliament, *county council assemblies* and *municipal council* are regulated by the Swedish Elections Act. The rules largely follow each other and are relatively similar at the various levels. It used to be mandatory for the counties to be divided into constituencies at county council elections but now the county councils can choose whether to do so. In Sweden, the Sainte-Laguë's method is used but with the first quotient of 1.2 to distribute seats among the parties.

At elections to the *municipal council*, the municipality is divided into several constituencies if it has more than 36,000 inhabitants or if there are specific reasons for this. The municipalities must adopt the division themselves, otherwise, the municipality becomes one constituency. When the municipalities have been divided into constituencies, 90 per cent of the seats shall be distributed as constituency seats and the remainder shall be seats at large. There is then an electoral threshold of at least two per cent of the votes in the municipality (or three if there are more constituencies or at elections to *the county council assemblies*) to have the opportunity to be allocated seats. The seats are distributed first among the parties at a constituency level to the parties that are above the electoral threshold. A seat distribution is then calculated throughout the municipality and if parties have received too many or too few seats in the first calculation, they lose or receive seats so that the final number of seats follows the poll at a municipal level.<sup>180</sup>

In 1970, Sweden introduced a joint Election Day and the system has since been reported on several times. A report from 2002 concluded that the system of a joint Election Day should be continued.<sup>181</sup> The report emphasised that introducing separate election days for national and local elections means a lower turnout in the municipal elections and that this is "unacceptable from a democratic point of view" - Another main point was the holistic perspective of the policies. A joint Election Day encourages the voters to assess the various parties' policies at a local and national level as a whole. This enables the voter to make conscious decisions at the various elections. In this way, a joint Election Day also safeguards the connection between national and local politics and "maximises" the opportunities to exercise a unified policy throughout the country, especially within welfare areas such as school and care.

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<sup>179</sup>Johannes Bergh and Dag Arne Christensen, "Hvem er hjemmesitterne?", i *Lokalvalget 2015: et valg i kommunereformens tegn?*, red. Jo Saglie and Dag Arne Christensen (Oslo: Abstrakt forlag, 2017), page 63.

<sup>180</sup>This differs from the Norwegian seats at large system at parliamentary elections in that parties may also lose direct seats they have received in the constituencies.

<sup>181</sup>Official Swedish Report (SOU) 2002:42 *The joint Election Day and other election issues*.

Another argument from the report was that local democracy had developed positively since the introduction of a joint Election Day in the 1970s. The Swedes also increasingly chose different parties at the municipal and parliamentary elections respectively. The research, on which the report was based, also showed that the media's interest in the municipal arena did not diminish upon the introduction of a joint Election Day. However, the media's attention to municipal elections had increased in total in the thirty years leading up to the report.<sup>182</sup> Therefore, the system of a joint Election Day could not be said to have prevented a developed local democracy. However, the report pointed out that municipal democracy would continue to be vitalised in a system with a joint Election Day. The report went further and also warned that a transition to separate election days risk threatening "so many important issues in municipal democracy that are connected to a high election turnout". However, subsequent reports are more concerned that separate election days may give local issues greater weight in relation to election campaigns,<sup>183</sup> and that the media "focuses mostly on national issues [...]".<sup>184</sup> In the debate on a joint Election Day, several critics have also argued that a joint Election Day means that the local issues are overshadowed by national politics.

Another experience from Sweden relates to competence during the election process. Election officials in Sweden have pointed out that it is difficult to maintain competence in the municipalities on how elections are conducted with such long intervals between the elections.

### *Denmark*

In Denmark, the rules for municipal and regional elections remind us of the rules for parliamentary elections and have been set out in the Act relating to Municipal and Regional Elections. The regions are not divided into constituencies at regional council elections and the distribution of seats is done using the d'Hondt's method as at national elections.

The voters receive a ballot paper with a list of all the candidates for all the lists and the parties and cast a vote by ticking either a list or a person on a list. In other words, a list or a candidate must be chosen but it is not possible to vote for more than one candidate or to divide the vote between one party and one candidate on another list. The Danish system also does not allow for candidates to be deleted from the list. The lists of candidates may contain four more names than there are members to be elected (section 21).

Unlike at parliamentary elections, several lists may be joined together in list alliances and parties and coalition lists to increase their chances of obtaining seats (section 24). Then the seats will first be distributed among parties that stand for election alone and the various alliances. The seats will then be distributed among the list alliances within the coalition lists and parties and lists within each alliance. Finally, it is calculated which independent candidates are entitled to a seat within each list or party. At elections to the municipal councils, different types of alliances are relatively common because d'Hondt's method gives the largest parties an advantage.

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<sup>182</sup>Official Swedish Report (SOU) 2001:65 *Separate election days and spring elections?*

<sup>183</sup>Official Swedish Report (SOU) 2008:125 *A reformed basis.*

<sup>184</sup>Official Swedish Report (SOU) 2016:5 *Allow more people to shape the future!*

The members of the Danish Parliament are elected for a four-year term. However, the Prime Minister may request for new elections to be called. Therefore, the timing of the parliamentary elections may vary. The election of the county councils and municipal councils takes place every four years. In 2001, there were elections at all political levels for the first time at the same time. In that year, the turnout was about 15 per cent higher at the two local elections.

### *Finland*

The electoral system at Finnish elections is the same as for the Swedish Parliament, *county councils* and *municipal councils* and the distribution of seats is done according to the d'Hondts method. At *municipal council* elections, lists can be put forward by parties, by alliances between parties, by a single list and by a *voters' association*, which is a list organised around one candidate. The voters must vote for independent candidates (i.e. forced preferential voting), and thus it is not possible to give cross-party votes to other lists or to delete any candidates.

The votes are counted so that the candidates' votes are given to the list for which they are running. The seats are then distributed on each list according to the d'Hondt's method. When it is clear which lists are entitled to seats, these are distributed among the candidates according to who has received the most personal votes. When selecting candidates, all the candidates within a coalition list are equal. In other words, it is important which part or list they are actually standing from and thus is not important which party received the most votes from the parties on the coalition list. The only thing that determines who is elected is which candidate has received the most votes.

## **6.2 The electoral system**

As is evident from the discussion above, there has been a tendency for electoral systems to become more similar over time in Norway. The Commission finds this is a positive trend and wants to increase the correspondence by introducing more similar preferential voting at the various elections (see Chapter 7). The Commission finds that there is no reason to change the electoral system at county and municipal council elections as regards the distribution method (i.e. the Sainte-Laguë's method with an elevated first quotient) and that the distribution method should follow the electoral system at parliamentary elections.

Furthermore, the possibility of dividing municipalities and county authorities into more constituencies and the requirements to be set for the numbers of members of the county council and municipal council are discussed.

### **6.2.1 Division into constituencies**

Sweden has a system that allows for the division of municipalities and counties into constituencies and seats at large by municipal and county. It is also possible to envision several arguments for such a system in Norway as well. In the same way as the division of Norway into constituencies, this will ensure that different geographical areas of municipalities and counties are represented. It is also possible to reduce the frequency of geographical voter protests. Unlike at parliamentary elections where many of the parties only get one candidate elected from each constituency, the parties often have several candidates elected at municipal and county council elections. Since the parties today attach great importance to having candidates from all over the country on their electoral lists, most parties have candidates with different types of backgrounds elected. The

preferential voting system at parliamentary elections has been relatively little and thus, the parties have good control over the geographical distribution of representative.

With the local government reform and mergers of municipalities into larger units, it may be possible that geographical representation is perceived also to be more important within municipalities. The mergers in the 1960s led to voter protests in some municipalities. At that time, the municipal councils in some municipalities were dominated by representatives from one part of the new municipalities.

Representatives elected from smaller constituencies may also consider themselves representatives of these areas and not of the municipality as a whole. Such a system is thus most relevant in municipalities where local representation from areas far away from the municipal centre is necessary, possibly also to give individual areas a greater influence in the municipality to make up for the distance.

It is possible to take these considerations within the current regulations. The Local Government Act allows for the establishment of democratically elected bodies under the municipal council, cf., Chapter 5 of the Local Government Act. For example, the municipalities can be divided into several geographical areas with their local committee, cf. section 5.7, subsection 1 of the Local Government Act. These local committees can work within the geographical areas and thus ensure the local democracy in large municipalities. Today, this system is used in several Norwegian municipalities, although only Oslo has direct elections to the local committees. The system is flexible for the appointment of the committees (appointment or direct election) and the type of tasks and the various municipalities that use local committees, have also chosen different solutions.

As regards the county council, the members of the county council were previously elected by the municipal councils of the county. Today, each county is one constituency. The parties put forward a list for the entire county and there is one joint final election result for the county. There is a minimum requirement for how many members there will be on the county councils and relatively many representatives are elected in each county. This provides a low threshold for being represented and ensures a high degree of proportionality even with an elected first quotient.<sup>185</sup>

The reason by the counties are not divided into constituencies has been a desire for the representatives of the county council to represent the entire county, not just their municipalities as it was before. In line with this, the electoral system at county council elections has no separate mechanism to ensure that all the different parts of the county are represented on the county council. Unlike for the municipalities, there are also no rules in the Local Government Act that allow local committees. At the same time, it matters where the representatives come from and Fiva and

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<sup>185</sup>The current minimum requirement for the number of members on the county councils is between 35 and 43 members. The minimum requirement provides effective electoral thresholds that vary between 2.1 per cent with 35 members and 1.7 per cent with 43 members. However, all county councils have settled on a higher number of members than the minimum number and the effective electoral thresholds vary between 1.6 per cent in Møre & Romsdal and 0.85 per cent in Viken. Even in the smallest county councils, the minimum requirement will provide a lower electoral threshold than in the largest constituency at the 2017 parliamentary election (Oslo with 18 directly elected seats and an effective electoral threshold of 3.9 per cent).

Halse find that the representatives' home municipality has a bearing on which policies the county council adopts.<sup>186</sup>

During the county merger process, there has been input from actors in several counties with a desire to also introduce constituencies at the county council elections. The arguments for splitting up a county into several constituencies may be to ensure that several areas of the county are represented on the county council. Although the parties have made sure to have a geographical distribution of their candidates, larger counties will make this more challenging. It is also possible to imagine that the preferential voting system may have a greater impact in merged counties than it has had to date, given previous experience with voter protests following municipal mergers.

The previous Election Act Commission also considered the constituency structure at county council elections. The Commission referred to the proposal put forward by the Sundsbø Commission (appointed by KS).<sup>187</sup> The Sundsbø Commission proposed dividing the county authorities into several constituencies and found it would give the inhabitants a stronger connection to the constituencies' representatives and increase interest in the county council elections and the legitimacy of the democratically elected intermediate level.

The previous Election Act Commission did not endorse the proposal. The Commission emphasised that the division into several constituencies could "contribute to a weakening of the county authority as a regional unit and to creating divisions and antagonism between different parts of the county. The proposal will also help complicate the electoral system".

However, the Commission also pointed to the then ongoing regional reform and the possibility of a future regional organisation with fewer regions. The Commission found that this could make it necessary to introduce an electoral system where regions/counties were divided into several constituencies. "For example, it is possible that more constituencies are established within the region – e.g. based on today's counties – and that a certain number of representatives are elected to the regional assembly from each constituency."

### 6.2.2 Number of members

The county and municipal councils can decide for themselves how many members they should have, but in the Local Government Act there is a minimum requirement the number of members. This figure varies with the number of inhabitants in the municipality or county. The reason for a minimum requirement is to ensure a certain degree of representativeness. The minimum requirements have not changed since the last Local Government Act was adopted in 1992. The Local Government Act Commission (Official Norwegian Report (NOU) 2016: 4) emphasised that the county authorities will determine to the greatest extent possible themselves how many members they want on the county council. Furthermore, the Commission stated:

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<sup>186</sup>Jon H. Fiva and Askill H. Halse. "Local Favoritism in At-Large Proportional Representation Systems". *Journal of Public Economics* 143 (2016): 15–26. <https://doi.org/10.1016/j.jpubeco.2016.08.002>.

<sup>187</sup>KOU 1-98 "Rydd opp!: styrket folkestyre og administrativ forenkling".

On the other hand, it is important for the sake of a well-functioning local democracy and representativeness that a minimum number of members is ensured. What is an appropriate minimum number naturally depends on the size of the [county] authority and is thus natural to relate to the number of inhabitants in the [county] authority.

The Commission found that this consideration was taken satisfactorily into account in the regulations with the applicable minimum requirement and proposed no changes.

The number of municipal councillors in Norway has decreased over time, both in total number and on average per municipal council.<sup>188</sup> While there were nearly 14,000 municipal councillors in the 1980s, there are currently just over 9,000. The reduction has taken place gradually over time, but the regional reform led to a relatively large reduction after the last municipal council election in 2019. The average number of representatives on the municipal councils has followed the number of municipal council representatives with a reduction over time, but there was some increase after the regional reform. This is because the new (merged) municipal councils have become larger than the previous municipal councils, see Figure 6.1.

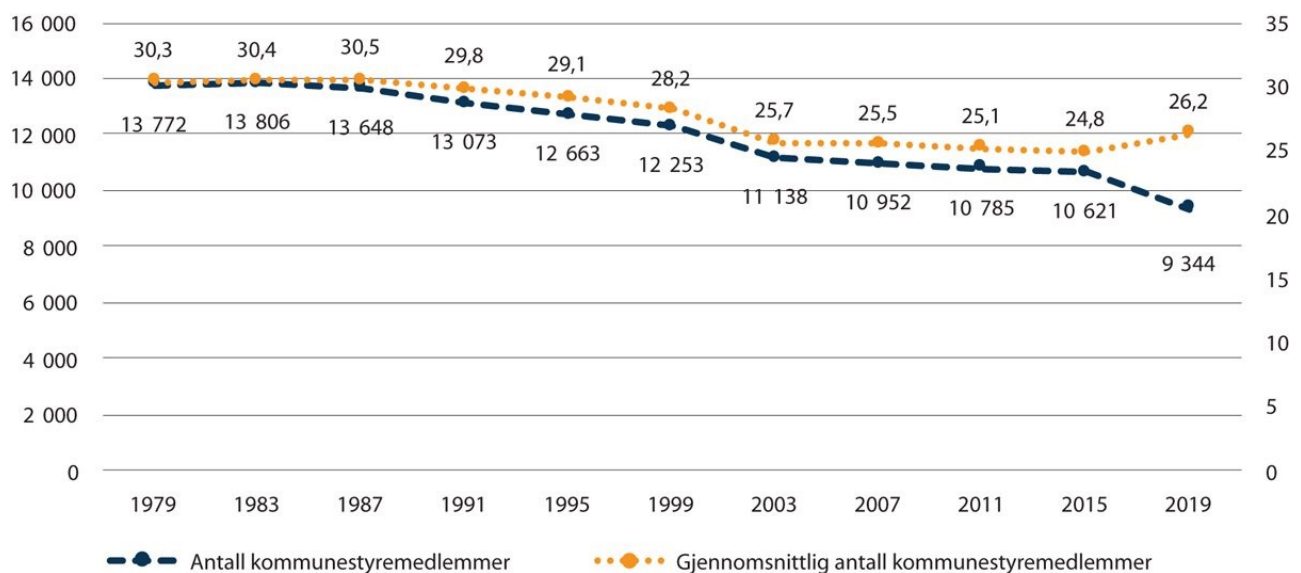


Figure 6.1 The number of municipal councillors over time.

Source: Statistics Norway (Table 01182).

Since the Local Government Act Commission presented its recommendation, there have been changes in the county structure that have an impact on the size and population of the counties. There are fewer counties that have few inhabitants and at the same time, several counties have very many inhabitants. Before 2020, Akershus was the county with the most inhabitants, 614,000.<sup>189</sup> Viken has now taken over the position of the county with the most inhabitants and it

<sup>188</sup>Sara Blåka, Trond Tjerbo, and Hilde Zeiner, *Municipal Organisation 2012*, NIBR report 2012:21 (Oslo: Norwegian Institute for Urban and Regional Research, 2012), page 33.

<sup>189</sup>Population as of 1 January 2018.

has about twice as many inhabitants, 1.2 million. There have also been municipal mergers at the same time but the new municipalities have populations that are well within the current system.

As Table 6.1 shows, the new county structure implies that the minimum categories in the Local Government Act are no longer as relevant. There are no longer any counties that have fewer than 200,000 inhabitants and the 2 lowest categories thus become unnecessary. There is also a significant difference between counties that will end up in the same category. For example, there will be equal requirements for the number of members for Agder, with about 300,000 inhabitants, as there will be for Viken, with over 1.2 million inhabitants. This involves very different representativeness requirements. With 43 representatives (as a minimum), there will be around 7,000 inhabitants behind every representative in Agder, while there will be more than 28,000 inhabitants behind every representative in Viken.

*Table 6.1 Today's minimum requirement for the number of members on the county council.*

County population	Minimum requirement for the number of members on the county council	Previous county structure	Current county structure (population 2020)
–150,000	at least 19	Aust-Agder Finnmark Nord-Trøndelag Sogn & Fjordane	None
150,000–200,000	at least 27	Hedmark Oppland Telemark Troms Vest-Agder	None
200,000–300,000	at least 35	Buskerud Møre & Romsdal Nordland Sør-Trøndelag Vestfold Østfold	Nordland (240,000) Troms and Finnmark (240,000) Møre & Romsdal (270,000)
300,000–	at least 43	Akershus Hordaland Rogaland	Innlandet (370,000) Agder (310,000) Vestfold and Telemark (420,000) Trøndelag (470,000) Rogaland (480,000) Vestland (640,000) Viken (1,240,000)

Table 6.2 presents the number of members of the new county councils elected in 2019. The figures show that the majority are well above the minimum threshold.



*Table 6.2 The number of members on the new county councils, 2019–2023.*

County	Statutory requirements	Number of members 2019–2023
Møre & Romsdal	At least 35	47
Nordland	At least 35	45
Troms and Finnmark	At least 35	57
Agder	At least 43	49
Innlandet	At least 43	57
Rogaland	At least 43	47
Trøndelag	At least 43	59
Vestfold and Telemark	At least 43	61
Vestland	At least 43	65
Viken	At least 43	87

### **6.2.3 Rules on majoritarian elections in municipalities**

Chapter 12 of the Election Act has rules for how the election is conducted if there is no more than one approved list proposal. The election shall then be conducted as a majoritarian election. There are no corresponding provisions for county council elections or parliamentary elections. The reason for this is that in some, especially small, municipalities, several electoral lists are not put forward. The last time these provisions were used was at the 1999 election in the municipality of Modalen. Before the 2019 election, two municipalities contacted the Norwegian Directorate of Elections and reported that they would possibly only have one list to put forward at the election that year. However, in both of these cases, several lists were put forward.

The rules on proportional representation elections are unsuitable if there is only list standing for election, since there is only one list to vote for. The election will then be conducted as a majoritarian election where the voters vote for individuals. The one list proposal that has possibly been approved is no longer taken into consideration.

The voters vote by setting up a list containing at least one name and a maximum of twice as many names as the number of members of the municipal council (i.e. the municipal council members and equally as many deputy members). If more names are listed than allowed, the surplus names are disregarded. If the voters have listed non-electable people, these individuals will not be included in the final election result. Voters can list names as members and deputy members but only as many of each as the members that are to be elected. Where a voter has made no distinction between members and deputy members on the ballot paper, those listed first are regarded as members in the number permitted and the subsequent names as deputy members in the number permitted.

The final candidate result is carried out by first counting how many times each name has been listed as a member. The seats are then allocated according to which names have received the most member votes. When all the representatives have been elected, a new count is made and this time the member and deputy member votes are counted. The names that receive the most

votes in this second count, and who have not already been elected, will be elected as deputy members of the municipal council. Individuals and groups are allowed to produce their lists and distribute them to the voters.<sup>190</sup>

#### **6.2.4 Joint Election Day**

The previous Election Act Commission concluded that parliamentary elections should still be held separately from municipal and county council elections.<sup>191</sup> The overall assessment was that the benefits of a possible increase in turnout at local elections could not outweigh the disadvantages of a joint Election Day. Central to the argument was that a joint Election Day would lead to municipal and county council elections become overshadowed by national politics, and that separate election days in a better way create interest for and draw attention to the local issues. Furthermore, the Commission pointed out that it is unfortunate that the consequence of a joint Election Day will be that some voters are up to 22 years old before they are allowed to participate in elections. In addition, every fourth year at upper secondary school will not be allowed to participate in school elections, which are often the first introduction to elections for young people.

The Local Democracy Commission reached the same conclusion in 2006. The Commission argued on the same lines as the previous Election Act Commission and stated, among other things: "There is a fear that a joint Election Day may shift the political focus towards the national election. In addition, such reform will lead to four years between each time the voters have the opportunity to go to the polls."<sup>192</sup>

### **6.3 The Commission's evaluation**

#### **6.3.1 Division into constituencies**

The Commission does not want to allow municipalities or counties to be divided into several constituencies. The Commission sees that there are major differences between the counties and the municipalities. The division into constituencies may be a possible solution to create more interest around the county council elections and give voters better affiliation with the representatives in new larger units. Nevertheless, the Commission finds that there are good reasons to continue the current regulations and not allow the counties or municipalities to be divided into constituencies. Such an opportunity could weaken the overall perspective that the county and municipal councils should have.

The Commission finds it is important to create interest among voters for the entire geographical area and a common identity in municipalities and counties. It is the responsibility of the parties to ensure that different parts of the counties and municipalities are represented. As regards the municipal councils, there are also several ways of ensuring that different parts of the municipality are

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<sup>190</sup>See Ot.prp. no. 45 (2001–2002) (white paper) page 242.

<sup>191</sup>Official Norwegian Report (NOU) 2001: 3 *Voters, electoral system, elected representatives*.

<sup>192</sup>Official Norwegian Report (NOU) 2006: 7 *A changing local democracy? About participation and involvement in local politics*.

heard, for example, through local committees, if necessary. Therefore, the committee does not support allowing the municipalities and counties to be divided into constituencies.

### 6.3.2 Number of members

As regards how many members will be elected to the county councils, the Commission points out that the county structure has changed after the Local Government Act Commission's report. A sufficient degree of representation is necessary to ensure that various considerations are heard and so that the county democracy has relevance and legitimacy. Therefore, the Commission finds there is reason to consider these regulations.

*The majority of the Commission (Anundsen, Christensen, Giertsen, Hagen, Hoff, Holmøyvik, Høgestøl, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo)* finds that the current number of county council members works well and proposes to continue this number. However, the majority finds that there is no need to continue two categories to which no counties belong and proposes abolishing these categories. The majority also proposes introducing a new category in the Act for counties with more than 500,000 inhabitants and proposes that the requirement for the number of members there should be at least 51. In a new country, this will be of importance for Viken and Vestland. Both have already adopted a higher number of members than this for the period 2019–2023. The majority also finds that if any of the county mergers are revoked, a minimum requirement of 35 members will not be unreasonable and points out that Finnmark had 35 members on the county council in the period 2015–2019.

Therefore, the majority proposes the following categories:

- County authorities that do not have more than 300,000 inhabitants shall have at least 35 members on the county council.
- County authorities with more than 300,000 inhabitants, but not over 500,000 inhabitants, shall have at least 43 members on the county council.
- County authorities with more than 500,000 inhabitants shall have at least 51 members on the county council.

As for the municipal councils, the *majority of the Commission (Anundsen, Christensen, Giertsen, Hagen, Hoff, Holmøyvik, Høgestøl, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo)* sees little reason to change the current minimum requirement for the number of members and points out that this has recently been dealt with by the Local Government Act Commission. The municipal mergers have not led to new units with a larger population than those covered by the current system.

*The minority of the Commission (Grimsrud, Holmås, Nygreen and Strømmen)* points out that a living democracy with strong popular support and the capacity for renewal is best ensured when many citizens gain political experience. Broad involvement and political competence provide an understanding of key democratic and political decision-making processes. The role of democratically elected officials as ombudsmen for their citizens becomes clearer and our representative democracy will be strong and safer. The development and management of community resources are challenging and a good balance between democratically elected and administrative employees is important. The role of the democratically elected representatives must be developed so that they can be good ombudsmen for the citizens.

Therefore, the minority finds that the development, with a reduction in the number of democratically elected representatives in recent years, is unfortunate. The Local Government Act regulates the minimum number of members of municipal and county councils (section 5-5). However, the minority finds that the number of members of municipal and county councils may be too low and thinks that the minimum limit for the number of members on the municipal and county councils should be raised.

The minority proposes the following minimum requirements:

- County authorities that do not have more than 200,000 inhabitants shall have at least 35 members on the county council.
- County authorities with more than 200,000, but not more than 300,000 inhabitants, shall have at least 49 members on the county council.
- County authorities with more than 300,000, but not more than 500,000 inhabitants, shall have at least 65 members on the county council.
- County authorities with more than 500,000 inhabitants shall have at least 79 members on the county council.
- Municipalities that do not have more than 5,000 inhabitants shall have at least 15 members on the municipal council.
- Municipalities with more than 5,000, but not more than 10,000 inhabitants, shall have at least 25 members on the municipal council.
- Municipalities with more than 10,000, but not more than 25,000 inhabitants, shall have at least 35 members on the municipal council.
- Municipalities with more than 25,000, but more than 50,000 inhabitants, shall have at least 49 members on the municipal council.
- Municipalities with more than 50,000 inhabitants, but not more than 100,000 inhabitants, shall have at least 59 members on the municipal council.
- Municipalities with more than 100,000 inhabitants shall have at least 65 members on the municipal council.

The Commission will not consider whether there should be maximum limits, as this is not affected to the same extent by the structural changes and since the Local Government Act Commission has recently considered the issue.

### **6.3.3 Majoritarian elections**

The Commission finds there may still be a need to have separate rules on how the election should be conducted if several lists are not put forward. The Commission finds that the current rules on majoritarian elections should be continued. The Commission also points out that it proposes lowering the requirement for the number of candidates on the list so that it can help make it easier for multiple parties to put forward lists. Therefore, the actual use of majoritarian elections due to the lack of more than one list is expected to be small.

The Commission also finds that it should be possible for the Electoral Committee to postpone the deadline for submitting list proposals if only one or no list proposals are submitted. In this case, it should be required that those who put forward lists have obtained in advance the consent of the candidates to be on the list proposal so that the municipality does not have to obtain this later.

#### 6.3.4 Joint Election Day

In the discussion of the issues of a joint Election Day for the parliamentary, county and municipal council elections, the Commission has taken the view that the highest possible participation is desirable. The rationale is that voter participation is an expression of the degree of political commitment and involvement in the population in general. A high voter turnout also gives a clear mandate to elected politicians and legitimacy to political decisions and the representative democracy. A high voter turnout can also indicate that voter participation is more or less the same across different groups and thus means that the political influence is the same.

The Commission finds it is desirable that the voters participate more in democracy and that the turnout at municipal and county council elections increases. A weighty argument for a joint Election Day is that the participation in municipal and county elections likely to increase. In this way, the effect of a joint Election Day could be that elected politicians receive a clearer mandate and a high voter turnout could give greater legitimacy to political decisions and the representative democracy. A coinciding time for all elections may also strengthen the holistic perspective on politics. At the same time, one must ask whether one wants a higher voter turnout on this basis – where one must assume that fewer would have voted if it were not for the connection with the parliamentary election.

*The majority of the Commission (everyone except Anundsen)* finds that a joint Election Day is problematic considering the voters' total political involvement and experience of influencing politics. This is primarily because a joint Election Day involves a long period between each time voters can hold the politicians accountable at elections. The elected politicians should also reflect the political mood of the people. Therefore, the Commission's majority finds that it is advantageous to hold either national or local elections at a reasonable interval. In addition to this is the consequence of involving young people in politics: A joint Election Day every four years will mean that some first-time voters may be almost 22 years old before they can participate in elections.

Secondly, national politics on a joint Election Day is likely to dominate the media picture and debate to an even greater extent. Also under the current system, the studies show that voters are most concerned about national politics.<sup>193</sup> Given the high degree of political commitment and involvement in the population, it would be unfortunate if local politics receive even less attention from the national media or the voters. That local politics risk being overshadowed by national politics supports keeping election days separate. However, it is uncertain *how negative* the impact of a joint Election Day will have on the population's political commitment and involvement in local politics, cf. the experiences from Sweden. However, the majority finds that there is a risk that the commitment and involvement in local politics will be weakened. In this regard, the majority points out that in the current system, the voters' commitment to and interest in Norwegian local politics is

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<sup>193</sup>Statistics Norway, the municipal and county council elections, electoral survey 2015. 65 per cent report being very or quite interested in national politics. When it comes to municipal politics, 57 per cent indicate being very or quite interested, while 30 per cent state the same interest as for county politics.

locally based.<sup>194</sup> In this way, the system is well-functioning with a view to creating engagement and involvement in local politics.

Finally, the Commission's majority emphasises the consideration for competence during the election process. If elections are held every four years, it becomes more difficult to keep the knowledge in the municipalities about how elections are conducted. The majority of the Commission concludes that the current system of separate elections for parliamentary, municipal and county council elections should be continued.

*Members Anundsen and Holmås* find a high voter turnout at as many elections as possible is a fundamental consideration to which great importance must be attached when assessing whether there should still be different election years for local government and parliamentary elections. A joint Election Day will likely increase the voter turnout in general, which in isolation will strengthen democracy.

*Commission member Anundsen* further points out that an election period is four years, both for municipal and county council elections and parliamentary elections. Therefore, in reality, politicians are accountable in elections only every four years. An assumption that voters "punish" or "reward" national politicians and parties at municipal and county council elections does not change this. In this member's opinion, there is, therefore, no reason to emphasise that some people may get the impression that politicians are accountable more often by having different election years for the various elections.

At elections to municipal councils and county councils, it would be ideal that it is the politics that are relevant to the individual municipality and county that will dominate the media and the attention on the political issues. That is not the case today. This member points out that the national politics dominate the political agenda both at parliamentary elections and municipal and county council elections. There is no development towards local issues being better raised at local elections than at parliamentary elections. Rather, the development is towards a greater focus on national politics and politicians. It is primarily the use of social media that can help counter the increasing focus on political issues in the local election campaign, combined with the active use of local media.

Therefore, Commission member Anundsen finds that the current system does not strengthen local democracy or interest in local issues to any extent. This member finds that introducing a joint Election Day for all elections will help highlight the local politics better than the case is today. The voters can more easily see the context and coherence of the politics and local, regional and national politicians will be forced to do the same. The interaction between politicians at different administrative levels may be strengthened and this can help bring out the inequality in the tasks of the administrative levels and thus strengthen the population's experience of having influence overall. In addition, one effect will be that the national politicians can be more involved in local issues in their constituency because it will directly affect the election of them as candidates. Through this, local

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<sup>194</sup>Johannes Bergh and Atle Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme? Om sammenhengen mellom valgordninger og valgdeltakelse", Annex 5 of the report (the Norwegian Institute for Social Research, 2018).

politicians may find that people become more concerned with the issues that are important locally, because politicians standing for election to the Storting are held accountable at the same election.

Knowing that a joint Election Day is very likely to increase voter turnout at local and regional elections is in itself has an important effect on democracy. More people will participate in the selection of the few who will represent us all. Commission member Anundsen finds this is a fundamental democratic consideration that cannot be offset by practical arguments or uncertainty about whether there will be any more focus on national politics in the election campaign.

## 7 Preferential voting

### 7.1 Introduction

The recruitment of democratically elected representatives in Norway goes through three different stages before the representatives are elected. *The mobilisation and nomination* of candidates are controlled by the parties. Depending on the preferential voting system, the voters will then have different degrees of influence over the actual *election* of these candidates.<sup>195</sup>

It is currently not possible to stand as a candidate without a party or a list or to vote for candidates who are not on any list.<sup>196</sup> It is thus the parties that decide which candidates can be elected and this is done in two steps. The parties will first find possible candidates. Once the parties have identified who might want to stand for election, the parties nominate the candidates who are seen as suitable. The parties make a selection of candidates among those who might want to stand and prioritisation of these candidates by ranking them on the lists. Thus, the parties decide who can be elected and make a prioritisation of which of these that the party thinks should be elected. As long as it is not possible to stand for election individually, the parties have a decisive role in determining which candidates are allowed to be elected.

It is only at the very end that the voters can be given the opportunity to influence the candidate election through preferential voting.<sup>197</sup> However, in the three Norwegian electoral systems, voters have different degrees of influence. While the voters only theoretically speaking can change the parties' nomination in the parliamentary electoral system, the voters have a greater influence in the county and municipal council electoral system. However, the voters' options are also limited to the parties' list proposals in these systems and are limited to varying degrees either through an electoral threshold in the county council electoral system or through an increased share of the poll in the municipal council electoral system. Even in the county and municipal council electoral systems the parties retain a high degree of control through determining the terms for preferential voting with the nomination and ranking of the candidates.<sup>198</sup>

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<sup>195</sup>Dag Arne Christensen et al, "To valg med ny personvalgordning – Kontinuitet eller endring?", Report 9 (Bergen: Rokkansenteret, 2008), page 130 and Johannes Bergh et al, "Personvalg ved stortingsvalg – Konsekvenser av en endring av personvalgreglene ved stortingsvalg", Report 8 (Oslo: The Norwegian Institute of Social Research, 2014), page 13.

<sup>196</sup>It was possible to vote for candidates who were not on the list, so-called wild cards in the Norwegian municipal council elections until amendment of the Election Act in 1974. At Swedish elections, the parties can choose to leave the lists open to other candidates.

<sup>197</sup>Christensen et al, "To valg med ny personvalgordning", page 130.

<sup>198</sup>Christensen et al, "To valg med ny personvalgordning", page 130.



## 7.2 Current law and historical development

### 7.2.1 Parliamentary elections

#### 7.2.1.1 *Applicable law*

Parliamentary elections are currently almost purely party elections. The voters have the opportunity to change the order of candidates but in practice, this has not bearing on who is elected.

Section 7-2, subsection 1 of the Election Act determines how to change a ballot paper at parliamentary elections:

At parliamentary elections, the voter may change the order in which the candidates are listed on the ballot paper. This is done by the placing of a number by the name of the candidate. The voter can also strengthen the name of a candidate by proceeding according to the instructions on the ballot paper.

The rules on the returning of members are laid down in section 11-5, subsection 1 of the Election Act.

When it has been decided how many constituency seats an electoral list shall have, the County Electoral Committee allocates these to the candidates on the list. Candidates who are not eligible are disregarded. The returning of members takes place in the following manner: First, the names listed as no. 1 on the ballot papers are counted. The candidate who has most such placements is elected. Thereafter, the names listed as no. 2 on the ballot papers are counted. The candidate who has most such placements when the results from the first and second counts are added together is elected. The counts continue in the same manner until all the parliamentary seats the list shall have, have been filled. If two or more candidates achieve the same result, the original order on the list is decisive.

These rules have been drawn up so that correcting the lists has only a theoretical effect. At least half (+1) of a party's voters in a constituency must make the same change to the ballot paper for it to have a bearing. This has never happened so far.

#### 7.2.1.2 *Historical development*

Today's preferential voting system at parliamentary elections was introduced with the introduction of proportional representation elections in constituencies with more seats in the Storting Election Act of 1920. Until then, parliamentary elections had been decided by indirect elections after 1814 and later, from 1905, by direct elections in single-member constituencies. It was only with the introduction of constituencies with more seats that preferential voting was actualised. The system chosen meant that this decision was primarily determined by the parties' nomination but also gave the voters a limited opportunity to influence the election by changing the order on the ballot paper.

In repeated public reports after 1920, the preferential voting system has been viewed as a problem and it has been proposed to alter the system to strengthen the influence of the voters. Both the Electoral System Commission of 1927 and a minority of the Electoral System Commission of 1948 proposed a moderate strengthening of the influence of the voters but did not find support in the Storting. In Official Norwegian Report (NOU) 1973: 38 *Preferential voting at parliamentary and municipal elections* it was proposed to increase the voter influence through amendments to the

nomination process rather than at the election. New rules on test nominations were proposed where all voters were allowed to participate. NOU 1982: 6 *About a new Election Act* cared less about preferential voting at parliamentary elections and finds the voters were primarily concerned with a party and not candidates at parliamentary elections. Therefore, the Commission stated that it was not necessary to change the preferential voting system at parliamentary elections.

However, in Official Norwegian Report (NOU) 2001: 3 *Voters, electoral system and elected* the voters' lack of influence over who was elected was once again viewed as a problem. The Commission proposed introducing weak preferential voting with a system similar to the system that was introduced for county council elections but with an electoral threshold of 5 per cent (increased to 8 per cent in the Ministry's proposal).<sup>199</sup> This did not gain a majority in the Storting. While a minority of the Standing Committee on Scrutiny and Constitutional Affairs wanted to introduce the system, the majority argued that there was "great uncertainty" about the consequences the systems would have and that a small minority could conceivably have a major influence with such a system.<sup>200</sup> Therefore, the majority found that it was appropriate to wait and see the consequences of the introduction of the same system for county council elections before introducing it for parliamentary elections.

In 2010, there was a representative proposal that the Government should re-propose the county council electoral system for parliamentary elections.<sup>201</sup> The discussion by the committee led to a request decision in 2012 calling on the Government to "report on changes to the electoral system for parliamentary elections so that the voters are allowed to influence the order of the parties' candidates".<sup>202</sup> The Government again proposed the county council electoral system with a threshold of eight per cent.<sup>203</sup> This was based in part on a report that contained simulations on the potential consequences of the preferential voting system from the Norwegian Institute of Social Research (ISF).<sup>204</sup> This proposal was again voted down in the Storting. Opposition to the proposal can be divided into two groups. On the one hand, the Labour Party's members on the committee found that the proposal would weaken the parties' ability to secure representation of different groups and that it could lead to a small group having an "unreasonably strong influence" on the preferential voting. These representatives thus questioned the positive effects of the proposal on democracy. On the other hand, there were committee members who thought increased preferential voting was positive but that the specific system proposed was not a good enough solution. These members want two other systems reported on. Thus, the parliamentary debate led to a new request decision where the Government was asked to return to the Storting with a proposed preferential voting

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<sup>199</sup>White paper Ot.prp. no. 45 (2001–2002).

<sup>200</sup>Innst. O. no. 102 (2002–2003).

<sup>201</sup>Document 8:101 S (2009–2010).

<sup>202</sup>Innst. 297 S (2011–2012).

<sup>203</sup>Prop. 73 L (2015–2016).

<sup>204</sup>Bergh et al, "Personvalg ved stortingsvalg".

system where two new systems would be considered.<sup>205</sup> One scheme, proposed by the Christian Democrat Party, was a combination of the municipal council electoral system and a threshold of 8 per cent. The other, proposed by the Socialist Party, was a weighted increased share of the poll for candidates where the first candidate would have the greatest weight and each subsequent candidate would have less and less weight.<sup>206</sup>

At repeated debates in the Storting, there has apparently been support to expand the preferential voting at parliamentary elections but not a majority for a specific system. Simulations of the two systems proposed by the Christian Democrat Party and the Socialist Party have been conducted for the committee by the Norwegian Institute for Social Research.<sup>207</sup>

Norway has been criticised for its preferential voting system at parliamentary elections. OSCE recommends a reassessment of the high threshold for changing which candidates are elected in the report following the 2017 election.<sup>208</sup> Alternatively, OSCE finds that the system should be removed to avoid voters believing they have an influence they do not actually have.

## 7.2.2 County authority election

### 7.2.2.1 *Applicable law*

The rules for county council elections are laid down in the Election Act. The final election result is described in section 11-10, subsection 1 of the Election Act, and the distribution among the parties is done according to the Sainte-Laguë's method with the first quotient of 1.4 pursuant to section 11-4. The voters have the opportunity to give personal votes to candidates on the list they vote on, cf. section 7-2, subsection 2 of the Election Act. They can give a maximum of one personal vote per candidate: "At county and municipal council elections, the voter may give candidates on the ballot paper one personal vote. This is done by placing a mark against the name of the candidate."

Section 11-10, subsection 2 of the Election Act then describes how the returning of members shall take place:

When it has been decided how many seats an electoral list shall have, the County Electoral Committee allocates the seats to the candidates on the list. Candidates who are not eligible are disregarded, Candidates on the list who have won a total personal poll of not less than eight per cent of the total vote polled by the list are returned in sequence according to the number of personal votes received. Remaining candidates are returned based on their sequence on the list.

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<sup>205</sup>Innst. 402 L (2015–2016).

<sup>206</sup>The system described by Aanund Hylland's annex to Official Norwegian Report (NOU) 2001: 3: Aanund Hylland, "Personvalg – ved forholdstallsvalg basert på partilister" (Annex 8 of Official Norwegian Report (NOU)2001: 3, 2001), pages 773–774.

<sup>207</sup>Johannes Bergh and Jo Saglie, "Personvalg ved stortingsvalg: Konsekvenser av ulike valgordninger", Appendix 4 of the report (the Norwegian Institute of Social Research, 2018).

<sup>208</sup>"Norway Parliamentary Elections 11 September 2017", OSCE/ODIHR Election Assessment Mission Report (Warszawa: The Organisation for Security and Cooperation in Europe, 2017).

In other words, personal votes to the candidates only matter if more than eight per cent of the list's voters give a candidate personal votes. Candidates on the list who have won a total personal vote of more than eight per cent of the total vote polled by the list are returned in sequences according to the number of personal votes received, before the remaining candidates are returned based on their ranking on the lists.

### **7.2.2.2 Historical development**

Until 1975, there were no direct elections to county councils. The members of the county council were then elected by the municipal councils in the county. The same electoral system as at parliamentary elections was introduced upon the introduction of county council elections. In other words, it was possible to change the lists but this only mattered if more than half of the voters of a party made the same changes. Thus, the system did not have consequences for who was elected. During the same period, there was also a system that secured representation from the whole county by changing who was elected from each party. In other words, this system reduced the importance of the preferential voting and the parties' ranking of the candidates.

The previous Election Act Commission proposed introducing a preferential voting system at parliamentary and county council elections. This system allowed voters to cast personal votes to as many people as they wanted on the list and the Commission proposed a five per cent threshold (which was increased to eight per cent in the Ministry's proposal).<sup>209</sup> This was adopted and has been the electoral system at county council elections since 2003.

## **7.2.3 Municipal council election**

### **7.2.3.1 Applicable law**

The rules for municipal council elections have been laid down in the Election Act. Since 1985, there has been one common Election Act for all types of election, the Election Act. There are also provisions in the Local Government Act that have significance for the electoral system for municipal councils.

At municipal council elections, the municipality is the constituency. The final election result takes place pursuant to section 11-12, subsection 1 of the Election Act. The distribution of seats among the lists is done using the Sainte-Laguë's method with the first quotient of 1.4, in the same ways as at parliamentary elections pursuant to section 11-4.

The parties can give an increased share of the poll of 25 per cent of the votes to a limited number of candidates, as described in section 6-2, subsection 3:

At municipal council elections, at certain number of candidates at the top of the list proposal may be given an increased share of the poll. In such cases, candidates are given an increase in their personal share of the poll corresponding to 25 per cent of the number of ballot papers cast for the list concerned in the election. Depending upon the number of members of the municipal council who are to be returned, the proposers may give an increased share of the poll to the following numbers of candidates:

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<sup>209</sup>White paper Ot.prp. no. 45 (2001–2002).

11–23 members: no more than 4

25–53 members: no more than 6

55 members or more: no more than 10

The names of these candidates shall appear first on the list proposal and in boldface.

In addition, the voters have the opportunity to give personal votes to candidates on the list, cf. section 7-2, subsection 2 of the Election Act.

At municipal and county council elections, the voter may give candidates on the ballot paper one personal vote. This is done by the placing of a mark by the name of the candidate.

The voters can also give personal votes to candidates on other lists (cross-party votes), cf. section 7.2, subsection 3 of the Election Act.

At municipal council elections, the voter may also give a personal vote to candidates on other electoral lists. This is done by the writing of the names of these candidates on the ballot paper. Such a personal vote may be given to such number of candidates as corresponds to a quarter of the number of members who are to be returned to the municipal council. Irrespective of the size of the municipal council a personal vote may nevertheless always be given to a minimum of five candidates from other lists. When the voter gives a personal vote to eligible candidates on other lists, a corresponding number of list votes are transferred to the list or lists on which these candidates appear.

Due to the system of cross-party votes, the counting is slightly different than at other elections. The counting of votes at municipal council elections has been described in section 10-6, subsection 3: “At the final count of ballot papers for municipal elections, the Electoral Committee also registers any corrections the voters have made on the ballot papers.”

Furthermore, it follows that the votes are converted into list votes: “Thereafter, the Electoral Committee shall find the number of list votes polled by the individual lists. Each ballot paper counts for as many list votes as the number of members to be elected to the municipal council.”

This number of list votes shall then be corrected for personal votes to candidates on other lists and candidates on the relevant list from other lists: “The figure is corrected for list votes cast for and received from other lists.”

A personal vote to a candidate listed on another list will reduce the number of list votes on the list the voter has voted on. Each cross-party vote means that a list vote is moved to another list.

The returning of members takes place after the allocation of the seats among the various lists. The total of the parties' increased share of the poll, personal votes on the parties' lists and personal votes from other parties' lists (cross-party votes) are used to allocate the seats among the candidates on the list, cf. section 11-12, subsection 2:

When it has been decided how many seats an electoral list shall have, the Electoral Committee allocates the seats to the candidates on the list. Candidates who are not eligible are

disregarded. Candidates whose names are in boldface are given the increased share of the poll to which they are entitled in accordance with Section 6.2, subsection 3, before the personal votes the voters have given to the candidates are counted. Thereafter the candidates are returned in sequence according to the number of personal votes received. If two or more candidates have received the same number of votes, or no votes, the sequence on the list is decisive.

### Box 7.1 Calculation examples

There are three lists. Of the 1,000 voters in the municipality, 400 votes on list A, 250 on list B and 350 on list C. The three lists look like this, candidates with an increased share of the poll are indicated in boldface and the figure in brackets indicates the number of personal votes the candidate has received. Four representatives are to be elected.

	A	B	C
1	<b>Martin M. (110)</b>	<b>Elise E. (60)</b>	<b>Charles C. (90)</b>
2	<b>Ingrid I. (90)</b>	Eirik E. (20)	<b>Filippa F. (30)</b>
3	Gunnar G. (50)	Hannah H. (10)	Magne M. (20)
4	Janne J. (110)	Kurt K. (40)	Ida I. (100)

In addition, cross-party votes have been given to candidates on other lists. The cross-party votes move list votes between the parties and are distributed as follows for the various lists:

List votes from list A have gone to

List B (50 list votes): Eirik E. (10), Kurt K. (40)

List C (50 list votes): Filippa F. (50)

List votes from list B have gone to

List A (30 list votes): Ingrid I. (30)

List C (20 list votes): Filippa F. (20)

List votes from list C have gone to

List A (20 list votes): Martin M. (20) List B (50 list votes): Kurt K. (50)

The first step in the final election result is to add up the list votes per party to calculate the allocation of seats. The number of list votes can be found by multiplying the number of people to be elected with the number of votes the parties have received. The number of cross-party votes from the list is then deducted and the number of cross-party votes received by the list's candidates is added:

A: 400 votes x 4 seats – 100 cross-party votes + 50 received cross-party votes = 1,550 list votes

B: 250 votes x 4 seats – 50 cross-party votes + 100 received cross-party votes = 1,050 list votes

C: 350 votes x 4 seats – 70 cross-party votes + 70 received cross-party votes = 1,400 list votes

The distribution of seats between the parties is then carried out according to the Sainte-Laguë's method with first quotient 1.4.

When the seats have been distributed among the parties, the candidates are selected based on personal votes, cross-party votes and the parties' increased share of the poll. First, how many personal votes the candidate receives is calculated based on the list. This is either the number of votes on the list or this number plus the increased share of the poll (for convenience the number of votes multiplied by 1.25). This number is then added along with the number of personal votes on the list and the number of cross-party votes from other lists. Example calculation for Martin M.:

400 list votes x 1.25 increased share of the poll + 110 personal votes + 20 cross-party votes = 630 personal votes

The candidates stand in the order in which they are listed on the list proposal and candidates with an increased share of the poll are indicated in boldface. The selected candidates are marked with white:

Party A – 2 seats	Per- sonal votes	New ranking	Party B – 1 seat	Per- sonal votes	New ranking	C – 1 seat	Per- sonal votes	New ranking
<i>Martin M.</i>	400 x 1.25 + 110 + 20 = 630	1	<i>Elise E. (60)</i>	250 x 1. 25 + 60 + 10 = 382.5	1	<i>Charles C. (30)</i>	350 x 1. 25 + 90 + 0 = 527.5	2
<i>Ingrid I.</i>	400 x 1.25 + 90 + 30 = 620	2	Eirik E. (20)	250 x 1. 25 + 20 + 0 = 2 70	4	<i>Filippa F.</i>	350 x 1. 25 + 30 + 70 = 537.5	1
Gunnar G. (50)	400 + 5 0 + 0 = 450	4	Hannah H. (10)	250 + 1 0 + 50 = 310	3	Magne M. (20)	350 + 2 0 + 0 = 370	4
Janne J. (110)	400 + 1 10 + 0 = 510	3	Kurt K. (40)	250 + 4 0 + 40 = 330	2	Ida I. (100)	350 + 1 00 + 0 = 450	3

As can be seen from the table, there will be some changes in the returning of members relative to the parties' own rankings. Several candidates change places but no candidates without an increased share of the poll receive enough personal votes to get past a candidate with an increased share of the poll. Thus, the parties can decide who is elected, if they can predict how many seats they will get at the election. Party C has not succeeded in this and has given an increased share of the poll to two candidates, but only had one candidate elected. Since the second candidate has received more personal votes than the first candidate, she is the one who is elected. In this hypothetical example, it is the cross-party votes that determine this, as the party's own voters have given more personal votes to the first candidate.

### 7.2.3.2 Historical development

Before 1896, there were majoritarian elections in single-member constituencies to the executive committees and supervisory committees in the municipalities. From 1896, it became possible to

use proportional representation elections to elect the representatives but only if a certain number of voters so required. There were then unlimited opportunities to cumulate candidates, i.e., to list candidates several times on the ballot paper both for the lists and for the voters. This was quickly reduced to a maximum limit of two pre-cumulative votes per person in 1901.

A new Act on municipal council elections was passed in 1925. Here, the possibility for cumulative voting was set at two cumulative votes (i.e. three votes) per person. In addition, the voters themselves were able to cumulate candidates once and delete candidates from the lists.<sup>210</sup> Voters could also list as many candidates from other lists as there were seats on the local council and each candidate could be listed as many times as they were lists on the list plus one. The voters could also list on the ballot paper up to two times so-called wild card candidates who were not on any lists. In Official Norwegian Report (NOU) 1973: 38, the possibility of voter protests was viewed as a problem following experiences from municipal mergers in the 1960s. The Commission proposed that the possibility to have cross-party votes and wild card votes should be removed. In addition, the majority found that cumulative voting should be changed to an increased share of the poll of 20 per cent while the minority wanted 100 per cent.

In the new Election Act of 1974, the possibility for cross-party votes and wild card votes was removed and the parties were only allowed to cumulate once per candidate. The removal of cross-party votes created much significant opposition and cross-party votes were reintroduced at the 1979 election. NOU 1982: 6 once again addressed the challenges associated with cross-party votes. The Commission pointed out that the system of an unlimited number of cross-party votes made it possible to influence a party's list without transferring list votes to the party.<sup>211</sup> The majority of the Commission proposed reducing the number of cross-party votes to a maximum of five. In the deliberations by the Storting, this was amended, and from 1983 there was a maximum limit of cross-party votes of one-quarter of the number of municipal council members, with a minimum of five for the smallest municipalities (which is also the case today).

However, in Official Norwegian Report (NOU) 2001: 3, it was proposed to retain the preferential voting system for municipal council elections but make certain changes. Cross-party votes and deletions were proposed removed. The reason for removing the possibility to delete candidates was that this could go beyond specific groups and thus could have an impact on the parties' recruitment of candidates. The Commission also found that the preferential voting systems at the various Norwegian elections should be based on positive preferences and proposed a system with personal votes at all elections. As regards cross-party votes, the main argument was that this was a complicating element on the system, which was also addressed in Official Norwegian Report (NOU) 1973: 38 and that simpler regulations could lead to increased use of personal votes. At the same time, the Commission proposed strengthening the voters' influence over preferential voting.

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<sup>210</sup>Up to 1975, lists would only receive as many list votes as candidates that were listed. Thus, a ballot paper where all the names were deleted would not give list votes to the party, see Official Norwegian Report (NOU) 1973: 38 page 31.

<sup>211</sup>If a person voted for a party (x) that he or she did not want to vote for, but listed equally as many candidates from another party (y) as there were municipal council members, this would only give list votes to the party (y) from which cross-party votes were listed. Thus, it was possible to influence the composition of a party's (x) seats using personal votes on the list without giving a list vote to the party (x).



It was proposed to reduce the importance of cumulative voting to an increased share of the poll of 20 per cent so that an increased share of the poll was no guarantee for being elected. The parties should only have the opportunity to give these additional votes to two candidates on the lists.

### 7.3 Nordic law

As stated in the review of the electoral systems in the other Nordic countries below, the Norwegian system stands out on several points. Firstly, the other countries have similar electoral systems at different levels than in Norway. In other words, the same system is used more or less to allocate seats among the parties and between the candidates in all three types of elections. Secondly, the Norwegian system with cross-party votes is not used in any of the other countries. In other words, it is not possible to vote for independent candidates on other lists than the list casts a vote on. The Swedish system that allows the parties to have open lists (thus allowing for some form of wild card votes), comes closest, but it is also not possible here to influence the returning of members in the other parties.

#### 7.3.1 Sweden

Sweden currently has preferential voting with a threshold of five per cent.<sup>212</sup> Swedish voters may choose to give an extra vote to one of the candidates of the party they are voting for.<sup>213</sup> The Swedish system has been shown to have small consequences, which led to the electoral threshold being lowered from eight to five per cent in 2014. This is because it is used to a limited extent and that voters often give personal votes to candidates high up on the list, candidates that would have been elected anyway. At Swedish elections, the personal votes will only have an impact on who is elected, when a candidate has received personal votes above five per cent of the voters of a party.

In Sweden, three types of ballot papers are used: ballot papers with party and candidate information, ballot papers with only party names and ballot papers without entries. Voters who use a list with candidate information can give a personal vote to a candidate by placing a cross by the name. If several crosses have been placed, it is the uppermost candidate with a cross by his or her name that receives the personal vote. Voters who use the other types of ballot papers can list candidates themselves and are considered to have given a personal vote to the first of the candidates. The sequenced is also of importance, as described below.

Some parties choose not to lock their lists. It will then be possible to list wild card candidates on the ballot paper. It is not possible to list candidates from other parties. If the parties lock the lists, it is only possible to list pre-registered candidates.

To determine which candidates have been elected, two calculations are made: first of the personal votes and then, if necessary, of the list sequences. First, it is calculated whether someone received enough personal votes to be elected by these. The threshold for personal votes to count is

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<sup>212</sup>Preferential voting was introduced for the first time in at the 1998 Swedish parliamentary election with an electoral threshold of 8 per cent. Before this, it had been used at the EU Parliament Election in 1995 and in some pilot municipalities. See Johannes Bergh et al, "Personvalg ved stortingsvalg".

<sup>213</sup>If voters place more than one cross, it is the uppermost cross on the list that is counted.

that at least five per cent of the voters have given this person a personal vote (but at least 50 voters in elections to *municipal councils* or 100 in elections to *county councils*). If any of the candidates have received so many personal votes, these candidates are elected according to who has received the most personal votes. If seats remain after this has been done, the list sequence will be followed.<sup>214</sup>

At the 2018 Swedish parliamentary election, 95 of 349 candidates received more personal votes than the electoral threshold, but only 5 of these would have been elected without the personal votes. The candidates who were elected as a result of personal votes came from small or large parties in small constituencies.<sup>215</sup> This is because most voters placed a cross beside the names of candidates high on the lists and thus it is the candidates who are highest on the list that have the opportunity to come above the electoral threshold of five per cent. For the smallest parties, this could lead to the first candidate being replaced by another top-placed candidate while for parties who are allocated several seats from each constituency, this will not be the case because candidates further down the lists generally receive more than five per cent personal votes.

### 7.3.2 Denmark

In Denmark, the rules for municipal and regional elections and the rules for parliamentary elections are relatively similar. At all three types of elections, the parties may choose between different types of preferential voting systems. The voters receive a ballot paper with an overview of all lists and parties with their candidates and votes by placing a cross either by a list or by a person on a list. In other words, a voter must either choose a list or candidate but it is not possible to vote for more than one candidate or to divide the vote between a party and a candidate on another list. The Danish system also does not allow for candidates to be deleted from the list.

At elections to the Danish parliament, Danish constituencies (*multi-member constituencies*) are divided into smaller areas (*nomination districts*) where the elections are conducted. Based on the system the parties choose, the listing of candidates on the ballot papers may vary from *nomination district* to *nomination district* within a *multi-member constituency*. The parties may choose between two main types of parliamentary elections: *standing in parallel* and *standing by district*.

The system of *standing in parallel* functions as strong preferential voting and is used more and more over time. Here, voters can either vote for a party or a candidate from a party (which is equivalent to giving one personal vote to this candidate). When the number of seats each party

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<sup>214</sup>At Swedish elections, several different lists will be available to some parties and the voters can also write the candidates up in a certain sequence if they use ballot papers without entries. This part of the returning of members is similar to the one used at parliamentary elections (except that the parties can put forward several different lists to choose from). The uppermost candidate who has not already been elected on the lists is counted first. The candidate who is at the top of most lists is allocated the seat. If there are still more seats left, a new count is made of who is the top candidate on the lists after those who have been elected have been removed. This is repeated until all the seats are allocated. To influence the first calculation, it is only possible to give one positive vote to one candidate. In the second calculation, in theory, it is possible to submit a ballot paper where certain candidates have been removed (deletion). This only matters if over half of the voters make the same deletion.

<sup>215</sup>Henrik Oscarsson et al, "Förhandlingsvalet 2018. Analyser av valresultatet i 2018 års riksdagsval", The Election Research Programme's report series 2018:8 (Gothenburg University: The Election Research Programme, 2018).

has received from each *multi-member constituency* has been determined, the seats are allocated based on personal votes. First, the personal votes are counted within each *nomination district* for each party. Then the additional votes (i.e. the votes of those who have not given personal votes) are allocated among *the nomination district's* candidates based on how many personal votes they have received in the *nomination district*. The all the personal votes are added up in the *multi-member constituency*. The seats the party has received are then distributed according to the number of personal votes. Following a legislative amendment in 2017, it is also possible for the parties to combine standing in parallel with the party setting up a priority order on the ballot paper and that the party can choose that only the personal vote count determines which candidates are elected.

In the event of *standing by district*, the candidates stand for election from *nomination districts*. Here, all the votes of the party in the *nomination district* will be counted as personal votes for the *nomination district's* candidate. The voters can also give personal votes to candidates from the other *nomination districts*. Each candidate thus receives the personal votes they receive from other *nomination districts*, and all the votes given to the party in the *nomination district*. Candidates who are standing from *nomination districts* where the party receives many votes have an advantage relative to candidates from *districts* where the parties have less support (within each *multi-member constituency*).

A party that has standing by district in all the nomination districts in the multi-member constituency can set up a *party list* for all the party's candidates in the multi-member constituency. The importance of personal votes is much less than for *standing in parallel*. In practice, the system involves the party's candidates being elected in the order in which the party has set up.

At municipal and regional elections, the parties and lists can choose between two different types of preferential voting, *standing in parallel* and *party list*. Since no *multi-member constituencies* and *nomination districts* are used at municipal and regional elections, only personal votes decide for *standing in parallel*. As regards the *party list*, this works the same as at elections to the Danish parliament (see above). This gives the party's ranking great importance.

### 7.3.3 Finland

The Finnish preferential voting system is an extreme point in the Nordic region. In Finland, there is mandatory preferential voting and the voters must vote for independent candidates. Thus, it is not possible to give any cross-party votes to other lists or to delete candidates. The votes are counted so that the candidates' votes are given to the list for which they are running. The seats are then distributed on each list according to the d'Hondt's method and a coalition list between parties is allowed. At *municipal council* elections, lists can be put forward by parties, by alliances between parties, by a single list and by a *voters' association*, which is a list organised around one candidate. When it is clear which lists are entitled to seats, these are distributed among the candidates according to who has received the most personal votes. The candidates stand equally within a coalition list and it is not relevant what votes other candidates from the same party within the coalition list have received. In other words, the choice of candidate within the coalition list does not have to reflect which of the parties has received the most votes, this is only decided by the personal votes.

## 7.4 Key considerations

An overall description of what preferential voting is, which considerations should be made and what other mechanisms can be used to take care of the same considerations is given here.

Preferential voting is closely related to the type of role the representatives will have in the parliament and the view on these roles has changed over time.<sup>216</sup> Early in the development of European democracies, the role of representative was a central model. The representative should be independent and make decisions based on his or her beliefs. This was based on an understanding of the representatives as more qualified than the voters and emphasised the suitability of the representatives to make the right decisions. The free mandate of the role of representative was in stark contrast to the bound mandate of the role of a delegate. According to this ideal, the representatives should conform to the opinion of the voters in their district and thus the interests of the constituency and the voters that are central.

With the rise of the party system, Norwegian democracy, together with most other democracies, has moved increasingly strongly towards representatives acting as party delegates. The voters vote for parties with party programmes and who will represent the parties is determined entirely by the parties' nomination meetings. The members of the Storting then follow the party programme and vote together with their party groups on the vast majority of issues and it is the parties that are held accountable at elections, rather than individual politicians. This system is effective in aggregating the political attitudes of the voters. The party programmes allow voters to know in advance what policies the parties will pursue and they can then choose the party they agree with most. At the same time, there are other aspects of representative democracy that this model does not capture equally as well.

At today's parliamentary elections, preferential voting and party elections are completely linked. When voters have chosen a party, the candidate follows and the voters cannot select which person shall represent the party. If the voters perceive that their party's candidates are unfit to sit in the Storting (a poor representative) or do not work for the best interests of the constituency (a poor delegate), they must vote for another party. The voters also have no opportunity to hold the representative who has been elected accountable without changing party.

One last consideration that is often central to the nomination processes, and which is not left to the voters, is the descriptive representation. Voters may want to have representatives who are like themselves. Most parties take this into account in their nomination processes. They ensure that the lists have a certain breadth and include candidates from different backgrounds. The voters have no way of influencing this. This can often also be viewed as a problem whether it does not particularly matter who is elected for the policies the party pursues. It is conceivable that different candidates from the same party can have two different opinions. Thus, the choice of candidate may also affect which policies are pursued.

Strengthening preferential voting will increase the voters' influence over who is elected. With preferential voting, the voters will not only influence which policies to pursue by also which politicians will work for this policy. This can be seen as an extension of democracy.

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<sup>216</sup>Christensen et al, "To valg med ny personvalgordning", pages 57–58, and Bergh et al, "Personvalg ved stortingsvalg", pages 47–48.

### 7.4.1 Nomination and preferential voting

The electoral system is of importance for who decides which people shall represent each constituency. Different groups influence the choice of person with different systems. This is discussed here for with a view to how many people participate in the selection and on who these individuals are.

Today, it is the parties' nomination meeting in each constituency that decide who is elected to the Storting from each party. Since the voters cannot change the lists, the ranking of candidates on the electoral lists is decisive for who is selected. Also at county and municipal council elections, the ranking or increased share of the poll has a lot to say. Both the size of the county teams and the system each team uses to determine their lists varies between parties and between constituencies.

In Official Norwegian Report (NOU) 1973: 38 *Preferential voting at parliamentary and municipal elections* the nomination process was viewed as a problem and the Commission was particularly concerned about the low turnout in the nomination process. The Commission proposed that there should be a requirement for written test nominations where all voters could participate. The Commission also specified rules for how the parties should conduct nomination meetings but none of these proposals was adopted by the Storting. The challenge of the electoral system giving power to small groups has not diminished since the Commission made its proposals. In 2017, about seven per cent of the voters were members of political parties and this share has decreased over time.<sup>217</sup> In other words, the current system gives significant power to small groups of politically active persons in each constituency.

As stated in the introduction of the chapter, preferential voting will be included in the final stage of the election of representatives. Even with "strong" preferential voting, the parties with the nomination of candidates who can be elected will control the first two phases, *the mobilisation phase* and *the nomination phase*. With regard to the choice between the candidates the parties have nominated, "strong" preferential voting can, in principle, lead to small groups deciding on the voter side. In the current municipal council electoral system, one voter's correction of the lists will be enough to change who is elected (if no one else makes changes). By introducing preferential voting at parliamentary elections, the voters gain more influence over the choice of candidates than they have today. The number of voters required to change the result depends on how many people correct the lists and on what rules are made for electoral thresholds or increased share of the poll.

The share of voters who use the opportunity for personal votes varies between the different types of elections in Norway. At municipal elections, the share of the voters who use the personal vote has increased over time and at the 2015 election, almost half of the voters (47 per cent) made corrections on the ballot paper.<sup>218</sup> At the county council elections, the share is even lower and just

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<sup>217</sup>"Få aktive medlemmer i politiske partier", Statistics Norway, 14 November 2017, <https://www.ssb.no/kultur-og-fritid/artikler-og-publikasjoner/fa-aktive-medlemmer-i-politiske-partier>.

<sup>218</sup>Hilmar L. Mjelde and Jo Saglie, "Velgeratferd: Tilbakegang for regjeringspartiene og rekordstor personstemmegivning", i *Lokalvalget 2015: et valg i kommunereformens tegn?*, red. Jo Saglie and Dag Arne Christensen (Oslo: Abstrakt forlag, 2017), page 24.

over 20 per cent made corrections to the lists in 2015. At parliamentary elections, where the personal votes do not matter, 12 per cent of the voters made corrections to the lists in 2013,<sup>219</sup> and it can be assumed that this percentage will increase if actual preferential voting is introduced.<sup>220</sup> More widespread use of personal votes at local elections seems to be a general finding internationally and the voters also use the personal vote more in smaller municipalities than in larger ones. This can be explained by the fact that personal knowledge of the candidates increases participation in preferential voting.

Analyses of who uses the personal vote find that there are otherwise small differences between the various voter groups.<sup>221</sup> Neither gender, age nor education are important for whether a voter uses the opportunity to cast a personal vote. On the other hand, people with an immigrant background are a group that uses the personal vote to a greater extent than others.<sup>222</sup> Political interest also seems to play a role and those who are more interested in politics, know more about the political system, are party members or are even on lists, use the opportunity to change the lists more than others.<sup>223</sup> At the same time, it seems that those with lower education and less knowledge of politics are more concerned about the individual relative to the party than others, even though this is a group that uses the right to vote less than others.<sup>224</sup>

The current parliamentary electoral system hands all power over the election of members of the Storting to the parties. This reflects the party-centre democracy in Norway and ensures the position of the parties. At the same time, the parties have experienced over time a decline in membership. Thus, fewer people have the opportunity to participate and actually participate in the processes around which people who represent them. This may be an argument for moving this power away from the parties and thus ensuring broader democratic influence over preferential voting. At the same time, it may also be an argument for not taking a key function from already weakened parties.<sup>225</sup>

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<sup>219</sup>Bergh and Saglie, "Personvalg ved stortingsvalg".

<sup>220</sup>Alan Renwick and Jean-Benoît Pilet, *Faces on the ballot: The personalization of electoral systems in Europe*, (Oxford, United Kingdom: Oxford University Press, 2016), chapt. 9.

<sup>221</sup>Mjelde and Saglie, "Velgeratferd", page 32.

<sup>222</sup>Johannes Bergh and Tor Bjørklund, "Få deltok, mange ble valgt: Innvandrerne og valget 2007", i *Det nære demokratiet: lokalvalg og lokal deltakelse*, red. Jo Saglie (Oslo: Abstrakt, 2009), page 82.

<sup>223</sup>Christensen et al, "To valg med ny personvalgordning" and Audrey André og Sam Depauw, "Too Much Choice, Too Little Impact: A Multilevel Analysis of the Contextual Determinants of Preference Voting" *West European Politics* 40, no. 3 (4 May 2017): 598–620, <https://doi.org/10.1080/01402382.2016.1271596>.

<sup>224</sup>Joop J.M. van Holsteyn and Rudy B. Andeweg, "Demoted Leaders and Exiled Candidates: Disentangling Party and Person in the Voter's Mind", *Electoral Studies* 29, nr. 4 (December 2010): 628–635, <https://doi.org/10.1016/j.electstud.2010.06.003>.

<sup>225</sup>Ottar Hellevik, "Velgere, partier og representanter: kritisk søkelys på ordningen for personutvalg i den nye valgloven" (Oslo: The Power and Democracy Report 1998–2003, 2003), page 84.

It can be discussed how significant the weakening of the parties would be when introducing a limited element of preferential voting. The parties will still decide which candidates the voters will vote on and will thus act as gatekeepers in the contest for personal votes. Research also shows that the voters' personal votes largely follow the parties' ranking on the lists. This may be partly because the parties place their best candidates at the top of the list and that the voters agree with the parties' assessments.<sup>226</sup> As described above, the parties currently spend resources on compiling lists that cover various considerations, although it is often only the top candidate(s) who will have the opportunity to be elected. In other words, it does not seem that the parties only care about the people who are elected but also about the lists being representative.<sup>227</sup>

## 7.5 The consequences of increased preferential voting

With preferential voting, the voters have a greater influence over who is elected. Thus, democracy is expanded from just being a choice between parties to also being a choice between different representatives of these parties. On the one hand, this can give the voters influence over who is elected, and influence which social background the representatives have, so-called descriptive representation. The voters then influence *who* will represent them and not just what policies to pursue. An introduction of preferential voting allows voters to express their opinions on the background of the candidates and to influence social representation. As will be discussed below, it has previously been viewed as a problem that this can negatively affect social representation and increase bias in the composition of representatives, although there is little to indicate that this will happen when introducing preferential voting at parliamentary elections.

On the other hand, the policies pursued may also be influenced by the choice of representatives. There are often political divides within political parties and it is not certain that the voters agree with the nomination meetings' choice of candidates. Thus, preferential voting is not necessarily without political consequences. By increasing the voters' influence over preferential voting, the voters can also have the opportunity to influence which policies the party should pursue and which issues should be prioritised. With the low percentage of party members, this could be a way to expand party democracy from members to the voters.

The most important consequence of the increased preferential voting is that it can change who is elected, even if the personal votes usually support the nomination sequence. By giving the voters influence over who is elected, other candidates may be elected than is the case today. This can lead to candidates being elected even if they may appear to be uncertain choices for the local government parties. For parties that have few representatives elected from a constituency, focusing on such candidates may seem risky. However, with a system where the voters determine which candidate is elected, presenting several candidates with different profiles may be a strength and

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<sup>226</sup>There has also been a debate about whether voters to some extent vote for the top candidates no matter who they are. This has been a finding internationally but on alphabetically ranked lists in Norway there is no such connection. See Ottar Hellevik and Johannes Bergh, "Personutvelgning: Ny ordning – uendret resultat", i *Lokalvalg og lokalt folkestyre*, red. Jo Saglie and Tor Bjørklund (Oslo: Gyldendal Akademisk, 2005), 72–73 and Patrick F. A. van Erkel and Peter Thijssen, "The First One Wins: Distilling the Primacy Effect", *Electoral Studies* 44 (December 2016): 245–54, <https://doi.org/10.1016/j.electstud.2016.09.002>.

<sup>227</sup>Christensen et al, "To valg med ny personvalgordning".

this can give candidates opportunities they do not have with the current system. Thus, preferential voting may lead to political renewal.

The research on preferential voting has highlighted various consequences. Preferential voting may have consequences for female and geographical representation and representation of minorities. It may also be possible to influence voter turnout, support for democracy and, the representatives' connection to the constituency relative to party and a personification of the politics. As state below, there is little to indicate that introducing preferential voting will have major consequences. Preferential voting has not been found to affect the turnout, party discipline and support for democracy or lead to a widespread personification of the politics. When it comes to social representation, it seems that preferential voting will not change the gender balance significantly but perhaps have a greater impact on the representation of minorities (and in special cases on geographical representation).

### **7.5.1 Support for democracy**

It has been proposed that the parliamentary election could lead to increased support for democracy on the part of the electorate.<sup>228</sup> Preferential voting can be seen as an extension of the democratic rights of the voters and it is conceivable that such political renewal leads to increased support for democracy. Renwick and Pilet did not find support for this. In their study of European countries that have introduced preferential voting, they find no connection between preferential voting and support for democracy. This can be interpreted in several ways and it may be possible that the voters do not find preferential voting is a good answer to their political desires, that the voters have not understood the changes, or that they do not pay close enough attention to the change when it happens.

At the same time, it is possible that preferential voting does not matter directly after the introduction, but rather has significance when democracy faces new types of challenges. The introduction of preferential voting may make democracies better equipped in the face of political scandals or similar situations where the choice of person becomes important. As will be discussed in section 7.5.7 on the personification of politics, an introduction of preferential voting allows the choice of party and the selection of the candidate to be disconnected from each other. Today, it is not possible to choose a party without support the top candidate(s) of this party and in situations where a top candidate is embroiled in a political scandal, the voters may face a dilemma. By introducing preferential voting, this will not be as great a problem because the voters can express support for other candidates on the list. In other words, it may be possible that the preferential voting may mean that the voters are less dissatisfied with the election itself in such situations.

### **7.5.2 Social representation**

The nomination meetings often balance different considerations so that the lists contain candidates that mirror the population of the constituency. It is especially geographical representation,

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<sup>228</sup>Renwick and Pilet, *Faces on the ballot*, chapt. 10.



i.e., that different parts of the constituency must be represented, age composition and candidates of both sexes that are emphasised by the nomination committees.<sup>229</sup>

Although the parties balance different considerations when compiling the lists, this is not necessarily reflected in the composition of seats. Many only lists only have one candidate elected to the Storting. Thus is it the first candidate who has significance and not the broader composition of the lists. Since the parties' lists are not coordinated between the counties at a national level or between the parties in a county, this means that the seats that are actually allocated may have a different composition to that each electoral list has individually.

Both at the 2017 parliamentary election and 2015 county council elections, there was almost a gender balance on the lists of the parties that were allocated seats.<sup>230</sup> At the 2019 municipal elections, the percentage of women among all the candidates was 43 per cent. In the Storting, the even gender balance among the candidates led to the percentage of women being 41 per cent among the elected representatives in 2017. Historically speaking, this is the highest percentage of women in the Storting, up from 40 per cent in the periods 2009–2013 and 2013–2017, but still below an even gender balance and below the balance found on the individual electoral lists of the local government parties. At the county council elections, there is less difference between the composition of candidates on the list and among the elected representatives. Here, there is a reduction in the percentage of work of one percentage point between the lists (45 per cent) and the elected representatives (44 per cent). This is because the constituencies (the counties) are larger and that each of the lists thus receives more representatives than the lists receive from each constituency at parliamentary elections, and that the gender balance is thus not so dependent on the top places.

The difference in gender balance between the candidates and the elected members of the Storting reflects that the top candidates are more often men (58 per cent) than women (42 per cent).<sup>231</sup> An increase in the size of the constituencies may thus increase the gender balance somewhat since this will lead to the parties having more candidates elected. There are also minor gender differences at county council elections, where more representatives per party are often elected in each district. The positive relationship between party size, i.e., the number of seats per party in the constituency and the gender balance is a consistent finding in the literature internationally.<sup>232</sup> Larger

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<sup>229</sup>Dag Arne Christensen et al, "Ny personvalgordning og hva så? En analyse av kommune- og fylkestingsvalget i 2003" (Bergen: The Rokkan Centre, 2004), page 71–73, and Christensen et al, "To valg med ny personvalgordning", page 98.

<sup>230</sup>At the 2017 parliamentary election, there was 49 per cent women and 51 men among the 2,508 candidates who were on the lists of the 9 parties that became members of the Storting. At the 2015 county council election, there was 45 per cent women and 55 per cent men among the 6,875 candidates on lists that gained representatives on the county councils.

<sup>231</sup>Similarly, the percentage of women among the top candidates on the lists that were allocated seats at county council elections was 33 per cent.

<sup>232</sup>Leslie A. Schwindt-Bayer, "The Incumbency Disadvantage and Women's Election to Legislative Office", *Electoral Studies* 24, no. 2 (June 2005): 227–244, <https://doi.org/10.1016/j.electstud.2004.05.001>.

regions and more parties that are allocated more than one seat at parliamentary elections may lead to a better gender balance in the Storting.<sup>233</sup>

Preferential voting can also affect the social and geographical composition. This applies if there are systematic differences in who does and does not receive personal votes. It is especially geography and gender that have been emphasised in studies on preferential voting and there are no unambiguous results in the research literature. To some extent, there are differences at different political levels, with the greatest consequences at lower levels in Norway. At Norwegian municipal elections, it has been found that preferential voting has a negative effect on female representation and fewer women are elected than had been the case without preferential voting.<sup>234</sup> This has been a correlation that has declined somewhat over time and which is found in Sweden.<sup>235</sup> The main trend seems to be that men are on average higher on the lists and that the voters often give personal votes to those who are placed high on the lists, which leads to more men being elected. Similarly, it seems that men receive more personal votes because they often have more experience from before.<sup>236</sup>

For county council elections, the preferential voting system has not had any special significance because it leads to few changes in who is elected. The vast majority of people who manage to achieve more personal votes than the eight per cent threshold stand in places that would have also been elected without personal votes (or they are on lists that are not allocated seats).<sup>237</sup> At the same time, it is conceivable that those who receive many personal votes will find that they have a stronger personal seat. When it comes to parliamentary elections, this relationship between gender and personal votes does not seem to be as clear as at municipal council elections. In the simulations of different preferential voting systems by Bergh et al and Bergh and Saglie, the gender balance at parliamentary elections does not appear to be affected by preferential voting.<sup>238</sup> For example, Bergh and Saglie obtained results that vary between a reduction of one woman and an increase of three in their simulations.<sup>239</sup> These results match the results from other

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<sup>233</sup>If all the parties had received one more seat in the counties they were represented, the percentage of women would have risen to 47 per cent. In other words, there is a higher percentage of women (53 per cent) than men among the first deputies in the Storting.

<sup>234</sup>Ottar Hellevik, "Velgere, partier og representanter", pages 59–60.

<sup>235</sup>Johannes Bergh, Tor Bjørklund, and Ottar Hellevik, "Personutvelgingen i norske valg", *Norsk statsvitenskapelig tidsskrift* 26, no. 02 (2010): 120, and Linda Berg og Henrik Oscarsson, "20 år med personvalg", *The Election Research Programme Report 2015:3* (Gothenburg: The Institute of Political Science, Gothenburg University, 2015).

<sup>236</sup>Christensen et al, "To valg med ny personvalgordning".

<sup>237</sup>Christensen et al, "To valg med ny personvalgordning", page 119.

<sup>238</sup>Bergh et al, "Personvalg ved stortingsvalg" and Bergh and Saglie, "Personvalg ved stortingsvalg".

<sup>239</sup>Bergh and Saglie, "Personvalg ved stortingsvalg", page 15.

countries.<sup>240</sup> At the parliamentary elections in Denmark, with a strong preferential voting system, there are no gender differences in who gets personal votes. The Swedish electoral system also does not seem to lead to changes in gender balance. The electoral system there is relatively similar to the Norwegian county council elections and there are also few seats that are elected due to personal votes.<sup>241</sup>

### 7.5.3 Voter protests and geographical representation

When it comes to geographical composition, there have been some cases of organised correction of lists at municipal council elections to support candidates from an area of the municipality (so-called coups or correction protests). The effect of organised correction will depend on how many of the other voters take advantage of the opportunity to change the lists and on how strong or weak the preferential voting system is. In any case, it is likely easier to implement organised correction at elections with fewer voters and thus easier at municipal council elections than at parliamentary elections. The times when geographical correction protests take place are primarily because there have been political processes in advance that have made geography an important dividing line in a municipality. For example, previous correction protests have originated from school closures.

Both the electoral system at county and municipal council elections make such correction protests possible but it is especially the county council electoral system that allows a correction protest to have a major effect, although this has not happened so far. The eight per cent threshold, combined with a free number of personal votes allows a group of eight per cent of a party's voters to change the sequence on the party's electoral list (as long as there are no other candidates who achieve more than eight per cent of the voters' personal votes).<sup>242</sup> Despite the great attention to the county mergers before the 2019 county council election, there was no sign of geographical correction protests. Although there were cases of list correction with consequences for the composition of the county council, there were no changes to large parts of a list due to county affiliation.

### 7.5.4 Minorities and immigrants

One group that seems to profit from personal votes, at least when it is not possible to delete candidates from a list, are candidates with minority or immigrant backgrounds. In recent year, voter protests have also been used when mentioning county council elections where several people with immigrant backgrounds have been elected on the municipal councils as a result of personal votes. Voters with immigrant backgrounds cast personal votes more often than others, and although this is a group with a generally low turnout, the percentage that cast personal votes at municipal council elections is much higher in this group. Bergh and Bjørklund show that at the 2007 municipal council election, immigrants used the opportunity to cast personal votes twice as much as other voters in some large municipalities and half times more often than others in small municipalities.<sup>243</sup>

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<sup>240</sup>Renwick and Pilet, *Faces on the ballot*, age 263.

<sup>241</sup>Only 5 of 349 seats were elected due to personal votes at the 2018 election. See Oscarsson et al, "Förhandlingsvalet 2018".

<sup>242</sup>Ottar Hellevik, "Velgere, partier og representanter", page 86.

<sup>243</sup>Bergh and Bjørklund, "Få deltok, mange ble valgt", page 82.

This was also reflected in the election result and immigrant candidates earn personal votes in elections with the current system without deletions.<sup>244</sup>

It can be problematised whether these situations should be described as voter protests. First, there is little reason to believe that the candidates have received personal votes from the same voters. Rather, it is likely that voters from different country backgrounds have supported candidates with the same country background as themselves. The fact that many with an immigrant background are elected due to personal votes is thus a consequence of the votes of several different groups, rather than of one common voter protest in support of immigrant candidates.

### 7.5.5 Voter turnout

The voter turnout may increase or decrease with strengthened preferential voting. On the one hand, preferential voting can mobilise the voters and create greater involvement in the election. On the other hand, the parties may find it less important to mobilise the voters when they are not sure about will be elected. Difficult and complicated systems can also mean that the voters experience the barrier to voting higher than without preferential voting. Bergh and Haugsgjerd have reviewed the literature about voter turnout and electoral systems for the Commission.<sup>245</sup> They show that the findings diverge in several directions and that several studies find no link between preferential voting and voter turnout.<sup>246</sup> There may be a positive link, but the effect is nevertheless small and possibly lasts for a short time after a change. Such an effect will probably also depend on the system not being too complicated, at least this will have significance for the support for the preferential voting.

### 7.5.6 Affiliation with a party and district

A key argument for preferential voting is to strengthen the bond between voter and representative. If voters have a stronger influence on who should represent them, this could create stronger ties with the voters. The candidates may be more reliant on campaigning locally and maintaining closer ties with the voters during an election period. In today's parliamentary electoral system, the selection of candidates only depends in practice on the ranking on the electoral lists from the parties. At the same time, there is little to indicate that the local county branches of the parties will benefit from having politicians who do not take into account local needs and desires. The nomination process itself can thus be expected to maintain similar considerations for the affiliation with the constituency.

Due to major differences in how secure the parties' seats are at parliamentary elections, the parties have also placed key politicians in secure seats in the constituencies with which they have no clear affiliation. The parties' need to have their key politicians elected has thus trumped the voters' affiliation with their representatives in the Storting. Although the representatives have their seats

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<sup>244</sup>People with immigrant backgrounds were also deleted more than others when it was possible to delete.

<sup>245</sup>Bergh and Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme?"

<sup>246</sup>See, for example, Renwick and Pilet, *Faces on the ballot*, pages 250–256.

from a constituency, there may be cases where the connection with the voters in the district is relatively limited.

At the same time, the current political system is built around strong parties. In the Storting, voting is conducted according to party lines and there is a high level of party discipline.<sup>247</sup> The power that parties have over each member of the Storting may be reduced with the introduction of preferential voting. Members of the Storting who have either been elected because of personal votes, or who have a large number of personal votes behind them may have a different role perception than today's members of the Storting. At the same time, research shows that today's Norwegian representatives' emphasis on the role of the party is on a par with that of the Swedish and Danish representatives, even though Denmark has strong preferential voting.<sup>248</sup> Finnish representatives, on the other hand, place less emphasis on the party role, but still have a high level of party discipline (albeit somewhat lower than Norway).

### 7.5.7 Personification of politics

A possible consequence of an increased level of preferential voting can be more focus on persons in the election campaign, i.e. that the candidates will be more important relative to the parties. In Finland, which has had mandatory preferential voting since 1955, over time there has been some increase in voters who say they choose a party based on the candidate, compared with the percentage of voters who emphasise the party.<sup>249</sup> In Sweden, in the same period, the opposite has been the case with a decline in knowledge of the candidates since 1956, a trend that did not change after the introduction of preferential voting in 1998.<sup>250</sup> However, increased focus on persons seems to be a general trend of the time, also in Norway without preferential voting. At the same time, there are signs that this focus on persons is not general and that it also does not cover a large number of candidates. The trend in Belgium, for example, is that there are fewer key politicians who get a lot of attention, while candidates further down the lists are overlooked.<sup>251</sup> It also mainly the top candidates who receive personal votes.

There are clear differences between Norwegian (and Swedish) elections and elections in Finland and Denmark. Personal campaigns are common in the latter two countries and the candidates raised funds themselves. In Finland, this has led to separate legislation on the funding of personal

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<sup>247</sup>Knut Heidar, "Partigruppene: Samordnings- og maktarena", in *The History of the Storting: 1964–2014*, red. Hanne Marthe Narud, Knut Heidar, and Tore Grønlie (Bergen: Fagbokforlaget, 2014), pages 403–405, and Øyvind Bugge Solheim, "Koalisjoner i Stortinget: Kompromiss og konfliktlinjer" (Master's Thesis, University of Oslo, 2013), pages 28–29.

<sup>248</sup>Bergh et al, "Personvalg ved stortingsvalg", pages 48–49.

<sup>249</sup>Lauri Karvonen, *The personalisation of politics: a study of parliamentary democracies*, ECPR monographs (Colchester: ECPR Press, 2010), pages 49–51.

<sup>250</sup>Karvonen, *The personalisation of politics*, pages 47–49.

<sup>251</sup>Bram Wauters et al, "Centralized Personalization at the Expense of Decentralized Personalization. The Decline of Preferential Voting in Belgium (2003–2014)", *Party Politics* 24, no. 5 (September 2018): 511–23, <https://doi.org/10.1177/1354068816678882>.

election campaigns. Although preferential voting seems to lead to a greater need to make their mark, even for candidates who are not key national politicians, the introduction of preferential voting has a limited impact in Sweden.<sup>252</sup> The amount of personal election campaigning also depends on the power of the parties over the nomination process and funding. When the parties can control these, there will be less personalised election campaigning.<sup>253</sup>

One possible concern is that increased levels of preferential voting will lead to the nomination and selection of people who are known from places other than politics. In Finland, there have been cases where the nomination of celebrities on the lists has received significant attention. However, studies find that it is still the parties who are in control. They are the ones who nominate celebrities and who profit from the personal votes the celebrities receive.<sup>254</sup> There is reason to believe that the celebrity effect will be small with a change to a Norwegian system. Firstly, the parties can already nominate celebrities to the top places on their lists if they want, but they have not done this to any extent. The Finnish system with mandatory preferential voting also differs from the Norwegian system in that voters must vote for a person, which may strengthen the importance of choosing celebrities as candidates. In a study of the importance of media attention for personal votes in elections in Oslo, Langsæther et al also found that media coverage leads to more personal votes,<sup>255</sup> but this is only the case when the coverage concerns politics and not when it concerns other topics. The celebrity effect on personal votes seems to be limited.

The argument that preferential voting leads to personalisation can also be turned upside down. With the current electoral system, it is given which candidates will be elected from each party if the party receives enough votes. Thus, the party election also has automatic importance for who is elected. A voter cannot vote for a party without supporting the top candidate(s). If a voter has a strong (negative) opinion about the top candidates, he or she must consider whether this is relative to the politics he or she wants to be implemented. With an electoral system where it is possible to cast personal votes, this is to a lesser extent the case. The voter can then express which candidates he or she wants to be elected and it is not given who will be elected from a list. This is particularly relevant in the Norwegian system because party votes in a constituency are of importance for seats at large that can come from other constituencies and thus for the party's total number of representatives. In other words, personal votes can act as a valve for voters who find

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<sup>252</sup>Johannes Bergh et al, "Personvalg ved stortingsvalg".

<sup>253</sup>Troels Bøggild and Helene Helboe Pedersen, "Campaigning on Behalf of the Party? Party Constraints on Candidate Campaign Personalisation", *European Journal of Political Research* 57, no. 4 (November 2018): 883–899, <https://doi.org/10.1111/1475-6765.12256>.

<sup>254</sup>David Arter, «CLOWNS, 'ALLURING DUCKS' AND 'MISS FINLAND 2009': THE VALUE OF 'CELEBRITY CANDIDATES' IN AN OPEN-LIST PR VOTING SYSTEM», *Representation* 50, no. 4 (2 October 2014): 453–70, <https://doi.org/10.1080/00344893.2014.982693>.

<sup>255</sup>Peter Egge Langsæther, Haakon Gjerløw, og Martin G. Søyland, "Is All PR Good PR? How the Content of Media Exposure Affects Candidate Popularity", *Electoral Studies* 57 (2019): 143–152, <https://doi.org/10.1016/j.electstud.2018.11.009>.

that a party's first candidate in the constituency is not ideal but who still wants the party's policies at the national level.

## 7.6 The design of the preferential voting system

### 7.6.1 Electoral thresholds, increased share of the poll and number of personal votes

There are several ways to arrange preferential voting. With strong preferential voting, only the voters have influence over who is elected. As stated above, this is used in Finland and is one of several possible systems that parties can choose in Denmark. In weaker versions of preferential voting, there are two types of instruments in particular used to limit the voters' influence. On the one hand, electoral thresholds are used, which mean that personal votes only matter when there are a sufficient number of voters who cast personal votes. This is the model used in Sweden and county council elections in Norway. On the other hand, the parties can give an increased share of the poll. Then those candidates who receive an increased share of the poll from the party will more likely from the start to be elected. This is the model we have at Norwegian municipal council elections.

The two types of weak preferential voting can be seen as a response to two different issues. Electoral thresholds reduce the possibility for small groups of voters to be able to decide who is elected. For the correction of lists to be important, they must have support among a larger group of voters. This reduces the likelihood that organised protest voting will succeed. However, if a candidate does come above the electoral threshold, voters are then free to change the lists. On the other hand, an increased share of the poll gives added weight to the ranking given by the parties. The starting point here is that it is assumed that voters who do not make corrections to the lists when they vote, want the lists to stay as they are. The parties also gain some control over who is elected. The increased share of the poll can be cast in different ways. It is possible to have a flat system involving a group of candidates and a progressive system where the candidates receive more additional votes the higher they are placed on the list. The consequences of these limitations will depend on how the personal electoral system is arranged and varies with party size and the size of the constituencies.

An electoral threshold is mainly of importance for parties who receive many seats.<sup>256</sup> The electoral threshold has little impact for small parties who have one or two candidates elected. For these lists, who is elected will be determined by the top candidates that receive the most personal votes. As a rule, the top candidates will receive enough personal votes that an electoral threshold, such as at county council elections (eight per cent) or Swedish parliamentary elections (five per cent), will be of little significance.<sup>257</sup> For the parties that have more representatives elected, the electoral threshold will be of greater importance. For these parties, the competition for seats will be between the candidates further down the list and these candidates will rarely be able to come above an electoral threshold.

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<sup>256</sup>Bergh and Saglie, "Personvalg ved stortingsvalg", page 4.

<sup>257</sup>Bergh et al, "Personvalg ved stortingsvalg". This seems to be the case for the few candidates who succeed in being elected on personal votes in Sweden, see Oscarsson et al, "Förhandlingsvalet 2018".

The importance of an increased share of the poll, whether in the form of a flat or a progressive system, will depend on the organisation of the system. The consequences of a municipal council electoral system with a flat increased share of the poll will depend on whether more candidates are elected than those who receive an increased share of the poll. If there are more places than there are candidates with an increased share of the poll, the competition will be limited to those who do not have an increased share of the poll and if there are fewer places than there are candidates with an increased share of the poll, the competition will be limited to those who have an increased share of the poll. A progressive system with an increased share of the poll is more likely to limit the competition to be between the last candidate who would have won a place without personal votes and the candidates immediately under this person on the list. Large jumps up the list will be less likely.

The number of personal votes the voters cast also has importance for how the preferential voting system works. This is a key distinction between the county council electoral system and the Swedish electoral system and makes the potential for voter protests greater in the county council electoral system, which is the basis for some of the criticism against the system. While a group of five per cent in the Swedish system can have one candidate elected if no one else casts personal votes, a corresponding group of eight per cent in the Norwegian county council electoral system will be able to determine *all the candidates* who are elected from a list.

### **7.6.2 The rules on an increased share of the poll**

The rules on an increased share of the poll at municipal council elections were amended after Official Norwegian Report (NOU) 2001: 3 and went from being a cumulative voting system (with 100 per cent increased share of the poll) to a system with 25 per cent increased share of the poll (the Commission proposed 20 per cent). The Commission also proposed reducing the number that could receive an increased share of the poll for two people on the list but this was changed to a system with three different levels, ranging from four to ten based on how many members there were on the municipal council.

Although the reduction in the increased share of the poll was intended to give the voters a greater influence over the lists, it is still highly unusual that candidates without an increased share of the poll receive enough personal votes to pass the candidates with an increased share of the poll. The current system thus serves as a *de facto* threshold of 25 per cent for candidates without an increased share of the poll. For the vast majority of lists, the competition for seats is divided in two; there is competition between the candidates that have an increased share of the poll and there is competition between the candidates who do not have an increased share of the poll.

The parties can decide who will be able to be elected by giving some candidates an increased share of the poll. As long as the party does not get more representatives than the number of candidates they have given an increased share of the poll, it will only be the candidates with an increased share of the poll that have a real chance of being elected. Thus, the parties have a high degree of control over which candidates are elected.

The limitation on the number of candidates that can receive an increased share of the poll is mainly a limitation for the parties that have many representatives elected in a municipality. These parties will to a lesser extent have the opportunity to secure (the last) seats to given candidates than parties who have few representatives elected. In Oslo, this has led to some debate, as both



the Labour Party and the Conservative Party have more representatives than they have the opportunity to give an increased share of the poll to (15 and 12 respectively in 2019). These candidates are elected solely based on personal votes. The debate has mainly been about candidates with an immigrant background achieving a large number of personal votes and thus dominating the last seats of the Labour Party in particular. Over time, there are indications that both the parties and the voters have to some extent adjusted to the fierce competition for these last seats, with changes in the composition of the lists and increased use of personal votes in general. Nevertheless, it can be problematised that this rule has different implications for parties depending on the number of seats the parties win. Small parties can decide which candidates are elected, as long as they can predict how many seats the party receives, but this is not possible for the major parties.

The rules on an increased share of the poll should also be seen in context with a possible change in preferential voting rules at parliamentary and county council elections. On the one hand, it may be appropriate to have the same rules for all types of elections. At the same time, there are reasons why such a limitation is particularly important at municipal council elections. Preferential voting seems to be of greater importance at local elections due to the closeness between voter and representative.

### 7.6.3 Cross-party votes

The Norwegian system with cross-party votes has a long tradition at municipal council elections and it has been changed several times. The rationale behind the system is related to the idea that preferential voting has greater importance locally and that the voters should have an influence on who is elected, in addition to which party. By allowing cross-party votes, the voters can not only influence which candidates are elected from their list, but also influence who will win seats on the other parties' lists. As cross-party votes move list votes and affect the allocation of seats, the parties that have the most popular candidates will benefit from the system. In other words, the voters can share the vote between the parties to some extent.

The system with cross-party votes also has another justification. By allowing the voters to share the vote among several parties, the system builds up under a consensus understanding of politics. By allowing the voters to vote for several parties and choosing the candidates they think are best, the system supports a view of politics that is not characterised by party differences. The Norwegian political system and in particular municipal policy are characterised by such a culture of consensus and the cross-party voting system supports this.

As stated in the historical review, the cross-party voting system has been the subject of criticism and it has been repeatedly proposed to abolish it, most recently by the last Election Act Commission in Official Norwegian Report (NOU) 2001: 3. The main problem with the cross-party voting system is that it can enable protest votes, that the system is difficult to understand and can easily be misunderstood and that the implementation complicates the final election result.<sup>258</sup>

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<sup>258</sup>Even the media seems to have trouble explaining how the system really works. For example, see Doremus Schaefer, "Kumulerings-opplaring", *Langust and korsnebb* (blogg), 14 September 2015, <https://doremusnor.wordpress.com/2015/09/14/kumuleringskroll/>.

Historically speaking, there have been two types of protest votes in Norway. The first type, geographical protest votes, have taken place in municipalities where there have either been disagreements over the location of municipal services, such as schools, or in situations where several municipalities have been merged and voters from one of the municipalities have joined forces to get their local candidates elected. The other type, so-called female coup, has been protests where voters have joined forces to give all votes to women on the lists and to give cross-party votes to women on other lists. In recent years, voter protests have also been used when mentioning county council elections where several people with immigrant backgrounds have been elected on the municipal councils as a result of personal votes. As stated in section 7.5.4, it can be problematised whether these situations should be described as voter protests.

Not much research has been done on the impact that certain rules have on voter turnout. Research into whether votes, if it is easy to vote, have produced mixed results. The removal of the right to delete in 2002, which was a simplification of the preferential voting, also had no major impact on voter turnout or the number of personal votes.<sup>259</sup> However, the fact that the cross-party voting system is used less because it is not well understood is a key assumption.<sup>260</sup> Mjelde and Saglie find that while personal votes are used to the same extent among people with different levels of education, this is not the case for cross-party votes.<sup>261</sup> Those with higher education use the opportunity more than others, which may reflect that knowledge of the system may help determine whether it is used or not. Thus, the cross-party voting system may seem to be a system that has an elite image to a greater extent.

It is also likely that some voters are unaware that they are giving away a list vote when they give a cross-party vote to other parties' candidates. The voters can give away up to a quarter of their vote and it can be a democratic problem if the voters do this without being aware of it. Bergh et al also find that the voters have a poor understanding of preferential voting system in general.<sup>262</sup> Thus it is highly unlikely that everyone who uses cross-party votes understands the cross-party voting system. The parties will also not necessarily have incentives to emphasise the transfer of list votes in the communication with the voters. If a party has very popular candidates, it can benefit from the fact that other parties' voters do not understand the consequences of giving cross-party votes to the candidates from their party.

The possibility for cross-party votes also has consequences for how the final election result is determined. The result itself is complicated by the need to divide the voters into list votes. This, it is not enough to count the number of ballots for each party. For each vote, the number of cross-party votes must be counted and deducted and transferred to the correct list. The ballot papers are also

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<sup>259</sup>Johannes Bergh et al, "Effekter av en eventuell gjeninnføring av strykninger ved kommunestyrevalg", Report 5 (Oslo: the Norwegian Institute of Social Research, 2009), pages 24–26.

<sup>260</sup>Tor Bjørklund og Ottar Hellevik, «Velgerne og kvinnerepresentasjon», i *Kjønn og politikk*, red. Nina C. Raaum (Oslo: Tano, 1995), page 126.

<sup>261</sup>Mjelde and Saglie, "Velgeratferd", page 32.

<sup>262</sup>Bergh et al, "Effekter av en eventuell gjeninnføring av strykninger ved kommunestyrevalg", pages 71–73.

more complicated and differ from ballot papers used at other elections, because they must have a cross-party voting box. This size of this box also varies from municipality to municipality based on the size of the municipal council. The variation in the number of cross-party votes that can be given also means that the voters have different opportunities to influence other parties' lists according to how large the municipal council is.

#### 7.6.4 Deletions

The possibility to delete candidates was removed by the Storting in 2002 following a proposal in Official Norwegian Report (NOU) 2001: 3. The Commission wants the voters to have more influence over preferential voting but wanted the preferential voting to be a positive experience. There should be positive preferences that would determine who was elected. In the reasoning for the proposal to remove the right to delete given in the Bill presented to the Storting, it was also emphasised that the personal vote should be a positive preference.<sup>263</sup>

A representative proposal in 2016<sup>264</sup> led to a request decision to "reintroduce the ability of the voters to delete list candidates".<sup>265</sup> The majority of the Commission found that there was reason to give voters a greater influence over preferential voting and that there was no fundamental difference in positive and negative personal votes. The majority also found it was appropriate to harmonise the system with the parliamentary electoral system where deletion of candidates from the lists is still possible and pointed out that the effects on gender and age composition would not be significant. A minority of the Commission did not want to reintroduce the deletion of candidates from the lists and pointed out that the possibility to delete candidates from the lists could have the negative impact that fewer candidates would want to be on lists, that the positive impact would be minimal, and that the possibility to delete candidates was a greater opportunity for successful voter protests.

Deletions increase the voters' influence over preferential voting. By introducing the possibility to delete candidates from the lists, the voters can remove the personal vote of the candidates they do not want to be elected and give an additional personal vote to the candidates they want to be elected. The possibility to delete candidates from the lists thus for all practical purposes doubles an individual voter's influence on preferential voting. This can be considered positive or negative depending on one's view on voter influence over the candidate election. Bergh et al show the effect this has.<sup>266</sup> Their calculations show that the current system (without deletions) gives relatively similar voter influence over the returning of members as the previous system with deletions and cumulative voting (i.e. 100 per cent increased share of the poll). By introducing the possibility to

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<sup>263</sup>White paper Ot.prp. no. 45 (2001–2002).

<sup>264</sup>Document 8:14 S (2016–2017).

<sup>265</sup>Since the possibility to delete candidates from lists was abolished in 2002, similar representative proposals have been put forward on two other occasions, cf. Document no. 8:15 (2007–2008) and Innst. no. 110 (2007–2008) (Recommendation) and Document 8:129 S (2009–2010) and Innst. 47 S (2010–2011). None of the proposals led to the reintroduction of the possibility to delete candidates from lists.

<sup>266</sup>Bergh et al, "Effekter av en eventuell gjeninnføring av strykninger ved kommunestyrevalg", Chapt. 4.

delete candidates from the lists without changing the size of the increased share of the poll given by the parties, the voters thus have a greater influence over preferential voting than today.

At the same time, arguments in favour of deletions have been waged without wanting to increase the voters' influence on the preferential voting. For example, in a representative proposal from representatives Jan Tore Sanner and Per-Kristian Foss, it was emphasised that a reintroduction of the right to delete had to be seen in context "with an adjustment of the increased share of the poll for the parties' pre-cumulated candidates".<sup>267</sup> In other words, the representatives did not want to increase the voters' influence over the returning of members. They found that the current system is problematic because candidates can benefit from making controversial statements backed by a minority of a party's voters. In other words, the system allows a "[...] small percentage of the voters to reward and select candidates who make their mark by making controversial statements, while a majority who disagree is not allowed to express their views and thus compensate for this".

In their view, deletion of candidates on the lists gives the voters an opportunity to prevent controversial candidates and candidates who support minority views within the parties from being elected.

The right to delete has been seen as problematic for the parties' recruitment to the lists. It is conceivable that potential candidates will be reluctant to subject themselves to the strain of being deleted from the lists,<sup>268</sup> and this may be a problem in small municipalities in particular. Studies of how the voters vote and of the candidates' views do not seem to support such a conclusion. There is a strong correlation between personal votes and deletion.<sup>269</sup> In other words, it is the same candidates who receive the most personal votes and who are deleted the most times and it seems that the most controversial candidates are also the most liked. Thus, this supports the argument that deletions can act as a counterweight to personal votes in cases where candidates are controversial. At the same time, the percentage of deletions is more evenly distributed among the lists than the personal votes are and the candidates who are high up on the list receive more personal votes relative to deletions than those who are further down.<sup>270</sup>

One concern that has been mentioned when it comes to deletions is that it may be of importance for social representation because some groups are deleted more than others. Bergh et al studied the last local elections with deletions (1999) and found that women and younger candidates are deleted to a greater degree than others, but that the difference is minimal.<sup>271</sup> Removing deletions at elections had not affected the gender balance on the municipal councils. On the other hand,

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<sup>267</sup>Document no. 8:15 (2007–2008).

<sup>268</sup>Dag Arne Christensen, "Kva utset kandidatar til norske kommunestyreval seg for? Ei undersøking av Kristiansand, Østre Toten, Narvik og Trondheim", Appendix 9 of Offician Norwegian Report (NOU) 2001: 3, 2001.

<sup>269</sup>Christensen, "Kva utset kandidatar til norske kommunestyreval seg for?".

<sup>270</sup>Bergh et al, "Effekter av en eventuell gjeninnføring av strykninger ved kommunestyrevalg", page 84.

<sup>271</sup>Bergh et al, "Effekter av en eventuell gjeninnføring av strykninger ved kommunestyrevalg", page 86.

one group that is more likely to be deleted than others is candidates with an immigrant background and these candidates do better in elections with no deletions.<sup>272</sup>

When the candidates themselves have been asked what they think about the right to delete, they are a little more negative than the voters. Among voters and candidates, there is a greater proportion who are positive to deletions than there are negative.<sup>273</sup> Somewhat surprisingly, it is the most experienced who are most critical to the right to delete. Thus, it does not appear that deletions have major implications for new recruiting but it may be that it has implications for the choice to continue.<sup>274</sup>

## 7.7 The same or different systems?

Today, there are three different preferential voting systems in Norway. This can make the electoral system difficult to understand and may lead to fewer people taking part in preferential voting than if the system had been the same at all the elections. The different systems also mean that the ballot paper must be designed differently. It is likely that more people will use their personal vote if they find that they understand how the ballot paper works than if they do not understand the system. In other words, these considerations suggest that the systems should be as similar as possible at the various elections.

At the same time, it is not certain that it is necessary to understand the electoral system in detail to use the opportunity to cast personal votes. It is unlikely that everyone who casts personal votes today will be able to work out how the seats will be distributed in a constituency and there are also other parts of the electoral system that can be perceived as complicated, such as quotients and the allocation of seats at large. Nevertheless, this does not prevent people from understanding the considerations behind the specific calculations.

When it comes to the design of preferential voting systems, the most important thing may be that the actions of the voters to prioritise a candidate are similar (e.g. crossing off) and have a similar meaning (that the candidate has a greater chance of being elected) rather than that the actual calculations of who is finally allocated the seats are the same. In other words, a system where the voters have the same opportunity to cross off candidates to give them an additional vote at all three elections, but where the actual calculation varies between the elections, can be unproblematic.

However, the current system with preferential voting at two elections, but only theoretically at the last, is particularly challenging for the voters to deal with. The opportunity to cast personal votes at parliamentary elections may seem like a similar system as at the other elections, even though these personal votes do not matter. It is conceivable that some voters believe the changes to the parliamentary election lists matter and other voters who do not think it is necessary to cross off on

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<sup>272</sup>Bergh et al, "Effekter av en eventuell gjeninnføring av strykninger ved kommunestyrevalg", pages 93–95.

<sup>273</sup>Bergh et al, "Effekter av en eventuell gjeninnføring av strykninger ved kommunestyrevalg", page 38.

<sup>274</sup>Bergh et al, "Effekter av en eventuell gjeninnføring av strykninger ved kommunestyrevalg", page 43.

the municipal or county council election lists because this does not matter at parliamentary elections.

## 7.8 Preferential voting systems considered by the Commission

In the request decision from the Storting from 2016, the Storting requested a report on two new preferential voting models.<sup>275</sup> The Commission will first discuss the county council election model, which has been proposed earlier, both by the Election Act Commission and by the Ministry on several occasions. The Commission will then give an account of the two models discussed in the request decision.

### 7.8.1 The county council election model

The county council election model has been proposed several times in the Storting and corresponds to the system currently used at county council elections. In this model, the voters vote on party lists and have the opportunity to give personal votes to as many candidates as they want.<sup>276</sup> The personal votes are then counted, but only have significance if they exceed an electoral threshold of eight per cent. For those candidates who have received more votes than the electoral threshold, the personal votes will determine who is elected. Should no candidate receive more personal votes than the electoral threshold, the sequence the parties have stated on the ballot paper is followed.

Although this system is similar to the Swedish system, the difference between having one personal vote or an unlimited number of personal votes is important for the consequences of protest voting. This is the basis for Hellevik's criticism of the system.<sup>277</sup> In Sweden, a group that wants a candidate elected will be able to move this person up to first place as long as they manage to mobilise more than 5 per cent of the votes at the same time as no other candidates receive the same number of personal votes. In Norway, a group that manages to mobilise more than 8 per cent of the votes will have the opportunity to determine *all* the candidates' positions as long as no other candidates receive more personal votes. Due to a free number of personal votes, organised correction protests have great opportunities to make changes to the lists and influence the position of many more candidates than is possible in the Swedish system. Although this is theoretically possible, there have been no such correction protests since the system was introduced. The difference between allowing the voters to cast one personal vote to one or more candidates is greatest if multiple candidates are selected for each electoral list. If only one candidate on the list is elected, there will be no difference if the voters can cast one or more personal votes.

Bergh and Saglie have conducted simulations of parliamentary elections with this system.<sup>278</sup> They found that while 60 seats had changed hands in 2013 if it were only personal votes that decided, the electoral threshold of 8 per cent would reduce this to 11 seats. If the use of preferential voting

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<sup>275</sup>Innst. 402 L (2015–2016).

<sup>276</sup>This is different from the Swedish model where only one personal vote can be cast.

<sup>277</sup>Hellevik, "Velgere, partier og representanter".

<sup>278</sup>Bergh and Saglie, "Personvalg ved stortingsvalg".

had been on a par with the use at municipal council elections, 24 seats would have gone to other candidates.

### 7.8.2 The municipal council election model

In the request decision, the Storting referred to a model based on the municipal council election model but with a threshold for personal votes. In the committee recommendation, the Christian Democrat Party put forward a proposal on this solution. This is a system where the parties can give an increased share of the poll in advance to a certain number of candidates. This means that candidates with an increased share of the poll receive an increase in their personal share of the poll corresponding to 25 per cent of the number of ballot papers cast for the list. Voters can also give a personal vote to as many candidates as they want. In order for a candidate who has no increased share of the poll to go in front of a candidate with an increased share of the poll, more than 25 per cent of the voters will have to give the candidate in question personal votes. It is unlikely that any candidates will manage this and it is highly unusual at municipal council elections. However, there will be competition between the candidates who have an increased share of the poll (and between the candidates who do not have an increased share of the poll).

In the system currently used at municipal council elections, it is sufficient for a candidate who has received one personal vote more than the candidate who is above him or her on the list to go in front (given that both have or do not have an increased share of the poll). The proposal included in the request decision has set out an eight per cent threshold limiting how often personal votes will matter. Based on the discussion above, it can be assumed that it will involve certain changes among the top candidates if a party receives fewer seats than they have given an increased share of the poll to. This probably will not be the case further down the lists due to the high threshold for personal votes.<sup>279</sup>

Bergh and Saglie have also simulated the consequences of this electoral system based on the final election result in 2013.<sup>280</sup> Their simulations show that it is of great importance how many candidates that have an increased share of the poll relative to how many are selected from a list. They write that “[i]f the party succeeds in anticipating the [i] seat distribution when the nomination is

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<sup>279</sup>If a threshold of eight per cent is introduced, this could in principle make it easier for a candidate without an increased share of the poll to go in front of a candidate with an increased share of the poll. To do so, it is necessary to achieve at least 25 per cent of the votes and thus, the threshold has little bearing for the candidate with no increased share of the poll. The personal votes that do not total eight per cent of the votes will not matter for the candidate with an increased share of the poll. Thus, a candidate with no increased share of the poll with 26 per cent personal votes will go in front of a candidate with an increased share of the poll who has 7 per cent personal votes, but will not come above the threshold. Without a threshold, the candidates with no increased share of the poll would have to have 33 per cent personal votes to go in front. On the one hand, in this way, the threshold means that candidates who receive an increased share of the poll are weakened. On the other hand, the argument in favour of the threshold is that there must be some support before this support matters, which also applies to the candidates with an increased share of the poll. Ultimately, it is unlikely that this matters. Firstly, candidates with an increased share of the poll will often come above the threshold and secondly, there are few candidates without an increased share of the poll who manage to achieve enough support to go in front of anyone who has received an increased share of the poll.

<sup>280</sup>Bergh and Saglie, “Personvalg ved stortingsvalg”.

decided, in practice, the influence of the voters can be removed".<sup>281</sup> Thus, the model allots the local government parties to either secure their candidates or allow competition between them and how the increased share of the poll is used has a decisive impact on who can be elected. At the same time, the parties will not always manage to predict the number of seats elected and the personal votes can be decisive in situations where the parties receive fewer or more seats than expected.

Bergh and Saglie studied what happens if the local government parties give an increased share of the poll to the number of candidates they had elected at the previous election, as well as one less, one more and two more.<sup>282</sup> Then there will be changes to a handful of seats with a threshold of eight per cent and the number of personal votes from the parliamentary election. A threshold of eight per cent is so high that it has little bearing on whether the parties give an increased share of the poll to fewer or more seats. This reflects that few candidates received over eight per cent personal votes without being elected anyway. When they increase the number of personal votes to reflect the number given at municipal council elections, the threshold has slightly less significance, and between 9 and 16 seats are changed. The low estimate applies to the option that gives an increased share of the poll to multiple candidates. When the parties give an increased share of the poll to few candidates (thus allowing free competition for the last seats among candidates with no increased share of the poll), there will be greater changes than when the parties allow the competition for seats to take place among the top candidates on a list.<sup>283</sup>

The simulations were also conducted with a lower threshold of five per cent and completely without a threshold. The effect of preferential voting will then be greater. With no thresholds, between 27 and 31 seats are changed. The personal votes have the most significance for the parties that receive more or fewer seats at the election than at the previous election, because it is the previous election that determines how many candidates receive an increased share of the poll in the calculation. The Labour Party lost seats at the election and therefore, there will be many changes among the party's seats since the increased share of the poll was given to more candidates than were elected. Similarly, the Conservative Party won seats and many seats are changed when an increased share of the poll is given to fewer seats than were elected. This is reminiscent of the discussion of the effect of a threshold above. Without a threshold, there are several candidates further down the list who can win over the candidate who takes the last seat. With a threshold of five per cent, the effect of personal votes will be somewhere between the effect of an eight per cent threshold and no threshold. Thus, such a system will give a change of between 13 and 27 seats.

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<sup>281</sup>Bergh and Saglie, "Personvalg ved stortingsvalg", pages 17–18.

<sup>282</sup>Bergh and Saglie, "Personvalg ved stortingsvalg".

<sup>283</sup>This may reflect that some of the local government parties give popular politicians a "place of honour" at the bottom of the list and that these receive enough personal votes to be elected. This is a practice that is likely to be changed with the introduction of increased preferential voting.



### *Key questions*

The municipal council model allows for various adjustments. One can imagine both a regulation of the number of candidates who receive an increased share of the poll, as is the case at municipal council elections, and different types of threshold. As Bergh and Saglie write, this system without changes gives great power to the local government parties.<sup>284</sup> As long as they can predict the number of seats the party will be allocated, they can decide who this is with the increased share of the poll. Thus, the system provides great flexibility and can lead to some parties allowing preferential voting, while others hold back. It can thus be said that at an overall level, the system is reminiscent of the Danish system in that the parties have the opportunity to decide whether there should be preferential voting or not. This gives the system flexibility that makes it more robust in the face of negative consequences. Should the system prove to have negative or positive consequences, the individual parties can change the element of preferential voting for the list at the next election through giving fewer or more candidates an increased share of the poll.

It is also possible to envision reducing the power of the parties over preferential voting. In today's municipal council electoral system, a maximum number of candidates with an increased share of the poll are determined based on the size of the municipal council. This mainly has consequences for large parties that have fewer representatives elected than those to whom they have the opportunity to give an increased share of the poll. For these parties, the last seats are determined by personal votes alone. Similarly, there could be a minimum number with an increased share of the poll. Then the parties who receive one seat would have been forced to let personal votes decide who should represent them, for example, in the choice between two top candidates. As can be seen here, a minimum or maximum number will have different significance for parties of different size.

An electoral threshold reduces the parties' options while increasing the importance of the party's lists. The flexibility the model provides to the local government parties is drastically reduced with an electoral threshold of eight per cent and this also breaks with how the system is for municipal council elections. Such an electoral threshold will make it difficult for candidates who are further down the lists to succeed in receiving enough personal votes even if the parties want to open the competition for the seats to this group of candidates. The top candidates on the lists will often come above the electoral threshold. Thus, an electoral threshold will have less importance for these candidates than for those who are further down the lists. Thus, an electoral threshold has little significance for the parties who have few candidates elected from a constituency.

### **7.8.3 Ranking**

The second model the Storting wanted a report on was a model where each candidate receives an increased share of the poll based on where they are placed on the lists. The system was proposed in the recommendation by the Socialist Left Party and has been previously discussed by Aanund Hylland, cf. Annex 8 of Official Norwegian Report (NOU) 2001: 3. With this system, the voters will also be able to give personal votes to the candidates. A party vote will also give an increased share of the poll to the candidates determined by where they are on the list. A model with a three per cent difference in an increased share of the poll (as described in the proposal) means that each vote to a party gives the first candidate an additional vote equivalent to 1 personal vote,

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<sup>284</sup>Bergh and Saglie, "Personvalg ved stortingsvalg".

the second candidate an additional vote equivalent to 0.97 personal votes, the third candidate 0.94 personal votes, etc.<sup>285</sup> Without personal votes, the election will then follow the ranking given by the party. To move a candidate one place requires personal votes from three per cent of the party's voters and to move a candidate two places requires personal votes from six per cent of the voters.

This system means that the votes to those who do not change the list, support the sequence already proposed, while it is still possible to achieve changes in the sequence. With such a model, changes will primarily be local, i.e. between people who are close to each other on the lists, since the number of voters required increases for each place a candidate shall move to. At the same time, it is possible to move a candidate further with a larger number of personal votes.

Bergh and Saglie have simulated the consequences of this electoral system based on the final election result in the 2013 parliamentary election.<sup>286</sup> With an increased share of the poll of three per cent per place, the system is of significance for four seats in the 2013 poll or ten seats if it assumed that the number of personal votes is the same as at municipal council elections.<sup>287</sup> The changes come here primarily with the major parties. This may reflect that it is less often that there is such a large difference in the voters' personal votes to the top candidates as three per cent of the votes to the party. However, for the major parties, there may be cases with such a great difference between candidates further down the lists. With a three per cent difference, this system will secure the parties' top candidates, but perhaps not candidates further down the lists.

Bergh and Saglie also simulated this system with a one per cent difference between the candidates. This increases the numbers of seats that are changed to 12 with the number of personal votes as at the parliamentary election and 23 with the number of personal votes from the municipal council election. In other words, this is on a par with the changes that would have occurred if the county council system had been introduced as Official Norwegian Report (NOU) 2001: 3 proposed. By reducing the difference to one percent, a couple of the smaller parties' seats are also changed in addition to several of the major parties' seats.

This model gives less flexibility and options to the parties than the municipal council electoral system. It also seems to secure the parties' candidates to a large extent, at least with a three per cent difference between the candidates. If such a system is chosen, it must be decided whether the increased share of the poll should be at three per cent or whether this is too high.

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<sup>285</sup>In the original proposal, the distribution began in the opposite direction. The last candidate received 100 personal votes, the penultimate candidate received 103 personal votes, and so on. The method Bergh and Saglie use is followed here, which gives an identical result.

<sup>286</sup>Bergh and Saglie, "Personvalg ved stortingsvalg", pages 17–18.

<sup>287</sup>Bergh and Saglie also conducted the simulation with only 1 personal vote per voter and then get that with the same percentage of the voters that give personal votes as at municipal council elections, the number of changed seats with 3 per cent difference will be 6 seats and 15 seats with 1 per cent difference.

It is also a question of whether the ranking should continue throughout the entire list or whether it is more appropriate that this should apply to a certain number at the top of the lists. If the system is followed throughout the list, the difference in the increased share of the poll between the top and bottom of the list will be significant. With more than 17 candidates on the list, the system will be more restrictive than the current system. To pass the first candidate, the 18th candidate requires more than half of all the votes as personal votes, which is more than with the current system. Thus, there should be a maximum number of candidates who receive an increased share of the poll, for example, designed so that no one has more than half of the votes to reach the first place. This cap can be somewhat arbitrarily placed on the first 15 candidates (which means that the 15th candidate needs 42 per cent personal votes) or the first 10 candidates (which means that the 10th candidate needs 27 per cent personal votes).

## **7.9 The Commission's evaluation**

The Commission has considered the preferential voting system at parliamentary elections, county and municipal council elections. The parties place a fundamental role in Norwegian democracy. It is the parties that find and nominate candidates to democratically elected posts. The Commission emphasises that this gives the parties great influence over the selection of candidates and that it is a role the parties will retain even with an expansion of the preferential voting. The Commission finds that there should be maximum agreement between the different systems used at the various elections and that the current municipal council electoral system should be the starting point for the preferential voting systems.

If a preferential voting system is introduced at parliamentary elections, the Commission finds that the funding of personal election campaigns for independent candidates must be regulated. The Commission finds this is an issue that the Ministry must look into further based on international standards.

### **7.9.1 Parliamentary elections**

The Commission finds the current parliamentary electoral system where the voters can change the sequence of the candidates, but where there are actually closed lists, is problematic because the voters can be led to believe that they are influencing the candidate election. Therefore, the Commission finds that there should either be completely closed lists or the preferential voting must be extended so that there is an actual opportunity to influence who is elected to the Storting. When it comes to which of the two solutions to choose, the Commission is divided.

*The majority of the Commission (everyone except Storberget) finds that the preferential voting should be extended at parliamentary elections and that a system with weak preferential voting should be introduced. These members find that it is a positive extension of democracy to give the voters the opportunity to influence who should be their representatives in the Storting. The majority of the Commission does not consider increased focus on persons a major problem and does not find that a limited element of preferential voting will have an impact on the role of the parties. The role of the parties to recruit, develop and nominate candidates is very important for democracy. A solution with weak preferential voting takes care of this, while allowing the voters to express their preferences.*

These members find the municipal council election model will be the best system to introduce at parliamentary elections. The municipal council election system has a long tradition in Norway and

is well known among the voters. The parties retain a high degree of control over how much the voters have to say for the preferential voting, while the electoral system, even if the most restrictive version, gives the voters more influence than today. Compared with the ranking system, the municipal council electoral system gives the parties the flexibility to give the voters different degrees of influence. The system is also better known to the voters and allows the parties to adjust to how the system works over time. These members find that there should be no limit to how many candidates can receive an increased share of the poll at parliamentary and county council elections.

As regards the electoral threshold, the *majority of the Commission* (Christensen, Giertsen, Hagen, Hoff, Holmøyvik, Høgestøl, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aatlo and Aardal) finds that it is not necessary. The municipal council electoral system without limitations on the number of candidates who have an increased share of the poll ensures that the parties' ranking of the lists has significant weight and a threshold reduces the parties' possibility to let the voters decide for themselves. An electoral threshold also has primarily consequences for major parties and will be unlikely to affect the smallest parties' lists. These members find that this means that the electoral threshold is not a suitable instrument and with an increased share of the poll, the parties' lists will have significant importance already.

*The minority of the Commission* (Anundsen, Grimsrud and Aarnes) finds that the increased share of the poll is not sufficient to prevent very small groups from gaining too much influence. The parties must take many considerations to ensure the necessary breadth and representation when they nominate their candidates. These members find that the parties must be ensured influence over preferential voting to take care of this responsibility in the best possible way. Therefore, these members find an eight per cent threshold on preferential voting is needed at parliamentary elections in addition to the possibility to give an increased share of the poll.

*One member of the Commission* (Holmås) finds that the increased share of the poll is not sufficient to prevent small groups from gaining a disproportionate influence over who is elected. Therefore, this member finds that a requirement should be introduced where a candidate must have four per cent more list votes at parliamentary elections than candidates higher up the list than the candidate in question (i.e. the ranking model). One injustice of a system with an 8 per cent threshold is that if the last candidate on the list gets 8 per cent of the list's votes as personal votes, while the first candidate on the list gets 7.9 per cent, the last candidate with 8 per cent of the list's votes as personal votes will be elected if none of the candidates have received an increased share of the poll. A system with a minimum number of votes more than the candidates higher up on the list ensures that to be elected the candidate in question must have a reasonable amount of support more than the candidates higher up on the list.

*Another member of the Commission* (Storberget) finds that a system with closed lists and personal election made by the parties safeguards the citizens' democratic rights in a good way. This member sees the parties' nomination processes as important democratic workshops at the local level. The nomination processes can take into account social and geographical representation in a way that is not possible with preferential voting. The fact that the percentage of the population who are party members is declining, is seen by this member as an argument *against* reducing the parties' importance further. Taking away from the parties one of their key functions could amplify the current development towards a reduction in the importance of the parties. Participation in political

parties could contribute to and influence the preferential voting. The parties should also be stimulated to open the nomination processes and allow more people to participate in this work. This member is also concerned about an increased focus on persons that may come as a consequence of extended preferential voting. This member finds that the current theoretical preferential voting must be abolished and wants to introduce completely closed lists at parliamentary elections. Alternatively, this member supports the municipal council electoral system with an eight per cent threshold.

### **7.9.2 County council elections**

The Commission finds there should still be preferential voting at county council elections and that a system similar to the current municipal council electoral system should be introduced, but without limitations on the number of candidates that can receive an increased share of the poll from the parties. By introducing the municipal council electoral system at county council elections, the electoral system will be simplified so that these elections become more similar. The election of the municipal and county council is also conducted at the same time, which suggests that these systems should be as similar as possible. This will make it easier for the voters to understand the electoral system and can lead to greater support for the preferential voting. The Commission does not find that any threshold on the preferential voting is required at county council elections.

The Commission has also considered whether the system where the voters can give cross-party votes to candidates on other lists should also be introduced at county council elections. *The majority of the Commission (Christensen, Grimsrud, Hagen, Holmøyvik, Holmås, Nygreen, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo)* does not want to introduce cross-party votes at county council elections. These members point out that this will make the election process and counting much more complicated and that this is a complicating element for the voters. The voters also generally have less knowledge of local government politicians and there is no tradition of cross-party votes at county council elections.

*The minority of the Commission (Anundsen, Giertsen, Hoff, Høgestøl and Strømmen)* finds fundamentally that the voters should also be able to cast cross-party votes at county council elections. This will mean that county council and municipal elections become more similar for the voters. This is appropriate since the elections are held at the same time. The arguments for cross-party votes at municipal council elections, e.g., that they contribute to a consensus culture, also apply at county council elections.

### **7.9.3 Municipal council elections**

The Commission finds that the current municipal council system works well and that no changes should be made to this. When it comes to an increased share of the vote, the Commission finds that it is not necessary to raise the increased share of the vote or to change the number of candidates that can be given an increased share of the vote. The current system with a limited number of candidates who can be given an increased share of the vote balances the parties and the voters' influence in a good way.

#### **7.9.3.1 Cross-party votes**

The Commission is divided on the issue of cross-party votes. *The majority of the Commission (Anundsen, Christensen, Giertsen, Hagen, Hoff, Holmås, Høgestøl, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aarnes and Aatlo)* finds the system of cross-party votes contributes positively

to the electoral system. The system allows the voters the opportunity to support several parties at the same time and to choose the best candidates regardless of party colour. The system also helps to support the consensus culture in Norwegian politics and acts as a counterweight to polarisation and conflict by allowing voters to support candidates across the different parties.

*A minority of four (Grimsrud, Holmøyvik, Storberget and Aardal)* want to abolish the cross-party voting system. At municipal council elections, the voters have considerable influence over which candidates are elected, in addition to the vote they cast on the list as a whole. The cross-party voting system also gives the voters influence over which candidates should *other lists* than the list the voter has voted on. The purpose of giving cross-party votes can partly be to strengthen the representation of a particular region or a population group and partly because selecting candidates from the other list can serve the interests of their lists. In particular, this can give longer lists influence over which candidates represent a shorter list. However, giving cross-party votes reduces the number of list vote to one's own party by as many votes as one has given to the other lists. This can have consequences not only for which candidates are selected from the other list but also for the number of seats won by own list. There are examples of very few cross-party votes having decided the distribution of seats. Firstly, the system requires a high level of knowledge. Many voters are probably not aware that their cross-party votes weaken their list's chances to win seats. It is also very difficult to predict the impact of each voter's cross-party votes. Secondly, the system complicates the final election result, which goes against a general desire for simpler and more understandable rules. Thirdly, these members emphasise that having such an electoral system at all three elections will be an advantage. Finally, it may be democratically unfortunate that voters from another party can influence the preferential voting and seat winning opportunities of another party. This can also contribute to political polarisation.

### **7.9.3.2 Deletions**

The Commission is also divided on the question of deletions. *The majority of the Commission (Christensen, Grimsrud, Hagen, Holmås, Nygreen, Stokstad, Storberget, Strømmen, Tørresdal, Aarnes, Aardal and Aatlo)* does not want to reintroduce deletions. These members find deletions give an unfortunate signal to those who are running for office as candidates. The majority also points out that it is unusual internationally to be able to express positive and negative preferences. Deletions also complicate the preferential voting for the voters and the electoral authorities. Reintroducing the right to delete also makes it easier to carry out protest voting and gives even a greater influence to those voters who understand the system, than the current system does.

*The minority of the Commission (Anundsen, Giertsen, Hoff, Høgestøl, Holmøyvik and Røhnebæk)* wants to reintroduce deletions. They think it is positive if the voters have the opportunity to correct the lists if they dislike the candidates on the lists. These members also want to give the voters more influence and therefore, find it is not necessary to increase the size of the increased share of the poll at the same time.

The Commission has assessed whether the consideration for having such systems at the various elections should have consequences for the municipal council electoral system. It could have meant removing the cross-party voting system. If the preferential voting system at parliamentary elections is not changed, it could also mean reintroducing deletions at municipal council elections. In the view of the Commission, it is not necessary to change the municipal council electoral system. The cross-party voting system is the most relevant at the local level. Municipal council

elections are, to a greater extent than other Norwegian elections, characterised by preferential voting. In addition, the cross-party voting system has a long tradition and is well established.

## 8 Referendums

### 8.1 Introduction

Referendums are a form of direct democracy where the voters are allowed to participate directly in decision-making processes. Referendums can help stimulate political activity and debate and are used to “check the mood” among the population. Referendums will thus amplify the voters’ direct influence on politics.

Referendums can be legally binding or they can be advisory and can be held nationally or locally. In Norway, we do not have binding referendums, either nationally or locally. In practice, advisory referendums often become politically binding because in the run up to the vote, the politicians give strong signals that they will listen to the majority.

The issue of national and local referendums has not been mentioned in the Commission’s mandate. Nevertheless, the Commission has – with reference to the general opportunity the Commission has been given to address relevant election issues – found it correct to have a brief discussion of the topic. The Commission also points out that the previous Election Act Commission discussed the issue.

### 8.2 The Venice Commission’s Code of Good Practice in Electoral Matters

In March 2007, the Venice Commission adopted the Code of Good Practice on Referendums. These are general guidelines for holding referendums and not binding rules. They are intended to be seen in context with the Venice Commission’s Code of Good Practice in Electoral Matters from 2002.<sup>288</sup>

The guidelines indicate that the basic principles of conducting elections also apply to referendums. This means that referendums should be universal, free and direct. One of the more specific recommendations is that there should be no minimum turnout requirement for referendums since it may favour the no side. Referendums on questions of principle or other generally-worded proposals should not be binding. The guidelines also recommend that the “final appeal to a court must be possible”. It is also pointed out in the guidelines that the questions put to the vote must be clear and understandable so that the voters know clearly what they are answering. The questions must not be misleading or suggest an answer and open questions must not be asked that necessitate a more detailed answer. Therefore, it is recommended that the voters must have the opportunity to answer with a “yes”, a “no” or a blank vote.

### 8.3 National referendums

#### 8.3.1 Applicable law

Neither the Constitution nor the Election Act has provisions on national referendums. There have been several reports on constitutionalisation of the right to a referendum on important matters, including by the Electoral System Commission of 1917<sup>289</sup> and the Electoral System Commission of

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<sup>288</sup>“Code of Good Practice on Referendums” (Venice: European Commission For Democracy Through Law (The Venice Commission), 2007), CDL-AD(2007)008rev-cor-e.

<sup>289</sup>Recommendation VII from the Parliamentary Electoral System Commission, presented 27 November 1924.



1948.<sup>290</sup> The previous Election Act Commission also considered regulating by law a number of types of national referendums. However, the Commission concluded that mandatory national referendums on constitutional issues should not be introduced and that a system of voluntary national referendums on specific legislative matters should also not be introduced. The Commission also discussed constitutionalising binding national referendums but did not come to a conclusion on this matter.

In 2016, two proposed constitutional amendments on referendums were put forward.<sup>291</sup> The proposals were considered by the Storting in January 2020 and were not adopted.<sup>292</sup>

National referendums are rarely held in Norway. The Storting has only six times during the last century decided to hold a national referendum. If such a referendum is to be held, the Storting adopts a separate law for its implementation. The last time a national referendum was held was on 28 November 1994, on whether Norway would join the EU.<sup>293</sup> The turnout was 89 per cent and 52.2 per cent of the poll voted no to Norwegian membership.

### 8.3.2 Nordic law

Of the Nordic countries, only Denmark has regulated national referendums in the law. According to the Danish Constitution, there are five situations where it can or should hold a binding referendum:

- for the purposes of a new constitutional provision (Article 88 of the Danish Constitution)
- to change the change of qualification for suffrage (Article 29, subsection 2 of the Danish Constitution)
- if Denmark is to relinquish its sovereignty (independence) (Article 20, subsection 2 of the Danish Constitution)
- if Denmark is to enter into certain international treaties – for example, as when Denmark joined the EU (Article 20, subsection 2 of the Danish Constitution)
- if at least 1/3 of the members of the Folketing (i.e. 60 members) want the population to vote on an adopted bill (Article 42, subsection 1 of the Danish Constitution)<sup>294</sup>

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<sup>290</sup>Recommendation III from the Parliamentary Electoral System Commission, presented 27 November 1952.

<sup>291</sup>Document 12:14 (2015–2016). The proposal calls for a third of the members of the Storting to be able to require that certain resolutions in the Storting are put out for a referendum. Document 12:43 (2015–2016). This proposal states that at least 100,000 citizens can require that legislative and treaty decisions are to be decided by referendum.

<sup>292</sup>See Innst. 121 S (2019–2020) (Recommendation).

<sup>293</sup>Act no. 42 of 24 June 1994 relating to a referendum on the question of whether Norway should become a member of the European Union.

<sup>294</sup>See “Folkeafstemninger”, Folketinget, opened 30 October 2019, <https://www.ft.dk/da/Folkestyret/Valg%20og%20afstemninger/Folkeafstemninger>.

### 8.3.3 The Commission's evaluation

The Commission has considered whether separate provisions must be laid down for how advisory national referendums shall be conducted. Such a provision could clarify that the principles for the implementation of elections shall also apply to the implementation of national referendums.

*The majority of the Commission (Christensen, Giertsen, Grimrud, Hagen, Hoff, Holmøyvik, Høgestøl, Røhnebæk, Stokstad, Storberget, Tørresdal, Aarnes, Aardal and Aatlo)* points out that national referendums are rarely held in Norway and that the practice of establishing separate laws for when this happens has worked well. The majority finds that since there will nevertheless be a need to establish further provisions in a separate Act, it is not appropriate to establish a general basic provision on the implementation of national referendums.

*The minority of the Commission (Anundsen, Holmås, Nygreen and Strømmen)* finds that national referendums are a natural part of a well-functioning democracy. That national politician can ask for the population's advice, or decision, in specific matters, strengthens democracy and shows that there is a fundamental trust between people and democratically-elected representatives.

That there is no framework for the implementation of national referendums means that special legislation must be passed by the Storting also on the principles for conducting a referendum so that the democratically-elected representatives have the opportunity to listen to the people. In this way, the Storting can adopt various principles for the implementation of the referendum depending on what the sitting Storting at any time thinks is appropriate. It provides little predictability for the people that are to be heard.

The fact that special legislation must be passed for the implementation of a referendum also means that the threshold to holding a referendum will be very high. These members find that a separate provision on national referendums should be laid down in the Election Act so that it is clear that the principles for the implementation of elections shall also apply when conducting national referendums. These members also find that a separate Act should be drawn up on the implementation of national and local referendums so that this instrument can be used as part of the political governance of Norway and that the threshold for obtaining the population's advice or decision is significantly reduced.

## 8.4 Local referendums

### 8.4.1 Applicable law

Unlike national referendums, there is a long tradition of holding advisory local referendums in Norwegian municipalities. Nevertheless, an explicit legal basis for holding referendums was first incorporated in the Local Government Act in 2009.

In June 2018, the Storting adopted a new Local Government Act.<sup>295</sup> Section 12-2 states that “[t]he municipal council or the county council itself may decide to hold advisory referendums on proposals that concern the business of the municipality or the county authority respectively”.<sup>296</sup>

The Local Government Act does not place limitations on the municipalities and the county authorities’ right to conduct local referendums, other than that the proposal must relate to the business of the individual municipality or county authority. The municipal council and the county council must establish the regulations for a referendum themselves. The Local Government Act Committee emphasised that it may be natural to consider the provisions of the Election Act when conducting referendums.<sup>297</sup> The municipalities and the county authorities are also obliged to follow the general principles of administrative law, such as that the administration shall engage in unreasonable discrimination.

Act no. 61 of 17 July 1998 relating to primary and secondary education (the Education Act) section 2-5, subsection 7, contains a special rule on a referendum in connection with a change of primary form of Norwegian in primary and lower secondary schools.

#### 8.4.2 Previous reports

##### *Official Norwegian Report (NOU) 2001: 3 Votes, electoral system, elected representatives*

The previous Election Act Commission considered whether there was a need to regulate local referendums. The Commission proposed to legislate that the municipal and county councils could hold advisory and binding referendums in matters that belonged under the municipality or the county authority’s area of expertise, provided that certain conditions were met. In the event of binding referendums, there would be a requirement of at least 50 per cent voter turnout for the result to be used as a basis. The Commission also found that a provision should be included in the Election Act on the preparation and implementation of local referendums, with the following wording:

1. The provisions of this Act on the preparation and implementation of municipal and county council elections apply accordingly to the extent they are appropriate.
2. The municipal/county council may provide further provisions on the implementation of the referendum.

The Ministry stated in the Bill that

[i]n the view of the Ministry, for the municipalities and county authorities it may have an inhibitory effect on the use of advisory referendums if binding implementation rules are established. The

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<sup>295</sup>Legislative enactment 81 (2017–2018), Act of 22 June 2018 no. 83.

<sup>296</sup>The wording of the new Local Government Act is the same as in section 39 b of the old Local Government Act, with the addition of the delimitation that is in “proposals that concern the business of the municipality or county authority”.

<sup>297</sup>Official Norwegian Report (NOU) 2016: 4 *New Local Government Act*, page 74.

Ministry cannot see any real need for government rules on local referendums and therefore, does not put forward any proposal on this.<sup>298</sup>

#### *Official Norwegian Report (NOU) 2016: 4 New Local Government Act*

The Local Government Act Commission also addressed the issue of introducing binding local referendums and allowing the population to initiate advisory referendums. However, both proposals were rejected by the Commission. The Commission also declined to introduce further rules on the implementation of local referendums. The Commission highlighted that consideration for local self-government and freedom of action supported introducing more rules on the implementation of local referendums. However, the Commission emphasised that “[t]he statutory provision itself, however, should state that the scope of the provision is limited to the municipality’s *business*, cf. a corresponding limitation in the provision on the population proposal”.

The Ministry endorsed the proposal from the Local Government Act Commission to limit the scope of the provision to the municipal’s business. This was previously only mentioned in the preparatory works of the Act.<sup>299</sup> However, the Ministry did not agree with Oslo Municipality’s consultation response that a separate legal basis should be introduced in the Act that granted the authority to lay down regulations on the implementation of referendums. The Ministry considered that a regulation was not an appropriate way to regulate local referendums, but pointed out that this did not prevent guidelines being drawn up at a later date for the implementation of referendums. This was justified as follows: “Guidelines are not as binding as a regulation and may be a more appropriate way of facilitating good implementation of local referendums”.<sup>300</sup>

#### **8.4.3 Nordic law<sup>301</sup>**

Sweden has a separate Act on municipal referendums, Act (1994:692) on municipal referendums, which concerns the implementation of local referendums. The central electoral authority has also created a separate manual on the implementation of local referendums when these are held between ordinary elections. If the referendums are held simultaneously with parliamentary or local elections (which is common), several practical issues will already have been clarified.

Finland also has a separate Act on the implementation of local referendums, Act (656/90) on the procedure for advisory municipal referendums with relatively detailed provisions. Section 18 of the Act states that relevant provisions in the Finnish Election Act shall be followed for municipal referendums. Unlike Norway, local referendums in Finland are not allowed in connection with municipal council elections, national elections or national referendums (Section 2).

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<sup>298</sup>Ot.prp. no. 45 (2001–2002) (white paper) *On the Act relating to parliamentary and local government elections (the Election Act)*.

<sup>299</sup>Prop. 45 L (2017–2018) (Bill) *Act relating to municipalities and county authorities (the Local Government Act)*.

<sup>300</sup>Prop. 45 L (2017–2018) (Bill).

<sup>301</sup>This has been based on Jo Saglie and Signe Bock Seggaard, “Lokale folkeavstemninger om kommunesammenslåing: Praksis og prinsipper”, Report 2017:08 (Oslo: The Norwegian Institute for Social Research, 2017).

Both Sweden and Finland have rules that give the voters the opportunity to advance demands for local referendums, i.e. citizen-initiated local referendums. However, there are several restrictions and requirements regarding such citizen initiatives.

In Denmark in 2018, separate provisions were introduced in the Local Government Act relating to binding local referendums. Municipal councils may decide that such referendums should be held on decisions made by the municipal council regarding a matter.<sup>302</sup> The referendums shall then be held from two to six months after they have been adopted and a decision made following a referendum cannot be overturned during the election period.<sup>303</sup> Thematically, referendums are limited to areas over which the municipal council has authority, and there is no room for conducting referendums at the regional level.

#### 8.4.4 Development in Norway

Among the Nordic countries, Norway has the longest traditions with local referendums. There are four categories of topics in particular that have been the subject of local referendums in Norway: territorial referendums (e.g. municipal mergers), school districts, alcohol and form of the Norwegian language. Between 1970 and 1979, there were a record number of referendums on the form of the Norwegian language (117), while in the 1980 there were numerous referendums on alcohol (114). In recent time, there have been almost no referendums on these topics.<sup>304</sup>

There have previously been discussions on which voting rules shall be used in referendums. Although the Local Government Act says nothing about which electoral register to use at referendums, it has been pointed out that the preparatory works of the Act must be interpreted so that the same people should have the right to vote at local referendums as at local elections.<sup>305</sup>

Referendums on municipal boundaries, territorial referendums, have gained momentum in recent year, especially in connection with the municipal reform. 2016 was a record year for local referendums, when 202 municipalities held local referendums on municipal mergers.

In connection with the many referendums on municipal mergers in the period 2015–2017, the Norwegian Institute of Social Research (ISF), Commissioned by the Ministry of Local Government and Modernisation, carried out a project that studied and discussed the various aspects of the local referendums. The project showed that the municipalities largely followed the Election Act when holding local referendums. Information had been posted on the Government's website regarding

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<sup>302</sup>Section 9b, subsection 1 of the Danish Local Government Act.

<sup>303</sup>Section 9b, subsection 5 2. of the Danish Local Government Act.

<sup>304</sup>Tor Bjørklund, "Lokale folkeavstemninger: lovreguleringer, tema og frekvens", i *Lokale folkeavstemninger om kommunesammenslåing: Praksis og prinsipper*, red. Jo Saglie and Signe Bock Seggaard, Rapport 2017:08 (Oslo: The Norwegian Institute for Social Research, 2017), page 33.

<sup>305</sup>In 2013, the City of Oslo conducted a referendum on hosting the Olympics. The referendum was conducted with the local election electoral register so that people without Norwegian citizenship were allowed to participate. There was a discussion ahead of the voting about which electoral register use, cf. VG articles on 10 March 2013: "Mener OL-avstemning er regelbrudd"

the implementation of referendums, with a specific recommendation to take into account the provisions of the Election Act. In a survey aimed at the municipalities that had conducted a referendum, most reported that they were concerned about following the principles of the Election Act. However, there were some anomalies around matters that were not covered by the Election Act. Among other things, the researchers found that the voting slips and response alternatives in several municipalities were clumsily worded. In some cases, it was difficult for the voters to understand what the various response alternatives meant or to understand what the consequences of their vote were. Among the weaknesses that were highlighted were the lack of the possibility to vote no, alternatives that were vaguely worded and conditional alternatives (which depended on events beyond the control of the municipality and the voters).<sup>306</sup>

A key question posed in the report was whether more national guidance and better help were needed with the practical implementation of local referendums. The report concluded that a national guide and an administrative system for the practical implementation of local referendums would meet a municipal need.

#### **8.4.5 The Commission's evaluation**

The Commission has considered whether rules on binding local referendums should be introduced. *The majority of the Commission (Christensen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Høgestøl, Røhnebæk, Stokstad, Storberget, Strømmen, Tørresdal, Aarnes, Aardal and Aatlo)* has concluded that this is not desirable. The majority refers to Official Norwegian Report (NOU) 2016: 4 and the municipal committee's evaluation of the same question:

In the Norwegian governance system of government, the citizens exert their influence through electing representatives to the municipal council. Transferring decision-making competence directly to the citizens will not be in line with the representative system of government on which the Local Government Act is based, cf. section 6 of the Local Government Act.

The majority has also considered whether more detailed rules should be established on how local referendums should be conducted. The majority finds that it is important to ensure that referendums follow some basic principles, e.g. that they shall be free, fair and universal. At the same time, the majority finds that the municipalities and the county authorities should have sufficient freedom to decide how they want to facilitate referendums, such as allowing people who do not have the right to vote to participate in referendums. However, depriving voters, who have the right to vote at elections, of the opportunity to vote at referendums will violate the principle of universal suffrage.

The majority also finds that it will be difficult to legislate how referendums should be conducted without establishing a separate Act on referendums. A relevant regulation is to lay down that the overarching principles for the implementation of elections as a result of the Election Act shall also apply to the implementation of referendums. Another regulation may be to lay down that the Election Act shall apply as far as it is appropriate when conducting referendums. However, the majority finds that in practice it will be difficult for the municipalities and the county authorities to adhere to

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<sup>306</sup>See Saglie and Seggaard, "Lokale folkeavstemninger om kommunesammenslåing".

such a regulation, as such a method of regulation will mean that many interpretation questions will arise.

In the opinion of the majority, the most appropriate way to ensure that referendums are conducted in line with the principles of conducting elections will be to draw up a guide on how referendums should be conducted.

The majority has also noted that when conducting local referendums it has proved to be difficult for some municipalities to formulate response alternatives that meet the international principles on referendums. The evaluation of the many municipal mergers in the period around 2016 showed that there was uneven practice around this and that in some cases, the response alternatives were misleading and contrary to good international practice. On this basis, the Commission finds that there is a need to clarify further how the response alternatives on the voting slip should be formulated. Although it must be up to the municipalities and the county authorities themselves to decide which questions they want to ask in a referendum, the Commission finds there is a need to clarify the use of response alternatives, including the importance of "neutral" question formulations. This can be done in a guide.

*The minority of the Commission (Anundsen, Holmås and Nygreen)* finds direct democracy through the use of referendums that leave a decision to the people or obtain the people's council before a democratically elected body makes a decision, is an important part of democracy.

Therefore, these members find it is necessary to facilitate better that democratically elected bodies can use a referendum as an instrument. These members find that a separate provision on referendums in municipalities and counties should be laid down in the Election Act so that it is clear that the principle for the implementation of elections shall also apply when conducting national referendums. These members also find that a separate Act should be drawn up on the implementation of national and local referendums so that this instrument can be used as part of the political governance of Norway and that the threshold for obtaining the population's advice or decision is significantly reduced.

## 9 The right to vote

### 9.1 Suffrage for 16-year-olds

#### 9.1.1 Applicable law

The voting age at parliamentary elections is regulated by the Constitution, while the Election Act has provisions on voting age both at parliamentary elections and municipal and county council elections.

Article 50 of the Constitution states that “[t]hose entitled to vote at parliamentary elections are the Norwegian citizens, men or women, who, at the latest in the year when the election proceedings are held, have reached the age of 18”.

According to sections 2-1 and 2-2 of the Election Act, a person who has reached the age of 18 by the end of the election year, has the right to vote at parliamentary elections and municipal and county council elections.

#### 9.1.2 Laws in other countries

On a global basis, the most common voting age is 18 years.<sup>307</sup> A voting age of 16 is not yet widespread in Europe or in the rest of the world, but some countries have introduced it and several countries, including our Scandinavian neighbours, are discussing the issue.

In Europe, Austria and Malta are the only countries that have given the right to vote to 16-year-olds both at local and national elections. Austria introduced suffrage for 16 year-olds in 2007, while Malta introduced it at local elections in 2013 and national elections in 2018.

In Germany, 16-year-olds can vote at local elections in several provinces and Estonia, 16-year-olds were able to vote in local elections from 2017. Slovenia, Bosnia-Herzegovina, Serbia and Montenegro give voting rights to 16-year-olds who are working. In Hungary, 16-year-olds who are married can vote at elections.

At the 2015 referendum in Scotland, regarding Scottish independence, 16 and 17-year-olds were allowed to vote.

Outside Europe, there are several examples of countries that have introduced a voting age of 16, such as Brazil, Nicaragua, Argentina and the Philippines.<sup>308</sup> The question has also been discussed recently in Canada and the United States.<sup>309</sup>

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<sup>307</sup>For a more detailed overview of voting age by country at national elections, see “Comparative Data”, ACE Electoral Knowledge Network, opened 10 October 2019, <http://aceproject.org/epic-en/>.

<sup>308</sup>“Field Listing: Suffrage”, *The World Factbook* (Central Intelligence Agency), opened 5 November 2019, <https://www.cia.gov/library/publications/resources/the-world-factbook/fields/311.html>.

<sup>309</sup>See, for example, Kathleen Harris, EElections Chief Says Lowering Voting Age to 16 Is an Idea ‘Worth Considering’, *CBC*, 19 March 2019, <https://www.cbc.ca/news/politics/chief-electoral-officer-voting-age-16-1.4579051> and Alex Seitz-Wald, «The



### Box 9.1 Voting age under 18 years<sup>1</sup>

#### *Europe*

Austria 16

Germany 16 (municipal elections in 7 provinces, of which 1 is also provincial elections)

Switzerland 16 (at local and regional elections in the Glarus canton)

Malta 16 (at local elections, otherwise 18)

Estonia 16 (local elections)

Slovenia 16 (if the person is in employment, otherwise 18)

Bosnia-Herzegovina 16 (if the person is in employment, otherwise 18)

Serbia 16 (if the person is in employment, otherwise 18)

Hungary 16 (if the person is married and the marriage is registered in Hungary, otherwise 18)

Greece 17

#### *Asia*

East Timor 17

Israel 17 (at local elections, 18 years at elections to Knesset)

Indonesia 17 (as well as married persons, regardless of age)

#### *South America*

Argentina 16 (voluntary, but mandatory for those between 18 and 70)

Brazil 16 (voluntary, but mandatory for those between 18 and 70)

Cuba 16

Ecuador 16 (voluntary, but mandatory for those between 18 and 65)

Nicaragua 16

<sup>1</sup> “Field Listing: Suffrage – The World Factbook – Central Intelligence Agency”, The World Factbook (Central Intelligence Agency), opened 5 November 2019, <https://www.cia.gov/library/publications/resources/the-world-factbook/fields/311.html>.

### 9.1.3 The recommendations of the Council of Europe

In 2011, the Council of Europe’s Parliamentary Assembly passed the resolution “Expansion of democracy by lowering the voting age to 16” by 19 to 7 votes.<sup>310</sup> The Assembly urged the member states to look at the possibility of introducing voting rights for 16-year-olds at all types of elections. In 2015, a new resolution was adopted, “Voting at 16 – Consequences on youth participation at a local and regional level”, where the Parliamentary Assembly “[...] invited Council of Europe

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Nation’s Capital May Let 16-Year-Olds Vote for President. Is That a Good Idea?”, *NBC News*, 17 April 2018, <https://www.nbcnews.com/politics/elections/washington-d-c-may-let-16-year-olds-vote-president-n866481>.

<sup>310</sup>“Expansion of democracy by lowering the voting age to 16”, Resolution 1826 (2011) (The Parliamentary Assembly of the Council of Europe, 2011).

member states to further harmonise the age for the right to vote, more specifically, to use local and regional elections as a 'starting point' and 'test case' for the lowering of the voting age to 16."<sup>311</sup>

Their reason for starting with local elections is that

[...] decisions at the grassroots' level cover a concrete scope of matters which are close to citizens and thus more easily comprehensible. Therefore, local and regional elections seem to be a particularly good "test-case" and an initial step for a reduction of the voting age to 16. This has been also confirmed by the domestic practice of several Council of Europe member countries which lowered voting age only for local and/or regional elections.<sup>312</sup>

#### **9.1.4 Development in Norway**

In 1898, Norway introduced universal suffrage for men and in 1913, for women. From 1919, people who received poverty relief were also given the right to vote at elections. The voting age was then 25 years. Since then, the voting age has been lowered several times. The first time this happened was in 1920 when it was lowered to 23 years. In 1946, it was lowered to 21 years and in 1967, it was lowered further to 20 years. In 1978, came the current provision on a voting age of 18 years.

#### **9.1.5 Other age limits in Norwegian law**

Since 1979 the age of majority and the voting age has been the same.

That the voting age is the same as the age of majority is largely due to a general view that the age of majority indicates the clearest distinction between child and adult. However, there is no unambiguous answer to when a person is considered an adult under the legislation.<sup>313</sup> Several age limits indicate one or other form of transition from child to adult: The age of criminal responsibility is 15 years, the minimum age of sexual consent is 16 years and a person can be liable to pay tax from the age of 13 if the person has his or her own income. In some case, there are age limits higher than the age of majority, such as the minimum age limit of 20-years for the purchase of beverages with an alcohol percentage above 22 per cent and a minimum age limit of 25 years for sterilisation.

#### **9.1.6 Previous processing**

A lower voting age at parliamentary elections has been put forward as a proposed constitutional amendment several times, most recently from the Socialist Left Party (SV) and the Liberal

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<sup>311</sup>"Voting at 16 – Consequences on youth participation at local and regional level», Resolution 387 (2015) (The Parliamentary Assembly of the Council of Europe, 2015).

<sup>312</sup>"Voting at 16 – Consequences on youth participation at local and regional level», Resolution 387 (2015) (The Parliamentary Assembly of the Council of Europe, 2015).

<sup>313</sup>See Ot.prp. no. 110 (2008–2009) (white paper) *On the Guardianship Act* pages 26 and 171.

Party.<sup>314</sup> After consideration by the Standing Committee on Scrutiny and Constitutional Affairs at the beginning of 2019, the proposal was voted down by a large majority of the Storting because the time has not come to lower the voting age to 16 years. The majority found that the principle whereby the age of maturity and the eligibility age should be linked to the voting age should still apply.<sup>315</sup>

The question of giving 16-year-olds the right to vote has also been dealt with by other committees, as in Official Norwegian Report 2011: 20 *Young people, power and participation*. At the time, the members of the Commission were divided on three alternatives: 1) to retain the current voting age at national and local elections, 2) to lower the voting age to 16 for all elections and 3) to lower the voting age to 16 at local elections but allow it to remain at 18 years for national elections.<sup>316</sup> The members who wanted to keep the current regulations find that it was a significant point that the voting age was the same as the age of majority. Furthermore, they pointed out that among most young people there was no desire to lower the voting age. The members who supported lowering the voting age pointed out that it would lead to an expansion of democracy and give the young people increased political influence. They argued that it was not a problem to distinguish the voting age from the age of eligibility and the age of majority and pointed out that these age provisions are rotted in three different Acts.

The members who wanted to lower the voting age only at local elections pointed out that young people are largely affected by municipal and regional politics. Lower secondary schools come under the municipality's area of responsibility and upper secondary schools are governed by the county authority. They found that young people should be allowed to influence the democratically elected bodies that govern over an important part of their everyday lives.

The previous Election Act Commission also discussed the question of a lower voting age, but then limited to the local elections. At the time, the majority (14 members) concluded that the voting age should still be 18. Among other things, they emphasised that the voting age should follow the age of majority. The minority (3 members) agreed to lower the voting age to 16 at local elections and argued that it could contribute to increased political participation among young people.<sup>317</sup>

*The Municipal Proposition 2018* discussed the pilot schemes with a lower voting age in Norway in 2011 and 2015.<sup>318</sup> The evaluation states that

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<sup>314</sup>The proposed constitutional amendment was put forward by Heikki Eidsvoll Holmås, Kirsti Bergstø, Snorre Serigstad Valen, Karin Andersen, Sveinung Rotevatn and Trine Skei Grande, cf. Doc. 12:7 (2015–2016).

<sup>315</sup>See Innst. 133 S (2018–2019) (Recommendation).

<sup>316</sup>The various alternatives were not referred to as majority or minority recommendations as they write that it “depends on whether the two recommendations on the lowering of the voting age are considered to be one or two main views”. Official Norwegian Report (NOU) 2011: 20 *Young people, power and participation* page 14.

<sup>317</sup>Official Norwegian Report (NOU) 2001: 3 *Voters, electoral system, elected representatives*.

<sup>318</sup>The pilot schemes were discussed in detail in section 9.1.8.

[...] there should be a correlation between the age of majority and the voting age and that the experience from the two suffrage attempts does not change this principle.

On this basis, the Government will retain the current rule that a person can vote for the first time at municipal council elections if he or she has reached the age of 18 by the end of the election year.<sup>319</sup>

In the Commission's recommendation, the majority of the Commission's members (the Conservative Party, the Christian Democrat Party and the Centre Party) agreed with the Ministry's view, while the members of the Labour Party and the Socialist Left Party were open to continuing and extending the pilot scheme with suffrage for 16-year-olds at local elections. The Commission members from the Liberal Party and the Socialist Left Party felt it was natural that the voting age was lowered to 16 and justified this by saying it would give the group between 16 and 18 years a stronger role in the Norwegian political debate. These members found the conclusion after the pilot scheme had to be to extend the pilot scheme rather than stop it, with the aim of making it a permanent arrangement. On this basis, these members put forward a proposal that "the Storting should request the Government to expand and extend the pilot scheme with suffrage for 16-year-olds and include the largest cities in the pilot scheme".<sup>320</sup>

The proposal was voted down by the other parties, except for the Green Party.

### 9.1.7 The pilot scheme with suffrage for 16-year-olds

In connection with the municipal council election in 2011, the Ministry conducted a pilot scheme with lower voting age in a selection of municipalities in Norway. One of the aims of the pilot scheme was "to adopt measures that could allow new groups to participate more actively in local democracy. To expand the electorate is a way of getting more young people to participate as active citizens in their communities".<sup>321</sup>

The Ministry selected 20 municipalities (and Longyearbyen local council) to participate. In the selection of the municipalities, the Ministry focused on there being a spread in the size, geography, political composition of the municipal council and age composition of the population. All the counties, except Oslo, were represented. In total, around 9,400 16 and 17-year-olds were allowed to vote.<sup>322</sup>

A pilot scheme with lower voting age was also implemented at the municipal council election in 2015. 20 municipalities were selected to participate in the pilot scheme, of which 10 municipalities

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<sup>319</sup>Prop. 128 S (2016–2017) *The Municipal Proposition 2018*.

<sup>320</sup>Innst. 422 S (2016–2017) *Recommendation to the Storting from the Standing Committee on Local Government and Public Administration*.

<sup>321</sup>St.meld. no. 33 (2007–2008) (white paper) *A strong local democracy*, section 5.2.7.

<sup>322</sup>Prop. 95 S (2013–2014) *The Municipal Proposition 2015*, page 64.

were the same as those that participated in the pilot scheme in 2011, while 10 municipalities were completely new.

Both pilot schemes included a few conditions: The 16 and 17-year-olds were only allowed to vote at the municipal council election and not at the county council election nor were they eligible.

The Norwegian Institute for Social Research and the Rokkan Centre (University of Bergen) evaluated the two pilot schemes. The results from the two evaluations were presented in two reports from 2014 and 2016 respectively.<sup>323</sup>

### 9.1.8 Evaluation of the pilot schemes

The turnout among young people who participated in the pilot schemes was significantly higher than among the ordinary first-time voters between 18 and 21. The participation of the 16 and 17-year-olds in the election was much closer to the overall turnout than the first-time voters were. The results from 2011 showed that 58 per cent of the 16 and 17-year-olds in the pilot scheme municipalities voted at the election. The turnout among ordinary first-time voters, both in the pilot scheme municipalities and the whole country was 46 per cent, while on a national basis it was 65 per cent for all voters (63 per cent in the pilot scheme municipalities). The results from 2015 showed similar figures.<sup>324</sup>

The explanation for this difference in turnout is not entirely clear. The increased attention the pilot scheme received, both in the local media, at schools and among the politicians, may have contributed to a greater degree of participation among the pilot scheme voters than among the first-time voters.<sup>325</sup> Another factor that probably played an important role was the terrorist attack on 22 July 2011. This may have contributed to the increased mobilisation of the young first-time voters (including the pilot scheme voters). The same mobilisation effect was not observed among the older age groups.

The researchers found that the increased turnout among 16-17-year-olds could also be explained by the fact that it is easier to mobilise this group of young people to vote since they are in structured and predictable environments. Most 16-year-olds still live at home, are in the process of ending a compulsory educational pathway and thus will be more easily mobilised to vote through the school and parents.<sup>326</sup>

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<sup>323</sup>Johannes Bergh (red.), "Stemmerett for 16-åringer – Resultater fra evalueringen av forsøket med senket stemmerettsalder ved lokalvalget 2011" (Oslo: The Norwegian Institute for Social Research, 2014) and Johannes Bergh (red.), «Hva skjer når 16-åringer får lov til å stemme? Resultater fra evalueringene av to forsøk med nedsatt stemmerettsalder" (Oslo: The Norwegian Institute for Social Research, 2016).

<sup>324</sup>Bergh (red.), "Stemmerett for 16-åringer", page 33. In 2015, the turnout among the voters in general was 60.2 per cent and 44.8 per cent among the first-time voters.

<sup>325</sup>Bergh (red.), "Stemmerett for 16-åringer", page 34.

<sup>326</sup>Bergh (red.), "Hva skjer når 16-åringer får lov til å stemme?", page 23.

In 2015, the researchers studied social difference among the pilot scheme voters. They found that girls participated to a greater extent than boys, that people with an immigrant background participated to a lesser extent than other young people and that first-generation immigrants participated to a lesser extent than people born in Norway of parents with an immigrant background. The turnout was also significantly higher among young people who were taking a Programme for Specialisation in General Studies, compared with those who followed a more vocational educational pathway.<sup>327</sup>

To test whether early turnout would affect subsequent participation at elections, the pilot scheme voters from the 2011 municipal election were followed-up at the 2013 parliamentary election. This group was compared with the first-time voters who had not participated in the pilot scheme in 2011. The analyses carried out in connection with the pilot scheme indicate that those who voted as 16 or 17-year-olds in 2011 did not vote to a greater extent than other voters in the same age group, either at the 2013 parliamentary election or the 2015 municipal council election. There was a slight tendency toward those who voted as 16 or 17-year-olds in the 2011 pilot scheme, voted to a lesser extent than other voters in the same age group at the 2013 election. 16 and 17-year-olds who were allowed to vote did not seem to have established a habit of voting at elections.<sup>328</sup>

### *Degree of maturity*

In connection with the pilot scheme in 2011, Bergh analysed the political maturity among 16, 17 and 18-year-olds in the pilot scheme municipalities and a selection of control municipalities. Political maturity was measured based on interest in politics, political competence, consistency in attitudes and the relationship between attitudes and how the voters voted. There was a slightly lower degree of maturity among 16 and 17-year-olds than among 18-year-olds, but not significant.<sup>329</sup>

The analysis also referred to the research conducted in the UK and Austria. While the results from the UK coincided with the Norwegian results, namely that 16 and 17-year-olds seemed to have a slightly lower degree of maturity than those over 18, the results from the pilot schemes in Austria showed that no significant differences in maturity between the age groups could be established. The researchers pointed out that the divergent results from Austria may have been due to different ways of measuring political maturity or that a smaller sample of young people was used in the Austrian pilot schemes.

In other words, there was no sign that suffrage for 16 and 17-year-olds significantly affected the political maturity of this group. Young people did not seem to be more politically mature from having the right to vote.

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<sup>327</sup>Bergh (red.), "Hva skjer når 16-åringene får lov til å stemme?", page 13–14.

<sup>328</sup>Bergh (red.), "Hva skjer når 16-åringene får lov til å stemme?", page 55–56.

<sup>329</sup>Johannes Bergh, "Does Voting Rights Affect the Political Maturity of 16- and 17-Year-Olds? Findings from the 2011 Norwegian Voting-Age Trial", *Electoral Studies* 32, no. 1 (2013): 95–96, <https://doi.org/10.1016/j.electstud.2012.11.001>. See also Bergh (red.), "Stemmerett for 16-åringene", pages 47–50.

### *Party preference*

During the pilot scheme in 2015, a separate analysis was carried out on the party preference of young people at the school elections in the same year as a basis of comparison. There was very little difference between which parties the 16 and 17-year-olds voted for and the election result for the country overall. There was almost no difference in the party preference between 16 and 17-year-olds who only voted at school elections and those who also voted in the pilot scheme. Compared with the final election result, the distribution of the young people's votes was about the same as that of the adults.<sup>330</sup>

### *Political representation of young people*

The most specific political outcome of lowering the voting age to 16 years was the more young representatives were elected to the municipal councils. Thus, the political representation of young people in the municipalities increased.<sup>331</sup> In 2011, the percentage of young municipal council members between 18 and 25 years doubled from 5.2 to 10.4 per cent in the pilot scheme municipalities.<sup>332</sup>

The increased representation of young people was due to both the parties' own nomination processes and the voters themselves.<sup>333</sup> In particular, at the 2015 election, the parties in the pilot scheme municipalities nominated young candidates to safe seats to a greater extent than in other municipalities. On the other hand, personal votes for younger candidates seemed to have been more decisive at the 2011 election.

### *Attitudes in society*

The pilot schemes also included studies of the attitudes in the population towards a lower voting age. It turned out that there was little support in general regarding lowering the voting age from 18 to 16 years, including among young people. The results showed the same trends in 2011 and 2015. Only among young people in the pilot scheme municipalities was there a majority in favour of lowering the voting age.<sup>334</sup>

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<sup>330</sup>Bergh (red.), "Hva skjer når 16-åringene får lov til å stemme?", page 7.

<sup>331</sup>Bergh (red.), "Hva skjer når 16-åringene får lov til å stemme?", page 8.

<sup>332</sup>Prop. 95 S (2013–2014) *The Municipal Proposition 2015*.

<sup>333</sup>Jacob Aars and Jo Saglie, "Recruitment of young councillors: Driven by parties or voters?», i *Hva skjer når 16-åringene får lov til å stemme? Results from the evaluations of the two pilot schemes with lower voting age*, red. Johannes Bergh, Report 2016:19 (Oslo: The Norwegian Institute for Social Research, 2016), page 105–106.

<sup>334</sup>Bergh (red.), "Hva skjer når 16-åringene får lov til å stemme?" page 21.

### 9.1.9 The consequences of lower voting age in other countries

Recent research on the consequences of a lower voting age in other countries than Norway shows that this may have an impact on turnout later in life.<sup>335</sup> When voters who were allowed to vote as 16-year-olds are compared with voters who were allowed to vote at a later date, the turnout is higher among those who were allowed to vote as 16-year-olds. There are relatively large differences with a difference of around 5 percentage points between the two groups. Although it is not clear why there is such a difference, it is proposed that this is related to the life phase and education in a democracy. First-time voters who are 16 are often in a more stable framework within the family than voters who are 18. Thus, the youngest first-time voters learn about democracy from family and teachers in a different way than the older first-time voters.

### 9.1.10 The relationship between the age of eligibility and voting age

#### 9.1.10.1 Applicable law

Eligibility is linked to the right to vote, cf. Article 61 of the Constitution: “No one can be elected as a representative without being eligible to vote.”

The Election Act also links eligibility to the right to vote:

#### *Section 3-1. Eligibility at parliamentary elections*

(1) Eligible to the Storting and bound to accept elections is any person who is entitled to vote at the election and who is not disqualified or exempt.

#### *Section 3-3. Eligibility at local government elections*

(1) Eligible to the county council and bound to accept election is any person who is entitled to vote at the election and who is listed in the Population Registry as a resident in one of the municipal authority areas of the county on Election Day, and who is not disqualified or exempt.

(2) Eligible to the municipal council and bound to accept election is any person who is entitled to vote at the election and who is listed in the Population Registry as a resident in the municipal authority area on Election Day, and who is not disqualified or exempt.

Under the Act, those who have the right to vote are eligible unless they are disqualified or exempt. In the current regulations, there are some people who, due to their position, are not eligible, cf. Article 62 of the Constitution and Chapter 3 of the Election Act, and the Commission discusses this in Chapter 10. To be eligible at municipal and county council elections, there is a requirement that the person concerned is registered in the Population Registry as a resident of the municipality or one of the municipalities in the county. The holders of certain positions are also excluded from elections to the municipal and county council, cf. section 3-3 of the Election Act.

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<sup>335</sup>Mark N. Franklin, “Consequences of Lowering the Voting Age to 16: Lessons from Comparative Research”, in *Lowering the Voting Age to 16*, red. Jan Eichhorn and Johannes Bergh (Cham: Springer International Publishing, 2020), 13–41, [https://doi.org/10.1007/978-3-030-32541-1\\_2](https://doi.org/10.1007/978-3-030-32541-1_2).



### 9.1.10.2 Briefly about the laws of other countries

In other countries where the voting age has been lowered to 16 years, such as Austria and Estonia, the age of eligibility has not been lowered accordingly. Both in Austria and Estonia, 16-year-olds have the right to vote, while people who have turned 18 on Election Day are eligible. In the pilot schemes in Norway, only the voting age was lowered, but the age of eligibility remained at 18.

### 9.1.10.3 The recommendations of the Council of Europe

The Council of Europe has raised the issue of the relationship between voting age and the age of eligibility. The Council of Europe's 2011 parliamentary assembly resolution urged member states to "examine the possibility of lowering the minimum age of eligibility to stand for different kinds of elections (local and regional bodies, parliament, senate and presidency) wherever this would seem appropriate".<sup>336</sup>

In the report that accompanied the resolution, it was established that local elections may be a particularly suitable starting point for lowering the age of eligibility. However, it was pointed out that

[t]he main argument raised in support of a minimum candidacy age is that a greater degree of maturity is required to act as a political representative than to elect such a representative.

Therefore, a reasonable period of time should be allowed to pass between the right to vote and the right to be a candidate.<sup>337</sup>

### 9.1.10.4 Historical development

The voting age has not always been the same as the age of eligibility, but in the last 70 years, both age limits have been the same.

Table 9.1 Changes in voting age, age of maturity and age of eligibility.<sup>1</sup>

Year	Voting age at parliamentary elections	Age of eligibility at parliamentary elections	Age of majority
1898	25 years (men)	30 years	21 years
1913	25 years (women)	30 years	21 years
1919	25 years (poor people)	30 years	21 years
1920	23 years	30 years	21 years
1946	21 years	30 years	21 years
1948	21 years	21 years	21 years

<sup>336</sup>"Expansion of democracy by lowering the voting age to 16", Resolution 1826 (2011) (The Parliamentary Assembly of the Council of Europe, 2011).

<sup>337</sup>"Expansion of democracy by lowering the voting age to 16", Doc. 12546 (Committee on Political Affairs and Democracy, The Council of Europe Parliamentary Assembly, 2011).

1967	20 years by Election Day	20 years	21 years
1972	20 years during the election year	20 years	21 years
1978	18 years	18 years	21 years
1979	18 years	18 years	18 years

<sup>1</sup> Guro Ødegård and Jacob Aars, “Ungdom, valgdeltagelse og stemmerett: En kunnskapsoversikt”, Report 2011:4 (Bergen/Oslo: The Centre of Research and Civil Society and the Voluntary Sector, 2011).

### 9.1.11 The Commission’s evaluation

#### 9.1.11.1 Voting age

The Commission is divided on the question of whether the voting age should be lowered to 16 years.

*The majority of the Commission (Christensen, Grimsrud, Hoff, Holmås, Høgestøl, Nygreen, Stokstad, Storberget, Strømmen, Aardal and Aatlo) finds the voting age should be lowered at municipal and county council elections. These members emphasise that young people are an important group to include in democracy and that their commitment must be taken care of. Changing the voting age to 16 at municipal and county council elections will give young people practical experience in participatory democracy in their local community. This can also contribute to higher voter participation later in life. These members point out that the matters for which the municipal and county councils are responsible, such as primary and lower secondary and upper secondary schools are part of the everyday life of young people to a great extent. Furthermore, these members point out that early contact with politics may be important for future participation in politics.*

*Members Christensen, Holmås, Høgestøl, Nygreen, Stokstad, Storberget and Strømmen finds the voting age should also be lowered at parliamentary elections. These members place particular emphasis on the fact that this will expand young people’s opportunity for democratic participation also at a national level and find that there is no reason why 16-year-olds should not also be granted the right to vote at parliamentary elections, even if they have not reached the age of majority. These members also find that the principal arguments for lowering the voting age at local elections are equally applicable to parliamentary elections, and therefore, that the voting age should be lowered at parliamentary, county council and municipal council elections.*

*The minority of the Commission (Anundsen, Giertsen, Hagen, Holmøyvik, Røhnebæk, Tørresdal and Aarnes) finds that the voting age should not be lowered, either at parliamentary elections or municipal and county council elections. The reason for this is that the voting age should correspond to the age of majority of 18 years. This is the main provision of the transition from child to adult.<sup>338</sup>*

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<sup>338</sup>Following a constitutional amendment in 1972, the voting age has been linked to the Election Year (and not Election Day), so that a person achieves the right to vote in the year he or she turns 18. See Innst. S. no. 237 (1971–1972) (Recommendation) On proposed amendments to section 50 and 61 of the Constitution, , Innst. S. no. 24 (1967–1968) (Recommendation) On proposed amendments to sections 50 and 61 of the Constitution and St.meld. no. 41 (1964–1965) (white paper) On lowering the voting age.

The deviating age limits – whether they grant the right at an earlier or later date – have their justifications and do not change the principal argument that a person should not have the right to vote until the year he or she is considered to have reached the age of majority. These members point out that there are other channels and arenas where young people can participate in political life and thus influence politics, such as youth councils (which are now also statutory).

The Commission points out that under Article 12 of the Constitution, the members of the Government must be eligible to vote. If the voting age at parliamentary elections is lowered, it should be decided whether this provision should also be amended. The Commission has not considered this matter.

### **9.1.11.2 The age of eligibility**

The Commission is also divided on the question of whether the age of eligibility should be lowered, and whether there should be a link between the age of eligibility and the voting age.

*The majority of the Commission (Anundsen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Holmås, Røhnebæk, Stokstad, Tørresdal, Aardal, Aarnes and Aatlo)* does not want to lower the voting age at any election. The reasons vary somewhat. Some members find there should be a correlation between the voting age and the age of eligibility, which is especially true for those of the majority who do not want to lower the voting age. Some find that lowering the voting age can have profound consequences for a young person who was to be elected.<sup>339</sup> The responsibilities of democratically elected representatives are extensive, whether it concerns the municipal council, the county council or the Storting and should be taken care of by people who have reached the age of majority.

*The minority of the Commission (Christensen, Høgestøl, Nygreen, Storberget and Strømmen)* wants to lower the age of eligibility for municipal and county council elections. *Christensen, Høgestøl and Storberget* also want to lower the age of eligibility for parliamentary elections as a result of their desire to lower the voting age for all elections. *Nygreen and Strømmen* do not want to lower the age of eligibility for parliamentary elections. These members justify the proposal of a different eligibility age with the fact that the position as a local politician is a part-time position, which is easier to combine with the life situation in which a 16-year-old finds him or herself than a parliamentary post. There is also a right to obtain an exemption from the municipal and county council position than from the parliamentary position.

## **9.2 Seriously weakened mental state or a reduced level of consciousness**

### **9.2.1 Applicable law**

Under Article 50, subsection 3 of the Constitution, rules may be laid down concerning the right to vote of persons otherwise entitled to vote who on Election Day are manifestly suffering from a seriously weakened mental state or reduced level of consciousness. No such legislation has currently been established.

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<sup>339</sup>Eligibility was previously considered more as a duty, but following the changed in the exemption options, which have not been adopted by the Storting, eligibility is more considered as a right than a duty.

### 9.2.2 The UN Convention on the Rights of People with Disabilities and the European Convention on Human Rights

In 2008, Norway ratified the UN Convention of 13 December 2006 on the Rights of Persons with Disabilities (CRPD). Article 29 of the Convention requires the member states to ensure that persons with disabilities, which also include mental impairment, can participate fully in political and public life on an equal footing with others. This right also includes the right and the opportunity to vote and to be elected.

Furthermore, Article 3 of the First Protocol of the European Convention on Human Rights requires the member states to hold free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. The European Court of Human Rights has interpreted the provision in such a way that the member states cannot impose general restrictions on the right to vote as a result of mental weakness.<sup>340</sup>

### 9.2.3 Previous processing

In connection with the previous Election Act Commission's work, a proposal was put forward to repeal Article 50, subsection 3 of the Constitution in document 12:7 (1999–2000). The Commission supported the proposal and the Ministry follow this up in its Bill. However, the Storting decided to continue Article 50, subsection 3 of the Constitution, cf. Recommendation to the Storting Innst. S. no. 209 (2002–2003). In 2005, the Ministry proposed repealing the provisions of the Election Act on how votes from people with a seriously weakened mental state or a reduced level of consciousness should be treated. The Storting endorsed the proposal.<sup>341</sup> In this regard, repealing Article 50, subsection 3 of the Constitution was not discussed.

### 9.2.4 The Commission's evaluation

The Commission finds that the right to lay down statutory rules on the right to vote for people suffering from a seriously weakened mental state or a reduced level of consciousness represents an outdated view of this group of voters. The Commission refers to the principle of universal suffrage and that the right to vote is a completely fundamental individual right of democracy. Under CRPD, Norway is obliged to ensure people with disabilities, which also include a seriously weakened mental state, the right and opportunity to vote and to be elected. The Commission would also like to remind that in the light of the practice by the European Court of Human Rights, the member states cannot impose general restrictions on voting rights as a result of mental impairment. The Commission also points out that excluding certain groups from elections could mean that individuals may find this extremely insulting and give them a feeling of unworthiness.

The Commission points out that in 2005, the Storting repealed special provisions of the Election Act on how votes from people with a seriously weakened mental state or reduced level of consciousness should be treated. Therefore, Article 50, subsection 3 of the Constitution no longer has any function other than as a legal basis for a future restriction of the right to vote. Based on this,

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<sup>340</sup>See ECtHR's judgment in *Alajos Kiss vs. Hungary*, application no. 38832/06, 20 May 2010, sections 39–44.

<sup>341</sup>Ot.prp. no. 44 (2004–2005) (white paper) and Recommendation to the Storting Innst. O no. 60 (2004–2005).

the Commission has concluded that Article 50, subsection 3 of the Constitution should be repealed.

### 9.3 Suffrage for foreign nationals – parliamentary elections

#### 9.3.1 Applicable law

Article 50, subsection 1 of the Constitution states that only Norwegian citizens have the right to vote at parliamentary elections.

Pursuant to section 2-2, subsection 2 of the Election Act, foreign nationals have the right to vote at municipal and county council elections if they meet the same conditions that apply to Norwegian citizens, as well as meeting one of the following conditions:

- The person in question has been registered in the Population Registry as being resident in Norway in the 3 years prior to Election Day.
- The person in question is a citizen of another Nordic country and has been registered in the Population Register as being resident in Norway no later than 30 June of the election year.

#### 9.3.2 Previous processing

The previous Election Act Commission debated whether persons without Norwegian citizenship should be allowed to vote at parliamentary elections in line with the rules on municipal and county council elections.<sup>342</sup> However, there was broad agreement among the Commission to retain the requirement of Norwegian citizenship. This was based on the fact that voting at parliamentary elections provides the opportunity to directly influence the country's constitution and national policy. Internationally, it is rare for foreign nationals to be eligible to vote at national elections.<sup>343</sup>

#### 9.3.3 The Commission's evaluation

*The majority of the Commission (Anundsen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Høgestøl, Røhnebæk, Stokstad, Storberget, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo)* finds that citizenship and the right to vote should be connected. Norwegian citizenship triggers a number of legal effects and the right to vote should still be one of these. Pursuant to Article 119 of the Constitution and section 6 of the Defence Act, Norwegian citizens are bound to serve in the defence of the country. A Norwegian citizen cannot be expelled from Norway, cf. Article 106 of the Constitution.<sup>344</sup> Norwegian citizenship is also a condition for being able to hold several types of positions.

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<sup>342</sup>Official Norwegian Report (NOU) 2001: 3 *Votes, electoral system, elected representatives* pages 73–74.

<sup>343</sup>Only four countries have universal suffrage at parliamentary elections for non-citizenship residents, but there are a number of countries that allow citizens from selected countries to also be allowed to vote. When it comes to local elections, there is a large group of countries that grant citizens the right to vote. See David C. Earnest, *Old nations, new voters: nationalism, transnationalism, and democracy in the era of global migration*, SUNY series in global politics (Albany: SUNY Press, 2008), page 23.

<sup>344</sup>The same applies to foreigners who were born in Norway and subsequently have had uninterrupted permanent residence here, cf. section 69 of the Immigration Act.

Among other things, only Norwegian citizens can be appointed as a cabinet minister, cf. Article 12 of the Constitution and as senior civil servants, cf. Article 114 of the Constitution. Under section 18 of the Police Act and section 9 of the Foreign Service Act, employees with general police authority in the Norwegian Police Service and employees in the Foreign Service must be Norwegian citizens. The majority of the Commission finds that the right to vote is at the heart of Norwegian citizenship and that the current rules, where the right to vote at parliamentary elections is reserved for Norwegian nationals, maintains a sensible relationship between rights and obligations. The majority also refers to fact that immigrants who meet the conditions for this in the Norwegian Nationality Act are entitled to Norwegian citizenship and thus will be entitled to vote at parliamentary elections. The condition that they must relinquish another citizenship has been an important reason why some people do not want to become Norwegian citizens.<sup>345</sup> <sup>346</sup> The principle of single nationality no longer applies. Therefore, the fact that a person does not want to renounce his or her foreign citizenship is no longer an obstacle to applying for Norwegian citizenship.<sup>347</sup> Norwegian citizens who acquire new citizenship will no longer automatically lose their Norwegian citizenship following the legal amendment.<sup>348</sup>

*The minority of the Commission (Christensen, Holmås and Nygreen)* points out that as of 1 January 2019, 14.4 per cent of the population are immigrants,<sup>349</sup> who currently cannot vote without first becoming Norwegian citizens. A further 3.3 per cent are Norwegian-born with immigrant parents<sup>350</sup> and do not receive Norwegian citizenship at birth unless at least one of the parents was already a Norwegian citizen.<sup>351</sup> However, the percentage of immigrants who have Norwegian citizenship is

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<sup>345</sup>Silje Vatne Pettersen, "Overgang til norsk statsborgerskap 1977–2011", Reports 25/2012 (Oslo–Kongsvinger: Statistics Norway, 2012).

<sup>346</sup>The main rule on release from any another nationality was set out in the now repealed section 10 of the Norwegian Nationality Act.

<sup>347</sup>On 6 December 2018, the Storting decided to withdraw the principle of single nationality, cf. Innst. 74 L (2018–2019) (Recommendation), cf. Prop. 111 L (2017–2018) (Bill) Amendments to the Norwegian Nationality Act (withdrawal of the principle of single nationality).

<sup>348</sup>The main rule of section 23 of the now repealed Norwegian Nationality Act stated that the person who acquires any other nationality by application or explicit consent, is released from his or her Norwegian nationality.

<sup>349</sup>Defined by Statistics Norway as persons born abroad to two foreign-born parents and four foreign-born grandparents. Figures from "Innvandrere og norskfødte med innvandrerforeldre", Statistics Norway, 5 March 2019, <https://www.ssb.no/befolkning/statistikker/innvbef/aar/2019-03-05>.

<sup>350</sup>Defined by Statistics Norway as persons born in Norway of two foreign-born parents and four foreign-born grandparents.

<sup>351</sup>Section 4 of the Norwegian Nationality Act. Persons born before 1 September 2006 became Norwegian citizens at birth if the mother was a Norwegian citizen or married to or widowed by the father if the father was a Norwegian citizen, cf. then section 1.

increasingly lower.<sup>352</sup> In 2013, 60 per cent of the immigrants who had been resident in Norway for at least 7 years had Norwegian citizenship and thus the right to vote. Immigrants from the Nordic countries, North America, Oceania and migrant workers who have arrived after 1989 rarely changed citizenship.<sup>353</sup> This means that a relatively large proportion of the population has lived for a long time in Norway without being able to influence national politics at elections. At the end of the 2017 election year, 193,896 people were 18 years of age or older, and had lived in Norway for 7 years or more, and were not Norwegian citizens at the same time.<sup>354</sup> Immigrants from countries that do not allow dual citizenship will also not benefit from the fact that Norway now allows this.

The minority points out that the right to vote at elections is a fundamental democratic right that as many citizens as possible should have. If large groups who have been resident in the country for a long time do not have the right to vote, this constitutes a democratic problem. Persons without Norwegian citizenship have several of the same rights and obligations associated with living in the country as those with Norwegian citizenship. The minority of the Commission finds that immigrants who have lived in Norway for several years will therefore have such a close connection to the country that they should have the right to influence the main lines of Norwegian politics at elections. Furthermore, recent research shows that formal rights in themselves can contribute positively to the integration of the immigrant population.<sup>355</sup> The researchers found major differences in political participation and social integration among immigrants with formal rights and immigrants without such rights. Allowing broader participation can thus help Norway succeed even better in integrating the immigrant population.

As regards the question of how long a person must live in Norway to gain the right to vote, the minority points out that the Government will extend the requirement of a period of residence from seven to eight years, cf. the Granavold platform.<sup>356</sup> Under the Granavold platform, self-supporting people can still gain citizenship after six years.<sup>357</sup> If the period of residence requirement is increased, fewer people will gain citizenship and a narrower circle of people will thus have the right

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<sup>352</sup>“Stadig lavere andel som tar norsk statsborgerskap”, Statistics Norway, 7 December 2015, <https://www.ssb.no/befolkning/artikler-og-publikasjoner/stadig-lavere-andel-som-tar-norsk-statsborgerskap>.

<sup>353</sup>“Stadig lavere andel som tar norsk statsborgerskap”, Statistics Norway.

<sup>354</sup>Øyvind Kleven, Statistics Norway in correspondence with Christensen.

<sup>355</sup>Jens Hainmueller, Dominik Hangartner, and Giuseppe Pietrantuono, “Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?”, *American Political Science Review* 111, no. 2 (2017): 256–276, <https://doi.org/10.1017/S0003055416000745>, og Jens Hainmueller, Dominik Hangartner, and Giuseppe Pietrantuono, “Naturalization Fosters the Long-Term Political Integration of Immigrants”, *Proceedings of the National Academy of Sciences* 112, no. 41 (2015): 12 651–12 656, <https://doi.org/10.1073/pnas.1418794112>.

<sup>356</sup>“Politisk plattform for en regjering utgått fra Høyre, Fremskrittspartiet, Venstre og Kristelig Folkeparti” page 26. Tilgjengelig under <https://www.regjeringen.no/contentassets/7b0b7f0fcf0f4d93bb6705838248749b/plattform.pdf>.

<sup>357</sup>Those who are exempt from the current main requirement and who are recognised refugees retain the current period of residence requirement.

to vote at parliamentary elections compared with the present situation. The majority of the Commission finds it is unfortunate that the right to vote is effectively restricted for immigrants. It will also be unfortunate if a person's financial situation is to be decisive for the right to vote, cf. that the government wants to introduce a more lenient period of residence requirement for people who support themselves. Therefore, the minority proposes that the right to vote is given after six years of residence. In this way, the right to vote will be separated from citizenship and be independent of whether a person is self-supporting.

The Commission has also considered whether foreign national should also be eligible if this group of persons is granted the right to vote at parliamentary elections. The Commission is negative to this. To determine the main lines of national politics, as well as representing Norway in international contexts, the chosen person must meet as many association markers as possible to Norwegian society. The Commission also points out that Norwegian citizenship is a condition for holding a number of other positions, such as a cabinet minister or employee of the Foreign Service.

## **9.4 Norwegians living abroad – registration in the electoral register**

### **9.4.1 Applicable law**

Article 51 of the Constitution states that the rules on registration in the electoral register and on registration of the eligible voters in the electoral register are laid down by law.

To exercise their right to vote, voters must be registered as a resident of a municipality on Election Day.

Under section 2-4, subsection 3 of the Election Act, those who are entitled to vote and who have not been registered as a resident in Norway in the course of the last 10 years, must apply to the Electoral Committee to be included in the electoral register. Exemption from application obligation applies to persons living abroad who are members of the diplomatic corps or of the consular service and their households, cf. section 2-4, subsection 4 of the Election Act. These are registered automatically in the electoral register in the same way as other voters. Applications for registration in the electoral register from persons who have lived abroad for more than ten years must include an assurance that the person concerned is still a Norwegian citizen. The person living abroad also provides his or last registered address in Norway. The voter is registered in the electoral register of the municipality concerned if the information is correct.

From a purely practical point of view, applications for registration in the electoral register are included as a point on the cover envelope for advance voting from abroad. The application can also be sent by letter or by using a separate application form. The application must have been submitted to the Electoral Committee by 5 p.m. on the day after Election Day. When the Electoral Committee receives the application for registration, the information must be checked against the Population Register.



Omslagskonvolutt for stemmegivning utenfor rikets grenser,  
Svalbard og Jan Mayen

### Stortingvalget 2017

<p>Til valgstyret i: ..... kommune (der velgeren har stemmerett)</p> <p><b>1. Tid og sted for stemmegivningen</b> Dato: ..... Sted: .....</p> <p><b>2. Opplysninger om velgeren</b> Fullt navn, eventuelt også tidligere navn (bruk blokkbokstaver): ..... Fødselsnummer (11 siffer): ..... Registrert bostedsadresse i Norge pr. 30. juni 2017, eventuelt siste registrerte bostedsadresse i Norge: .....</p> <p><b>3. Hvordan stemmegivningen foregikk</b> (kryss av og fyll ut rett alternativ)</p> <p><input type="checkbox"/> <b>Alt. 1 Stemmegivning hos offentlig oppnevnt stemmemottaker</b></p> <p><input type="checkbox"/> ved norsk utenriksstasjon <input type="checkbox"/> på Svalbard <input type="checkbox"/> oppnevnt av Valgdirektoratet</p> <p>Stemmemottakers navn (bruk blokkbokstaver): .....</p>	<p><input type="checkbox"/> <b>Alt. 2 Stemmegivning ved brevpost (brevstemmegivning)</b> Opplysninger om eventuelt vitne som var tilstede ved brevstemmegivning: Navn: ..... Fødselsdato: ..... Adresse: ..... .....</p> <p><b>4. Søknad om innføring i manntallet</b> Jeg søker herved om innføring i manntallet i den kommunen i Norge der jeg sist var registret som bosatt, jf. opplysningene gitt i punkt 2. Jeg forsikrer at jeg er norsk statsborger.</p> <p><b>5. Signaturer</b> Stemmemottaker: ..... Vitne ved brevstemmegivning: ..... <i>Undertegnede velger bekrefter riktigheten av det som er anført over.</i> Velgerens signatur: .....</p>
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Figure 9.1 Cover envelope for advance voting from abroad.

#### 9.4.2 Nordic law

Swedish citizens who have not been registered as being resident in Sweden in the last ten years are registered in the electoral register.

- if the citizen submits written notification of address to the Tax Administration. The citizen is then enrolled in the electoral register for the next ten years.
- if the citizen casts a vote that is received by the central electoral authority. Regardless of when such a vote is received, the citizen is enrolled in the electoral register for the next ten years.<sup>358</sup>

These rules apply to elections to the Swedish Parliament and the European Parliament. To be able to vote at municipal and regional elections, the voter must be registered as being resident in Sweden.

Danish citizens who move abroad and are registered as expatriates in the population register must apply to be registered in the electoral register. To be registered in the electoral register also requires some continued connection with the realm.<sup>359</sup> Examples of groups of people that can be

<sup>358</sup>cf. Chapter 5, section 2 of the Swedish Elections Act.

<sup>359</sup>Cf. section 2 of the Folketing Election Act, cf. section 16.

registered in the electoral register are persons who employed by the Danish state and ordered to serve outside the realm. People who for the “purpose of education” or for “health reasons” are resident abroad can also be registered in the electoral register. As in Sweden, Danes living abroad do not have the right to vote at municipal and regional elections.

### **9.4.3 The Commission’s evaluation**

The Commission points out that a prerequisite for conducting correct elections is that the electoral register is correct. The electoral register shall include all persons entitled to vote and it shall also include the names of persons who do not have the right to vote. Therefore, the register must be updated and the names of deceased persons must be removed. This is done automatically for people who are resident in Norway. However, the Population Register does not always receive a notification when eligible voters, who are resident abroad, die. Therefore, the requirement that voters who have lived more than ten years abroad must apply for registration in the electoral register helps to ensure a correct electoral register and to prevent election fraud. However, the Commission finds that these considerations can be taken care of equally effectively without the voter having to apply for registration in the electoral register, even though this is very simple today. Therefore, the Commission proposes that voters who have not been registered as a resident in Norway in the last ten years before Election Day are included in the register if they vote. It could be said that the advance vote is also an application for registration in the electoral register. The Commission refers here to the corresponding system in Sweden. This rule should also apply to persons living abroad who are members of the diplomatic corps or the consular service, and their households. This proposal will simplify the procedures for registration in the electoral register and make the regulations the same for all citizens resident abroad.

The Commission also finds that it should be unnecessary for the voter to confirm that he or she is still a Norwegian citizen. Nevertheless, the Electoral Committee must check in the Population Register that the voter is a Norwegian citizen.

Under applicable law, those who are entitled to vote and who have not been registered as a resident in Norway at any time during the last ten years, must apply for registration in the electoral register of the municipality in which the person concerned was last registered as being resident. The Commission finds that persons with the right to vote who are resident abroad should be able to vote at the election in the municipality to which they feel the strongest affiliation. This does not have to be the municipality in which they were registered as residents at the time there were registered in the population register as having emigrated. Therefore, the Commission proposes that persons who have the right to vote and who have not been registered as a resident in Norway during the last ten years before the Election Day, shall be included in the electoral register for the municipality to which they vote.

## **9.5 The requirement of having been registered as a resident in Norway to have the right to vote**

### **9.5.1 Applicable law**

Sections 2-1 and 2-2 of the Election Act state that one condition for a person to have the right to vote at parliamentary elections, county council and municipal council elections, is that the person concerned is, or has ever been registered as a resident in Norway. This condition does not apply to members of the diplomatic corps or of the consular service and their households.

Before 1972, Article 50, subsection 1 of the Constitution stated that it was not enough to be a Norwegian citizen to have the right to vote at parliamentary elections. It was also required that the person must have been resident in Norway for five years, as well as living there.

From 1973, Norwegian citizens living abroad were able to vote if in the course of the last ten years before Election Day they had been registered in the Norwegian Population Register as a resident of the realm. This led to some Norwegian citizens living abroad being allowed to vote and some not being allowed to vote.

The Election Act Commission that put forward the recommendation for the Election Act of 1985, proposed (in a first policy paper to the Ministry in September 1980) that all Norwegian citizens living abroad should have the right to vote. The Commission's proposal meant that the length of the stay abroad and whether they had ever been resident in Norway should have no bearing on whether they could vote.

However, the Ministry found that this proposal was too far-reaching.<sup>360</sup> In the view of the Ministry, in addition to the citizenship requirements, there should also be a requirement of some connection to Norway. The evaluation was that it would be most natural to meet this requirement through the requirement for previous registration in the Norwegian Population Register. The Ministry also pointed out that the right to vote for Norwegian citizens who have never been resident in Norway raises the question of in which municipality these persons should be registered in the electoral register.

## **9.5.2 The Commission's evaluation**

The Commission is divided on the question of whether it should still be a condition for having the right to vote that the person concerned is or has been registered as a resident in Norway, both at parliamentary elections and municipal and county council elections.

### **9.5.2.1 Parliamentary elections**

*The majority of the Commission (Christensen, Giertsen, Holmøyvik, Holmås, Høgestøl, Nygreen, Røhnebæk, Stokstad, Storberget, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo) finds that the most important element of having Norwegian citizenship is the right to vote at parliamentary elections. Therefore, the Commission proposes removing the condition of having been resident in Norway to have the right to vote at parliamentary elections.*

*The minority of the Commission (Anundsen, Grimrud, Hagen and Hoff) finds that some connection to Norway other than citizenship should be required to be eligible to vote at parliamentary elections. Therefore, the minority proposes continuing the current law in this area, i.e. to have the right to vote, the voter must have been registered as a resident in Norway.*

### **9.5.2.2 Municipal and county council elections**

*The majority of the Commission (Anundsen, Giertsen, Grimrud, Hagen, Hoff, Holmås, Nygreen, Røhnebæk, Strømmen, Tørresdal and Aarnes) finds that to have the right to vote at municipal and*

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<sup>360</sup>Ot.prp. no. 35 (1980–81) (white paper) *On Act relating to amendments to the Act of 17 December 1920 no. 1 relating to parliamentary elections and the Act of 10 July 1925 relating to municipal and county council elections* pages 7–8.

county council elections there should be a requirement that the voter is or has been registered as a resident in Norway. The right to vote at local elections is related to the residents of the municipality being able to influence the conditions in the municipality in which they live. The majority points out that on certain condition, foreign nationals have the right to vote at municipal and county council elections in the municipality in which they are living, while that do not have the right to vote at parliamentary elections. Therefore, the majority proposes continuing the requirement that Norwegian citizens must have been registered as a resident in Norway to be able to vote at municipal and county council elections.

*The minority of the Commission (Christensen, Holmøyvik, Høgestøl, Stokstad, Storberget, Aardal and Aatlo)* finds that the right to vote at municipal and county council elections is also related to having citizenship. These members find that Norwegian citizens should also have the right to vote at municipal and county council elections, regardless of whether they have ever been resident in Norway.

## 9.6 Compulsory voting

There is currently no compulsory voting in Norway or the other Scandinavian countries. In the rest of the world, there are a good number of countries that have compulsory voting and the voter turnout is higher in countries that have compulsory voting than in countries that do not have it. In the following, the Commission discusses the possibility of introducing compulsory voting to the Norwegian electoral system.

### 9.6.1 Applicable law

Under, Article 3 of the First Protocol of the European Convention on Human Rights (ECHR), Norway is obliged to “hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”. A question is whether “free” elections include a right not to vote. The wording “is allowed to freely express their opinion at the election of the legislative assembly” supports that “free elections” must refer to freedom to choose between various alternatives. The Commission assumes that compulsory voting will be in accordance with Article 3 of the First Protocol of ECHR as long as the voters can cast a blank vote,<sup>361</sup> but this has not been studied in detail.

### 9.6.2 Legislation in other countries

Compulsory voting is practised in 27 countries in the world, such as Argentina, Brazil, Ecuador and Mexico. Compulsory voting is not widespread in Europe, but is found in Belgium, Cyprus, Bulgaria, Luxembourg, Greece, Turkey and Liechtenstein.<sup>362</sup> An international study from 2015 showed that almost half (46 per cent), of the countries that practise compulsory voting had a voter

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<sup>361</sup>Jørgen Aall argues in the same direction in *Rettsstat og menneskerettigheter: en innføring i vernet om individets sivile og politiske rettigheter etter den norske forfatning og etter den europeiske menneskerettighetskonvensjon*, 2nd edition. (Bergen: Fagbokforlaget, 2007).

<sup>362</sup>Previously, there was compulsory voting Austria, Italy and the Netherlands.

turnout of more than 81 per cent.<sup>363</sup> At the same time, an increased number of invalid or blank votes is a consequence of the obligation to vote.

When it comes to sanctions for violating compulsory voting, fines are the most common sanction. In some countries, abstaining from voting is not subject to sanctions or at least the authority to impose sanctions is not used in practice. Belgium operates with fines of 5 to 10 Euros if a person fails to attend on Election Day without valid reasons. The fines increase in size for each election a person does not attend. A person who has failed to attend 4 times in 15 years loses the opportunity to vote for the next 10 years.<sup>364</sup> Also in Luxembourg, the sanction is a fine for not attending an election without a valid reason. The fines are higher than in Belgium, from 100 to 250 Euros, while non-participation can lead to a fine of up to 1,000 Euros.<sup>365</sup>

### 9.6.3 Previous processing

The previous Election Act Commission found that compulsory voting was not an alternative as the introduction of compulsory voting would not only increase voter turnout, but also have negative effects. The Commission was negative to such institutional measures, stating collectively that «[a] living democracy is created not by orders or inducements but through the political debate and well-functioning political institutions».<sup>366</sup>

In 2006, the Local Democracy Commission came to a similar conclusion in the discussion of the issue:

Local democracy does not become more vital and alive through orders and inducements. The Commission finds compulsory voting is particularly problematic because it puts the variation in turnout out of action as an important indicator of democracy's legitimacy. Changes in the turnout mean that there has been a continuous debate on the situation of local democracy. When it comes to rewarding citizens for participating in elections, the municipalities currently have full freedom to benefit from such means. The Commission will not restrict the municipalities' latitude in this area.<sup>367</sup>

The Inclusion Commission also deal with the issue in Official Norwegian Report (NOU) 2011: 14 *Better integration – Goals, strategies, measures*. The Commission pointed out that fewer immigrants with Norwegian citizenship vote than the population as a whole. The majority found that a system

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<sup>363</sup>Abdurashid Solijonov, "Voter Turnout Trends around the World" (Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), 2016), <https://www.idea.int/sites/default/files/publications/voter-turnout-trends-around-the-world.pdf>, s. 29. Updated to then end of 2015.

<sup>364</sup>Article 210 of the Belgian Election and Articles 62 and 68 of the Belgian Constitution.

<sup>365</sup>Articles 89 and 90 of the Luxembourg Election Act.

<sup>366</sup>Official Norwegian Report (NOU) 2001: 3 *Voters, electoral system, elected representatives* page 17.

<sup>367</sup>Official Norwegian Report (NOU) 2006: 7 *A changing local democracy? About participation and involvement in local politics* page 10.

with compulsory voting is interesting in a context with increasing diversity, and recommended that the question be looked into further.

#### 9.6.4 The Commission's evaluation

In the discussion of compulsory voting, the Commission has taken as its starting point that the highest possible turnout is desirable. The reason for the objective is that a high voter turnout gives a clear mandate to the elected politicians and legitimacy to political decisions and the democratically representative government. Nevertheless, the Commission finds that compulsory voting will not be a suitable measure, as there is a risk that compulsory voting could weaken the legitimacy of political decisions and the form of government, even if the voter turnout increases. The Commission also finds that it is a fundamental right to be able to choose not to vote, in line with the right of citizens to express political preferences at elections.

The strongest argument for introducing compulsory voting is that it can lead to an equal turnout across various groups and thus equal political influence. When the political influence is equal, it can also be argued that the political system becomes more receptive to the political preferences of all citizens.<sup>368</sup> In this context, the Commission points out that the voter turnout in Norway varies between different groups and that the turnout is lower among immigrants and people with a low level of education. Nevertheless, the Commission finds that the challenge of a low voter turnout in certain groups can only be remedied to a lesser extent with changes in the electoral system itself. Therefore, the responsibility for mobilising immigrants and people with a low level of education lies with the political parties and the electoral authorities.

Finally, research gives an ambiguous picture of whether voting has a positive effect on political engagement and involvement in the population. A study by Belgian voters, where politically uninterested voters voted to a small extent in according to their political preferences, also shows that compulsory voting does not necessarily lead to equal political representation.

For these reasons, the *majority of the Commission (everyone except Holmås)* finds that compulsory voting should not be introduced in Norway.

*Commission member Holmås* finds that compulsory voting should be introduced without sanctions. This member points out that the Constitution states that Norway shall be a democracy. To ensure democracy, it is important that contributing to the maintenance of democracy is seen as a responsibility of the citizens. This may be expressed through the citizens' right to vote being accompanied by an explicit expectation that they are contributing to maintaining democracy through participating in elections. Such an expectation can be expressed in that the Election Act includes a normatively expressed duty to citizens who hold the right to vote to exercise this right. Negative experiences from other countries indicate that the duty should not be accompanied by a penalty.

Since countries with compulsory voting generally have a higher turnout than countries without compulsory voting, there is reason to believe that an introduction of compulsory voting could increase the voter turnout. The fact that a duty is only normative and is not accompanied by

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<sup>368</sup>See Emilee Booth Chapman, "The Distinctive Value of Elections and the Case for Compulsory Voting", *American Journal of Political Science* 63, nr. 1 (2019): 101–112, <https://doi.org/10.1111/ajps.12393>.

sanctions, will have the opposite effect. Since many of those who do not vote, actively make a choice not to vote, the introduction of compulsory voting will reinforce the argument that blank votes must be made visible at elections.

## 10 Eligibility

### 10.1 Applicable law

#### 10.1.1 Parliamentary elections

Article 61 of the Constitution states that a person must have the right to vote to be elected as a member of the Storting. Article 50 of the Constitution and section 2-1 of the Election Act contain provisions on when a person has the right to vote at parliamentary elections. Norwegian citizens who turn 18 at the latest in the year the election is held have the right to vote. The person concerned must not have lost the right to vote under Article 53 of the Constitution and he or she must be or have been registered as a resident in Norway.

Article 62 of the Constitution, cf. section 3-1 of the Election Act state that persons holding certain types of position may nevertheless not be elected as representatives. Under these provisions, the following people may not be elected as representatives:

- members of staff in the ministries, except for cabinet ministers, state secretaries and political advisers
- Justices of the Supreme Court of Norway
- members of the diplomatic corps or the consular service

Whether a person is excluded from election, depends on whether the person concerned holds the position on Election Day, i.e. that the candidate must have resigned and stepped down from the position before Election Day to be elected to the Storting. Thus, there is no prohibition on people with such positions being able to stand for election, i.e. stands on list proposals and participate in the election campaign.

#### 10.1.2 Municipal and county council elections

Who may not be elected as representatives at municipal and county council elections is stated in section 3-3 of the Election Act. Eligible to the municipal council is any person who is entitled to vote at the municipal council election and who is listed in the Population Registry as a resident in the municipal authority area on Election Day. Persons who are disqualified or exempt cannot be elected. Similar rules apply to eligibility to the county council.

Disqualified from election to the municipal council or county council are

- a) the county governor and assistant county governor
- b) persons who in the municipal or county authority in question are
  - the chief municipal executive or his or her alternate
  - heads of municipal affairs, heads of departments and managers at the equivalent level
  - secretaries of the municipal council or county council
  - persons responsible for the accounting function
  - the person who performs the audits of the municipality or the county authority

In addition, employees of the secretariat of the Municipal Executive Board or the County Executive Board may not be elected if they have been delegated authority from the board.



## 10.2 Previous reports

### 10.2.1 Official Norwegian Report (NOU) 2001: 3 *Voters, electoral system, elected representatives*

The previous Election Act Commission proposed amending the provision that staff in the ministries may not be elected to the Storting. The Commission thought it was unreasonable to place cleaning assistants, drivers Director Generals in the same category. In the opinion of the Commission, only senior civil servants in the ministries should be excluded from election to the Storting. There are appointed by the King in the Council of State and they shall swear or make assurances of obedience and allegiance to the Constitution and the King, cf. Article 21 of the Constitution.

Few consultation bodies submitted an opinion on this proposal. However, the Ministry of Justice opposed the proposal.

We agree that the considerations, which dictate that civil servants in a Ministry should be excluded from being elected, should not apply to employees who do not take part in the Ministry's executive work, such as cleaning staff and drivers. However, the distinguishing between senior civil servants and civil servants does not have to be decisive for the type of tasks assigned to the position. Much of the executive work in the ministries that may be politically important or controversial is carried out by staff who are not senior civil servants in the sense of the Constitution. Although the requirement of loyalty to the political leadership is strongest for the upper tier of civil servants in the Ministry, and these are generally senior civil servants, the political leadership must feel confident that even executive officers at a lower level loyally follow-up the management's decisions. Such trust considerations support that ordinary civil servants who prepare matters for the political leadership should also have the opportunity to stand for election to the Storting.

[...] Instead, the distinction should have been linked to the tasks of civil servants in a Ministry. In any case, it seems reasonable that civil servants who carry out work for the political leadership should be able to attend the Storting. However, no proposed constitutional amendment has been put forward based on such a distinction between various types of tasks.

The Ministry has also not endorsed the Commission's proposal that only senior civil servants in the ministries shall be excluded from election to the Storting. Therefore, the Ministry put forward the proposal to continue the provision that no staff in the ministries shall be able to be elected to the Storting, except for cabinet ministers, state secretaries and (new) political advisers.

The Standing Committee on Scrutiny and Constitutional Affairs stated the following on which civil servants in the ministries should be excluded from being elected to the Storting, cf. Innst. S. no. 209 (2002–2003) (Recommendation) page 5:

*The majority of the Committee, the members from the Labour Party and the Socialist Left Party, has evaluated the relevant proposed amendments to the Constitution. In the view of the majority, it is not natural that anyone other than senior civil servants (except for the state secretaries) in the ministries shall be excluded from being elected as members of the Storting. [...]*

*The members of the Committee from the Conservative Party, the Progress Party and the Christian Democrat Party [...] expressed scepticism to the Election Act Commission's proposal that the*

ban on eligibility for civil servants in the ministries should be limited to apply to those who are senior civil servants in the sense of the Constitution. These members support the proposition and the Ministry of Justice's consultation statement and would like to specifically point out that the distinction between senior civil servants and civil servants does not have to be decisive for the kind of tasks assigned to the position. Trust considerations support that ordinary civil servants or office staff who participate in preparing matters for the political leadership/ government should not have the opportunity to stand for election to the Storting.

*These members* would particularly like to point to the unfortunate situation that may arise if a civil servant in a ministry should be elected as a deputy representative to the Storting. For example, a situation where an executive officer would alternately attend the Storting and work in a ministry would lead to difficult conflicts of loyalty as regards handling internal information, especially in cases where an employee would have to belong to another party than the cabinet minister in the ministry the person concerned works.

The Election Act Commission states that the current provision means that cleaning staff and drivers are treated the same as Director Generals. This is only partly correct since most people working with technical support services (postal delivery, printing, cleaning, security, etc.) are employed in the Administrative Service, which is an underlying agency and not in the individual ministry. *These members* understand that the "staff at the Cabinet Minister's offices" category includes the staff in the ministries and at the Office of the Prime Minister, while the employees in the Administrative Service are not included. Based on this, these members support maintaining the current state of law insofar as concerns the staff in the ministries, but so that political advisers shall be treated the same as state secretaries and no longer be excluded from election.

At the vote in the Storting, the proposal from the Conservative Party, the Progress Party and the Christian Democrat Party was adopted.

### **10.2.2 Official Norwegian Report (NOU) 2016: 4 New Local Government Act**

The provisions on eligibility and exclusion from elections have traditionally been the same for elections to the municipal council and the county council as for elections to other democratically elected bodies in the municipalities and the county authorities. In the report, the Local Government Act Commission put forward proposed eligibility rules and rules on who is excluded from election to other democratically elected bodies in the municipalities and county authorities. The Commission's proposal was mainly a continuation of the applicable law.

In the follow-up of Local Government Act Commission's report, the Ministry also put forward a proposal to amend section 3.3, subsection 2 of the Election Act on who is excluded from being elected to the municipal and county council. This was done to harmonise the wording of the Election Act with the wording of the Local Government Act. The proposal was adopted by the Storting in the summer of 2018.

### **10.3 The Venice Commission's Code of Good Practice in Electoral Matters**

The Code of Good Practice in Electoral Matters from the Venice Commission states that universal suffrage is a fundamental principle of European election tradition. This means that everyone shall have the right to vote and to stand for election. The principle may be limited by some factors such as age, nationality and place of residence. Persons may also be deprived of the right to vote and

to stand for election but it must be done under the provisions of the law and the principle of proportionality shall be complied with. The conditions for depriving people of the right to stand for election may be less stringent than for depriving of the right to vote.

#### 10.4 The European Convention on Human Rights

The European Convention on Human Rights (ECHR) applies as Norwegian law, cf. section 2, no. 1 of the Norwegian Human Rights Act. The right to free elections is regulated in Protocol 1, Article 3 of ECHR: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot under the conditions which will ensure the free expression of the opinion of the people in the choice of legislature.”

The provision does not only require the conducting of elections. The European Court of Human Rights (ECtHR) has also concluded that the provision ensures citizens the right to vote and to stand as a candidate to the legislative assembly.<sup>369</sup>

The member states have broad discretion to regulate rights pursuant to Protocol 1, Article 3. However, ECtHR case law shows that encroachment on rights under the provision may be contrary to ECHR unless certain requirements are met. The following factors must be considered:

- Is the limitation based on a legitimate purpose, i.e., does it have a justifiable basis?
- Is the limitation disproportionate or is arbitrary?<sup>370</sup>
- Is the limitation general or is it based on an individual evaluation?
- Has the need to have the limitation changed?
- Can the consideration behind the limitation be achieved in less intrusive ways?

The Court has dealt with several cases concerning eligibility. *Tanase vs. Moldova* (2010) concerned a ban on citizens with dual citizenship being members of parliament. This was justified in the interests of protecting Moldova’s laws, institution and national security. The Court concluded that there were other ways to ensure this. The Court also emphasised the disproportionate consequences the ban had on the parties that at the time constituted the opposition. It was concluded that the measure was disproportionate and that it was a violation of Protocol 1, Article 3.

*Zdanoka vs. Latvia* (2006) concerned a ban on people who had participated *actively* in the Communist Party after 13 January 1991 being able to stand for election to parliament. The provision must be seen on the basis of the party’s participation in two coups d’etat against the newly independent Latvia in 1990. The Court concluded that the measure was not a violation of Article 3 of the First Additional Protocol. The ban had to be considered in light of the political and historical context in Latvia. However, the Court stated that since the situation in Latvia had stabilised, Latvia should lift the ban. If this was not done soon, the conclusion could be different in any new case.

The Court also pointed out that restrictions in the rights under the European Convention on Human Rights should be subject to a specific evaluation in each case. Therefore, it takes a lot for general restrictions that cannot be justified in a legitimate purpose in each case to be accepted.

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<sup>369</sup>*Mathieu-Mohin and Clerfayt vs. Belgium* (1987).

<sup>370</sup>*Yumak and Sadak vs. Turkey* (2008).

Adamsons vs. Latvia (2008) concerned a provision that all persons who had served in the KGB were excluded from standing for election to parliament. The Court stated in this case that some time had passed since Latvia became independent. Therefore, there was sufficient general suspicion against a whole group of people. However, a case-by-case evaluation should be carried out on what the person concerned had done in the service. The ban was extended in 2004 without justification, despite the time that had passed and a more stable Latvia. Based on this, the Court concluded that the restriction on eligibility had been arbitrary.<sup>371</sup>

### 10.5 OSCE's recommendations

After the 2009 parliamentary election, OSCE stated the following in its *Election Assessment Mission Report* on the eligibility of staff in the ministries: "Consideration might be given to allowing officials employed in government ministries the right to be elected to office."

In other words, OSCE urged the Norwegian authorities to consider giving officials employed in the ministry the opportunity to be elected as members of the Storting.

The Ministry stated in its response to OSCE that there may be good reasons for considering changes in the regulations, such as distinguishing between employees based on position or tasks. It was also stated that there may be reason to consider the time at which the candidate must resign in order to be eligible. At parliamentary elections, the employee must resign before Election Day to be eligible. At municipal and county council elections, the deadline for resigning is only before the municipal council or county council meets. The Ministry followed-up its response to OSCE in Prop. 64 L (2010–2011) (Bill) *Amendments to the Election Act and Local Government Act (duty to accept election, sealing of ballot boxes, etc.)*. In the Bill, the Ministry concluded that "good reasons may support considering amendments to the provision of the Constitution on eligibility to the Storting for civil servants in the ministries".

### 10.6 Nordic law

In Sweden, the same conditions apply to being eligible as having the right to vote. For elections to the Swedish parliament, the candidate must 1) be a Swedish citizen, 2) have reached the age of 18 at the latest on Election Day, 3) be registered as being a resident of Sweden or ever having been registered. The person must also have consented beforehand to being a candidate. There are no corresponding exemptions for civil servants in a ministry, etc, in Sweden, as is the case in Norway.

In Denmark, a person is eligible if he or she 1) has reached the age of 18, 2) is a Danish citizen, 3) has a permanent address in Denmark and 4) is not under guardianship and deprived of legal capacity. There are also no corresponding eligibility restrictions for the Danish Parliament as in Norway. On the contrary, Article 30, subsection 2 of the Danish Constitution states that "[c]ivil servants, who are elected as members of the Danish parliament, do not need the government's permission to be elected"- There has been no discussion about the appropriateness of these rules in Denmark, nor related to any duty of loyalty.

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<sup>371</sup>See also Hirst (no. 2) vs. the United Kingdom where the Court concluded that a general voting ban for prisoners was contrary to Protocol 1, Article 3 (2005).

In Finland, in principle, everyone who has the right to vote is eligible for election to the Finnish Parliament. However, persons holding military office are excluded. Persons who hold the following positions can also stand for election to the Finnish Parliament, but they must resign their position in order to accept election: “the Chancellor of Justice of the Government, the Parliamentary Ombudsman, a Justice of the Supreme Court or the Supreme Administrative Court, and the Prosecutor-General”. There has also been no discussion in Finland about placing restrictions on the eligibility of civil servants in the ministries (or other civil servants) beyond the regulations they have today.

## **10.7 The Commission’s evaluation**

### **10.7.1 Introduction**

The eligibility rules should be based on the principle that as few people as possible should be excluded from being able to stand for election. Excluding someone in particular from being able to stand for election encroaches on the individual’s rights and the citizens’ right to be represented by the persons they want to be elected. Therefore, there should be good reasons for excluding individual groups from being able to stand for election. This is especially true for the position of member of the Storting, which is the most important democratically elected office in Norway. This also follows from ECHR and international standards.

Following the constitutional reform in 2014, Article 49, subsection 1 of the Constitution received a new subsection 2: “The representatives of the Storting are elected through free and fair elections.” In several judgments, including Rt. 2015 page 93, the Supreme Court of Norway has concluded that the new constitutional provisions that came with the constitutional reform in 2014, “shall be interpreted in light of the models of international law but so that future practices from the international enforcement bodies do not have the same prejudicial effect on the constitutional interpretation as when interpreting the parallel convention provisions”. Article 49, subsection 1, second sentence of the Constitution has its parallel in Protocol 1, Article 3 of ECHR. Like Protocol 1, Article 3 of ECHR, Article 49 of the Constitution is silent about whether it also includes a right to stand for election. However, there is long and reliable case law from ECtHR that Protocol 1, Article 3 also includes the right to stand for election. In the opinion of the Commission, the consequence of this is that ECtHR’s practice of the right to stand for election has a transfer value to the interpretation of the corresponding right in Article 49, subsection 1, second sentence of the Constitution.

### **10.7.2 Parliamentary elections – civil servants in the ministries**

#### ***10.7.2.1 Whether the eligibility restrictions are out of date***

The main content of Article 62 of the Constitution on limitations on eligibility is from 1814. It was originally only “State secretaries and officials and pensioners of the Court” who could not be elected to the Storting. The reason for this was consideration for the principle of division of powers, i.e. the division of state power among the legislative power (the Storting), the executive power (the King/Government) and the judicial power (the courts). The members of the Storting shall have a free position, independent of the government. At the same time, the civil servants in the ministries shall be loyal to the political leadership in the ministries. Therefore, it was concluded that the

senior civil servants would not be able to exercise their position as a member of the Storting with the desired independent and candour.<sup>372</sup>

When the Constitution was adopted, there were 5 ministries with a total of 24 employees. This is in stark contrast to the 4,538 civil servants in the ministries in 2017.<sup>373</sup> At the time, the senior civil servants in the ministries were in a different state of dependence with the government than today.

Article 62 of the Constitution was amended in 1913 so that the State Secretaries were eligible to be elected to the Storting but without the right to attend as representatives as long as they had a seat in the Council of State. At the same time, the word “Embedsmænd” (senior civil servant) was changed to “Tjenestemænd” (civil servant). All civil servants in the ministries were thus excluded from election to the Storting. The reasons and the remarks in the proposed constitutional amendment as well as in the Recommendation and debate in the Storting were related to the issue of making the State Secretaries eligible. What the reason was for expanding the circle of those who are not eligible in the ministries, to all employees, was not discussed.<sup>374</sup>

The Storting was also completely different in 1814 than today. It was not in session the whole year, but only met every three years for a few months. Therefore, there was a real possibility to combine the office of a (permanent) member of the Storting with the position as a senior civil servant, which it is not today. The annual Storting was introduced in 1871, but limited to two months of the year. From 1908, the Storting could be gathered for as long as the Storting itself wanted. In the years around 1913, the sessions normally lasted from mid-January and ended in July or August. There were no full-time members of the Storting like today.

Therefore, with full-time members of the Storting, we face a different issue today. In practice, permanently elected representatives cannot hold a position in a Ministry at the same time as the parliamentary office. Nevertheless, there may be unfortunate aspects of allowing key civil servants or senior civil servants in a ministry to be elected to the Storting. This may apply especially to deputy representatives who will be able to a great extent to switch between being employed in a ministry and attending the Storting.

One objection to allowing a person to go from being employed in the Ministry to being a member of the Storting and back to being employed in the Ministry is that it this could change the public's as well as the political leadership's expectations of a neutral civil service. Nevertheless, *the majority of the Commission (everyone except Anundsen)* finds that switching between such positions and

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<sup>372</sup>The introduction of parliamentary system has weakened the classic justification of eligibility restrictions on senior civil servants/officials in the ministries, namely the principle of the division of powers. Since the introduction of the parliamentary system, there have no longer been three independent state powers since the government sits only as long as it has the confidence of the Storting.

<sup>373</sup>“Utvikling i antall ansatte i stats- og sentralforvaltningen 2016–2017”, Difi note 2019:1 (Oslo: The Agency for Public Management and eGovernment (Difi), 2019).

<sup>374</sup>Document 72 (1911), Indst. S. L. (1913) (Recommendation) and the debate in the Storting on 1 July 1913 in “Stortingstidende 1913”, pages 2 144–2 175.

the parliamentary position is no more worrying that switching between being a part of the political leadership of a ministry and working in a ministry, which it is possible to today. Persons in the political leadership in the ministries are only subject to certain limitations in the task execution when they go to be ordinary civil servants in the ministries, cf. the Quarantine Act. There is no requirement that civil servants in the ministries must resign if they are to step down from the political leadership of a ministry.

Act no. 70 of 19 June 2015 concerning disclosure requirement, quarantine prohibited practices for politicians, senior civil servants and civil servants (the Quarantine Act) includes provisions on quarantine prohibited practices for cabinet ministers, state secretaries and political advisers who take up office or a position in the ministries.

Under section 10, subsection 1 of the Quarantine Act, cabinet ministers, state secretaries and political advisers who take or resume office as a secretary-general, deputy secretary-general, director-general or head of communications in the ministry where the person in question has been a politician, cannot perform the functions of the office or position for six months after his resignation. A similar prohibition only applies for three months where the transition takes place to another ministry, because there is not much risk of suspicion of mixing roles between professionalism and politics.

During the period in which the person concerned cannot perform the functions of the office or position, he or she may not have duties that involve a direct advisory relationship with the political leadership, or concerning matters that the person concerned had for consideration in his or her political position, cf. section 10, subsection 2 of the Quarantine Act.

Section 11 of the Quarantine Act regulates the transition to other position in the ministries than those stated in section 10. If a politician transfers to other offices or positions in the Ministry than what is mentioned in section 10 of the Quarantine Act, the Ministry may decide that the person concerned shall not have any duties that entail direct advice to the political leadership for a period of up to six months after resignation from the political position.

Excluding someone in particular from being able to stand for election infringes the individual's rights and the citizens' right to be represented by the persons they want to be elected. The eligibility limitation is very general. It applies to all civil servants in the ministries without regard for their duties.

There should be very good reasons for excluding individuals or individual groups from being able to stand for election, cf., ECtHR case law and international standards. The position of member of the Storting is the most important democratically elected office in Norway. Therefore, all persons who have the right to vote should, in principle, be able to be elected to the Storting.

In this respect, it may be asked whether the limitation is arbitrary as regards ensuring that the political leadership has confidence in the employees. Trust is particularly relevant for employees who have tasks that involve direct advice to the political leadership. It is primarily secretary generals and director generals who have such tasks, but also other employees may from time to time perform these types of tasks. There may also be a reason to assume that the independence of a member of parliament will more easily be put to the test if there are high-ranking officials in the ministries who are elected to the Storting than if it were an ordinary executive officer. The majority

of the Commission finds that ECtHR case law, cf. *Adamsons vs. Latvia* and *Hirst vs. the United Kingdom*, makes it possible to question whether automatic loss of eligibility for civil servants in a Ministry, without an individual assessment of the grounds for the loss of eligibility, is a disproportionate infringement of the individual's rights under Protocol 1, Article 3 of ECHR.

The majority of the Commission would also like to point out that civil servants in the ministries are eligible for the National Assembly in Denmark, Sweden and Finland. The regulations do not seem to have caused specific problems in these countries. These are all countries that Norway is happy to compare itself with and this suggests that there is no need to have such strict eligibility limitations in Norway either. The majority of the Commission also assumes that persons employed in high-ranking positions in the ministries will be reluctant to stand for election, as are employees in Denmark.

In the opinion of the majority, there is a distinction between being elected as a permanent representative and being a deputy representative. In practice, it is not possible to combine the office of a permanent member of the Storting with work in the Ministry. The representative concerned will have to apply for leave from work in the Ministry for the entire election period. However, deputy representatives will often be able to switch between meeting in the Storting and working in a Ministry. It is especially this combination of roles that could be problematic. The problem is not primarily related to exercising the role of a member of the Storting, but to being able to return to the Ministry. Advising the political leadership of the Ministry after attending the Storting for another political party can challenge the trust of the political leadership and the public that the employee bases his or her advice on professionalism and not his or her political beliefs. However, there are other ways of establishing the necessary trust than to exclude civil servants in the Ministries from being eligible for the Storting. The majority of the Commission explains this below.

Following an overall assessment, the majority of the Commission finds that the eligibility limitation for civil servants in the Ministries should be amended.

*Commission member Anundsen* points out that the considerations behind the provision on key senior civil servants in the ministries cannot stand for election is to ensure the neutrality of the civil service and the confidence in this. It is a crucial prerequisite for the way our democracy is structured that the incumbent political leadership shall have full confidence in the neutrality and professional recommendations of our civil service.

The Storting adopts laws, budgets and controls the executive power. Switching between being a representative for one party one moment and a key senior civil servant for a government composed of competing parties the next moment will be challenging for the political leadership and the senior civil servant. It is also fundamentally concerning that a senior civil servant is responsible for the performance of his or her official duties at one moment and the next moment is responsible for controlling this as a member of the Storting.

This will be reinforced by the fact that as a member of the Storting a person can be elected in and out of the Storting several times, with an intermediate period where the person concerned shall then serve as a high-ranking civil servant in a government he or she has actively worked to remove.



The alternative to the current system will be that a large part of the Ministry is replaced in connection with changes in government, and that, for example, all managers up to director-general level go from being employed senior civil servants to being politically appointed. Commission member Anundsen finds that it would not be an appropriate arrangement and therefore, wants to retain the current limitation for civil servants in the Ministries.

#### **10.7.2.2 Different alternatives**

The Commission has considered whether there should be different limitations in the eligibility for various types of civil servants in the ministries. An eligibility rule based on whether the employees participate in the executive work for the political leadership, or give direct advice to the political leadership, will, in the opinion of the Commission, be too general and restrictive (disproportionately) to employees who will only meet such conditions to a small extent. These conditions suggest that no eligibility rules should be introduced based on the type of tasks that employees perform. In practice, such a rule will also be very difficult for the electoral authorities to enforce.

One solution may be to use the same level for who is excluded from election to the Storting as for election to the municipal and county council. The municipal director and his or her deputy, as well as heads of municipal affairs, heads of departments and managers at the equivalent level in the municipality and the county authority are excluded from election to the municipal council and the county council. The reason for this is a desire to avoid dual roles and a mixture of administrative and political functions. Most municipal and county council members are part-time politicians and therefore, people in the said positions will – unlike full-time members of the Storting – at the same time be politicians and employed civil servants.

The ministries are administratively led by a secretary general (which in some cases has other names). Some ministries also have an assistant secretary general. The ministries are divided into departments, including a communication unit.<sup>375</sup> The departments are led by a director general, except for the communication units, which are led by a communications manager.

If we draw the same limits for who should be excluded from election to the Storting, as at local elections, it would mean that only the secretary general and his or her deputy, the director generals and the head of communications will be excluded from standing for election. Such a distinction also corresponds to the distinction in the Quarantine Act, where holders of such positions are subject to stricter restrictions for what they can perform in the position when they return to the position from having been in political leadership in a ministry, than other civil servants in the ministries are. The reason for this distinction is that people in these positions have an influence on the Ministry's activities at any time and that they are in a direct advisory relationship with the political leadership. Therefore, there are special grounds to set loyalty requirements for the employees who hold such positions.

The Commission finds that such a rule will not be contrary to ECHR. There are several reasons for this. Such a provision will not apply to all employees, but only employees with special functions where there are special limitations to ensure consideration for a free Storting and the employees'

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<sup>375</sup>Some ministries have entities that do not use the term department, such as the Agency Governance Unit under the Ministry of Finance and the Finance and Governance Unit under the Ministry of Justice.

loyalty to political leadership. The fact that there has been a reassessment of the need for such a regulation will in itself be a factor for the regulation being in line with ECHR.

Another alternative may be to propose that all senior civil servants in the ministries should not be able to be elected to the Storting, as the previous Election Act Commission proposed, and as it was in 1814. However, it will not be as accurate and will be more arbitrary than the proposal to exclude secretary generals and director generals. For example, some civil servants in the ministries today are senior civil servants because they previously held leadership positions. The reason for the eligibility limitation does not necessarily affect these in their current positions.

### **10.7.2.3 The Commission's proposal**

The reason for the eligibility limitation for civil servants in the ministries is that this shall ensure a free and independent Storting and that the political leadership in the ministries and the general public shall have confidence that the civil servants in the ministries are professional and without own political agendas. This is a legitimate consideration according to ECHR. However, ECtHR case law shows that it is important to consider whether the purpose behind a limitation in eligibility should still apply, and that the purpose may lose its weight over time as a result of the general development of society.

Therefore, *the majority of the Commission (everyone except Anundsen)* has concluded that there should be no limitations on civil servants in the ministries being able to be elected to the Storting: A parliamentary post is the most important democratically elected office. The majority of the Commission finds that in today's society all civil servants in the ministries, both senior civil servants and other employees, will be able to perform the role of a member of the Storting with the necessary independence and candour. This applies to employees who are full-time representatives and employees who have been elected as deputy representatives, although the latter group will be able to switch between the role of an employee in the Ministry and attending the Storting. In the opinion of the Commission, a limitation in eligibility will also be an excessive encroachment on the individual's right to stand for election set up against the considerations that such a rule is intended to protect. The majority of the Commission points out that there are no limitations in the right to switch between political leadership in a Ministry and to be ordinary employees of the Ministry. Any disadvantages in allowing civil servants in the ministries to be eligible for election to the Storting may also be remedied using less restrictive measures. The majority of the Commission also points out that the proposal is in line with the state of law in Sweden, Denmark and Finland.

### **10.7.2.4 Other limitations for civil servants in the ministries**

The neutral employees in a Ministry are a key element of the Norwegian state apparatus. However, this can be challenged if civil servants in the ministries can be elected to the Storting and then go back to working in the Ministry when the election period is over. Under the Quarantine Act, certain limitations apply today for what tasks an employee in the ministries can have for a certain time after they have been part of the political leadership of a Ministry. The reason for these regulations is that civil servants in the ministries shall be loyal to the sitting government at any time and the politics pursued by the government. The political leadership of the ministries must have confidence in the civil servants in the ministries and that the advice the political leadership receives is based on a professional opinion and not on the employees' political points of view. This is also important for the sake of public trust in the administration. Politicians have other roles and functions than senior civil servants and other employees. Mixing these roles may reduce the confidence of

the politicians and the public that the civil servants in the ministries give political advice on a professional basis, not according to their political belief.

*The majority of the Commission (everyone except Anundsen)* finds that some limitations may be needed on the tasks that a ministry employee can perform in a transitional period after serving as a member of the Storting. This applies both when the person concerned returns to the Ministry after being a full-time representative, but especially to deputy representatives who alternately attend the Storting and work in a Ministry.

In the opinion of the majority, it may be appropriate to limit the employee's duties so that the person concerned does not have a direct advisory relationship with the political leadership in the Ministry. This applies in particular to secretary generals, director generals and heads of communication, where such contact with the political leadership is a key part of the tasks assigned to such positions. There is no need to amend the legislation to implement measures. Such a limitation will fall under the employer's general management prerogative.<sup>376</sup>

The majority of the Commission finds that no statutory provisions should be introduced that regulate the tasks civil servants in the ministries can perform in a period after they have been members of the Storting. There are several reasons for this. Firstly, in the opinion of the majority, there is less need for such limitations in these cases than when the employee comes from having been a part of the political leadership of a ministry. This is because there is a closer link between being employed in a ministry and being a part of the political leadership than being employed in a ministry and at the same time being a member of the Storting. Secondly, it may vary how often and how long an employee, who is a deputy representative to the Storting, attends the Storting. Therefore, there will be a need for flexible rules for such situations. The majority of the Commission finds this can be achieved by using the employer's management prerogative than by regulation of the law.

In the view of the majority, it should be up to the individual Ministry to assess whether in the specific cases there is a need to use the employer's management prerogative to impose certain limitations in the employees' duties after they have attended the Storting.

### **10.7.3 Parliamentary elections – other employees**

#### ***10.7.3.1 Members of the diplomatic corps and the consular service***

OSCE has not raised the issue of eligibility for members of the diplomatic corps and the consular service, which constitutes a more delineated group than civil servants in a Ministry. These conditions dictate that the limitation is not contrary to ECHR.

The provision that excludes members of the diplomatic corps and consular service came into force in 1928. Until then – due to the then criterion of being a resident of the realm – these were not entitled to vote. With the right to vote, they were also eligible, which was not considered desirable.

The reason for excluding members of the diplomatic corps and the consular service is partly the same as for excluding civil servants in the ministries, namely “both the distinctive character of the act entrusted to the seconded officials, as well as the special loyalty relationship in which they

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<sup>376</sup>See Prop. 44 L (2010–2011) (Bill) pages 83–84.

stand and must stand with the government of the country at any time”, cf. Recommendation to the Storting Innst. S. no. 96 (1928). It is also stated that they are excluded out of consideration for the order obligation to which they are subject to on the part of the Ministry of Foreign Affairs, cf. Ot. prp. no. 2 (1984–85) (white paper) *On the Act relating to parliamentary, municipal and county council elections (the Election Act)*.

It may still be worth noting that just a few months after Norway received it on foreign service in 1905, the Ministry of Foreign Affairs requested the Ministry of Justice to put forward a proposal that Norwegian diplomatic and consular officials should be given the right to vote and thus also be eligible: “It must be allowed to provide the Storting with the practical expertise in the area of foreign affairs, which persons who have served in the diplomatic corps or consular service abroad must be assumed to be in possession of.”

The Ministry of Justice did not agree and therefore, no such proposal was made in 1905.<sup>377</sup>

*The majority of the Commission (everyone except Anundsen)* refers to section 10.7.2.3, where the majority of the Commission proposes repealing the limitation in eligibility for civil servants in the ministries. The considerations why members of the diplomatic corps and the consular service are not eligible largely overlap with the considerations that have been argued for civil servants in the ministries. Therefore, in the view of the majority, this group of employees, like civil servants in the ministries, should also be able to be elected to the Storting.

*Commission member Anundsen* refers to his assessment of section 10.7.2.1 and proposes continuing the current limitation in eligibility of members of the diplomatic corps and the consular service.

### **10.7.3.2 Justices of the Supreme Court of Norway**

The provision that Justices of the Supreme Court of Norway are excluded from election to the Storting was adopted by a unanimous Storting in 2003. The reason why Justices of the Supreme Court of Norway are not eligible is due to the principle of division of powers and the Supreme Court of Norway as the only independent power to the Storting.

The Commission points out that the Supreme Court of Norway has a control function toward the Storting by reviewing whether laws passed by the Storting are contrary to the Constitution, cf. Article 89 of the Constitution. Under Article 83 of the Constitution, the Storting may also obtain the Supreme Court of Norway’s opinion on points of law. Justices of the Supreme Court of Norway individually form a central part of the judicial power. There are very few Justices of the Supreme Court of Norway, while there are several thousand civil servants in the ministries. In the opinion of the Commission, these factors indicate that there should still be a requirement that Justices of the Supreme Court of Norway must resign their position to be eligible for the Storting.

In the case of municipal and county council elections, to be elected a candidate who holds a position that makes him or her ineligible must resign his or her position before the municipal council or county council takes office. It may be appropriate to introduce such a provision for Justices of the Supreme Court at parliamentary elections, as the Ministry has outlined to OSCE as a possible

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<sup>377</sup>Innst. S. no. 96 (1928).

legal amendment, However, the Commission finds that there is difference between the various elections and the positions in question.

Members of the municipal council and the county council may be granted release from office under the provisions of the Local Government Act, while there are not corresponding release opportunities for members of the Storting. Thus, the duty to hold office is more stringent for members of the Storting than for members of the municipal and county council. This should also be reflected in the time when eligibility is considered.

Standing for election involves entering into some kind of contract with the voters that the candidate concerned will accept the office if he or she is elected. In the view of the Commission, this contract and the stricter duty to accept election at parliamentary elections means that at parliamentary elections, the voters should be certain that candidates who have agreed to stand on an electoral list, are eligible and thus can accept election. Therefore, the Commission finds that to be eligible, Justices of the Supreme Court of Norway must have resigned from office before the electoral lists are approved.

#### **10.7.4 Municipal and county council elections**

The Commission points out that in the summer of 2018, the Storting passed a new Local Government Act and amendments to a number of other laws, including section 3-3 of the Election Act on eligibility at municipal and county council elections. Therefore, the Commission does not find it natural to go into detail about these rules so soon after the Storting has considered the rules.

## 11 Duty to accept election

### 11.1 Introduction

The duty to accept election has traditionally been threefold. Firstly, there is a duty to stand for election if a candidate has been listed on the electoral list. Secondly, it is a right and a duty to accept the office if the candidate is elected and thirdly, a right and a duty to serve in the office for the period the candidate is elected.

The duty to accept election is justified by the fact that participation is a civic duty – everyone has a responsibility to the community by participating in the processing of socially important matters. A central background to the duty to accept election is also the consideration of democracy, in that as many people as possible can be elected as representatives of the people. A further consideration that justifies the duty to accept election is the recruitment consideration, in that the duty helps to ensure recruitment to democratically elected bodies. The duty to accept election is based on the fact that the office is personal. Representatives who opt out of a party, or are excluded from a party, still have the right and duty to remain in office to the end of the period.

### 11.2 Applicable law

#### 11.2.1 Parliamentary elections

The three-part duty to accept election is regulated in Articles 63 and 71 of the Constitution, as well as sections 3-1 and 3-2 of the Election Act. Under Article 63 of the constitution, the main rule is that any person who is elected as a representative is obliged to accept such election. In January 2020, Article 63 of the Constitution was amended and a new letter c) was included which introduced the possibility to be released from being on the list if the candidate submits a written declaration. There is now an exemption from being on an electoral list or refusing to accept the election as a member of the Storting<sup>378</sup>

- if the candidate has the right to vote in another county
- If the candidate has attended all the sessions of the Storting since the last election
- if the candidate has submitted a written declaration that he or she does not wish to be on an electoral list

The latter reason for exemption only applies to the duty to be on a list and not the duty to accept election. The duty to serve in office follows from Article 71 of the Constitution, which states that the members of the Storting function as such for four consecutive years. Neither the Constitution nor the Election Act have provisions on exemption or leave from the duty to serve in office to the end of the period. However, the provisions of Article 62 of the Constitution mean that members of the Storting who take up positions that make them ineligible, or members of the Storting who become cabinet ministers, state secretaries or political advisers must resign temporarily from the Storting.

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<sup>378</sup>Article 63 of the Constitution only explicitly regulates the duty to accept election. However, the provision has been interpreted so that the grounds for exemption also include the duty to be on the list, cf, among others, Ot. prp. no. 45 (2001–2002) (white paper) page 146.

### 11.2.2 Municipal and county council elections

The duty to accept election at municipal and county council elections is founded on sections 3-3 and 3-4 of the Election Act. There is no longer any real duty to be on the list, as the right to an exemption in section 3-4 of the Election Act was significantly extended in 2011.<sup>379</sup> Under the provision, those who submit a written declaration that he or she does not wish to stand for election on the electoral list in question is entitled to be exempt.

A candidate is obliged to accept office if the person concerned has allowed him or herself to be listed on an electoral list.

As regards the duty to function in office, the Local Government Act allows for exemption. The municipal and county council may exempt a democratically elected candidate who cannot take of his or her office without causing significant inconvenience to him or her, cf. section 7-9 of the Local Government Act.

## 11.3 Duty to be on a list and to accept election

### 11.3.1 ECHR and the International Covenant on Civil and Political Rights

Article 11 of ECHR states the following:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, the police or of the administration of the State.

The International Covenant on Civil and Political Rights (CCPR) states the following:

- Article 18 (2): “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”
- Article 19 (1): “Everyone shall have the right to hold opinions without interference.”
- Article 22: “Everyone shall have the right to freedom of association [...]. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

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<sup>379</sup>Prop. 64 L (2010–2011) (Bill) *Amendments to the Election Act and the Local Government Act (the duty to accept election, sealing ballot boxes, etc.)*, cf. Recommendation to the Storting Innst. 286 L (2010–2011). The amendments entered into force on 1 January 2012.

### 11.3.2 OSCE's recommendations and the Ministry's follow-up

Following its election observations in 2009 and 2013, OSCE request that Norway considered a further right to exemption from being on a list. The Norwegian rules do not specify any condition of consent from the person who is listed on the list proposal. The consequence of this has been that some people, usually well-known people, are listed on the list proposals against their will. The only reason for exemption at this time was to join another political party than the party that had put forward the list proposal, cf. the then section 63 of the Constitution and section 3-2 of the Election Act.

OSCE state in its *Election Assessment Mission Report* (2009):

The obligation to be elected should be seen in light of the fundamental rights to freedom of political opinion/belief and association established by the International Covenant on Civil and Political Rights. These would include the right to be apolitical in both thought and association and the right not to associate with any political party.

Consideration might be given to reviewing the duty to be elected, ensuring it is fully consistent with the International Covenant on Civil and Political Rights which states that no one should be forced to associate with a political party or group, not of his/her choosing.

In Proposition 64 L (2010–2011) (Bill) *Amendments to the Election Act and the Local Government Act (the duty to accept election, sealing ballot boxes, etc.)* the Ministry finds that the duty to be on a list may be contrary to declarations of principle on freedom of thought, opinion and association as stated in CCPR and ECHR. The Ministry reiterates the discussion in the consultation paper, which states:

Article 22 of the Convention and Article 11 of ECHR concern the right to form and join organisations and associations, including political parties. It is assumed that the right is also negatively defined, i.e. that a person has a right not to join such organisations. In light of this, agreement with the provision in the Constitution and the Election Act regarding exemptions from joining another party can be questioned. To avoid standing for election, “unwilling” candidates must in effect join another party to gain an exemption from being on the list. [...]It can be argued that this is contrary to the principle of freedom of association. It harmonises badly with the fundamental principle that political involvement shall be a private matter and voluntary, if you have to join a political party to avoid a nomination you do not want.

Based on the recommendation from OSCE, among other things, the Ministry proposed a general exemption rule for municipal and county council elections. The proposal received the support of the Storting. The exemption rule implies that it is sufficient for a person to submit a written declaration to the electoral authorities where the person concerned declares that he or she does not want to stand on the relevant list, cf. section 3-4 of the Election Act.

The Ministry did not propose specific legislative amendments for parliamentary elections, as these rules are enshrined in the Constitution. However, the Ministry stressed that a similar amendment should also be made for parliamentary elections.

The Storting considered a proposal to amend section 63 of the Constitution in January 2020, cf. Document 12:30 (2015–2016) (exemption from the duty to accept election at parliamentary



elections).<sup>380</sup> The proposal received the required majority to be adopted and will come into effect from the 2021 parliamentary election.<sup>381</sup>

The amendment entails a rule corresponding to the general exemption rule at local elections. The duty to be on a list lapses if the candidate “has submitted a written declaration that the person concerned does not want to be on an electoral list”. The application for exemption must relate to a specific list proposal. In this way, it shall not be possible to apply for a general exemption from the duty to stand for election or to apply for an exemption before the person concerned has been listed as a candidate on a list proposal. No amendments were made to the other subsections in section 63.

### **11.3.3 Nordic law**

In Sweden, there is no obligation to stand as a candidate on a list proposal. The candidates must submit a written declaration that they accept the party’s nomination. In certain cases, the voters may even list candidate names on the ballot, but also then the candidate must consent to the nomination in advance.

In Denmark, all the candidates must submit a declaration that they are standing for election with information about name, national identity number, position and residence.

### **11.3.4 The Commission’s evaluation**

#### ***11.3.4.1 Parliamentary elections***

The Commission refers to the Ministry’s conclusion that the duty to be on a list may be contrary to the principle of freedom of association, as stated in Article 11 of ECHR and Article 22 of CCPR. The Commission agrees that it is problematic that to be exempt “unwilling” candidates must join a political party. Therefore, the individual’s right to freedom of association supports extending the right to exemption. That a person who is not interested in or does not want to be associated with the party in question is obliged to be on the list is also misleading to the voters. From experience, such situations have arisen because smaller parties list well-known people on the electoral lists most likely to gain attention. The people in question may find it offensive or unpleasant to be associated with the parties in question. The Commission also points out that the regulations have been amended for municipal and county council elections.

Based on this, the Commission supports the adopted amendment of Article 63 of the Constitution on the right to exemption from being on an electoral list. The Commission agrees that it should be sufficient to obtain an exemption that a person submits a written declaration to the electoral authorities that he or she does not wish to be on the list in question. The Commission also finds that the other grounds for exemption will thus be superfluous. However, these were not amended by the Storting in the consideration of the new ground for exemption. The Commission proposes

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<sup>380</sup>See Innst. 129 S.

<sup>381</sup>Document 12:30 (2015–2016) (exemption from the duty to accept election at parliamentary elections), proposed constitutional amendment from Michael Tetzschner, Erik Skutle, Hans Fredrik Grøvan, Abid Q. Raja and Martin Kolberg.

repealing the grounds for exemption from the duty to be on an electoral list in Article 63 of the Constitution.

Based on the recently adopted amendment to Article 63 of the Constitution, the Commission has considered whether the rules on the right to refuse *to accept election* should be continued, cf. Article 63 of the Constitution and section 3-2 of the Election Act. If a candidate does not exercise the right to refuse to be on a list, he or she should not be able to unilaterally refuse to accept election. The candidate has then made himself or herself available to the voters. To refuse to accept election would be to breach the contract that can be said to have arisen between the voters and the elected representative. The Commission cannot see any reasons to perpetuate this rule. Therefore, the Commission finds that the right to refuse to accept election should be repealed.

#### **11.3.4.2 Municipal and county council elections**

The rules on the right to require an exemption from municipal and county council elections were amended in 2011 following a recommendation from OSCE. The Commission finds these rules should be continued, cf. the Commission's evaluations on this related to parliamentary elections.

### **11.4 Duty to function in office**

#### **11.4.1 The position of member of the Storting**

##### **11.4.1.1 Nordic law**

In Denmark, a member of the Danish Parliament (Folketinget) can at any time resign from his seat. The right is derived from section 5 of the Danish Parliamentary Elections Act that no one can be "put up" for election without having registered himself or herself as a candidate for the election.

In Sweden, the Swedish Parliament (Riksdagen) may consent to a member resigning, cf. Chapter 4, section 11 of the Instrument of Government (Regjeringsformen). The Instrument of Government does not require any reason for stepping down. The Swedish Parliament's practice seems liberal, as a large number of representatives have been granted exemptions, including entering municipal politics, business or other taking up other offices. Göran Persson and Fredrik Reinfeldt both resigned from the Swedish Parliament at their request after having resigned as Prime Ministers.

In Finland, the Finnish Parliament (Riksdagen) may grant an exemption (termination of the assignment as representative) if "Parliament considers that there is an acceptable reason for this", section 28 of the Finnish Constitution. The practice varies significantly but the exercise of a socially important task or position is a typical case that has provided grounds for exemption.

In addition, Sweden and Denmark have separate rules on leave of absence. In Sweden, the Riksdag Act provides provisions on this ("leave of absence"). In practice, it seems that a leave of absence is granted in the event of illness, care for one's own children or the performance of certain public or international assignments. In Denmark, the Danish Parliament lays down a number of grounds for a member to be granted a leave of absence. The reasons for a leave of absence may include "illness", "temporary posting to a public office" or "other reasons". The practice seems to be liberal and representatives have been granted leave based on work in the private sector and municipal policy work.

### 11.4.1.2 The Storting's practice

Applications for a leave of absence are dealt with by the Storting following the recommendation of the Presidium, cf. section 5 of the Rules of Procedure of the Storting. The practice is liberal when the application is justified by reasons such as illness, childbirth, welfare or other activities related to parliamentary work (e.g. delegation trips, party meetings), etc.<sup>382</sup>

When it comes to a leave of absence for taking up other appointments (e.g. county governor), the Storting has followed a strict practice. Nevertheless, the Storting has granted long-term leave to representatives who are offered important international appointments that are believed to be of national interest. In the last three parliamentary periods, a total of three members of the Storting have been granted long-term leave of absence: Jens Stoltenberg (NATO Secretary General), Dagfinn Høybråten (Secretary General of the Nordic Council of Ministers) and Børge Brende (Director of the World Economic Forum). Although, in reality, the leave of absence is for the remainder of the parliamentary period, it is formally granted for each parliamentary session upon application.<sup>383</sup> Some other appointments have also provided grounds for exemption, such as when Representative Eidem was elected Auditor-General in 1990.<sup>384</sup> Members of the Storting appointed or employed as a cabinet minister, state secretary or political adviser, do not apply for a leave of absence under the Rules of Procedure of the Storting. However, these will resign from office as a member of the Storting pursuant to section 62, subsection 2 of the Constitution. A representative who has taken up an appointment that makes him no longer eligible also does not apply for a leave of absence under the Rules of Procedure for the Storting, but leaves the Storting by virtue of the rules on eligibility in section 62, subsection 1 of the Constitution.<sup>385</sup>

The Storting's practice of granting a leave of absence does not have support in the wording of the Constitution. Article 71 of the Constitution only states that the elected representatives serve as members of the Storting for four years. It is unclear if and how the Constitution allows a leave of absence from parliamentary office.

According to older practice, short-term absence is usually accepted in the event of so-called replacement between the party groups. The arrangement maintains the balance of power between

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<sup>382</sup>Eivind Smith, *"Konstitusjonelt demokrati: statsforfatningsretten i prinsipielt og komparativt lys"*, Fourth edition (Oslo: Fagbokforlaget, 2017), page 188.

<sup>383</sup>For example, the minutes from the Storting negotiations on 1 October 2016 state that representative Jens Stoltenberg was granted a leave of absence from and including 1 October up to and including 30 September 2017, due to his appointment as NATO Secretary General. The Storting granted a leave of absence in the way in 2014 and 2015.

<sup>384</sup>Since the Second World War, the Storting has granted a leave of absence to take up the appointment as Auditor-General on four occasions. This concerned Lars Breie, Tor Oftedal, Petter Furberg, as well as Bjarne Mørk-Eidem.

<sup>385</sup>For example, representative Erik Solheim, when he was no longer eligible due to taking up appointment in the Foreign Service. The minutes of the Storting's negotiations on 4 April 2000 state the following: "The President: Representative Erik Solheim has notified that from 1 April 2000, he has taken up appointment in the Foreign Service. This notification is proposed attached to the protocol. – It is considered adopted. The first deputy representative for Oslo, Lisbet Rugtvedt, has taken the seat as representative."

the parties during voting in that representatives with opposing points of view do not attend the voting.

#### **11.4.1.3 Proposed constitutional amendment**

On two occasions, members of the Storting have put forward identical Bills on the right to resign as a member of the Storting on specified terms. The Storting has not endorsed any of these. The list proposers have referred to the following, among other things, cf. document no. 12:21 (2007–2008) and 12:37 (2011–2012):

The practice that has developed is at odds with the Constitution's system. This in itself provides an important reason to "tidy up" through a proposed constitutional amendment. It would also be preferable that in exceptional cases the representatives were allowed to be released from their seat. This could happen without the premise of a duty to accept election and function to the end of the election period being significantly weakened.

[...] a more limited amendment that expressly allows the Storting itself, following an application, to grant an exemption from the remainder of the period, will be an affirmation of the practice that has developed and a way to bring this part of the Constitution in line with the present time.

The representatives put forward three alternative proposals for the new subsection 2 of Article 71 of the Constitution. The most liberal alternative did not set any conditions other than that the representative must apply for an exemption. The most restrictive alternative concerned exemption only if this is of national interest. The third alternative left it up to the Storting to set further criteria for exemption in the Rules of Procedure for the Storting. In all the alternatives, the exemption applied to the remainder of the election period.

During consideration of the proposal in 2016, the Standing Committee on Scrutiny and Constitutional Affairs stated the following, among other things, cf. Recommendation to the Storting Inst. 161 S (2015–2016):

The majority of the Commission, everyone except the member from the Socialist Left Party, finds that the proposal to allow exemption from attending the Storting, as stated in the proposed constitutional amendment, may help to weaken awareness about the obligation of being a member of the Storting. The majority finds that significant emphasis must be placed on the responsibility imposed on the representative under the Constitution. The majority points out that the same proposals put forward were also put forward in 2008 without gaining the support of the Storting in 2010. The majority points out that the proposals at the time, by a united committee, were considered to be on the border or over the border of not being in line with the spirit of the Constitution. Based on the constitutional obligation of being a member of the Storting, in the view of the majority, it is not correct that after an election, the Storting itself can grant an exemption following an application. In practice, the most liberal alternative will remove the duty to accept election as a member of the Storting. The majority finds that it is important to the understanding of the position as a member of the Storting that it shall still be a civic duty for those who are elected. The majority finds that the current regulations work well in situations where it may be difficult to combine the position as a member of the Storting with other tasks.

The Commission's member from the Socialist Left Party points out that the position of member of the Storting is a constitutional duty. It is the view of this member that there should be a very high threshold for exempting representatives from such a responsibility. Today's practice allows for a leave of absence in certain cases, but this is strictly applied. In the view of this member, there are good arguments for constitutionalising this established practice, which has broad political support and is in use today.

At the same time, there are situations beyond this, where the individual representatives, for political or personal reasons, would want to resign from office, and where it may in the public interest that this is granted. If so, this must take place at the request of the individual, that it is defined in the Rules of Procedure for the Storting what these grounds can be and that it is still strictly applied. Several other countries have far more opportunities to grant exemptions from positions as parliamentarians, without this appearing to have a negative impact on the status of the appointment or the importance of the parliament. In the view of this member, it is the tasks the Storting has, not the rules for resigning, that gives the Storting its authority.

Based on this, this member will primarily support proposal 3 B and C, where representatives can be exempt according to further provisions in the Rules of Procedure for the Storting.

#### **11.4.1.4 The Commission's evaluation**

The duty to accept election has been justified by the individual's responsibility for the community by participating in the processing of socially important matters (the civic duty). Consideration for recruitment and democracy, in that it shall be possible for as many people as possible to be elected as represented as possible, has been key. The Commission points out that in municipal and county council elections there is no longer a real duty to be on a list, cf. the introduction of the general exemption clause in 2011. A similar reason for exemption was adopted by the Storting in January 2020 for parliamentary elections.<sup>386</sup> The Commission agrees with this amendment. When the duty to be on a list completely or partially is repealed, the traditional considerations behind the duty to accept election play a minor role. Therefore, the Commission finds a reason to emphasise that the appointment as a member of the Storting is the country's foremost position of trust. The voters can be said to enter into a four-year contract with whoever is elected. The voters are not permitted to terminate the contract and therefore, it could be said that the elected representative should then also not have a unilateral right of termination. The relationship between the voters and the candidates supports there still being a strict duty to function in office to the end of the parliamentary period.

The Commission also finds that the consideration for preventing representatives from being forced out is central to the question of the right to exemption. To protect the representatives and voters' preferences, neither the media, the representative's party, deputy representatives nor political opponents should be able to force an application for exemption. In connection with this, the Commission points out that the position of member of the Storting is personal. Representatives who opt out of a party, or are excluded from a party, still have the right and duty to remain in office to the end of the period. Furthermore, the representatives also have an independent responsibility and

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<sup>386</sup>See document 12:30 (2015–2016) and Recommendation to the Storting Innst. 129 S.

must decide for themselves the decisions they are involved in making. This implies a strict duty for a member of the Storting to function in office to the end of the parliamentary period.

*The majority of the Commission (Anundsen, Grimsrud, Hagen, Hoff, Holmøyvik, Holmås, Høgestøl, Nygreen, Stokstad, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo)* finds the Storting's practice of granting a leave of absence should be enshrined in the Constitution. Article 71 of the Constitution, which regulates the position of member of the Storting, does not state whether and how long the Constitution allows a leave of absence from parliamentary office. The Storting's right to grant short-term leave of absence in the event of temporary absence follows from long-term practice and is supported by the system of deputy representatives.<sup>387</sup> On the other hand, the more recent practice of long-term exemptions from the position of member of the Storting for the remainder of the election period is difficult to associate with the wording of the Constitution and the considerations behind the duty to accept election.<sup>388</sup> Such exemptions have been formally granted for each session, but actually involve an exemption from the remainder of the election period. Examples of such a leave of absence to take up the appointment as Auditor-General may be special circumstances since it concerns an appointment placed under the Storting and authorised in Article 75, letter k) of the Constitution. These members cannot see any practical disadvantages of enshrining current leave of absence practice in the Constitution. A legal basis in the Constitution that leaves it to the Storting to give further rules can hardly be said to provide less flexibility for the Storting. If the Constitution reflects the practice of the Storting by granting a leave of absence, the Storting will be given in return an explicit and clear legal basis for a leave of absence practice that has been disputed on several occasions. A legal basis in the Constitution will also promote transparency and honesty around the facts. A legal basis in the Constitution for the Storting to issue rules on the leave of absence arrangement may also prevent arbitrariness and discrimination when granting a leave of absence.

The majority of the Commission finds that the Storting's practice of granting a leave of absence for illness, childbirth, business related to parliamentary work and short-term compassionate leave can be continued. However, in the view of these members, the Storting's practice of granting long-term leave of absence to members of the Storting to attend to international appointments of national interest has been liberal. These members agree that a leave of absence should be granted, for example, to become the Secretary General of NATO, but doubt whether a leave of absence should be granted to become Secretary General of the Nordic Council of Ministers. However, no leave of absence from parliamentary office should be granted to become a Director of the World Economic

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<sup>387</sup>See, for example Torkel Halvorsen Aschehoug, *"Norges nuværende statsforfatning"*, second edition, volume 1 (Christiania: P. T. Mallings boghandels forlag, 1891), page 453 et seq.

<sup>388</sup>See Smith, *"Konstitusjonelt demokrati"*, page 188: "Nevertheless, the Storting has effectively exempted a few representatives for the remainder of the election period, so that he or she could undertake tasks assumed to be of national interest (typically international appointments). Strictly speaking, this is unconstitutional. If such exemptions are allowed, adequate constitutional regulation should also be ensured." No support for the arrangement of a leave of absence for the whole or the remainder of the election period can be found in previous literature on constitutional law, see Johs. Andenæs and Arne Fliflet, *"Statsforfatningen i Norge"*, Oslo 2017, pages 195–197; Frede Castberg, *"Norges statsforfatning"*, Third edition, volume 1 (Oslo: Universitetsforlaget, 1964), pages 273–276; Bredo Morgenstjerne, *"Lærebok i den norske statsforfatningsret"*, Third edition, volume 1 (Oslo: O. Christiansens trykkeri, 1926), pages 327–328; Aschehoug, *"Norges nuværende statsforfatning"*, page 453 et seq.

Forum. Based on this, these members propose to include a legal basis in Article 71 of the Constitution that the Storting may issue rules on compassionate leave. This will typically concern leave in case of illness, pregnancy, care obligations, childbirth, a child and child carer's illness. A legal basis is also proposed to be able to grant short-term leave of absence for other reasons. Exemption from parliamentary office with effect for the remainder of the election period can only be granted if the representative applies for a leave of absence to perform other duties in the national interest. The majority of the Commission emphasises that the bar should be high for granting exemptions under this provision.

To protect the independence of the members of the Storting, it should be stated in the Constitution that the right to grant leave of absence should only apply when the representative himself or herself has applied for this. This means that the Storting cannot on its own initiative impose a leave of absence on a representative. These members further emphasise that the right to leave of absence should be practised restrictively, as the entire Commission initially pointed out.

*The minority of the Commission (Christensen, Giertsen, Røhnebæk and Storberget)* points out that the question of further regulation of the right to exemption is within the sphere of the Storting. These members point out that the Storting's practice is well functioning and gives the Storting the necessary flexibility on the issue. Therefore, there is no need to incorporate rules on leave of absence in the Constitution.

#### **11.4.2 Municipal and county authority positions**

The Commission points out that the duty to function in municipal and county authority positions is regulated by the Local Government Act. In the summer of 2018, the Storting passed a new Local Government Act. Therefore, the Commission has not found it appropriate to consider these rules.

#### **11.4.3 In particular, about members of the Storting who are appointed as state secretary or political adviser**

##### **11.4.3.1 Applicable law**

The appointment of members of the Storting as state secretary or political adviser is a controversial practice. Together with cabinet ministers, these are formally in a somewhat different position than members of the Storting who apply for an exemption. In these cases, the Storting grants a leave of absence pursuant to section 5 of the Rules of Procedure for the Storting.<sup>389</sup> Article 62, subsection 2 of the Constitution expressly states that cabinet ministers, state secretaries and political advisers cannot attend as representatives as long as they hold their office/positions<sup>390</sup>, and it is based on this provision that the members of the Storting resign from their posts.

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<sup>389</sup>However, the minutes from the Storting's negotiations on 19 June 2015, state that when member of the Storting Gjermund Hagesæter was appointed state secretary the President referred to the letter from the Office of the Prime Minister and said: "The President proposes that the referenced letters is attached to the protocol. – It is considered adopted."

<sup>390</sup>The Storting amended Article 62 of the Constitution in 1976 so that state secretaries became eligible. The provision was also amended so that, like a cabinet minister, a state secretary cannot serve as a member of the Storting as long as he or she holds office. Political advisers were given a corresponding legal position on these points after a constitutional amendment in 2003.

Article 62, subsection 2 of the Constitution requires that despite the duty to serve as a member of the Storting pursuant to Article 71 of the Constitution, it is permitted to appoint or employ already elected members of the Storting as state secretary and political adviser. The provision also requires that sitting state secretaries or political advisers can continue in their positions even if they were to be elected as members of the Storting. The actual appointment of state secretaries has a legal basis in Article 12 of the Constitution. Article 3 of the Constitution states that the executive power to appointment political advisers is vested in the King.<sup>391 392</sup>

#### **11.4.3.2 The Commission's evaluation**

The Commission has used as its basis the duty to accept election and the consideration for ensuring that the voters' preferences are applicable. Furthermore, the position of member of the Storting is the country's foremost position of trust. Therefore "the contract" between the voter and the elected representative should be strong from a legal point of view. The Commission points out that a proposal was considered by the Storting in January 2020 regarding a ban on appointing members of the Storting as state secretary and political adviser.<sup>393</sup> The proposal is based on document 12:1 (2011–2012) and has been justified by the consideration for a division of powers and ensuring that the voters' preferences are applicable.<sup>394</sup> The proposal was not adopted. Nevertheless, the Commission agrees with the list proposers that it is worrying from a power distribution perspective that the Government should be able to influence the composition of the Storting.

*The majority of the Commission (Anundsen, Grimsrud, Hagen, Hoff, Høgestøl, Nygreen, Strømmen, Tørresdal, Aardal and Aatlo)* refers to the duty to accept election and finds that any given time, the 169 members of the Storting should not be able to be appointed as state secretary or employed as a political adviser and thus not be able to attend as a representative. The majority finds that Article 14 of the Constitution should be amended so that members of the Storting can no longer be appointed or employed as state secretaries or political advisers. These members conclude that it is not sufficient to amend Article 62, subsection 2 of the Constitution. This is because before this provision was adopted, it was permitted to appoint a member of the Storting as state secretary.

The majority also points out that a similar issue arises if a sitting state secretary or political adviser is elected to the Storting. At the same time, this is a situation where the Government's possibility to influence the composition of the Storting is limited. The Government can only influence whether the newly elected representative is going to the Storting or staying in the Government, and it is unlikely that this can be used strategically by the Government. Therefore, the majority finds it is only

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<sup>391</sup>See more information about state secretaries and political advisers in the Political Leadership Handbook, sections 2.2–2.4. Available under [www.regjeringen.no/hpl](http://www.regjeringen.no/hpl).

<sup>392</sup>Before the amendments to Article 62 of the Constitution in 1976, it was permitted to appoint a member of the Storting as state secretary, cf. St.meld. no. 58 (1975–76) (white paper) *On the state secretary system, etc. and on resignation, etc. of senior civil servants* page 30.

<sup>393</sup>See Document 12:40 (2015–2016) and Innst. 126 S (2019–2020) (Recommendation to the Storting).

<sup>394</sup>Proposed constitutional amendment from Per Olaf Lundteigen, Marit Arnstad and Kjersti Toppe.



when these state secretaries or political advisers resign from their positions that they will step in as representatives in the Storting. However, if they have become representatives in the Storting, the rules in the previous paragraph on limitations in the Government's ability to appoint them as state secretaries and political advisers will apply.

*Commission member Holmås* supports the majority's assessment as regards political advisers, but not state secretaries.

*The minority of the Commission (Christensen, Giertsen, Holmøyvik, Røhnebæk, Stokstad, Storberget and Aarnes)* is reluctant to discuss the question about whether members of the Storting can be appointed as state secretary and political advisers, as the topic touches on the relationship between the Storting and the Government. These members point out that various governments have practised the right to appoint members of the Storting to state secretaries and political advisers with caution and under the necessary consideration that the office as state secretary is a more key position than the position of political adviser. Therefore, these members find there is no need to cut off the Government's right to appoint members of the Storting as state secretary and political adviser. For the same reasons, these members find there is no need to stipulate that state secretaries and political advisers who are elected as members of the Storting must take up the parliamentary office.

## **11.5 Loss of the right to have a democratically elected office**

### **11.5.1 Applicable law**

Neither the Constitution nor the Election Act regulates directly the right to suspend or deprive members of the Storting or democratically elected representatives in the municipalities and county authorities of office.

Suspension means a temporary loss of the right to hold the office until the facts of an accusation have been clarified. Depriving of office means that a democratically elected representative loses the right to hold office for a shorter or longer period after the facts of the case have been clarified.

Suspension and deprivation of office may be used in several contexts as a response to criminal offences or as a response to a breach of other norms, such as the Rules of Procedure of the Storting. Loss of office – in case of suspension or deprivation – may in some cases take place automatically or it may result from a decision made by the democratically elected body itself or by the courts.

Article 61 of the Constitution states that no one can be elected to the Storting without having the right to vote. A person who loses the right to vote will no longer be eligible. The person concerned must then resign from the Storting.

Article 53 of the Constitution regulates the loss of the right to vote. The right to vote is lost by persons

- a) sentenced for criminal offences, in accordance with the relevant provisions laid down by law
- b) entering the service of a foreign power with the consent of the Government

The rules of the Norwegian Penal Code on being able to be deprived of the right to vote were repealed in connection with the new Penal Code.

Section 56 of the Norwegian Penal Code is the general provision on loss of rights as one or more sanctions for offences. Under subsection 1, letter a), the offender may be “deprived of the position”. It is reliable law that “position” also includes representatives and other public positions of trust, with the consequence that members of the Storting and democratically elected representatives in the municipalities and county authorities can be deprived of their positions.

The conditions for depriving any position is that the person concerned has committed a criminal offence which shows that the person concerned is unfit or may misuse the position and that public interest dictates this. A democratically elected representative can only be deprived of office for the remainder of the election period, cf. section 58, subsection 2, third sentence of the Norwegian Penal Code. In Official Norwegian Report (NOU) 1992: 23 *New Penal Code – general provisions* page 185, the Penal Code Commission states the following:

The intervention of the judiciary could easily be perceived as political interference. This implies such loss of rights shall only be imposed in special cases, cf. the judgment in Rt-1961-899 and the statement of the first voting judge on page 900. It is further assumed that there is little need to deprive the right for longer than the election period. It will then be up to the political organisations to decide whether the convicted person shall be re-nominated.

The Ministry also used such an opinion as the basis for its Bill, cf. Ot.prp. no. 90 (2003–2004) *relating to the Law on Punishment (the Penal Code)* page 320: “The courts should also exercise some restraint where there is a question of depriving some of a position of trust that has been achieved through public elections.”

In the summer of 2018, the Storting passed a new Local Government Act. The Bill from the Ministry, cf. Prop. 46 L (2017–2018) *Act relating to municipalities and county authorities (the Local Government Act)*, based on Official Norwegian Report (NOU) 2016: 4 *New Local Government Act* from the Local Government Act Commission. The Act contains certain provisions on suspending and depriving democratically elected representatives in the municipalities and county authorities of their positions.

If a charge or indictment has been brought against a democratically elected representative for specific criminal offences, the municipal or the county council may decide to suspend the person concerned from office until the case has been finally decided, cf. section 7-11, subsection 1 of the Norwegian Local Government Act. Except for the circumstances stated in sections 151 to 154 of the Norwegian Penal Code, the criminal offences must relate to the performance of duties or a position for the municipality or the county authority. If the democratically elected representative is not deprived of the position legal proceedings, the person concerned will have the right and obligation to take up the position again, provided that the election period has not ended.

The municipal council or county council may also suspend the mayor if a charge is brought against the person in question for a matter that can be punishable with a term of imprisonment of more than three years, cf. section 7-11, subsection 2 of the Local Government Act. There is no requirement that the criminal offence must be linked to the performance of duties or service for the

municipality or the county authority. The mayor may be suspended from office until the case is finally decided. The decision shall be made by no less than two-thirds of the votes cast.

The municipal or county council may decide to remove the mayor from office if his or her conduct shows that he or she is unfit to hold the office. Such a decision shall be made with at least 90 per cent of the votes cast, cf. section 7-11, subsection 4 of the Local Government Act.

### **11.5.2 Nordic law**

In Finland, the Finnish Parliament itself may deprive the members of office in two different situations, cf. Article 28 of the Finnish Constitution. Firstly, it can do so if the member in a significant way and repeatedly neglects to perform his or her duties as a member of the Finnish Parliament, i.e., if the member fails to carry out his or her duties for no valid reason. The position may be revoked for a specific time or for the entire election period. Secondly, the Finnish Parliament can deprive a member of office if through a final and enforceable judgment the member is sentenced to prison for an intentional crime or as punishment for offences related to elections. A prerequisite for depriving the member of office is that the offence shows that the convicted person is not worthy of the trust and reputation that the position as a member of the Finnish Parliament requires. In both situations, the decision to deprive the member of the position is made with at least two-thirds of the votes cast. Emphasis can only be placed on judgments that are final and enforceable after the election.

In Sweden, a member of the Swedish Parliament may be deprived of his or her office if through an offence he or she has proved to be clearly unfit for the position, cf. Chapter 4, section 11 of the Instrument of Government.<sup>395</sup> The decision on this must be made by the courts. Chapter 20, section 4 of the Swedish Penal Code (brottsbalken) also states that to be deprived of office, the member must have committed a crime with a minimum sentence of at least two years. The provision has only been applied twice.

In Denmark, a member of the Danish Parliament (Folketinget) may lose eligibility and thus be deprived of office if the person concerned is punished for an act which in the eyes of the public makes him or her unworthy to be a member of Folketinget, cf. section 30, subsection 1 of the Danish Constitution. The provision is practised so that if the member is given a prison sentence, as a general rule, the member must resign from Folketinget. Decisions on this are made by Folketinget.

### **11.5.3 Previous proposals to amend the Constitution**

On two occasions proposals have been put forward to amend the Constitution so that a member of the Storting is deprived of office if the membership of the party or the party's parliamentary group ends.<sup>396</sup> The proposals were voted down both times by the votes of the Progress Party. The majority emphasised, among other things, that each representative is elected personally and not as a member of a party. In addition, the majority found that it is important to uphold the principle that the individual representative is personally accountable to the electorate. The majority also pointed out that the proposal allows a representative to withdraw from the Storting by resigning

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<sup>395</sup>The Swedish Constitution consists of 4 fundamental laws of which the Instrument of Government is one.

<sup>396</sup>Doc. 12:6 (1995–1996) and Doc. 12:11 (1999–2000) from Carl I. Hagen.

from the party, which would be a violation of the principle of the representatives' duty to receive and exercise the office.

#### **11.5.4 The Commission's evaluation**

##### ***11.5.4.1 Depriving members of the Storting of office***

The Commission refers to the duty to accept election, including the right and duty to function in office, has traditionally speaking been strong in Norway compared with many other countries. The member of the Storting's right to function in office has strong protection. These are elected by the voters and can be said to have signed a four-year contract with them. Therefore, the Commission finds that as a clear general rule it should only be the voters who can deprive the representatives of office, through not re-electing them to the Storting.

*The majority of the Commission (Christensen, Giertsen, Grimsrud, Hagen, Holmøyvik, Høgestøl, Røhnebak, Stokstad, Storberget, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo) finds that in very special cases it should be possible to remove democratically elected representatives from office, including members of the Storting. Such a rule can be found today in section 56 of the Norwegian Penal Code. The courts have been very reluctant to use this opportunity. In a ruling published in Rt. 1961 page 899, the Supreme Court of Norway states the following on page 900:*

As regards the question of whether a convicted person should be deprived of his or her position as a member of Søgne municipal council, I, like the District Court, have been in serious doubt. It is clear that the convicted person's offences are gross and highly reprehensible, but when considering the question of whether public interest requires deprivation of the position as a member of the municipal council, I agree with the District Court, which is unanimous on this point. Therefore, I agree with the District Court that on the question of deprivation of a mandate, the courts should exercise caution when it comes to positions of trust the person in question has been appointed to through direct election. This view coincides with the opinion expressed by the Standing Committee on Justice in their Instilling O. III (1953) (Recommendation) on amendments to the legislation on the loss of rights.

The Supreme Court of Norway subsequently ruled (like the District Court) that the convicted person should not be deprived of the position of member of the municipal council.

The majority of the Commission has noted that the statements in the preparatory works of the provision and the practice of the Supreme Court show that it takes a lot to deprive a democratically elected representative of office under the Norwegian Penal Code. In the opinion of the majority, this should still be so.

*The minority of the Commission (Anundsen, Hoff, Holmås and Nygreen) finds that it should not be possible to deprive members of the Storting of office. The members of the Storting are elected directly by the electorate at elections. Therefore, it should not be possible for other than the electorate to deprive the representative of the position at a new parliamentary election.*

The Commission points out that it is the courts that can deprive a member of the Storting of office, cf. section 56 of the Norwegian Penal Code. It is not a condition that the prosecuting authority has requested such a loss of right – the courts raise this matter themselves during the proceedings. In

the case of certain sex offences, the courts are obliged to consider the loss of rights, cf. section 319 of the Norwegian Penal Code.

The Commission has considered whether the authority to deprive a member of the Storting of position should remain with the Storting rather than the courts. This is the arrangement in Finland and Denmark. An argument for this may be that the Storting may be better qualified than the courts to assess whether due to the criminal offence a member of the Storting is unfit to hold office and whether public interest dictates that the member of the Storting is deprived of the position. It can also be argued in principle that the courts should not be able to intervene in the composition of the Storting. However, the Commission has concluded that the courts should still have this authority. This is in the interest of the public's confidence that no party political considerations are taken into account in a decision to deprive a member of the Storting of position.

#### **11.5.4.2 Suspending members of the Storting**

It is currently not allowed to suspend members of the Storting. The Commission sees that it may be offensive and contrary to the general sense of justice if a member of the Storting can function in office at the same time as the person concerned is charged with a serious criminal offence. This may support allowing the possibility to be able to suspend the representative from the position until the case has been finally decided.

However, it is the voters who have elected the representatives to the Storting and the Commission finds that strict requirements should still be set for intervening in this "contract" between the voters and the representatives. Due process considerations draw in the same direction. As mentioned above, the courts may, on certain conditions, deprive a member of the Storting of position if the person concerned has been found guilty of a criminal offence. This will only happen after it has been finally decided by a court – or following an appeal – in accordance with the rules of criminal procedure that the person concerned is guilty. Suspending a member of the Storting before a court has found the person concerned guilty, will challenge *the presumption of innocence*.<sup>397</sup> The damage will be irreparable if the accused member of the Storting – after having been suspended for a long period – should be acquitted. The Commission finds that a suspension based on a provisional evaluation of the validity of an allegation can affect the courts and public opinion in an unfortunate manner.

Formally speaking, the presumption of innocence only applies in criminal cases and therefore the principle should not prevent the introduction of a rule that the Storting can suspend a member of the Storting who has been charged with a criminal offence. However, such a principle may apply beyond this if the sanction can be characterised as punishment, cf. Rt-2014-1161 section 29. The Commission has concluded that significant importance must be attached to the presumption of innocence for such radical measures as depriving, albeit temporarily, member of the Storting of his or her position. This indicates that there should be no opportunity to suspend a member of the

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<sup>397</sup>The presumption of innocence is stated in Article 96, subsection 2 of the Constitution: "Everyone has the right to be presumed innocent until proved guilty according to the law", and Article 6 no. 2 of the European Convention on Human Rights: "Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to the law."

Storting until he or she has been found guilty of a criminal offence, cf. section 56 of the Norwegian Penal Code.

On the whole, the Commission finds that the considerations against introducing the right to suspend members of the Storting weigh heavier than the consideration that it may be contrary to the general sense of justice that a member of the Storting who is charged or indicted of a serious criminal offence remains in office. Therefore, in the opinion of the Commission, no right to suspend members of the Storting who have been charged with criminal offences should be introduced.

#### **11.5.4.3 Municipal and county authority positions**

The Commission points out that in the summer of 2018, the Storting passed a new Local Government Act. The Bill was based on a report from the Local Government Act Commission to be able to suspend and deprive democratically elected representatives in the municipalities and county authorities of position. Therefore, the Commission does not find it natural to discuss these rules in more detail.

#### **11.5.5 Article 53 of the Constitution**

Article 53 of the Constitution regulates the loss of the right to vote. The right to vote is lost in the event of a sentence for criminal offences, in accordance with the relevant provisions laid down by laws and when entering into the service of a foreign power without the consent of the Government.

The Norwegian Penal Code no longer includes any provision for being able to deprive a person of the right to vote. The provision was repealed in connection with the Norwegian Penal Code of 2005. There were multiple reasons for removing the provision of the Norwegian Penal Code of being able to deprive a person of the right to vote and thus also eligibility.<sup>398</sup>

It is unlikely to have a particularly preventive effect in addition to the threat of punishment that will nevertheless apply to the relevant offences. Furthermore, the loss of the right to vote will probably only apply to a small number of people, who are unlikely to be able to influence the outcome of an election. It will no doubt cause offence that former traitors have the right to use their right to vote and thus also stand for election. However, the voters can turn their backs on them by preferring other candidates.

Based on this, the Commission proposes repealing Article 53, letter a) of the Constitution.

Section 56 of the Norwegian Penal Code allows members of the Storting to be deprived of the position. In the opinion of the Commission, a statutory provision that allows a member of the Storting to be deprived of the position should have a clear legal basis in the Constitution. This is because such a provision intervenes directly in Article 71 of the Constitution that “the members of the Storting function as such for four consecutive years”. The Constitution does not contain any explicit legal basis for depriving a member of the Storting of the position or to regulate this by law. However, Article 53 of the Constitution may authorise such a loss of rights based on a from more to less mindset – this is because as long as the provision currently allows for rules to be issued to

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<sup>398</sup>Official Norwegian Report (NOU) 2002: 4 *New Penal Code* section 8.10.1.

deprive members of the Storting of the right to vote, with the consequence that the person concerned loses eligibility and thus his or her position, it must also be possible to only deprive the representative of his or her position. In the opinion of the Commission, a clear legal basis is required so that it shall be possible to deprive a member of the Storting of position.

*Therefore, the majority of the Commission (Christensen, Giertsen, Grimsrud, Hagen, Holmøyvik, Høgestøl, Røhnebæk, Stokstad, Storberget, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo) proposes including a provision in Article 53 of the Constitution that further provisions may be laid down on the right to deprive members of the Storting of position in the event of a conviction for criminal offences, cf. section 56 of the Norwegian Penal Code, cf. section 56 of the Norwegian Penal Code. The majority points out that including a clear legal basis in the Constitution to lay down provisions on being able to deprive a member of the Storting of position is not intended to lower the threshold for this. The reason for the proposal of the majority is only the need to clarify the legal basis.*

*The minority of the Commission (Anundsen, Hoff, Holmås and Nygreen) finds that it should not be possible to deprive a member of the Storting of position and therefore, finds that such a provision should not be laid down. Therefore, these members find that section 56 and 58 of the Norwegian Penal Code should be amended so that it is evident that they do not apply to the position as a member of the Storting.*

When it comes to the loss of the right to vote for entering into the service of a foreign power, this is a provision that is very difficult to control, it is very intrusive (for example, also includes civilian employment in other countries' ministries), it probably does not apply where it is most needed (where people join various terrorist organisation), and cannot be assumed to have a preventative function. The Commission also points out that having dual citizenship is now possible to a greater extent. Dual citizenship makes it more problematic to have this provision regarding the loss of the right to vote. Under the current provision, doing military service in another country will result in the loss of the right to vote in Norway. Therefore, in the opinion of the Commission, this provision should be repealed.

*Part III*  
*Conducting elections*



## 12 The use of technology during the election process

### 12.1 Today's use of technology

The municipalities and the county authorities use a government ICT system, electronic election management system (EVA) in the implementation of the election. EVA serves as a support tool for the municipalities and the county authorities in the various phases of the election process. The municipalities use an electronic electoral register during the entire advance voting period and the majority of the municipalities also use this on Election Day. The voting itself takes place manually using paper ballots, but the majority of the municipalities and all the county authorities also use machine counting (scanners) as part of the count.

In addition to EVA, technology is also used for other important parts of the election process. The Norwegian Directorate of Elections uses web technology, [www.valg.no](http://www.valg.no), to inform about the election and has its own website, [www.valgresultat.no](http://www.valgresultat.no), to communicate forecasts and election results. Polling cards are sent out on paper today, but at the 2019 election, the Ministry and the Directorate carried out a pilot scheme with electronic polling cards.

#### 12.1.1 Development and responsibility

The municipalities and the county authorities are mainly responsible for the election process. The Norwegian Directorate of Elections supports the municipalities and the county authorities in their implementation of the election. The Norwegian Directorate of Elections' services are largely digital, with the largest service being the ICT system EVA. Since 2013, EVA has been used by all municipalities and county authorities in Norway. The ICT system has been developed by the Ministry of Local Government and Modernisation and is state-owned and operated. Since the establishment of the Norwegian Directorate of Elections in 2016, the Directorate has been responsible for EVA.

In the development of EVA, representatives from municipalities and county authorities have contributed in user groups to make EVA user-friendly. In this way, it is ensured that EVA is a system that is fit for use by election staff. Furthermore, the Directorate tests the system before elections to ensure that the system is working in accordance with the regulations. This is an assurance to the municipalities and the county authorities that they are conducting elections securely and correctly.

All municipalities and county authorities use EVA in the implementation of elections. However, the use of EVA is not statutory and therefore the municipalities and county authorities are not obliged to use this system. It is also not mandatory for the municipalities to use the tools the Norwegian Directorate of Elections offers. This means that the municipalities and the county authorities can choose to use alternative systems to conduct elections. However, no municipalities or county authorities have chosen *not* to use EVA.

#### 12.1.2 EVA

The applications in EVA are administrative tools that the municipalities and county authorities may use to simplify the implementation of elections. EVA is not a case management system and cannot replace the responsibility of the Electoral Committees to ensure that election events are carried out according to the current regulations. EVA currently has functionality that supports the implementation of parliamentary elections, Sami parliamentary elections, municipal and county council elections, elections to district councils and local council elections in Longyearbyen.

EVA consists of three main applications, EVA Admin, EVA Scanning and EVA Result. EVA Admin is a standard web application that is operated and managed centrally by the Norwegian Directorate of Elections and which is made available through a web browser on the municipalities or county authorities' PCs. EVA Scanning is a locally installed application that is operated by the municipalities and county authorities. The application has been developed by the Norwegian Directorate of Elections and the installation files are made available to the municipalities and the county authorities. EVA Result is the Norwegian Directorate of Elections' internal application that sends figures between the applications and to other stakeholders such as media outlets.

### **Box 12.1 EVA applications**

#### *EVA Admin*

EVA Admin is the largest application. The Norwegian Directorate of Elections establishes "an election" in EVA based on statutory requirements, before municipalities and county authorities enter information about how the Electoral Committee wants to conduct the election within its area of responsibility. EVA admin contains information about registered voters and is used to register votes cast by the voter. The votes cast are assessed manually, but rejected or approved in EVA, or against a hardcopy electoral register for the municipalities that registers votes cast on a hardcopy electoral register on Election Day(s).

#### *EVA Scanning*

EVA Scanning is used by municipalities and county authorities who want to read the ballots mechanically rather than counting manually. The municipalities and county authorities can assess whether it is appropriate to use the scanning solution, based on considerations such as risk, costs and effectiveness. About half of the municipalities and all the county authorities use EVA Scanning. EVA scanning is installed on local machines in the municipalities and county authorities. The municipalities and county authorities can choose to use third-parties who are qualified by the Norwegian Directorate of Elections through a framework agreement for the purchase of equipment, installation and/or assistance.

#### *EVA Result*

When a county has been approved in EVA Admin, the municipalities and the county authorities report this to EVA Result. EVA Result contains the forecast model offered by the Directorate. The Norwegian Directorate of Elections also communicates forecasts and election results via its website [www.valgresultat.no](http://www.valgresultat.no). The results are presented here in numbers in a neutral way. The figures are retrieved directly from EVA Result and are the same figures that the media houses can access. EVA Result is not used by the municipalities, but is an internal application in the Norwegian Directorate of Elections that only sends figures between the application and to other stakeholders.

EVA is used both in the planning and implementation of the election. EVA is divided into four different phases to support the municipalities and the county authorities' practical election implementation. These four phases are

- the preparation phase

- the voting phase
- the counting phase
- the election result phase

#### *The preparation phase (1 January – 30 June in the election year)*

The municipalities and the county authorities enter basic data in EVA. Basic data is information about how the municipality and the county authority shall conduct the election. The basic data includes information on the form of the Norwegian language on the ballots and polling cards, constituency structure, number of representatives to be elected and whether the municipality shall use an electronic electoral register or hardcopy electoral register at the election proceedings.

The Norwegian Directorate of Elections distributes the electoral register to all the municipalities in Norway via EVA. The electoral register is based on information from the Population Register Authority (The Directorate of Taxes (SKD)), where population register data is compiled with geographical data from the cadastral authority. The electoral register is transferred from SKD to EVA and updated towards the election. The electoral register provides an overview of all eligible voters throughout Norway and where they are eligible to vote. The electoral register is the most important reference work to which the municipalities have access during the election process.

An important task for the municipalities and county authorities before the voting can start is to process list proposals. The municipalities and the county authorities establish, edit and approve the list proposals in EVA. The approved list proposals form the basis for the production of the ballots. Anyone wishing to put forward a list must submit the list proposal to the Electoral Committee who check that the list proposal meets the requirements of the law and registers it in EVA.

#### *The voting phase (1 July – Election Day)*

In the advance voting period, all the municipalities have electronic electoral registers. When the voter enters the polling station to vote, the returning officer will search for the voter on the electronic electoral register in EVA. The municipalities have read access to the electoral register for the whole country, but can only approve ballots cast by voters in their municipality. Voters who have the right to vote in the municipality, place the ballot straight into the ballot box and are crossed off on the electronic electoral register and the vote is then approved. Voters who have the right to vote in another municipality must place the ballot in a ballot envelope. This envelope is placed together with the polling card into a cover envelope and sent to the voter's native municipality. Voters who do not bring their polling card with them will have a new polling card printed for them from EVA.

The majority of the country's municipalities also choose to use electronic electoral registers on Election Day, and then the process is the same as in the advance voting period. The rest of the municipalities use a hardcopy electoral register instead, which is printed out from EVA after the advance voting has ended.<sup>399</sup>

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<sup>399</sup>At the 2019 election, there were 58 municipalities of a total of 356 that did not use an online electoral register on Election Day.

### *The counting phase (Election Day–around Friday after Election Day)*

The municipalities count the advance votes and ballots cast at the election proceedings separately. All the ballots must be counted at least twice in the municipality. At county council and parliamentary elections, the ballots are also counted by the county authorities.<sup>400</sup> In the counting phase, EVA is used to approve the counts, reject ballots, report to the media and keep track of the counting process in the municipality. When the municipalities count manually, the figures from the count are manually registered in EVA and for manual counting, the results are entered in the system through EVA Scanning.

All advance votes and ballots cast at the election proceedings received in envelopes must be validated before they can be counted. If a vote is to be rejected, the reason for the rejection must be registered in EVA. The result of the checks and the reasons for rejection are registered.

The first count of the ballots is called the provisional count and will be done manually by all municipalities. All the results from here are registered manually in EVA. The municipalities can choose whether to make the final count manually or using scanners. For municipalities that count manually, the voting figures are registered manually in EVA admin. For municipalities that use machine counting, the voting figures are transferred from EVA Scanning to EVA Admin. The figures are received by EVA Result and communicated to the media and on valgresultat.no.

At county council and parliamentary elections, at the end of the count, the municipalities will submit election material to the county authority for recounting. The county authority will recount all the ballots and will go through the rejected votes and ballots. All county authorities normally use EVA Scanning for the count. The county authorities do not have access to the electoral register through EVA.

### *The election result phase (when the counting phase is finished)*

When the municipality and the county authority shall determine the election result, this is also done in EVA as an automated process. Once the determination of the election result is made, the municipality and the county authority will receive relevant reports on seat distribution and the returning of members. When voting has been completed, the Electoral Committee and the county Electoral Committee will keep a record of the implementation of the election and the count. This is done in the election committee and the county election committee's record book. The record book is generated from EVA and explains the counting of votes and the election result. The record book shall be signed by the Electoral Committee/county Electoral Committee and is important when checking and for validation of the election.

#### **12.1.3 Digital guidance tools**

The municipalities and the county authorities can find practical information on various topics related to election implementation in a separate web portal, the Election Worker Portal. The web portal is open and does not require login. In the same place, there are also links to user guides for EVA, regulations and other important information relevant to the topic in question. Here the municipalities and county authorities can also find an overview of deadlines, which will help in the

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<sup>400</sup>Except for the City of Oslo, where the County Governor of Oslo and Viken checks the election.

planning of the election implementation. These deadlines consist of statutory deadlines, as well as other relevant deadlines that are the same for all municipalities and county authorities. Furthermore, on the front page, there is important information from the Norwegian Directorate of Elections. This information is also sent by email so that it is possible to subscribe for important information.

The Norwegian Directorate of Elections offers training to municipalities and county authorities. The training largely takes place at physical training sessions. The Directorate is working on offering more digital solutions to the municipalities and county authorities, for example, by offering training sessions via so-called webinar for the municipalities and county authorities that do not have the opportunity to attend the sessions. The election officials will be able to observe the lectures on-screen and participate in group assignments by discussing with others who participate in the webinars. The Norwegian Directorate of Elections is also exploring the possibility of creating e-learning courses. Such courses can be adapted to different target groups and provide opportunities to further define routines around the implementation of elections. Such courses will be particularly suitable for election staff at the polling stations as well as new election officials.

The Directorate has a website where the voters can find information about polling stations and opening hours, valglokaler.no. The information on this website is obtained from information the municipalities have registered in EVA, and it is the municipalities who are responsible for ensuring that this information is correct.

#### **12.1.4 The Commission's evaluation**

The Commission has noted that Norway uses technology to a greater extent than our neighbouring countries in the election process. The Commission finds that government electoral authorities must adopt technology in areas where it leads to improvement, and further work must be done on this. The Commission finds that it is good that an ICT system that all the municipalities and county authorities can use has been developed. The Norwegian Directorate of Elections' services and support to the municipalities and counties is very important in the election implementation.

The Commission finds that the use of a government ICT system for conducting elections, similar to what is currently EVA, should be legislated. By legislating the use of a government ICT system, the municipal and county authorities will have to use this system. At the same time, the government will be responsible for offering an election implementation system that has been tested and secured to the required extent, as well as offering training, support and guidance to this system. In the opinion of the Commission, the introduction of a duty to use EVA will not involve any material change, as all the municipalities are already using the system. At the same time, it is proposed that the Ministry can lay down in regulations requirements regarding the use and safeguarding of the system.

It is an important national goal to ensure election implementation and establishing by law the obligation to use a government ICT system is a means of achieving this goal. At the same time, technological solutions for the implementation of elections are not an area where the consideration for municipal freedom of action and proximity to the citizens is very important. If different ICT systems were to be developed for election implementation in the municipalities and county authorities, it would be very challenging for the Directorate to provide support, training and guidance in other systems. In the opinion of the Commission, the duty to use a government ICT system will be a

mutual benefit for the municipalities, county authorities and government electoral authorities and will contribute to a good election process.

## **12.2 Use of electronic electoral registers on Election Day**

### **12.2.1 Applicable law**

Section 9-5 of the Election Act allows the municipalities to decide to also use electronic electoral registers on Election Day. This provision was introduced into the Election Act in 2016 following a legal amendment. In the advance voting period, all the municipalities have electronic electoral registers. Previously, the municipalities had to use electoral registers on paper on Election Day.

Before the legal amendment in 2016, a pilot scheme was implemented with election checking off in the electoral register on Election Day. At the 2015 election, 27 municipalities participated and the pilot scheme included about 1.7 million eligible voters.<sup>401</sup> In the evaluation, the municipalities reported that it was time-consuming and resource-intensive to participate in the pilot scheme and that more ICT competence than before was needed. At the same time, all the pilot scheme municipalities concluded that extra costs and efforts in advance are worth it when the result is a more efficient process at the polling station, fewer errors and faster counting.

The municipalities decide whether they want to use an electronic electoral register at the election proceedings. At the 2019 election, 58 municipalities used hardcopy electoral registers on the Election Day, while 298 municipalities used electronic electoral registers at the election proceedings.

### **12.2.2 Consequences and opportunities**

One advantage of using electronic electoral registers on Election Day is that it is easier to accept votes from voters from another district in the municipality. By using electoral registers on paper, an electoral register is printed out per polling district in the municipality. This means that a voter from another district cannot vote in the ordinary way, as the election official will not find the person concerned in the district electoral register. Such votes are called “alien votes”. The voter must then place the ballot in an envelope, which is then placed in another envelope, called a special cover envelope, together with information about the identity of the voter. The voting is assessed and approved or rejected later centrally in the municipality by the Electoral Committee.

With an electronic electoral register on Election Day, anyone who is registered as a resident of the municipality can vote in the ordinary way through placing the ballot straight into the ballot box, regardless of whether they are voting in their polling district or not. This is a simplification for the voters and a significant simplification for the municipalities, as the procedure with alien votes is time-consuming.

A consequence of this is that there is no longer correlation between the ballots cast in a polling district and the voters who formally belong to this polling district. This affects the content of the election statistics regarding results at polling district level. The same applies to advance votes

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<sup>401</sup>Pilot schemes were also implemented with electronic crossing off on the electoral register on Election Day in 2011 and 2013.

placed directly in the ballot box. It will be possible to count and report the count from an advance voting location, but it will not be possible to know who in the municipality has voted at this venue.

Another consequence of using electronic electoral registers is new requirements for technical readiness and security procedures. The polling station depends on the internet and a power supply. As long as grid or power outages are short-lived, this can be handled smoothly by the municipalities. Section 9-5 a, subsection 5 of the Election Act includes a general contingency rule for such cases. In the event of a power outage or an interruption of communication with the electronic electoral register, the contingency procedure must be followed immediately. Instead of crossing off the voter in the electoral register and placing the ballot paper in the ballot box, the ballot paper must now be placed in an envelope, which in turn is placed in a cover envelope and on which is written information about the identity of the voter (the same as receipt of advance votes from other municipalities). The votes are approved when the communication is restored. The voters are then crossed off in the electoral register and the ballot paper is placed in the ballot box. Experience from the pilot scheme and the elections in 2017 and 2019 has shown that the contingency procedures work well. However, in the event of prolonged interruption of communication, it will be very a time-consuming procedure and could lead to queues.

### **12.2.3 The Commission's evaluation**

The Commission sees several benefits of using electronic electoral registers at the election proceedings. There will no longer be alien votes and all voters in the municipality can vote in the same way. The Commission finds that the voters perceive the polling to be more uniform and that this inspires confidence. Furthermore, it will generally be easier and faster for the election staff to find the voter on the electoral register as the person concerned can be searched for in the online system. It will also generally reduce the risk of crossing off the wrong name on the electoral register. The Commission sees that the benefits of electronic electoral registers will not apply to the same extent in small municipalities, where a hardcopy electoral register may be equally as clearly set out and perhaps especially in municipalities that have only one polling district. The Commission finds this is an area where the Election Act should not place restrictions on the use of technology and that the text of the law here should be technology-neutral.

The Commission finds that all the municipalities should consider introducing electronic electoral registers on Election Day. This could be the first step towards more use of technology and better solutions to simplify the election for the voters. The Commission sees that there are certain risks associated with all municipalities having electronic electoral registers at the election proceedings. The Commission points out that it is extremely important that municipalities that use electronic electoral registers, ensure that they have good manual back-up and contingency procedures.

*Some members of the Commission (Anundsen, Giertsen, Hoff and Storberget) find it very unfortunate that a consequence of electronic electoral registers on Election Day has been that there are no longer district results based on the voter's place of residence. This also applies to advance votes that are placed straight into the ballot box. These members find that it must be possible to obtain data on district results without reintroducing the voting envelope and request that the Ministry investigates this further.*

## 12.3 Electronic polling cards

### 12.3.1 Applicable law

Section 2-3 of the Election Act states that polling cards shall be distributed to everyone entitled to vote who is registered on the electoral register of the municipality and who has a residential address in Norway, except on Svalbard and Jan Mayen. Thus voters abroad do not receive polling cards. Since 2015, the Ministry has been responsible for distributing polling cards to voters. The task has been delegated to the Norwegian Directorate of Elections.<sup>402</sup>

The arrangement with polling cards was introduced through a legal amendment in 1997 as a mandatory part of the advance voting via Posten. Some municipalities had also distributed polling cards to voters as a voluntary scheme. When postal voting ended in 2002, the requirement for the distribution of polling cards was also removed. However, the municipalities still could distribute polling cards to voters if they wished. The vast majority of the municipalities distributed polling cards to voters at the 2003 and 2005 elections.

In 2007, the Election Act was amended, and it became mandatory once again to distribute polling cards to the voters. The reason for this was that the polling card is a reminder of the election, that polling is streamlined for voters and election officials alike and that it will contribute to fewer crossing off errors, among other things.

There is no requirement that the voters must bring their polling card along with them to vote. If a polling card is needed and the voter has not brought it with him or her, the election staff will print out a new polling card, cf. sections 8-4 and 9-5 a) of the Election Act.

### 12.3.2 Purpose and function

The polling card has several functions in the election process. For the voter's part, the polling card has an important role as an information channel. Each voter receives a polling card as confirmation that he or she has suffrage. Furthermore, the information on the polling card states in which municipality the voter is registered on the electoral register. There is also information on the polling card about when Election Day and the advance voting period is and about where the voter's nearest polling station is.

The polling card also has practical significance at the polling station, both related to crossing off on the electoral register and sending advance votes. The polling card has a barcode on it that indicates the position on the electoral register. If the municipality uses an electronic electoral register, using a hand scanner they can effectively search for the voter on the electoral register. Pilot schemes have shown that this improves the efficiency of the polling station and helps reduce crossing off errors on the electoral register. For municipalities that use electoral registers on paper on Election Day, the polling card also has information about where on the electoral register the voter can be found (page, line, polling district).

The polling card is also important when the voter cast his or her vote in an envelope. This is relevant for voters who vote in advance in other municipalities, votes that must be checked separately

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<sup>402</sup>Regulation no. 79/2017: Delegation of authority to the Norwegian Directorate of Elections.



and votes cast in contingency envelopes. In these cases, the ballots cast are validated afterwards and information about the voter must accompany the ballot cast. The polling card is used for this. The address of the municipality to which the vote is to be sent is written on the polling card. That the address is written on the polling card saves time and prevents the votes from being sent to the wrong address.

At the municipal and county council elections in 2019, a pilot scheme was implemented with electronic mailing of polling cards.

Voters in 18 municipalities<sup>403</sup> received their polling cards electronically unless they had reserved against digital communication with the public authorities or had not used ID-porten for 18 months or more.

The digital polling card contained a barcode that could be scanned for looking up in the electoral register. If a physical polling card was needed to send the ballot cast to another municipality or where the ballot cast was to be validated separately, the election official had to print out a polling card on paper.

The evaluation of the pilot scheme showed that it was successful.<sup>404</sup> Seven out of ten opened the digital polling card and half of those who voted used this polling card during voting. About three or four wanted to receive their polling card electronically at the next election as well.

### **12.3.3 The Commission's evaluation**

The Commission is very positive about the electronic distribution of polling cards. Introducing electronic polling cards will be in line with section 15 a), subsection 1 of the Public Administration Act, which states that digital communication shall be the main rule in communication with others. For the vast majority of voters, a digital polling card will be able to meet the need for information. The Commission also does not disregard that electronic polling cards may be more accessible, for example, to blind and partially sighted voters, if this is taken into account in the design of the solution. The Commission is also aware that sending polling cards on paper is a challenge, as not everyone has correct mailing addresses. Electronic mailing can make this easier and help reach more voters.

The Commission finds that further work should be done to introduce electronic polling cards to as many people as possible. Voters who do not use digital solutions must still receive their polling cards on paper. However, the Act should also be technology-neutral in this area to avoid placing restrictions on how the polling cards can be distributed in future.

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<sup>403</sup>The municipalities are Bergen, Bodø, Fredrikstad, Færder, Gjøvik, Gloppen, Grimstad, Hamar, Hå, Lillesand, Skaun, Skien, Stjørdal, Tromsø, Ulstein, Vadsø, Vanylven and Vågan.

<sup>404</sup>"Evaluering av forsøk med digitalt valgkort 2019" (conducted on behalf of the Norwegian Directorate of Elections, Opinion, October 2019).

## 13 List proposals

### 13.1 Applicable law

Chapter 6 of the Election Act and Chapter 3 of the Election Regulations contain requirements for the list proposals so that they can be approved at elections and for the Electoral Committee and the County Electoral Committee's processing of these. Chapter 2 of the Political Parties Act<sup>405</sup> and Chapter 1 of the Political Parties Regulations<sup>406</sup> also contain some relevant provisions relating to putting forward list proposals at elections.

The list proposals are the final result of a long process in the local branches of the parties. As stated in Chapter 7, the parties put a lot of effort into drawing up a list that balances various considerations, such as geography, gender and age. The branches of the parties play a crucial role in recruiting new candidates and thus new political representatives for the regions. Although the degree of preferential voting varies in the three types of Norwegian elections, the parties' lists are still decisive for who can be elected and also to a great extent who is elected.

#### 13.1.1 Requirements concerning the list proposals

##### *Submission and withdrawal of list proposals*

Section 6-1, subsection 1 of the Election Act states that to be approved a list proposal must be submitted by midday on 31 March of the election year. The list proposal must have been submitted to the *municipality* for municipal council elections and *the county authority* for parliamentary and county council elections. There is no requirement that the list proposal must have been submitted to the Electoral Committee or the County Electoral Committee by the deadline.

It is the original list proposals with signatures, etc., that must be submitted within the deadline. However, the Ministry has concluded that it is sufficient for the list proposal to be submitted by email within the deadline, as long as the list with the original signatures is sent by post or delivered in another way immediately.

The representation committee can withdraw a submitted list proposal. This must take place by midday on 20 April of the election year, cf. section 6-5 of the Election Act.

##### *Number of signatures*

Section 6-3 of the Election Act states that to be approved, a list proposal shall be signed by a certain number of people with the right to vote in the constituency. A person can only sign one list proposal at the same election, cf. section 6-6, subsection 4 of the Election Act.

There are more lenient signature requirements for registered political parties who at the previous parliamentary election received at least 500 votes in 1 constituency or at least 5,000 votes in the whole country. At parliamentary, county and municipal council elections, the parties can submit list proposals with signatures from only 2 committee members of the executive committee of the

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<sup>405</sup>Act no. 102 of 17 June 2005 on certain aspects relating to the political parties (the Political Parties Act).

<sup>406</sup>Regulation no. 107 of 5 February 2014 on certain aspects relating to the political parties (the Political Parties Regulations).

party's local branch responsible for the constituency to which the list applies, cf. section 6-3, subsection 1 of the Election Act. These rules also apply to parties registered in the Register of Political Parties after the last parliamentary election, as they have recently gathered 5,000 signatures to be registered.

When it comes to list proposals from registered political parties that have not received support as stated above, the rules differ for parliamentary, municipal and county council elections respectively. The same applies to groups that are not registered as a political party.

At parliamentary and county council elections, the list proposal must be signed by at least 500 people with the right to vote in the constituency at the election concerned, cf. section 6-3, subsection 2, letter a) of the Election Act.

At municipal council elections, the list proposal shall be signed by such number of persons entitled to vote in the municipality as corresponds to 2 per cent of the number of inhabitants entitled to vote at the last municipal council election, cf. section 6-3, subsection 2, letter b). As a minimum, the list proposal shall be signed by as many persons entitled to vote in the municipality as the number of members elected to the municipal council. However, signatures from 300 people will be a significant number.

#### *The heading of the list proposal*

The list proposal must have a heading showing which party or group is behind the list proposal, cf. section 6-1, subsection 2, letter b) of the Election Act. The list proposers cannot use names that may be confused with the name of a registered political party, a registered Sami political entity or the heading of other list proposals in the constituency. Registered political parties must use the party's registered name in the list heading. However, they can still choose whether they want to write the name in Bokmål or Nynorsk, cf. section 12 of the Election Regulations.

If several registered political parties put forward a joint list, all the registered names of the parties must be in the list heading. Similarly, the names of registered parties must be in the list heading when the party puts forward lists together with a group that is not a registered political party.

#### *Information about the candidates*

The list proposal must specify which candidates are standing for election, cf. section 6-1, subsection 2, letter c) of the Election Act. The proposal shall include the first name(s), family name and year of birth of the candidates. The list proposers can also add information about the candidates' occupation or residence. This shall be done if it is necessary to avoid confusion about the candidates on the list. The list proposal must contain the same information about all the candidates, so that if information about the candidates' occupation and/or residence is added to the list proposal, this shall be done for all the candidates, cf. section 17, subsection 1 of the Election Regulations.

#### *Number of candidates*

Section 6-2 of the Election act states how many candidate names shall and can be listed on the list proposal.

At parliamentary elections, the list proposal shall contain as many candidates as the number of representatives to be elected from the constituency. The proposal may also contain up to six other candidates.

At county and municipal council elections, the list proposal shall contain at least seven candidates and a maximum number of candidates corresponding to the number of members who shall be returned to the county or municipal council, with an addition of up to six other candidates.

### *Representatives and representation committees*

Section 6-1, subsection 2, letter e) of the Election Act states that all list proposals must contain the name of a representative and an alternate among those who have signed the proposal. These have the power to negotiate with the Electoral Committee and the County Electoral Committee with respect to changes to the list proposal. The list proposal should also contain the names of the person who will function as a representation committee for the proposal. The representative committee has the authority to withdraw the list proposal.

Section 14 of the Election Regulations regulates who is the representative and representation committee for the list proposal. If the list proposal is submitted by a registered political party and it has been signed by two members of the executive committee in the local branch of the party, these are considered to be the representative and alternate representative respectively. The executive committee of the local branch of the party will then be the representative committee.

The following applies to other list proposals: If the list proposal does not specify who the representative, alternate and representative committee are, the top two signatories on the list proposal are the representative and alternate representative. The top five signatories are the representation committee and the next three are alternate representatives.

### *Printed on paper*

Section 13, subsection 1 of the Election Regulations states that signatures collected under section 6-3, subsection 2 of the Election Act shall be written on paper. This is also concluded in the preparatory works of the Election Act.<sup>407</sup> The provision does not apply to registered political parties that submit list proposals according to section 6-3, subsection 1 of the Election Act. They are allowed to submit electronic signatures.

### **13.1.2 The Political Parties Act and associated regulations**

The Political Parties Act has provisions that are also important for putting forward lists at elections. Chapter 2 of the Political Parties Act has provisions on the registration of political parties. These provisions were previously in Chapter 5, but were moved to the Political Parties Act in 2005.<sup>408</sup>

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<sup>407</sup>Ot.prp. no. 45 (2001–2002) (white paper) page 168.

<sup>408</sup>The transfer of these provisions from the Election Act to the Political Parties Act is referred to in the preparatory works of the Political Parties Act, cf. Ot.prp. no. 84 (2004–2005): “The Ministry considers the proposal to move the party registration system from Chapter 5 of the Election Act to the new Political Parties Act as a proposal of a legal and administrative nature, without

Section 3 of the Political Parties Act lays down conditions for the registration of party names in the Register of Political Parties. It must not be possible to confuse the name of the party with another registered party or a Sami political entity registered with the Sami Parliament. The party must attach independently signed declarations from at least 5,000 people who are eligible to vote at parliamentary elections if they want the party name registered, cf., section 3, subsection 2, letter d). These signatures must be written on paper.

By 2 January in the election year, all registered parties must submit updated information or confirm the information already registered in the Register of Political Parties, about who are members of the party's executive bodies, cf. section 6, subsection 2 of the Political Parties Act. The party's executive body has an important role in case of doubt about who can represent a registered political party locally.

If parties registered in the Register of Political Parties do not put forward a list in any constituency at two subsequent parliamentary elections, the registration will cease and the name of the party will then be deleted from the Register of Political Parties, cf. section 5, subsection 1 of the Political Parties Act. The name of the party is then free to be used by others.

The electoral authorities shall use the information registered in the Register of Political Parties as of 31 March in the election year when preparing elections, cf. section 1-5, subsection 2 of the Political Parties Regulations.

### **13.1.3 The Electoral Committee and the County Electoral Committee's handling of the list proposals**

#### *Handling and checking the list proposals*

The Electoral Committee and the County Electoral Committee shall check that the list proposals meet the requirements of the law. This means checking the heading, that the candidates are eligible and have not been listed on several list proposals, that the list proposers, i.e. those who have signed the list proposal, have the right to vote in the constituency and that they have not signed several list proposals.

The Electoral Committee and the County Electoral Committee put the list proposals on display for public scrutiny as they come in, but it has not been regulated further how this will happen. The displayed list proposals shall not contain the names of those who have signed the list proposal. This is considered information about "someone's circumstances" and is subject to confidentiality. However, information about who is the representative for the list proposal is public, cf. section 13, subsection 2 of the Election Regulations.

The electoral authorities shall also inform the candidates on the list proposals that they have been listed on the list proposal and inform them of the right to apply for an exemption, cf., section 6-6, subsection 5 of the Election Act. It is the Electoral Committee or the County Electoral Committee

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this in any way being said to have an impact on the rights or obligations of the parties – or otherwise implies any material amendments to applicable law.”

that sets the deadline for when a declaration of exemption must be submitted, cf. section 3-4, subsection 2 of the Election Act. It has not been determined how long this deadline will be.

#### *Correction of the list proposals*

There is no absolute requirement that the list proposal must meet all the requirements at the time of submission. This follows implicitly from section 6-6, subsection 3 of the Election Act, which states that if a list proposal at the time its submission does not satisfy the statutory requirements, the electoral authorities shall through negotiations with the representatives of the list proposal seek to bring the proposal in accordance with the law. The provision requires that the list proposers can make changes after the list has been submitted. However, the submitted list proposal must meet certain minimum requirements. It must be stated that there is a proposed electoral list, contain the name of at least one candidate and be signed by at least one signatory to the list proposal who is eligible to vote in the constituency.<sup>409</sup>

Section 15, subsection 1 of the Election Regulations states that when the deadline for submission has expired, the list proposers can only make changes to the list proposal that are necessary to bring it in compliance with the requirements of the Election Act. However, there is the opportunity to put a new candidate on the list proposal if a candidate is deleted because the person concerned is excluded from election or exempt, cf. the subsection 2. Alternatively, those candidates listed below the empty place can move up a place, while a new name is added to the bottom of the list.

#### *Approval of electoral lists*

The Electoral Committee and the County Electoral Committee shall decide no later than 1 June of the election year whether the submitted list proposals shall be approved, cf. section 6-6, subsection 2 of the Election Act. Once approved, the electoral authorities put the official electoral lists on display for public scrutiny. The electoral authorities shall also announce the headings of the approved lists and provide information about where they are on display, cf. section 6-7 of the Election Act.

Section 18, subsection 1 of the Election Regulations states that once the lists have been approved, the representatives shall be informed and be sent a copy of the approved list. If a list proposal is not approved, the representatives for the list proposal shall be notified as soon as possible and informed about the right of and conditions for appeal, cf. the subsection 2.

#### **13.1.4 Too few names on the lists – new election result in the period**

##### *Parliamentary elections*

Under section 14-1, subsection 1 of the Election Act, the County Electoral Committee shall, on the orders of the Storting, perform a new determination of the election result if a member's seat in the Storting remains vacant. However, no rules have been established for what will happen if it is not

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<sup>409</sup>Arnold Dybsjord, "Lov om kommunevalg av 10. juli 1925 med endringslover av 1. juni 1928, 1. mai 1931, 24. juni 1932, 30. april 1937 og 5. mai 1939" (Oslo: Tanum, 1945), page 125. Oddvar Overå, Steinar Dalbakk, and Jan-Ivar Pavestad, Valglovgivningen: valg til storting, fylkesting, kommunestyre og sameting (Oslo: Kommuneforlaget, 1997), pages 110–111.

possible to perform a new determination of the election result because there are no more candidates on the list, i.e. if the list has run out of names of candidates.

The Election Act also has no provisions on what happens if an electoral list at parliamentary elections gains more seats than there are candidates on the list. Today's requirements for the number of names on the lists mean that such a situation cannot arise.

### *Municipal and county council elections*

Unlike parliamentary elections, the Election has provisions for municipal and county council elections on what happens if an electoral list gains more seats than there are eligible candidates on the list. According to section 11-10, subsection 4 and section 11-12, subsection 4, in such cases, the surplus seats are allocated to the remaining lists.

The Act also has provisions on determining a new election result if a representative seat is left vacant. According to section 14-2, subsection 1, the chairman of the county council or the chairman of the municipal council shall ensure that in such cases, the County Electoral Committee or the Electoral Committee shall perform a determination of a new election result. Furthermore, the subsection 2 states that the County Electoral Committee or the Electoral Committee shall also perform a determination of a new election result when an alternate's seat has become vacant, if the chairman of the county council or the chairman of the municipal council deems this necessary.

Rules have also been laid down on how the alternates shall be selected if this cannot be done by performing a determination of a new election result to the municipal and county council. According to section 14-2, subsection 3, the party or group may itself choose the person who shall take over the vacant seat if the number of alternates has become insufficient during the period. The party or group then informs the County Electoral Committee or the Electoral Committee, who selects the person concerned as an alternate if the eligibility conditions have been met.

## **13.2 Nordic law**

### **13.2.1 Sweden**

Like Norway, to put forward a list, Sweden requires a certain number of signatures on the list proposals. Chapter 2, section 3 of the Swedish Elections Act states that for election to the Swedish Parliament, if a party is not represented in the body that the list proposal concerns, the party must document support from at least 1,500 people who are entitled to vote in the whole of Sweden. In the case of *county or municipal council elections*, support must be documented from at least 100 and 50 people respectively who are entitled to vote in the county council or municipality to which the notification relates.

In Sweden, the Swedish Elections Act has no requirement regarding the number of candidate names on the lists, neither a minimum nor maximum. However, there are provisions in the Act that the candidates must agree to be on the lists. At what point the candidates shall agree, depends on how the party compiles the electoral lists. If the party puts forward a so-called locked list, where the candidate names are printed on the ballots (thus preventing the voters from nominating other names than the party wants to be on the ballot), the candidate must submit their consent in advance to stand on the list. If a party puts forward an "open" list where only the name of the party is on the ballot (and where the voters can add the name of the desired candidate to the electoral list),

the must candidate must no later than two days before Election Day have given his consent to be a candidate for that party, cf. Chapter 2, sections 9 and 20 of the Swedish Elections Act.

### 13.2.2 Denmark

In Denmark, there is also a requirement for a certain number of signatures to put forward a list at elections. Section 19 of the Local and Regional Government Elections Act states that a list of candidates at local elections must be signed by at least 25 voters in the municipality as supporters. On the other hand, at county council elections in the municipalities of Århus, Odense and Ålborg, the minimum requirement is doubled to 50 and at elections in the City of Copenhagen, the requirement is set at 150. At regional elections, at least 50 voters in the region must sign the candidate proposal. The electoral authorities exempt lists of candidates that were represented in the body at the previous election from the requirement if they so request, cf. subsection 4.

Section 24 of the Local and Regional Elections Act also states that the lists of candidates must be signed by the independent candidates, which in practice means that the candidates agree to be on the listed as it is submitted.

At parliamentary elections, parties that were elected to the Danish Parliament (Folketinget) at the last election may put forward a list without collecting signatures. For everyone else, the requirement for putting forward a list as a political party is that the party must collect 1/175 of all valid votes cast at the last parliamentary election (equivalent to around 20,000 signatures in 2019) under section 12 of the Parliamentary Election Act. This corresponds to how many votes are needed to gain one seat in Folketinget. The requirement is thus much stricter than the requirement in Norway for parties that are not already represented in the Folketinget. The reason is to prevent rogue or small parties that do not have a real chance of gaining a seat at the election from putting forward lists. It is also possible for candidates to stand for election outside a party. The person concerned must then have been recommended by at least 150 voters.

#### **Box 13.1 Signatures for putting forward lists at elections in Denmark**

Collecting signatures to support a party's chances of standing for election takes place through a website operated by the Ministry of Social Affairs and the Interior. The parties collect the email addresses or national identity numbers of supporters and register them on the website. These supporters then receive an email with a link to a website where they can log in with a so-called NemID or a letter they can sign on paper.

NemID is a secure method of login on the internet used to log in for online banking and public services. These emails and letters are only sent out after one week, see section 5, subsection 2 of the voter declaration form. It is only possible to support one party at a time and the voter declarations last for 18 months unless they are withdrawn.



## 13.3 The Commission's evaluation

### 13.3.1 The requirement for the number of names of candidates on the list

#### 13.3.1.1 *Parliamentary elections*

The Commission points out that the requirement for the number of names on the electoral list is not only a technical formality for filling seats gained at the election, but should also reflect the ambition and a goal of a vibrant and active democracy. An electoral list should show the diversity and breadth of citizens who get involved, organise themselves and are willing to do a job to ensure an active democracy. The voters should also feel represented through the breadth of candidates on the lists.

It is primarily the parties' responsibility to have enough candidate names on the lists to fill the seats they are allocated in the Storting. Nevertheless, some considerations support retaining a minimum requirement for the number of candidate names. The relationship between the voters and the candidates is a key aspect here. This supports that the voters have some assurance that the list contains enough names to designate the representatives and alternates for the list at the election.

However, the Commission finds that the current minimum requirement is too strict and should be changed. The current requirement affects small parties in particular, which find it difficult to fill the list with candidate names in large constituencies in particular. The requirement that the list proposal shall contain as many candidates as representatives to be elected to the Storting from the constituency can also be perceived to be unnecessarily high: There are only a few, if any, parties that will realistically be able to expect to have so many representatives and alternates elected.

The Commission has considered whether a minimum requirement should be set that is equal to the number of seats the smallest constituency has. It will then be up to the parties themselves to ensure that they have a sufficient number of names on lists in the larger constituencies. If the current constituency structure is maintained, it will result in the minimum requirement being set at four candidates. If there is a new constituency structure as a result of a new county structure, the smallest constituencies will have nine seats. This means that the minimum requirement is set at nine candidates.

However, the Commission has concluded that it is better to use a minimum requirement that corresponds to the number of candidates required to appoint representatives and alternates if the party has at least one candidate elected to the Storting. Since according to current law, as many alternates shall be elected as the list gains representatives, with an addition of three, it will mean that a minimum requirement should be set at five candidates. It will also be the parties' responsibility to ensure that they have enough names on the list to fill the allocated seats. The parties will also have a strong self-interest of filling their allocated seats.

A minimum limit of five candidates may be perceived as somewhat low in the larger constituencies, but the Commission finds that the most important consideration that must be followed is that anyone who wants to put forward a list, shall have the opportunity to do so – regardless of the size of the party/group or where in the country it put forwards a list. The Commission finds that it should first and foremost be the parties' responsibility to ensure that the party's list has a sufficient number of names and proposes that the minimum requirement should be set at five candidates.

*Members Grimsrud, Holmås, Nygreen and Strømmen* refer to their remark in section 6.3.2, where these members also want to raise the minimum requirement for the number of democratically elected representatives on the municipal and county councils. This desire has been based on an objective to strengthen an active and vibrant democracy by giving more citizens political experience and balancing a growing administration.

### **13.3.1.2 County council elections**

Today, the Election Act requires that a list proposal at county council elections shall have at least seven candidates and maximum as many names as corresponds to the number of representatives to be elected to the county council, with an addition of up to six other names.

The Commission finds there are similar arguments for retaining a minimum requirement at county council elections as at parliamentary elections. At county council elections it should also be the parties that have the primary responsibility for ensuring a sufficient number of names on the lists so that the allocation of seats follows the election result. The minimum requirement must be low enough for all serious groups and parties that want to put forward a list to have the opportunity to do so, but it is also important to take the voters into account when drafting the regulations.

The Commission finds that the current requirements, which affect different party groups very differently, depending on whether the party puts forwards a list in a large or a small county, are problematic and should be amended. The Commission points out that there is a greater probability that situations will arise where parties or groups that put forward lists may run out of candidate names on the list during the election period at county council elections than at parliamentary elections. At county council elections, the candidates lose eligibility if they move out of the county. It is also easier to obtain exemptions from local political appointments than from the parliamentary office. Thus, there is a greater risk that more candidates will resign from office during the period than at parliamentary elections. In addition, the various parties will often be represented by more representatives on the county council than they will be from the various constituencies at parliamentary elections. This means that it is more important to have more names on the lists.

Based on the above, the Commission finds that a differentiated requirement should be established for the number of candidate names on the list for the county council. An alternative is to link it to how many members are to be elected to the county council. The county councils are free to determine the number of members themselves, as long as they comply with the minimum requirements of the Local Government Act.

The Commission proposes changing the minimum requirement for the number of members on the county council. The proposal means that county authorities with a population that does not exceed 300,000 inhabitants shall have at least 35 members, county authorities with over 300,000, but not over 500,000 inhabitants, shall have at least 43 members, while the largest county authorities (over 500,000 inhabitants) shall have at least 51 members.

*The Commission* wants to differentiate the requirement for the number of candidates on the list proposals based on the number of members of the county council and proposes that at elections to county councils that have 35–41 members, the list proposal shall have at least 5 candidates on the list. The requirement is then increased by 2 names so that there must be at least 7 candidates

when the county council has 43–49 members and at least 9 candidates when the county council has at least 51 members.

*Members Grimsrud, Holmås, Nygreen and Strømmen* refer to their remark in section 6.3.2, where these members also want to raise the minimum requirement for the number of elected representatives on municipal and county councils, based on an objective to strengthen an active and vibrant democracy by giving more citizens political experience and balance a growing administration.

### **13.3.1.3 Municipal council elections**

The Election Act currently sets the same requirements for the number of candidate names on the list proposal at municipal council election as at county council elections. It shall have at least seven names and maximum as many names as corresponds to the number of representatives to be elected to the municipal council with an addition of up to six other names.

The Commission finds that there are good arguments for retaining a minimum requirement, but that at municipal council elections it is also primarily the parties' responsibility to ensure a sufficient number of names on the lists so that they have enough names when the seats are allocated.

The Commission also finds that it is also natural at municipal council elections to be based on how many members shall be elected to the body. As with the county council, the municipal councils are free to choose the number of members themselves, as long as they comply with the minimum requirements of the Local Government Act. Section 5-5, subsection 2, of the Local Government Act states that the minimum number of members of the municipal council must be at least 43 for the largest municipalities (over 100,000 inhabitants), while for the smallest municipalities (not over 5,000 inhabitants) the minimum requirement is 11.

Following the merger of the municipalities, there are a few larger municipalities and thus also larger municipal councils. For example, the new municipality of Ålesund has 77 representatives and the new municipality of Kristiansand has 71 representatives. On the other end of the scale, there will be municipal councils that are still very small, such as Utsira with only 11 representatives (which is the minimum requirement).

The Commission finds that the significant differences between the number of members of the municipal councils speak in favour of differentiating the requirement for the number of candidate names on the lists at municipal council elections. The requirement for the number of candidates should depend on how many members there are on the municipal council.

The Commission finds that a requirement of at least 5 candidates should be set for municipalities with municipal councils that have up to 33 members. The requirement should be increased to 6 candidates for municipal councils with 35–41 members and 7 for municipal councils with 43 or more members. Such a gradual increase in the requirement for the number of candidates on the list proposals will increase the likelihood that the parties and the groups have a sufficient number of candidates on the lists to be able to fill the seats they gain at the election. At the same time, the minimum requirements will be low enough so that all the groups and parties that want to put forward a list have the opportunity to do so.

*Members Grimsrud, Holmås, Nygreen and Strømmen* also refer to their remark in section 6.3.2, where these members want to raise the minimum requirement for the number of democratically

elected representatives on municipal and county councils based on an objective to strengthen an active and vibrant democracy by giving more citizens political experience and balance a growing administration.

### **13.3.2 Too few names on the lists – new election result in the period**

#### ***13.3.2.1 Parliamentary elections***

If the requirement for the number of candidate names on the lists is reduced in line with the Commission's proposal, theoretically, a situation may arise where a list has more representatives elected to the Storting than it has candidates. Some of the representatives may also leave the Storting for various reasons during the period. If the list then has too few candidates, a situation may arise where it is not possible to replace the representatives who resign from the Storting.

In the absence of regulations that regulate such a situation, the consequence will be that one or more seats will remain vacant, i.e. there will be so-called empty seats in the Storting. However, the Commission assumes that such a situation is very highly unlikely, as there are strict requirements for the duty to accept election and since the parties will have strong incentives to ensure that there are a sufficient number of candidates. Therefore, the Commission finds that there is no need to regulate this separately in the Election Act and points out that it is the responsibility of the parties to ensure that they have a sufficient number of candidate and names and alternates on the list to avoid running out of candidate names during seat allocation. If the party does not have enough names on the list to fill the seats it is allocated in the Storting, it must be the consequences itself. The Commission finds that a party that runs out of names on the list must accept that there will be an empty seat in the Storting for this party. In the opinion of the Commission, such an arrangement will be more in line with the voters' preferences than that the seat is allocated to another party.

The Commission also does not want to formulate new regulations ensuring that a party avoids empty seats during the parliamentary period, if all the candidates on the list should lose eligibility or be exempted from the duty to accept election. However, should such a situation arise, the Commission finds there should be an empty seat in the Storting.

#### ***13.3.2.2 Municipal and county council elections***

The Election Act has provisions on what happens if a list at municipal or county council elections gains more seats than there are candidates on the list. In such a case, the remaining seats are distributed among the other lists. In this way, it is ensured that all the seats are assigned to a representative (avoiding "empty" seats). The Commission finds that these provisions should be continued.

At municipal and county council elections, there is a much greater chance that a representative loses eligibility or is granted exemption from office than at parliamentary elections. Therefore, the Commission finds that the current rules ensuring that a party avoids empty seats during the period or that the list does not have a sufficient number of alternates should be continued.

This means that the rules will be different at parliamentary elections and municipal and county council elections. The Commission finds this can be justified by the fact that there a greater likelihood that a seat will be left empty at local elections than at parliamentary elections, and that such

rules will help those that put forward the list proposals do their utmost to prevent the list from running out of candidates.

### **13.3.3 Independent candidates**

The Commission has considered whether it should be possible to stand as an independent candidate.

The Commission points out that OSCE has previously pointed out that it is not possible to stand for election as an independent candidate in Norway and that this should be considered.<sup>410</sup> As a basis for the recommendation to allow independent candidates, OSCE has referred to Article 7.5 of the so-called Copenhagen Document from 1990.<sup>411</sup> This is a non-binding declaration by the member states of OSCE which enshrines certain principles of democracy and the rule of law. However, the Commission would like to point out that the wording of Article 7.5 does not require the member states to allow independent candidates in addition to electoral lists.<sup>412</sup> No international electoral law standards require the member states to allow independent candidates to stand for election.

In the opinion of the Commission, standing as an independent candidate will not fit in with the Norwegian electoral system, which is based on party lists and which sets a requirement for the number of candidates on the list proposals. The minimum requirement for the number of candidates also ensures that alternates are elected.

The Commission also points out that there are low formal thresholds for standing for election in Norway. The Election Act does not require that a candidate must be or register as a member of a political party, among other things. The Commission finds that the Norwegian system takes into account that anyone who wishes to do so can stand as a candidate on a list. The Commission finds that there are more negative aspects of allowing independent candidates to stand for election than positive aspects, and therefore, the Commission does not want to allow independent candidates to stand for election.

### **13.3.4 The requirement for handwritten signatures on paper**

The Commission finds that the time is ripe to change the current rules that signatures must be written on paper. It must be possible to collect signatures on list proposals electronically and it

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<sup>410</sup>OSCE has notified the Norwegian electoral authorities that “The Election Act should be amended to provide a possibility for independent candidates to stand for elections, in line with OSCE commitments”. “Norway Parliamentary Elections 9 September 2013”, OSCE/ODIHR Election Assessment Mission Report (Warszawa: The Organisation for Security and Cooperation in Europe, 2013), page 4.

<sup>411</sup>“Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Csece” (Conference on Security and Co-operation in Europe (CSCE), 1990).

<sup>412</sup>(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will [...] (7.5) – respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”. See “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”.

must be possible to submit them to the municipality/county authority electronically. This will make it easier to collect signatures. It will also be easier for the electoral authorities to process them as they do not have to decipher different handwriting on paper.

Today, many documents are signed electronically. There are also public websites where signatures are collected. Among other things, the Ministry of Local Government and Modernisation operates a website (Minsak.no), where individuals can submit proposals for citizens' initiatives and collect signatures in support of their cause. If a matter has significant support, the municipal council must consider it.

The Commission finds it is important to establish available digital services as long as the security of such a system is satisfactory. However, the Commission points out that such an amendment to the regulations will change the possibility of verification. With handwritten signatures, it is to some extent possible to distinguish signatures from each other (even if there is no guarantee that tampering has not taken place). If the requirement to sign on paper is removed, the use of electronic signatures must be regulated in a way that ensures that the signatures collected are authentic. The Commission finds that the more detailed provisions on the design of an electronic signature system should be laid down in regulations.

Besides being able to collect signatures electronically, the list proposers should still be able to collect signatures on paper if they so wish.

If the requirement for handwritten signatures on paper is removed, the Commission finds that the requirement of handwritten signatures on paper for the collection of declarations to register a party should also be removed. The Political Parties Act should be amended in accordance with this.

Currently, the consent of the candidates is not required to be listed on a list proposal in Norway. Pursuant to section 6-6, subsection 5 of the Election Act, the electoral authorities shall inform all candidates on the list proposals that they have been listed on the list proposal and of their right to apply for an exemption.

The current system with no consent requirement may seem cumbersome as the electoral authorities must contact each person on the list and inform them that they are on the list and of the possibility to request exemption. Nevertheless, the Commission finds that it must still be the responsibility of the electoral authorities to obtain consent from each candidate and will not place this responsibility on the parties.

To simplify this work, the Commission finds that the Ministry should consider developing a solution so that the people who sign the lists can submit the list proposal directly in EVA. This will make it easier to distribute information that a candidate has been placed on a list proposal and about the right to request an exemption. However, this will require that the parties also register the email address of the candidates.

### **13.3.5 The requirement for the number of signatures**

The Commission finds it is important to retain a minimum requirement for the number of signatures required to put forward a list. This will ensure that there is some degree of seriousness and voter turnout behind the list proposal, thereby limiting the possibility of very small parties or groups making lists in elections. The Commission finds that the same minimum requirement should apply

to the number of signatures required to put forward a list at parliamentary and county council elections.

### **13.3.5.1 Parliamentary and county council elections**

Today, parties and groups that at the previous election did not receive at least 500 votes in 1 constituency or at least 5,000 votes in the whole country, must collect signatures from at least 500 people voting in the constituency.<sup>413</sup> However, there are significant differences between the number of eligible voters in the various constituencies and therefore, the requirement has a different impact depending on which constituency the group or party put forwards a list.

The Commission finds that a minimum requirement for the number of signatures to be able to put forward a list at parliamentary and county council elections should be differentiated so that the requirement is calculated based on a proportion of the eligible voters in the constituency instead of being based on a fixed number. This will provide a fairer requirement for anyone who puts forward a list, regardless of the size of the constituency in which they put forward the list.

*The majority of the Commission (Anundsen, Christensen, Giertsen, Grimrud, Hagen, Hoff, Holmøyvik, Røhnebæk, Storberget, Strømmen, Tørresdal, Aardal and Aarnes)* finds that the requirement should be set at one per cent of the eligible voters at the last election. In practice, this will increase the requirement for the number of signatures. These members point out that the Venice Commission in “Code of Good Practice in Electoral Matters” recommends that the law does not require the list proposals to have signatures from more than one per cent of the voters in the constituency concerned.<sup>414</sup> The reason for this is to ensure that the law does not prevent any parties or candidates from standing for election.

*The minority of the Commission (Holmås, Høgestøl, Nygreen, Stokstad and Aatlo)* finds the requirement should instead be set at 0.5 per cent of the eligible voters at the last election. This will also lead to an increase from the current requirements for most constituencies, but will still ensure that parties and groups that want to put forward lists have the opportunity to achieve the requirement without excessive costs.

### **13.3.5.2 Municipal council elections**

The Commission finds that the requirement for the number of signatures required to put forward a list at municipal council elections should also be changed. Today, the list proposal shall, as a general rule, be signed by a number of people with the right to vote in the municipality, which corresponds to 2 per cent of the number of residents entitled to vote at the last municipal council election. As a minimum, the list proposal shall be signed by as many persons entitled to vote in the

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<sup>413</sup>For parties that have achieved at least 500 votes in 1 constituency or at least 5,000 votes nationwide, it is sufficient that the list has been signed by 2 members of the executive committee of the local branch responsible for the constituency to which the list proposal applies.

<sup>414</sup>“The law should not require collection of the signatures of more than 1% of voters in the constituency concerned.” “Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report” (Venice: European Commission For Democracy Through Law (The Venice Commission), 2002), CDL-AD(2002)023rev2-cor.

municipality as the number of members elected to the municipal council. However, signatures from 300 people will be a sufficient number.

The requirement impacts the parties very differently based on which in which municipality they put forward the list. Norway is a country with many small municipalities and there are municipalities with only a few hundred voters. There are also municipalities with several hundred thousand voters.

According to the Commission's evaluation, at least one per cent of the eligible voters in the municipality should sign the list proposal. This will also be more in line with the recommendations of the Venice Commission. The one per cent requirement should apply to municipalities regardless of size, including very small municipalities. The Commission finds that there should not be a requirement that a list proposal shall be signed by at least as many eligible voters in the municipality as the number of members elected to the municipal council, as is the requirement today. Such a requirement will mean that it becomes proportionately much more difficult to put forward lists in the smallest municipalities.

In larger municipalities, such as Oslo or Bergen, a requirement of signatures from 1 per cent of the eligible voters will mean that very many must sign the list proposal. In Oslo, such a requirement will mean that the list proposers must collect around 5,000 signatures. The Commission finds a requirement for so many signatures at municipal council elections will make it difficult to put forward a list. Therefore, the Commission proposes setting a fixed upper limit for how many signatures will always be sufficient for putting forward a list proposal.

However, the Commission is divided on the question of what the requirement should be set at. *The majority of the Commission (Anundsen, Christensen, Giertsen, Hagen, Hoff, Holmøyvik, Røhnebæk, Storberget, Tørresdal, Aardal and Aarnes)* finds that 1,000 signatures should be sufficient. *The minority of the Commission (Grimsrud, Holmås, Høgestøl, Nygreen, Stokstad, Strømmen and Aatlo)* finds the current requirement where 300 signatures are sufficient, should be continued.

### **13.3.6 The requirement for the number of signatures from registered political parties**

For parties including on the Register of Political Parties, which at the last parliamentary election received at least 500 votes in one constituency or at least 5,000 votes in the whole country, it is sufficient that the list proposal has been signed by 2 members of the executive committee of the local branch responsible for the constituency to which the list applies. The Commission points out that setting a requirement to come under these rules that the party gained specific support among the voters at the last parliamentary election, helps to ensure that there is some degree of voter turnout behind parties that put forward lists. This means that there shall be a threshold for putting forward lists and that being included on the Register of Political Parties does not automatically give the right to exemption from the requirement to collect signatures. There are several relative small parties on the Register of Political Parties that at each election must collect signatures because they do not receive a sufficient number of votes.<sup>415</sup>

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<sup>415</sup>The Communist Party of Norway received a total of 309 votes, while the Social Party received 104 votes at the 2017 election.



The Commission finds there should still be a requirement that a registered political party gains a certain amount of support at the last parliamentary election to be able to put forward a list with signatures from only 2 members of the executive committee of the party's local branch in the constituency. However, in the opinion of the Commission, there should be a common limit for how many votes the party must have received to come under the more lenient requirements. This has to do with the fact that the various constituencies vary greatly in size. Therefore, the Commission proposes that only registered political parties that at the last election received at least 5,000 votes in total throughout the country should be able to put forward lists with signatures from only 2 members of the executive committee of the party's local branch in the constituency. This will ensure that the parties are treated equally regardless of where in the country they receive votes. At the same time, the change will make it harder for small parties with support concentrated in one or a few constituencies to come under these provisions.

### **13.3.7 The number of signatures required to register a political party**

The Commission finds that the Political Party Act should also be amended. As a requirement for registering the name of a political party on the Register of Political Parties, the Political Parties Act states that the application must be accompanied by a declaration from at least 5,000 people with the right to vote at parliamentary elections if they want the name of the political party to be registered. The Commission proposes amending this requirement to signatures from at least 10,000 people with the right to vote at parliamentary elections. The Commission refers to its proposal to allow the signatures to be collected electronically so that it is no longer required that the signatures shall be written on paper, cf. section 1-1, subsection 3 of the Political Parties Regulations.

## 14 Rules of order

### 14.1 Applicable law

The Election Act has provisions prohibiting canvassing both during the advance voting, cf. section 8-5 and at the election proceedings, cf. section 9-4. For example, canvassing means campaigning in the form of stands, etc. This includes oral and written expressions of opinion, such as hanging up placards or handing out brochures.

During the advance voting period, canvassing is not permitted in the room where the advance voting takes place.

The ban on canvassing at the election proceedings is more extensive. Canvassing is then not permitted in the polling station and in the rooms the voter must pass to reach the polling station. However, the ban does not include the area outside the building where the polling station is located. Thus there is no ban on handing out ballot papers in this area.<sup>416</sup>

Section 9-4 of the Election Act lays down certain rules relating to public order on how the election proceedings shall be conducted. According to subsection 1, at the polling station and in the rooms the voter must pass through to reach the polling station, it is not permitted to engage in canvassing or to perform any actions that may disturb or prevent a normal implementation of the polling. In this area, it is also not permitted for unauthorised persons to keep check of who comes to vote or to conduct voter surveys, etc.

The chairman or the vice chairman of the polling committee may, if necessary, remove any person behaving in a manner contrary to the provisions of this section, cf. the subsection 3.

There are no similar rules of public order for the advance voting period.

### 14.2 Nordic law

According to the Swedish Elections Act, it is not permitted to engage in “propaganda” or other activity intended to influence or impede the voters in their polling, either at the polling station or in “a room adjacent to this”, cf. Chapter 8, section 3. In Sweden, the canvassing rules are the same during the advance voting period and at the election proceedings.

In Denmark, almost the same rules apply to canvassing during the advance voting period as at the election proceedings. During the advance voting period, the returning officer is responsible for ensuring that the voters are not subjected to canvassing or any other form of “electioneering close to the postal voting process”, cf. section 61, subsection 8 of the Parliamentary Election Act of Denmark.<sup>417</sup>

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<sup>416</sup>Handing out ballot papers means that candidates from the various parties stand outside the polling station and hand out ballot papers to encourage voters to vote in a certain way. This is mainly a tradition in Oslo, and there have been some debate on whether this should be banned.

<sup>417</sup>There are similar provision for local elections in the Local and Regional Elections Act.

At the election proceedings, the Electoral Committees are responsible for ensuring the same: that the voters are not subjected to canvassing or any form of “electioneering” either at the polling stations or in other places “in the immediate vicinity”, cf. section 50.

Section 107 further determines that the Minister of Justice may lay down provisions “preventing electioneering from taking place in or fronting public roads or open spaces in disturbance of the peace”.

### **14.3 The Commission’s evaluation**

The Commission finds it is important that the Norwegian Election Act has provisions that shield the voters from unwanted interference or influence from politicians or others when voting. Such provisions also help ensure that the polling committee and the returning officers have control over what is happening inside the polling station.

The Commission points out that according to the wording, the term “canvassing” will include all forms of political influence at the polling station. This will apply to oral and written expressions of opinion, including placards and handing out brochures or lists.

During the advance voting period, there is currently only a ban on canvassing in the actual room where the voters cast their votes. This makes it possible to locate advance voting polling stations inside shopping malls, multipurpose buildings, service centres, libraries and other large public buildings where many people gather. Central electoral authorities are calling for the use of such premises to increase accessibility for the voters. The Commission points out that accessibility is a key consideration in the election process and finds it would be unfortunate to set restrictions that make it difficult to locate advance voting polling stations in such buildings.

When it comes to the question of how comprehensive the ban on canvassing should be on Election Day, *the majority of the Commission (Christensen, Giertsen, Hagen, Holmøyvik, Høgestøl, Røhnebæk, Stokstad, Storberget, Aardal and Aarnes)* only wants to prohibit canvassing in the actual room where the voters cast their votes. These members find this ban should apply to the entire voting period, i.e. from 1 July up to and including Election Day.

Under the current regulations, it is also forbidden at the election proceedings to conduct canvassing in the rooms the voters must pass through to reach the polling station. These members refer to the consideration of rule simplification and find it is unfortunate to have two different rules on electioneering for the advance voting period and at the election proceedings. This can lead to confusion and ambiguity among the election officials, the politicians and the voters. These members also point out that it is allowed to campaign throughout the election period, which suggests that there should not be different rules for where the campaigning is allowed.

These members understand that people handing out ballot papers can be perceived as intrusive and a nuisance to voters, but believe that as long as this takes place outside the polling station, there is no need to ban this. As with other kinds of canvassing, people who hand out ballot papers for political parties outside the polling station must be considered a natural part of the election campaign. Instead, these members would like to point out that the parties themselves must take action and ensure good internal guidelines for the people handing out ballots outside the polling station, so that they are not considered a nuisance or intrusive or create confusion for voters on their way into the polling station to vote.

*The minority of the Commission (Anundsen, Grimrud, Hoff, Holmås, Nygreen, Strømmen, Tørresdal and Aatlo)* finds the current provisions on canvassing are not comprehensive enough. These members find the ban on canvassing should be extended to the election proceedings. At the election proceedings, a ban on canvassing should not only include the room where the voters cast their votes, but also the rest of the area in proximity to the polling station. Such a ban would include the rooms the voter must pass through to reach the polling station and the outside area directly outside the building. These members argue that the voters are entitled to uninterrupted access to the polling station and that the area close to the polling station, like inside the polling station itself, should be neutral. The proposal from these members implies that handing out ballot papers will be prohibited in the area outside the polling station. These members do not propose changes for the advance voting period.

The Commission finds that the remaining current provisions, which shall ensure that the voters are not intruded upon at the election proceedings, should largely be continued. Rules that prevent any disturbance in the polling station are important. However, in the view of the Commission, the ban should be extended somewhat so that it is also prohibited to unduly disturb or hinder voters on their way into the room where they cast their votes. Furthermore, the Commission finds that such rules of order should apply to the entire voting period and not only at the election proceedings. The Commission proposes to continue that Chair or Deputy Chair of the polling committee can turn away any person or persons acting in violation of the rules of order at the election proceedings. The Commission finds that during advance voting, returning officers must also have this option. This could avoid disturbances and people causing trouble in the room where the voters cast their votes.

The Commission does not propose continuing a separate provision on the prohibition of voter surveys or similar questioning of the electorate. Such surveys should be considered against the ban on performing any actions at the polling station or in its immediate vicinity that may interfere with the election.

## 15 Identification

### 15.1 Applicable law

#### 15.1.1 Duty to provide proof of identity

Section 8-4, subsection 6 of the Election Act regulates the duty to provide proof of identity during the advance voting. Section 9-5, subsection 2 of the Election Act contains the corresponding regulation of the voting at the election day. A voter who is unknown to the returning officer must provide proof of identity. Thus, there is no absolute requirement to prove identity.

The Ministry has concluded that even though the Act only mentions returning officers, election officials at the polling station in question will be able to vouch for a voter's identity.

Section 8-4, subsection 6, second sentence of the Election Act regulates advance voting at institutions. Here, the voter's identity can also be verified by an employee who provides proof of his or her identity. The provision is particularly relevant when voting in health and care institutions and prisons. The reason for the exemption provision is that not everyone who resides in such institutions has identification papers available. The provision does not concern visitors to the institution.

#### 15.1.2 Identification requirements

Neither the Act nor the regulations provide further provisions on the specific types of identification that can be accepted. The preparatory works of the Act state that proof of identity must include a photo and name of the voter and that the returning officer must consider the identification presented by the voter in each case.<sup>418</sup>

In addition to the requirement that the proof of identity must contain the name and a photo of the voter, in the *Election Manual*, the Ministry states that the proof of identity must have "a certain official character" and show the voter's date of birth. Typical identification would include a bank card with photograph, driving licence or passport, but other types of photo identification may also be acceptable.

The Ministry wants to point out that it is important to show good judgment in deciding whether the identification offered is sufficient proof of the voter's identity. The essential point must be that if the identification provides a credible impression, the voter has fulfilled his or her obligation. Provided the returning officer sees that the correct person is present, the voter must be allowed to cast a vote. This should apply even if the identification is out of date. Even so, the returning officer must assess the "quality" of the identification in every case.<sup>419</sup>

### 15.2 The International Covenant on Civil and Political Rights

Article 25 of the International Covenant on Civil and Political Rights states that

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<sup>418</sup>Ot.prp. no. 24 (2006–2007).

<sup>419</sup>"Election Manual: Overview of the regulations that apply for conducting elections" (Ministry of Local Government and Modernisation, 2019), section 10.8.

[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions[...] [t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Based on this, an identification requirement must not be formulated in such a way that it becomes an unreasonable limitation in the right to vote.

### 15.3 Nordic law

In Sweden, unknown voters must prove their identity or “*strengthen their identity*” in other ways.<sup>420</sup> If a voter does not have proof of his or her identity, another person can verify the voter’s identity. The person that verifies another person’s identity must then provide proof of his or her identity.

In Denmark, the voters must bring with them their polling card and hand over this as well as providing their date of birth before they can vote. Voters who have forgotten their polling card will have a new one printed out. A voter may be asked to provide their name and address to check their identity and in some cases, a voter may also be asked to provide proof of identity.<sup>421</sup>

## 15.4 The recommendations of election observers and the Ministry’s follow-up

### 15.4.1 Election observation at the 2005 parliamentary election

The Norwegian Helsinki Committee invited international election observers to the 2005 parliamentary election. Up to 2007, the Election Act only contained a requirement that the returning officer was allowed to require that the voter provided proof of identity. The election observers found that a lack of an identification requirement could lead to election fraud and recommended that mandatory identification requirement was introduced.

The Ministry followed up with a proposal that a voter must prove his or her identity if the person concerned is unknown to the returning office, cf. Ot.prp. no. 24 (2006–2007). Here, the Ministry pointed out that the provisions on identification were practised differently and that while proof of identity was usually requested during the advance voting period, this was not so common on Election Day.

Furthermore, the Ministry considered whether requirements should be set regarding the types of identification that can be used and several consultative bodies thought it would be useful. However, the Ministry stated the following:

The Ministry is not sure whether such a rule is necessary. Particular during advance voting, unknown voters are already asked to provide proof of identity. The Ministry does not know of any problem in connection with the practice of this. To function as identification, the proof of identity must include the name and a photograph of the person. It is natural to ask for a passport, bank card with photo, driving licence or other identification issued by public authorities. If the voter does not have such identification, the Ministry finds that it would be too strict turn away the voter

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<sup>420</sup>The Sweden Election Act (2005:837), Chapter 7 section 9 and Chapter 8 sections 6 and 8.

<sup>421</sup>Section 47 of the Danish Parliamentary Elections Act.

if the person concerned has another type of identification that the returning officer would be able to accept following a specific evaluation. In this evaluation, it would be natural to emphasise the “quality” of the identification provided, for example, the type of lamination used. This may be decisive for how easy it would be to falsify the identification. Based on this, the Ministry has concluded that the regulations should state the types of identification that can be accepted.

The Ministry did not want the identification requirement to lead to voters without proof of identity not being allowed to vote. In the consultation paper, the Ministry proposed that voters who could not provide proof of identity could have their identity confirmed by another person who was over the age of 18 and who could provide proof of identity.

In the consultation process, there were several who were sceptical to the proposals, including the Norwegian Data Protection Authority. They pointed out that it would not prevent election fraud, as it only requires cooperation between two people. Based on the consultation process, the Ministry amended its proposal and removed the exemption provision.

#### **15.4.2 Election observation at the 2017 parliamentary election**

Election observers from OSCE observed the 2017 parliamentary election. They provided some recommendations for amendments to the regulations and procedures. Among other things, OSCE found that it should be clarified what is acceptable proof of identity at elections. They pointed out that newer bank cards do not contain a photo and thus cannot be used as proof of identity. OSCE requested that Norway consider extending or clarifying what is acceptable proof of identity.

In the feedback to the OSCE, the Ministry stated that they do not believe it is necessary to have a complete list of the acceptable identification certificates. The Ministry pointed out that other types of identification than passports and driving licenses can also be used as identification. What the identification requirement entails and what the returning officers must consider, are reviewed in the training sessions and have also been discussed in guides.

### **15.5 Current issues**

A survey conducted by the Norwegian Directorate of Elections following the 2017 election showed that 36 per cent of the municipalities have turned away voters because they did not provide proof of identity. The survey does not say how many such cases there are in each municipality, nor does it say why the voters did not provide proof of identity. It is conceivable that the voters were not aware that there is an identification requirement when voting or that the voters have forgotten their proof of identity at home.

However, providing proof of identity to be able to vote seems to be well known among the voters. Attention polls conducted by the City of Oslo show that 99 per cent of the voters knew that they must provide proof of their identity before they could vote.<sup>422</sup>

There may also be some voters who simply do not have proof of identity. Several banks no longer issue bank cards with a photo, which can mean that more people no longer have a photo ID. A

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<sup>422</sup>The Electoral Committee's Evaluation Report 2019: Municipal council and district council elections 2019 (Oslo: City of Oslo, 2019), page 42.

passport is the only official proof of identity for people without a driving licence. How many people who do not have a passport, driving licence or bank card with a photo is not known.

There will also be some people who do not have identification due to their life situation and financial circumstances. The Ministry has previously urged municipalities to provide information to the NAV (Norwegian Labour and Welfare Administration) and any other agencies in the municipality so that they can consider financial support toward identification or establish a scheme for issuing temporary free identification.

In 2015, the Storting passed a new Act relating to ID cards. The Act will offer the population a government-issued proof of identity which will be as reliable as a passport and more practical to use as identification. In the proposal for the new Act, the Ministry emphasised that the scheme of national ID cards is intended to be a service to the population and it should not lead to greater degree of identification obligation.

In the state budget for 2018, the Ministry of Justice wrote that the production of new passports and national ID cards with eID would at the end of 2018 or the beginning of 2019. However, further delays have been announced since then and the Norwegian Police Directorate assumes that national ID cards will be available in 2020.<sup>423</sup> The Commission finds nevertheless that national ID card must be in place before the new Election Act comes into force. The voters will have to pay a fee to be issued a national ID card.

Another element is that it has become easier to falsify identification with new technology. As a consequence of this, it is more difficult to verify whether the identification is genuine. It has also become more complicated and costly to issue identification that cannot be forged. This is one of the reasons that several banks have stopped making bank cards with a photo.

## 15.6 The Commission's evaluation

A requirement that the voter must provide proof of identity is directly related to fundamental democratic principles, such as avoid election fraud when someone votes more than once. This is also related to people's confidence in the democratic system. Therefore, the Commission finds that the Election Act should include provisions that help prevent someone from voting in another person's name. At the same time, too strict identification requirements could lead to the voting rights of some people being restricted in reality. These considerations must be weighed against each other.

### 15.6.1 General identification requirements

The Commission finds that basically all voters should provide proof of identity. At elections, it is important to ensure that the right person is checked off on the electoral register to ensure that each voter only gets one vote. In most municipalities, the rules are already practised so that *everyone* has to provide proof of identity. The Commission proposes that the current provisions are amended and that the general rule is that all voters shall provide proof of identity.

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<sup>423</sup>“Status for prosjektet nye pass og nasjonale ID-kort”, Politiet, 16 August 2019, <https://www.politiet.no/aktuelt-tall-og-fakta/aktuelt/nyheter/2019/08/16/status-for-prosjektet-nye-pass-og-nasjonale-id-kort/>.



At the same time, the Commission finds that if a voter is known to the returning officer or election official, the person concerned should be allowed to vote even if he or she does not provide proof of identity. In practice, this amendment will not be of great importance, but it is a fundamental amendment which emphasises that secure identification of the voters is important.

The returning officers perform many tasks that require society to trust them and there is no reason to doubt their integrity related to identifying voters. No problems with the current practice have been identified.

### **15.6.2 Institutional voting**

Under the current provisions, voters at health care facilities and in prisons can vote without identification if an employee at the institution can confirm the identity of the person concerned. The Commission finds there are good reasons for the exemption, as voters in such institutions do not always have identification and their identity is known to those who work at the institution. Therefore, the Commission proposes that the provision is continued so that all residents of health and care facilities and inmates of prisons have a real opportunity to vote.

### **15.6.3 Voters without identification**

The Commission stresses that all people who have the right to vote, have the right to cast their votes. The requirement to provide proof of identity must not result in some voters being deprived of the opportunity to vote. The Commission has considered what can be done to ensure that voters who do not have proof of identity are also allowed to participate in the election. There may be people who for social or financial reasons do not have proof of identity with a photo and name. The Commission has considered the possibility of allowing voters who do not have proof of identity to vote if another person with identification can verify the voter's identity. This will involve a liberalisation of the current rules and will ensure that voters who lack identification can vote. However, allowing voters to vote without having to provide proof of identity will involve a risk of election fraud in that someone can pretend to be someone else and vote in his or her name. The Commission does not want to allow this. While there have been few problems with election fraud, the Commission sees that the increased use of technology can make it easier to identify whether voters who do not usually vote are being used in election fraud. However, the Commission has considered whether the risk of election fraud can be reduced by requiring that voters without identification must vote according to a separate procedure and by validating the ballots cast separately after the ordinary poll. However, the Commission has concluded that this will only reduce the risk of election fraud to a certain extent and that at the same time it will introduce a new, complicated procedure for the election officials. Therefore, the Commission finds that people without identification should not be allowed to vote.

The Commission points out that it will soon be possible to obtain a national ID card in Norway. The Commission has noted that the ID card will not be free, but that it will be available at full cost. However, the Commission assumes that the introduction of a national ID card will mean that more people with the right to vote have identification. There is currently no possibility to obtain ordinary identification free from the public authorities for Norwegian citizens and people residing in Norway that can be used at elections.

The Commission emphasises that it is important that everyone who has the right to vote can obtain identification. The Commission does not decide about whether this is achieved through

support to obtain a national ID card, in that a public authority issues election credentials to those who need it, or in other ways, but finds that the Ministry must ensure that everyone who has the right to vote also has a genuine opportunity to participate in elections. Measures must be put in place to ensure that groups without ID cards have the opportunity to vote.

#### **15.6.4 Identification requirement**

The reason why the Commission has raised the question of whether an identification requirement should be set is that OSCE has questioned whether the requirements should be clarified and partly because technological developments have made it easier to forge identification.

Therefore, the Commission has considered whether specific requirements should be set for the types of identification the voters can use. Specific requirements will also make it easier to communicate with the voters about the kinds of identification that are accepted, as OSCE has pointed out, and will make the training of election officials easier. More precise requirements also lead to equal treatment of voters in that there is equal practice, regardless of where a voter lives.

Technological developments have made it easier to forge identification and this indicates that requirements must be set for a certain quality of identification. At the same time, the Commission is concerned that it should be easy to vote and does not want to set up unnecessary obstacles to voting. Although the Commission finds it is important to prevent election fraud, it still finds that this can still be achieved through the election officials' use of general discretion. The Commission emphasises that there are no known issues with identification forgery and that at this time, there is no need to tighten the identification requirements.

The Commission finds that the current requirements that the identification must include the voter's name, date of birth and photo, counteract election fraud while ensuring that it is easy to vote. The committee agrees that these requirements should be included in the regulations and not only stated in the preliminary works and the Ministry's interpretation statements. The proposal represents a continuation of applicable law. The starting point is that a passport, bank card, driving licence or other identification issued by the public authorities shall be accepted as long as these contain the name, date of birth and photo of the holder. Other types of identification with the name, date of birth and photo of the holder can also be accepted following a specific evaluation. In such an evaluation, the quality of the identification provided, including whether it has a certain official character, is central. The election officials must exercise good discretion when assessing whether the identification shall be accepted.

The Commission finds it is important that the Ministry monitors the developments to detect any problems with forged identification in the future. It is possible that in time developments within the field of biometrics will have consequences for how voters can provide proof of identity. There is a need to continuously assess which requirements can and should be set for identification. Therefore, the Commission finds that further requirements for the type of identification that can be accepted should be laid down in regulations and proposes a regulatory basis for this in the Act.

## 16 Accessibility and facilitation

### 16.1 Introduction

The purpose of the Election Act is to establish such conditions that the citizens shall be able to elect their representatives to the Storting, county and municipal councils at free, direct and fair elections, cf. section 1 of the Election Act. The provision must be understood so that all persons who are entitled to vote shall be able to vote regardless of their functional ability. In its work on the topic, the Commission's basic principle is that people with disabilities face various community-created barriers that challenge the opportunity to vote.<sup>424</sup> It is the responsibility of the electoral authorities and the municipalities to help remove obstacles that make it difficult to vote for this group. To ensure that everyone can vote, the Election Act and associated regulations have further provisions on accessibility and facilitation for voters. These can be thematically divided into three main categories:

- rules to ensure that the voters can enter the polling station
- rules to ensure that the voters can vote in the polling station
- rules to ensure that voters who are unable to come to an ordinary polling station can vote elsewhere

### 16.2 The UN Convention on the Rights of Persons with Disabilities

The UN Convention of 13 December 2006 on the Rights of Persons with Disabilities (CRPD) shall ensure this group of persons equal opportunity to participate in all parts of society as able-bodied persons. The Convention was ratified by Norway in 2013. Under Article 29, letter a) Norway is obliged to “ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others [...], including the right and opportunity for persons with disabilities to vote and be elected [...]”. To achieve this, the provision states certain measures:

- i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use,
- ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate,
- iii) guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice.

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<sup>424</sup>The United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities expresses this as “[p]ersons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. The Convention also points out that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

Article 29, letter b) further states a duty to “promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others [...]”.

### **16.3 The Gender Equality and Anti-Discrimination Act, etc.**

The municipalities must comply with the universal design requirements under Act no. 51 of 16 June 2017 on general equality and a prohibition against discrimination. The purpose of the Act is to promote equality and prevent discrimination on the basis of disability, among other things. The Act shall also help dismantle disabling barriers created by society and prevent new ones from being created, cf. section 1.

The universal design requirement applies to the extent that it does not impose a disproportionate burden on the undertaking, cf. section 17, subsection 3. According to section 19, public undertakings shall make active, targeted efforts to promote universal design in their operations. Universal design means designing or accommodating the *main solution* with respect to the physical conditions rather than using special solutions to ensure accessibility for people with disabilities. The activity obligation requires that the municipalities have a conscious relationship with how the polling stations satisfy the universal design requirements. The planning and building legislation also includes universal design requirements. Among other things, buildings for the public and work buildings shall be universally designed, cf. section 12-1 of the Building Regulations.

### **16.4 The voters must be able to enter the polling station**

#### **16.4.1 Applicable law**

Sections 8-3, subsection 1 and section 9-3, subsection 2 of the Election Act state that both advance voting and voting at the election day shall take place in suitable and accessible premises. Voters must be able to enter the polling stations unassisted. Other premises shall not be used unless special reasons exist.

The preparatory works of the Act state that the accessibility requirement related to the geographical location in the municipality, parking facilities or bus stop close to the premises, if the premises are located in a busy place, etc. The accessibility requirement applies in this way to all voter groups, so that factors, such as the voter having a polling station in their local area, must be considered. Therefore, the municipalities must consider several factors related to accessibility. The preparatory works of the Act also point out that the accessibility requirement also includes the route from the parking lot/bus stop to the polling station. Furthermore, the accessibility requirement also applies to the entrance, stairs, corridors, etc. that the voter must pass through on his or her way to the polling station.<sup>425</sup>

The municipality is obliged to implement measures to ensure that the premises are accessible to the voters. Only if there are no suitable premises that voters can enter without assistance, and it is

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<sup>425</sup>Prop. 52 L (2012–2013) (Bill) *Amendments to the Election Act and the Local Government Act (state responsibility for electoral registers, new procedures for advance voting, etc.)* page 27.

not possible, or will be disproportionately expensive to make the premises accessible to all voters, can other premises be used.

If the polling station is not accessible to a voter, on Election Day, the person concerned may give his or her vote to two returning officers immediately outside the polling station, cf. section 9-6 of the Election Act. Further procedures for such voting can be found in section 32 of the Election Regulations.

#### **16.4.2 The Commission's evaluation**

In principle, the Commission finds that all polling stations should be available to *all* groups of voters. This helps to ensure voter participation as a key democratic right for all individuals. According to the Election Implementation Survey of 2017, 97 per cent of the municipalities reported that all polling stations were accessible for all voter groups during the advance voting. 95 per cent of the municipalities reported that on Election Days, all polling stations were accessible to all voter groups.

Under the applicable law, the municipalities may use other premises if there are "special reasons". Special reasons indicate a high threshold for when the municipalities can use premises that do not meet the accessibility requirements. The Commission finds it is reasonable that the municipalities have some flexibility to use other premises, as permitted by law today. In the opinion of the Commission, such flexibility is necessary if there are not premises available and if it is impossible or disproportionately expensive to make the premises available. Based on this, the Commission finds that the applicable law should be continued. The Commission points out that municipalities also have an activity obligation under section 19 of the Gender Equality and Anti-Discrimination Act and therefore shall "make active and targeted efforts to promote universal design".

However, the Norwegian Association of the Blind and Partially Signed and the Norwegian Federation of Organisations of Disabled People (FFO) have highlighted several problems related to the practice of section 8-3, subsection 1 and section 9-3, subsection 2 of the Election Act in meetings with the Commission. The Commission wants the requirement to be practised strictly and that there must be qualified assessments for the municipality to waive the requirement. The decision on which premises to use shall be a central part of the application of the provisions. Section 9-3, subsection 2, first, second, third and fourth sentence on voting at the election proceedings that the accessibility requirement must be considered and that any deviations from the requirement must be justified. The Electoral Committee determines this, cf. section 9-3, subsection 2. The Electoral Committee may delegate authority to the administration of the municipality if the matter does not concern questions of principle, cf. section 10 of the Local Government Act. The Commission finds the decision on which polling places to use is a question of principle. Such a decision shall be made by a democratically elected body, not the administration of the municipality. To clarify that the authority in these types of matters cannot be delegated, the Commission proposes that it is stipulated in the Election Act that the Electoral Committee "itself" shall determine where the voting shall take place. This will also highlight how important the decision on which premises to use, is. The Commission proposes stipulating the same for advance voting.

The Commission also proposes to legislate that the municipalities must announce which polling stations do not satisfy the accessibility requirements. This also means that the municipalities must also inform in more detail the specific shortcomings of the premises with regards to accessibility.

For example, lack of accessibility is due to the absence of a lift, ramp, etc. Such information will enable persons with disabilities to find out which polling places in the municipality are accessible and that meet the individual's needs.

As regards how the information is announced, the Commission finds it is important that the information reaches the population of the municipality within a reasonable time before the advance voting starts. The announcement can be made on the polling card, in the local press, on the municipality's website, at [valglokaler.no](http://valglokaler.no)<sup>426</sup> or by letter to the individual households. The information must be available and understandable for the various target groups. The Commission proposes that further provisions on such an announcement should be laid down in regulations.

The Commission also encourages the Electoral Committee to confer with representatives of the various user groups, such as the county branch of the Norwegian Association for the Blind and Partially Sighted and FFO and the municipal councils for persons with disabilities during the planning of the election process. Such cooperation can help to ensure that as many polling places as possible are adapted and that this is done appropriately.

In other respects, the Commission would like to point out that following the 2017 parliamentary election, the municipalities reported a lack of need for adaptation as the main reason why all polling stations did not satisfy the accessibility requirement. The Commission points out that it would not be in accordance with the Bill to not adapt a polling place because there is no need for such adaptation in the constituency. To be able to vote in advance/vote in another polling district, persons with disabilities should have the same flexibility as the rest of the population.

## **16.5 The voters in the polling station must be able to vote**

### **16.5.1 Applicable law**

The starting point is that the voters shall vote in a secluded room and unobserved, cf. section 8-4, subsection 1 and section 9-5, subsection 3 of the Election Act. This ensures the principle of a secret ballot and that the voter is not subjected to undue influence from others.

#### *Organisation of the polling stations*

Sections 26 and 30 of the Election Regulations state that when facilitating voting in the polling stations, the emphasis should be on good accessibility for all voters. The regulations include the requirements for accessibility, signs/ marking, good lighting inside the voting booths and that the information in the polling stations is in large enough print for it to be read by everyone. The provisions state specifically that blind and partially sighted voters shall be able to vote without having to ask for assistance. The requirements apply to advance votes and votes cast at the election proceedings.

The municipalities decide themselves how they facilitate that blind and partially sighted voters can vote without assistance.

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<sup>426</sup>[Valglokaler.no](http://valglokaler.no) is a website for which the Norwegian Directorate of Elections is responsible, and contains an overview of all polling places.

### *Assistance with voting*

Under section 8-4, subsection 8 and section 9-5, subsection 5 of the Election Act, voters who so require can ask the returning officer/polling committee for help. Voters with severe mental or physical disabilities may themselves choose an extra helper among the persons who are present at the polling station. The returning officer and the extra helper have a duty of confidentiality, cf. section 15-4 of the Election Act. The returning officer shall draw the helper's attention to the fact that he or she has a duty of confidentiality.

In other words, the general rule of the Act is that it is the returning officer who shall assist a voter who needs help to vote. Only voters with severe mental or physical disabilities can ask for help from another person in addition to the returning officer. This is justified as follows in Ot.prp. no. 44 (2004–2005) (white paper) *On the Act relating to amendments to Act no. 57 of 28 June 2002 relating elections to the Storting, county and municipal councils (the Election Act)* page 38:

As regards blind and partially sighted voters who need help to vote, they should be able to choose their helpers. This is because these voters will not be able to check the choices they make and therefore must be able to use a helper they fully trust. This will most likely be a small group of voters, as the Election Regulations state that the voting shall be organised in such a way that blind and partially sighted voters shall be able to vote themselves. Also, voters who, due to their disability need the help of persons they know when communicating with the returning officers, should be able to choose their helpers.

Furthermore, the preparatory works point out that the election officials should give the voter the benefit of doubt in assessing whether the voter has a severe mental or physical disability, so that the voter is entitled to choose an assistant him or herself. It would be more unfortunate to refuse such help to a voter who needs a helper than allowing a voter who does not need special help to receive this.

The Act states that *the voter shall choose* the extra helper. The fact that the voter must take the initiative to receive extra assistance reduces the risk of situations where the voter may be subjected to undue influence.

### **16.5.2 Recommendations from OSCE**

OSCE has repeatedly recommended that measures are taken to improve the election process for blind and partially sighted persons. In the wake of the 2017 election observation, OSCE recommended that “[a]dditional measures should be undertaken to allow partially sighted voters to independently select candidates”.<sup>427</sup>

In its *Election Expert Team Report*, OSCE stated that it may be contrary to international law when blind and partially sighted persons cannot cast personal votes on their own. OSCE refers to Article 29, letter b) of the UN Convention on the Rights of Persons with Disabilities. The Commission points out that blind and partially sighted voters have the right to bring an extra helper with them. In the opinion of the Commission, taking care of the voter group in this way is in accordance with

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<sup>427</sup> “Norway Parliamentary Elections 11 September 2017”, OSCE/ODIHR Election Assessment Mission Report (Warszawa: The Organisation for Security and Cooperation in Europe, 2017), page 5.

Article 29, letter a) of the UN Convention on the Rights of Persons with Disabilities. The Commission finds support for this view in an interpretation ruling from 2010 from the Venice Commission:

The right of people with disabilities to vote by secret ballot should be protected, inter alia, by “guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing them to use assistance technologies and/or to be assisted in voting by a person of their choice” in conditions which ensure that the chosen person does not exercise undue influence.<sup>428</sup>

### **Box 16.1 Examples of facilitation from other countries**

There are various solutions in other countries that will help to ensure a secret ballot for blind and partially sighted voters. In the following, the Commission provides some examples of solutions in a few selected countries.

For example, in Denmark, a magnifying glass is still available at all elections, as well as at nationwide referendums. At the local and regional elections in 2017, a pilot scheme was carried out in which magnifying device with *Closed-circuit Television* was made available at some polling stations. Font size, contrasts and brightness can be controlled here by the voter. The magnifier could not be connected to the internet or store data. In the same way, an LED lamp was provided at some polling stations, where the brightness and luminous colour could be controlled by the voter.

In Austria, blind and partially sighted voters can use templates (*Stimmzettel-Schablonen*) to fill out the ballot. The aid is to ensure that blind and partially sighted persons can vote, including casting a personal vote, alone. The template is placed over the ordinary ballot paper so that the template and the ballot paper are in parallel. The blind or partially sighted voter finds their way using recessed holes on the template that mark the various checkboxes on the ballot paper.

A similar solution exists in the UK, where partially sighted voters can use a tactile voting device. The template is made of plastic and is attached to the ordinary ballot paper.

## **16.5.3 The Commission’s evaluation**

### **16.5.3.1 Facilitation requirements**

The municipalities are responsible for facilitation at elections and thus it is up to the municipalities to meet the facilitation requirement. The Commission finds it is important that the municipalities ensure that the polling stations are adapted to all voter groups and that universally designed solutions are used to the greatest extent possible.

The current regulations require the municipalities to emphasise good accessibility for all voters. To ensure greater facilitation, the Commission finds that it should be legislated that the Electoral Committee shall ensure that the polling stations are organised so that everyone can vote and not

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<sup>428</sup> “Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections” (Venice: European Commission For Democracy Through Law (The Venice Commission), 2010), CDL-AD(2010)036, page 3.



that the emphasis is only placed on good accessibility, as it is today. Such a provision will mean that the municipalities' responsibility for facilitation will be stricter. To meet the requirement of ensuring facilitation, the municipalities must provide accessibility, signs/markings, good lighting inside the polling booths and that the information in the polling station is in large print.

The Commission also encourages the Electoral Committee to involve representatives of the various user groups during the planning of the election process. In addition, the Commission encourages municipalities to assess based on local circumstances whether certain polling stations can be particularly well adapted. The Commission emphasises that all polling stations must nevertheless be adapted so that everyone can vote.

### **16.5.3.2 Facilitation for the blind and partially sighted**

Sections 26 and 30 of the Election Regulations state that blind and partially sighted voters shall be able to vote without having to request assistance. In practice, this is taken care of by marking the ballot cassettes with labels that have the list heading in braille and large print or with a card index solution where a box the like with index dividers is used. The name of the party is printed in braille and large print on the tab of the index divider. The Norwegian Directorate of Elections also produces a general ballot paper that contains a list of abbreviations of the party names of all the registered political parties in braille.

The Commission notes that the current measures to allow blind and partially sighted to vote without assistance do not function satisfactorily for everyone. This is because a large number of blind and partially sighted people do not use braille.<sup>429</sup> The alternatives will also not be able to ensure that blind and partially sighted voters can cast personal votes without assistance. The current situation, where blind voters cannot cast personal votes, is a weakness in the Norwegian election process, regardless of international law.<sup>430</sup> In this context, the Commission refers to the principle of a secret ballot. It is also a serious weakness that only blind/partially sighted who use braille can vote alone.

The Commission finds it is important that the electoral authorities facilitate that as many people as possible can cast party votes and personal votes in private and unobserved, as the main rule is, cf. sections 8-4 and 9-5 of the Norwegian Election Act. Therefore, the Commission proposes that the Ministry of Local Government and Modernisation and the Norwegian Directorate of Elections explores alternative ways for the blind and partially sighted to vote. This should take place in close cooperation with the Norwegian Association of the Blind and Partially Sighted. Pilot schemes should be carried out with the most relevant solutions.

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<sup>429</sup>According to *the 2017 Election Implementation Survey*, the Norwegian Directorate of Elections/Kantar TNS 2018 reported that 62 per cent of the municipalities have voters with visual impairment at the 2017 election. In only 4 per cent of the cases was the polling was carried out in private and unseen. Forty-three per cent of the cases were handles with assistance from returning officers and 18 per cent with returning offices and a self-chosen helper. Sixteen per cent were handled with different measures or combinations of solutions.

<sup>430</sup>Sweden and Denmark also have challenges related to ensuring that the blind and partially sighted can cast personal votes without assistance. Both countries have rules on assistance in voting for this group of persons.

Both the Norwegian Association of the Blind and Partially Sighted and the Norwegian Federation of Organisations of Disable want to introduce the possibility of voting online to ensure that blind and partially sighted voters can vote alone.<sup>431</sup> The Commission has a great understanding of this desire, but the majority of the Commission finds that online voting from home brings with it major challenges related to secret voting. The Commission also finds that electronic voting at the polling station would make it possible for people with visual impairment to vote alone. As long as the voting takes place at the polling station, the challenges associated with a secret ballot, which voting online entails, are removed.

The Commission finds that the electoral authorities must investigate what technical aids can make voting easier for this group, including considering electronic voting at the polling station. This requires that the digital design is user-friendly and compatible with different ICT aids and that the security aspects are thoroughly considered.

A minority of the Commission also finds that pilot schemes with electronic voting should be initiated for selected groups, see section 4.3.6.5. For the blind and partially sighted voters who today cannot vote alone, it will mean a major improvement.

The Commission that it detailed provisions should be laid down in the regulations on facilitating so that the voters can vote without assistance. In the opinion of the Commission, the regulatory provision must be defined precisely on two points. Firstly, the provision must reflect that today only blind/partially sighted who use braille can vote without assistance. Secondly, the provision must take into account that the current solutions do not ensure that the blind/partially sighted can cast personal votes alone.

### **16.5.3.3 Assistance with voting**

Section 8-4, subsection 8 and section 9-5, subsection 5 of the Norwegian Election Act shall take care of those voters who need help to vote. The provisions represent exceptions from the starting point that the voter shall cast his or her vote in a secluded room and unobserved.

In 2017, the National Electoral Commission deal with several complaints about blind and partially sighted voters who had not been allowed to bring an extra helper with them into the polling booth. In these cases, the returning officers in the municipalities practised the regulations on the right to an extra helper incorrectly. At the 2019 municipal and county council elections, the Ministry did not receive complaints of this type. However, the Norwegian Association of the Blind and Partially Sighted informed that at the 2019 election, many voters were not allowed to bring an extra helper with them into the polling booth. These problems are not necessarily due to the regulations, but the practice of these.<sup>432</sup>

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<sup>431</sup>The Norwegian Association of Blind People “Consultation Responses on Electronic Voting” (2011), <https://www.blindeforbundet.no/om-blindeforbundet/filer-horinger/horingsuttalelse-om-e-valg-2011> og Funksjonshemmedes Fellesorganisasjon, “Consultation responses – proposed amendments to the Election Act and associated regulations” (2014), [https://www.regjeringen.no/contentassets/80f9d63ad08d40e6a108b6129cc79972/funksjonshemmedes\\_fellesorganisasjon.pdf?uid=Funksjonshemmedes\\_fellesorganisasjon](https://www.regjeringen.no/contentassets/80f9d63ad08d40e6a108b6129cc79972/funksjonshemmedes_fellesorganisasjon.pdf?uid=Funksjonshemmedes_fellesorganisasjon).

<sup>432</sup>Innst. 1 S (2017–2018) *Recommendation to the Starting from the Credentials Committee*, page 13.

The Commission has discussed three questions related to the voter's right to assistance: firstly, whether there is a need to change the rules on *who* shall be entitled to assistance, secondly, the question of who shall decide whether a voter has such a right and thirdly, where the right to assistance shall include greater freedom of choice for the voter.

The Commission finds there is a need to simplify and clarify the rules on who is entitled to assistance when they vote. Under the current regulations, voters who need it can receive help from a returning officer. This is the main rule of the law. The right includes people with language problems and others who need assistance.<sup>433</sup> Furthermore, voters with severe mental or physical disabilities who need help have a special right to choose their helper in addition to the returning officer. The Commission finds the regulations should be simplified and clarified so that all voters, who due to physical or mental impairment cannot vote alone, are entitled to assistance from a helper of their choice. Unlike the current law, the proposal implies that all degrees of physical and mental disability trigger the right to assistance from a self-selected helper as long as the disability means that the voter cannot vote on his or her own.

As regards other voters, the Commission finds that the main rule of section 8-4, subsection 8, first sentence and section 9-5, subsection 5, first sentence of the Election Act on assistance from a returning officer inside the polling booth undermines the fundamental principle that the voter shall cast his or her vote in a secluded room and unobserved, more than necessary. However, persons who are not covered by the special right to assistance due to physical or mental disability, etc. will be entitled to guidance by virtue of the returning officers' general duty to provide guidance. Unlike the current rule, such a general right to guidance does not include assistance during the actual voting inside the polling booth. However, a returning officer may show the way and explain how the voter can vote, before the person concerned goes out and leaves the voter to cast his or her vote along in the polling booth. The Commission finds that it is important that non-Norwegian speaking voters receive guidance so that they can vote. The returning officer's general duty to guide a voter, including explaining to the voter how he or she is to proceed to cast his or her vote, will adequately take care of this voter group. Based on this, the Commission proposes that the general provision on assistance, cf. section 8-4, subsection 8, first sentence and section 9-5, subsection 5, first sentence, is not continued. The proposal means that the regulation will be less complex.

The Commission has also considered who will decide whether a voter is entitled to assistance. The Commission finds that during the advance voting it should be sufficient that one of the returning officers decides whether the voter is entitled to assistance. On Election Day, the Commission finds that, in principle, the decision should be made by the polling committee. However, the Commission has concluded that this would be a too bureaucratic arrangement. Therefore, where there is no doubt that the conditions for receiving assistance have been met, the returning officer or the member of the polling committee that the voter contacts concerning the request for assistance should be able to grant such assistance. If the returning officer or the member of the polling committee finds that the condition for the right to assistance has not been met, the question shall be decided by the polling committee. When the election officials decide whether a voter qualifies for

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<sup>433</sup>Ot.prp. no. 44 (2004–2005) (white paper) page 39.

such assistance, any doubt should be in the voter's favour. In other respects, the polling stations must have signs providing information about the possibility of obtaining assistance. This will ensure that voters who are entitled to such help receive this.

As regards the content of the right to assistance, the Norwegian Association of the Blind and Partially Sighted has commented that the right to assistance from a self-chosen helper should include greater freedom of choice for the voter. The right applies to voters with severe physical or mental disabilities who need help but has been proposed to be extended to apply to voters who due to physical or mental disabilities cannot vote alone. The Norwegian Association of the Blind and Partially Sighted thinks that the voters who can require an extra helper should be entitled to be assisted by this helper alone. This differs from the current provision, where a returning officer must also be present when the voter casts his or her vote. Several members of the organisation do not want a returning officer to know who the voter concerned is voting for. This may apply to situations where the voter knows or has a connection to the returning officer, for example in small municipalities. In such situations, many voters are very uncomfortable about letting someone know who they want to vote for. According to the Norwegian Association of the Blind and Partially Sighted, such situations have led to more people voting differently than they want to. Some voters have also expressed that they will refrain from voting at the next election.

The question of whether voters should have the right to choose an assistant *instead of* a returning officer depends on a trade-off between consideration for the voter's freedom of choice and dignity on the one hand and consideration for preventing undue influence of the voter on the other hand.

The reason for the requirement that a returning officer shall always be present is the consideration to ensure that the voter is not subjected to undue influence, cf. Ot.prp.no. 44 (2004–2005) (white paper) page 38:

When it comes to voters who shall select their helpers, it must be considered whether this helper should be in addition to or instead of a helper from the election officials. As the Ministry sees it, there should always be a helper from the election officials present during assisted voting. This is the only way to ensure that the voters are not subjected to undue influence from the appointed helper. However, the Ministry sees no reason why there should be any general requirement that there should always be two helpers present. The Ministry finds that in cases where the returning officer, election officials or members of the polling committee act as helpers, it must be possible to assume that the assistance will be given according to the regulations.

Ensuring that the voter is not subjected to undue influence touches on two fundamental principles of the electoral system: free elections and equal suffrage. The voter shall be allowed to as he or she wishes, without the interference or influence of the public authorities or others and no one shall have more than one vote through exerting undue pressure on another person. When an election official is present inside the polling booth together with the voter or his or her helper, this person may prevent the helper from influencing the voter.

The Commission finds that the consideration for ensuring everyone a dignified way of voting, regardless of functional ability, must weigh heavily. As regards people with mental or physical disabilities who need help, the Commission finds that the right to assistance must be arranged in a way that is in line with the wishes of this group. It must be taken seriously that the voters themselves want to decide who will assist them and who in this way gets to know who the person

concerned is voting for. The voter's freedom of choice regarding who he or she receives assistance from can be decisive for the voter voting freely for the party he or she wants.

Based on this, the Commission proposes to legislate that a helper the voter has chosen may assist instead of an election official. The Commission points out that the right will only apply to voters with mental or physical disabilities, who due to their disability need help to vote.

## 16.6 Voting outside ordinary polling stations

### 16.6.1 Applicable law

Section 8-3, subsection 2, letter b (for the advance voting period) and section 9-3, subsection 2 (for the election proceedings) of the Norwegian Election Act state that the Electoral Committee decides where the voters shall be able to vote. Most voters vote at these polling stations. However, not all voters can come to these polling stations. According to section 8-3, subsection 2, letter a) of the Norwegian Election Act, it shall therefore be possible to vote in advance at health and social welfare institutions. In addition, voters who, due to illness or disability, cannot make it to a polling station, can apply to vote in advance where they live (ambulatory voting).

#### *Health and Social Welfare Institutions*

When there is advance voting at health and welfare institutions, votes can also be received at the home of voters who reside in welfare and sheltered housing near the institution, cf. section 25 of the Norwegian Election Regulations. It is not permitted to agree that advance voting shall only be held at certain health and welfare institutions. It shall be possible to vote in advance at least one day at all the institutions.<sup>434</sup>

#### *Other places*

Section 8-3, subsection 2, letter b) states that the voters can vote in advance where the Electoral Committee decides that advance votes shall be received. For example, this provision can be used for advance voting at municipality buildings, public service offices, shopping centres, educational institutions, in prisons, etc.<sup>435</sup> The Ministry has stated that the same considerations which justify advance voting at health and welfare institutions indicate that it is possible to vote in advance in all prisons.

#### *Ambulatory voting*

Voters who cannot come to a polling station due to illness or disability may, upon application to the Electoral Committee, vote in advance where they reside, cf. section 8-3, subsection 6 of the Election Act. There are no formal requirements for the application. However, the application must indicate that due to illness or disability, the voter cannot vote in advance elsewhere.

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<sup>434</sup>Prop. 83 L (2014–2015) (*Bill*) *Amendments to the Election Act (responsibility for polling cards, etc.)* page 13.

<sup>435</sup>Ot.prp. no. 45 (2001–2002) (white paper) *On the Act relating to parliamentary and local government elections (the Election Act)* page 266.

## **16.6.2 The Commission's evaluation**

The Commission finds that the current provisions on advance voting at health and welfare institutions function satisfactorily and do not need to be amended. However, the Commission finds that the regulations on voting in prisons and ambulatory voting should be looked at more closely.

### **16.6.2.1 Prisons**

It can be difficult for prison inmates to vote in an ordinary way. Therefore, it is common to facilitate the possibility to vote in advance in prisons. The Commission proposes to legislate that voters who are prison inmates shall be able to vote in advance there. The purpose of the Election Act is that all voters shall be able to vote. The same considerations that justify advance voting at health and welfare institutions support that it should also be possible to vote in advance in prisons. This indicates that the Election Act should expressly set the requirement of advance voting in prisons on an equal basis with health and welfare organisations.

### **16.6.2.2 Ambulatory voting**

The commission points out that a voter who meets the conditions is entitled to vote where he or she resides. The conditions are that due to illness or disability, the person cannot vote elsewhere. The Commission points out that the right to ambulatory voting applies regardless of whether the voter resides in the municipality where the voter is registered on the electoral register. The municipality in which the voter resides is obliged to offer ambulatory voting. The Commission proposes continuing the right to vote in advance where the voter resides.

In other respects, the Commission would like to point out that there may be sick or disabled voters who are entitled to ambulatory voting because they cannot attend the polling station on their own initiative, but are still able to be transported to a polling station. The possibility to vote in the ordinary way can be important for the individual's freedom of choice and dignity. The Commission finds that for some arranged transport to the polling station may be a good option and that based on location conditions, the municipalities may consider whether it is appropriate to offer transport as an alternative to ambulatory voting. Arranged transport can also be offered on Election Day, as opposed to ambulatory voting, which only applies during the advance voting period. The Commission does not wish to legislate such an arrangement.

## 17 Voting, validation and counting

### 17.1 Introduction

The regulations on how the voter votes, checking voting and ballots, as well as counting ballots shall address key considerations such as secrecy, trust and transparency. For example, the rules on public order and the rules on counting are designed to ensure secrecy. Among other things, it is permitted to count ballots in constituencies only when there are more than 100 voters on the electoral register. The regulations shall also ensure that everyone has the opportunity to vote and that no one has the opportunity to vote more than once. It must also be easy for the voters to understand how they can vote and the rules must be easy for the election officials to put into practice.

Good regulations are as important as information to the voters, so that they are aware of their rights and opportunities. It is also important to have sufficient training of the election officials to ensure that the regulations are followed.

### 17.2 Applicable law

#### 17.2.1 The electoral register

Section 2-2, subsection 3 of the Election Act states that to be able to exercise his or her right to vote, the voter must be included in the electoral register on Election Day. Section 2-4 of the Election Act regulates in which municipalities the voters shall be registered. Persons eligible to vote who are residents in Norway shall be included in the electoral register in the municipality where they were registered in the Population Registry as being resident on 30 June in the year of the election.<sup>436</sup> It is in this municipality the voter must vote at the election proceedings and the votes shall be counted.

Persons who are entitled to vote who are resident outside Norway shall be included in the electoral register in the municipality where they were last registered at the Population Register as being resident. Persons living abroad who have not been registered in the Population Registry as being resident in Norway at any time during the last ten years before Election Day, must apply to the Electoral Committee to be included in the Electoral Register. This applies to some special rules for including members of the diplomatic corps or the consular service and their households in the electoral register. As a general rule, these shall also be included in the electoral register in the municipality where they were last registered as a resident. If they have never been registered as being resident in Norway, they shall be included in the electoral register of the City of Oslo. This group of voters does not need to apply to be included in the electoral register even though they have lived abroad for more than ten years, cf. section 2-4, subsection 4.

A joint electoral register shall be kept for municipal and county council elections, cf. section 2-3, subsection 1 of the Election Act.

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<sup>436</sup>Those who are entitled to vote on Svalbard and Jan Mayen shall be registered as electors in the municipality where they were last registered at the Population Registry as being resident.

### 17.2.2 Polling cards

Polling cards shall be distributed to everyone entitled to vote who is registered in the electoral register of the municipality and who has a residential address in Norway, except on Svalbard and Jan Mayen. The Election Act assigns the task to the Ministry, which has delegated it to the Norwegian Directorate for Elections.<sup>437</sup>

Section 22, subsection 1 of the Election Regulations states that it is the electoral register as of 8 July that is to be used for the production of polling cards. All updates that can be made in the electoral register up to and including this date, shall be incorporated into the electoral register before it is “frozen” for the production of polling cards.

The purpose of the polling card is to provide information to the voter about where the person concerned is registered on the electoral register and practical information about how the voter can vote. The polling card also contains information that makes the process at the polling station easier. However, the voters do not need to bring their polling card with them when voting. All polling stations can print out polling card from a printer or manually if the advance voting is to be sent to another municipality.

### 17.2.3 Early voting

The Norwegian Election Act allows voters to vote before the ordinary advance voting starts on 10 August, cf. section 8-1, subsection 4. Under this provision, voters who are in the realm, except Svalbard and Jan Mayen, and who cannot cast a vote in the advance voting period or during the electoral proceedings can apply to the municipal authority and vote from 1 July and up to the start of the advance voting. The Electoral Committee is responsible for ensuring that all voters who contact the municipality in this period (so-called early voting), are allowed to vote, cf. section 24 a) of the Election Regulations. The Electoral Committee shall determine where such voting is to take place and should “as far as possible, take into account the wishes of the voter with respect to the time at which the early voting will take place”.

Early voting is intended as a special arrangement that shall be easy to handle. For example, there is no requirement that there must be two returning officers present, as is the case for ordinary advance voting. This is because the voting is not validated on receipt for early voting. However, section 24 a), subsection 3 of the Election Regulations stresses that the Election Act and the provisions of the Election Regulations on advance voting shall apply correspondingly to early voting, as they are appropriate.

In the case of early voting, the voter shall *not* place the ballot directly in the ballot box, cf. section 24 a), subsection 4 of the Election Regulations. The reason is that the electoral register is not ready from 1 July. After the returning officer has stamped the ballot paper, the voter in person places it inside a ballot paper envelope and seals the envelope. The returning officer signs the polling card and adds the time and place when the voting took place. The returning officer then puts the ballot paper envelope, along with the polling card, inside a cover envelope, which is then sealed. The voter places the cover envelope in a ballot box. If the voter votes early in another

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<sup>437</sup>Regulation no. 79/2017: Delegation of authority to the Norwegian Directorate of Elections.



municipality other than where he or she is registered on the electoral register, the ballot cast will be sent to the right municipality and validated there.

Early voting is intended as a supplement to voters who do not have the opportunity to vote within the ordinary advance voting period or at the electoral proceedings. However, there is a requirement that the voters shall be able to document that they need to vote early in order to vote.

#### **17.2.4 Advance voting abroad**

##### **17.2.4.1 Time**

Section 8-1, subsection 1 of the Election Act states that advance voting in Norway, except for Svalbard and Jan Mayen, starts on 10 August in the year of election. If 10 August is on a Saturday or a public holiday, the advance voting starts on the first working day thereafter, cf. section 15-5 of the Election Act. Advance voting in Norway, including Svalbard and Jan Mayen, ends on the last Friday before Election Day, cf. section 8-1, subsection 2 of the Election Act. To ensure that the advance votes from Svalbard arrive in time, the Governor may decide that the advance voting on Svalbard shall be concluded earlier.<sup>438</sup>

The Electoral Committee shall announce when and where the voters can vote in advance, cf. section 24 of the Election Regulations.

##### **17.2.4.2 Receiving**

According to section 8-1, subsection 5 of the Election Act, at least two returning officers must be present when receiving advance votes during the ordinary advance voting period. The requirement that there must be two returning officers present does not apply to Svalbard and Jan Mayen.<sup>439</sup>

Section 8-2, subsection 1, letter a) of the Election Act determines that returning officers are appointed by the Electoral Committee. On Svalbard, the Governor (who in turn can appoint other returning officers) is the returning officer, cf. letter b) of the same subsection.

According to section 8-3, subsection 1 of the Election Act, the voters shall vote in suitable and accessible premises. Voters resident abroad, except for Svalbard and Jan Mayen, and who due to illness or disability cannot vote according to the subsection 2 (i.e. at health and welfare institutions and where the Electoral Committee otherwise decides that advance votes shall be received) may, upon application to the Electoral Committee, vote in advance where they reside.

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<sup>438</sup>This has happened on several occasions. At the 2017 parliamentary election, the advance voting period ended on the last Friday before the election.

<sup>439</sup>The requirement that there must be two returning officers present was introduced at the same time as it was permitted that ballots could be placed directly in the ballot box if the voter votes in advance in his or her municipality. To ensure that the approval of the voting takes place correctly in these cases, the requirement of two returning officers was introduced. On Svalbard and Jan Mayen, the advance ballot paper is placed directly into the ballot box.

### **17.2.4.3 Procedure**

According to section 8-4, subsection 1 of the Election Act, the voter shall, in a secluded room and unobserved, fold the ballot paper so that it is not possible to see which electoral list the voter is voting for. This is essential to ensure the principle of a secret ballot and applies to all types of elections.

#### *Voting in own municipality*

Section 8-4, subsection 2 of the Election Act states that voters who are registered in the electoral register of the municipality where they vote in advance shall place the ballot paper in a ballot box themselves after it has been stamped. The returning officer places a cross in the electoral register beside the name of the voter. Voters who are unknown to the returning officer shall provide proof of identity, cf. section 8-4, subsection 6 of the Election Act.

All municipalities use an electronic electoral register during the advance voting period. This allows the returning officers to approve the voting on the spot if the voter votes in his or her municipality. The returning officer can cross off the voter on the electoral register and the ballot paper can be placed directly in the ballot box.

In some cases, the municipality will receive advance votes where it is not possible to validate the ballots cast on-site even if the voter should be registered in the electoral register of the municipality. This will be the case if the returning officers do not have access to an electronic electoral register. For example, this may apply to prisons or health and welfare institutions. In such cases, a ballot paper envelope and cover envelope will be used and the electoral committee will validate the ballots cast afterwards.

#### *Voting in another municipality*

Section 8-4, subsection 5 of the Election Act states that voters who vote in advance in another municipality than where they are registered in the electoral register shall not place the ballot paper directly in the ballot box. This is because the ballots cast shall be approved in the municipality where the voter is registered in the electoral register.

After the ballot paper has been stamped, the voter shall place it in a ballot paper envelope and seal the envelope. The returning officer places the ballot paper envelope together with the polling card in a cover envelope and this is then placed in a ballot box, cf. section 27, subsection 4 of the Election Regulations. The advance vote shall be forwarded to the municipality where the voter is registered in the electoral register, cf. section 8-4, subsection 5 of the Election Act. Section 27, subsection 8 of the Election Regulations states that in the last two weeks of the advance voting period, advanced votes shall be forwarded to the voter's home municipality each day. Separate forwarding envelopes shall be used. The ballot cast will not be approved until it is assessed by the Electoral Committee in the municipality where the voter is registered in the electoral register.

All ballots cast in advance shall be approved before Election Day insofar as this is possible, cf. section 10-1, subsection 3 of the Election Act.

#### **17.2.4.4 Responsibility for ensuring that the advance votes arrive in time to be approved**

According to section 8-1, subsection 3 of the Election Act, the voter is personally responsible for casting the advance vote on a date that enables it to be received by the Electoral Committee by 5 p.m. the day after Election Day.

#### **17.2.5 Advance voting abroad**

##### **17.2.5.1 Time**

Advance voting abroad starts on 1 July in the election year, cf. section 8-1, subsection 1 of the Election Act and ends on the penultimate Friday before Election Day, cf. section 8-1, subsection 2 of the Election Act. This is done to ensure that the votes arrive with the deadline for approval of advance votes, which is the Tuesday after Election Day at 5 p.m.

Section 8-2, subsection 2 of the Election Act states who can be the returning officers abroad. This may be any member of the Foreign Service at a paid Norwegian Foreign Service mission, but also – following special authorisation from the Ministry of Foreign Affairs – a member of the Foreign Service at an unpaid Norwegian Foreign Service mission. The head of the mission may also appoint one or more of the officials at the mission to act as returning officers for advance votes when it is deemed necessary. In places other than at a Norwegian Foreign Service mission, according to the Act, the Ministry appoints the returning officers.

##### **17.2.5.2 Receiving**

According to section 8-3, subsection 4, receipt of advance votes at Norwegian Foreign Service missions takes place at the mission. The head of mission may decide that the receiving of votes may take place outside the area of the mission. In the presence of any returning officer appointed by the Ministry, the voter may vote where the Ministry decides, cf. section 8-3, subsection 5. Advance voting to a returning officer abroad follows the same procedure as for voters who vote in advance in another municipality than where the voter is registered in the electoral register.

The Act also contains an exemption provision that voters who reside abroad and unable to visit a returning officer may cast a vote by letter without a returning officer being present when the voter votes, cf. section 8-2, subsection 4.

##### **17.2.5.3 Procedure**

The procedure for voting by letter is described in more detail in section 28 of the Election Regulations. The ballot paper must be placed in a ballot paper envelope (at municipal and county council elections the same ballot paper envelope is used for both elections), which is then placed in a cover envelope that is sealed. The name and address of the correct Electoral Committee (where the voter is registered in the electoral register) shall be written on the cover envelope, as well as the name and national identity number of the voter. Furthermore, the voter must add his or her registered address as of 30 June in the election year, or the last address in Norway if he or she has notified the authorities of a move abroad and when and where the voter voted. The voter shall sign the cover envelope. If possible, there should be a witness present to confirm the correctness of what has been written on the cover envelope, cf. section 28, subsection 5 of the Election Regulations. The address and date of birth of the witness shall be written on the cover envelope. It is not a requirement to have a witness for the postal vote to be approved.

The voter may receive the voting materials from a Foreign Service mission if the voter so requests. However, official voting materials are not necessary for a postal vote. A voter living abroad can vote by writing his or her name on the list on a sheet of paper and including the necessary information about himself or herself and sending the vote to the Electoral Committee in the municipality in which the voter is registered in the electoral register.

#### **17.2.5.4 Responsibility for ensuring that the advance votes arrive in time to be approved**

As with other advance votes, section 8-1, subsection 3 of the Election Act states that the voter is personally responsible for casting the advance vote on a date that enables it to be received by the Electoral Committee by 5 p.m. the day after Election Day.

### **17.2.6 Voting on Election Day**

#### **17.2.6.1 Where the voter can vote**

According to section 9-5 of the Election Act, when the election proceedings open, voters who appear in the electoral register in the municipality are “allowed to cast their vote”. Some voters are registered with a secret address, which means that they are not in the electoral register at the polling station, but in a separate electoral register to which the Electoral Committee has access. These voters shall also be allowed to vote, but the vote shall then be placed in a special cover envelope.

If the voter is registered in the electoral register of another municipality, the voter concerned shall be referred to that municipality. If the voter still wants to vote, he or she shall be allowed to do so, but such votes shall be placed in a special cover envelope, cf. section 31 of the Election Regulations. As a general rule, such ballots cast will be rejected, cf. section 10-2, subsection 1, letter a).

#### **17.2.6.2 Time**

Parliamentary elections shall be held in all municipalities on the same day in September in the final year of the electoral term of each Storting, cf. section 9-1, subsection 1 of the Election Act. According to subsection 2, county and municipal council elections shall be held in all municipalities on the same day in September every four years, in the second year of each parliamentary term.

According to section 9-2 of the Election Act, the Kings determines Election Day. This is done through a Royal Decree in good time before the election. The municipal council may itself resolve that in one or more places in the municipal authority area, polling shall also take place on the Sunday before the official polling day (so-called two-day elections).<sup>440</sup>

The Electoral Committee determines the opening hours of the polling stations. According to section 9-3, subsection 2 of the Election Act, the municipal council itself may, with the support of at least one-third of the members, resolve to keep the polling stations open longer than the Electoral Committee has decided. However, according to section 9-3, subsection 2 of the Election Act, the

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<sup>440</sup>At the 2017 parliamentary election, 173 municipalities had two-day elections. In 2013, 196 municipalities had two-day elections.

voting shall not take place later than 9 p.m. on Election Day Monday. Voters who has turned up at the polling station when it closes shall be allowed to vote, cf. section 9-7.

The Electoral Committee shall announce the time and place of polling, cf. section 9-3, subsection 3 of the Election Act.

#### **17.2.6.3 Polling districts**

It is up to the municipal board, or the Electoral Committee following delegated authority, to decide into how many polling districts the municipality shall be divided, cf. section 9-3, subsection 1 of the Election Act. The central cadastral authority (the Norwegian Mapping Authority) shall be informed of changes in the division into polling districts by 31 March in the year of election. There shall be only one polling station for each polling district. In addition, section 9-3 has in practice been interpreted so that the polling station must be geographically located within the polling district.

#### **17.2.6.4 Procedure**

When the voter arrives at the polling station, he or she shall, in a secluded room and unobserved, usually a polling booth, fold the ballot paper together in such a manner that so that it is not possible to see for which electoral list the voter is voting, cf., section 9-5, subsection 3 of the Election Act. This is done to ensure a secret ballot. After the voter has provided proof of identity (if the voter is unknown), the ballot paper shall be stamped and the voter crossed off in the electoral register. The voters themselves must place the ballot papers in a ballot box.<sup>441</sup> This is the normal procedure, but the order is not statutory.

#### **17.2.6.5 Use of electronic electoral registers at the election proceedings**

The municipalities may decide to use an electronic electoral register to cross off voters at the election proceedings, cf. section 9-5 a) of the Election Act. At the 2019 municipal and county council elections, 58 municipalities did not use an electronic electoral register on Election Day.

When an electronic electoral register is used, the polling committee shall cross off in the electronic electoral register for voters who are registered in the electoral register in the polling district in question and voters who are registered in the electoral register in other polling districts in the municipality, cf. section 9-5 a), subsection 2.

In the preparatory works of the Act, the Ministry emphasises that municipalities that use crossing off in an electronic electoral register on Election Day must facilitate this at all polling stations in the municipality.<sup>442</sup> This ensures that no one is allowed to vote more than once.

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<sup>441</sup>The Venice Commission recommends that “[t]he voter should collect his or her ballot paper and no one else should touch it from that point on”. Although this is not explicitly stated in Norwegian law, the principle is followed during the advance voting and voting at the election proceedings. “Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report” (Venice: European Commission For Democracy Through Law (The Venice Commission), 2002), CDL-AD(2002)023rev2-cor.

<sup>442</sup>Prop. 73 L (2015–2016) (*Bill*) *Amendments to the Election Act (personal votes at parliamentary elections, deadline for approval of advance votes, etc.)* page 20.

### **17.2.6.6 Use of electoral registers on paper**

The municipalities that do not use electronic electoral registers shall print out electoral registers on paper for each polling district. If a voter votes in another polling district than the one where the voter is registered in the electoral register, a separate procedure shall be followed, cf. section 9-5, subsection 4 of the Election Act. In such cases, the voter shall not place the ballot paper directly into the ballot box. Instead, he or she shall place the ballot paper, after it has been stamped by the returning officer, in a ballot paper envelope and give this to the polling committee. The ballot cast is then considered a so-called alien vote. The polling committee places the ballot paper envelope in a cover envelope, seals it and writes the name, address and date of birth of the voter on it. The polling committee sets the cover envelope aside and the Electoral Committee validates the ballots cast after the polling stations are closed.

Section 31 of the Election Regulations states that voters who are not included in the relevant section of the electoral register or who have already been crossed off in the electoral register (for example due to having a secret address), shall also not place the ballot paper directly in the ballot box. They shall be allowed, but the voter shall be treated in the same way as votes from voters who are not registered in the electoral register of the polling district. These ballots cast are called ballots in “special cover envelopes”.

### **17.2.6.7 Emergency procedure when using electronic electoral registers**

In the event of power outages or interruption of communication with the electoral register, it will not be possible to validate the ballots cast against the electoral register. Therefore, a separate emergency procedure has been established for this situation, cf. section 9-5 a), subsection 4.<sup>443</sup> In such cases, after that ballot paper has been stamped, the voter shall place this in a ballot paper envelope and seal the envelope. The polling committee places the ballot paper envelope in a contingency envelope along with the polling card.

When the emergency ends, the contingency envelopes are delivered to the Electoral Committee for approval. In municipalities with two-day elections, any contingency votes received on Sunday shall be processed and crossed off in the electronic electoral register before the polling stations open on Monday, cf. section 31 a) subsection 4 of the Election Regulations.

If access to the electronic electoral register is restored, the emergency procedure shall be terminated immediately. The voters shall then vote in the ordinary way according to section 9-5, subsection 3.

## **17.2.7 The joint rules for advance voting and voting at the election proceedings**

### **17.2.7.1 Who cannot serve as returning officers or election officials?**

According to section 8-2, subsection 3 and section 9-3, subsection 4, candidates who appear on the electoral list for municipal council elections cannot be appointed as a returning officer or election official at polling stations in the municipality in question. Candidates who appear on the

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<sup>443</sup>A corresponding emergency procedure also applies during the advance voting period, cf. section 8-4, subsection 3 of the Election Act and section 27 a) of the Election Regulations.

electoral list at parliamentary elections or county council elections cannot be appointed as a returning officer or election official at polling stations in the municipalities in the constituency in question.

### **17.2.7.2 Stamping**

All ballot papers cast in Norway, except for Svalbard and Jan Mayen, shall be stamped before they are placed in the ballot box (or in a ballot paper envelope). A ballot paper must have a stamp to be approved, cf. section 10-3, subsection 1 of the Election Act. At municipal and county council elections, both ballot papers are stamped if the voter votes at both elections. This applies in the case of advance voting and voting at the election proceedings. Section 39 a) of the Election Regulations states that if a ballot paper, which has been placed in a ballot paper envelope during the advance voting period in Norway or the election proceedings, lacks a public stamp, the Electoral Committee shall stamp the ballot paper afterwards. Similarly, section 40 a) of the Election Regulations states that the Electoral Committee shall stamp ballot papers cast abroad if they are to be counted by machine.

### **17.2.8 Validation of ballots cast**

Before the electoral authorities can validate (approve or reject) the ballot papers, they must decide whether the voter's ballot cast shall be approved. Validating the ballots casts involves checking whether the voter has been registered in the electoral register and whether the formal polling requirements (e.g. that the voter has not already voted) have been met. If the voting requirements of the Election Act have been met, the voter is crossed off in the electoral register and the voting is thus approved. If the conditions have not been met, the electoral authorities reject the ballots cast.

The Election Act lays down conditions for approval of ballots cast at the election proceedings (section 10-2), advance votes placed in ballot boxes (section 10-1 a) and advance votes placed in ballot paper envelopes both in Norway and abroad (section 10-1).

The conditions for approval of ballots casts are the same for ballots cast at the election proceedings and advance voting where the ballot paper is placed directly in a ballot box.

Firstly, for the ballot cast to be approved, the voter must be registered in the electoral register of the municipality. Secondly, the voter must have had the opportunity to vote. This condition has been met if the voter places the ballot paper in the ballot box. The condition has also been met if the voter is crossed off in the electoral register, but leaves the polling station without place the ballot paper in the ballot box. The condition is also met if the voter's ballot cast on Election Day is placed in a special cover.<sup>444 445</sup> Thirdly, the voter must not have already have had a ballot cast approved.

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<sup>444</sup>Ot.prp. no. 45 (2001–2002) (white paper) On the Act relating to parliamentary and local government elections (the Election Act) page 272.

<sup>445</sup>If, for various reasons, the voter cannot be crossed off in the electoral register at the venue (the voter has been crossed off in advance or is not registered in the electoral register of the polling district/municipality), the ballot paper shall be placed in a ballot paper envelope, which is placed in a cover envelope (during advance voting) or a special cover (at the election

In order for the Electoral Committee to be able to approve an advance ballot cast in a ballot paper envelope, the corresponding requirement applies that the voter must have been registered in the electoral register in the municipality, and that the voter has not already cast an approved vote. Furthermore, it is required that the ballot cast contains sufficient information to determine who the voter is and that it has been handed over to the right returning officer – Unless it has been cast as a postal vote. The cover envelope must also not have been opened or attempted to be opened.

The ballot cast must also be submitted at the right time and be received by the Electoral Committee by 5 p.m. the day after Election Day. Before the Election Act was amended in 2016, the advance votes had to be received by the Electoral Committee by 9 p.m. on Election Day to be approved. The deadline was shifted because the Storting passed a new Postal Act where Posten no longer must deliver on Saturdays.<sup>446</sup>

### 17.2.9 Validation of ballot papers

After the ballots cast have been approved, the ballot papers must also be validated. According to section 10-3 of the Election Act, a ballot paper shall be

- approved if it bears a public stamp. This shall ensure that the voter does not deliver more than one ballot paper. However, the lack of a stamp on ballot papers in the *ballot paper envelope* does not result in the ballot paper being rejected. The Electoral Committee shall stamp the ballot paper afterwards, cf. section 39 a) of the Election Regulations,
- it is clear as to which election the ballot paper applies
- it is clear as to which party or group the voter has voted for
- if the party or groups have put forward a list in the constituency. A ballot paper intended for another constituency may only be approved if it applies to a registered political party.

There is no requirement that the voter must use the official ballot papers printed by the electoral authorities. Therefore, the voter may use another printed or handwritten ballot paper. If the voter uses a ballot paper that is not the same as the official electoral list, the ballot paper shall still be treated as if it had the same content as the official electoral list. If the voter has used a printed ballot paper that is not identical to the official electoral list, any changes made by the voter shall be disregarded.

Section 39 of the Election Regulations regulates the situation where at the same election, a voter has cast several ballots for the same party and some of them have been corrected. This is only applicable to ballot papers placed in a ballot paper envelope. This is because ballot papers placed directly into the ballot box shall be stamped and only stamped ballot papers can be approved. The rules are as follows:

- If only one of the ballot papers has been changed, it is approved.

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proceedings). The Electoral Committee checks the cover envelope or cover and the electoral register and approves/rejects the ballot cast.

<sup>446</sup>Advance votes cast in Norway in the early voting period are checked according to the same rules as advance votes cast in a ballot paper envelope.



- If several ballot papers have been changed in the same way, one of the ballot papers shall be approved.
- If several of the ballot papers have been changed in different ways, one of the ballot papers shall be approved, but the changes will be ignored.

The key consideration behind the rules on validation of ballot papers is that as few factors as possible shall lead to rejection.

#### **17.2.10 Counting ballots**

The Electoral Committee is responsible for the counting of ballot papers and decides who counts the votes and in what way. However, section 10-4 of the Election Act lays down some rules on counting and among other things, requires that the Electoral Committee or the persons the Electoral Committee determines, shall count the ballot papers twice, one provisional and one final county, according to sections 10-5 and 10-6 of the Election Act. In the provisional count, the ballot papers shall be counted manually, cf. section 37 a) of the Election Regulations.

The Electoral Committee determines where it or the individual polling committees shall count the votes in the provisional count. There is no requirement that each polling district shall be counted separately. On the other hand, counting by polling district is only allowed if the part of the electoral register the count concerns contains at least 100 names. Otherwise, the count must take place together with one or more other districts. The purpose of this is to take into consideration that the ballot shall be secret. Consideration for a secret ballot is also the reason for the rule in section 37 of the Election Regulations that the Electoral Committee shall keep a certain number of advance votes outside the provisional count and mix these with advance votes that arrive after the provisional count has begun. No later than four hours before the voting has ended at all polling stations in the municipality, the counting of advance votes shall start. This shall only be done if the counting can take place without violating the principle of a secret ballot. If this is not possible, the counting shall start as soon as all the advance votes have been approved. The provisional counting of ballot papers cast at election proceedings shall start as soon as possible after polling at such election proceedings has been concluded.

The final count begins immediately after the provisional count has been concluded and all the votes have been received by the Electoral Committee. Unlike the provisional count, the final count must take place under the scrutiny of the Electoral Committee, cf. section 10-6. Firstly, the Electoral Committee shall recount the ballot papers from the preliminary count. Secondly, the Electoral Committee shall approve or reject the ballot papers the polling committees put aside in the provisional count and ballots cast where the ballot paper has been placed in a special cover. The ballot papers the Electoral Committee approves are counted together with the other ballot papers. Thirdly, the Electoral Committee registers any corrections the voters have made to the ballot papers, i.e. personal votes and cross-party votes at municipal council elections, personal votes at county council elections and renumbering and deletions at parliamentary elections.

#### **17.2.11 Checking at parliamentary and county council elections – the County Electoral Committee' count**

According to section 10-8 of the Election Act, the Electoral Committee shall as soon as possible send the specified material to the County Electoral Committee. The material shall be packed in good order and properly sealed packaging and sent in the swiftest safe manner. Section 34 of the

Election Regulations lay down further rules on transport, including that the Electoral Committee shall establish secure routines for the transport of election material, the election material shall be sealed if it not under the direct supervision of the electoral authorities and that anyone other than those who keep the sealing equipment shall transport the election material. When handing over election material from the Electoral Committee to the County Electoral Committee, a receipt shall be issued detailing what was handed over, cf. section 34 a) of the Election Regulations. In principle, there is no requirement for a direct handover from the Electoral Committee to the County Electoral Committee. The Electoral Committee is free to choose the method of sending the election material in the “swiftest safe manner”, cf. section 10-8 of the Election Act.

The material the Electoral Committee shall send to the County Electoral Committee is a certified transcript of the records kept in connection with the election, all approved ballot papers,<sup>447</sup> all rejected ballots cast and ballot papers, all polling cards from advance votes, all cover envelopes from advance votes abroad and on Svalbard and Jan Mayen and a copy of appeals received, cf. section 10-8 of the Election Act.

The County Electoral Committee shall check the conduct of the parliamentary elections and county council elections in the municipalities based on the material they have received from the Electoral Committees according to section 10-8, cf. section 10-9. The County Electoral Committee counts all the approved ballot papers for all the municipalities in the constituency. The County Electoral Committee also checks the Electoral Committee’s validation of ballots cast and ballot papers. If the County Electoral Committee finds errors in the Electoral Committee’s decisions to approve or reject ballots cast or ballot papers or errors in the Electoral Committee’s count, the errors shall be corrected. If the errors cannot be corrected, the County Electoral Committee shall enter such errors in the records (often called the meeting book) on the implementation of the election.

At parliamentary elections, the County Electoral Committee’s control is provisional and is used as the basis for the Storting’s final control. Therefore, the County Electoral Committee sends a certified copy of the records to the Storting and the National Electoral Committee. At parliamentary elections, separate rules apply to the City of Oslo. Here, the County Governor of Oslo and Viken shall carry out the check the County Electoral Committees make in the other constituencies, cf. section 10-9, subsection 2 of the Election Act. However, the County Governor cannot correct errors in the Electoral Committee’s validation and counting of the votes. On the other hand, the County Governor shall enter such errors in the records and send such records to the Storting and the National Electoral Committee.

### **17.2.12 Electoral bodies**

It is electoral bodies at national, county and municipal authority level that have duties related to the implementation of elections. These are described in section 4-1 to 4-4 of the Election Act. The National Electoral Committee only has duties related to parliamentary elections, while the County Electoral Committee has duties at county council and parliamentary elections. The Electoral Committees have duties at all elections. In municipalities where the voters can vote in several places

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<sup>447</sup>Sorted as uncorrected and corrected, those that were cast at election proceedings and those that were cast separately in advance.

on Election Day, there shall be a polling committee at each polling station. Figure 17.1 provides a schematic overview of these electoral bodies and their most important duties.




<p><b>Nasjonalt nivå</b></p> 	<p><b>Riksvalgstyret</b></p> <ul style="list-style-type: none"> <li>• oppnevnes av Kongen i statsråd</li> <li>• har oppgaver kun ved stortingsvalg: <ul style="list-style-type: none"> <li>• er endelig klagemyndighet for alle klager bortsett fra klager på stemmerett</li> <li>• kårer utjevningsmandater</li> </ul> </li> </ul>
<p><b>Fylkesnivå</b></p> 	<p><b>Fylkesvalgstyret</b></p> <ul style="list-style-type: none"> <li>• oppnevnes av fylkestinget</li> <li>• har disse oppgavene ved fylkestingsvalg og stortingsvalg: <ul style="list-style-type: none"> <li>• godkjenning av listeforslag</li> <li>• trykking av stemmesedler</li> <li>• endelig opptelling</li> <li>• valgoppgjør (ved stortingsvalg kårer kun distriktsmandatene)</li> </ul> </li> </ul>
<p><b>Kommunenivå</b></p> 	<p><b>Valgstyret</b></p> <ul style="list-style-type: none"> <li>• oppnevnes av kommunestyret</li> <li>• har oppgaver ved alle valg: <ul style="list-style-type: none"> <li>• ansvarlig for stemming</li> <li>• manntallsføring</li> <li>• første opptelling ved alle valg</li> </ul> </li> <li>• har i tillegg disse oppgavene ved kommunestyrevalg: <ul style="list-style-type: none"> <li>• godkjenning av listeforslag</li> <li>• trykking av stemmesedler</li> <li>• endelig opptelling</li> <li>• valgoppgjør</li> </ul> </li> </ul> <p><b>Stemmestyret</b></p> <ul style="list-style-type: none"> <li>• oppnevnes av valgstyret</li> <li>• skal være ett per valglokale, med ansvar på valgdagen for <ul style="list-style-type: none"> <li>• mottak av stemmer</li> <li>• første opptelling av valgtingsstemmer avgitt rett i urne</li> </ul> </li> </ul>

Figure 17.1 The electoral bodies and their tasks

## 17.3 Nordic law

### 17.3.1 Sweden

#### 17.3.1.1 Voting

In Sweden, municipal, regional and national elections take place on the same day (the second Sunday in September). It is not permitted to hold two-day elections – but it is possible to also vote

in advance on Election Day itself. Advance votes are sent to the municipality in which the voters are registered in the electoral register.

The advance voting period is much shorter in Sweden than in Norway. According to Chapter 10, section 2, subsection 1 of the Swedish Elections Act, advance voting in Sweden can start no earlier than 18 days before Election Day. Advance voting abroad can start no earlier than 24 days before Election Day, cf. subsection 2.

Only paper electoral registers are used at the Swedish elections. The voter shall place the ballot paper in an envelope inside the polling booth and then hand this over to the returning officer. On Election Day, the envelope is placed directly in the ballot box, but during advance voting, the envelope is set aside if the voting takes place at a polling station. The advance votes are then sent to the municipality where the voter is registered, so that these are ready at the polling station on Election Day. This is because in Sweden voters are allowed to change their vote on Election Day, even if they have voted during the advance voting period. This is called "*ångerröstning*" (*change of vote*) and is described in Chapter 9, section 14 of the Swedish Elections Act. If the advance voting takes place at a polling station where the voter goes to vote on Election Day, the voter is only allowed to vote again when he or she has received from the returning officer the advance vote he or she has cast.

In Sweden, the same requirements do not apply to the placement of the ballot papers as in Norway. In most places, the ballot papers are placed unshielded outside the polling booths and the voters must select them in full public view and take these with them into the polling booth. As in Norway, far more ballot papers are printed than are used. There is one ballot paper per party standing for election.

The opening hours for the polling stations at national and local elections are set out in the Act and shall be between 8 a.m. and 8 p.m., cf. Chapter 4, section 21, subsection 1, no. 2 of the Swedish Elections Act.

It is also possible to vote using a courier in Sweden, i.e. that another person can take the vote along to the polling station.

### **17.3.1.2 Counting**

In Sweden, there are two counts, both by manual counting. A provisional count (*preliminär rösträkning*) is made at the polling station, see Chapter 11 of the Swedish Elections Act. The count cannot start until the voting is concluded and all the envelopes to be placed in the ballot box. The votes that were not counted at the polling stations are counted by *the election committee* in the municipality in a provisional count according to Chapter 12 of the Swedish Elections Act. *The election committee's* count takes place on the Wednesday after Election Day and includes the advance votes that did not arrive at the polling stations on Election Day. *The County Administrative Board* conducts a final count of all the ballot papers.

## **17.3.2 Denmark**

### **17.3.2.1 Voting**

In Denmark, all voters can vote in advance in every municipality in the country, cf. section 53 of the Danish Parliamentary Election Act and section 59 of the Act on municipal and regional

elections. As a rule, advance votes shall be cast to two vote receivers, cf. section 55 of the Danish Parliamentary Election Act and section 61 of the Act on municipal and regional elections.

The voters can vote in advance in the last three weeks before Election Day at parliamentary elections and six weeks before Election Day at local elections. If the voter has voted in advance, the person concerned cannot vote again on Election Day.

In Denmark, on Election Day, the voters can only vote in a different polling booth than the one they belong to according to the electoral register if they apply for this in advance and only if this is justified by the voter's "disability or poor health". This applies to all types of elections, cf. section 47 a) of the Danish Parliamentary Election Act, cf. section 47 and section 53 a) of the Act on municipal and regional elections, cf. section 53.

Like in Sweden, the opening hours for the polling stations at national elections are set out in the Act and shall be between 8 a.m. and 8 p.m. If the voting is on a Saturday, Sunday or other public holidays, the opening hours shall be from 9 a.m. to 8 p.m.

Unlike Norway and Sweden, a ballot paper in Denmark is considered a security and each voter is only issued one ballot paper. All the parties and candidates are listed on the same ballot paper, which is therefore very large.

### **17.3.2.2 Counting**

The votes are counted twice at all elections. The first count takes place at the individual polling stations when the voting is concluded, cf. section 68 of the Danish Parliamentary Election Act and section 74 of the Act on municipal and regional elections. No later than the day after Election Day, the election committee shall recount the votes in the relevant nomination district, cf. section 72 of the Danish Parliamentary Act and section 77 of the Act on municipal and regional elections. Both counts are done manually

## **17.4 Sending votes**

### **17.4.1 Background**

If a voter votes in advance outside the municipality where he or she is registered in the electoral register, the vote shall be sent to the home municipality for validation and counting. The deadline for when such votes must have been received by the Electoral Committee in this municipality is 5 p.m. on the Tuesday after Election Day. Advance votes that arrive later than this are rejected and thus not included in the election result.

At the 2017 parliamentary election, 1,051 arrived too late.<sup>448</sup> To be able to solve this problem, it is important to know the reasons why votes arrive too late. In the Recommendation to the Storting Innst. 1 S (2017–2018) the Ministry gives an account of the problem:

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<sup>448</sup>Data is collected from a survey conducted by the Norwegian Directorate of Elections after the election. Of these 1,051 votes, 335 were advance votes from abroad. The Ministry of Local Government and Modernisation informs in its report to the Credentials Committee in the Storting that there may be reason to assume that the number is higher, as not all the municipalities have responded. The number is lower than at the 2013 parliamentary election, as 1,653 advance votes arrived too late, see Innst. 1 S (2017–2018) *Recommendation to the Storting from the Credentials Committee*.

The feedback from the municipalities indicates that the main reason for the advance votes arriving too late is errors from the election official. This is unacceptable. The Ministry will ensure that the Norwegian Directorate of Elections gives a thorough introduction to the importance of proper addressing and that the municipalities must ensure that advance votes are sent in good time before the approval deadline. The municipalities must also understand the consequence of not following forwarding routines.

The main reasons for errors are inadequate addressing or that the votes were submitted to Posten so late that they did not arrive in time with the ordinary postal service.<sup>449</sup>

Such errors can be avoided by better routines and training of the election officials. At the same time, this may not be sufficient. A reduced postal service in the future will have an impact on how it can be ensured that advance votes cast in time, arrive in time so that they are included in the election result.

More than one million voters voted in advance at the 2017 parliamentary election. Experience from recent elections also shows that the majority of people who vote in advance do so in the last week, especially in the last two days of the advance voting period.

At the 2019 elections, the City of Oslo received 107 advance votes after the deadline. Of these, 6 were advance votes from other municipalities sent as ordinary mail (not through the distribution agreement with Posten) and 101 advance votes from abroad.

Abroad, voters can vote in advance up to the penultimate Friday before Election Day. Posten informs that it takes longer than before to send letters to Norway, and that there are significant variations in how long it takes. Experience from Oslo at the 2019 election seems to confirm this.

By looking at the postmark date, the City of Oslo calculated how long it takes to send votes from abroad to Norway. It is worth noting that these were votes being sent to Oslo. There were no votes to be forwarded to municipalities across the country. Here are some examples of the mail delivery times:

- Spain, Alicante 19 days
- Spain, Madrid 9 days
- Thailand 23 dager
- Belgium, Brussels 12 days
- France 25 days
- Sweden 6 days
- Denmark, Copenhagen 3 days
- Australia, Sydney 27 days
- Australia, Melbourne 23 dager

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<sup>449</sup>Innst. 1 S (2017–2018) *Recommendation to the Starting from the Credentials Committee.*

### 17.4.2 Reduced postal service and what it means for the delivery time

The Postal Act was amended in 2016 so that Posten must no longer deliver post on Saturdays.<sup>450</sup> Furthermore, from 1 January 2018, first and second class mail was merged into one common letter stream.<sup>451</sup> According to a temporary licence to Posten Norge AS, with the new routines, at least 85 per cent of letter post in Norway shall be delivered within two days. Previously, the delivery time requirement was stricter, in that 85 per cent of the first-class letter post in Norway (A-post) was to be delivered the day after being sent.

A common letter stream for letter post, two days delivery time and loss of Saturday as a delivery day will pose more challenges for the delivery of advance votes. These changes mean that many advance votes cast on the last Friday before Election Day will not arrive by ordinary mail delivery within the deadline for approval.<sup>452</sup> This is a consequence of advance votes received after Posten's latest time of posting on Friday, not being considered as sent until Monday under the new changes. With a two-day delivery time, the advance votes will not normally be received by the Electoral Committee until Wednesday, which is after the deadline of 5 p.m. on Tuesday. Some advance votes will be further delayed, as the 2-day delivery requirement applies to 85 per cent of the letter post. Therefore, there is a risk that advance votes cast on Thursday before Election Day will arrive too late to be approved.

In 2019, the Storting decided to amend the distribution day requirements in the Postal Act. The requirement has been amended from five days a week to every other day, Monday to Friday in a two-week cycle.<sup>453</sup> The amendment came into effect from July 2020. The Ministry of Transport and Communications writes the following about the importance of delivery of advance votes:

The change in the number of distribution days will have little impact on the forwarding of advance votes. There will still be a daily collection of postal items from "Post i butikk" and terminals and daily posting of mail in the mailbox facilities. This means that only advance votes that are sent either as stamped letters placed in a red mailbox located on a distribution route or that are issued elsewhere than in a mailbox facility will be affected by the proposed change.

The municipalities must then ensure that mail containing advance votes is sent from "Post i Butikk" or in a way that ensures a daily collection of the mail. Furthermore, it helps if the address

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<sup>450</sup>Prop. 109 L (2014–2015) (Bill) Act on postal services (the Postal Act).

<sup>451</sup>Meld. St. 31 (2015–2016) (*white paper*) *The Changing Postal Sector*.

<sup>452</sup>According to the Norwegian Directorate of Elections, on Friday 8 September, which was the last day of advance voting for the 2017 parliamentary election, almost 140,000 votes were registered. The majority of the voters who vote in advance, vote in the municipality where they are registered in the electoral register.

<sup>453</sup>The wording "every other day, Monday to Friday in a two-week cycle" means that the distribution of mail shall take place on Monday, Wednesday and Friday one week and Tuesday and Thursday the second week, cf. Prop. 102 L (2018–2019) (Bill) Amendments to the Postal Act (number of distribution days) page 34.

of the Electoral Committee is linked to a post office box address, so that daily distribution is ensured. [...]

If it is deemed impossible to address advance votes to post office box addresses, an alternative will be to ensure collection and distribution of advance votes on the last weekend before Election Day according to section 12 of the Postal Act. This can be done by state purchase of express services or by an order in accordance with section 12 of the Postal Act. In 2018, the Norwegian Directorate of Elections made a request for interest for this kind of purchase.<sup>454</sup>

Already from July 2020, the mail will only be distributed 2.5 times a week (2 days one week and 3 days the other week). Those who have a post office box will have post delivered every day. According to Posten, this means that at the 2021 election, it will be possible to send the advance votes as letter post up and including Wednesday before the election, i.e. as at the 2019 election, provided that all municipalities operate with a post office box address for the advance votes.

Over time, it must be assumed that the postal network will be further reduced and it will then take longer to send advance votes via Posten's ordinary distribution system. This could mean that all advance votes cast in the last week before Election Day will have to be sent via a special distribution solution. The purpose of this procedure is to be able to make sure that they arrive in time to be approved. Posten estimates that this may be needed as early as the 2023 or 2025 election.

Posten also states that in the long term, it may be more difficult to offer such a special solution as in 2019 to the whole country. This is due to the downsizing of the post network and workforce reductions. In many places, Posten also depends on other actors to deliver the votes in time (e.g. Widerøe). In sparsely populated areas, the delivery time may have to be increased by one day. To ensure that no advance votes cast on Friday (the last day of the advance voting period) must be rejected because they arrive too late, the mailing deadline must then be changed to Wednesday.

#### **17.4.3 Distribution agreement for advance votes at the 2019 election**

Before the 2019 local government elections, the Norwegian Directorate of Elections entered into an agreement with Posten Norge AS regarding delivery of advance votes cast on the last Thursday and Friday before Election Day. Advance votes cast before these days were sent as ordinary letter post.

The distribution agreement was based on the following elements:

- The municipalities appointed contacts that Posten could contact.
- The municipalities themselves had to pack advance votes cast on the Thursday and Friday before Election Day in dispatch envelopes addressed to each receiving municipality, one envelope per municipality. They collected these envelopes in separate pre-addressed boxes.
- Posten collected the box at the agreed time. The box was scanned so that it could be tracked. All the boxes were addressed to Posten Norge, Østlandsterminalen, Lørenskog.
- The boxes were collected in local collection centres and sent to the Østlandsterminal by air/truck.

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<sup>454</sup>Prop. 102 L (2018–2019) (Bill) page 21.



- At the Østlandsterminal, the boxes were opened and the dispatch envelopes were sorted according to municipality. These were put in a new box, which was addressed to the individual municipality.
- The boxes were then sent as an Express Contract Parcel.

Posten collected advance votes in 33 municipalities on Thursday, in 340 municipalities on Friday and in Oslo on Saturday (in some municipalities several of these days). The votes arrived at the Østlandsterminal on Saturday, where they were sorted the same day. The sorted boxes were then distributed to the municipalities through Posten's distribution network on Sunday and the boxes were distributed to the recipients on Monday. There were some sorting errors, but these were discovered on Monday and sent to the municipalities on Tuesday. An additional delivery day is necessary to correct errors.

#### **17.4.4 The Commission's evaluation**

The Commission stresses that rejected votes caused by errors or delivery delays are a serious restriction of the voter's democratic rights. The voter's vote will not be counted in the election result and the voter will also not be able to appeal as the person concerned will not receive information that his or her advance vote was rejected because it arrived too late to be approved.

As long as votes are cast on paper and shall be validated and counted by the municipality where the voter is registered in the electoral register, there will be challenges related to sending votes.

In the view of the Commission, it is unacceptable that the election officials in the municipalities make mistakes when sending ballot papers, which lead to the voters' votes being rejected. It is important that the Ministry provides adequate information, training measures and clear procedures and that the Electoral Committees around the country take their responsibilities seriously to prevent such situations arising. The Commission finds it is important that the dispatch envelopes have the correct address so that the votes are sent to the correct place and that the best possible procedures are in place to prevent the wrong address being written on the dispatch envelopes. One possibility may be that the election officials are allowed to print an address label with the correct address taken straight from EVA, thus minimising the risk of human error.

Even if the municipalities do everything correctly, it must be expected that with the current postal system advance votes will arrive too late if they are sent by ordinary letter post. This is further complicated by the reduction in the postal service. Therefore, the Commission has considered various solutions to prevent votes from being rejected because they are received by the Electoral Committee after the deadline for being approved. The various solutions will have varying implications for the voters' accessibility and the election result itself, as well as various financial consequences.

One possibility is to conclude the advance voting period earlier than today. However, the Commission finds that limiting the accessibility of the voters by concluding the advance voting period earlier, such as the Thursday before Election Day, is not a good solution. This would involve restricting a well-established opportunity that voters largely take advantage of, without replacing it with a satisfactory alternative. This is not desirable.

The Commission has also considered it may be appropriate to make changes to the regulations for when the votes must have been received in order to be approved. The Commission

understands that the election result is likely to be delayed as a consequence of such a change. If the election result comes even closer to the time for the opening of the Storting in October, the period of proper control and handling of appeals will be reduced. Therefore, the Commission finds that the problem of late-arriving votes should be sought to be resolved through a separate agreement with Posten, or a similar post distributor, who guarantees a faster delivery of votes than is possible with the current post distribution system, cf. the agreement between the Norwegian Directorate of Elections and Posten at the 2019 municipal and county council elections. The Commission points out that both Sweden and Denmark have entered into special agreements with distributors to ensure that advance votes arrive as quickly as possible.

The special delivery agreement at the 2019 election worked very well. Virtually none of the advance votes arrived too late to the voters' home municipalities.

Overall, the Commission finds that a separate distribution agreement will be the most appropriate measures to avoid advance votes arriving too late. This should be combined with more training of the election officials in the municipalities to avoid making mistakes that lead to votes not arriving in time. In the opinion of the Commission, experience from the 2019 election shows that similar agreements should be entered into for the upcoming election as the one that was entered into between the Norwegian Directorate of Elections and Posten in 2019.

The Commission also points out that there may be a need to set a time for when the advance voting period ends on the Friday before Election Day. The Commission discusses this in section 17.6.4 regarding the conclusion of the advance voting period.

The Commission finds that a separate agreement on the delivery of advance votes in Norway means that there is no need to continue the provision of section 8-1, subsection 3 of the Election Act. This provision states that the voter is personally responsible for casting the advance vote on a date that enables it to be received by the Electoral Committee by 5 p.m. the day after Election Day.

The Commission is concerned that many advance votes from abroad are being rejected. There may be several measures that can help reduce the number of rejected ballots cast. One measure may be to amend the regulations for when it is possible to vote abroad. For example, one possibility is to conclude the advance voting period earlier. However, the Commission points out that the overview from the City of Oslo makes it clear that it takes a very long time to send the votes home to Norway. The Commission assumes that in the cases, the votes are mostly sent as ordinary mail. The Commission finds that concluding the advance voting period early enough so that all the votes arrive in time if they are sent by post, i.e. up to one month earlier than today, is not a good alternative. It would lead to a very restricted opportunity to vote for voters who live or stay abroad.

The Commission assumes that there is much to be gained from providing better information to the voters and to those who vote by mail, that they must not send their votes as ordinary mail, but that the votes should be sent by courier mail (DHL, etc.) or diplomatic mail if it is an option, to ensure that the votes arrive in time.

The Commission finds that the Ministry should also look at the possibility that the votes coming from abroad are forwarded to the right municipality in Norway using the same solution as used for delivery of the other advance votes in Norway. In the opinion of the Commission, the same should

also be done for advance votes cast on Svalbard. All these deliveries will nevertheless go through Posten's central distribution terminal at Lørenskog before being forwarded to the right place in Norway.

### **17.5 The Commission's evaluation – the electoral bodies**

The Commission finds that the division of responsibility between the municipality, county authority and the national level when conducting elections has been good, and proposes no changes here. As regards the electoral bodies, some changes are proposed that are related to other issues the Commission has considered.

The Commission proposes that there shall still be a National Electoral Committee at a national level, but makes major changes to the composition and authority. This related to the changes proposed in the appeal system. For more information about the National Electoral Committee, reference is made to Chapter 20.

At the county level, a minor adjustment is proposed, which is related to the fact that at parliamentary elections there will be more constituencies in a number of counties. Therefore, it is proposed to distinguish between the body that has duties related to parliamentary elections (the District Electoral Committee) and the body that has duties related to County Council Elections (the County Electoral Committee).

As regards the municipal electoral bodies, the Commission also proposes some adjustments. The reason for this is the changes to the counting requirements proposed by the Commission in section 17.8. To ensure that two different bodies count the votes the first and second time at municipal council elections, the Commission proposes that the establishment of a central polling committee in each municipality. This is in addition to the polling committees responsible for the polling stations on Election Day. While the polling committees at the polling stations are responsible for the first count of votes placed straight into the ballot boxes on Election Day, the central polling committee is responsible for the first count of the advance votes. The central polling committee is also responsible for the first count of votes cast in envelopes on Election Day. No changes are made to who will be responsible for the final count. At municipal council elections, the Electoral Committee has this task. At county council elections, the County Electoral Committee is responsible for the final count and at parliamentary elections, the District Electoral Committee has this responsibility.

Figure 17.2 provides a schematic overview of the electoral bodies the Commission proposes and the tasks intended for them. The overview has been structured in the same way as figure 17.1, which provides a corresponding view of the electoral bodies in the current law.

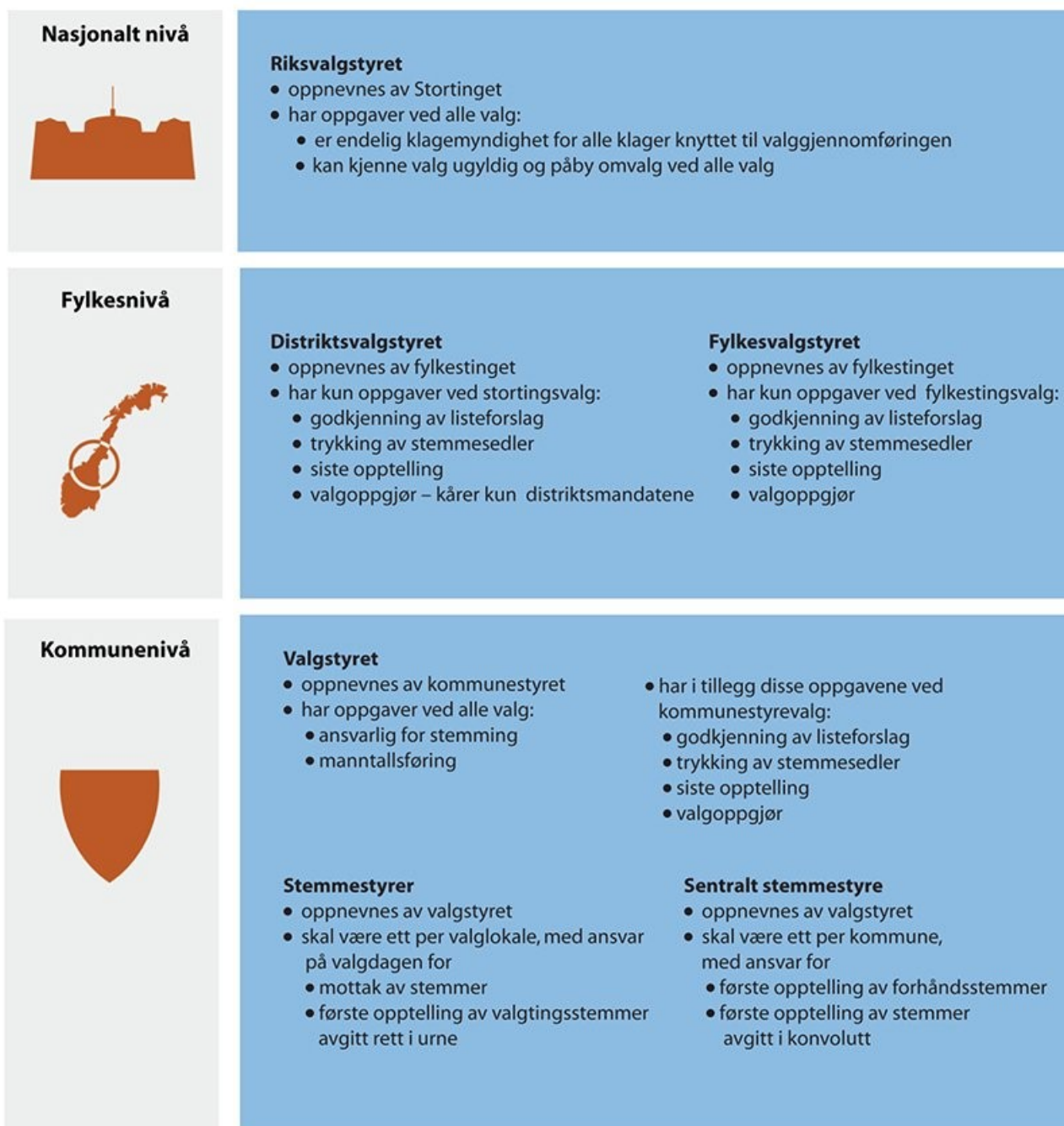


Figure 17.2 Overview of the Commission's proposed electoral bodies and their tasks

## 17.6 The Commission's evaluation – voting

### 17.6.1 The municipalities' facilitation

The Commission points out that following delegated authority, it is up to the Municipal Council or the Electoral Committee to decide into how many polling districts the municipality shall be divided.<sup>455</sup> For the municipalities, the determination of the number of polling districts will often depend on a trade-off between cost savings and accessibility. Before the 2017 parliamentary

<sup>455</sup>Nevertheless, sections 8-3 and 9-3 of the Election Act sets certain limits by requiring the use of available premises.

election, 20 per cent of the municipalities reduced the number of polling districts.<sup>456</sup> The Commission finds that practical considerations during the election process and costs are legitimate considerations in assessing into how many polling districts the municipal shall be divided. The voters will naturally have different travel times to the polling stations depending on where they live. Nevertheless, the municipality's division into polling districts should not be random or founded on ulterior considerations. Geographically large municipalities should not automatically allow financial considerations to be decisive if the consequence is that it becomes significantly more difficult for large groups of voters to vote. Therefore, the Commission proposes to legislate that following delegation of authority, the Municipal Council or Electoral Committee shall place particular emphasis on the consideration for travel distances and transport services when it divides the municipality into polling districts.

The Commission would also like to point out that large polling districts may lead to queues when the voters shall vote. This can create discontent among the voters, and some voters might then, due to the long waiting time, decide to leave the polling station without having voted. Long waiting times may also be particularly problematic for older voters and voters with disabilities. Therefore, the Commission finds that it is important that when dividing the municipality into polling districts, the municipality also emphasises avoiding queues. This does not mean that the municipality must be divided into more polling districts. It is just as important how many polling booths and election officials there are at each polling station.

The Commission points out that the current requirement that the polling station must be geographically located in the polling district, may mean that other, more suitable premises outside the polling district cannot be used. The reason for this has been to ensure that the polling stations are close to where the voters are registered in the electoral register. At the same time, there is no limit to the size of the polling districts. Therefore, the Commission finds that the requirement that the polling station shall be geographically located in the polling district, in itself does not ensure accessibility. The Commission has confidence in the municipalities' assessments and finds there should be room for municipalities to make assessments of where it is appropriate to locate a polling station. Therefore, the Commission emphasises that the Commission's proposal does not continue the current law that the polling station must be located in the polling district. The Electoral Committee may decide that the voting shall take place at a polling station that is not in the polling district, if they find this venue is more suitable and accessible. For example, this means that the municipality can divide the municipality into several smaller polling districts that have polling stations in the same building, e.g. at a school, but that separate rooms are used for each polling station. This will provide clear polling districts and contribute to a faster county and better control.

In Chapter 3, the Commission has explained that researchers who have analysed the effect of two-day elections in Norway with data from the voters in 1997 and 2011, found no impact on voter

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<sup>456</sup>Jostein Ryssevik et al, "Et spørsmål om tillit – En evaluering av gjennomføringen av valgene i 2017", Ideas2evidence report 2/2018 (ideas2evidence, 2018).

turnout at a municipal level. However, the researchers say that less accessibility compared with the current level may have a negative impact on voter turnout in Norway.<sup>457</sup>

The Commission points out that at the 2017 parliamentary election, there were two-day elections in 173 of 426 municipalities. At the municipal and county council elections in 2019, 154 of 356 municipalities had two-day elections.<sup>458</sup> Although the proportion of municipalities with two-day elections increased from 40.6 per cent at the 2017 election to 43.3 per cent at the 2019 election, fewer municipalities had two-days elections in 2019 than in 2017.<sup>459</sup> The Commission finds it should still be up to the municipalities whether they only want to have election proceedings on Election Day Monday or whether the voters should also be able to vote on the Sunday before Election Day. However, the Commission would like to point out that the Electoral Committee must consider the question of two-day elections carefully, where the emphasis is on the distance to the polling stations, whether many commute, how many polling stations there are in the municipality, how long the polling stations are open on the Monday, etc.

The Commission is aware that at the 2019 election some municipalities changed the time for when it was possible to vote in advance after the opening hours were printed on the polling cards and announced in the municipality and on valg.no. The Commission sees that there may be a need to change the time and place for where the voters can vote. Therefore, the Commission finds that it should be clarified how close to Election Day this can be done and how different places and times for the voting should be announced. The Commission finds that such rules belong in regulations and therefore, proposes giving the Ministry the authority to issue further provisions on these issues.

### **17.6.2 Who cannot serve as returning officers, election officials or participate in the count**

Under current law, candidates who appear on the electoral list for municipal council elections cannot be appointed as returning officers or election officials at the polling stations in the municipality in question. Similar rules apply at parliamentary and county council elections. The Commission supports that such restrictions as to who can be returning officers and election officials at polling stations are needed.

When it comes to the Electoral Committee there is no such restriction. This has been justified by the fact that the Electoral Committees have a cross-political composition and that the meetings are open. There is also no limit to who can assist the Electoral Committee with the count.

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<sup>457</sup>Johannes Bergh and Atle Haugsgjerd, "Hvilken valgordning får flest velgere til å stemme? Om sammenhengen mellom valgordninger og valgdeltakelse", Appendix 5 of the report (The Norwegian Institute of Social Research, 2018) and Johannes Bergh and Jo Saglie, "Valgdeltakelsen ved sametingsvalg: hvor viktig er tilgjengelighet?", in *Sami parliament elections: voters, parties, media*, red. Eva Josefsen and Jo Saglie (Oslo: Abstrakt forlag AS, 2011).

<sup>458</sup>"154 kommuner har to valgdager" (Norwegian Directorate of Elections, 2 September 2019), <http://www.valg.no/kommune-styre--og-fylkestingsvalget-20192/valgdag-og-gjennomforing/154-kommuner-har-to-valgdager/>.

<sup>459</sup>The change in the number of municipalities is due to the municipal reform.

For the sake of confidence in the election process, the Commission finds that candidates standing for election should also not be able to participate in the counting of ballot papers centrally in the municipality. Therefore, the Commission proposes that candidates on an electoral list at municipal council elections shall be able to participate in the counting of ballot papers at municipal council elections in the municipality in question. Similarly, candidates at parliamentary or county council elections shall not be able to participate in the counting of ballot papers at parliamentary and county council elections in any of the municipalities in the constituency.

### 17.6.3 Early voting

Everyone must be allowed to vote. The Commission points out that in Norway, it is possible to vote from when early voting starts on 1 July and up to Election Day in September.<sup>460</sup> At the 2017 parliamentary election, 12,582 early votes were cast, which constituted about 0.4 per cent of the total approved votes. The period for voting in Norway, when early voting is included, is about 70 days. By comparison, it is 18 days in Sweden and 3 weeks in Denmark at parliamentary elections and 6 weeks at municipal elections. Nevertheless, Denmark and Sweden have a higher voter turnout than Norway.

*The majority of the Commission (Anundsen, Grimrud, Hagen, Holmøyvik, Holmås, Høgestøl, Nygreen, Røhnebæk, Stokstad, Storberget, Strømmen, Aarnes and Aatlo)* finds that the possibility of early voting should not be abolished at present, as it will restrict the accessibility of the voters who are not able to vote during the ordinary advance voting period. These members point out that early voting was introduced at the 2009 parliamentary election. The system was introduced to ensure that Norwegian residents who are located in places where they are unable to vote in advance in (the ordinary) advance voting period are also allowed to vote. The scheme ensures that fishermen who are far out at sea, among others, also have the opportunity to vote in advance. However, the majority points out that the system does not provide personnel who stay at the Troll Research Station in Antarctica with the opportunity to vote. They leave for Antarctica before the early voting starts. Until a better solution is found that ensures that everyone has the opportunity to vote within the ordinary advance voting period, these members find that the early voting system should continue.

*The minority of the Commission (Christensen, Giertsen, Hoff, Tørresdal and Aardal)* finds that early voting makes the advance voting period in Norway disproportionately long and that the system should be removed. These members also point out that the voting period in Norway is very long compared with other Nordic countries.

These members also point out that advance voting in Norway is already very well facilitated and that it gives the voters good opportunities to vote during the ordinary advance voting period. Few people take advantage of early voting. Early voting also means that the entire election campaign period and the preparations for the election must start earlier, both for the politicians and the electoral authorities. Moreover, there is a risk that people will be less involved in the election campaign if they vote so early in the election period.

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<sup>460</sup>Many of the premises where it is possible to vote in advance are closed on the weekends.

The also proposes that there must be two returning officers present when the voters cast early votes. This will ensure the same regulations for early voting and ordinary advance voting. In the past, only two returning officers have been required when the vote is placed in the ballot box. The idea has been that when the ballots cast are approved directly, there is no need to be two returning officers present. The Commission finds that when receiving early votes, there should also be two returning officers present. This ensures control and will appear more trustworthy to the voters.

#### **17.6.4 When the advance voting period shall end**

Today, the voters can vote from 1 July and up to Election Day, except for the Saturday before Election Day.<sup>461</sup> The advance voting venues have varying opening hours and many of the venues are closed on Saturdays and Sundays. The Commission has considered whether it should also be possible to vote in advance on the Saturday before Election Day by extending the advance voting period by one day.

Based on the information the Commission has received from Posten, the Commission concludes that with advance voting on a Saturday, the deadline for when the advance votes must have arrived to be approved will in a few years be moved to Thursday at 5 p.m. to ensure that the ballots cast arrive in time.

*The majority of the Commission (everyone except Holmås and Nygreen)* finds for somewhat different reasons that advance voting on Saturday before Election Day should not be allowed. A few of the majority emphasises that the advance votes will then not arrive within the current deadline, i.e. Tuesday at 5 p.m., which means that the deadline must be moved, in the long term probably to Thursday at 5 p.m. This will delay the election result and reduce the possibilities for good control of the election before the Storting opens at the beginning of October. Another part of the majority finds that accessibility is already good and that it is good to have a “day of rest” that separates the advance voting from the voting at election proceedings. These members stress that such a “day of rest” will give the municipalities time to prepare the voting at the election proceedings. This involves taking down advance voting venues and preparing the polling stations to be used at the election proceedings and in some municipalities, updating electoral lists on paper.

The majority also proposes that the advance voting shall be concluded no later than 6 p.m. on the last Friday before Election Day. This will make the delivery of advance votes more predictable and help ensure that the advance votes arrive within the deadline to be approved.

*The minority of the Commission (Holmås and Nygreen)* finds it should be possible to vote in advance on the Saturday before Election Day. This will improve the voters’ opportunity to participate in the election. The minority finds that this consideration is more important than the election result being delayed. Therefore, the minority proposes to legislate that it shall also be possible to vote in advance on the Saturday before Election Day.

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<sup>461</sup>As well as Sunday in the municipalities that do not have two-day elections. At the 2017 parliamentary election, 173 municipalities had two-day elections.



## **17.6.5 Voting outside your municipality on Election Day**

### **17.6.5.1 Introduction**

The Commission has considered whether it can be facilitated that voters who so wish can vote on Election Day in other municipalities than where they are registered in the electoral register. This is mainly due to a desire to avoid votes being rejected because the voters show up at the wrong polling station.

It will not be possible to allow voters to vote at the election proceedings in another municipality than where they are registered in the electoral register and while retaining the current provisions on local counting and approval of the ballots cast with the current approval deadlines. That would have resulted in many votes being rejected. Therefore, for it to be possible to vote in all municipalities also on Election Day, several amendments must be made to the regulations. Furthermore, it will require that all municipalities have access to an electronic electoral register at the election proceedings to establish where the voter has the right to vote and to be able to print a polling card with information about where the voter shall be sent.

### **17.6.5.2 Moving the approval deadline**

The Commission has concluded that a separate distribution agreement should be entered into to ensure that the advance votes arrive in time to be approved. If voting outside a voter's municipality is allowed on Election Day, with such an agreement, it will be necessary to change the deadline for when an advance vote must be received to Friday at 5 p.m.

It will involve major problems for local elections that the election result is ready a few days later than today. However, the time between when the election result is ready and when the Storting opens is already very short. To have sufficient time for proper control and appeal processing, Election Day should then also be as early as possible in September.<sup>462</sup>

### **17.6.5.3 Amend the validation and approval rules**

The Commission has considered whether the issue can be solved by counting votes cast at election proceedings by voters registered in the electoral register of another municipality *not* being counted in the municipal count, but are sent directly to the District Electoral Committee at parliamentary elections and the County Electoral Committee at county council elections. In this way, these votes will only be counted at an electoral district level.

It should be possible to send such votes to each of the District Electoral Committees or the County Electoral Committees by the Friday after Election Day. If the other votes are counted in the same way as today, with a deadline for approval on the Tuesday after Election Day at 5 p.m., the municipalities will be finished the counting by Tuesday afternoon/evening. The material is then sent to

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<sup>462</sup>The timing of elections is regulated by section 9-1 of the Election Act, where it is stipulated that Election Day shall be in September. Traditionally, Election has been set for the second Monday in September and in the period 1989-2017, Election Day has been somewhere between 9 and 15 September. It has been considered undesirable that Election day comes too close to the school holidays. The municipalities and the parties would then have little time to prepare for the election. On the other hand, it must be taken into consideration that the County Electoral Committees and the National Electoral Committees shall have time to conduct the election result and process the appeals, so that this is ready before the newly elected Storting convenes.

the District Electoral Committee or the County Electoral Committee, which then conducts counting Wednesday, Thursday or Friday – depending on the transport distances. Votes from Election Day sent directly to the District Electoral Committee or the County Electoral Committee will then be able to arrive in time for a county in the constituency on Friday.

It will be difficult for the District Electoral Committees and the County Electoral Committees to approve and sort the ballots cast in each municipality, especially in constituencies with many municipalities. It will require a great deal of organisation and accuracy so that the various election results are not mixed together. Another challenge concerns secret ballots. If only one such ballot comes to a municipal result, it will not be possible to keep this ballot secret. Today, secrecy regarding the late advance votes is resolved by withholding a small number of advance votes, which are not counted until they are mixed with any advance votes that arrive on Tuesday. A similar solution is difficult to organise in the District Electoral Committees and the County Electoral Committees as they do not receive other advance votes.

How laborious this will be, will depend on how many people take advantage of the opportunity to vote on Election Day in another municipality. Although not many people show up to do so today, it must be assumed that this will change if such votes are approved.

Such a solution would involve changes in the administrative system the municipalities use, as the District Electoral Committees and the County Electoral Committees must have access to the electoral register and the opportunity to “open” the election result to add votes. It would also mean that some authority currently delegated to the Electoral Committee is transferred to the District Electoral Committee and the County Electoral Committee. If it turns out that a large number of voters vote on Election Day, it must also be considered whether it is sufficient that these votes are only counted once.

A system where ballots cast outside a voter’s home municipality on Election Day are sent to the District Electoral Committee or the County Electoral Committees for counting, could be used at parliamentary and county council elections, while municipal council elections will be more complicated. The County Electoral Committees have no role in municipal council elections and since the municipal and county council elections are conducted at the same time, there should be equal rules, i.e. that the voters are sent to the municipalities. However, at local elections there is more time available and a delay in the election result will not be so problematic.

Having different rules for when advance votes must have been received by the electoral committee at local elections and parliamentary elections will complicate the regulations and increase the risk that election officials misunderstand and make mistakes. Therefore, good guidance and training to municipalities and county authorities will be very important.

#### ***17.6.5.4 Only allow ballots cast outside the voters’ registered municipalities count when allocating seats at large.***

The Commission has considered whether ballots cast on Election Day in another municipality than where the voter is registered in the electoral register can be counted centrally for the whole country and only count in the allocation of seats at large. Such a solution will only be relevant at parliamentary elections.

The advantage of this solution is that it ensures that such votes also count to some extent. By sending all these votes for a central count, e.g. at the Norwegian Directorate of Elections, the votes will arrive in good time before the seats at large are allocated. In this solution, the authority is also transferred from the electoral committees and the votes will only be counted once.

A decisive objection to this is that the voter is then deprived of the opportunity to influence the direct-elected seats. This goes against the principle of one voter, one vote. It is also possible that these votes are to the electoral committees in the municipalities by mistake. The system will be difficult to explain to the voters. Although the solution is intended as a safety valve to avoid rejecting votes, a rule change could lead to more people using the solution.

As this solution will only apply to parliamentary elections, it will cause the regulations to become more complicated.

#### ***17.6.5.5 Send ballot papers electronically from one polling station to another***

The Commission has also considered whether various technical solutions can help make it possible for voters to vote outside their registered municipality. As discussed in Chapter 4, electronic voting at the polling station poses several security challenges, but in the same way as electronic voting (from uncontrolled environments) challenges the principle of a secret ballot.

The Commission finds it interesting to look into the possibility that the voter votes on paper, but that the ballot paper is then scanned and sent electronically to the right municipality. It will then be possible to allow voters to vote outside their municipality on Election Day, without risking votes arriving too late. At the same time, there will be a paper ballot that can be checked and re-counted if there is any doubt about the election result.

To ensure secrecy, the scanned ballot paper should be sent without information about the voter who has cast it. If the municipalities have electronic electoral registers on Election Day, it will be possible to approve the ballots cast and cross off in the electoral register where the ballot is received. As the Commission sees it, such a way of sending ballot papers will thus require that the rules on who approves the ballots cast are amended and that all municipalities have electronic electoral registers on Election Day. The Commission sees that such a solution must be thoroughly investigated both technically, security-wise and legally and therefore will not propose a legal amendment at this time. The Commission would also like to stress that if a secure technical solution for sending scanned ballot papers becomes a reality, it may also be a solution to the challenge of sending advance votes.

#### ***17.6.5.6 The Commission's evaluation***

The Commission finds that it must be a goal that the voters should also be able to vote at the election proceedings in municipalities where they are not registered in the electoral register. The Commission stresses that it is a democratic right to be able to use the right to vote on Election Day and that the election should be organised so that as many people as possible go to vote. Furthermore, it is important that as many voters as possible, who make an effort to vote, have their vote counted in the election result. The population is mobile and many people visit other municipalities than where they have their permanent residence. The development of better infrastructure and technology should enable practical solutions so that everyone can vote in the municipality where they are on Election Day. Allowing all voters to vote on Election Day regardless of where they are in the

country, will also provide the voters with a real opportunity to follow the election campaign throughout the election period before deciding what they want to vote. How the current system is set up, the election campaign loses importance as Election Day approaches, as an increasing number of voters have already voted.

However, the Commission will not propose allowing voters at the election proceedings to vote in another municipality than where they are registered in the electoral register. *The majority of the Commission (Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Røhnebæk, Stokstad, Storberget, Strømmen, Aardal and Aatlo)* points out that the outlined solutions have significant disadvantages and uncertainties associated with them. There is also reason to fear that the number of votes cast outside the voters' home municipality on Election Day could be significant if this is allowed. The number may be so large that there will be no provisional, credible election result during election night. It is not desirable that it can take up to several days before a credible result is available. The Commission also points out that the advance voting period is very long already and that the possibility of voting is well organised for everyone.

*The minority of the Commission (Holmås, Høgestøl, Nygreen, Tørresdal and Aarnes)* points out that at the last parliamentary election, 4089 votes were rejected because they were not registered in the electoral register in the municipality. In addition to this, some failed to vote because they were staying in another municipality on Election Day than the municipality where they were registered in the electoral register. These members find that the Norwegian Directorate of Elections should investigate further how the Commission's goal that everyone should be able to vote at the election proceedings, even if municipalities where they are not registered in the electoral register, can be achieved.

#### **17.6.6 Postal votes**

Voters who are abroad and are unable to go to a returning officer can vote by letter post. These voters can be sent election material from the foreign service missions. Before each election, a guide on how the voters can postal vote is available at valg.no.

Postal voting violates the key principles of election implementation such as secrecy, authentication and to ensure that every voter can vote without undue influence from others. Therefore, the Commission has considered whether the system should be abolished.

The Commission finds that the postal voting system should be continued. Removing the system would make it very difficult for some voters resident abroad to participate in the election. However, the Commission stresses that it does not consider postal voting an optimum solution as it violates the fundamental principles of the electoral system.

#### **17.6.7 Advance voting at universities, colleges and defence facilities**

The Commission has considered whether the Act should be amended to make it easier for students and conscripts, in particular, to vote in advance. These are voter groups that will not

necessarily reside where they are registered in the Population Register, and therefore will not have the opportunity to vote at the election proceedings under the current regulations.<sup>463</sup>

The question has been raised by the Ministry and discussed in the Storting on several occasions,<sup>464</sup> but the outcome has been that neither the Storting nor the Ministry has wanted to order municipalities to locate polling stations at universities or colleges. Instead, the municipalities have been encouraged to facilitate elections in a good way for all voters and to consider locating advance voting polling stations at campuses in the municipality.

The Commission supports that it is important that the municipal councils facilitate advance voting and voting at the election proceedings in such a way that as many voters as possible are given ample opportunities to vote. This means that the municipal council should consider advance voting at colleges and universities and at defence facilities to ensure that students and persons in military service have ample opportunities to vote even when they are in places where they are not registered in the electoral register.

However, the Commission will not legislate any requirement that the Electoral Committees must locate advance voting facilities at universities/colleges or military facilities. The Electoral Committees' assessments of local conditions must be the basis for the location of polling stations and for where it shall be possible to vote in advance in the municipality. The Commission points out that there are already many municipalities with a college and/or university that offer advance voting on these campuses.<sup>465</sup> The Commission will encourage the municipalities to continue cooperating with universities and colleges on conducting elections at such campuses.

## **17.7 The Commission's evaluation – reasons for rejection**

### **17.7.1 Voters who are not registered in the electoral register**

The Commission points out that the condition that the voter must be registered in the electoral register in the municipality was the main reason why the ballots cast were rejected at the 2017

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<sup>463</sup>According to section 5-1-4 of the Population Register Regulations (FOR-2017-07-14-1201), students can choose whether to be registered at a) a new place of residence at the place of study, b) maintain registration at the same place of residence as before they started their education (previous residence), if they still have a connection to this, c) be registered at their parental home, d) at a joint residence with a spouse or children or e) at a dwelling that replaces the previous residence, as far as these dwellings are in the same municipality. Parental home, title to a dwelling, tenancy rights to a dwelling and subletting of a dwelling are considered connections to a previous residence.

According to section 5-1-5 of the same regulations, conscripts on national service will be considered as residents where they had their place of residence before their national service began, unless the living conditions there change so that it will be natural to consider them as being resident elsewhere. If they no longer have a connection to another home address, they are considered to be resident at their place of residence.

<sup>464</sup>See for example Innst. S nr. 34 (2004–2005) (Recommendation) and Prop. 64 L (2010–2011).

<sup>465</sup>According to the Norwegian Directorate of Elections' evaluation of the 2019 parliamentary election, almost 10 per cent of the municipalities stated that they offered advance voting at campuses. *The Election Implementation Survey 2019, OE report 2019\_45* (Oslo: Oslo Economics, 2019), page 16.

parliamentary election. 4,391 ballots were rejected for this reason, of which 4,089 were ballots cast at the election proceedings.<sup>466</sup> The reason these ballots cast were rejected may have been that the voter did not have the right to vote at parliamentary elections. Another reason may have been that the people were not aware that the votes would be rejected if at the election proceedings they voted in a municipality other than where they were registered in the electoral register. The Commission points out that such rejections are correct and a consequence of the regulations. More nuanced reasons for rejection will be able to provide more information and also distinguish between rejection because the person is registered in the electoral register in another municipality and rejection because the person does not have the right to vote at parliamentary elections. It could facilitate more targeted measures.

The Commission finds that it is important that in the information work, the Ministry ensures that everyone receives good information about where they can vote. The rule that at the election proceedings the voter must vote in the municipality he or she is registered in the electoral register should be central to this information. The Commission makes reference to a survey conducted by the City of Oslo following the 2019 election, which showed that 55 per cent of voters were aware that they could only vote in their own municipality on election day.<sup>467</sup> The Commission considers this percentage to be far too low.

The Commission is also of the view that there needs to be a simple process for voters to find out where they are registered to vote. This is information that appears on the polling card which is currently sent to each voter. However, not everyone receives their polling card and other solutions should be considered that enable voters to easily search where they are registered to vote. It is presently a requirement that the electoral register has to be made available for public inspection, but it is not readily accessible, particularly for voters who do not reside in the municipality where they are included in the electoral register. The Commission is aware that this relates to rules for registration in the Population Registry and data protection issues, and requests the Ministry to clarify how this can be achieved.

It is also vital that voters are given good information when they arrive to vote. The election official should be able to state the possible grounds for why a voter may not be included in the electoral register, including that the voter may be registered in the electoral register in another municipality. The Commission is of the view that this should be clarified in the training provided to the municipalities.

The Commission has considered whether the voter should be informed about the outcome of the validation of ballots cast when the ballot paper is placed in an envelope. The Commission believes that this may provide the voter with useful information about his or her rights. At the same time, the Commission sees that information provided to individual voters on whether the ballot cast will be approved will result in additional work during an already labour-intensive period. Furthermore, in the vast majority of cases, the information will be provided at too late a stage for the voter to be

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<sup>466</sup>Innst. 1 S (2017–2018) *Recommendation to the Starting from the Credentials Committee*.

<sup>467</sup>“The Electoral Committee’s Evaluation Report 2019: Municipal council and district council elections 2019” (Oslo: City of Oslo, 2019).

able to appeal. The Commission has also placed emphasis on the fact that the electoral registers for Norwegian elections are generally of very high quality and that voters have the opportunity prior to the election to check whether they are included in the electoral register. The Commission has therefore decided not to set such a requirement, but instead requests that good routines are established for what returning officers should tell voters in these situations.

### **17.7.2 Voting outside the advance voting period**

The Credentials Committee stated the following in Proposition to the Storting (Bill) 1 S (2017–2018): “Therefore, the Committee is of the opinion that consideration should be given to whether all ballots cast from abroad that are received by the electoral committee in the applicable municipality by the deadline of 5 p.m on the day after election day, should be approved [...]”

The Commission assumes that advance votes cast in Norway are only accepted during the period in which advance voting is permitted. The situation may be somewhat different abroad, perhaps especially for postal voting and when voting in the presence of an appointed returning officer. For an advance ballot cast in a ballot paper envelope to be approved, the vote must have been cast at the correct time. Advance voting abroad must have concluded no later than the penultimate Friday before election day, cf. Section 8-1, subsection 2 of the Election Act. This deadline has been set to ensure that the ballots arrive at the electoral committee in time.

The Commission assumes that votes cast abroad after the end of the advance voting period pose a very minor problem. It is the Commission’s understanding that the statement from the Credentials Committee was also based on incorrect registration of grounds for rejection.<sup>468</sup> However, it is difficult to see how removing this requirement can be abused. Therefore, the consideration of voters and that their vote shall count should be decisive and, on this basis, the Commission supports removing this reason for rejecting ballots. It can also not be ruled out that some people living abroad will cast a postal vote *before* the advance voting period commences on 1 July in the year of the election. The Commission's proposal entails that a vote cast outside the period stipulated in the Act must not be rejected on this basis. Since the consideration of voters and that their votes shall count will similarly apply when voting domestically, the Commission would clarify that it will also not constitute grounds for rejection if domestic advance votes are not cast at the correct time. The Commission would note that the current rules already require that votes cast before or after the advance voting period must be stored and then reviewed by the electoral committee. The difference to the Commission’s proposal is that votes cast outside the advance voting period will no longer be rejected for that reason.

### **17.7.3 Attempts were made to open the cover envelope**

The condition that the cover envelope must not have been opened or that no attempt must have been made to open this in order for an advance ballot to be approved, was introduced in the

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<sup>468</sup>Following the 2017 parliamentary election, the City of Oslo reported that zero ballots were rejected because of the requirement that an advance vote cast in a ballot paper envelope must be cast at the correct time. Arendal Municipality on the other hand, reported 30 rejected ballots for the same reason. However, the election protocols showed that only five of the rejected ballots were advance votes cast from abroad. The Commission assumes that an error must have occurred when registering the reasons for rejecting the ballots because, in practice, it is only possible for a vote to be cast outside of the time period when voting from abroad.

Election Act in 2002.<sup>469</sup> The intention was to continue the contents of Section 47 of the 1985 Election Act, which stipulated that advance ballots should be rejected if the cover envelope has not been sealed, or if anything indicated that the cover envelope had been opened.

The Commission is of the opinion that the condition that no attempt has been made to open the cover envelope is excessively strict in light of the consideration that the fewest possible factors should result in ballots being rejected. As long as the cover envelope has not been opened it will not be possible to alter the contents of the envelope. However, if it is probable that the cover envelope has been opened, it will not be possible to determine whether the ballot has been tampered with and the Commission is of the view that the ballot should be rejected in these instances. The Commission proposes amending the wording in the provision. If there is reason to believe that a cover envelope has been opened, the ballot should be rejected. The Commission assumes that this is also how the provision has been practiced.

#### **17.7.4 The ballot paper has not been stamped**

The Commission notes that the requirement for an official stamp on ballot papers was introduced in 2002 and replaced the use of ballot paper envelopes. The official stamp shows that the ballot paper is valid and ensures that the voter has not, either consciously or unconsciously, had multiple ballot papers approved.<sup>470</sup>

Ballot papers not having an official stamp was the most common reason for rejection at the 2017 parliamentary election. 4,250 ballot papers were rejected for this reason. The reason that a ballot paper is not stamped may be that the voter placed several ballot papers inside one another, either as a result of using a ballot paper as a cover, or in an attempt to cast multiple ballots. It is therefore uncertain as to whether the high number was due to deliberate fraud or misunderstanding. The ballot paper may also be missing a stamp because the election official forgot to stamp it. No stamp will mean that there is a discrepancy between the number of crosses in the electoral register and the number of stamped ballot papers.

The Commission has discussed how to reduce the number of ballot papers that are rejected due to them not having the official stamp. One measure could be to ensure that voters are provided with better information about the rules. It is possible to conduct information campaigns to prevent the voter from using multiple ballot papers. Another measure may be to print text on the ballot paper stating that the ballot paper must not be used as a cover because only the stamped ballot paper will be approved. A third measure may be that the election official informs voters that they must not place another ballot paper around the ballot they intend to use because only the stamped ballot paper will be approved. This should be able to be short and simple. These types of measures may be well-suited to preventing both misunderstanding and attempted fraud. All of these measures will mitigate the problem and will not require a statutory amendment.

The Commission also notes that there is some variation between the constituencies in terms of the number of rejected ballots. In Oslo, the number of ballot papers that were rejected in 2017

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<sup>469</sup>Proposition no. 45 to the Odelsting (2001-2002), p. 271.

<sup>470</sup>Proposition no. 45 to the Odelsting (2001-2002) p. 207.



because they had no stamp was 0.07 per cent of the total number of approved ballot papers. The corresponding figure in Hordaland was 0.25 per cent and was 0.23 per cent in Sør-Trøndelag. In the view of the Commission, this indicates that there is much to be gained from tightening up procedures for election workers.

Another way to approach the problem would be to reintroduce the use of ballot paper envelopes. However, removing ballot paper envelopes was an important simplification. This enabled the avoidance of (1) loose ballot papers in the ballot box that had to be rejected, (2) multiple ballot papers from the same voter being approved because it was not discovered that there were multiple ballot papers in the envelope, and (3) envelopes having to be checked, which took a great deal of time and resulted in many incorrect registrations. The election result can also be determined faster and it saves both paper and money.<sup>471</sup> The Commission considers the disadvantages of reintroducing the ballot paper envelope to outweigh the benefits and will not recommend this.

Following an overall assessment, the Commission has found that the issue of ballot papers being rejected because they are not stamped should be resolved through information and guidance, not a statutory amendment. The Commission would also emphasise that it is not necessarily a problem that ballot papers are rejected on the grounds of no stamp because this is an effective means of preventing a voter from casting more than one vote.

The Commission would otherwise note that since ballot papers cast abroad are not stamped when the voter casts his/her vote, the ballot papers need to be stamped at a later date in order for them to be approved. Applicable law does not appear to stipulate that ballot papers cast abroad, but only counted manually, have to be retroactively stamped by the electoral committee. It is the Commission's view that this should be clarified in the Election Regulations.

## **17.8 The Commission's assessment - counting and validation**

### **17.8.1 Number of counts**

A correct and trustworthy count is vital to the integrity of an election. An important advantage in having paper ballots is that it is possible to conduct a recount if there is any doubt about the result. The rules for counting should be appropriate and should enable the most efficient count possible to take place without compromising the quality of and confidence in the counting process.

The Election Act presently requires that the municipalities count the votes twice for parliamentary elections and county council elections. The county authority also conducts a verification count. The ballot papers are therefore counted a total of three times. For municipal council elections, the ballot papers are only counted twice by the municipalities themselves. In comparison, for parliamentary elections in Sweden (elections to the Riksdagen), ballot papers are only counted twice - once by the municipalities and once by the *County administrative boards (länsstyrelsen)*. For parliamentary elections in Denmark (elections to the folketing), the votes are first counted for the individual ballot papers and the electoral committee (*valgbestyrelsen*) then conducts a final count.

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<sup>471</sup>Proposition no. 45 to the Odelsting (2001–2002) and Official Norwegian Report (NOU) 2001: 3 *Voters, electoral system, elected representatives*.

The Commission questions whether it is necessary for the municipality to conduct two counts for parliamentary elections and county council elections. This has also previously been assessed. Proposition no. 45 to the Odelsting (2001–2002) raised the question of whether a second count unnecessarily delays the forwarding of material to the county electoral committee. However, the Ministry was of the view that the requirement for a correct result of the count had to take precedence over material being forwarded as quickly as possible. The Ministry made reference to the fact that the election protocols of the county electoral committees revealed major errors in the counting. The Ministry was therefore of the opinion that it was necessary to conduct two counts at municipal level.

The Commission would emphasise that the count that is conducted at municipal level is important and that it should be as precise as possible.

The Commission makes note of the fact that machine counting of ballot papers is much more common now than it was 15-20 years ago. Today, about half of all municipalities use machine counting and, since this applies to the large municipalities, this means that a large majority of the ballot papers are being counted by machine in the municipalities. Furthermore, all county authorities use machine counting. When both the final count in the municipalities and verification count in the county authorities is carried out by machines with the same type of equipment and software, the Commission questions whether this is actually an improvement in quality.

Based on this, the Commission finds that it is sufficient for the municipalities to conduct one count of the votes for parliamentary elections and county council elections. This entails that the requirement for the number of counts will be the same for all types of elections.

### **17.8.2 Responsibility for counting**

The Commission notes that it is important that the rules for counting are formulated in such a manner that a correct count is ensured. There are two factors in particular that are important for ensuring that counting is correct. Firstly, that all of the ballot papers, both from advance voting and cast on election day, are counted twice, and secondly, that the final count involves the actual verification of the first count. In the view of the Commission, this means that the same body should not be responsible for both counts. In addition, the rules for all three elections should be as similar as possible, since this would make it easier to communicate the rules and incorporate routines, which would in turn reduce the risk of errors.

The Commission considers it natural that the body which is responsible for determining the election result, is also responsible for the final count. For parliamentary elections it will be the district electoral committee that approves the election result and which therefore should also be responsible for the final count. For county council elections, the county electoral committee is responsible for approving the election result and, as is presently the case, should be responsible for the final count. The electoral committee approves the election result at municipal council elections, and, as is also presently the case, should also be responsible for the final count.

#### **17.8.2.1 Counting of advance voting ballot papers**

The counting of ballot papers from advance voting takes place centrally in the municipality. It is currently the electoral committee that is responsible for both the provisional and final counting of advance ballots. For municipal council elections, the Commission proposes that the electoral

committee shall be responsible for the final count. In order to ensure genuine verification of the counting process, the electoral committee cannot also be responsible for the first count. A different body must therefore be responsible for the first count.

It is the view of the Commission that there is no existing electoral body in the municipality that can be assigned this responsibility. In order to remedy this, the Commission proposes that the municipalities also elect a central polling committee. This central polling committee will then be responsible for conducting the first count of advance ballots at municipal council elections. Since county council elections are held at the same time as municipal council elections, it is natural that the central polling committee is also assigned responsibility for the first count of advance ballot papers at county council elections. The Commission would also emphasise that the rules should be as similar as possible for all elections. The Commission therefore proposes that the central polling committee shall also be responsible for the first count of advance voting ballot papers at parliamentary elections, even if, based on purely verification purposes, this task could instead have been assigned to the electoral committee.

#### ***17.8.2.2 Counting of polling day ballots***

As mentioned above, for county council elections, both the first and final counts of ballot papers take place in the municipality. The electoral committee is responsible for the final count. Therefore, for verification purposes, a different body must be responsible for the first count. The ballots are cast at the polls at a polling station. Each polling station has an elected body known as the polling committee, which is responsible for conducting the election at the polling station. It is therefore the view of the Commission that the polling committees should be assigned responsibility for the first count of the ballot papers at municipal council elections. However, the Commission is still of the view that it should be possible for the electoral committee to decide that counting shall take place centrally in the municipality. If so, the central polling committee should be responsible for the first count.

Ballots that are set aside for special checks must be examined and counted centrally in the municipality. This includes ballots from people whose names do not appear in the electoral register and ballots from people who have already been checked off in the electoral register. In municipalities with hardcopy electoral registers, this will also include ballots cast outside the voter's own constituency. The Commission proposes that the central polling committee shall also be assigned responsibility for the first count of these types of ballots.

Since county council elections take place at the same time as municipal council elections, it is natural that the polling committee is also assigned responsibility for the first count of polling day ballots at county council elections. As mentioned above, the Commission places emphasis on the rules being as similar as possible for all elections. Therefore, the polling committee should also be responsible for the first count of polling day ballots at parliamentary elections.

*Table 17.1 The Commission's proposal for where responsibility should be assigned for the counting at the various elections.*

	Municipal council elections	County council elections	Parliamentary elections
First count of advance votes	central polling committee	central polling committee	central polling committee
First count of ordinary polling day ballots	polling committee at each polling station (possibly the central polling committee)	polling committee at each polling station (possibly the central polling committee)	polling committee at each polling station (possibly the central polling committee)
First count of polling day ballots cast in special cover envelopes	central polling committee	central polling committee	central polling committee
Second count of advance votes	electoral committee	county electoral committee	district electoral committee
Second count of ordinary polling day ballots	electoral committee	county electoral committee	district electoral committee
Second count of polling day ballots cast in special cover envelopes	electoral committee	county electoral committee	district electoral committee

### **17.8.2.3 Special rules for Oslo**

Pursuant to applicable law, for parliamentary elections, the county electoral committee shall conduct the verification count of the county conducted by the municipalities. The County Governor in Oslo and Viken carries out this process in Oslo because Oslo is not part of a county authority. The Commission would note that the county governors do not presently have any duties in connection with the conduct of elections. Therefore, in practice, the county governor is fully dependent on the City of Oslo to conduct the verification count. The Commission considers it unfortunate that there are separate rules for the City of Oslo and is of the view that it is also important that Oslo also has two different bodies that are responsible for counting.

The Commission proposes that district electoral committees are established for parliamentary elections which shall be responsible for the duties that are presently assigned to the county electoral committee. The City of Oslo is a separate constituency for parliamentary elections. The Commission proposes that there is also a district electoral committee in Oslo. This will have the same duties and the same responsibility as the district electoral committee in the other constituencies. The proposal entails that responsibility for the verification count at parliamentary elections will be assigned to the same body in the City of Oslo as for the other constituencies. There will thus be equal rules for all constituencies and the same rules for all three elections.

### **17.8.3 Requirements for conducting the count**

The Commission has assessed whether there should be changes to the requirements for how the votes are to be counted. The Commission's focus has been on counting taking place in a correct and trustworthy manner. This ensures that the election result has legitimacy. The Commission will therefore legislate for two independent methods having to be used to conduct the first and final counts, but is of the view that the electoral committee is best placed to assess the means by which the first count should be conducted as long as the electoral committee does not decide to use the same people and the same equipment as the district electoral committee or county electoral committee when conducting the count. All counties currently use machine counting. To satisfy the requirement for two independent means of counting, the electoral committee can, for example, use a scanner from a different supplier with different software to the scanners used by the county electoral committee. Another alternative is that the electoral committee decides that the first count shall take place manually. This method of counting is more transparent and easier to observe than machine counting. Experiences from the 2017 and 2019 elections also demonstrated that the requirement for manual counting did not delay the election results.

The Commission would emphasise that it may be necessary to stipulate specific technical and practical provisions for how the counting must take place. For example, it may be applicable to set more detailed rules for instances in which there is a discrepancy between the results from the first and final counts, or more detailed rules for how manual counting must take place. The Commission will therefore continue the content in Section 10-10 of the Election Act which stipulates that the Ministry may issue regulations relating to the validation of the ballots cast and ballot papers, the counting of ballot papers and the keeping of protocols of elections.

### **17.8.4 Time and date for counting advance ballots**

Pursuant to the present regulations, the preliminary counting of advance ballots must start no later than four hours before voting has ended at all polling stations in the municipality. Counting may only start if this does not conflict with the principle of a secret ballot. Otherwise counting will commence as soon as all the advance ballots have been approved. The provision is interpreted in such a way that counting is not permitted to start until election day.

The consideration of the prompt determination of the election result suggests that the municipalities should themselves have the freedom to assess when the counting of advance ballots should commence. It may also be an advantage for the organisation of the election process if the counting must not start too close to the start of the election. It is important that requirements for secrecy in the counting process are observed and counting must be organised in a manner which ensures that as few people as possible are aware of the results. At present, larger municipalities in particular will prepare for counting on the Sunday. Among other things, this involves opening

envelopes and sorting ballot papers. Based on this, the Commission is of the view that the counting of advance votes should also be able to start the day before election day, i.e. on the Sunday. The Commission therefore proposes that the Election Act stipulates both the earliest and latest points at which the counting of advance votes may start. This means that counting by the municipalities can start the day (Sunday) before election day at the earliest and must have commenced no later than four hours before voting has ended at all polling stations in the municipality. The prerequisite should still be that counting is still able to take place without violating the principle of a secret ballot. However, the content of the requirement that counting must comply with the principle of a secret ballot must be clarified out of the consideration of equal treatment and to make it simple for election workers to put the rules into practice. The Commission proposes that it must be a requirement for counting to start that the count involves a minimum of 30 advance votes and that 30 advance votes are kept out of the first count to be mixed in with advance votes that may arrive after counting has started.

### 17.8.5 Announcing the results of the count

After observing the 2017 election, the Organization for Security and Co-operation in Europe (OSCE) recommended that election results in Norway should be published by polling station: "Except where vote secrecy is challenged, results should be published by polling station to enhance transparency and allow for greater scrutiny of results."<sup>472</sup>

In order to announce election results by polling station, the count needs to be organised in such a way that counting can take place by polling station. The Election Act does not presently set any requirements for counting having to take place by polling station. Among the reasons for there being no requirement for counting by polling station is that we have some very small polling districts in Norway where counting by polling station would make it impossible to ensure secrecy. This is the background to Section 10-4, subsection 2 of the Election Act, which states that separate counting cannot take place at polling districts where the electoral register contains fewer than 100 names.

The previous Election Act Commission proposed lowering the required number of names in the electoral register for being able to count by polling station from 500 to 100. The Commission was of the view that 100 names in the electoral register were sufficient for safeguarding the principle of a secret ballot and that this would improve the ability to carry out preliminary counting and thereby achieve an earlier preliminary election result.<sup>473</sup> The Act was amended in accordance with this.

The Commission notes that counting and announcing election results by polling station may enhance transparency and allow for greater scrutiny of results. It would make it easier to detect any electoral fraud. A limited number of ballot papers would make it easier for election workers to obtain an overview and thereby contribute to fewer errors and more accurate counts.

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<sup>472</sup>"Norway Parliamentary Elections 11 September 2017", OSCE/ODIHR Election Assessment Mission Report (Warsaw: Organization for Security and Co-operation in Europe, 2017), p. 6.

<sup>473</sup>Official Norwegian Report (NOU) 2001: 3 *Elections, voters, elected representatives*.

Out of consideration to secrecy, the Commission is of the view that it should remain the case that polling districts with less than 100 names in the electoral register cannot be counted by polling station. The Commission is also of the view that it would be beneficial in most cases if the votes were counted by polling station. The reasoning for this is to enhance transparency and greater scrutiny of results. Counting by polling station would also provide citizens with a good opportunity to observe the count in their local community. The Commission proposes that polling committees should, as a starting point, be responsible for counting at the polling stations, i.e. that counting takes place per polling district. However, the electoral committee must still be able to decide that the counting shall take place centrally in the municipality. The central polling committee shall therefore be responsible for the count. The Commission will therefore not set the requirement that counting must take place by polling station. However, it is the Commission's view that the decision to not count by polling station is a principled decision that should be assigned to the electoral committee and that should not be possible to delegate.

To the best of the Commission's knowledge, election results are not always published at polling district level, even if counting has taken place at this level. The Commission would note that publishing the results from each polling station is, as the OSCE also noted, desirable to enhance transparency and allow for greater scrutiny of results. Results by polling station would also be beneficial for the parties. Based on this, the Commission proposes that the result of the count should be announced at the lowest possible level. For example, this entails that the municipalities must announce the results of the county from each polling station if counting took place at polling district level.

Since 2013, advance ballots cast by voters in their own municipality have been placed directly in the ballot box.<sup>474</sup> It is therefore not possible to know what ballot papers belong to what polling district in the municipality. This means that the ballot papers cannot be assigned to the voter's polling district. However, the Commission is still of the view that municipalities which count advance ballots according to the polling station where these were cast (from the voter's own municipality) should also announce the results of advance voting according to the polling stations where the advance ballots were cast.

The Commission would note that the high proportion of advance votes and the fact that ballots cast outside the voter's constituency are placed directly in the ballot box in municipalities that use electronic electoral registers mean that publishing election results from the individual polling districts does not provide information on how people included in the electoral register in that polling district have voted. The results by polling station will instead provide information about how those who have cast votes at this polling station have voted. Irrespective of this, the Commission is of the view that the election results should be announced at polling station level to enhance transparency and allow for greater scrutiny of results.

#### **17.8.6 Validation of ballots cast when the ballot paper has been placed in a ballot paper envelope and validating doubtful ballot papers**

The Commission considers it important that all ballot papers are counted twice, including ballot papers that were placed in a ballot paper envelope and a cover envelope and ballot papers initially

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<sup>474</sup> Proposition 52 L (2012–2013).

set aside as doubtful. The Commission is also of the view that a different body to that which made the decision should scrutinise decisions to reject votes when a ballot paper envelope and cover envelope were used, and decisions to reject ballot papers. Such scrutiny does not currently take place for municipal council elections. Furthermore, the rules should be as similar as possible for all elections. These preconditions set guidelines for which body shall carry out the first check of ballot papers when a ballot paper envelope and cover envelope have been used, and of doubtful ballot papers.

The second (and final) check should be conducted by the electoral body that is responsible for determining the election result. This will be the district electoral committee at parliamentary elections, the county electoral committee at county council elections and the electoral committee at municipal council elections.

To ensure checks are also conducted at municipal council elections of doubtful ballot papers and ballots where a ballot paper envelope and cover envelope were used, a body other than the electoral committee must be responsible for the initial check. With regard to advance voting, the Commission is also of the view that the central polling committee should be responsible for conducting the first check of ballots cast when ballot paper envelopes and cover envelopes were used and of doubtful ballot papers for all elections, cf. the Commission's proposal that the central polling committee shall be responsible for conducting the first count of advance votes. For all elections, the central polling committee should also be responsible for checking ballots cast on election day when a ballot paper envelope and cover envelope were used, as well as doubtful ballot papers cast on election day.

#### **17.8.7 Checking ballots cast when the ballot paper is placed directly in the ballot box**

Pursuant to applicable law, a ballot cast by a voter who is included in the electoral register in a municipality and who has not already cast an approved ballot, shall be approved if the voter has been given the opportunity to vote. A cross must then be placed beside the voter's name in the electoral register. This applies for voters who vote on election day or who vote in advance in their own municipality pursuant to Section 8-4, subsection 2 of the Election Act. However, a cross can be placed beside the voter's name in the electoral register even if the voter does not vote. In order for the ballot that is cast to be approved, it is sufficient that the voter has been given the opportunity to vote. If the procedure at the polling station is that a cross is placed beside the voter's name when the voter enters the polling station, i.e. before he/she casts his/her vote, situations may arise in which the voter, for whatever reason, leaves the polling station without having voted. This person can then not have a new ballot approved at a later stage because of the requirement that the voter cannot already have cast an approved ballot. In practice, this will mean that the voter has been deprived of the right to vote.

The Commission is of the view that the rule should be amended such that the voter will not be crossed off in the electoral register until the ballot paper has been stamped. The Commission is aware that the general practice at present is for the voter's name to be crossed off at the same time or immediately before or after he/she has placed the ballot paper in the ballot box. The amendment therefore entails little or no material difference. Therefore, the condition that the voter must have been given the opportunity to vote needs to be removed.



### **17.8.8 Placing a cross beside the voter's name in the electoral register**

The Commission refers to the fact that the electoral committee must keep a protocol of preparations for and conduct of the election. Part of the control process is to compare the number of crosses in the electoral register with the number of ballot papers (approved and rejected (including blank)) that were received. Among other things, this comparison is important for being able to detect electoral fraud. The present system of having a joint electoral register for municipal council and county council elections means that a joint cross is placed in the electoral register for both elections. This means that discrepancies often arise between the number of crosses in the electoral register and the number of ballot papers that have been received, even if no errors have occurred. These discrepancies may be difficult to definitively explain. Without having registered the number of voters who may have only voted at one election, it is not possible to definitively state whether this was the reason for a discrepancy, or whether there were other reasons.

However, separate electoral registers for municipal council elections and county council elections would not be sufficient in themselves to prevent possible discrepancies between crosses in the electoral register and the number of ballot papers. There also need to be routines in place that make it possible to cross off in the electoral register that the voter has voted at one or both elections, or possibly register that the voter has been crossed off in the electoral register without having cast ballots for both the county council election and municipal council election. When the returning officer stamps the ballot paper/ballot papers, the returning officer will be able to see what election the voter is casting a vote in. When the ballot paper is placed directly in the ballot box either for advance voting or on election day, the returning officer must cross off the voter's name in one or both of the electoral registers. Therefore, in principle, no discrepancies will arise. If the ballot papers are placed in the same ballot paper envelope (as is presently the case), the person who later examines the ballot will not be able to see what election or elections the voter has voted at without opening the ballot paper envelope. This should be avoided out of consideration to the principle of a secret ballot. Therefore, the solution may be to place the ballot papers in separate ballot paper envelopes for each election, with a small hole at the bottom of the envelope. It will then be possible to see what election the voter has voted at and whether the ballot paper envelope contains a ballot paper. A cross can then be placed in the electoral register for the elections the voter has voted at. It is important that the returning officer is careful to only issue ballot paper envelopes for the elections that the voter is voting at in order to avoid empty ballot paper envelopes being submitted. However, it may be the case that a ballot paper envelope does not contain any ballot paper. In order to be able to explain possible differences between the number of crosses in the electoral register and the number of ballot papers, the Commission considers there to be a need to register the number of empty ballot paper envelopes and any other matters of importance to the control process. The Commission proposes that the specific rules for how this is to be effectuated are prescribed in regulations.

Based on this, the Commission proposes that there should no longer be a joint cross in the electoral register for municipal and county council elections, but that there should be one cross for each election the voter casts a vote at.

### **17.8.9 Forwarding of election materials to the district electoral committee and county electoral committee**

The Election Regulations do not set requirements for the electoral committee having to forward materials directly to the county electoral committee. The Election Manual recommends that the

electoral committees should employ practical systems based on local conditions to forward the materials to the county electoral committee as quickly as possible. Whenever practicable, the electoral committee should organise direct transport to the county electoral committee.

At the 2017 parliamentary election, the election result for Vega Municipality was sent on 13 September, but did not arrive until 18 September. The Credentials Committee stated the following in Recommendation 1 S (2017–2018): “It is the Committee’s view that there must be solutions in place before the next election that ensure the quick and secure forwarding of election materials from all municipalities to the relevant county authority, regardless of location.”

The Commission notes that secure transport of election materials is essential for a correct election result and thereby also public trust in the election process. The Commission is therefore of the view that the election materials should be under the supervision of the electoral authorities while being transported. This entails that one or more election officials or staff in the municipal administration should personally and directly arrange the handover of the election materials. The electoral committees in municipalities with large distances to the district electoral committee and county electoral committee can consider transporting the materials together. This arrangement requires the municipalities to provide some resources. It is already common practice at many locations for one or more election officials or staff in the municipality’s administration to transport the election materials by motor vehicle to the county electoral committee. Based on this, it is the Commission’s view that it is necessary to prescribe more detailed rules relating to who has to hand over the election materials. The Commission finds the current regulations to be adequate. However, in the Commission’s opinion, the district and county electoral committees should prepare guidelines for the electoral committees on how election materials must be transported to the district electoral committee and county electoral committee.

## 18 Practical matters relating to elections to the Sami Parliament

### 18.1 Introduction

Act no. 56 of 12 June 1987 relating to the Sameting (the Sami Parliament) and other Sami legal matters (the Sami Act) stipulates that “The Sami people are to have their own nationwide Sameting elected by and among the Sami population,” cf. Section 1-2. Sweden and Finland also have separate Sami parliaments. The Sami Parliament’s electoral register consisted of a total of 16,958 people in 2017.<sup>475</sup> There has been an increase in the Sami Parliament’s electoral register at each election since the first Sami parliamentary election was conducted in 1989, when 5,500 people were registered.<sup>476</sup> Voter turnout at the Sami parliamentary election in 2017 was 70.3 per cent. This was an increase of 3.4 percentage points compared to the 2013 election and at the same level as the turnout at the 2009 election.

Elections to the Sami Parliament are held as a proportional representation election in September every four years, and at the same time as the parliamentary election. Like municipal council elections, the election is by majority ballot if there is not more than one approved list proposal in a constituency. 39 members are elected to the Sami Parliament from seven constituencies, cf. Section 2-4 of the Sami Act.

The Sami Parliament is the highest electoral authority, cf. Section 2-10 of the Sami Act. This means that the Sami Parliament checks the validity of the election, can order a new election and can overrule decisions by other electoral bodies. As is the case with other elections, responsibility for conducting elections to the Sami Parliament is assigned to the municipalities.

### 18.2 Applicable law

#### 18.2.1 The rules in the Sami Act relating to elections for the Sami Parliament

Chapter 2 of the Sami Act contains provisions relating to the Sami Parliament, including certain overarching provisions relating to elections to the Sami Parliament. This chapter has provisions relating to Method of election, time of election and electoral term (Section 2-3), Constituencies and distribution of seats (Section 2-4), Right to vote (Section 2-5), Sami electoral register (Section 2-6), Eligibility for election and right to propose candidates (Section 2-7), Obligation to accept election, grounds for exemption and obligation to attend meetings (Section 2-8), Exemption and retirement during the electoral term (Section 2-9), and Electoral authority (Section 2-10).

Of key importance when conducting Sami parliamentary elections is the provision in Section 2-3 of the Sami Act which stipulates that, in municipalities with fewer than 30 people registered in the electoral register, voters are only permitted to vote in advance and are therefore barred from voting on election day. The restriction was introduced in 2008 to ensure a faster election result. It was considered important for the election result to be quickly determined because this would likely

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<sup>475</sup>“Electoral Register”, Sami Parliament, opened 17 February 2019, <https://www.sametinget.no/Valg/Valgmanntall>.

<sup>476</sup>“Historically low voter turnout at the last four elections”, Statistics Norway, 10 August 2019, <https://www.ssb.no/valg/artikler-og-publikasjoner/historisk-lav-valgdeltakelse-fire-siste-valg>.

contribute to increased voter turnout and greater legitimacy.<sup>477</sup> This distinction is of importance to where validation of the ballots cast takes place and for the counting of the ballot papers. At the 2017 Sami parliamentary elections, there were 362 municipalities with fewer than 30 people registered in the Sami Parliament's electoral register and 64 municipalities with 30 or more people registered.<sup>478</sup> About half of the approved votes for the 2017 Sami parliamentary elections were advance votes.

Section 2-11 of the Sami Act authorises the King to issue supplementary provisions concerning elections to the Sami Parliament. The preparatory works to the Act presuppose that “supplementary provisions will not be issued without the Sami Parliament having had the opportunity to provide a statement,” cf. Proposition no. 33 to the Odelsting (1986-1987) p. 121. The King's authority pursuant to Section 2-11 has been delegated to the Ministry of Local Government and Modernisation.

## 18.2.2 Regulations relating to elections to the Sami Parliament

### *Introduction*

Pursuant to Sections 2-1, 2-4, 2-7 and 2-11 of the Sami Act, supplementary provisions are issued relating to elections to the Sami Parliament in Regulations no. 1480 of 19 December 2008 relating to elections to the Sami Parliament. The purpose of the Regulations is “to establish such conditions that the Sami population shall be able to elect their representatives to the Sami Parliament by means of a secret ballot in free and direct elections”, cf. Section 1. The Regulations have the same structure as the Election Act, and the rules for conducting Sami parliamentary elections are very similar to the rules for conducting other elections. However, the rules are different in certain areas and this will be discussed below.

### *Electoral bodies*

Chapter 4 of the Regulations has provisions relating to the electoral bodies for Sami parliament elections that differ in part from the provisions in the Election Act. There must be a Sami electoral committee that is elected by the municipal council, even in the municipalities that have 30 or more people registered in the electoral register, cf. Section 17, paragraph one of the Regulations. However, in several municipalities, the same people sit on both the electoral committee and Sami electoral committee. Among other things, the Sami electoral committee is responsible for the preliminary counting in these municipalities. In municipalities with fewer than 30 people included in the electoral register, the municipality's electoral committee functions as a Sami electoral committee.

Each constituency has a counting electoral committee responsible for the preliminary count in municipalities with fewer than 30 people included in the electoral register and for the final count in all municipalities. The Sami electoral committees in Tana, Karasjok, Alta, Tromsø, Narvik, Steinkjer and Oslo function as counting electoral committees in the constituencies. The counting electoral

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<sup>477</sup>Proposition no. 43 to the Odelsting (2007–2008) p. 17.

<sup>478</sup>“Sami parliamentary election” (Norwegian Directorate of Elections, Alna, 28 March 2017), <https://valgmedarbeiderportalen.valg.no/Administrasjon/Temadokumenter/Modul%201%20PP%20-%20Sametingsvalget.pdf>.

committee shall determine the election result for the constituency and allocate the constituency's seats between the lists.

When the count is completed and the election result determined, protocols and any appeals are then sent to the Sami Parliament's election committee, which "is responsible for preparing and conducting the election", cf. Section 70, paragraph one of the Regulations. The committee is appointed by the Sami Parliament and must consist of no fewer than five members, including alternate members. The members and alternate members must have the right to vote at Sami parliamentary elections. It is the Sami Parliament's election committee which announces the invitation to submit proposals for electoral lists, processes list proposals and arranges for the printing of ballot papers and issues credentials for and notifies the elected representatives.

### *The electoral register*

The electoral register for Sami parliamentary elections must be compiled for each municipality and prepared both during the years in which there are Sami parliamentary elections and the years in which there are municipal council and county council elections, cf. Section 4 of the Regulations. The Sami Parliament is responsible for preparing the electoral register for each of the municipalities and making it available to the applicable Sami electoral committee and counting electoral committee, cf. Section 6 of the Regulations. Notices requesting registration in the Sami Parliament's electoral register must have been received by the Sami Parliament no later than 30 June.

The Regulations state that the Population Registry Authority is responsible for the Sami Parliament receiving the information from the Population Registry that is necessary for compiling the electoral register.

Like the electoral committee in other elections, the Sami electoral committee announces the time and place for the display of the electoral register and also provides information about the right to have any errors corrected and the procedure for doing so. The Regulations permit announcements not to be made if there are no people included in the electoral register in the municipality. In municipalities where local conditions suggest doing so, the announcement may also be made in the form of direct notification to each individual who is included in the electoral register. This is applicable if very few people are registered in the electoral register in the municipality.

Contrary to the Election Regulations, the copies of the electoral register given to those who submit lists at Sami parliamentary elections must be returned within six months after the election. Pursuant to the Election Regulations, the electoral committee must ensure that these are returned within two years. The Regulations relating to elections to the Sami Parliament also impose a responsibility on those who receive copies of the electoral register to return these. The purpose of assigning responsibility to the recipients of copies of the electoral register is to avoid these copies being lost or misplaced. There is no corresponding duty in the Election Regulations.

### *List proposals*

The provisions in the Regulations relating to list proposals and the processing of these in chapter 6 are essentially the same as the rules in the Election Act. The Regulations also authorise the Sami Parliament to stipulate that each gender must have a minimum of 40 per cent representation among the proposed candidates on each list.

### *Ballot papers and the right of voters to make changes to the ballot papers*

As is the case for parliamentary elections, voters can change the order in which the candidates are listed on the ballot paper by writing the desired candidate number, cf. Section 39 of the Regulations. However, for Sami parliamentary elections, the option to make changes is limited to the five candidates at the top of the ballot paper or the total number of seats to be elected in the constituency if this is more than five. The purpose of introducing this form of restriction was to better enable voters to influence the personal composition of the Sami Parliament.<sup>479</sup> The ballot paper therefore only has one column with boxes to the left of the candidate names for the candidates at the top of the list, cf. Section 36 of the Regulations. Voters cannot make other changes on the ballot paper. As is the case with municipal council and county council elections and, unlike parliamentary elections, voters cannot remove candidates.

### *Voting*

As opposed to other elections, voters at Sami parliamentary elections also use ballot paper envelopes when casting advance votes in their own municipality and on election day, cf. Sections 43 and 50 of the Regulations. For that reason, unlike for other elections, it is not a requirement that the ballot paper has to be stamped. Hardcopy electoral registers are used for all municipalities at Sami parliamentary elections. For this reason, the Regulations do not stipulate the types of rules relating to use of an online electoral register for crossing off voters that are stated in Section 9-5 a of the Election Act.

The advance ballots must be continually sent to the Sami Parliament in the municipality where the voter is included in the electoral register or to the counting electoral committee in the constituency if there are fewer than 30 people registered in the electoral register in the municipality where the voter is registered.

### *Prohibition against the publication of election results and forecasts*

An equivalent prohibition against the publication of election results and forecasts to that in Section 9-9 of the Election Act has been inserted in Section 55 of the Regulations. However, unlike what is stipulated in Section 15-11 of the Election Act, no rules relating to fines for contravention have been included in the Regulations.

### *Counting and keeping of the election protocol*

The principles for counting are largely the same as the principles for other elections, cf. Section 64 of the Regulations. Ballot papers must also be counted twice for Sami parliamentary elections, with a preliminary and final count. Votes cast in advance and votes cast on election day must be counted separately. Unlike other elections, all counting must take place under the supervision of the Sami electoral committee or counting electoral committee. At other elections, it is only a requirement that the electoral committee supervises the final count.

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<sup>479</sup>Cf. consultation paper of 2 September 2008 on the Regulations relating to elections to the Sami Parliament.

Unlike other elections, all counting for Sami parliamentary elections takes place manually. Therefore, unlike the counting of ballot papers at the 2017 parliamentary election, there were no requirements stipulated for the preliminary counting at Sami parliamentary elections to be done manually.

The Sami electoral committee in the municipality is responsible for the preliminary counting of votes cast in advance and votes cast on election day in municipalities with 30 or more people in the electoral register, cf. Section 62, paragraph one of the Regulations. When the preliminary count in municipalities with 30 or more people in the electoral register has concluded, the Sami electoral committee must send all ballots cast and ballot papers to the counting electoral committee in the constituency. This must take place by 3pm on the Wednesday following the election.

The Regulations have special provisions regarding the processing of votes in municipalities with fewer than 30 people in the electoral register. In these municipalities, the counting electoral committee in the constituency is responsible for both the preliminary and final counting of advance votes, cf. Section 62 of the Regulations.

Advance votes cast in municipalities with fewer than 30 people in the electoral register are sent unopened to the counting electoral committee. The purpose of this is to ensure secret ballots for every voter.

The final count shall be conducted by the counting electoral committee, cf. Section 66 of the Regulations. The count and determination of the election result take place together for the entire constituency. Like other elections, the ballot papers must be re-counted in the final count and approved ballot papers that were not included in the preliminary count must be counted together with the other ballot papers.

Keeping of the election protocol is regulated in Section 67 of the Regulations and is essentially the same as for other elections. Unique for Sami parliamentary elections is that the Sami Parliament determines the form in which the counting electoral committee shall keep the election protocol in connection with the count and election result.

#### *Miscellaneous provisions*

The Regulations do not have an equivalent provision to Section 15-1 of the Election Act, which states that the King may, upon application, consent to pilot schemes in which elections are conducted in a different manner.

Like Section 15-3 of the Election Act, Section 81 of the Regulations has a provision relating to access to the electoral register and the other material. Unlike the situation for other elections, authority to consent to disclosure of the electoral register is assigned to the Sami Parliament, not the Population Registry Authority. The Sami Parliament can also consent to disclosure of the electoral register to "others". This is not permitted under the Election Act.

Section 82 of the Regulations has an equivalent provision to Section 15-4 of the Election Act regarding duty of secrecy. The provision relating to the calculation of deadlines in Section 83 is also equivalent to what applies for other elections. However, Section 15-5, subsection 4 of the Election Act stipulates that a report, declaration or appeal made after a deadline has been exceeded may only be considered if the failure to respect the deadline was due to circumstances which were

beyond the control of the person with a duty to respect the deadline, and which were also such that the person in question could not foresee them. The Regulations do not have an equivalent provision.

Section 86 of the Regulations has a separate provision regarding the expenses for Sami parliamentary elections. The public treasury will cover the expenses of the counting electoral committee by NOK 28 per person registered in the electoral register in the constituency. Also covered are the expenses of the Sami Parliament's electoral committee for performing tasks pursuant to the Sami Act and Regulations relating to elections to the Sami Parliament.

### **18.3 The Commission's evaluation**

The Commission has assessed the various aspects of conducting elections to the Sami Parliament. Out of consideration to the quality of the Sami parliamentary elections conducted by the municipalities, the rules for conducting Sami parliamentary elections should correlate with the rules for conducting elections in the Election Act unless there are fundamental or practical reasons for prescribing different rules. It is expedient for both the voters and the electoral authorities to conduct the elections in as similar a manner as possible.

Most of the differences between Sami parliamentary elections and parliamentary elections relate to Sami political issues and the overarching aspects of the electoral system and thus fall outside the Commission's mandate. Differences in how the elections are conducted which relate to Sami parliamentary elections having special electoral bodies that are responsible for various tasks are generally considered Sami political issues that fall outside of the Commission's mandate. For example, this applies to the arrangement with a separate Sami electoral committee in municipalities with more than 30 people registered in the electoral register and that there is a counting electoral committee in each constituency that is responsible for the final count. Furthermore, the statutory authority that permits the Sami Parliament to stipulate that each party must have a minimum of 40 per cent of each gender on the electoral lists, that voters can only make changes to the candidates at the top of the ballot paper, that the Sami Parliament keeps the election protocol for the counting electoral committee and that the Sami Parliament can consent to the disclosure of electoral register data, must be deemed Sami political issues and thus fall outside of the Commission's mandate. The Commission would emphasise the importance of the Sami Parliament providing good information to the eligible voters in the Sami Parliament's electoral register to ensure that they are aware of their rights and options.

The Commission is aware that the Sami Parliament considers there to be a need to strengthen the statutory basis for the Population Registry Authority's responsibility to make the electoral register available to the Sami Parliament. Those who submit list proposals require access to the electoral register before the deadline for submitting list proposals has expired. The wording in Section 4, subsection 2 of the Regulations is as follows: "The Population Registry Authority is responsible for the Sami Parliament having the Population Registry information required for compiling the electoral register." Pursuant to Section 10-2 of Act no. 88 of 9 December 2016 relating to registration in the Population Registry (Population Registry Act), confidential information may be disclosed to public authorities and enterprises and to private enterprises that are authorised by law to collect information from the Population Registry without being impeded by the duty of secrecy. The Commission is of the view that a provision should be inserted in the Sami Act relating to the duty of the



Population Registry Authority to provide the necessary information by the relevant deadline without being impeded by the duty of secrecy.

The Commission is also of the view that the Regulations should include the same option to sanction breach of the prohibition against the publication of election results and prognoses as the Election Act. The Sami Act should also contain an equivalent provision to the Election Act regarding the option to conduct pilot schemes. There are no practical or principle grounds for differentiating between the different elections in these areas.

However, in order to safeguard the principle of a secret ballot, the Commission considers it necessary to have rules for conducting Sami parliamentary elections that differ somewhat from the rules for conducting other elections. The Commission therefore does not consider it applicable, as some municipalities have proposed, to be able to vote without ballot paper envelopes on election day or when receiving advance votes from voters registered in the electoral register in the municipality. Like other elections, the polling committee at each polling station must keep records to document the election process. To keep records, the polling committee must count the number of votes in the ballot box and compare these with the number of crosses in the electoral register. Ballot box counting must be carried out at each polling station to ensure that no errors were made or ballot papers lost while the ballot boxes were being transported from the polling station to the electoral committee. For example, if only one vote is cast in the Sami parliamentary election in one of the 103 polling districts in the City of Oslo, there is a risk that this will not be a secret ballot for this one voter if no envelope is used. The envelope ensures secrecy in instances in which a small number of votes are received at the election.

The Commission considers the rule that one is only permitted to vote in advance in municipalities with fewer than 30 people registered in the electoral register to be a question of principle that falls outside the mandate. However, the Commission would note that questions can be asked as to whether 30 people in the electoral register is a high enough number to fully safeguard the principle of a secret ballot in all municipalities.

Section 86 of the Regulations relating to Sami Parliamentary Elections states that the public treasury shall cover the expenses incurred by counting electoral committees in connection with Sami parliamentary elections at the amount of NOK 28 per registered eligible voter in the electoral register in the constituency. This was increased from NOK 25 to NOK 28 in 2008. The Commission is of the opinion that the counting electoral committees should have more of their election-related expenses covered.

The Commission is otherwise of the view that there must be linguistic and regulatory amendments in Regulations relating to elections to the Sami Parliament that are in line with the new Election Act and Election Regulations.

## 19 Other issues

### 19.1 Chapter 15 of the Election Act

Chapter 15 of the Election Act contains a number of different provisions concerning issues that do not fit into the other chapters. In the following, the Commission will provide a brief overview of these rules.

#### 19.1.1 Applicable law

##### *19.1.1.1 Separate provision relating to pilot schemes*

Section 15-1 of the Election Act includes a legal basis to carry out pilot schemes, which entails that elections are conducted in other ways to those stipulated in the Election Act. Pilot schemes involving the direct election of other elected bodies to those to which the Election Act applies can also be carried out.

Act no. 87 of 26 June 1992 relating to Pilot Schemes in Public Administration includes a legal basis to carry out pilot schemes. This legal basis partly overlaps with the legal basis in the Election Act. The current provision in the Election Act was incorporated into the Act by the Storting, which was of the opinion that it was important to not have excessive restrictions for the conditions under which pilot schemes can be carried out for elections.

##### *19.1.1.2 Keeping, disposal and destruction of election materials*

Section 15-2 of the Election Act states that the Records and Archives Act and Records and Archives Regulations apply for that the keeping, disposal and destruction of election materials.

##### *19.1.1.3 Access to election materials – freedom of information*

Section 15-3 sets restrictions for who has access to the electoral register and other election materials.

The electoral register may only be disclosed to:

- a public servant where this is necessary out of consideration for the service,
- researchers for research purposes where consent has been given by the Population Registry Authority,
- others, when stipulated in the Election Act or Election Regulations.

Access to other election materials can only be granted to researchers for scientific purposes. The relevant electoral authority must consent to such disclosure.

##### *19.1.1.4 Duty of secrecy*

Section 15-4, subsection 1 of the Election Act states that the provisions of the Public Administration Act relating to duty of secrecy apply accordingly for elections. This is also directly stipulated in Section 13 of the Public Administration Act which states that “any person rendering services to, or working for, an administrative agency, to prevent others from gaining access to, or obtaining knowledge of, any matter disclosed to him/her in the course of his/her duties concerning [...] an individual's personal affairs.”

The duty of secrecy pursuant to Section 13 of the Public Administration Act and Section 15-4, subsection 1 of the Election Act only applies for persons “rendering services to, or working for, an administrative agency”. Therefore, a separate provision relating to duty of secrecy has been inserted in Section 15-4, subsection 2 of the Election Act for persons who assist a voter in the process of casting a vote. They have a duty of secrecy regarding how the voter has voted.

#### **19.1.1.5 Calculation of deadlines – Exceeding deadlines**

Section 15-5 of the Election Act has provisions for calculating deadlines and the right to consider reports, declarations and appeals when the deadline has been exceeded.

Subsections 1 and 2 contain provisions for instances in which deadlines linked to a date start and finish on a Saturday or public holiday. When the starting point for the deadline is a Saturday or public holiday, the deadline will not start to run until the first subsequent working day. If the electoral committee announces the election result on a Saturday, the deadline for appealing the election result will not start to run until the following Monday. When the deadline expires on a Saturday or public holiday, the deadline will not expire until the first subsequent working day. If the deadline for appealing the electoral committee’s election result expires on a Saturday in accordance with the rules in the chapter on appeals, the provision in subsection 2 regarding the calculation of deadlines will, however, mean that the deadline for submitting appeals will not expire until the coming Monday.

Subsection 3 stipulates that the provisions in subsections 1 and 2 apply correspondingly in those cases in which a date that is the earliest or latest point in time for the performance of any action under the Election Act falls on a Saturday or public holiday. If the date for the start of the advance voting period (10 August) falls on a Saturday, the provision entails that the advance voting period will not start until Monday 12 August. Subsection 3 further entails that if 31 March falls on a Sunday (when a list proposal needs to have been submitted), the list proposal will be able to be submitted by 12 noon on Monday.

#### **19.1.1.6 Duty to provide information**

Pursuant to Section 15-6 of the Election Act, all public servants have a duty, insofar as this is possible, to provide the electoral authorities with any information they may require for use in the preparation and conduct of elections. The provision is primarily directed at the Population Registry Authority, cf. Proposition no. 45 to the Odelsting (2001-2002), which must provide the electoral authorities with the information required for being able to check the list proposals.

Pursuant to Section 2-5 of the Election Act, the Population Registry Authority also has a responsibility to make information available to the election authorities regarding who will be entered in the municipality's electoral register as of 30 June. In 2013, a separate provision was inserted in Section 2-5 that required the Population Registry Authority to make an overview available to the electoral authorities of the persons in the municipality who met the eligibility criteria (preliminary electoral register). Furthermore, in 2013 a provision was inserted in Section 2-5, subsection 2 that the Population Registry Authority shall transfer updates to the preliminary electoral register and updates to the electoral register as of 30 June to the Ministry. Therefore, following these statutory amendments, Sections 15-6 and 2-5 of the Election Act now regulate the same conditions.

#### **19.1.1.7 Election statistics**

Pursuant to Section 15-7 of the Election Act, the electoral committees and county electoral committees have a duty to provide the information that the Ministry or Statistics Norway deem necessary for the publication of election results or for the production of official election statistics. The Ministry or Statistics Norway shall determine what information is necessary.

#### **19.1.1.8 Municipal authorities that constitute a separate county**

Section 15-8 of the Election Act stipulates that the provisions in the Act relating to county council elections do not apply in those cases in which a municipal authority constitutes a separate county. This is due to the fact that no county council elections shall be held in these municipalities. However, voters who are eligible to vote in municipalities in other counties shall also still be entitled to cast an advance vote in these municipalities.

#### **19.1.1.9 Expenses that are covered by the State**

Pursuant to the Election Act of 1985, the municipalities had their expenses for parliamentary elections refunded by the State in accordance with rates set by the Ministry. The State also covered the activities of county electoral committees in connection with parliamentary elections, including the printing of ballot papers.

In Proposition no. 45 to the Odelsting (2001-2002), the Government permitted the municipalities and county authorities to have their expenses for parliamentary elections refunded through transfers via the revenue system. In line with this, the existing refund scheme was incorporated into the revenue system from and including 2003. However, the Election Act still states that the public treasury will cover expenses incurred by municipal and county authorities in the conduct of their statutory activities in connection with parliamentary elections, cf. Section 15-9 of the Election Act.

#### **19.1.1.10 Monitoring of elections**

A new Section 15-10 relating to the monitoring of elections was added to the Election Act in 2009. The provision was inserted to clarify the responsibility Norway has for enabling elections to be monitored, and regulates two factors. Firstly, the Ministry is given the authority to accredit Norwegian and international election observers from institutions or organisations to monitor the conduct of elections to the Storting or to municipal and county councils. Secondly, the municipalities have an obligation to accept accredited election observers and facilitate the monitoring of elections.

#### **19.1.1.11 Fines for contravention**

Section 15-11 of the Election Act relating to fines for contravention of Section 9-9 of the Election Act regarding publication of election results and prognoses was inserted in 2009. Pursuant to subsection 1, in the event of wilful or negligent contravention of Section 9-9 of the Election Act, the Norwegian Media Authority may impose upon an enterprise a fine for contravention of up to 28 times the basic amount in the National Insurance Scheme.

The enterprise may appeal fines for contravention to an independent appeal board appointed by the King.

The King may not issue instructions to the Norwegian Media Authority or the appeal body concerning either general instructions for the enforcement of authority or in individual cases: The King is also not permitted to reverse decisions made by these bodies. The

appeal board cannot reverse a decision made by the Norwegian Media Authority of its own initiative.

More detailed rules have been issued in regulations regarding, among other things, the composition of the appeal body.

### **19.1.2 The Commission's evaluation**

#### ***19.1.2.1 Introduction***

The provisions in Chapter 15 of the Election Act are not mentioned in the Commission's mandate and the Commission has also not registered that anyone is of the opinion that there is a need to amend these rules. The Commission also cannot see that there is a need to make significant amendments to these rules, and proposes, with some exceptions, to continue the contents of these provisions.

#### ***19.1.2.2 Duty of secrecy***

The Commission is aware that some voters require assistance to vote. A helper could therefore obtain information about how the voter has voted. Paper ballots are presently used. It may be possible that, in the future, digital systems such as voting machines will leak information that reveals how individual voters have voted. As a consequence of this, the Commission is of the view that it may be appropriate to legislate a duty of secrecy for anyone who obtains knowledge about how an individual voter has voted.

#### ***19.1.2.3 Duty to provide information***

The Commission would note that, in practice, Section 15-6 has become redundant since the obligations of the Population Registry Authority stipulated in Section 2-5 were expanded. The Commission is therefore of the view that there is no need to continue Section 15-6 in the new Election Act.

#### ***19.1.2.4 Expenses that are covered by the State***

The requirement that the State shall (to varying degrees) cover municipal expenses for parliamentary elections has been stipulated in various electoral laws for over 100 years. During these years, the State has reimbursed the municipalities' expenses to a greater or lesser extent. The Commission would note that, from and including 2003, the municipalities and county authorities were reimbursed for their expenses associated with parliamentary elections through transfers via the revenue system, which is the standard method for covering municipal expenses. It is not standard practice to legislate that the municipalities shall be reimbursed for their statutory duties. The Commission has therefore considered whether the provision should be repealed. The Commission has concluded that the provision should be continued in the new Election Act. This is because holding parliamentary elections is a central government responsibility, despite a large part of the election process being assigned, for practical reasons, to the municipalities and county authorities. Therefore, in the view of the Commission, coverage of the expenses incurred by the municipalities and county authorities in connection with parliamentary elections differs from coverage of expenses the municipalities and county authorities may have in connection with more genuine duties incumbent on the municipalities and county authorities. The Commission therefore proposes that the Election Act shall continue to stipulate that the public treasury will cover expenses incurred by municipalities and county authorities in the conduct of their statutory activities in connection with

parliamentary elections. Furthermore, it is the Commission's view that it should be clarified in the Act that coverage of these expenses shall occur through transfers via the revenue system, in line with current practice.

#### **19.1.2.5 Fines for contravention**

Pursuant to applicable law, a decision by the Norwegian Media Authority to impose a fine for contravention of Section 9-9 of the Election Act may be appealed to an independent appeal board appointed by the King. The Commission agrees that these types of appeals should be heard by an independent appeal body. However, the Commission is of the view that it is not necessary to have a separate appeal board in this area. It would be preferable if appeals of fines imposed for contravention of the Election Act were heard by an existing appeal body. The Norwegian Media Appeals Board (Klagenemnda for mediasaker) hears appeals of individual decisions handed down by the Norwegian Media Authority in accordance with the Broadcasting Act, cf. Section 2-14 of the Broadcasting Act. The Commission proposes that the Norwegian Media Appeals Board should also hear appeals of decisions by the Norwegian Media Authority to impose fines for contravention of the Election Act.

Pursuant to Section 15-11 of the Election Act, fines for contravention of Section 9-9 of the Election Act can only be imposed on "enterprises". Private individuals cannot receive fines for contravention.

The then Ministry of Local Government and Regional Development provided the following grounds for why only enterprises and not also private individuals should be imposed fines for contravention in Proposition no. 32 to the Odelsting (2008-2009): *Act relating to amendments to the Election Act and Local Government Act (advance voting, election monitoring etc. )* p. 31:

It must be assumed that when the prohibition was introduced this was primarily intended to apply to media companies that publish election day polls and opinion polls. It is the publication of polls that include information about how a large number of people have actually voted that has the greatest potential for causing undue influence. When the prohibition was introduced, it is doubtful that this concerned publication by private individuals. The internet, which enables anyone to post information online, represents new challenges. However, it is the Ministry's opinion that it is not much of an issue that private individuals are responsible for election day polls and opinion polls. We refer to the fact that it must be considered a condition that the opinion polls the Act is meant to apply to have been conducted based on, among other things, a specific methodology, when selecting the people who participated. It is the Ministry's view that private individuals who conduct and publicise private polls, for example, between friends and acquaintances, and post these online to, for example, blogs, will not come under the definition of opinion poll in the Election Act.

Therefore, the code of conduct in Section 9-9 of the Election Act must be primarily considered to focus on enterprises, and this suggests that fines for contravention can only be imposed on enterprises.

The Commission agrees that it is less applicable for private individuals than for enterprises to conduct the type of election day polls and opinion polls that the prohibition in Section 9-9 of the Election Act is intended to apply to. However, the Commission does not rule out of the possibility of

private individuals being able to do this. In this case, the Commission also believes that private individuals should also be able to receive fines for contravention. The Commission therefore proposes expanding the scope of the provision relating to fines for contravention. Fines for contravention should be able to be imposed on anyone who deliberately or negligently violates the prohibition on publishing election results or prognoses prepared on the basis of surveys conducted on election day or the previous day. If an employee of an enterprise violates the prohibition in the course of his/her work for the enterprise, the fine for contravention will be imposed on the enterprise, not the employee.

## **19.2 Provisions for working hours**

### **19.2.1 Introduction**

The question of whether there is a need for special provisions for working hours for election officials in the municipalities was specifically emphasised in the Commission's mandate. The background to this was that in 2014 the Ministry of Local Government and Modernisation (KMD) received an inquiry from the municipalities of Bergen and Trondheim which made reference to the challenge of complying with the provisions for working hours in the Working Environment Act in connection with the work associated with conducting elections. Other municipalities identified the same challenge in the evaluation of the parliamentary and Sami parliamentary elections in 2013. The view of the municipalities was that neither the freedom to contract nor the authority to grant exemptions stipulated in the Working Environment Act are flexible enough to cover the exemptions required when conducting elections.

At present, there are no specific provisions in statutes or regulations relating to working hours for work with elections. Several larger municipalities have entered into agreements between the employer and employee representatives to derogate from the provisions for working hours in connection with election work, cf. Section 10-6, subsection 5 of the Working Environment Act. The Commission is not aware of the extent to which such agreements have been entered into.

### **19.2.2 Applicable law**

#### **19.2.2.1 Introduction**

Chapter 10 of the Working Environment Act contains provisions relating to working hours. The purpose of the rules is to protect employees from long and uncomfortable working hours for the sake of their health and social welfare. Section 10-2 of the Act states that working hours shall be arranged in such a way that employees are not exposed to adverse physical or mental strain.

Longer working hours than those stipulated in the provisions may only be agreed to if the Act so permits, cf. Section 1-9 of the Working Environment Act.

Employees in "senior posts" and employees in "particularly independent posts" are not covered by the provisions for working hours, cf. Section 10-12, subsection 1 and 2.

#### **19.2.2.2 General rule for working hours**

Section 10-4 of the Working Environment Act has rules for normal working hours. The starting point is that normal working hours must not exceed nine hours per 24 hours and 40 hours per

week. Working hours must normally be between 6am and 9pm, cf. Section 10-11, subsection 4 of the Working Environment Act.

### **19.2.2.3 Calculating average working hours**

Section 10-5 of the Working Environment Act enables average working hours to be calculated. When calculating average working hours it is assumed that there is a written agreement between the employer and employee, employer and the employees' elected representatives in undertakings bound by a collective pay agreement or consent from the Labour Inspection Authority.

If there is an agreement between the employee and employer and an agreement between the employer and the employees' elected representatives in undertakings bound by a collective pay agreement, working hours must be arranged in such a way that, during a period not exceeding 52 weeks, they are no longer than the working hours prescribed by Section 10-4.

If there is an agreement between the employee and employer, normal working hours cannot exceed 10 hours per 24 hours and 48 hours per seven days. The limit of 48 hours may be calculated according to a fixed average over a period of eight weeks provided, however, that normal working hours do not exceed 50 hours in any one week.

If there is an agreement between the employer and the employees' elected representatives in undertakings bound by a collective pay agreement, working hours must not exceed 12.5 hours per 24 hours and 48 hours per seven days. The limit of 48 hours may be calculated according to a fixed average over a period of eight weeks provided, however, that normal working hours do not exceed 54 hours in any one week.

The Labour Inspection Authority may consent to normal working hours that, on average during a period not exceeding 26 weeks, are no longer than prescribed by Section 10-4. Total working hours cannot exceed 13 hours per 24 hours and 48 hours per seven days. The limit of 48 hours may be calculated according to a fixed average over a period of eight weeks. Working hour arrangements must be discussed with the employees' elected representatives before consent is granted and, when making its decision, the Labour Inspection Authority shall assign particular importance to the health and welfare of the employees.

### **19.2.2.4 Overtime**

Work exceeding the limit prescribed by the Act for normal working hours is regarded as overtime. Employees can be ordered to work overtime when there is an exceptional and time-limited need for this, cf. Section 10-6, subsection 1. Overtime work must not exceed ten hours per seven days, 25 hours per four consecutive weeks or 200 hours during a period of 52 weeks. Overtime work in excess of this may only be imposed on employees who, in each individual case, have declared their willingness to perform such overtime. In addition, total working hours must not exceed 13 hours per 24 hours or 48 hours per seven days. The limit of 48 hours per seven days may be calculated according to a fixed average over a period of eight weeks provided, however, that normal working hours pursuant to Section 10-5, subsection 2 and 10-6, subsection 5 do not exceed 69 hours in any one week.

The employer and the employees' elected representatives in undertakings bound by a collective pay agreement may agree in writing to overtime work not exceeding 20 hours per seven days



provided, however, that total overtime work does not exceed 50 hours for four consecutive weeks. Overtime work must not exceed 300 hours during a period of 52 weeks. In addition, these parties may agree in writing to exceptions from the limit of 13 hours stated above, however total working hours must still not exceed 16 hours per 24 hours. In such an instance, the employee must be ensured of having corresponding compensatory rest periods or, where this is not possible, other appropriate protection.

The Labour Inspection Authority may permit total overtime work not exceeding 25 hours per seven days or 200 hours during a period of 26 weeks. When making its decision, the Labour Inspection Authority must assign particular importance to the health and welfare of the employees.

#### **19.2.2.5 Night work and work on Sundays and weekends**

Work on Sundays and weekends, as well as night work, is not permitted unless necessitated by the nature of the work, cf. Sections 10-10 and 10-11 of the Working Environment Act. Work between 9pm and 6am constitutes night work. The employer must discuss the necessity of night work and the need for work on Sundays and weekends with the employees' elected representatives before this is commenced.

The employer and employee may enter into a written agreement that the employee may, at his/her own initiative, perform work between 9pm and 11pm. At undertakings bound by a collective pay agreement, the employer and the employee's elected representatives may enter into a written agreement concerning night work and work on Sundays and weekends when there is an exceptional and time-limited need for this.

#### **19.2.2.6 Daily and weekly off-duty time**

Section 10-8 of the Working Environment Act states that an employee must have a minimum of 11 hours continuous off-duty time between two main work periods per 24 hours. In addition, an employee must have a continuous off-duty period of 35 hours per seven days. The employer and the employees' elected representatives in undertakings bound by a collective pay agreement may agree to waive the provision relating to daily and weekly off-duty time. The parties may only enter into such an agreement if the employee is ensured corresponding compensatory rest periods or, where this is not possible, other appropriate protection. The parties cannot agree to off-duty periods shorter than eight hours per 24 hours or 28 hours per seven days. At undertakings which are not bound by a collective pay agreement, the employer and the employees' representatives may conclude a written agreement on the same terms to the effect that overtime may be worked during the off-duty period when this is necessary in order to avoid serious disturbances to operations.

#### **19.2.2.7 Collective pay agreements that depart from the provisions for working hours**

Trade unions entitled to submit recommendations, i.e. trade unions with more than 10,000 members, may, with some exceptions, enter into a collective pay agreement that departs from the provisions for working hours, cf. Section 10-12, subsection 4 of the Working Environment Act. Pursuant to this provision, the parties can agree to work on Sundays and weekend work, night work, extend normal working hours and calculate average working hours exceeding the framework and conditions stipulated in the Act. The parties may also agree to extended overtime if there is an exceptional and time-limited need for this. Exemptions from daily and weekly rest require compensatory rest periods or other appropriate protection. Provisions included in such an agreement cannot

violate a principal collective agreement unless the principal parties to the agreement have approved of these.

#### **19.2.2.8 Permission from the Labour Inspection Authority to deviate from working hour arrangements**

The Labour Inspection Authority may consent to working hour arrangements that deviate from Section 10-8, subsections 1 and 2. Consent may only be granted if the employees are ensured compensatory rest periods or, where this is not possible, other appropriate protection,

#### **19.2.2.9 Regulatory authority for work of a special nature**

If the work is of such a special nature that it would be difficult to adapt it to the provisions in the chapter relating to working hours, the Ministry may, by regulation, issue special rules providing exceptions from the provisions, cf. Section 10-12, subsection 8. The following regulations were issued pursuant to this provision: Regulations no. 1052 of 25 May 2017 relating to working hours for relief workers, Regulations no. 873 of 26 June 2009 relating to exemptions from the provisions for working hours in the Working Environment Act for police officers etc., Regulations no. 783 of 3 July 2008 relating to working hours etc. for employees in cross-border rail traffic, Regulations no. 1567 of 16 December 2005 relating to exemptions from the Working Environment Act for certain types of work and employee groups, Regulations no. 686 of 24 June 2005 relating to working hours at institutions with co-delivery schemes, and Regulations no. 543 of 10 June 2005 relating to working hours for drivers and others within road transport.

The provision not only applies for work that *cannot* be adapted to the provisions in the chapter on working hours based on how the previous Section 41 of the Working Environment Act (1977) was worded, but also includes work that is *difficult* to adapt to the provisions. The provision therefore has a somewhat wider scope for exemptions than the previous provision.

#### **19.2.2.10 Working Time Directive**

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time sets minimum rules for the organisation of working hours and the national regulation. Exemptions from the provisions for working hours must be within the Working Time Directive.

Among other things, the Directive grants the right to derogate from requirements for daily and weekly rest by way of act, regulations or collective agreement. The Directive sets a list of the activities that can constitute grounds for derogations, including “activities involving the need for continuity of service or production”, cf. Article 17 (3) (c), cf. (2). The list is not exhaustive, cf. Court of Justice of the European Union judgment C-428/09.

Article 17 (2) states that workers must be afforded “equivalent periods of compensatory rest or that, in exceptional cases in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection.”

### 19.2.3 The Commission's evaluation

#### ***19.2.3.1 The need to derogate from the provisions for working hours and scope of the exemptions***

It is essential for democracy that elections to municipal councils, county councils, the Storting and Sami Parliament are conducted in the correct manner. Conducting elections is an extensive process. Approximately 30,000 election officials were involved in conducting the 2017 election. The work requires expertise on the present set of rules, the electronic election administration system and on the practical conduct of elections in general. This expertise is limited in the individual municipalities, and some employees will therefore have a heavy workload. A high degree of continuity is also required for the work involved in conducting elections.

Several of the tasks associated with elections require evening work. It is necessary to work on the weekend prior to the election day(s) and on election night. The election-related work for people who have overall responsibility for conducting the election may entail that, for several weeks prior to election day, on election day and the subsequent days, this work will not be in compliance with the provisions for working hours in the Working Environment Act. However, the workload is at its heaviest period shortly before election day, on election day and shortly after election day.

The work of others who are also employed to work with the election will also exceed the limits stipulated in the Working Environment Act. Work on election day will take place from the morning. It varies from municipality to municipality as to when the work on election day will end. In larger municipalities, counting can take place throughout the night. Counting of late advance votes will take place during Tuesday afternoon and possibly evening, depending on the scope of the work. The election result is expected to be available as soon as possible. Materials from parliamentary elections and county council elections must also be sent to the district electoral committee and county electoral committee as soon as possible.

It is important to ensure that the conduct of the election, the count and determination of the election result take place in the most efficient and correct manner. The Commission finds that the normal framework of the rules for working hours prevents the continuity required for the work involved in conducting elections. The Commission is aware that, in some larger municipalities, local agreements have been entered into to deviate from provisions for working hours, however is not aware of the extent to which such agreements have been used.

Based on this, the Commission is of the view that the work of municipalities in conducting elections is of such a special nature that it is difficult to adapt to the rules for working hours in the Act. The right to issue regulations is therefore deemed to have been fulfilled. The Commission would emphasise that exemptions are only granted for a smaller and restricted group of employees in the municipality and that this is not a far-reaching exemption for a large group of employees. The exemption will also only apply for a very limited period of time every two years.

The Commission's starting point is that the heads of election administration in the municipalities and others who work with elections do not have "particularly independent posts" or "senior posts". The Commission assumes that the employees in municipalities who work with conducting elections are generally covered by the provisions for working hours in the Working Environment Act.

The Commission proposes that the exemption shall apply for employees in municipalities or county authorities who have overall responsibility in different areas for conducting elections. The continuity of this work is important for efficiency and quality when conducting elections.

The Commission also proposes that the exemption shall apply for returning officers and election officials who work on election day (and election night), as well as for employees who count ballot papers, irrespective of when this occurs. The exemption will not apply for election workers as such, but will relate to the specific work tasks that need to be performed during this relatively brief period of time. The Commission considers it important to have continuity in the work of receiving ballots on election day and counting ballot papers after polling stations have closed. Returning officers and others who work at the polling station will have knowledge about the voting process that may be of importance when counting ballot papers.

However, the Commission is of the view that the work involved with receiving advance ballots during the advance voting period must be able to be organised in accordance with the provisions for working hours in the Working Environment Act by having adequate staffing levels and an appropriate on-duty system. In the view of the Commission, the opening hours of polling stations used for advance voting do not prevent the work from being organised in accordance with the provisions for working hours in the Working Environment Act.

The Commission considers there to be a need for equivalent exemptions from the provisions for working hours for employees at the Norwegian Directorate of Elections, Ministry of Local Government and Modernisation and the Storting who have duties associated with elections. The Commission assumes that members of the proposed National Electoral Committee are not covered by the provisions for working hours in the Working Environment Act and there is thus no need to make exemptions for these members.

The requirements in the Working Time Directive for compensatory rest or other appropriate protection when applying the exemption should be included as a requirement in the regulations.

### **19.2.3.2 The provisions for working hours that can be derogated from**

The Commission proposes to permit derogations from Section 10-6 of the Working Environment Act, which sets rules for overtime and total working hours, for employees in the municipalities who work on election day and election night, in order to make it possible, for a limited period, to carry out work associated with the election process over several continuous hours in excess of what is permitted in the Working Environment Act. This means that there are derogations from the rule that total working hours must not exceed 13 hours per 24 hours. The overtime restrictions will not apply.

For employees in the municipality with overall responsibility for the different areas of election proceedings and employees at the Norwegian Directorate of Elections, Ministry of Local Government and Modernisation and employees in the Storting who work with conducting elections, the Commission proposes to also allow derogations from Section 10-8 of the Working Environment Act, which applies to daily and weekly off-duty periods. This means that the regulations derogate from the rules for 11 hours of daily off-duty periods and 35 hours of weekly rest.

## 19.3 The media's access to election results

### 19.3.1 Applicable law

Section 9-9 of the Election Act states that neither election results nor prognoses produced on the basis of investigations undertaken on the day or days on which polling takes place may be published any earlier than 9pm on Election Day Monday.

This prohibition applies to the publication of actual election results and prognoses based on interviews with voters on election day (Monday and possibly Sunday). The prognosis produced by the Norwegian Directorate of Elections is based on actual results of advance voting and is therefore also prohibited. The prohibition does not include prognoses based on investigations carried out at an earlier stage.

The background to Section 9-9 of the Election Act was a desire to “shield” the actual election day and ensure that voters are not influenced by election results. In the proposed new Election Act, the Ministry emphasised that the deadline for publishing election results and prognoses should be set in order for it to be certain that all polling stations are closed. At the same time, the Ministry was also of the view that it was not desirable to postpone publication of election results for longer than was strictly necessary for ensuring that voters are not subject to adverse influence.<sup>480</sup>

The Election Act contains no rules regarding the media's access to election results. However, standard practice is that the media can, by agreement, obtain access to election results and prognoses based on advance votes one and a half hours before polling stations close. This makes it possible for the media to prepare their broadcasts and to be ready to report on the election results at 9pm. At present, it is the Norwegian Directorate of Elections that enters into agreements with media outlets that request such access, and data is then supplied directly through EVA Result at 7:30pm.<sup>481</sup>

The practice of providing access to results before polling stations close dates back a long way. In the consultation paper relating to amendments to the Election Act following the 2007 election, this issue was raised in connection with the introduction of fines for contravention in Section 15-15.<sup>482</sup> The Ministry made reference to the fact that the Ministry has no duty to release results to the media, and that restricting this practice had been considered. However, this does not appear to have been followed up in the form of specific proposals or changes in practice.

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<sup>480</sup>Proposition no. 45 to the Odelsting (2001-2002) p. 270.

<sup>481</sup>At the 2019 election, the following media outlets entered into an agreement with the Norwegian Directorate of Elections and were granted access to EVA Result: Aftenposten, Amedia, Bergens Tidende, DN, Fædrelandsvennen, Kommunal Rapport, NRK, NTB, Stavanger Aftenblad, TV 2 and VG.

<sup>482</sup>Ministry of Local Government and Regional Development. Consultation – proposed amendments to the Election Act and Local Government Act, 27 June 2008.

There have also been discussions as to whether municipalities can release information about election results to the media before 9pm. The Election Manual<sup>483</sup> states that:

The result of the preliminary count must not be “published” before 21.00 hours on election day on Monday, cf. Section 9-9 of the Election Act. Giving information concerning the result to media or to researchers is not synonymous with publishing. If the electoral committee gives such information regarding the result before 21.00 hours, it must also call attention to the release ban. The party who receives information regarding the voting results before 21.00 hours, has an independent responsibility to ensure that it is not published before 21.00 hours.

It is not known as to whether the municipalities have released election results to the media in addition to the information in EVA result.

### 19.3.2 The Commission’s evaluation

The Commission has discussed current practices relating to the media being granted access to preliminary election results and prognoses based on the results of advance votes that have been counted. The Commission finds that the starting point has to be that the election results must not be known until after polling stations have closed. This creates the same conditions for all voters and contributes to all voters being able to make their choices without being influenced by the election result.

The Commission considers it to be unfortunate that the practice of granting the media access to elections results before 9pm is not established by law. For example, no rules are stipulated for who can be granted access to election results before 9pm. The Commission would note that the media landscape has changed and that it can be questioned as to whether other operators should also be granted access to such results before 9pm. There have previously been requests from bloggers and other websites for access to election results, but these have been refused. The Commission finds that it is now more difficult to clearly define what operators require early access to election results. The principle of equal treatment may argue in favour of either everyone who wants access to elections results before 9pm being granted this or that no media outlets should be given such an advantage. The Commission also questions whether it is necessary to grant access to election results as early as 7:30pm or whether it would be sufficient to release preliminary election results half an hour before 9pm.

*A majority of the Commission (everyone with the exception of Giertsen and Grimsrud) was of the opinion that the media should no longer be granted access to election results before 9pm. As long as the polling stations are open, as few people as possible should know the election results. This is important to ensure that all voters are able to vote under the same conditions. This entails that neither the Norwegian Directorate of Elections nor the municipalities can release information about the election result until 9pm.*

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<sup>483</sup>“Election Manual: Overview of the regulations that apply for conducting elections” (Ministry of Local Government and Modernisation, 2019). The Election Manual is not legally binding, but provides an overview of the rules and a description of how the rules have been understood.

A minority of the Commission (Giertsen and Grimsrud) was of the opinion that the system whereby media outlets with an agreement with the electoral authorities are granted access to election results from 7:30pm on election night should be continued. These members agreed with the majority that the increase in the number of media outlets, particularly those that are online, may make it more difficult to determine what media outlets should have access to election results before the time these are released to the general public, (which is 9pm on election night).

Restricting access to media outlets that are credible enough to be given election results before 9pm could take place by accepting media outlets that are covered by the Freedom of Media Act.<sup>484</sup> The Tax Administration Act uses this restriction as a basis for granting access to the tax lists.<sup>485</sup> The Norwegian National Courts Administration also takes a similar approach when concerning access to non-anonymised court rulings and indictments.<sup>486</sup> Therefore, in the view of these members, it is possible to establish criteria for the media outlets that have the necessary level of credibility to be granted access to results from 7:30pm on election night.

With regard to the issue of whether media outlets should still be granted access to election results from 7:30pm on election night, members Grimsrud and Giertsen would firstly emphasise that there are no known instances of this arrangement having been abused. Secondly, granting media outlets access at 7:30pm would enable them to plan the profile of their reports and commentaries, with the positive consequences this will have for the quality of the election coverage. Thirdly, granting access at 7:30pm would enable media outlets to prepare their own prognoses for the entire country and for counties and municipalities with publication at 9pm.

If the media are no longer granted access at 7:30pm, it is probable that the only prognoses at 9pm will originate from the state electoral authority. It is unusual in an international context that the state prepares prognoses through the electoral authority. In practice, the media outlets in Norway that will prepare their own national and local prognoses will be at a major disadvantage if this work cannot start until 9pm. It will therefore be difficult to have genuine competition between prognoses prepared by the electoral authority and media outlets that prepare their own prognoses.

The *minority* is also of the view that the municipalities should not be able to release information about election results until 9pm.

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<sup>484</sup>Act no. 41 of 13 June 2008 relating to editorial freedom in the media 41.

<sup>485</sup>"Vilkår for bestilling og bruk av skattelister", Norwegian Tax Administration, accessed 17 February 2019, <https://www.skatteetaten.no/presse/bestill-skattelister/vilkar-for-bestilling-og-bruk-av-skattelister/>.

<sup>486</sup>"Kriterier for godkjenning", Norges domstoler, accessed 17 February 2019, <https://www.domstol.no/elektronisk-pressemappe/kriterier-for-godkjenning/>.

*Part IV*  
*Approval of elections*



## **20 Approval and appeals**

### **20.1 Applicable law**

#### **20.1.1 Right of appeal**

The rules governing who has the right to appeal are the same for all elections. Any person who is entitled to vote at an election has a right of appeal, cf. Section 13-1, subsection 1 and Section 13-2, subsection 1 of the Election Act. The voter only has a right of appeal in the constituency in which he/she is included in the electoral register. The requirement of being included in the electoral register in the constituency does not apply if the appeal concerns the right to vote or the possibility of casting a vote.

#### **20.1.2 Subject matter of the appeal**

The voter may appeal against "matters relating to the preparation and conduct of the parliamentary election," cf. Section 13-1, subsection 1, first sentence of the Election Act. The same applies for municipal council and county council elections, cf. Section 13-2, subsection 1, first sentence of the Election Act. This entails that the voter can, in principle, appeal all types of matters as long as this relates to the preparation or conduct of the election. This may include individual decisions handed down by the electoral authorities, breach of the rules for how the election must be prepared and conducted and the election result. However, in order for the appeal to be heard it is still a requirement that the matter being appealed may constitute a breach of the rules for how the election must be prepared and conducted.

The voter does not have the right to appeal against decisions by the Storting, county council and municipal council regarding whether an election was valid.

#### **20.1.3 Appeal deadline**

The appeal must be brought within seven days after election day, cf. Section 13-1, subsection 1 and Section 13-2, subsection 2. An appeal may be brought before election day, something that will often be appropriate for potentially being able to effectively correct the error before the election.

If the appeal concerns the county electoral committee's election result, the appeal must be brought within seven days after the election result was determined. Appeals against the election result at municipal council and county council elections must be brought within seven days after the result of the election was approved by the county council or the municipal council.

#### **20.1.4 Special rules for appeals of list proposals and correcting errors in the electoral register**

The Election Act also contains special rules for appeals when concerning decisions to approve or reject a list proposal, cf. Section 6-8 of the Election Act. The rules are the same for all elections. The general rule is that everyone who has a right to vote and is included in the electoral register in the constituency has a right of appeal. If the reason for the appeal is an infringement of the exclusive right to use a party name, registered political parties also have a right of appeal. The appeal deadline is seven days after the headings on the approved electoral lists are published.

Pursuant to Section 2-7 of the Election Act, any person who believes that he or she or any other person has been erroneously included in or omitted from the electoral register may demand that

the error be corrected. The electoral committee's decision to register or not register a voter can be appealed in accordance with the normal rules governing appeals in Section 13-1, subsection 1, first sentence of the Election Act for parliamentary elections and Section 13-2, subsection 1, first sentence for municipal council and county council elections.

#### **20.1.5 Requirements for the appeal**

For parliamentary elections, the appeal must be in writing and addressed to the electoral committee, the county electoral committee, the County Governor, the Ministry or the Administration of the Storting, cf. Section 13-1, subsection 3. Prior to 1997, the appeal had to be submitted to the Office of the Storting. The other authorities were added in connection with the change to the appeal deadline. The reason for the change was to ensure that the appeal deadline would be interrupted if the appeal was sent to local electoral authorities. For county council elections, the appeal must be submitted to the county electoral committee, and for municipal council elections the appeal must be submitted to the electoral committee, cf. Section 13-2, subsection 3. If the appeal relates to matters of importance for both elections, it may be submitted to either the county electoral committee or electoral committee. The appeal shall then be deemed to apply to both elections.

#### **20.1.6 Appellate instance**

For parliamentary elections, the Storting is the appellate instance for appeals concerning the right to vote or the possibility of casting a vote. The National Election Committee is the appellate instance for other appeals, cf. Section 13-1, subsection 4. If the appeal concerns the right to vote or right to cast a vote, the National Election Committee shall make a statement before the Storting hands down a decision in the case. Other appeal cases are decided on by the National Election Committee, which then forwards on its decisions to the Storting.

The Ministry is the appellate instance for municipal council and county council elections, cf. Section 13-2, subsection 4.

#### **20.1.7 Whether decisions in appeal cases can be brought before the courts**

Section 13-2, subsection 4 of the Election Act states that decisions by the Ministry in appeal cases relating to municipal council and county council elections are final and may not be brought before the courts. However, it can be questioned whether this can be interpreted entirely based on the wording.

In Proposition no. 45 to the Odelsting (2002-2002), the Ministry referred to the statement from the Appeals Committee of the Supreme Court of Norway on 15 June 1962, which was reproduced in Rt. 1962, p. 571. With this statement as the backdrop, the Ministry found that, pursuant to applicable law, decisions by the Ministry in appeal cases cannot be brought before the courts. The Ministry therefore proposed to include in the proposal for a new provision for appeals relating to municipal council and county council elections, that decisions by the Ministry in appeal cases cannot be brought before the courts.

However, the wording used by the Appeals Committee of the Supreme Court was somewhat more nuanced than what was stated in the Proposition to the Odelsting. The Appeals Committee found that the exemption for court proceedings cannot apply unconditionally. The case concerned an appeal of a municipal council election and the statement was essentially restricted to these types of elections. The Appeals Committee stated that:

“...even when final decisions are assigned to an administrative body, pursuant to general principles in our public law, the courts will have a certain right of review or control authority as protection against abuse of power or other serious offences on the part of the administrative body.”

In accordance with this, the Appeals Committee is of the view that it must be able to be assumed that, in connection with municipal council and county council elections, the courts can review whether there was abuse of power in terms of how the Ministry processed the appeal, even if the Ministry’s decision will normally not be able to be reviewed by the courts.

When concerning parliamentary elections, it has always been an established doctrine of constitutional law that the courts cannot review decisions by the Storting, cf. Articles 55 and 64 of the Constitution of Norway.<sup>487</sup>

Section 13-1, subsection 4 of the Election Act states that, for parliamentary elections, the National Election Committee is the appellate instance for all appeals (with the exception of appeals concerning the right to vote or the right to cast a vote). The National Election Committee shall forward its decisions on the appeal cases to the Storting, which will then decide whether the election was valid. Prior to the 2002 Election Act, the Storting itself was the appellate instance for all appeals relating to parliamentary elections.

It is not directly stated in the Election Act that decisions by the National Election Committee cannot be brought before the courts, but the same considerations as those used as a basis by the Appeals Committee of the Supreme Court in Rt. 1962, p. 571, must also be able to be applied here. In the decision, the Appeals Committee noted that:

“...including court proceedings in the rule would be futile because one cannot expect a final decision until the municipal council’s term of office has expired or almost expired.” Furthermore, particularly compelling considerations would suggest that it will be promptly determined as to whether a county council is to be deemed legally elected.

It is also the Storting itself that decides on the validity of the election. These factors must entail that decisions by the National Election Committee cannot be brought before the courts.

### **20.1.8 Approval of the election**

The rules concerning the approval of elections are different for parliamentary elections and municipal council and county council elections.

Pursuant to Article 64 of the Constitution of Norway, “The Members elected shall be furnished with credentials, the validity of which shall be adjudged by the Storting.” This takes place according to a two-stage process, which is somewhat different for constituency seats and seats at large. For constituency seats, it is the county electoral committee that “returns” the members in accordance with Section 11-5 of the Election Act, while it is the National Electoral Committee that “returns” the members to seats at large, cf. Section 11-7 of the Election Act. The National Electoral Committee

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<sup>487</sup>Frede Castberg, *Norges statsforfatning*, 3rd edition, Volume 1 (Oslo: Universitetsforlaget, 1964), p. 270, Castberg, *Norges statsforfatning*, 3rd edition, Volume 2 (Oslo: Universitetsforlaget, 1964), p. 158, and Johannes Andenæs and Arne Fliflet, *Statsforfatningen i Norge*, 10th edition (Oslo: Universitetsforlaget, 2006), p. 158.

then issues credentials for all members and alternate members returned to the Storting, cf. Section 11-8 of the Election Act. The Act states nothing about whether, in the event of disagreement with a county electoral committee, the National Electoral Committee can furnish credentials for direct seats other than those returned by the county electoral committee. The credentials are sent to the Storting.

Pursuant to Article 64 of the Constitution, the Storting shall adjudge whether the members of the Storting have been validly elected in accordance with the rules in the Constitution, laws and regulations. It is the newly returned Storting that performs this task. Among other things, this validation process involves assessing whether the election result determined by the county electoral committee and National Electoral Committee was correct. The Storting may also review decisions by the National Electoral Committee in appeal cases.

The courts cannot review a decision by the Storting on whether or not the election was valid. Therefore, neither the voters, those who submitted lists, nor individual candidates may have decisions by the Storting reviewed.

For county council and municipal council elections, the new municipal council or county council shall decide whether the election of members of the municipal council or county council was valid, cf. Section 13-4, subsection 1 of the Election Act. The election protocols of the electoral committee or county electoral committee are the basis for the recommendation from the electoral committee or county electoral committee and thereby for decisions by the municipal council and county council.

The Ministry must be notified if the election is deemed invalid. The Ministry may then order a new election, however it must be assumed that this will only occur if the Ministry agrees that the election is invalid.

The validity of the election may be brought before the Ministry for a legality review pursuant to Section 27-1 of the Local Government Act, cf. Section 13-4, subsection 5 of the Election Act. The deadline for submitting an application for a legality review is seven days after the county council or the municipal council has handed down a decision on whether the election was valid. If special grounds exist, the Ministry may, at its own initiative, conduct a legality review of a decision by the county council or municipal council.

Neither the voters, those who submitted lists, nor individual candidates may appeal a decision by the county council or municipal council to approve the election.

## **20.2 Compliance with international standards**

The Organization for Security and Co-operation in Europe (OSCE) monitored the 2009 parliamentary election. In its report, the OSCE made two recommendations regarding election-related appeals:<sup>488</sup>

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<sup>488</sup>“Norway Parliamentary Elections 14 September 2009”, OSCE/ODIHR Election Assessment Mission Report (Warsaw: Organization for Security and Co-operation in Europe, 2009).

It is recommended that consideration be given to providing the legal right to appeal all election-related matters and election results to a competent court as the final authority on all election matters, in line with OSCE commitments and international good practice.

Consideration could be given to setting specific expedited time limits for the adjudication of election-related complaints and appeals by all relevant authorities including courts, the NEC and Parliament, in order to be fully consistent with paragraph 5.10 of the Copenhagen Document.

Based on this, the then Ministry of Local Government and Regional Development asked the Venice Commission, which is a body subordinate to the Council of Europe, for an assessment of the Norwegian appeal system when concerning electoral disputes. The Venice Commission and the OSCE issued a joint statement in 2010<sup>489</sup>, in which they concluded that, in order to meet international standards and requirements, Norway should involve the courts or a judicial-type body when resolving disputes in election-related matters. It was also recommended that it be possible to bring verification of an election before the courts or another independent body, which would then conduct the final verification of the election. Finally, the Venice Commission/OSCE recommended that deadlines be set for when decisions in appeal cases need to be in place, to ensure the prompt consideration of the appeal cases.

On behalf of the Commission, member Holmøyvik has written a memo about the appeals system for parliamentary elections and compliance with international regulations. In the following, the Commission will provide a brief overview of the content of this memo. The memo has been included as appendix 1 of the report.<sup>490</sup> The memo discusses two questions:

1. Is the current appeals system which is authorised in the Constitution of Norway and the Election Act in accordance with international standards for election laws?
2. What requirements do the international standards set for a potential new appeals system for parliamentary elections?

The memo's conclusion is that the Norwegian appeals system is neither in compliance with the Venice Commission's recommendations in "Code of Good Practice in Electoral Matters" nor Article 3 of Protocol No. 1 of the European Convention on Human Rights (ECHR). This provision requires actual and effective consideration of election disputes. This means that election disputes must ultimately be able to be subject to judicial review by an impartial appellate instance. Following the Constitutional Review in 2014, an equivalent requirement can most probably be derived from Article 49, paragraph one, second sentence of the Constitution of Norway.

When concerning the requirements that are set for a possible new Norwegian appeals system, the memo concludes that neither the "Code of Good Practice in Electoral Matters" nor the ECHR can be interpreted in such a way that the appellate instance has to be a court, but that an appellate instance must satisfy the same requirements for due process of law as a court when concerning the

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<sup>489</sup>Joint Opinion on the Electoral Legislation of Norway" (Venice: European Commission For Democracy Through Law (Venice Commission) and OSCE Office For Democratic Institutions And Human Rights (OSCE/ODIHR), 2010), CDL-AD(2010)046.

<sup>490</sup>Eirik Holmøyvik, "Klageordning for stortingsval", Annex 1 of the report, 2020.

appeal process. This means that the appeal process must be judicial, i.e. that requirements are set for the formal and actual independence of the appellate instance, legal expertise, impartial composition, authority to make binding decisions and procedural guarantees such as adversarial proceedings.

## 20.3 Nordic law

Finland, Sweden and Denmark all have rules which stipulate whether, in the event of a new election, the members of the newly-elected or previous democratically elected body shall serve in office until the new election has been concluded. These rules are addressed in more detail in Chapter 21 concerning new elections.

### 20.3.1 Finland

Appeals are regulated in Chapter 8 of the Finnish Election Act. Section 101 states that “appeals may be brought by those whose interests or rights are violated by a decision.” Candidates and parties that participated in the election can appeal if they believe the decision was unlawful. In addition, every eligible voter in the constituency or municipality in question may appeal against a decision on the grounds that the election was incorrectly conducted and that this could have influenced the election result.

An appeal must be lodged with the local administrative court within 14 days from publication of the election results. A decision by the court can be appealed to the highest administrative court.

### 20.3.2 Sweden

In Sweden, appeals for all elections are decided by a special board – the Election Review Board (Valprövningsnämnden). The relevant article in the Constitution of Sweden (Form of government) states that the decisions by the Election Review Board are final and cannot be reviewed by the courts.<sup>491</sup> The members of the Election Review Board are elected by the Swedish Parliament (Riksdagen) after each ordinary parliamentary election and the members will sit on the board until the next ordinary parliamentary election has been approved. The board has seven members. The chair is elected separately and must be or have been a judge and may not be a member of the Swedish parliament. However, there are no special requirements for the other six members. The present board members are current or former members of the Swedish parliament from various parties.

Chapter 15 of the Swedish Election Act contains provisions regarding appeals in connection with elections. The most important provision is Section 3, subsection 4 which states that decisions of the *county administrative board* or the central election authority to determine the outcome of an election may be appealed to the Election Review Board. Voters may appeal if they believe an error was made that has influenced the election result. Those entitled to appeal are persons who were entered in the electoral register for the election and parties that participated in the election. The appeal must have been submitted no earlier than on the day after election day and no later than ten days after the election was concluded.

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<sup>491</sup>Form of government, Chapter 3, Article 12.

### 20.3.3 Denmark

Denmark has two election acts, one for elections to the Danish parliament (Folketinget) and one for municipal and regional elections. The rules for appeals appear in Chapter 11 (in the Act relating to parliamentary elections) and Chapter 9 (in the Act relating to municipal and regional elections).

For parliamentary elections, any voter may appeal the election. Appeals are to be addressed to the

Danish parliament and submitted to the Minister for Economic Affairs and the Interior, which will prepare the appeal for the Danish parliament. The appeal deadline is “the weekday after the election day”, which means that the deadline is one week. Together with Norway, Denmark is one of the few countries in Europe where the parliament is the final instance for election appeals relating to parliamentary elections. Article 33 of the Constitution of Denmark states that “The Danish Parliament itself shall determine the validity of the election of any Member and decide whether a Member has lost his eligibility or not.” However, the courts may review decisions by the election authorities regarding whether the voting eligibility terms in Article 29 of the Constitution of Denmark are satisfied. These are questions regarding whether the person in question has Danish citizenship, has a permanent residence in Denmark, has reached legal age and whether he/she is legally incapable.<sup>492</sup>

For municipal and regional elections, any voter in the municipality and region can appeal the election. The respective appeal bodies are the local council or the regional council. The appeal must be submitted no later than the first weekday after election day. A decision in an appeal case may be brought before the Minister for Economic Affairs and the Interior for a final decision no later than 14 days after the person filing the appeal was notified of the decision.

## 20.4 The Commission’s evaluation

### 20.4.1 The structure of the legislation

The current Chapter 13 of the Election Act deals with rules for appeals, rules for approving elections and provisions relating to new elections. The rules for appeals come before the rules for approval, and this is a natural order under applicable law because, with the exception of the legality review, there is no right to appeal decisions to approve the election result.

However, the Commission proposes that there must also be a general right to appeal approval decisions, and the current order therefore appears to be inappropriate. The natural order would be to go from the rules for determining the election result, allocation of seats, and returning of members to the provisions relating to approval. The normal situation would then be described as a whole and chronologically in the Election Act, from when the list proposals are submitted to the electoral authorities until the election is approved.

The rules for appeals and possible new elections should appear after the normal situation has been described. The Commission has formulated its proposal in line with this.

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<sup>492</sup>See, for example, the Danish Supreme Court’s judgment in U 2000.669 H.

It is normal under administrative law that the right of appeal first applies after the first instance has handed down its decision. The process that takes place with the first instance until the decision cannot be formally contested until a decision is in place. (Instances of special right of appeal regarding right of access, disclosure orders, etc. are thus disregarded).

When transferred to the Election Act this would mean, when disputes regarding entry in the electoral register and right to vote are disregarded, that there was no ongoing right to appeal incidents during the election process, and that the right of appeal first applied after the Storting, county council and municipal council (the first instances) handed down their decisions to approve the election. When viewed from the outside, everything (approval of lists, rigging of polling stations, counting, returning of candidates etc.) that occurs until the Storting, county council and municipal council approve the election could be deemed as proceedings up until this decision. In formal terms this would be a viable option, particularly if there were also provisions that the newly-elected body was legally convened until the round of appeals potentially revealed otherwise.

Under this type of system, the first instance (the newly-elected bodies with possible assistance from the various electoral committees) would have to address all of the objections to irregular circumstances before potentially approving the election, which is what any first instance otherwise has to do until a decision is handed down in a case. The first instances would therefore need to have done this without assistance from an appeal body, but rather based on their own assessments. Objections from voters and parties up until the final decision would not be appeals, but precisely that - objections. If the objections were not accepted, they would become appeals after the approval decision was handed down.

The Commission now proposes a combination. As is presently the case, objections up until the approval decision will be dealt with as appeals. They will be assessed by the various electoral committees and then decided on by the appellate instance. At the same time, a right to appeal the actual approval is also proposed that is different to the legality review that currently exists for approval by the county council and municipal council.

This presents some new challenges. It will therefore be necessary to regulate how the first instances (Storting, county council and municipal council) shall consider both decided and undecided appeals before handing down a decision on whether or not to approve an election. Questions also arise about how to prevent grounds for appeal that have already been decided on by an appellate instance prior to approval of the election being repeated as grounds for an appeal of the approval decision. By grounds for appeal is meant the material facts that the appellant has based the appeal on, cf. in parallel with the prayer for relief in Section 11-2, subsection 2 of the Dispute Act.

The final question is hardly a difficult one to answer when concerning parliamentary elections. The Commission proposes that the Storting's approval decision can be brought before the Supreme Court under specific conditions relating to the legal interest. The appeal shall be brought before the Supreme Court through an action against the Storting. It is clear enough that the Supreme Court cannot be bound by decisions of the appellate instance (National Electoral Committee) that shall consider appeals submitted prior to approval.



### **20.4.2 Approval of the election**

For parliamentary elections and county council elections, the district electoral committee and county electoral committee will have determined the “total votes polled” for each list after the final count. At municipal council elections, the electoral committee will have determined the “total votes polled by the lists” for each list.

This takes place after the same electoral bodies have made the necessary corrections. The reason for corrections may be circumstances that the different electoral committees themselves have discovered, or could be appeals. Appeals are currently excluded.

The process then proceeds chronologically to the allocation of seats and returning of members, cf. Sections 11-4 to 11-13 of the current Election Act. Under applicable law this is referred to as the “election result” and for parliamentary elections is determined by the county electoral committee (with the exception of Oslo) when concerning the constituency seats and by the National Electoral Committee when concerning the seats at large. The county electoral committee determines the election result at county council elections and for municipal county elections this is done by the electoral committee.

For parliamentary elections, credentials are issued for all members and alternate members returned to the Storting. This is done by the National Electoral Committee based on the election results in the 19 constituencies and separate election result for the seats at large. The credentials are sent to the Storting. Equivalent credentials are not issued to the elected members of the county council and municipal councils and their alternate members, however they are informed of the election.

Following this, the election can be approved by the Storting, county council and municipal council respectively. If there are no issues associated with determining the election result and no objections/appeals have been made against the preparation or conduct of the election, validation will effectively be approval of the election result determined by the responsible electoral body. If there are irregularities, the newly-elected body must consider whether errors can be corrected and whether there is a preponderance of probability that the error influenced the election result.

In the view of Commission, there is no need to make major material amendments to the provisions relating to the election result and approval. As stated in section 20.4.3, the Commission proposes certain amendments to the rules for appeals and this means that the provisions relating to approval must be amended somewhat. The starting point must be that the appeals process associated with the preparation and conduct of the election has concluded at the time the elected body shall consider whether or not the election shall be validated. It must therefore be regulated as to how the body should address the decisions in the appeal cases. There must also be provisions for the situation in which the appeals process becomes drawn out and whether the new or previous body shall function during the intervening period.

#### **20.4.2.1 Parliamentary elections**

With regard to the Storting, the Commission proposes a continuation of the current Section 13-3 of the Election Act, but with a direct statement of the grounds for invalidity. Furthermore, the Commission proposes a provision regarding temporary approval if the appellate instance has decided

that a new election must be held or if the appellate instance has not concluded the appeals process.

When the Storting determines whether or not the election is valid, the Storting must have full information about the decisions made by the appellate instance, i.e. the National Electoral Committee. The situation can therefore either be that the National Electoral Committee has found that the election is invalid and has thus decided that a new election must be held, or that the National Electoral Committee has found that the election is valid. In the first instance – where it has been decided to hold a new election – the Storting cannot make a final decision regarding the credentials for the seats impacted by the new election. If it is decided to hold a new election in a municipality, this will impact on the direct seats from this constituency and for all seats at large. These credentials can therefore only be issued with temporary approval. The Storting must wait for the new election. The Storting cannot reverse a decision by the National Electoral Committee to hold a new election. It is not until after the new election that the Storting can make a final decision regarding the final credentials. The Storting can then decide whether or not the new election was valid. However, the Storting cannot decide that the first election result shall take precedence ahead of the result of the new election. The fact that the Storting must, in this manner, comply with the National Electoral Committee's decision to hold a new election does not involve a review of the Storting's decision, because the National Electoral Committee's decision is handed down first.

In the second instance – where, following an appeal, the National Electoral Committee has found that the election is valid – the Storting may still find that the election was invalid. This applies irrespective of the reason for why the Storting has a different opinion on the matter than the National Electoral Committee, i.e. irrespective of whether this is due to new facts having come to light, due to the facts being assessed differently, or due to the Storting having a different opinion about the application of the law.

In a situation in which the appellate instance has not considered all appeals before the Storting is convened, the Storting will be prevented from final approval of the election. This is a situation that would ideally not arise, because both the appeal deadlines and composition of the National Electoral Committee should ensure a prompt appeals process. However, in the unlikely event that such a delay should arise, this situation must be regulated. If the appeal or appeals that have not been considered are linked to circumstances in only one constituency, the direct seats from other constituencies can be given final validation. Temporary approval entails that members have full authority.

#### **20.4.2.2 County council and municipal council elections**

The provisions relating to approval of county council and municipal council elections should follow the provisions for the approval of parliamentary elections insofar as possible. However, the Commission proposes that, unlike the Storting, the county council and municipal council shall be fully bound by the appellate instance's decision, and that the authority to order a new election must be assigned to the appellate instance.

The consequence of this is that the new county council and new municipal council cannot approve the election before it is clarified as to whether there have been appeals relating to the election and before a decision has been made in the appeal case. If there have been no appeals regarding the

election, the county council or municipal council must – as the first instance – determine the validity of the election based on the general grounds for invalidity in connection with elections. If the county council or municipal council declares the election invalid, the appellate instance must be notified. The appellate instance must then make an independent decision on whether the result was invalid and possibly order a new election.

If an appeal has been received, the county council and municipal council cannot determine whether the election was valid until there is a decision in the appeal case. If, as a result of the appeal or other factors, the appellate instance has ordered a new election, the newly elected body cannot be convened. The previous county council and municipal council will then continue to function until a new election has been held.

If the outcome of the appeal case is that the appellate instance does not find the election to be invalid, the newly elected body may be convened. The county council and municipal council must therefore also determine whether the election shall be approved, but potential invalidity must be based on factors that have not already been disregarded as grounds for invalidity by the appellate instance.

### **20.4.3 Election appeals**

#### ***20.4.3.1 Particular considerations when concerning electoral matters***

The Commission would note that appeals associated with electoral matters differ on certain points from appeals in other areas.

There is a need for prompt consideration of the appeal, either because it is necessary to remedy the matter the appeal pertains to before the election is concluded or because it would be unfortunate if there was to be a long period of uncertainty about whether or not the election is valid.

Election appeals are only an issue every two years and there are few appeals at every election. In addition, there are election appeals in only a few municipalities in connection with each election. This means that the electoral committees gain little experience in considering appeals. In many of the appeals, the legal issues are not complicated. However, sometimes determining what actually occurred is not a simple matter. This may be due to some appeals being poorly substantiated and containing few details.

For elections, it will often be the case that it is not possible to remedy the error that is being appealed, for example, if the appeal concerns breach of the prohibition against influencing elections at the polling stations.

#### ***20.4.3.2 Need for independent judicial review of election appeals***

When concerning appeals of the preparation and conduct of the election, pursuant to applicable law it is the National Electoral Committee that decides on such appeals for parliamentary elections and the Ministry that decides on appeals at municipal council and county council elections. The consideration of appeals by these bodies does not satisfy the requirements for an independent judicial review.

For municipal council and county council elections, the municipal councils and county councils themselves approve the election. It is correct that approval of these elections can be reviewed by

the Ministry if it reviews the legality of the decision to approve the election, cf. Section 27-3, subsection 4 of the Local Government Act, together with Section 27-1, subsection 2. However, the Ministry is politically controlled and does not satisfy the requirements for an independent judicial review.

For parliamentary elections, it is the Storting itself that is responsible for final approval of the election.

The Commission refers to the fact that, with the exception of the 1993 election, it has always been the case in modern times that, when approving parliamentary elections, the Storting has passed unanimous resolutions to approve the credentials to the members. However, we have examples of the process for approving credentials being politicised during periods of strong political tension, such as in the 1880s and 1890s.<sup>493</sup> During the interwar years there was also regularly dissent and special remarks in connection with the validity of the credentials.<sup>494</sup> In such instances there will be a risk that the member's opinion on the issue of validity may be influenced by whether the result is to the benefit or disfavour of his/her own party, and, irrespective of this, the view may arise among voters that there were party-political considerations behind how the different parties voted.

The Commission is of the view that the electoral system must be organised to meet possible future challenges which may appear to be unlikely at the present time. Voters having confidence in the election being conducted in accordance with the law is a fundamental prerequisite for the legitimacy of the electoral system and trust in the political system, which is represented by the Storting, government, county councils and municipal councils. Even though the Commission has a high level of confidence in the Norwegian electoral system and the appeal process, the Commission is of the view that it is unfortunate that disputes concerning the preparation and conduct of an election and the approval of an election cannot be brought before an independent judicial body for a final decision. Such an option would be of major importance to voter trust in the election result in instances in which there is disagreement about whether there were errors in the preparation or conduct of the election and the consequences that potential errors will have for the validity of the election. An independent judicial review would also strengthen the due process of law for voters by them being able to determine whether their rights under the election rules have been violated. The Commission also refers to the fact that Norway is obligated under international and internal law to have a system for the independent judicial review of elections. Based on this, the Commission proposes to introduce a right to have election-related disputes, including regarding approval of the election, reviewed by an independent judicial body.

#### **20.4.3.3 System with independent judicial review**

Both national and international regulations set requirements for dispute resolution, whether this takes place within the judicial apparatus or as an administrative arrangement. The Commission refers to the Agency for Public Management and eGovernment (Difi) Report 2014:2 *Sprawling*

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<sup>493</sup>Rolf Danielsen, *Det Norske storting gjennom 150 år: 1870–1908*, bd. (2). (Oslo: I kommisjon hos Gyldendal norsk forlag, 1964), p. 107–110.

<sup>494</sup>Karl Harald Søvig, "Hvem dømmer i valgtvister?", in *Nybrott og odling: festskrift til Nils Nygaard på 70 årsdagen, 3 April 2002*, ed. Gudrun Holgersen, Kai Krüger, and Kåre Lilleholt (Bergen: Fagbokforlaget, 2002).

*committees? The organisation and regulation of state appeal bodies* and Official Norwegian Report (NOU) 2017: 8 *Special courts in new areas*, both of which provide further details regarding the circumstances that should be regulated and the requirements that should be set for dispute resolution by appeal bodies and the courts. Of key importance here are the requirements for independence, contradiction and justification.

The Commission proposes that appeals relating to parliamentary, county council and municipal council elections shall be decided by the National Electoral Committee in a new form, and that a decision by the Storting's on whether an election is valid should be able to be brought before the Supreme Court. In the view of the Commission, the rules for the National Electoral Committee must be formulated in such a way that they satisfy the requirements for court proceedings stipulated in national and international regulations. In the following, the Commission will provide an overview of a few key points that, in the Commission's view, should form the basis for these regulations.

### *Appellate instance*

The Commission finds that the present appeals system, in which the National Electoral Committee and the Ministry consider appeals regarding the preparation and conduct of elections, functions well. Therefore, it is the Commission's opinion that the appeals system should not be changed more than is necessary for ensuring there is an independent legal review. This entails that, for parliamentary elections, it should still be the National Electoral Committee that considers appeals regarding the preparation and conduct of the election. However, the Commission is of the view that there is a need to change how the National Electoral Committee is composed to ensure that the Committee has the necessary legal expertise and independence required under international law. The Commission is also of the view that the Ministry should not be the appeal body for municipal council and county council elections because this does not ensure that the appeal proceedings have the necessary independence. It is also not appropriate to have two different bodies considering the appeals at the different elections. Assigning the appeals process for all elections to the National Electoral Committee would also contribute to the members of the Committee learning more about the electoral system and appeal cases. Based on this, the Commission is of the view that the National Electoral Committee should also consider appeals regarding the preparation and conduct of municipal council and county council elections. The National Electoral Committee should also consider appeals of decisions by the municipal council or county council regarding whether an election was valid.

However, in the view of the Commission, the National Electoral Committee should not consider appeals relating to the Storting's approval of parliamentary elections. There are three branches of state power in Norway: The Storting, the government and the courts. The Constitution of Norway has several provisions that are based on the courts, and not the others branches of state power, exercising judicial authority, cf. Articles 88, 90, 95 and 96 of the Constitution of Norway. Article 88 states that "The Supreme Court pronounces judgment in the final instance" and Article 90 states that "The judgments of the Supreme Court may in no case be appealed."

The Commission has also assessed whether laymen should also be involved in deciding whether a decision by the Storting to approve an election is valid. One alternative could be to establish a special arrangement whereby, using the same template as the Court of Impeachment, the Supreme Court is supplemented by laymen when the Supreme Court shall hear appeals relating to

the validation of parliamentary elections. However, the Commission would note that the Storting's authority under Article 64 of the Constitution to be able to determine the validity of parliamentary elections and under Article 55 to settle disputes regarding the right to vote, entail derogations from the courts exercising judicial authority.<sup>495</sup> In connection with this, the Commission would also note that the Supreme Court is granted the authority in Article 89 of the Constitution to decide whether laws and administrative decision are in accordance with the Constitution. This grants the Supreme Court, as the only body outside of the Storting itself, a control function in relation to the Storting. The Supreme Court has exercised this control function for 200 years and it became constitutional in 2015, and thus gives the Supreme Court special authority and legitimacy to verify the validity of the Storting's approval of elections. Based on this, the Commission is of the view that it would be most in line with the system in the Constitution that the Supreme Court alone has the authority to review the Storting's assessment of whether a parliamentary election is valid.

#### *Composition of the National Electoral Committee*

Section 4-4 of the Election Act states that the National Electoral Committee shall have no fewer than five members. Standard practice has been that all parties in the Storting have been represented by one member on the National Electoral Committee and that they are normally former members of the Storting.

The Commission proposes that the Storting appoints the members of the National Electoral Committee using the same system to that used in Sweden for the Election Review Board (Valprövningsnämnden). Alternatively, as is presently the case, the National Electoral Committee can be appointed by the King. In the view of the Commission, it would be unfortunate if the National Electoral Committee was to be appointed by the government. In the Storting, the appointment of the members of the National Electoral Committee would be the subject of public debate prior to the decision and the majority of the Storting would support the decision. Appointment by the King would not have the same degree of public attention prior to the decision. If the King appoints the members of the National Electoral Committee, there will also not be a majority of the Storting in support of the appointments if a minority government is in power. Based on this, the Commission proposes that, after each parliamentary election has been finally approved, the Storting shall appoint a National Electoral Committee that serves for four years from 1 January in the second new year after the parliamentary election. This will ensure that the entire Storting is involved in appointing the National Electoral Committee, which is something that the Commission considers to be important for its legitimacy. In order to contribute to continuity in the work performed by the National Electoral Committee, the Commission proposes that the members are able to be reappointed.

The Commission considers it important that the Storting's process of appointing members to the National Electoral Committee is as transparent as possible. There must be knowledge about who the proposed members are before they are appointed in order for it to be possible for objections to be raised against their appointment. The Commission considers it natural that the Storting's Presidium provides recommendations when appointing members to the National Electoral Committee.

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<sup>495</sup>Castberg, *Norges statsforfatning 2*, 1964, p. 158.

In order to ensure that the National Electoral Committee is independent, the Commission is of the view that there should be certain restrictions on the people who can be appointed to the Committee. Sitting members of the Storting, and members of county councils or municipal councils and their alternate members should not be able to be elected as members or alternate members to the National Electoral Committee. Furthermore, cabinet ministers, state secretaries and political advisors in the ministries and in the Storting should be precluded from being appointed. If members and alternate members of the National Electoral Committee are included on electoral lists for parliamentary, county council and municipal council elections, they must then resign from the National Electoral Committee. The obligation to resign from the National Electoral Committee applies from the date the list proposal has been approved.

In the view of the Commission, the National Electoral Committee should consist of judges and people with other relevant experience, for example, a long parliamentary background. The Commission is of the opinion that judges should make up a majority of the National Electoral Committee. This is both to ensure that cases are subject to judicial review and ensure the necessary independence. In the view of the Commission, the National Electoral Committee should consist of three judges and two laymen with other relevant experience. The chair of the Committee must be a judge. To ensure that the National Electoral Committee always forms a quorum, alternate members should also be elected. For the same reason, the Storting should elect a new member or alternate member if a member or alternate member dies or is incapable of serving in the position, is removed from the position or withdraws from the National Electoral Committee at his/her own initiative.

The Commission is also of the view that it should be possible for each member or alternate member to be removed from the position. Correspondingly, the Storting should also have a limited ability to, at its own initiative, relieve individuals of their duties. The Commission makes reference to Official Norwegian Report (NOU) 2019: 5 *New Public Administration Act*, in which the Law Commission on the Public Administration Act considered and provided grounds for the need for special regulation of central government committees. As a follow-up to Section 11 of the Public Administration Act (that the King may prescribe rules concerning the appointment and composition of central government committees), the Law Commission on the Public Administration Act proposed the inclusion of a new chapter in the Public Administration Act relating to committees and independent administrative bodies. Section 67 of the draft bill contains rules relating to the termination of a position as member of a committee. Subsection 1 states that the appointing authority may release a member from the position when the member requests this for personal reasons or he or she has been in gross violation of the duties incumbent on the position. In special cases, the appointing authority may also release one or more members from the position if this is necessary for the committee to be able to perform its duties, cf. subsection 2. There are corresponding provisions for certain central government committees in the legislation.<sup>496</sup>

The Law Commission on the Public Administration Act wrote the following regarding its proposal, cf. Official Norwegian Report (NOU) 2019: 5, p. 481:

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<sup>496</sup>Section 77, paragraph four of the Immigration Act and Section 4 a, paragraph two of the Lottery Act.

*The Commission* firstly proposes that the appointing authority should have the right to release a member from his/her position when he/she requests this due to personal reasons. This condition should not be too strictly interpreted because it is of little benefit to the committee's work if it has a member who has a strong desire to withdraw.

A more difficult question is how much power the appointing authority should have to release a member from the position at its own initiative when this is contrary to the wishes of the member. *The Commission* is of the view that the appointing authority would be given too much power if the Act stipulates that the member can be released from the position when there are "special grounds". This needs to be clarified in more detail, particularly because many of the committees are supposed to be independent of the appointing authority. The Lottery Act and Foundations Act have more specific and stricter conditions which also appear to cover situations in which a member is not able to adequately perform the duties incumbent on the position. If the person in question is appointed to the committee by virtue of the public administration's authority to issue instructions, this authority must also be used to relieve the person in question of his/her position.

*The Commission* proposes that the member can be relieved of his/her position if he/she has been in gross violation of the duties incumbent on the position. Furthermore, in special cases, the member should be able to be relieved of his/her position if this is necessary for the committee to be able to perform its duties. One element in this assessment is whether it is necessary to remove the member from the position in order to maintain public trust in the committee. An example is when the member is guilty of serious criminal offences outside of the position. Special legislation may set other conditions for relieving members of their positions.

In accordance with this, the Commission is of the view that equivalent rules to those in Section 67 of the draft new Public Administration Act should be established in law for removing members of the National Electoral Committee from their positions. However, the Commission is of the view that if the Storting is to relieve a member or alternate of his/her position on the National Electoral Committee at its own initiative, then to ensure the legitimacy of the decision, requirements should be set for the decision having to be adopted with two-thirds of the votes cast. It is proposed that these rules be included in the Constitution and Election Act.

A decision by the Storting to relieve a member of the National Electoral Committee of his/her position can be reviewed by the courts pursuant to the rules in the Dispute Act.

The Commission notes that the ability to relieve a member of the National Electoral Committee of his/her position against the wishes of said member should be restricted. In connection with this, the Commission makes reference to the recommendation from the Law Commission on the Public Administration Act. The Commission further notes that only issues relevant to the performance of the position can constitute grounds for removing a member from the position. A key element in the assessment of whether an issue shall result in a member being relieved of his/her position will be whether trust in the National Electoral Committee as an administrative body would be weakened if the member was permitted to continue in the position. An example of when the Commission considers it appropriate for a member of the National Electoral Committee to be relieved of his/her position is when the member commits the acts referred to in Sections 151-154 (electoral fraud) of the Norwegian Penal Code.



*The National Electoral Committee's authority*

The Commission proposes that the National Electoral Committee shall consider all appeals at all elections, with the exception of appeals relating to the approval of parliamentary elections.

Based on the present system of rules, with certain exceptions (including appeals of list proposals), appeals relating to the preparation and conduct of elections cannot be finally decided until after the election. This is due to the fact that, as a general rule, the issue to be assessed is whether there was any breach of law or regulation that is assumed to have influenced the election result. However, the Commission is of the view that, in the event of an appeal, it should be assessed as soon as possible as to whether there was a breach of the rules, irrespective of whether the breach is deemed to have influenced the election result. The National Electoral Committee's assessment of whether there was a breach of the rules may contribute to similar errors not being made again at the current election or at the next election. The Commission therefore proposes that the National Electoral Committee shall consider the appeals as these are received and to then determine whether there was a breach of the rules in connection with the preparation or conduct of the election. Thereafter, following the election, the National Electoral Committee shall determine whether the breaches of the rules, whether individually or collectively, are assumed to have influenced the overall allocation of seats between the lists at the election. In this assessment, the National Electoral Committee can also take into consideration matters that were not appealed.

The Commission assumes that the National Electoral Committee's consideration of the appeals will satisfy the requirement for court proceedings. The Commission is of the opinion that decisions handed down by the National Electoral Committee should be final, i.e. that they cannot be appealed or brought before the ordinary courts. In this regard, the Commission places major emphasis on the importance of appeals being promptly decided by an independent body with specialist expertise in the area.

The Commission also proposes to remove the option to review the legality of decisions by the municipal councils and county councils on whether the election was valid and makes reference to the description of the legality review in section 20.4.3.2.

Appeal proceedings are presently conducted in writing. The Commission is of the view that proceedings before the National Electoral Committee should, as a general rule, be in writing. Out of consideration to the adversarial principle, the parties to the case must be given the opportunity to provide remarks to the respective parties' written submissions. Nevertheless, the Commission is of the view that there should be a certain allowance for parties to verbally present their views on the case to the National Electoral Committee. The Commission therefore proposes the inclusion of a provision that the National Electoral Committee can consent to an oral hearing if there are special grounds for doing so.

The Commission would note that, out of consideration to voter trust in decisions made by the National Electoral Committee, it is important that grounds are provided for these decisions. The Commission therefore proposes that grounds must be provided for decisions by the National Electoral Committee in accordance with the rules that apply for individual decisions. In the case of individual decisions, this entails that the Commission proposes that the Public Administration Act shall apply for the activities of the National Electoral Committee. However, the Commission is of the view that grounds must be similarly provided for decisions that are not individual decisions.

### *Deadline for considering the appeal*

The Commission has assessed whether it would be appropriate to set deadlines for how quickly election appeals must be considered by the subordinate instance and the appellate instance. Such rules would pressure the bodies involved with the appeals process into prioritising the consideration of the appeals. However, the Commission expects that the subordinate instance, as well as the National Electoral Committee and Supreme Court, will consider the appeals as soon as possible and assumes that they will do so, irrespective of whether or not deadlines for considering appeals are set. The Commission finds that it is not applicable to legislate that appeals which have not been considered within a certain time will lapse. The Commission also questions whether it would be appropriate to set deadlines for appeal proceedings as long as there will be no consequences if the deadlines are not met. In accordance with this, the Commission has decided that it will not propose any absolute deadline for how quickly election-related appeals need to be considered. However, the Commission still proposes that the National Electoral Committee shall consider the appeals without undue delay. The Commission accepts the same understanding of this concept as Section 11 a of the Public Administration Act, cf. the remarks to the provision in Proposition no. 75 to the Odelsting (1993-1994): *Act relating to amendments to the Public Administration Act* p. 59:

The criterion “without undue delay” is highly discretionary, and its meaning may differ from case to case. The Ministry would note that compliance with the guarantees for the rule of law that form the basis of the procedural rules in the Public Administration Act will necessarily entail that, under the circumstances, proceedings may be time-consuming. As has previously been the case, an adequate processing time in each instance will vary depending on the nature of the case, as well as scope, available resources etc.

Based on this, the Commission emphasises that the National Electoral Committee and the Committee’s secretariat must be assigned adequate resources for being able to promptly consider the appeals.

The Commission proposes that all decisions by the National Electoral Committee are publicly announced. This will ensure that the decisions are readily available to both voters and the electoral authorities. Decisions by the Supreme Court are already published on the Supreme Court’s website at [lovdata.no](http://lovdata.no).

### *Secretariat*

The Ministry presently functions as the secretariat for the National Electoral Committee. The Commission expects that the National Electoral Committee will also require assistance from a secretariat in the future. The Commission is of the view that it would, in principle, be unfortunate if the Ministry functioned as secretariat for the National Electoral Committee when it is to make final and enforceable decisions on appeal cases, because the Ministry is politically controlled. A secretariat should therefore be developed for the National Electoral Committee that is independent of the Ministry.

Being the secretariat to the National Electoral Committee will be a responsibility that only arises for a brief period every two years. The role as secretariat for the National Electoral Committee should therefore be assigned to an existing body. In the view the Commission, there are two bodies in particular that stand out - either the Appeal Board Secretariat or the Administration of the

Storting. The Appeal Board Secretariat is located in Bergen and is subordinate to the Ministry of Trade, Industry and Fisheries. It is a joint secretariat for the Norwegian Energy Board of Appeal, Volunteer Register Board, Norwegian Complaints Board for Public Procurement (KOFA), Competition Appeals Tribunal, Lottery Board, Media Appeals Board and the Foundation Appeals Board. Making this body the secretariat would ensure there is a broad group of legal experts who will have the capacity to quickly prepare the appeal cases for the National Electoral Committee. Unlike the Administration of the Storting, it also has no ties to the Storting. However, the National Electoral Committee is not an ordinary appeal board, but rather a body that is subordinate to the Storting. The Appeal Board Secretariat also has no knowledge of election laws.

For its part, the Administration of the Storting has good knowledge of election laws because it participates in the Storting's control process for parliamentary elections. In the view of the Commission, excessive emphasis can also not be placed on the Administration of the Storting being formally subordinate to the Storting. Firstly, the Storting can by no means instruct the National Electoral Committee on the tasks it performs. Secondly, the Commission proposes strict requirements for independence for the members of the National Electoral Committee. Based on an overall assessment in which emphasis was placed on the National Electoral Committee only being in operation for a brief period every two years and the consideration of existing election expertise, the Commission is of the view that the best solution would be to assign the secretariat function for the National Electoral Committee to the Administration of the Storting. In order to completely rule out the possibility of the Storting instructing the administration in its function as secretariat of the National Electoral Committee, the Commission proposes to legislate that the Storting cannot instruct the administration when it is serving as the secretariat for the National Electoral Committee.

#### *Powers of the Supreme Court*

The Commission proposes that the Supreme Court shall be able to review decisions by the Storting on whether an election was valid.

Pursuant to applicable law, the courts may, in a case concerning the validity of a decision, review the public administration's procedure, the public administration determination of the facts and the public administration's application of the law. However, the courts cannot review the free discretion of the public administration - also referred to as the "appropriateness assessment". The Commission believes that the same should apply when the Supreme Court considers a dispute regarding approval of an election. This will ensure that there is a genuine review of the Storting's decision to approve the election.

The Commission is of the view that the Supreme Court must be able to dismiss appeals that will clearly not succeed. In the Commission's opinion, the appeals committee should be able to unanimously decide on this.

If the Supreme Court grants leave to hear an appeal case, the question arises of who in the Supreme Court shall hear the case. Normally five judges hear cases in the Supreme Court (panel), cf. Section 5, paragraph two the Courts of Justice Act. In cases of particular importance, it may be decided that the case shall be decided by the Supreme Court in the Grand Chamber (eleven judges), cf. paragraph four. The Act stipulates that, when making this assessment:

“..emphasis shall be placed on considerations such as whether a question arises concerning the setting aside of a legal interpretation that the Supreme Court has used as a basis in another case, or whether the case raises questions of conflict between laws, provisional arrangements or decisions by the Norwegian Parliament and the Constitution or provisions by which this realm is bound in international collaboration.

In extraordinary instances, it may be decided that the case, or the legal question that lies therein, shall be decided by the Supreme Court in a plenary session, which shall then consist of all the Supreme Court's judges who are not disqualified or absent.”

Time considerations would suggest that appeals regarding the approval of an election should be able to be decided by a panel of the Supreme Court. However, in the view of the Commission, reviewing the Storting's assessment of whether the election shall be validated is highly invasive and principled. The Commission is therefore of the opinion that such cases should be heard by a plenary session of the Supreme Court.

The Commission is also of the view that the standard rules for hearing cases in the Supreme Court should apply insofar as these are appropriate. The defendant will be the President of the Storting on behalf of the Storting, cf. Rt-1981-692.

#### **20.4.3.4 Subject matter of the appeal**

From when preparations for the parliamentary elections commence with the Ministry's calculation of the number of constituency seats (a year and a half before the parliamentary election) until the Storting has approved the election, a number of decisions are made and actions carried out which involve possible errors. If the decisions and actual actions are in violation of applicable provisions for elections in the Constitution, Election Act and Election Regulations, this will constitute a breach of the rights of voters and the rights held by those standing for election under the same provisions.

It would not be appropriate to list all the errors that may occur, but the errors can be grouped as follows, based on a certain chronological order:

- errors when calculating the number of seats per constituency
- errors regarding who has the right to vote (electoral register)
- errors regarding the establishment of the electoral bodies
- errors regarding which lists and candidates are able to participate in the election
- errors associated with practical matters concerning advance voting
- errors associated with practical matters concerning voting on election day
- errors associated with the approval/rejection of ballots cast
- errors associated with the approval/rejection of ballot papers
- errors associated with counting
- errors associated with controls
- errors in determining the election result and returning of seats
- errors associated with approving the election

#### *Preparation and execution*

The Commission has considered restricting the possible grounds for appeal. However, out of respect to due process of law for voters, it is important that voters are able to appeal all matters

relating to the preparation and conduct of the election. Restricting the grounds on which appeals can be brought would raise difficult issues regarding such restrictions. One option could be to limit the right of appeal to matters that could result in a new election.

The Commission assumes that such a restriction would be difficult for voters to understand, which could in turn result in voters not appealing matters that could in fact be appealed. The Commission is of the view that it is vital that the rules for appeals are not so complicated that this negatively impacts the ability of voters to exercise their democratic rights to, among other things, participate in elections. The Commission is also of the view that it is important that both local and central electoral authorities receive information about circumstances associated with the election process that are not in accordance with the regulations. There are several reasons for this. It may be to obtain a better overview of the areas in which the information and training should be improved, where there is a need to make amendments to the regulations, and whether the errors committed have impacted on the election result. Appeals from voters are an important source of information in all of these cases. In the long-term, this will also contribute to strengthening due process of law for voters by fewer errors being made at elections. Based on this, the Commission proposes to continue the current law that all circumstances entailing breach of laws and regulations which relate to how an election must be prepared and conducted can be appealed.

The Commission also proposes that the right of appeal should include matters that are criminal offences pursuant to Section 151-154 of the Norwegian Penal Code, for example, buying and selling votes or electoral fraud. In order to avoid the electoral bodies and elected bodies having to consider the issue of guilt in accordance with these penal provisions, both the right of appeal and question of invalidity resulting from breach of the provisions must be linked to the objective conditions in the provisions.<sup>497</sup>

There are many different reasons for why problems may arise when conducting an election. These may include, for example, natural disasters or problems with law and order. A voter not being able to vote for reasons such as this is not generally a breach of the rules for how the election must be prepared and conducted. Therefore, as a general rule, an appeal on these grounds must be dismissed. The Commission makes reference to the discussion on the introduction of a provision (provision for national emergencies) to postpone, extend or possibly hold a new election in special cases.

### *The election result*

It must also be possible to appeal the election result. Pursuant to applicable law, an appeal of the result of municipal council and county council elections must be submitted within seven days after the election result was approved by the *municipal council and county council* respectively. For parliamentary elections, the appeal deadline is seven days after the county electoral committee has determined the election result, i.e. in practice, seven days from when the election protocol has been signed, cf. Section 41 of the Election Regulations.

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<sup>497</sup>The distinction between the objective and subjective requirements in the penal provision is from the Election Act in Hamburg, cf. among others, "Gesetz über die Prüfung der Wahlen zur Bürgerschaft und zu den Bezirksversammlungen" (Wahlprüfungsgesetz), 25 June 1997, Section 5, paragraph one, no. 3.

The appeal deadline in both instances is seven days, but the deadline will start at different times. Pursuant to the wording in the Election Act, the appeal deadline for municipal council and county council elections will not start from when the final result is determined by the electoral committee/county electoral committee, but from when the municipal council and county council have approved the election result. Based on what the Commission has been able to ascertain, this is not how these rules have been interpreted and practiced by the municipalities and county authorities. In practice, the election result itself is not approved by the municipal council and county council. The involvement of the municipal council and county council in the election is restricted to determining whether the election is valid, cf. Section 13-4, subsection 1 of the Election Act. The Commission assumes that this practice may be related to the reference to these rules in Official Norwegian Report (NOU) 2001: 3 p. 133-134 and Proposition no. 45 (2001–2002). Official Norwegian Report (NOU) 2001: 3 refers to the municipal council's *approval of the election result*, while what the Commission actually refers to is *approval of the validity of the election*. In the follow-up to the report, the Ministry amended the committee's proposal and created rules for the municipal council having to approve both the election result and validity of the election.

In the view of the Commission, it is important that the deadline to appeal the election result starts to run as soon as the election result has been determined. It would not be expedient to convene the municipal council, and perhaps the county council in particular, after the electoral committee and county electoral committee have determined the election result, and then have them approve the election result determined by the electoral committee and county electoral committee. This would postpone the appeal deadline, be expensive and would not entail any additional verification of the election result other than the municipal council and county council addressing whether the election is valid pursuant to Section 13-4, subsection 1 of the Election Act. These factors suggest that the rules that apply to parliamentary elections for when the deadline for appealing the election result will start to run should also apply for municipal council and county council elections. The Commission therefore proposes enshrining this system into law. However, the Commission is of the view that there should be a change to the time for when the appeal deadline will start to run. At present, the deadline for parliamentary elections starts to run when the county council has determined the election result. The deadline should not start to run until the election result has been announced. The electoral committee and county electoral committee are not currently obligated to announce the election result. It is the view of the Commission that, out of consideration to voters being entitled to appeal, the election result (the calculation of the election result) and election protocols for the district electoral committee, county electoral committee and electoral committee should all be made public. The Commission therefore proposes that there be a duty to make these public and that the deadline to appeal the election result for municipal council, county council and parliamentary elections shall start to run from the time the election result is announced.

#### *Allocation of the seats at large*

Pursuant to applicable law, the National Electoral Committee shall allocate the seats at large for parliamentary elections, cf. Section 11-6, subsection 1 of the Election Act. The National Electoral Committee shall

allocate the seats at large between the parties on the basis of the final election results from each constituency, cf. subsection 2. There is no right to appeal the National Electoral Committee's election result for parliamentary elections. The Commission is of the view that there should also be a right to appeal the allocation of seats at large. This would remove any uncertainty relating to this

part of the election result before the election is approved, rather than through a possible appeal of the Storting's approval of the election. In the view of the Commission, appeals regarding the allocation of seats at large should be considered by the same appellate instance that considers appeals of the other election results, i.e. the National Electoral Committee. This entails that a body other than the National Electoral Committee must allocate the seats at large.

It is presently the Ministry that prepares the allocation of seats at large for the National Electoral Committee. An alternative is that the Ministry itself allocates the seats. Another alternative is to establish a new body to allocate the seats at large. This could consist of a representative from each of the county electoral committees. The allocation of the seats at large would then be established in the individual constituencies. However, it would be time-consuming to bring together all of these representatives from the entire country. They would also need to have a secretariat to attend to the practical work of allocating the seats.

Even though the Ministry is politically controlled, the Commission cannot see that there would be any issue assigning this specific and defined task to the Ministry as long as the allocation of the seats at large takes place by the number of votes in the county electoral committees' election results being entered into a computer programme which calculates what parties shall receive the seats at large and in what constituencies. The Commission therefore proposes that the Ministry shall allocate the seats at large for parliamentary elections. The Commission further proposes that the Ministry shall announce how the allocation of seats at large has taken place. This will make the process more transparent and thus make it a simple process for voters to check the calculation and possibly submit an appeal to the National Electoral Committee regarding the Ministry's decision on how to allocate the seats at large.

#### *Disputes regarding the right to vote*

Pursuant to the 1985 Election Act, decisions by the National Electoral Committee concerning the right to vote and the right to cast a vote could be appealed to the Storting for parliamentary elections and to the Ministry for municipal council and county council elections. Pursuant to Section 70, subsection 4, decisions by the Ministry could be further appealed to the Storting. The Election Act of 2001 did not continue the right to appeal decisions by the Ministry in connection with local government elections to the Storting. In Official Norwegian Report (NOU) 2001: 3 p. 138, the following reasons for this were given:

These decisions concern cases of a typically administrative nature, where legal assessments of the rules in the Election Act and National Registry Act/Regulations will be of key importance. There are no political assessments that need to be used as a basis. These cases therefore appear poorly suited for consideration by a plenary session of the Storting.

With regard to the arrangement for parliamentary elections, the Ministry stated the following in Proposition no. 45 to the Odelsting (2001-2002), p. 239-240: "It is assumed that Article 55 of the Constitution of Norway prevents the Ministry from handing down decisions in cases concerning the issue of the right to vote. It is therefore proposed that the current law is maintained, such that the Ministry prepares appeal cases regarding the right to vote for the Storting."

The Commission assumes that the Ministry's statement must be assessed in light of that fact that there was no constitutional proposal to amend Article 55. Therefore, unlike for municipal council and county council elections, the Ministry did not consider whether the rules should be changed.

The Commission makes reference to it having been proposed in section 20.4.3.3 that the same body should consider appeals regarding the preparation and conduct of all elections. This, and the fact that, in the view of the Commission, the justification used to change the rules in this area for local government elections is equally as viable for parliamentary elections, means that the Commission proposes repealing Article 55, second sentence of the Constitution. The proposal entails that the ordinary appeal body, i.e. the National Electoral Committee and not the Storting, shall consider appeals regarding the right to vote for all elections.

#### *Appeals regarding approval of elections*

As stated above in section 20.4.3.2, the Commission is of the view that a right of appeal must be introduced for decisions by the Storting, county council and municipal council regarding the validity of an election. The Commission has found that the right to appeal the approval of an election should not be as extensive as the right to appeal matters relating to the preparation and conduct of the election, and has addressed this in section 20.4.3.5.

#### **20.4.3.5 Right of appeal - who can appeal**

The ideal starting point would appear to be that anyone with the right to vote should be able to appeal anything, since everyone with the right to vote has a responsibility for democracy and therefore should have the right to review if an election has been conducted in the correct manner. On the other hand, it is important that the right of appeal is assigned where it belongs to ensure there are genuine appeals and that appeals without any sensible purpose are avoided. There is thus a need for relatively complicated rules regarding who shall have the right to appeal the various matters.

The Commission has selected two approaches to this. Firstly, certain objective criteria are set, and secondly, based on a template from Section 1-3, subsection 2 of the Dispute Act, there is a requirement that the complainant must, in some cases, be able to demonstrate a genuine need to have the appeal decided.

#### *Right to appeal the preparation and conduct of the election*

The Commission makes reference to the fact that, at the 2017 parliamentary election, the National Electoral Committee considered an appeal from a voter concerning an advance ballot cast in a different county to where the voter in question was registered. The appeal was dismissed because the voter did not have a right of appeal (was entered in the electoral register in another county). In the preparatory proceedings for the National Electoral Committee, the Ministry stated the following:

The Ministry considers it unfortunate that voters who cast votes outside their own constituency cannot appeal in the county where they cast the vote. If a voter experiences irregularities in connection with casting an advance vote, they presently only have a right to appeal the conduct of the election in the county where they are registered. The municipalities facilitate advance voting for voters who are outside of their own constituencies in the period from 1 July until the Friday



before election day. In practice, this means that all voters who cast a vote in a county other than their home county lose the right to appeal matters relating to the conduct of the advance voting process at the location where the vote is cast. The Ministry considers it important that this issue is raised in connection with the work on amending the Election Act.

The Credentials Committee agreed with the Preparatory Credentials Committee, which stated the following regarding this issue:<sup>498</sup>

The Committee considers it to be unfortunate that voters who cast advance ballots may be prevented from appealing matters relating to the voting process and agree that the commission which shall review the election laws should examine this issue in more detail.

Based on the present system of rules, the voter only has a right of appeal in the constituency where the voter is included in the electoral register. The Commission makes reference to the fact that many voters vote in advance in other constituencies. This means that these voters cannot appeal any errors they believe have occurred in connection with the conduct of the election at the location where they cast an advance vote. For example, they will not be able to appeal if they are of the view that they were unlawfully denied the right to nominate an extra person to assist them with voting, cf. Section 8-4, subsection 8 of the Election Act, or that they were denied the right to vote at a health and social welfare institution because they were not included in the electoral register in that municipality, cf. Section 8-3, subsection 2.

The Commission considers it unfortunate that voters who vote in advance in a different constituency to where they are registered cannot appeal errors which they believe have occurred during the advance voting process. Out of consideration to due process of law for the voter, the voter should be able to appeal circumstances that may influence the voter's ability to vote in advance in accordance with the regulations: In the view of the Commission, such errors should be included in the assessment of whether the election is valid in the voter's own constituency. The Commission therefore proposes that voters who vote in advance in a constituency where they are not included in the electoral register shall be able to appeal the conduct of the advance voting process in the municipality where they cast the advance vote or attempted to cast the advance vote. In such instances, the voter must submit the appeal to the electoral committee in the municipality where the voter voted in advance or attempted to vote in advance. The electoral committee must forward the appeal on to the National Electoral Committee with its assessment of the appeal. The National Electoral Committee shall then assess whether the asserted error was an error, and if an error was committed, whether this was deemed to have influenced the overall allocation of seats at the election in the constituency where the voter is registered.

The Commission also proposes expanding the right of appeal to everyone who has submitted a list in an election. At present, political parties only have a very limited right to appeal list proposals. They can appeal decisions by the electoral committee or county electoral committee to approve or reject a list proposal if the grounds for the appeal are that the sole right to the name of a party has been infringed, cf. Section 6-8 of the Election Act. The interest that a political party or group may have in being able to appeal the preparation and conduct of the election in the constituency where

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<sup>498</sup>Recommendation 1 S (2017–2018) *Recommendation to the Starting from the Credentials Committee* p. 12.

the party or group submits a list is presently considered to be safeguarded by the list proposers having the right to vote in the constituency and thereby also the right of appeal. The Commission agrees that this arrangement ensures that the parties and others who submit lists can, via the list proposers, appeal the election if they believe the election was not conducted in accordance with the regulations. However, the Commission does consider it unfortunate that the parties and groups have to appeal via the list proposers or other voters in the constituency. Granting the parties and groups an independent right of appeal would provide transparency and clarity surrounding who is behind the appeal, something the Commission considers to be positive. The Commission therefore proposes that parties and other grounds that submit lists can appeal matters relating to the preparation and conduct of the election in the constituency where they submit lists.

Due to the system of seats at large, errors committed in any constituency could influence a party's opportunities of having members elected to the Storting. The Commission proposes in section 5.6.7.4 that registered political parties must submit list proposals in all of the country's constituencies to be able to be allocated seats at large. This entails that parties that can be allocated seats at large have a right of appeal through their local branches in all of the country's municipalities and constituencies, cf. the proposal above regarding the right of appeal for anyone who submits a list. The Commission is also of the view that the central part of registered political parties, i.e. the executive body of the party, cf. Section 3, subsection 2 (b) of the Political Parties Act, which submits list proposals in all of the country's constituencies, should be able to appeal the Ministry's allocation of seats at large.

The Commission has considered expanding the right of appeal to enable various interest groups to appeal circumstances that they have the objective of safeguarding. For a comparison, see Section 1-4 of the Dispute Act relating to the right of action for organisations etc. However, the Commission has concluded that the interests of the members of such organisations are adequately safeguarded by they themselves being able to appeal the error they believe has been committed.

#### *The right to appeal the approval of an election*

The Commission is of the view that it is important that no baseless appeals are brought against the validity of an election after it has been approved, because baseless appeals may weaken the legitimacy of the Storting, county council or municipal council. Therefore, it is the view of the Commission that, insofar as this is possible, requirements should be set for the right of appeal to avoid frivolous appeals and to limit appeals to those that may have tangible grounds. There are two means of doing this: The right of appeal can remain the same as for other appeals, but requirements can be set for there having to be a certain number of complainants behind the appeal, or the right of appeal can be restricted to the parties/groups who submitted lists at the election, and possibly also the list candidates.

The Commission would note that it cannot be considered excessively strict to set requirements for a minimum number of complainants since, prior to the decision to approve the election, it will be possible for each voter to appeal the preparation and conduct of the election.<sup>499</sup>

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<sup>499</sup>In its practice relating to Article 3 of Protocol No. 1 of the ECHR, the ECtHR has accepted that procedural thresholds can be established for the consideration of election appeals, cf. recently *Davydov and others v. Russia*, application no. 75947/11, Judgement 30 May 2017, par. 82. In an older judgment against West Germany, the ECtHR accepted a claim from at least 100

However, the Commission considers that it would be a better solution to limit the right of appeal to parties and groups that submitted lists at the election. In the view of the Commission, this solution would not overly restrict the right of appeal, but would rather grant the right of appeal to those who are most affected by the decision. The Commission expects that if the election should not have been approved, one or more of the parties or groups that submitted lists will exercise the right of appeal. If none of the parties or groups that submitted lists believe anything occurred during the election that would most probably have resulted in a different election result for the parties/groups, there is little justification in allowing a group of voters with less of a connection to the case to be able to appeal the approval of the election.

The Commission is of the view that the parties and groups that submitted lists will do a good job in ensuring that a correct election was conducted and thereby also safeguard the interests of voters. Furthermore, each voter will have had the opportunity to appeal matters relating to the preparation and conduct of the election. Restricting the right of appeal to parties and groups that submitted lists will most likely limit the number of baseless appeals, because parties/groups will be aware that baseless appeals may backfire on them at the next election. A more random group of voters would not be as likely to consider the long-term consequences that clearly baseless appeals would have for them. The Commission therefore proposes that anyone who submits lists at an election shall be able to appeal the approval of the election.

With regard to the more specific restriction on the right of appeal, the Commission's starting point is that the complainant must have a legal interest in having the appeal or action heard. This is a relatively open legal standard which has largely been created by the courts and which is now legally stipulated in Section 1-3 of the Dispute Act. The Commission wishes to further clarify what is required for there to be a lawful right to bring an action. The right of appeal will be conditional upon the complainant having a genuine need, on his/her own behalf, for having the appeal decided. Such a need will exist in the instances in which the parties or groups assert that there was an error in connection with the election that caused them to lose a seat.

This means that the complainant will not have a legal interest in having the appeal decided if the grounds for the appeal are that errors occurred in connection with the election which only influenced the allocation of seats between other lists.

The Commission has also assessed whether all of the list candidates should be able to appeal a decision to approve an election if they are of the opinion that they should have been elected. However, upon assessing the errors that may result in a new election, the Commission has concluded that there can only be a new election if the error that was committed is considered to have influenced the allocation of the seats between the lists. There will thus be no context in the regulations if the list candidates are able to appeal the approval of the election on the grounds that the incorrect candidate from the list was elected to the relevant body when this would regardless not result in a new election. In such instances, the list candidates should not be able to appeal the approval of the election. However, the Commission considers the situation to be different if a candidate wants to appeal that an error has occurred which has resulted in the list missing out on a seat, and

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signatures to bring an election appeal before the courts, cf. *X v. Germany*, application no. 8227/78, Commission decision 7 May 1979.

this seat would have gone to the candidate in question or resulted in the candidate becoming an alternate member. The representation committee for the list would normally appeal the election itself, but there may be instances in which this does not occur. An example of this is if the candidate in question has resigned or been excluded from the party. In such instances, it is the view of the Commission that the candidate in question him/herself should appeal the decision to approve the election.

### *Repeated appeals of the same matter*

The Commission's proposal, which involves the present appeal system being retained and expanded to a right to appeal a decision by the newly-elected body to approve the election, entails a risk that the same factual grounds for the appeal may be asserted multiple times to the same appellate instance.

For example, on the day before he/she travels abroad, a voter may go to cast an advance vote for a municipal council election in his/her own municipality. It states online that the opening hours are until 6pm. The voter arrives at the polling station at 5pm, but discovers that the polling station for advance votes closed at 3pm and that the information online was incorrect. The voter was therefore unable to vote at the election and files an appeal. It is clear that an error occurred in this instance. The National Electoral Committee considers the appeal before the election result is announced. The National Electoral Committee upholds the complainant's claim that an error was committed, however, since no election result has been determined, the Committee cannot consider whether it was probable that the election result was influenced by the error. However, the National Electoral Committee must take this individual event into consideration in the final assessment of the overall, potential impact of all errors.

Following the election, appeals are received by the deadline from two other voters who experienced the same issue in this municipality. The National Electoral Committee finds that there is still such a large difference between the number of votes that these three votes would not have altered the election result. The same decision is handed down for the two new appeals, i.e. that an error occurred, but it was not probable that the errors influenced the allocation of seats.

In this example, the municipal council then approves the election. Following approval, appeals are received from 15 people. All 15 assert that they were denied the opportunity to vote due to incorrect information about the opening hours for advance voting. Since these appeals concern the decision to approve the election, they have been submitted before the appeal deadline.

In this example there would not be repeated appeals of the same matter because these are appeals from different people. Furthermore, the question of whether or not the election was valid would also not be finally decided because the total number of voters who potentially missed the opportunity to vote has increased to 18.

This would be different if it was only the three initial complainants who continued to appeal after the municipal council had approved the election. The National Electoral Committee would then be able to dismiss the appeal because the same grounds had already been rejected as grounds for invalidity. This will also apply if it is a different complainant who asserts this as grounds for the appeal.

The National Electoral Committee will have to determine whether or not these are the same grounds for appeal. Because the National Electoral Committee must look at the accumulated impact of each individual appeal after having considered all of the appeals, an appeal that, in isolation, was of no significance to the issue of validity, may in fact still be of significance.

The Commission assumes that, in real terms, there is a low risk that the same grounds will be asserted in multiple successive appeals. However, it cannot be ruled out that some complainants will attempt to have the same matter considered on multiple occasions by referring to new circumstances having been uncovered that change the nature of the case. The Commission assumes that the National Electoral Committee will be able to manage this. The principles for reopening cases in Chapter 31 of the Dispute Act can be used as a basis without this having to be legislated. The Commission makes particular reference to the provision in Section 31-4 (a) of the Dispute Act relating to new "information on the facts in the case" that suggest that the decision "would in all likelihood have been different".

The National Electoral Committee would be bound by its own decision, but would be able to reverse this in accordance with Section 35 of the Public Administration Act. The Commission also proposes that all other electoral bodies, as well as the county council and municipal council, shall be bound by the National Electoral Committee's decision. If the Storting cannot reverse a decision by the National Electoral Committee to declare an election invalid, the Storting will also be bound by this decision, however the Storting may - based on the same grounds for the appeal - find that the election is invalid, cf. section 20.4.2.

The Supreme Court cannot be bound by the National Electoral Committee's decision when reviewing a decision by the Storting to approve an election. This entails that, when there is an action against the Storting's decision to validate an election, one can repeat the grounds for appeal that have previously been considered by the National Electoral Committee.

#### **20.4.3.6 Appeal deadlines and content of the appeal**

The Commission is of the view that election appeals must be dealt with quickly. The prompt consideration of appeals is necessary to either rectify the matter than is being appealed before the election has been conducted or because it would be unfortunate if there is a long period of uncertainty about whether the election is valid. The current Election Act therefore operates with short deadlines. The Election Act does not include any deadlines for how quickly the appeals have to be decided. However, in practice, appeal cases are assigned high priority, and all election appeals are thus considered before the election is approved.

The Election Act presently operates with an appeal deadline of seven days. This applies to appeals of decisions to approve elections or reject list proposals, appeals of the election result and appeals of other matters. The length of an appeal deadline will depend on a trade-off between the need to quickly clarify the situation and the need for complainants to have a reasonable opportunity to file an appeal.

Very few requirements are set for an appeal. The Commission is therefore of the view that an appeal deadline of four days should be sufficient. This is also in line with section 11.3.3g of the

Venice Commission's "Code of Good Practice in Electoral Matters", which recommends a deadline of three to five days.<sup>500</sup>

The Commission proposes that it should also be possible to appeal the decision of whether the election was valid. The new Storting, county council and municipal council will take office after the election has been approved. Out of consideration to the legitimacy of the relevant body, it is important that there is prompt clarification of whether the body has been legitimately elected. The Commission is therefore of the view that the deadline set for appealing a decision on whether an election was valid should be as short as can be justified. However, those who have a right of appeal must be given reasonable time to submit the appeal. It may be difficult to assess whether there are grounds to appeal the approval of the election. Those who are considering an appeal should be given sufficient time in which to assess whether they wish to appeal. This will then function as a means of avoiding impulsive appeals. On the other hand, decisions by the National Electoral Committee will be known prior to the approval decision being adopted by the Storting, county council or municipal council. It will therefore normally be possible to start the work on considering an appeal of the decision to approve an election before it is handed down. The Commission is of the view that the deadline for appealing the approval of an election should be slightly longer than the deadline for appealing the preparation and conduct of an election. Based on this, the Commission proposes that the deadline for appealing the approval of an election is set at seven days. There should be sufficient time for the parties or groups, or possibly candidates, to consider whether they wish to appeal the approval decision.

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<sup>500</sup>"Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report" (Venice: European Commission For Democracy Through Law (the Venice Commission), 2002), CDL-AD(2002)023rev2-cor.

## 21 New election

### 21.1 Applicable law

#### 21.1.1 Parliamentary elections

The newly returned Storting decides whether the election of members to the Storting is valid. This is stipulated in both Article 64 of the Constitution and Section 13-3, subsection 1 of the Election Act. If the Storting declares the election to be invalid, it shall order a new election, cf. Section 13-3, subsection 4 of the Election Act. The conditions for declaring an election to be invalid are stated in subsection 3: "The Storting shall declare a parliamentary election in a municipality or county invalid if any error has been committed which may be deemed to have had an influence on the outcome of the election, and which it is not possible to correct."

##### 21.1.1.1 Conditions for a new election

The Election Act sets several conditions that must be met in order for the election to be deemed invalid. Firstly, the error(s) must be "deemed to have had an influence" on the outcome of the election. Other than it being proposed that existing law is continued, there is scant reference to the condition in the preparatory works to the current Election Act. In the preparatory works to corresponding provisions in previous Election Acts,<sup>501</sup> the Ministry stated that "[a new election] should not take place unless it can be considered probable that the present result was influenced by the error or errors that were committed."

The fact that errors have been committed can only influence the outcome of an election in two ways: either the election result has been influenced by the errors committed, or the election result has not been influenced. Errors can therefore only be assumed to have had an influence on the election result if it is more probable than not that the errors influenced the election result. Therefore, it must be assumed that, under existing law, a preponderance of evidence is required that the errors influenced the election result in such a manner that the election must be deemed invalid.

Secondly, the error(s) committed must be deemed to have influenced "the outcome of the election". The condition includes both the allocation of seats between the lists and the candidates elected from the different lists. It also includes whether a candidate has been elected as a member or alternate member, and the order in which the alternate members have been elected.

A third condition for the election to be deemed invalid is that there must have been an "error" in connection with the preparation and conduct of the election, i.e. a breach of the Election Act or Election Regulations pertaining to how the election must be prepared and conducted. As a starting point, only "errors" committed by persons who have any obligations under the Act can result in a new election.

The Storting itself has provided a statement regarding the consequences of errors committed by persons who have no obligations under the Election Act, cf. Recommendation no. 1 (1993–94) p. 5. The situation was that a voter who was admitted to hospital had received incorrect information

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<sup>501</sup>Proposition no. 22 (1982–83) to the Odelsting: *The Act relating to amendments to Act no.1 of 17 December 1920 relating to parliamentary elections and Act no. 6 of 10 July 1925 relating to municipal council and county council elections* p. 46.

from an employee at the hospital about the time at which it was possible to cast an advance vote at the hospital. The Credentials Committee stated the following in this case:

The Election Act [...] does not assign specific duties to personnel at institutions in connection with the advance voting process. If the personnel provide incorrect information in connection with this, it is the opinion of the Committee that this can hardly be considered an error that comes under Section 72 of the Election Act and which can thereby influence the validity of the election.

The Credentials Committee stated the following in another appeal case for the same election, cf. Recommendation no. 1 (1993–94) p. 6:

With regard to exclusion from election debates in schools, in military bases and on television and radio, the Committee notes that neither the Election Act nor regulations issued in accordance with the Act contain rules in these areas. The errors which can result in an invalid election pursuant to Section 77 of the Election Act are breach of the Election Act or regulations issued pursuant to this Act. Therefore, the Committee finds that any errors committed by a public authority in the aforementioned areas cannot have any consequences for the validity of the election.

In a legality review of the 2007 municipal council election in Drammen, the then Ministry of Local Government and Regional Development found that electoral fraud in the form of the purchase and sale of votes can result in a new election. Among other things, the Ministry stated the following:

The Election Act uses [...] the term “errors committed” for circumstances that may result in a new election. Based on the wording of the Act, it is not clear that this also includes electoral fraud such as the purchase and sale of votes. However, the Ministry stated the following in the preparatory works to the new Election Act, cf. Proposition no. 45 to the Odelsting (2001-2002):

“It is proposed that the present rules regarding errors that can result in a new election, the rules for the means by which to remedy errors and conditions for new elections are continued.”

Section 76, subsection 3 of the Election Act of 1985 stated that the Ministry should declare an election in a municipality invalid if someone has sought to influence the election in an unlawful manner. [...]

The Ministry is therefore of the view that electoral fraud is a factor that can also result in a new election pursuant to the new Election Act if the other conditions are in place.

#### **21.1.1.2 Correction of errors**

The Storting must not automatically declare the election to be invalid even if an error was committed that is deemed to have influenced the outcome of the election. If it is possible to correct the error, for example, by approving the incorrectly rejected ballots, by conducting a new count of the ballot papers or by determining a new election result, then this is what must be done. If the error cannot be corrected, for example, if ballots have been incorrectly approved, the election shall be declared invalid if the error is deemed to have influenced the outcome of the election.



### **21.1.1.3 The scope of a new election**

If the conditions for invalidity, and thereby a new election, are satisfied, the question will then be to what extent the Storting can order a new election. The starting point is that the Storting must only order a new election in the municipalities in the county that have been affected by the error, however, in special cases, can order a new election in the entire county, cf. Section 13-3, subsection 4. Prior to 1965, a new election could only be held in the municipalities where an error had been committed. The Parliamentary Election Act was then amended to enable the Storting to order a new election in the entire constituency if “special circumstances so warrant”, even if the error did not impact on all of the municipalities in the constituency. There is little information in the preparatory works to the statutory amendment, cf. Proposition no. 29 to the Odelsting (1964-65), relating to the meaning of “special circumstances” - which was how the Act was worded at that time. The draft bill was based on a report from the Municipal Council Election Act Committee.<sup>502</sup> The Committee stated that:

The Committee would note that, pursuant to Article 59 of the Constitution of Norway, the polls shall be held separately for each electoral parish. Furthermore, the Act assigned a type of jurisdiction to the Storting in these cases. It would therefore not correlate well with normal court rulings if the Storting was able to invalidate the election in a constituency where the election was held fully in accordance with applicable law. For this to occur, it must be clear that the proportional representation election in the constituency cannot be lawfully conducted without this.

Following this statutory amendment, the only new elections that have been held were in Buskerud and Troms in connection with the 1981 parliamentary election. The Storting decided at that time that elections should be held in all of the municipalities in the constituency even though the error only affected certain municipalities, cf. Recommendation no. 1 (1981–82) p. 9:

The Committee has discussed whether elections should be restricted to the electoral parishes where the errors were committed or whether elections should be held in the entire county. The Committee has concluded that elections should not be limited to individual electoral parishes in some of the counties. Since there are such relatively minor irregularities in the relevant electoral parishes, it would not appear very natural to limit the election to these electoral parishes. The Committee would note that, since the most recent new election (1961), the Election Act has been amended in such a way that the Storting now has the power to order a new election in the entire constituency if there are special grounds for doing so. The Committee is of the view that such special grounds exist in these instances.

### **21.1.1.4 Who will be members of the Storting until the new election has been conducted**

After the Storting ordered new elections in some electoral districts in Vestfold following the 1921 election, the question arose of how the credentials for the members of the Storting should be validated. Neither the Constitution nor the Election Act regulated this issue. At that time, the Storting decided that final consideration of the election for Vestfold county would be postponed until the new election had been conducted. It was also decided that, until then, the members and their

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<sup>502</sup>Recommendation from the Municipal Council Election Act Committee pertaining to amendments to the Act relating to municipal elections from 10 July 1925, particularly the appendix to Odelsting Proposition no. 17 (1962–63).

alternates should retain their full rights as members of the Storting, i.e. attend sessions of the Storting until the new election had been conducted.

This practice was also followed during the most recent new elections in Buskerud and Troms following the parliamentary election in 1981. The credentials for the members and alternatives elected for Buskerud and Troms counties were therefore temporarily validated.

### **21.1.2 Municipal and county council elections**

#### *Introduction*

Section 13-2, subsection 4 and Section 13-4, subsections 1 to 4 of the Election Act contain provisions relating to the approval of municipal and county council elections, conditions for when an election is invalid and for who is authorised to order a new election.

Pursuant to Section 13-4, subsection 4, the newly returned municipal council and county council shall respectively decide whether the election of members to the municipal council or county council is valid. The municipal council and county council shall declare the municipal council election and county council election invalid "if any error has been committed which may be deemed to have had an influence on the allocation of seats to the lists, and which it is not possible to correct", cf. subsections 2 and 3. Subsection 4 further states that if the county council or the municipal council declares an election invalid, "a report shall be sent to the Ministry, which orders a new election". For county council elections, the general rule is that the Ministry can only order a new election in the municipalities in the county impacted by the errors, but may, in special cases, order a new election in the entire county.

Section 13-2, subsection 4 of the Election Act regulates the authority of the Ministry in appeal cases and stipulates that:

The Ministry shall declare invalid the election of members to the county council in a municipal authority area or in the whole county or the election of members of a municipal council in a municipal authority area if any error has been committed which may be deemed to have had an influence on the allocation of seats to the lists, and which it is not possible to correct.

Many of the rules for new elections for municipal and county council elections are similar to those for new elections for parliamentary elections. The Commission refers to the overview in section 21.1.1 of the areas in which the rules are the same. However, there are also differences in the rules. These are discussed in more detail below.

#### *Conditions for a new election*

In municipal and county council elections, the error(s) must have had an influence on the "allocation of seats to the lists" in order for there to be a new election. Unlike for parliamentary elections, the fact that the wrong person has been elected from a list is not grounds for invalidity in the case of municipal and county council elections.

*Order for new election*

For parliamentary elections, it is the Storting that shall order a new election after it has considered whether the election was valid, including considering whether it agrees with decisions by the National Electoral Committee in appeal cases. The starting point for municipal council and county council elections is that the Ministry shall order a new election after the municipal council or county council has decided that the election is not valid. However, it is unclear as to what the process is in the instances in which the Ministry, in its capacity as appellate instance, declares that the election is invalid, cf. Section 13-2, subsection 4 of the Election Act. The Act does not provide any answers as to whether the Ministry must then order a new election before the municipal council or county council determines whether the election is valid in connection with the constituent meeting, cf. Section 7-1, subsection 2 of the Local Government Act, or whether the Ministry must not order a new election until after the municipal council or county council has considered whether the election is valid. The preparatory works to the provision also provide no guidance on this issue.

*Who will be members of the municipal council and county council until the new election has been conducted*

Neither the Election Act nor the Local Government Act regulate the transition between the new and previous municipal council or county council in the event of a new election. These acts also do not regulate whether the previous municipal council or county council will remain in office until the new election has been completed or, as is the practice for parliamentary elections, whether the new municipal council or county council shall temporarily take office until the new election has been conducted. This issue was discussed in the commentary edition to the Local Government Act of 1954.<sup>503</sup> It was found that the previous municipal council should continue in office until a new election had been held. However, at that time the municipal council did not take office until 1 January the year following the election.

**21.1.3 Conducting new elections**

The general rule is that a new election must be conducted in accordance with the ordinary rules in the Election Act. The electoral register from the original election must be used, however this has to be updated and errors corrected, cf. Section 13-5, subsection 1 of the Election Act.

Section 13-5, subsection 2 authorises the Ministry to make exceptions from the provisions in the Election Act “where it is necessary out of consideration for the appropriate conduct of the election”. This may involve setting shorter deadlines or initiating other measures that are not necessarily in line with the standard procedure for conducting elections. The provision cannot be used to deviate from provisions that have been set to protect the rule of law for voters.<sup>504</sup>

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<sup>503</sup>Oddvar Overå, *Kommuneloven med kommentarer 1988. Lov om styret i herreds- og bykommunene: av 12. november 1954* (Oslo: Sem & Stenersen, 1988), p. 36.

<sup>504</sup>Proposition no. 45 to the Odelsting (2001–2002): *The Act relating to parliamentary and local government elections (Election Act)* p. 284.

## 21.2 Previous occasions when new elections were held

New elections have been held for both parliamentary elections and county council elections in recent decades. New elections were held in both Buskerud and Troms in connection with the 1981 parliamentary election.

The error in Buskerud was that the municipalities had approved a total of 60 votes more than what should have been approved if the rules in the Election Act had been followed. The Credentials Committee stated the following:<sup>505</sup>

Pursuant to Section 51 of the Act, such errors entail that, if they may have had an influence on the outcome of the election, the election must be declared invalid. The Committee cannot rule out the possibility that the proven errors could theoretically have affected the Joint List's final seat because the margin was only 28 votes. In accordance with this, the Committee finds that it must propose that a new election is held in Buskerud County.

In Troms, the error was that a total of 14 votes were approved that should not have been approved if the Election Act had been followed. The Christian Democratic Party would have lost the final seat if their number of votes had been reduced by more than seven. The Credentials Committee stated the following:<sup>506</sup>

The Committee cannot rule out the possibility that these 14 incorrectly approved votes mean that the Christian Democratic Party final seat is in jeopardy. Under these circumstances, the Committee finds that a new election also cannot be avoided in this county.

The duty to declare an election invalid because the error could theoretically have influenced the outcome of the election was repealed after the 1981 election. Following the statutory amendment, a new election was only to be held if the Storting found that the error would probably have influenced the outcome of the election. If this statutory amendment had occurred prior to the 1981 election it must be assumed that there would have been no new elections in connection with the 1981 election.

At the municipal county election in 1983, there were new elections in both the municipalities of Beiarn and Torsken.<sup>507</sup> In the first case, 95 ballot papers cast for the Conservative Party were rejected in accordance with the rules for determining the election result because candidate names were not on the printed ballot paper. It was the fault of the electoral committee that the ballot papers had been printed without all of the names of the candidates. The rules therefore stipulated that the ballot papers had to be rejected. It was thus not possible to correct the error that had been made. Based on the number of votes polled (including the rejected ballot papers), the Conservative Party should have had two members on the municipal council, however had none. The error

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<sup>505</sup>Recommendation S no. 1 (1981–82) *Recommendation from the Credentials Committee regarding the credentials* p. 9.

<sup>506</sup>Recommendation no. 1 (1981–82) *Recommendation from the Credentials Committee regarding the credentials* p. 9.

<sup>507</sup>Oddvar Overå, Steinar Dalbakk, and Jan-Ivar Pavestad, *Valglovgivningen: valg til storting, fylkesting, kommunestyre og sameting* (Oslo: Kommuneforlaget, 1997), p. 347.

had therefore influenced the allocation of seats and the Ministry ordered a new election. The rules for rejecting ballot papers have changed since 1983. If the election were held today, the ballot papers would have been approved, but the electoral authorities should have disregarded corrections on the ballots papers.

In the second case, three “alien” votes were correctly rejected because ballot paper envelopes had not been used. This error was made by the polling committee. These three ballot papers represented a total of 57 list votes (three ballot papers multiplied by the number of municipal council members to be elected). There were very small margins in the election result. The Labour Party was six list votes away from taking the Conservative Party’s final seat. The Labour Party received 49 per cent of the votes, while the Conservative Party received 13 per cent. The Ministry found that it had to be considered probable that there was a ballot paper from the Labour Party among the three ballot papers that had been rejected. The error therefore had to be considered to have influenced the election and the Ministry ordered a new election. This was in accordance with applicable law.

The new elections were held on 27 and 28 November in Beiarn and 4 and 5 December in Torsken. At that time, the municipal council did not take office until 1 January the year after the election. It was therefore possible to hold the new election before the new municipal council was scheduled to take office.

## 21.3 Nordic law

### 21.3.1 Sweden

In Sweden, disputes concerning the validity of elections are settled by the Election Review Board (Valprövningsnämnden). The Election Review Board shall revoke the election and order a new election

- if upon the preparation and implementation of the election for which an authority is responsible there has been a deviation from the prescribed system, or
- if someone has impeded voting, corrupted votes cast or improperly acted at the election in some other way.<sup>508</sup>

If rectification can be achieved by a less intrusive measure than a new election, this must be done. Furthermore, the Election Review Board can only order a new election if it may be deemed that it is justified by what has occurred having had an effect on the outcome of the election. The preparatory works to the corresponding provision in the previous Election Act stated that this entails that the minimum requirement is “a certain positive probability that a proven error will result in a new election.”<sup>509</sup>

Chapter 3, Article 12 of the Instrument of Government stipulates that a person who has been elected a member of the Swedish Parliament exercises his or her mandate even if the election result has been appealed. If the new election results in a revised election result, the new member

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<sup>508</sup>Chapter 15 and Section 13, subsection 1 of the Swedish Elections Act.

<sup>509</sup> Proposition 1974:35.

will take office immediately after the revised result has been declared. The same applies for elections of members to the county council or municipal assembly, cf. Chapter 15, Section 10 of the Elections Act.

### 21.3.2 Finland

In Finland, the competent administrative court rules on appeals relating to the validity of elections, cf. Sections 103 and 105 of the Finnish Election Act. Section 103 states the following regarding when a new election can be held: “If a decision or a measure of an election authority has been unlawful and this unlawfulness evidently may have affected the election results, new elections shall be held in the said electoral district or municipality [...] if the election result cannot be rectified.”

In the event of a new election, the members of the Finnish parliament and the *alternate members* who were elected in the invalid election shall remain in their posts until the results of the new election have been confirmed, cf. Section 106, paragraph four of the Finnish Election Act.

### 21.3.3 Denmark

In Denmark, the Danish Parliament (Folketinget) itself determines whether parliamentary elections are valid, cf. Article 33 of the Constitution of Denmark and Section 87 of the Danish Act relating to parliamentary elections. The Danish Parliament shall decide to which extent and in which way a new election shall take place, cf. Section 90 of the Danish Act relating to parliamentary elections.

For local and regional government elections, the Minister for Economic Affairs and the Interior will make the final decision regarding election disputes, cf. Section 94 of the Danish Act relating to local and regional government elections. Pursuant to Section 95, a new election shall be held as soon as possible if, upon considering an appeal, the ministry declares the election to be invalid.

Neither the Danish Constitution, Parliamentary Elections Act nor Local and Regional Government Elections Act contain provisions relating to the conditions for declaring an election to be invalid.

In the event of a new election to the Danish Parliament, the members who were elected at the invalid election will be regarded as legally elected until, but only until the new election has been completed, cf. Section 89 of the Danish Parliamentary Elections Act.

For *local and regional government elections*, the rules will differ depending on whether the decision to hold a new election was made before or after the end of the year (when the local or regional council normally takes office). If it is decided that a new election will be held before the local or regional council takes office, the previous members shall remain in office until the new election is final, cf. Section 97, subsection 2 of the Danish Local and Regional Government Elections Act. However, if it is decided to hold a new election after the local or regional council has taken office, the new members shall remain in office until the new election has been decided.

## 21.4 The Commission’s evaluation

The Commission would note that there are many factors that argue against conducting a new election. Firstly, there will be a long period of uncertainty regarding the composition of the elected body. For parliamentary elections, this could have an impact on both the legitimacy of the decisions made by the Storting and the government before the new election has been conducted and cause political uncertainty regarding what parties should be part of the government. Furthermore,

the parties must mobilise and conduct a new election campaign and voters have to vote once more. A new election should also be able to be conducted quickly. This would restrict the ability of voters to cast votes both domestically and from abroad. The Commission is of the view that it cannot be required that all municipalities in the entire country have to arrange ordinary advance voting if there will only be a new election in a single municipality or small number of municipalities. The circumstances of individual voters will also mean that some voters will not be able to vote in a new election. There is thus the risk that a new election will be less representative than the original election.

It is the view of the Commission that these disadvantages should be assigned weight when assessing the conditions that need to be met for conducting a new election.

#### **21.4.1 Conditions for a new election**

##### ***21.4.1.1 Probability that the errors influenced the election result***

The Commission is of the view that a high degree of certainty that the error (breaches of the regulations) has influenced the election result should be required before it is possible to conduct a new election, cf. the disadvantages and costs associated with conducting a new election.

The Commission is therefore of the opinion that it would not be applicable to reintroduce the rules as these existed prior to 1983, when certain errors resulted in a new election even though there was only a theoretical possibility that the error had influenced the election.

The Commission has also assessed whether there should be a new election if there is a reasonable possibility that the error influenced the election. Such a rule would entail that there can be a new election even if there is a preponderance of probability that the error did not influence the election result. The factor that may argue in favour of this alternative is that it is an unfavourable situation if there is doubt surrounding the validity of an election. This could weaken the legitimacy of the elected body. However, the Commission is of the view that, as long as it is more probable that the election result is correct than it is incorrect, the disadvantages associated with conducting a new election must weigh heavier than if there is a reasonable possibility that the election result was not correct.

The Commission has also assessed whether, due to the many disadvantages associated with conducting a new election, more than the general preponderance of probability should be required for the error to be said to have influenced the election result. However, the Commission is opposed to such a rule, since it could mean that an election result that was probably incorrect will be permitted to stand. In the view of the Commission, such a provision would result in the election result lacking legitimacy among voters and may undermine confidence in the entire electoral system.

The Commission therefore proposes that a new election shall only be held if it is assumed there is a preponderance of probability that the error or errors influenced the election result, i.e. that it must be more probable than not that the errors influenced the election result. The Commission assumes that this involves continuing existing law.

### **Box 21.1 Example of assessing probability**

The Commission would note that it is not clear as to how one should proceed in assessing whether breach of the election rules is deemed to have influenced the election result. An example may demonstrate this.

A municipality receives 300 advance votes in the county council election. The municipality is able to approve the advance votes, but the ballot papers are incinerated before they can be validated and counted. It would be a breach of the Election Act that the ballot papers cannot be counted. The election result determined by the county electoral committee shows that the allocation of the final seat in the county is extremely close. Party A received 1 seat (final seat) with 8,500 votes. Party B received 8,479 votes and no seats. However, on election day in the municipality, Party B received more than double the number of votes as Party A.

When determining whether the missing advance ballot papers influenced the election result, one must first allocate the 300 ballot paper among the lists based on their probable distribution. The Commission is of the view that there are two obvious means of allocating the ballot papers. These can either be allocated based on the number of votes each of the lists received on election day in the relevant municipality or they can be allocated based on the total number of votes the lists received in the constituency. The Commission is of the view that it is natural to use the number of votes the different lists received in the municipality on election day. This is because there may be major differences in the number of votes received by the lists in a municipality compared with the number of votes received in the constituency.

If the 300 votes are divided among the different lists in accordance with the votes received on election day in the municipality, Party A will receive 37 votes and Party B will receive 77 votes in the municipality. Party A will then have a total of 8,537 votes and Party B will have 8,556 votes in the constituency. In this instance, Party B will have 19 more votes than Party A. In an instance such as this, the Commission is of the view that it will be more probable that the ballot papers being incinerated, and thus not being able to be counted, influenced the election result more than it did not influence the election result.

#### **21.4.1.2 Requirements for the consequences the error must have had**

The Commission would note that the rules for the consequences an error must have for a new election to be held are different for parliamentary elections and local government elections. The conditions for new elections are stricter for municipal council and county council elections (influenced the allocation of seats) than they are for parliamentary elections (influenced the allocation of seats or preferential voting (returning of members)). Prior to 1979, the rules were the same for both local government elections and parliamentary elections. The reason for the change was that in municipal council elections there will often only be a small difference in preferential votes between the number of votes for the final member and the first alternate member or between the alternate members.<sup>510</sup>

<sup>510</sup>Overå, Dalbakk and Pavestad, *Valglovgevingen*, p. 346.



Among other things, this is a consequence of the preferential voting system. For parliamentary elections, the reality is that there is not currently preferential voting. With regard to constituency seats, this means that these cannot, in practice, be assigned to the wrong person. However, due to the seat at large system, an error could result in the parties receiving seats at large in different constituencies to those they would have received if the error had not occurred. The wrong people could thereby be elected to seats at large, even if the allocation of the seats between the parties has not changed as a result of the error. Therefore, it could also be the case for parliamentary elections that a limited number of errors will result in the wrong candidates being elected. The Commission also makes reference to it being proposed that a system is introduced for actual preferential voting at parliamentary elections. Based on this, the Commission finds that the reason for having different rules for parliamentary and local government elections is no longer applicable.

The Commission has considered whether it is only errors that have impacted the allocation of seats that shall result in a new election or whether errors in the returning of members shall also result in a new election.

It is the Commission's view that the choice of solution will depend on the considerations that must be assigned the most weight, i.e. the consideration that the allocation of seats is correct or the consideration that the wrong people from the different lists will not be elected. The Commission illustrates this with the following example:

If the election result shows that the seats have been correctly distributed among the lists that submitted list proposals, but that an error has occurred which resulted in the "wrong" people being elected from one or more lists, it can be asked as to whether it would be correct to conduct a new election. A new election would result in a potentially unstable political situation, which will continue until the new election has been completed and the allocation of the seats between the different lists can be changed through a new election. This could result in changes to the majority of the elected body. For parliamentary elections, this could also be decisive for who is able to form a government.

In the view of the Commission it would be a "greater evil" that a new election risks causing a change in the allocation of seats that was in fact correct in the first election than if the wrong people from a party or group remain in the elected body. Even though the members are personally elected, they are elected as representatives of different parties or groups. It is the allocation of seats between the parties and groups that determines who has a majority in the elected body and, for parliamentary elections, determines the parties that can form a government. Conducting a new election in a situation in which there is agreement that the allocation of seats between the lists is correct would, in practice, entail that the parties and groups that lost the election will have a new chance to win the election, despite having correctly lost the ordinary election.

In the view of the Commission, there needs to be a trade-off between the consideration of the individual candidate who has not received the office he or she should have received and the consideration of the allocation of seats between the parties being correct and reflecting how voters have voted. It is the view of the Commission that questions can be raised about whether a revised election result in this type of new election scenario would have the necessary legitimacy. In accordance with this, the Commission proposes that it shall be a condition for new elections (both local government elections and parliamentary elections), that the errors are assumed to have

influenced the allocation of seats between the lists. For parliamentary elections this means that one must look at the allocation of the direct seats and seats at large in context. It will only be when there is a preponderance of probability that the errors have influenced the allocation of the direct seats and seats at large as a whole that this condition for holding a new election will be satisfied. The fact that the different lists have received seats in different constituencies to what they would have received without the errors having been committed shall not result in a new election

#### **21.4.1.3 Errors in the preparation and conduct of the election**

Pursuant to applicable law, errors committed by anyone other than the electoral authorities or others who have obligations imposed upon them in the Election Act or Election Regulations will not generally be able to result in a new election. This is because errors committed by anyone other than these people will not entail breach of the rules in the Election Act or Election Regulations.

The Commission is of the view that errors committed by companies or people who the electoral authorities purchase services from (subcontractors) in connection with the conduct of the election must be treated as if the error was committed by the electoral authorities themselves. If the act would have entailed breach of the Election Act or Election Regulations if it had been committed by the election authorities, it must also be deemed a breach of the Election Act if the act was committed by persons or companies on assignment from the electoral authorities. An example is that if the municipalities use the Norwegian postal service (Posten) to send advance votes to the voter's home municipality and Posten employees commit an error that causes a number of advance votes to be misplaced and thus not able to arrive in time to be approved, this may be of significance to the election result. The Commission's proposal entails that errors committed by companies or others who perform tasks on behalf of the electoral authorities linked to the conduct of the election must be deemed to be errors pursuant to the Election Act and therefore included in the assessment of whether the election is valid.

In accordance with this, the Commission proposes that, in order for there to be a breach of election law rules for how the election must be prepared and conducted, the error must either have been committed by the electoral authorities, others who have obligations imposed upon them in the Election Act, or anyone who performs a task or service for the electoral authorities.

The Commission is also of the view that it should be clarified that an election also should be able to be declared invalid in the event of different forms of electoral fraud. At present, the Election Act does not clearly state that an election shall be declared invalid if there is a preponderance of probability that the election result was influenced by different forms of electoral fraud. For example, such electoral fraud may cause votes have been removed or changed, or because votes that have not been cast have been added to the election result, cf. Section 154 of the Norwegian Penal Code, or this may involve the purchase and sale of votes, cf. Sections 151 and 152 of the Norwegian Penal Code. Another example is that people meet up in front of a polling station one hour before polls open on election day and block access to a polling district, cf. Section 151, paragraph one (a) of the Norwegian Penal Code. Such offences would not be in any direct breach of the provisions in the Election Act, however could, in the same manner as errors committed by the electoral authorities and their subcontractors, result in the incorrect allocation of seats between the lists and thus not reflect how voters voted or how they would have voted. The Commission therefore proposes that it be clarified that an election shall also be declared invalid if anyone unlawfully attempts to influence the election and there is a preponderance of probability that the election

result was influenced by the criminal offence. The Commission is of the view that such a rule should only apply to direct criminal influence referred to in Sections 151 to 154 of the Norwegian Penal Code.

It is not a condition that the subjective conditions for criminal liability in the provisions are satisfied. It is sufficient to establish that the objective conditions have been violated. It is of no significance as to whether the person who committed the act did so with intent. Restricting this to subjective guilt is also necessary for the body that is to decide on whether to hold a new election being able to avoid considering questions of guilt that belong in a criminal case before the courts.

The Commission would note that it has unfortunately become relatively common for various actors to conduct misinformation campaigns in connection with elections. Misinformation campaigns will not be classified as undue influence over voting under Section 151 of the Norwegian Penal Code. This applies even if information that is used in connection with the campaign has been illegally obtained. An example may be having illegally obtained information about voters which makes it possible to better target misinformation than what would have been possible without this access to illegally obtained information. In the view of the Commission, these types of campaigns can be a threat to democracy and social stability. The Commission will not address whether such misinformation campaigns should be regulated by law, but would encourage the Ministry to consider this.

There are also criminal acts not covered by Section 151 to 154 of the Norwegian Penal Code that could have a more indirect influence on the election, for example, terrorism. In the view of the Commission, the assessment of whether such events shall result in a new election should not be assessed in accordance with the rules pertaining to new elections that are discussed in this chapter. Such criminal acts should rather be assessed in relation to the regulations that are discussed in the chapter concerning the emergency preparedness provision for being able to postpone or hold a new election because of an extraordinary situation. The issue to be assessed should therefore be whether the election cannot be conducted or has not been conducted in such a way that voters had a genuine opportunity to cast a vote.

#### **21.4.2 Correction of errors**

As the Commission has discussed above, there are a number of disadvantages associated with conducting a new election. Therefore, in accordance with existing law, the Commission proposes that a new election shall only be conducted if the error cannot be corrected in some other manner.

#### **21.4.3 The scope of a new election**

The primary content of Section 13-3, subsection 4, which states that a new election must generally only be conducted in the municipality where the error was committed, dates back to the Act of 29 March 1906 relating to the electoral register and parliamentary elections. The Commission notes that, following a statutory amendment in 1965, it became possible to hold new elections in the entire constituency (county), even if the error did not concern all of the electoral parishes (now known as municipalities) in the constituency.

The Commission is of the view that there are arguments in favour of amending these rules. One alternative is to allow a new election to include the entire country. Another alternative is to limit a new election to the municipality or municipalities in which the election was influenced by the error

that was committed, i.e. the municipalities where the error influenced the number of votes received by the different lists.

If the new election is only conducted in the municipalities in the constituency where the result of the count was influenced by the errors, the voters in these municipalities will be aware of the election result in the other municipalities in the constituency. They may then vote for a different party to what they otherwise would have voted for.

This is further complicated in parliamentary elections by the fact that the allocation of seats at large can be influenced by the new election. In parliamentary elections it will be possible to influence the allocation of seats at large even if the new election only takes place in the municipality(ies) or constituency where the errors were committed. If the voters in these municipalities or this constituency see that the party they voted for will not lose anything from them voting for a different party in the new election, they can vote for other parties without any risk. If the new election takes place in the entire country, the voters will not be aware of how the other voters will vote in the event of a new election. Thus, for voters, there will be a greater risk associated with voting for other parties. If one is to reduce the possibility of voters adjusting how they vote in a new election, all voters must participate in the new election. For parliamentary elections, this will mean that a new election has to include the entire country.

Pursuant to Article 58 of the Constitution, the polls shall be held separately for each municipality. If the election in a municipality has been conducted in accordance with the Election Act and Election Regulations, the Commission is of the opinion that it would be problematic if a parliamentary election was to be declared invalid in this municipality because an error occurred in a different municipality in the constituency. If a new election is held, the election result will most probably not remain the same. Some voters will probably not vote the same way in a new election and some voters who voted at the ordinary election will probably be unable to vote in the new election. In addition, a new election would be a demanding process for the parties, as well as the voters and electoral authorities, particularly if a new parliamentary election has to be held in the entire country to prevent tactical voting, even if the error only affects a small number of municipalities. However, with the present day opinion polls, tactical voting can not only occur at new elections, but can also already occur at ordinary elections.

The Commission is of the view that the disadvantages of conducting a new election in more municipalities than those where the counting result was influenced by the errors committed, must be assigned more emphasis than the possibility that some voters will vote tactically. The scope of a new election should be as limited as possible. The Commission therefore proposes that for both parliamentary elections and county council elections, a new election shall only be conducted in the municipalities where the number of votes for the different lists has been influenced by the errors that were committed.

#### **21.4.4 Conducting new elections**

As a starting point, the Commission assumes that the ordinary rules in the Election Act shall also apply in the event of a new election. However, the Commission has found that there is a need to stipulate certain exceptions. Firstly, the Commission proposes to legislate that the electoral register that was used in the original election must also be used in the new election. This is also the procedure today, but the electoral register must be corrected by removing people who have died or lost

the right to vote before the new election. If someone was incorrectly entered in or omitted from the original electoral register, this must also be rectified. There must otherwise be no changes made to the electoral register.

The Commission also proposes to legislate that the original electoral lists shall be used after any deceased candidates or candidates who are no longer eligible for election have been removed. This is not regulated in the current act. If candidates are removed from a list, this may entail that the list does not satisfy the minimum requirements for the number of candidate names or that the list proposers believe that there will thus not be enough names on the list. This does not need to prevent the list from being used, but the considerations behind the rules for the number of names on the lists would suggest that the representative should be able to replace the removed candidates with new candidates, cf. the right to amend list proposals after the deadline for submission in Section 15, subsection 2 of the Election Regulations. In this case, the representative shall attach a declaration from the new candidate indicating that he or she is willing to stand as a candidate on the list.

The Commission is also of the view that there could be a need to make certain other adjustments to the rules for conducting new elections, which is something the current statutory provision also allows for. Among other things, the necessary adjustments will depend on the scope of the new election. The Commission therefore proposes granting the Ministry the authority, through regulations, to make exceptions from the provisions in the Election Act. Existing law, cf. Section 13-5, subsection 5 of the Election Act, states that "Where it is necessary out of consideration for the appropriate conduct of a new election, the Ministry may make exceptions from the provisions of this Act." As stated below, pursuant to applicable law, the provision may be used to "stipulate shorter deadlines and initiate other measures that do not necessarily correspond with standard procedures for elections." The provision cannot be used to deviate from provisions that have been set to protect the rule of law for voters.

The Commission considers the current wording to be too broad, even though there is a restriction in that the authority to make exceptions may only be exercised if this is *necessary* for the appropriate conduct of the election. The Commission is of the view that there is no need for such broad authority. In the Commission's opinion, a new election would make it applicable to only make exceptions from the provisions in the Election Act in two areas. Firstly, it may be applicable to stipulate other deadlines for certain activities, for example, the length of time in which voters are able to vote in advance. Secondly, it will be applicable to further restrict the possibilities of voting in advance, for example, by it not being possible to vote early or to cast an advance vote from abroad. In accordance with this, the Commission proposes to restrict the Ministry's authority, through regulations, to derogate from the Act in these two areas.

#### **21.4.5 Who will be in office until a new election has been conducted**

The Commission considers it important that the Storting, county councils and municipal councils are functioning and legally convened even if approval of the election has been appealed and it is potentially decided that a new election shall be held. This will ensure that no legal doubts can be raised about the validity of the decisions made until the new election has been conducted.

The Commission makes reference to the fact that Finland, Sweden and Denmark have provisions for this in their legislation.

In all of these countries (with a minor exception), the newly elected representatives continue in office until the new election has been completed. This is also the current practice for parliamentary elections. The Commission proposes that this practice is legislated, cf. section 20.4.2.1. In the view of the Commission, this will be such a fundamental provision regarding the composition of the Storting that it should be stipulated in the Constitution.

With regard to municipal council and county council elections, it is presently unclear as to what constitutes applicable law. The Commission also refers to the discussion relating to the approval of elections in section 20.4.2.2. The newly elected municipal council or county council cannot be constituted until it has been clarified as to whether there have been appeals of the election and before a decision/decisions has/have been handed down in the appeal case(s). If the National Electoral Committee declares the election invalid, the Commission proposes that the sitting members of the county council or municipal council continue in office until a new election has been conducted. If, even at the constitutive meeting, the county council or municipal council finds that the election is invalid, and if the National Electoral Committee agrees that a new election must be conducted, the Commission proposes that the newly elected members shall remain in office until the new election has been conducted.

#### **21.4.6 The right to reverse the approval of an election**

Article 54 of the Constitution states that parliamentary elections shall be held every four years. Sections 9-1 and 9-2 of the Election Act contain more detailed rules regarding the election day. Parliamentary elections shall be held on a Monday in the month of September in the final year of the electoral term of each Storting. Local government elections shall be held on a Monday in the month of September in the second year of each Storting's term of office.

The Storting itself decides whether the parliamentary election is valid, cf. Article 64 of the Constitution and Section 13-3, subsection 1 of the Election Act. Correspondingly, the municipal council or the county council shall decide whether the municipal council election or the county council election is valid, cf. Section 13-4, subsection 1 of the Election Act.

It may be the case that an error which has influenced the election result or someone having altered the election result is not discovered until after the Storting, county council or municipal council has approved the election and the deadline for appealing approval of the election has expired. Neither the Constitution nor the Election Act state anything about what will then occur.

Approving the election involves identifying the candidates that are deemed to have been elected to the relevant body. In relation to the individual members, this is considered an individual decision pursuant to Section 2, paragraph one (b) of the Public Administration Act.

In the proposition relating to the current Election Act, cf. Proposition no. 45 to the Odelsting (2001-2002) p. 236, the Ministry stated that the standard system in the Public Administration Act may also be applied when concerning the ability of local electoral bodies to reverse their own individual decisions. This entails that the municipal council and county council can reverse their decision to approve an election if it is subsequently revealed that the decision to approve the election must be deemed invalid, cf. Section 35, paragraph one (c) of the Public Administration Act. The Public Administration Act does not apply for the Storting, cf. Section 4, final paragraph of the

Public Administration Act. In any case, a potential right to reverse a decision must be based on general rules pertaining to administrative law.

The Commission would note that questions can be asked about whether, when viewed in context, Articles 54 and 64 of the Constitution constitute a prohibition against holding new elections after the Storting has approved the parliamentary election. However, Article 2 of the Constitution states that it “shall ensure democracy, a state based on the rule of law and human rights”. It would not be consistent with this provision if the Storting was not to have the right to annul an election that should not have been approved. This would mean that people who should not have been elected will be able to continue in this position during the entire term of office. The Commission therefore assumes that the Constitution does not preclude the Storting from being able to reverse its decision to approve the election if information emerges that the election should not have been approved. The Commission finds support for this view in the grounds given by the Supreme Court on 20 November 1945 regarding the sitting Storting’s term of office.<sup>511</sup>

Among other things, the Supreme Court stated the following:

When deciding whether the currently sitting Storting, which was elected nine years ago, is permitted to declare its term of office as having ended before 10 January 1946, it is the opinion of the Supreme Court that it must be an important consideration when determining the term of office, that the intention in the Constitution of Norway was to ensure that the composition of the Storting would at all times correspond as much as possible with the position of the voters. After the parliamentary election has now been held, the Supreme Court considers it to be constitutionally correct that the new Storting takes office as soon as possible without waiting for the date stipulated in Section 68 of the Constitution of Norway. As mentioned, the reason for the necessary extension of the term of office for the Storting elected in 1936 was that new parliamentary elections could not be held as prescribed in the Constitution. However, the grounds for the extension now no longer exist.

The Commission is of the view that there should still be a right to revoke the approval of an election if it is clear that the election should not have been approved. The reason for this is that both the elected body and the decisions it makes would lose their legitimacy in such a situation.

In order to avoid any doubt that the Storting can revoke its own approval of an election if circumstances subsequently emerge which demonstrate that the election should not have been approved, the Commission is of the view that constitutionalisation should be considered. This will ensure that the Storting will not have to base the decision to revoke approval of the election on non-statutory and somewhat uncertain legal grounds.

At the same time, clear statutory authority for the Storting to revoke its own approval of the election if circumstances emerge which reveal that the election should not have been approved will also raise a number of new questions. There is not the same need to answer and clarify such questions when, as is presently the case, the right to reverse a decision is much more unclear. The Commission has not had the capacity to examine all aspects of this issue in its entirety and must therefore be content with making note of the issues that a positive legal basis to reverse a

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<sup>511</sup>Document no. 11 (1945).

decision may give rise to. The Commission therefore also does not propose that such a legal basis to reverse a decision should be stipulated.

If the Storting is given a clear legal basis to reverse or revoke a decision to approve, one must first look at whether the same degree of probability that the error influenced the allocation of seats shall apply as for invalidity in general, or whether requirements should be set for a qualified preponderance of probability. When considering how serious such a reversal would be for the political system, the same evidentiary requirement as for a conviction in criminal law could be a possibility, i.e. that it is proven beyond a reasonable doubt that the error caused an incorrect allocation of seats.

Secondly, one must consider whether the list proposers should be granted the right to appeal in the instances in which the Storting will not revoke its own approval of the election, even if circumstances emerge after the appeal deadline has expired which reveal that the election should not have been approved. The Commission would note that this issue leads to difficult trade-offs between the consideration of a correct election result on the one hand and the consideration of stability surrounding the election result and protection against possible abuse of the appeal system on the other hand. The Commission is of the view that even though a correct election result is essential for trust in the electoral system, continual appeals claiming reversal of the election result could also result in suspicion that could in turn erode trust in the electoral system and the legitimacy of any Storting that may be in office.

This would suggest that the list proposers should not have a right of appeal after the appeal deadline has expired. The Commission would note that if the incorrect election result is due to electoral fraud that becomes known after the appeal deadline expired, the Norwegian Penal Code has sanctions that include such offences, irrespective of whether the Storting revokes its approval of the election. Members of the Storting who have committed or been complicit in electoral fraud may be stripped of their parliamentary positions.

Thirdly, one must consider whether the members of the Storting who have their credentials rescinded if the Storting revokes an earlier decision to approve shall have the right to appeal the decision to revoke. In accordance with the Commission's other proposals, the appellate instance will then be the Supreme Court and the procedure will take the form of an action against the Storting. If individual members who are affected have no such right of appeal, there may be a risk that the majority of the Storting will - under different political conditions to those at present - attempt to remove one or more members by using this system. There is thus a great deal that argues in favour of introducing such a right of appeal. This right of appeal may, depending on the circumstances, follow from the Commission's draft Article 64 of the Constitution.



## 22 Provision for national emergencies

### 22.1 Introduction

The Election Act currently contains no rules regarding the consequences that an extraordinary event may have for an election. In some extraordinary events, for example, serious accidents, extreme weather, epidemics or terrorist attacks, many voters may be physically prevented from voting or will refrain from voting because of the event. Such events raise several questions: firstly whether the election should be able to be postponed prior to election day, and, secondly, whether the election should be extended before or during election day. A third question is whether the decision should be made to hold a new election or extend the election after the polls have closed due to the extraordinary events that occurred prior to or during the election. Another key question is who will be authorised to decide that the election shall be postponed or extended or that a new election shall be conducted.

### 22.2 Applicable law

#### 22.2.1 The Election Act

##### 22.2.1.1 *Parliamentary elections*

The Election Act does not contain any provision for postponing or extending an election or holding a new election due to extraordinary events. However, such events may be of indirect significance to the provisions in the Election Act relating to new elections on the grounds of invalidity. An example is that an election cannot be conducted at a polling station because a flood has caused it to remain closed.

If the Storting declares the election to be invalid, it shall order a new election, cf. Section 13-3, subsection 4 of the Election Act. Subsection 3 sets the conditions for being able to declare an election invalid. Pursuant to this provision, the Storting shall declare a parliamentary election in a municipal authority area or in a constituency invalid if any error has been committed which may be deemed to have had an influence on the outcome of the election, and which it is not possible to correct.

Errors pursuant to Section 13-3, subsection 3 of the Election Act include violations of the Election Act or regulations to the Election Act on how the election must be prepared and conducted.<sup>512</sup> Examples of such violations are that ballot papers have gone astray, that the polling stations are not open etc. The provision also includes breach of the provisions in the Norwegian Penal Code relating to electoral fraud. Therefore, natural disasters, epidemics or other extraordinary events cannot directly justify a new election pursuant to Section 13-3. It is only when such events result in persons with obligations under the Election Act committing errors in the conduct or preparation of the election that a new election may be applicable in accordance with specific conditions.

The condition that the error must be assumed to have had an influence on the outcome of the election presently means that the error must have affected the allocation of seats or preferential voting (returning of members).

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<sup>512</sup>See, among others, Recommendation no. 1 (1993–94) p. 6.

If the conditions for invalidity, and thereby a new election, are satisfied, the general rule is that the Storting must only order a new election in the municipalities in the constituency that is impacted by the error. Exemptions from the general rule apply in special cases and enable the Storting to order a new election in the entire constituency, cf. Section 13-3, subsection 4.

### **22.2.1.2 Municipal and county council elections**

Section 13-2, subsection 4 and Section 13-4, subsections 1 to 4 of the Election Act contain provisions relating to the approval of municipal and county council elections, conditions for when an election is invalid and for who is authorised to order a new election.

Unlike the rules for parliamentary elections, it is the Ministry that has the authority to order a new election after the municipal council or county council has decided that the election is not valid. Pursuant to Section 13-4, subsection 1, the starting point is that the newly returned municipal council and county council shall decide whether the election of members of the county council or municipal council is valid. The municipal council and county council must notify the Ministry if they decide that the election is invalid. The conditions for declaring the election invalid are that “any error has been committed which may be deemed to have had an influence on the allocation of seats to the lists, and which it is not possible to correct”, cf. Section 13-4, subsections 2 and 3. Therefore, unlike the present situation for parliamentary elections, the wrong person being elected from a list is not grounds for invalidity in municipal and county council elections.

For county council elections, the general rule is that the Ministry can only order a new election in the municipalities in the county impacted by the errors, but may, in special cases, order a new election in the entire county.

Section 13-2, subsection 4 of the Election Act regulates the Ministry’s authority in appeal cases and stipulates that the Ministry shall declare invalid the election of members to the county council in a municipal authority area or in the whole county or the election of members of a municipal council in a municipal authority area if any error has been committed which may be deemed to have had an influence on the allocation of seats to the lists, and which it is not possible to correct.

### **22.2.2 Parliamentary elections - The Constitution of Norway and constitutional emergency law**

Article 54 of the Constitution states that “Elections shall be held every fourth year. They shall be concluded by the end of September.”

In accordance with this, the Election Act stipulates that parliamentary elections shall be held in all municipal authority areas on one and the same day in the month of September in the final year of the electoral term of each Storting, cf. Section 9-1.

Article 54 of the Constitution stipulates a clear duty to hold parliamentary elections by the end of September. It is difficult to see that it is possible to interpret an exemption from such a specific and precise statement of when the election must be held. If the election shall be postponed or extended to a date later than 30 September,<sup>513</sup> this must therefore be authorised in the

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<sup>513</sup>It can be questioned as to whether Article 68 of the Constitution stipulates that the election cannot be held late in the month of September. The reason for this is that the provision states that the Storting shall assemble on the first weekday in October.

Constitution.<sup>514</sup> Similarly, Article 54 of the Constitution must be considered to be an obstacle to holding a new election due to extraordinary events, because the election would then be held more often than every fourth year.<sup>515</sup>

The question is therefore whether the constitutional rules for emergency law can authorise the postponement or extension of the parliamentary election after 30 September, or that a new election shall be held due to extraordinary events. Frede Castberg provided an in-depth review of constitutional emergency law in a report commissioned by the Storting's Presidium in 1953. The precondition set by Castberg for disregarding the Constitution was that the *circumstances must make the regular process impossible*.<sup>516</sup> Therefore, in order to disregard Article 54 of the Constitution, the circumstances must preclude the election from being held after four years and by the end of the month of September. The condition implies that the election cannot be postponed simply because it would be more convenient or appropriate to hold the election at a later date.

A further condition for being able to disregard Article 54 of the Constitution of Norway is that the postponement, extension or new election must be *necessary*. This means that the postponement, extension or new election must be necessary as an adequate means of realising a necessary objective.<sup>517</sup> The Commission's interpretation of this is that there must not be other, less invasive, alternatives that could achieve the objective, i.e. that as many voters as possible have a genuine opportunity to vote at the parliamentary election. There do not appear to be any alternatives other than postponement, extension or new election to ensure that citizens who are entitled to vote are able to vote if a significant number of voters are prevented from voting at the original election.

Similarly, there do not appear to be any alternatives other than postponing or extending the election or holding a new election if there is a major risk that a significant number of voters will refrain from voting due to an extraordinary event. However, the necessity requirement sets restrictions for emergency law.<sup>518</sup> A postponement, extension or new election must not be greater in terms of time or geographical scope than what is necessary. The authorities also cannot hold a new

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Parliamentary elections must therefore be held earlier than 30 September for the Storting to be able to assemble on the first weekday in October.

<sup>514</sup>The King in Council shall decide the date of the parliamentary election. It is unlikely that either the Constitution or the Election Act can be considered an obstacle to the King in Council deciding to postpone the parliamentary election until a later date in the month of September in the election year.

<sup>515</sup>However, the Constitution cannot prevent the Storting from ordering a new election on the grounds that the parliamentary election is invalid. Article 64 of the Constitution states that the Storting will determine whether the credentials of the elected members are valid. Therefore, the precondition must be that it is permitted to hold a new election in accordance with specific conditions if the Storting does not have validly elected members.

<sup>516</sup>Document no. 2 (1953) Konstitusjonell nødrett p. 19.

<sup>517</sup>Document no. 2 (1953) Konstitusjonell nødrett p. 19.

<sup>518</sup>Document no. 2 (1953) Konstitusjonell nødrett p. 20.

election if it would be sufficient to postpone or extend the election, cf. that there cannot be less invasive alternatives that ensure as many voters as possible have a genuine opportunity to vote at the parliamentary election.

Whether it is possible to postpone or extend the election or hold a new election will also depend on a *trade-off between the interests* that are at risk if the election is held in accordance with the date prescribed by the Constitution on the one hand, and the interests that are violated by disregarding the standard provision in the Constitution on the other. The interests that argue in favour of postponing or extending the election or holding a new election must strongly outweigh the considerations associated with disregarding Article 54 of the Constitution.<sup>519</sup> The interests that argue in favour of deviating from the date for parliamentary elections stipulated in the Constitution are to ensure the election has legitimacy by voters having a genuine opportunity to vote at the election. The right to vote is an essential democratic right and is of fundamental importance to our Constitution. Among other things, the fundamental basis for democracy in the Constitution is expressed in Article 2, which states that the Constitution shall ensure democracy, and in Article 49, which states that the people exercise the legislative power through the Storting and that the members of the Storting are elected through free and fair elections. This is thus a matter of safeguarding fundamental interests in our Constitution.

In a crisis situation, these considerations may take precedence over the interests that argue in favour of conducting the election in accordance with Article 54 of the Constitution, which will, among other things, include that, for democratic reasons, elections should be held at regular intervals, predictability should be ensured etc. In order for the consideration of ensuring that voters have a genuine opportunity to vote at the election to take precedence over the democratic considerations that argue in favour of holding the election by 30 September, a significant number of voters must have been impacted by the extraordinary event. This entails that a significant number of voters must be prevented from voting or that there must be a major risk that a significant number of voters will refrain from voting due to an extraordinary event. There will not be a greater interest in postponing or extending the election or holding a new election if the voters will essentially have a genuine opportunity to vote on the election day that was originally set. Articles 2 and 49 of the Constitution would then indicate that the parliamentary election must still be conducted by the end of September.

An important factor in assessing whether the election can be postponed or extended, or whether a new election can be held, is also whether this *is in accordance with the general opinion of the law in society*. It can be assumed that citizens will support a postponement or extension of the election or a new election if a very large number of voters have not been given the opportunity to vote at the election, or if there is a high risk that a very large number of voters will refrain from voting due to an extraordinary event.

With this as the backdrop, the Commission assumes that, under specific conditions, constitutional emergency law may provide a legal basis for postponing or extending an election if, due to extraordinary events, a significant number of voters are prevented from voting or may refrain from voting due to these events. Similarly, a decision to conduct a new election may come under

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<sup>519</sup>Document no. 2 (1953) Konstitusjonell nødrett p. 20.

constitutional emergency law if the other conditions are also satisfied. It is unclear as to how many voters have to be affected by the event. This is neither possible nor appropriate to quantify. In order for the interests behind postponing the election to be considered to weigh heavier than the interests in maintaining the date for the election stipulated in the Constitution, the crisis situation must probably affect a significant number of voters. The other conditions for postponing or extending the election or holding a new election are, firstly, that the circumstances must preclude the election from being held after four years and by the end of September. Secondly, the postponement, extension or new election must be necessary. Thirdly, the postponement, extension or new election must be in accordance with the general opinion of the law in society. However, the postponement, extension or new election cannot go further than what is necessary and reasonable. This is also out of consideration to democracy and that elections must be held at reasonable intervals.

### **22.2.3 Municipal and county council elections – the Election Act and emergency law**

Pursuant to Section 9-1 of the Election Act, local government elections shall be held in all municipal authority areas on one and the same day in the month of September every four years.

If the election shall be postponed or extended until after 30 September or if a new election shall be held, this will generally require statutory authority. However, it must be assumed that the same considerations that constitute grounds for the right to postpone or extend a parliamentary election or hold a new election pursuant to constitutional emergency law may grant a corresponding right to do this for county council or municipal council elections on the basis of general emergency law.<sup>520</sup>

## **22.3 The European Convention on Human Rights**

Article 3 of the First Protocol to the ECHR commits the member states “to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of legislature.” It can be questioned whether a state holds elections “under conditions which will ensure the free expression of the opinion of the people” if an extraordinary event results in many voters not being able to vote. Exemptions from this obligation can be authorised in Article 15 of the ECHR, which permits the member states to derogate from the obligations in Article 3 of the First Protocol. However, the conditions for derogating are very strict and require notification to the Secretary General of the Council of Europe. Only “war or other public emergency threatening the life of the nation” can legitimise such derogation. Furthermore, the provision sets the requirement that exemptions from the rights under the Convention must be strictly required by the exigencies of the emergency situation. The Commission is not aware of any cases in which member states have derogated from the obligations under Article 3 of the First Protocol. It can also be asked as to whether Article 15 grants the authority to derogate from the obligations under the ECHR for an extraordinary event that has already resulted in violation of the member state’s obligations under the Convention.

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<sup>520</sup>Another alternative is for the Storting to adopt a new statutory provision that gives the authorities the legal basis on which to postpone or extend the election or to hold a new election.

## 22.4 Laws in other countries

In Denmark, there are no special rules pertaining to national crises in connection with elections. However, a crisis can result in errors that cause an election to be invalid and thus necessitate a new election.

Finland also has no rules on national crises in connection with elections. However, there are rules for new elections if breach of the regulations has influenced the election result. These regulations could potentially be of significance in national crises.

The Commission has collected information from the authorities in other countries pertaining to the regulation of emergency preparedness in connection with elections. Some countries, for example, Belgium, Spain and the United Kingdom, do not have special rules for this. Other countries have rules for emergency preparedness in connection with elections, for example, Iceland, Czech Republic and Germany. In Austria, the rule is that if extraordinary circumstances arise that hinder the start, continuation or conclusion of voting, the electoral authorities can extend the voting period or move this to the following day.

## 22.5 The Commission's evaluation

### 22.5.1 There is a need to legislate the right to postpone or extend elections or to hold new elections.

#### 22.5.1.1 *Parliamentary elections*

The Commission is of the view that there is a need to legislate a limited right to postpone or extend parliamentary elections, or hold a new election, in crisis situations.

With regard to parliamentary elections, there is a certain right, under specific conditions, to postpone or extend the election or to hold a new election pursuant to constitutional emergency law. However, this authorisation is not established by law, the conditions are discretionary, are not adapted to crisis situations in connection with elections and are thus difficult to apply. Crisis situations relating to elections also differ from crisis situations involving the transfer of authority to the government, because the political parties in the Storting will more often have conflicting self-interests linked to the postponement or extension of the election or a new election.

The Commission finds that this inherent conflict of interest makes it particularly important to have clearly defined jurisdictional rules, procedures and conditions for the right to postpone or extend an election or hold a new election. It is also especially important that a decision to postpone or extend an election or hold a new election has legitimacy among the population. In this respect, non-statutory authority would mean that any decision to hold a new election etc. would more vulnerable to criticism. In connection with this, the Commission would note that positive statutory authority may enhance the legitimacy of the decision by the legal rules for crisis management being the subject of open debate. The legitimacy may also be enhanced by the Storting, in its capacity as legislator, having approved the freedom of action available to the authorities (if bodies other than the Storting are granted potential authority), compared with a situation in which equivalent actions are carried out directly on the basis of the principles in emergency law. Therefore, a specific emergency preparedness provision is a better basis for clarifying the constitutional responsibilities of

the political authorities.<sup>521</sup> The alternative is to wait for a specific situation in which the decision must be taken at short notice in the middle of a difficult situation, with a great deal of attention and pressure and on the basis of constitutional emergency law.

The Commission would also note that an emergency preparedness provision will not bind the authorities, i.e. will not be a legal obstacle to the authorities potentially acting outside the framework of the provision. This will apply as long as the action is in accordance with constitutional emergency law. Such flexibility is necessary in light of the fundamental uncertainty regarding what situations may arise, and that it is thus unpredictable as to what measures will be necessary.<sup>522</sup>

The Commission notes that the general reason for having positive statutory provisions for emergency preparedness is also linked to the consideration of democratic legitimacy, predictability and clear frameworks for exercising authority.<sup>523</sup> Furthermore, in Official Norwegian Report (NOU) 2019: 13 *When the crisis occurs*, the Emergency Preparedness Provision Commission stated that:

“...globalization, climate change, a more defined world order and a complex threat landscape mean that Norway is more exposed than before to serious accidents, terrorism, natural disasters and various forms of hybrid events. Norway is also vulnerable because Norwegian society is open, because there are large geographical distances, and because we occasionally live in very harsh weather conditions”.<sup>524</sup>

Based on this, the Commission is of the view that there is now a need for a legal basis to postpone or extend the election or to hold a new election.

The Commission has discussed whether the rules in the Election Act are sufficient for dealing with the issue of whether to postpone or extend the election or to hold a new election due to extraordinary events. Firstly, the Commission would note that the rules in the Election Act relating to new elections on the grounds of invalidity only cover acts and omissions on the part of the electoral authorities (or someone who performs tasks/services on their behalf) or others who have duties under the Election Act which constitute breach of the Election Act or Election Regulations. The rules only cover certain envisaged crisis situations. For example, there may be a new election under

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<sup>521</sup>Official Norwegian Report (NOU) 1995: 31 p. 80.

<sup>522</sup>Official Norwegian Report (NOU) 1995: 31 *Emergency legislation in light of amended framework conditions for defence and security policy* p. 81.

<sup>523</sup>Document no. 11 (1950) *Proposition no. 78 to the Odelsting for 1950 regarding the Act relating to special measures in time of war, threat of war and similar circumstances* p. 5: "It can in no way be denied that, in the long run, it is unsatisfactory to allow jurisdiction and limits of authority to be completely unspecified in advance by citing that one is able to go beyond the law and the constitution by virtue of the principles of emergency law. It is precisely in a society under the democratic rule of law that it is reasonable that both the government and citizens should be provided with certain information in written legal provisions regarding what they must be prepared for."

<sup>524</sup>Official Norwegian Report (NOU) 2019: 13 *When the crisis occurs* p. 54.

specific conditions if extraordinary events such as flood or fire mean that the polling stations cannot be open.

The Commission has also proposed that an election can be declared invalid if the objective conditions in Section 151 (Purchase of votes and exercise of undue influence over voting), Section 152 (Sale of votes), Section 153 (Illicit participation in an election) and Section 154 (Subsequent interference with an election result) of the Norwegian Penal Code have been met. Secondly, extraordinary events are more peripheral to the election and should therefore not be assessed under the rules for invalidity. In the set of rules pertaining to new elections on the grounds of invalidity there is a requirement for the preponderance of probability that the criminal offence had an influence on the election result. It may be difficult or impossible to calculate the probability that the allocation of seats between the lists has been influenced, for example, if certain municipalities in a constituency are affected by a flood that prevents voters from voting. Based on this, the rules relating to invalidity in the Election Act will not be sufficient and there should be a statutory right to postpone or extend the election or hold a new election due to extraordinary events.

The Commission is also of the view that the right to postpone or extend the election or hold a new election must be made constitutional. If a right to postpone or extend the election or hold a new election goes outside the framework of constitutional emergency law, it will be necessary to make the rule constitutional.

#### **22.5.1.2 Municipal and county council elections**

With regard to municipal and county council elections, the Commission is of the view that the same considerations for parliamentary elections also apply. The Commission is therefore of the view that it is necessary to legislate a right to also postpone or extend the election or to hold a new election when concerning municipal and county council elections. It is not necessary to make such a right constitutional, because Article 54 of the Constitution concerning when elections shall be held only regulates parliamentary elections.

#### **22.5.2 Content of a provision for national emergencies**

The Commission is of the opinion that very strict requirements must be set for being able to postpone or extend an election or hold a new election and that the legal basis should not extend further than is necessary for achieving the objective of as many voters as possible having a genuine opportunity to vote. Therefore, less invasive alternatives must not be found than postponing or extending the election or holding a new election.<sup>525</sup> Furthermore, the interests that argue in favour of postponing or extending the election or holding a new election must carry more weight than concerns associated with moving away from holding the election by the end of the September. There will not be a greater interest in postponing or extending the election or holding a new election if the voters will, for all intents and purposes, have a genuine opportunity to vote on the election day that was originally set.

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<sup>525</sup>In section 22.5.9, the Commission proposes legislating that the electoral committee can establish extra polling stations in a constituency if it is necessary for ensuring that voters have the opportunity to vote. This measure is an example of a less invasive alternative that, depending on the circumstances, can achieve the objective of ensuring that as many voters as possible have a genuine opportunity to vote.



The reason for this is that a number of considerations argue against holding a new election or postponing or extending the election. The Commission will discuss these considerations in the following. There are more considerations that argue against holding a new election or extending the election after election day than argue in favour of postponing or extending the election in advance.

Firstly, for democratic reasons and to ensure predictability, elections should be held at regular intervals. The circumstances of individual voters may mean that some of them will not be able to vote on the new date for the election. There is thus a risk that a new election or postponed election in the relevant municipality will be less representative than the original election. Another drawback of a new election is that the preferences of the voters who actually voted in the original election will not be respected. A new election should also be able to be conducted quickly. This would restrict the ability of voters to cast votes both domestically and from abroad. Secondly, a statutory right to postpone or extend the election or hold a new election could increase the chances of electoral fraud. It simply cannot be ruled out that a desire to postpone or extend the election or hold a new election may be politically motivated. Thirdly, a postponement, extension or new election in certain municipalities would enable some voters to have more information than others when they vote and they could exploit this for tactical voting.<sup>526</sup>

There are also cost-related and practical disadvantages associated with a new election or postponing or extending an election. For the parties, the disadvantages are greatest in connection with new elections, when they have to mobilise and conduct a new election campaign. For the electoral authorities, a postponed, extended or new election will result in challenges associated with ensuring they have enough staff, premises and election materials.

### **22.5.3 What alternatives should be legislated?**

The Commission is of the view that the authorities should firstly be able to postpone the election before it starts. The voters who did not vote in advance will then be able to vote at the postponed election. The Commission makes reference to the fact that the present rules already appear to allow for the election to be postponed within the month of September in the election year, cf. Article 54 of the Constitution of Norway and Section 9-1 of the Election Act. However, the Commission is of the view that there is a need to extend this timeframe somewhat.

Secondly, the Commission is of the opinion that the authorities should be able to extend the election prior to election day and during the actual election day. Extending the polls on election day can either take place by the authorities cancelling voting and opening the polls at a later time, or by allowing the polls to continue over a longer period than originally stipulated. Voters who voted prior to this therefore cannot vote once more. The Commission is also of the view that it is vital that voters who vote at a postponed or extended election are not aware of the preliminary election result in the municipality: All voters in the same municipality should have the same democratic starting point and the right to free and equal elections. The Commission therefore proposes to legislate that the preliminary counting of ballots cast in advance must be suspended if this has commenced. The counting of advance votes can resume the day before the extended election. It is not

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<sup>526</sup>Tactical voting was proven in Dresden during the German federal election in 2005. See "Wahlreport: Wahl zum 16. Deutschen Bundestag 18 September 2015" (Berlin: Infratest dimap, 2005), [https://www.infratest-dimap.de/fileadmin/\\_migrated/content\\_uploads/BTW05\\_Wahlreport\\_Leseprobe.pdf](https://www.infratest-dimap.de/fileadmin/_migrated/content_uploads/BTW05_Wahlreport_Leseprobe.pdf).

necessary to propose separate rules for counting ballot papers from the election day. Counting of these cannot start before the polls are closed.

Thirdly, the Commission notes that a crisis situation on the election day or prior to this can develop in such a way that the scope of the crisis will not become known until after election day. It is the view of the Commission that the authorities should, in exceptional cases, be able to decide that a new election shall be held after an election has been conducted. The Commission's view is that it would not be appropriate to extend the election afterwards, and notes that the counting of election day votes will have commenced. This enables large parts of the election result to be revealed. There is thus a risk that the authorities may take external factors into consideration when deciding between whether to extend the election or to hold a new election.

The Commission would note that postponement, extension or new election will only be applicable for the election day. The advance voting period is long enough that it should be possible to vote during the period, or possibly in another municipality. The voters also have the opportunity to vote on election day.

#### **22.5.4 Conditions for holding a new election or postponing or extending the election**

##### ***22.5.4.1 Circumstances that may constitute grounds for a new election***

The Commission is of the view that, under certain conditions, extraordinary events that are liable to prevent a significant proportion of voters from voting should be able to constitute grounds for postponing or extending the election or holding a new election. However, it is not possible or appropriate to provide an exhaustive list of conditions that must be considered extraordinary. It is fundamentally uncertain as to what crises will occur in the future.<sup>527</sup> Examples of conditions that may constitute extraordinary events are natural disasters such as floods, earthquakes, landslides, etc. Other examples include terrorism, sabotage of infrastructure, nuclear accident, serious epidemics, etc. However, the Commission will not include wartime situations. In wartime situations, constitutional emergency law and the Emergency Preparedness Act will take over. Pursuant to Section 1 of the Emergency Preparedness Act, if war prevents the Storting from exercising its functions, the King is empowered to make all necessary decisions for safeguarding the interests of the Kingdom. The situation this provision pertains to is if the Storting is completely unable to exercise its functions. If the Storting has convened or can be convened, more restricted powers for the King will apply pursuant to Section 3 of the Emergency Preparedness Act.

One objection to using such an indefinite term as "something extraordinary" is that it may be open to abuse. To this, the Commission would note that the requirement for the events having to be "extraordinary" includes a threshold for the situations in which the authorities can order a new election, or postpone or extend election day. The extraordinary event must also be liable to prevent a significant proportion of voters from voting. Furthermore, the Commission proposes strict material and procedural requirements for such decisions.

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<sup>527</sup>In its report "Analyses of crisis scenarios 2019", the Norwegian Directorate for Civil Protection (DSB) listed pandemics and drug shortages as the scenarios with the highest risk.

The requirement for a new election will be that the voters have been prevented from voting. This must involve a large number - a significant proportion of voters. The Commission notes that the societal importance of a new election or extending or postponing election day would mean less predictability in the form of uncertainty regarding the composition of the elected body, financial and practical implications for the parties, limited opportunities for voters to vote during a new a shorter period, a delayed election result, and the possibility of tactical voting in the event of a new election. Furthermore, it is a compelling consideration that holding the election on the originally scheduled date will safeguard the right to vote for the voters who, for various reasons, will be unable to vote in a new or postponed election. Based on this, it cannot be sufficient grounds for postponing or extending an election or to hold a new election in one or more municipalities, that a limited number of voters in these municipalities were affected by a natural disaster or other extraordinary events, even when the event is extremely serious. The extraordinary event must have affected a significant number of voters - a *significant* proportion of the voters. In addition to voters who are directly affected by, for example, injury or illness, other factors such as fear, unrest or other social and psychological reactions caused by the event will also have to be taken into consideration when assessing whether a significant proportion of voters have been affected. A requirement that the event must have affected a significant proportion of voters or be liable to do so, also correlates best with the threshold for conducting a new election pursuant to the invalidity rules, where a preponderance of probability is a requirement for the election result to have been influenced. The principle of constitutional emergency law also appears to set the requirement that a certain proportion of voters are prevented from voting.

#### **22.5.4.2 The new election, postponement or extension must be necessary**

It is the view of the Commission that the most important condition for being able to postpone or extend the election or hold a new election should be whether the postponement, extension or new election is necessary for ensuring that voters have the opportunity to vote. Providing voters with a genuine opportunity to vote ensures compliance with Article 49 of the Constitution, which states that the people exercise the legislative power through the Storting and that the Members of the Storting are elected through free and fair elections. Ensuring voters have the opportunity to vote is also essential in relation to Article 2 of the Constitution, which states that the Constitution shall ensure democracy. The Commission notes that, as a starting point, the criterion that the measure must be necessary for ensuring voters have the opportunity to vote will not be satisfied if there are massive influence campaigns from external actors, because such campaigns do not impact on the ability of voters to vote.

The necessity condition presupposes that other less invasive alternatives will not be possible to ensure voters have a genuine opportunity to vote. In a crisis situation, an alternative may be to hold the election on the originally scheduled date. Respect for the wishes of the voters that are expressed at the original election would argue in favour of the authorities being disinclined to holding a new election.

#### **22.5.5 The length of time in which the election can be postponed or extended and the date of the new election**

The question here is whether absolute deadlines should be set for how late the postponed or extended election can be held, and how late a new election can be held.

The Committee would note that the postponed or extended election should generally be able to be held as late as necessary for ensuring that voters have a genuine opportunity to vote. How long this is will depend on the crisis situation. However, a longer postponement or extension may result in some voters having a completely different factual basis on which to vote than the voters who already voted. Therefore, the consideration of equality would indicate that the postponed or extended election cannot be held after several months. The Commission is therefore of the view that a postponement or extension of more than one month is such a major intervention in the election that this period of time should be the absolute limit. This means that if the King in Council has set 10 September as the election day, the postponed or extended election must be held no later than 10 October. Irrespective of this, the election can only be extended by up to one day. If the authorities are of the view that a postponed or extended election cannot be conducted and concluded within a month after the originally scheduled date for the election, there will be a right to order that a new election shall be held.

With regard to a new election, it is important to note that this should be conducted as soon as possible. This is because, for democratic reasons, elections should be held at regular intervals. This prevents the members of the Storting, county council and municipal council from being in office for longer than is legitimate. However, it may take some time for the authorities to prepare a new election. The Commission expects that the electoral authorities will be able to conduct and conclude a new election within six months, but does not wish to legislate an absolute deadline. The Commission has also discussed whether the actual decision to hold a new election should be handed down by a certain deadline. However, the Commission does not consider it necessary to set a strict deadline for when the decision to hold a new election must be made. The decision must be handed down with a two-thirds majority, and the political situation will mean that the decision has to be made within a short period of time.

## **22.5.6 Who shall decide on the issue of postponement, extension or new election**

### ***22.5.6.1 Parliamentary elections***

When assessing who shall be able to decide to postpone or extend the election or that a new election shall be held, the primary considerations are to ensure that the decision has legitimacy and that a quick decision is made. The consideration of countering abuse or suspected abuse is also of vital importance. Based on these considerations, the Commission has found that there is a distinction between postponing the election before the election day starts or extending the election before or during the election day on the one hand and declaring a new election after election day on the other hand.

The Commission notes that the risk of abuse and external factors is greatest when a decision is made to hold a new election after election day. The election result or parts of this will therefore already be known. This would suggest that only the Storting should be able to order a new election. This is supported by the fact that it is essentially only the Storting that will have the legitimacy to order a new election.

To further prevent the right to order a new election from being abused, the requirement should be set that a decision by the Storting must require a two-thirds majority. In such an event, due to time constraints it will normally also not be necessary to assign this authority to another body. However, this decision should be made as quickly as possible, because it would be unfortunate if there

is a long period of uncertainty about whether a new election will be held. It will normally also be possible to quickly gain an overview of the consequences of the extraordinary event. It should also be noted that a decision to hold a new election pursuant to the emergency preparedness rules should be made before the Storting considers whether the election shall be approved pursuant to Article 64 of the Constitution. The authority to order a new election under these rules should therefore be assigned to the sitting Storting, not the newly elected Storting. In accordance with this, the Commission proposes that Article 54 of the Constitution is amended to stipulate that the Storting can, with a two-thirds majority, decide whether to hold a new election. It must also be clarified in the Constitution that it is the outgoing Storting that decides on new elections.

With regard to the decision to postpone or extend the election, the Commission is of the view that it will also be the Storting that has the highest level of legitimacy to decide on this issue. In order to include guarantees against abuse, the requirement should also be set that a decision by the Storting requires a two-thirds majority.

A quick decision is necessary for being able to determine whether to postpone the election or to extend the election before or during election day. The Commission assumes that it will be possible in many extraordinary situations to convene the Storting at short notice. In the instances in which the Storting cannot be convened or the government is unable to contact the Storting, the government should have a limited right to hand down the decision. The risk of abuse is somewhat lower when the election result is not known. However, the Commission is still of the view that the government should not have the authority to postpone or extend the election for more than seven days.

Assigning some authority to the government will also be in accordance with the normal arrangement in the Election Act, whereby the election day is determined by the King. In this arrangement, the government is essentially granted the right to postpone or extend the election for a limited period of time. The Commission would emphasise that the government's decision to postpone or extend the election takes place under constitutional responsibility.

#### **22.5.6.2 *Municipal and county council elections***

The Commission would note that the consideration of the decision being as legitimate and close as possible to those the decision applies to, suggests that it is the municipal council in municipal elections and the county council in county council elections that shall have the authority to postpone or extend the election or to decide to conduct a new election. However, it may be difficult in a crisis situation to gather sufficient numbers of people for the municipal council or county council to form a quorum. In addition, crisis situations rarely arise and will take different forms, something that makes it difficult to have the same policies in the different municipalities or counties. Furthermore, in more extensive crisis situations, difficult assessments may arise regarding whether the election should be cancelled in municipalities where the event did not physically take place, but where the event can still prevent a large number of voters from being able to exercise their right to vote. This suggests that a body that has an overview of the entire country should make the decision. On this basis, the Commission proposes that the authority to postpone or extend elections or to hold new municipal and county council elections is assigned to the government. The Commission notes that the risk of abuse is reduced by the government's decision to postpone or extend the election taking place under constitutional responsibility.

### **22.5.7 The scope of a new election, postponement or extension**

It is the Commission's opinion that the scope of a postponement, extension or new election should be as limited as possible. The Commission makes reference to the fact that the result of a new election will most probably not be the same: Some voters will probably not vote the same way in a new election and some voters who voted at the ordinary election will probably be unable to vote at the new election. In addition, a new election will be a demanding process for the parties, voters and electoral authorities. The Commission also makes reference to its proposal that a new election on the grounds of invalidity shall only be conducted in the municipalities where the errors influenced the distribution of votes to the various lists. The proposal applies for both parliamentary elections and county council elections. Based on this, the Commission proposes that the authorities shall only be able to postpone or extend an election or hold a new election due to an extraordinary event in the municipalities where this is necessary for achieving the objective, i.e. that voters have a genuine opportunity to vote at the election. This means that an event which only affects one municipality should not influence the conduct of the election in other municipalities. However, if the crisis situation can be said to be nationwide in scope, the postponement, extension or new election should also apply to the entire country, not just the municipality where the event took place.

### **22.5.8 Who will be in office until a new election has been conducted**

If a new election is to be held as a result of extraordinary events that have occurred, the question will be whether the newly elected members to the Storting, county council and municipal council will serve in these offices until the new election has been conducted.

If a parliamentary election is invalid, the newly-elected members shall serve in office until the new election has been conducted. This is both existing law and the Commission's proposal. It is the view of the Commission that the same should apply if the sitting Storting decides that a new election must be held due to an extraordinary event.

The Commission is also of the view that this should apply for county council and municipal council elections, and if the newly-elected county council or municipal council has conducted its constituent meeting before the decision to hold a new election has been handed down, the newly-elected members of the county council or municipal council should serve in the office until the new election has been conducted. If the constituent meeting has not been held, the Commission proposes that the electoral term is extended for the sitting members of the county council or municipal council.

### **22.5.9 Other measures for ensuring that voters have the opportunity to vote**

The Commission would note that the electoral committees have a responsibility for enabling voters to vote. The Commission is of the view that the electoral committee should be better able to provide remedies in instances in which voters are unable to vote due to a crisis situation. The electoral committee should therefore be able to establish extra polling stations for a constituency on election day. Out of consideration to accessibility, the electoral committee should have the right to establish extra polling stations, not only if extraordinary events occur, but also in general when the electoral committee considers this necessary for ensuring that voters are able to vote. The Commission therefore proposes legislating that the electoral committee can establish extra polling stations.

## **23 Financial and administrative consequences**

### **23.1 Introduction**

The Commission proposes continuing the principal features of the current Election Act. However, introducing a new act will result in financial and administrative consequences, irrespective of the content of the act. Time and resources will be devoted to training and guidance in connection with the new act. The conduct of elections is a demanding task for which there is no room for error, and it is important that election workers and municipalities have a good understanding of the changes. The new act will also require updating of the information and instruction materials that are used by the Norwegian Directorate of Elections. In addition, during a transitional phase, all of the bodies that have tasks associated with conducting elections will have to devote extra time and resources to familiarising themselves with the new Act. This will apply prior to the first two elections that are held after the Act has entered into force, because there are some differences between parliamentary elections and municipal and county council elections.

There will eventually not be a greater need for more resources for these activities than what is generally necessary for conducting elections. The fact that the draft bill uses simpler and more user-friendly language and has a more appropriate structure will make it easier in the long term for users of the Act to familiarise themselves with this, which in turn will also mean less use of resources in this area.

In sections 23.2 to 23.8, a more detailed overview will be provided of the financial and administrative consequences of the Commission's draft bill.

### **23.2 Giving 16-year-olds the right to vote at municipal and county council elections**

Lowering the voting age to 16 years at municipal and county council elections will have administrative and financial consequences for the municipalities, county authorities and the state. The municipalities will have to receive more votes, and both the municipalities and county authorities will have more ballot papers to count. For the State, the costs of polling cards will increase. The amount by which these increase will depend on whether digital or paper polling cards are used.

### **23.3 The number of signatures on the list proposals**

The Commission proposes increasing the requirement for the number of signatures on list proposals that are from parties other than registered political parties which received a minimum of 5,000 votes in the entire country at the previous parliamentary election. The proposal entails that, for parliamentary elections and county council elections, more signatures need to be collected than before. The situation is more nuanced for municipal council elections. In municipalities with less than 30,000 eligible voters at the previous municipal council election, the requirement for the number of signatures will be reduced, but will increase in municipalities with more than 30,000 eligible voters.

For the district electoral committees and county electoral committees, the proposal will entail that controls of the list proposals will be more extensive. Since most municipalities have less than 30,000 eligible voters, the scope of the controls for the electoral committee will be reduced somewhat, even if this will increase in the largest municipalities.

However, the Commission proposes that it shall be possible to collect the signatures on the list proposals electronically. In practice, this will require the State having to develop an electronic system for collecting the signatures which, among other things, enables the identities of list proposers to be confirmed. Electronically submitted list proposals will entail considerable simplification for the municipalities and make it possible to improve the efficiency of what is currently a very labour-intensive process. It would be natural to link such a solution to EVA, and increased operating costs will therefore be limited. Irrespective of this, the actual development of the solution will require financial and administrative resources.

### **23.4 Counting of votes**

Pursuant to applicable law, ballot papers are counted twice for municipal council elections and three times for parliamentary elections and county council elections. The Commission proposes that the ballot papers shall be counted twice at all elections. This would mean that the municipalities will hereafter only count ballot papers once for parliamentary elections and county council elections. At the same time, somewhat stricter requirements are set for counting, such as counting by polling station, clearer division of responsibility, and that two independent methods for counting are used. In order to ensure two independent counts, the municipalities must establish a central polling committee. Despite this requiring the municipalities to have an additional administrative body, the administrative consequences will be minimal. The tasks of the central polling committee are also performed now and it is not a requirement that the central polling committee itself has to carry out the counting.

Therefore, on the whole, the proposal will result in moderate financial and administrative savings for the municipalities, primarily in connection with parliamentary elections and county council elections.

### **23.5 The appeal system**

The Commission proposes several changes to the appeal system that will have both financial and administrative consequences. First and foremost, these changes have consequences for the State in the form of the courts, the Ministry of Local Government and Modernisation and the Administration of the Storting.

A National Electoral Committee will still be appointed, but changes are proposed to both the appointment and composition of the National Electoral Committee and its duties.

Under the proposal, the National Electoral Committee shall be an independent appeal body, and the majority of its members will be judges to ensure an independent appeals process. Unlike the present situation where it only considers appeals relating to parliamentary elections, the National Electoral Committee shall also consider appeals regarding the preparation and conduct of county council elections and municipal council elections. The Commission also proposes expanding the right to appeal the preparation and conduct of elections.

The Commission also proposes that there is a right to appeal decisions by the Storting, county council and municipal council regarding whether an election is valid. For parliamentary elections, the appeal shall be dealt with by the Supreme Court. For municipal and county council elections, the appeal shall be dealt with by the National Election Committee.



The Commission's proposal entails that more resources will be assigned to the National Electoral Committee, not only due to how it is composed, but also because the National Electoral Committee shall consider more types of appeals. This will be necessary to free the members of the National Electoral Committee from their normal work for shorter or longer periods around the election. Out of consideration to the proceedings before the courts which provide judges to the National Electoral Committee, these courts should be assigned resources that will enable them to replace the judges who are appointed to the National Electoral Committee. This should be done to avoid delaying the cases that are before these courts.

It is proposed that the Administration of the Storting is made secretariat for the National Electoral Committee. This will involve a new responsibility for the Administration of the Storting and will require both administrative and financial resources. The duties of the secretariat will vary during the year, but it must be expected that there will be a considerable amount of work from when the list proposals have to be approved in June until the election has been finally approved. It must also be taken into account that there may be more election-related appeals in the years ahead. This is an international trend and a National Electoral Committee with a visible presence and clear rules for appeals may also contribute to an increase in the number of appeals.

Being able to appeal decisions by the Storting regarding the validity of an election may result in the Supreme Court having to hear such appeals every four years. However, the proposal must still be considered to have minimal financial and administrative consequences for the Supreme Court.

The Ministry will also have some savings in not having to consider appeals for municipal and county council elections and not being secretariat for the National Electoral Committee for parliamentary elections. However, this duty is closely linked to the Ministry's other work associated with elections and the cost savings will therefore be relatively negligible.

### **23.6 Provision for national emergencies**

The Commission proposes that the election may be postponed or extended if an extraordinary event has occurred that is liable to prevent a significant proportion of the voters from voting. Similarly, it can be decided that a new election shall be held if an extraordinary event has occurred that has prevented a significant proportion of the voters from voting.

Postponing or extending the election or holding a new election may have significant financial and administrative consequences. The electoral authorities will have to find both the staff and polling stations for being able to conduct the new election. A new election would also make it necessary to obtain more election materials, including envelopes and ballot papers.

It must be assumed that the emergency preparedness provision will rarely have to be applied. Furthermore, it is already possible to postpone or extend the election day or hold a new election pursuant to constitutional emergency law (parliamentary elections) or general emergency law (municipal and county council elections). These factors indicate that the proposals to legislate an emergency preparedness provision for extraordinary events will have limited financial and administrative consequences.

### **23.7 Changes to the electoral system**

Changes to the electoral system will require changes to EVA. This will have administrative and financial consequences. Irrespective of this, the Directorate will still have to make adaptations to EVA due to the regional reform and the 2021 election. However, it must be assumed that the proposed changes, and perhaps particularly those relating to the introduction of a new preferential voting system for parliamentary elections, will result in development needs.

### **23.8 Sending of advance votes**

The Commission would note that there appears to be a need to continue to enter into special agreements to ensure that advance votes arrive on time. The Commission has also taken into account that the number of votes that need to be sent in this manner is increasing. The costs of such agreements may increase in the coming years.

*Part V*  
*Draft bill with comments*

## 24 Remarks to the individual provisions

### Chapter 1. The purpose and applicability of the Act

*For Section 1-1 The purpose and applicability of the Act*

General preparatory works: Section 2.9.2.

*Subsection 1* continues existing law that the Act shall ensure that the overarching principles of free and fair elections are upheld for all elections, cf. Section 1-1 of the current Election Act. That the Act shall ensure that the elections are *direct*, has been taken from the purpose provision. This has no material importance, because other statutory provisions stipulate that the elections shall be direct.

*Subsection 2* continues the applicability of the Act, which is presently stated in Section 1-2 of the Election Act.

### Chapter 2. Right to vote and electoral register

*For 2-1 Right to vote at parliamentary elections*

General preparatory works: Sections 9.1.11.1, 9.3.3 and 9.5.2.1.

The section continues the conditions in Section 2-1 of the current Election Act that the voting age is 18, that only Norwegian citizens have the right to vote at parliamentary elections, and that the voter must be included in the electoral register to be able to exercise the right to vote. The requirement that the person in question must be included in the electoral register in a municipal authority area on *election day* has not been continued.

The provision does not continue the condition that the person in question must be or have been registered in the Population Registry as resident in Norway in order to have the right to vote. The requirement that the person in question has not been disenfranchised pursuant to the Constitution has also not been continued because the Commission has not proposed that the rules for loss of voting rights should be continued.

*For Section 2-2 Right to vote at county council and municipal council elections*

General preparatory works: Sections 9.1.11.1 and 9.5.2.2.

The section corresponds to Section 2-2 of the current Election Act.

The section does not continue the current voting age of 18, but changes the voting age to 16 for municipal and county council elections. As opposed to parliamentary elections, *subsection 1* continues the condition that Norwegian citizens must be or have been registered in the Population Registry as resident in Norway in order to have the right to vote.

*Subsection 2* continues the rules for voting rights for persons who are not Norwegian citizens. Only linguistic amendments have been made to this provision. The period of residence for foreign nationals in subsection 2 (a) shall be three consecutive years prior to election day. If the election day

is 8 September, persons who have been registered in the Population Registry as resident in Norway from and including 8 September three years prior, shall have the right to vote.

The condition that the voter must be included in the electoral register in order to have the right to vote is continued in *subsection 3*, but not the requirement that the voter must be included in the electoral register on *election day*.

*For Section 2-3 Responsibility for keeping and updating the electoral register*

The section continues existing law stipulated in Section 2-3 of the current Election Act, but with slightly amended wording. However, the Ministry's responsibility for distributing polling cards, cf. Section 2-3, subsection 3 of the Election Act, has become a separate provision in the Commission's proposal for Section 2-9.

*For 2-4 Responsibility of the Population Registry Authority*

The provision continues, albeit with slightly amended wording, existing law that is stipulated in Sections 2-5 and 15-6 of the current Election Act. Pursuant to *subsection 3*, in addition to transferring updates to the preliminary electoral register as of 30 June, the Population Registry Authority shall also transfer updates to the preliminary electoral register as of 2 January to the Ministry.

*For Section 2-5 Section 2-5 The municipality in which voters shall be included in the electoral register*

General preparatory works: 9.4.3.

*Subsections 1, 2 and 3* of the provision continue existing law that is stipulated in Section 2-4 of the current Election Act.

The condition that Norwegian citizens living abroad who have not been registered in the Population Registry as being resident in Norway at any time in the course of the last 10 years prior to election day have to apply to the Electoral Committee to be included in the electoral register in the municipality where they most recently resided, is not continued. Instead, *subsection 4* stipulates that persons who are eligible to vote and have not been registered in the Population Registry as being resident in Norway at any time in the course of the last 10 years may select the municipality where they will be included in the electoral register. If the voter casts an advance ballot from abroad, the vote must be addressed to the municipality where the voter requests to be included in the electoral register. If the voter casts an advance ballot in another municipality, the advance ballot must be sent to the municipality where the voter requests to be included in the electoral register. On election day, the voter can only vote in the municipality where he or she has requested to be included in the electoral register. The rule also applies to persons living abroad who are members of the diplomatic corps or the consular service.

*For Section 2-6 Availability of the electoral register for public inspection*

The provision continues, albeit with slightly amended wording, existing law that is stipulated in Section 2-6 of the current Election Act.

*For Section 2-7 Correction of the electoral register*

The provision continues existing law, cf. Section 2-7 of the current Election Act. Only linguistic amendments have been made to this provision.

*For Section 2-8 Notification of amendments to the electoral register*

The provision continues existing law, cf. Section 2-8 of the current Election Act. In addition, the provision clarifies that the electoral committee must also give notice if claims for correction are not taken into account.

*For Section 2-9 Polling cards*

The provision continues the system for polling cards which is presently stipulated in Section 2-3, subsection 3 of the Election Act. A new addition is that the Commission finds that the provision permits polling cards to be sent both electronically and in paper form. The provision also does not prevent polling cards from being able to be sent to persons resident abroad or on Svalbard or Jan Mayen.

*For Section 2-10 Regulations*

The provision continues Section 2-9 of the current Election Act. *Paragraph one (c)* also includes the duties of the electoral committee in connection with the production and distribution of polling cards.

### Chapter 3. Eligibility and duty to accept election

*For Section 3-1 Eligibility and duty to accept election at parliamentary elections*

General preparatory works: Section 9.1.11.2.

This section continues the duty to accept election at parliamentary elections, which is presently stipulated in Section 3-1, subsection 1 of the Election Act. Some linguistic changes have been made to the provision. A separate provision regarding persons disqualified from elections has been created in Section 3-3 of the draft.

*For Section 3-2 Eligibility and duty to accept election at county council and municipal council elections*

General preparatory works: Section 9.1.11.2.

This section continues the duty to accept election at county council and municipal elections, which is presently stipulated in Section 3-3, subsections 1 and 2 of the Election Act. Some linguistic and structural amendments have been made to the provision. A separate provision regarding persons disqualified from elections has been created in Section 3-3 of the draft.

*For Section 3-3 Persons disqualified from election*

General preparatory works: Sections 10.7.2.3, 10.7.3.1 and 10.7.3.2.

Section 3-3, *subsection 1* continues Section 3-1, subsection 2 (b) of the current Election Act that justices of the Supreme Court are disqualified from election to the Storting. The Commission proposes making members of staff in the ministries and members of the diplomatic corps or of the consular service eligible for election. This entails that all members of staff, including senior civil servants and others, will be eligible for election. The provision stating that such persons are disqualified from election has therefore not been continued.

*Subsections 2 and 3* continue the rules for eligibility for election at municipal and county council elections, which are currently stipulated in Section 3-3, subsection 3 to 5 of the Election Act.

#### *For Section 3-4 Exemption from inclusion on an electoral list*

General preparatory works: Section 11.3.4.

This section continues Section 3-4 of the current Election Act relating to exemption from inclusion on lists for municipal and county council elections. The provision introduces a corresponding rule for exemption from inclusion on electoral lists for parliamentary elections, cf. Parliamentary Resolution of 7 January 2020 relating to amendment to Article 63 of the Constitution of Norway that a person who has submitted a written declaration that he or she does not wish to be on an electoral list is not obligated to accept the election.

The provision provides a general right to claim exemption from inclusion on an electoral list, irrespective of the reason. The other grounds for exemption listed in Section 3-2 of the current Election Act will therefore be redundant and the Commission proposes that these are not continued, cf. the Commission's proposed amendment to Article 63 of the Constitution.

The right to refuse election in Section 3-2, subsection 3 of the current Election Act is not continued. This entails that if a candidate fails to exercise his or her right not to be included on a list, he or she cannot refuse election.

## Chapter 4 Electoral bodies

#### *For Section 4-1 National Electoral Committee*

General preparatory works: Section 20.4.3.3.

*Subsection 1* introduces a system with the National Electoral Committee as the appeal body. The new Storting shall appoint the National Electoral Committee following final approval of the election. The provision stipulates that the National Election Committee shall consider appeals against the preparation and conduct of all elections. In addition, the National Election Committee shall consider appeals of decisions by county councils and municipal councils regarding whether a county council or municipal council election was valid.

*Subsection 2* stipulates that the National Election Committee shall consist of five members. The provision stipulates that the chair and two other members must be judges. Judges must be appointed to fixed terms. Alternate members for members who have to be judges must also be judges. If the chair is absent, one of the other permanent members who is a judge shall function as chair. If all of the permanent members who are judges are absent, one of the alternate members who is a judge shall function as chair.

*Subsection 3* stipulates that the National Electoral Committee shall be appointed for four years and when this period shall commence.

*Subsection 4* has rules for who is disqualified from being appointed as members and alternate members of the National Electoral Committee.

*Subsection 5* stipulates that members and alternate members who stand for election must withdraw from the National Electoral Committee. The wording of the provision does not state when the member is obligated to withdraw, but this applies from the date the electoral list has been approved. If the former member or alternate member is not elected, he or she may again be appointed as a member or alternate member of the National Electoral Committee.

*Subsections 6, 7, 8 and 9* contain rules for when and how the Storting can relieve a member or alternate member of the National Electoral Committee of his or her position and for when new members and alternate members shall be appointed.

*Subsection 10* stipulates that the members and alternate members may be reappointed. There are no restrictions on the number of times a member or alternate member can be reappointed.

*Subsection 11* states that the Administration of the Storting shall function as secretariat for the National Electoral Committee. The provision also prohibits the Storting from issuing instructions to the Administration in its role as secretariat to the National Electoral Committee.

Pursuant to *subsection 12*, the Storting shall determine the remuneration that members and alternate members of the National Electoral Committee shall receive.

#### *For 4-2 District electoral committee*

The provision stipulates that each constituency shall have a district electoral committee with a minimum of three members in connection with parliamentary elections. Since the counties are not necessarily the constituencies for parliamentary elections, it is proposed that, for parliamentary elections, a district electoral committee is elected to replace a county electoral committee. The district electoral committee is simply a new name for the county electoral committee at parliamentary elections, cf. Section 4-3 of the current Election Act. The district electoral committee shall be elected by the county council in the county authority where the constituency is located. In the City of Oslo, the district electoral committee shall be elected by the municipal council.

The district electoral committee is an elected county authority body pursuant to special legislation, cf. Section 7-2 (i) of the Local Government Act. This means that the rules in the Local Government Act pertaining to these types of bodies will apply.

If the county is divided into multiple constituencies, the same person can be elected as a member of multiple district electoral committees, cf. Section 7-2, subsection 3 of the Local Government Act, cf. subsection 1.

The wording "shall itself elect" entails that the county council or municipal council in the City of Oslo cannot delegate authority to others pursuant to this section.



*For Section 4-3 County Electoral Committee*

The section continues existing law that there shall be a County Electoral Committee for county council elections, cf. Section 4-3 of the Election Act. For parliamentary elections, each constituency shall instead have a district electoral committee, cf. the remarks to Section 4-2 above.

The wording “shall itself elect” entails that the county council cannot delegate authority to others pursuant to this section.

The county electoral committee is an elected county authority body pursuant to special legislation, cf. Section 7-2 (i) of the Local Government Act. This means that the rules in the Local Government Act pertaining to these types of bodies will apply.

*For 4-4 Electoral committee*

The provision continues existing law that there shall be an electoral committee in every municipal authority area, cf. Section 4-1 of the Election Act.

The wording “shall itself elect” entails that the municipal council cannot delegate authority to others pursuant to this section.

The electoral committee is a municipal body pursuant to special legislation, cf. Section 7-2 (i) of the Local Government Act. This means that the rules in the Local Government Act pertaining to these types of bodies will apply.

*For Section 4-5 Polling committees*

General preparatory works: Sections 17.8.2.1, 17.8.2.2 and 17.8.6.

The section continues the system for polling committees.

*Subsection 1* of the provision stipulates that each polling station shall have a polling committee. Pursuant to applicable law, a polling committee is only required if voting takes place at multiple locations in the municipal authority area, cf. Section 4-2 of the current Election Act.

A new addition is that each municipality shall have a central polling committee, cf. *subsection 2*.

The polling committee, including the central polling committee, is a municipal body pursuant to special legislation, cf. Section 7-2 (i) of the Local Government Act. This means that the rules in the Local Government Act pertaining to these types of bodies will apply.

The right of the municipal council to delegate the appointment of polling committees to the electoral committee is continued in *subsection 3*.

*Chapter 5. Requirements concerning and treatment of list proposals**For Section 5-1 Requirements concerning list proposals*

The provision continues Section 6-1, subsections 2 and 4 of the current Election Act, but has been reworded. The rules relating to deadlines in Section 6-1, subsection 1 of the current Election Act

have been moved to Section 5-7 and a separate provision has been created for the rules for representatives and the representation committee, cf. the proposed new Section 5-6.

*Subsection 2* stipulates rules for headings on list proposals and continues existing law. This also entails that if two registered political parties submit a list together, the heading on the list must include the registered name of both parties.

*Subsection 3* continues existing law. The first sentence states that, in each constituency, only one candidate can be included on a list proposal for each election, cf. first sentence. With regard to the inclusion of occupation or residence, list proposers can either include the candidates' occupation or residence or both on the list proposal, cf. *second sentence*. The different lists do not need to include the same information about the candidates, but must include the same information for all candidates on the same list proposal. The *third sentence* states that information about the candidates' occupation and residence *must* be included in the list proposal if this is necessary to avoid confusion. At the different elections, it will be the district electoral committee, county electoral committee and electoral committee that decide whether it is necessary to enter this information in the list proposals.

*Subsection 4* continues existing law, cf. Section 6-1, subsection 4 of the Election Act.

*Subsection 5* continues existing law, cf. Section 6-1, subsection 1, final sentence, that the same party or group can only submit one list in each constituency.

#### *For Section 5-2 The number of candidates on a list proposal*

General preparatory works: Section 13.3.1.

The provision corresponds to Section 6-2 of the current Election Act, but amends the requirements for the number of candidate names that must be on the list proposal. Linguistic changes were also made.

*Subsection 1* regulates parliamentary elections and stipulates that there must be a minimum of five candidate names on list proposals for parliamentary elections. Existing law has been continued when concerning the maximum limit. The number of seats to be elected from the constituency includes both direct seats and seats at large.

*Subsection 2* regulates county council elections and amends existing law. The minimum requirement for the number of candidate names on list proposals differs according to the number of members who shall be elected to the county council. The maximum limit for the number of names on the list proposal has been continued.

*Subsection 3* regulates municipal council elections and amends existing law. The minimum requirement for the number of candidate names on list proposals differs according to the number of members to be elected to the municipal council. The maximum limit for the number of names on the list proposal has been continued.

#### *For Section 5-3 Additional votes*

General preparatory works: Sections 7.9.1, 7.9.2 and 7.9.3.

*Subsections 1 and 3* are new and concern the introduction of a new preferential voting system for parliamentary elections and county council elections. For these elections, additional votes can be given to all or none of the candidates or the number of candidates requested by the list proposers. *Subsections 2, 4 and 5* are a continuation of Section 6-2, subsection 3 of the current Election Act. Only linguistic changes have been made.

*For Section 5-4 The number of signatures on a list proposal*

General preparatory works: Sections 13.3.5 and 13.3.6.

The provision has been partially amended and partly continues Section 6-3 of the current Election Act. Changes have been made to the number of votes registered political parties must have received in order to be able to submit list proposals pursuant to the simplified requirements in *subsection 1*. The requirement of 500 votes in a constituency has been removed and it is now required that the party received no fewer than 5,000 votes in the entire country. Subsection 1 is also a continuation of existing law. In the event of any doubt about the board members in the party branch who are responsible for the constituency that the list applies to, the party's executive body shall be contacted, cf. draft for Section 5-6, subsection 5. As is the present situation, the parties that have been included in the Register of Political Parties subsequent to the previous parliamentary election will also be covered by subsection 1. These parties have recently collected signatures in order to be registered as political parties and have not had the opportunity to report voting figures from the previous election.

*Subsection 2* regulates requirements for signatures for other list proposers and is an amendment to existing law. A requirement has been introduced for all elections regarding the number of signatures that correspond to one per cent of the number of people who were eligible to vote at the previous election in the constituency. For example, for parliamentary elections this will entail that, to be permitted to submit a list in a constituency, the number of signatures that corresponds to one per cent of the number of eligible voters in the constituency at the previous parliamentary election will need to be collected. For county council elections, the number of signatures corresponding to one per cent of the number of eligible voters in the county at the previous county council election will need to be collected. The same applies for municipal council elections, which requires the collection of as many signatures that correspond to one per cent of the number of eligible voters in the municipality at the previous municipal council election. If the number of constituencies or municipalities in the constituency has changed, the number of eligible voters at the most recent corresponding election in the municipalities that are now part of the constituency must be used as a basis.

The maximum number of signatures that will still be sufficient for municipal council elections has been increased from 300 to 1,000. There is no longer any minimum requirement for the number of signatures. For municipalities where 1 per cent of the eligible voters at the previous election exceeds 1,000 people, the maximum number – 1,000 signatures – will apply.

The requirement that the signatories must be eligible to vote in the constituency has been continued in *subsection 3* and applies to all list proposals.

*For Section 5-5 Appendices to list proposals*

The provision continues Section 6-4 in the current Election Act, albeit with minor amendments.

*Paragraph one (c)* states that the declaration which must be provided by candidates who are not registered in the Population Registry as resident in the constituency shall include confirmation that the candidate will be registered in the Population Registry in the appurtenant constituency on election day, and not, pursuant to current law, that the candidate will be eligible.

*For Section 5-6 Representatives and representation committees*

The provision is partly new and combines rules relating to representatives and representation committees. The provision essentially continues existing law, but linguistic changes have been made, and the various rules have not previously been combined into one section.

*Subsection 1* continues existing law regarding who is to be deemed a representative and representation committee. *Subsection 2* is also a continuation of existing law, except for there no longer being the right to derogate from the rules. These conditions are currently regulated in Section 14 of the Election Regulations.

*Subsections 3 and 4* continue Section 6-1, subsection 2 (e), second sentence and Section 6-5 in the current Election Act. The proposed Section 14-2, subsection 3 also stipulates that the representation committee has right of appeal for parliamentary elections, right of appeal for county council elections (Section 14-3, subsection 3), and right of appeal for municipal county elections on behalf of the list (Section 14-4, subsection 3).

*Subsection 5* continues the current procedure in instances in which it is unclear as to who represents a registered political party locally. This is presently stipulated in Section 6-6, subsection 4 of the Election Act.

*For Section 5-7 Deadline for submitting a list proposal*

General preparatory works: Section 6.3.3.

*Subsections 1, 2 and 3* are essentially a continuation of Section 6-1, subsection 1 of the current Election Act. This must be viewed in connection with the Commission proposing that electronic signatures should be permitted.

*Subsections 4 and 5* are new provisions and introduce the right for the municipal council to postpone the deadline for submitting list proposals if less than two list proposals have been submitted. Due to time constraints, list proposals submitted pursuant to subsection 4 must include confirmation from the candidates on the list that they consent to being included on the list. This is a derogation from the right to claim exemption in Section 3-4 and from the electoral committee's duty to inform candidates on list proposals that they have been included on a list proposal and to inform them of the possibility of an exemption, cf. draft Section 5-10, subsection 4. However, the electoral committee must still review the candidates' eligibility for election.

*For 5-8 Withdrawal of a list proposal*

The provision is partly a continuation of Section 6-5 of the current Election Act. However, the deadline for withdrawing the list proposal has been changed. Furthermore, the body that notice of withdrawal must be sent to has been specified.

*For Section 5-9 Who is responsible for approving the list proposal*

The provision continues Section 6-6, subsection 2 of the current Election Act, albeit with some linguistic changes.

*For Section 5-10 The electoral authorities' treatment of the list proposals*

The provision continues existing law which is presently stipulated in Section 6-6, albeit with some linguistic changes.

In *subsection 1*, “inspection” has been replaced by “public inspection”. This is only a linguistic change and does not entail any material amendments to applicable law.

*Subsection 4* addresses the responsibility of the electoral authorities to inform candidates on list proposals that they have a right to be exempted. In order to be exempted, the candidate must give notice of this by the deadline set by the electoral authorities. The term “list proposal” is used until the lists are approved and the approved lists are then referred to as electoral lists.

*For Section 5-11 Changes to list proposals after the deadline for submission*

The provision continues existing law, cf. Section 15 of the Election Regulations, relating to the changes that are possible to make to list proposals after the deadline for submission.

*For Section 5-12 Announcement of approved electoral lists*

The provision continues existing law, albeit with some linguistic changes, cf. Section 6-7 of the current Election Act. The process relating to the duty to announce the headings on the approved list proposals is not regulated. However, this announcement must take place in a manner that is publicly accessible. *Publicly accessible* means that everyone should be easily able to access the information, for example, by announcing the headings on the municipality's website or in the local newspaper.

*For Section 5-13 Printing of ballot papers*

The provision continues Section 7-1 of the current Election Act. Minor linguistic changes have been made, and the provision has been moved to the chapter on requirements for and treatment of list proposals.

*For Section 5-14 Regulations*

The provision is a continuation of existing law and continues the regulatory authority relating to list proposals in Section 6-9 of the current Election Act and the regulatory authority relating to ballot papers in Section 7-3 of the current Election Act. A new addition is that the Ministry is granted regulatory authority to stipulate requirements for electronic signatures pursuant to Section 5-4.

## Chapter 6. Advance voting in Norway

### *For Section 6-1 When voters can vote in advance*

General preparatory works: Sections 17.4.4, 17.6.3 and 17.6.4.

*Subsection 1* continues existing law relating to the ordinary period for voting in advance that is presently regulated in Section 8-1, subsections 1 and 2 of the Election Act. It is also stipulated that advance voting must have concluded no later than 6 pm on the Friday before election day. The provision that voters are responsible for casting the advance vote at a time that enables the advance vote to be received before 5 pm on the day following the election day is not continued for advanced voting in Norway. Separate arrangements for sending the ballot papers will ensure that the votes arrive on time.

*Subsection 2* formally reduces the period for voting on Svalbard and Jan Mayen by one week compared with Section 8-1, subsections 1 and 2 of the current Election Act. Pursuant to Section 8-1, subsection 2, second sentence of the current Election Act, the Governor of Svalbard has previously decided that voting shall be concluded in line with the committee's proposal.

*Subsection 3* states that when the polling station is about to close, the voters who have arrived at the polling station before this time shall be permitted to vote. The provision is new for advance voting and corresponds to the current Section 9-7 of the Election Act for the conclusion of polling, albeit with some linguistic changes.

*Subsection 4* continues, with some linguistic changes, the system for so-called early voting from 1 July. The system is presented in Section 8-1, subsection 4 of the current Election Act.

### *For Section 6-2 Number of returning officers*

General preparatory works: 17.6.3.

The provision continues existing law that, with the exception of Svalbard and Jan Mayen, there must be two returning officers present for receiving advance votes. This is stipulated in Section 8-1, subsection 5 of the current Election Act. The provision has also been expanded to include the receiving of advance votes prior to 10 August (early voting).

### *For Section 6-3 Who appoints the returning officers*

The provision continues Section 8-2, subsection 1 of the current Election Act, albeit with some linguistic changes.

### *For 6-4 Where voters can vote in advance*

General preparatory works: 16.6.2.

*Subsections 1 and 2* are a continuation of section 8-3, subsection 2 of the current Election Act with regard to where it shall be possible to vote in advance. The authority of the electoral committee pursuant to this provision may not be delegated. The provision must be viewed in connection with the draft Section 9-5 which sets requirements for the premises that can be used, cf. Section 8-3, subsection 1 of the current Election Act. A new addition is that there is a statutory duty to receive

advance votes in prisons. *Subsection 3* continues Section 8-3, subsection 6 of the current Election Act. *Subsections 4 and 5* continue Section 8-3, subsections 3 and 5 of the current Election Act.

*For Section 6-5 How voters can vote in advance in their own municipalities*

*Sections 1 to 3* continue Section 8-4, subsections 1 to 3 of the current Election Act, albeit with linguistic changes. A new addition is that a cross must be placed in the electoral register for each election the voter has voted at, cf. subsection 2.

Subsection 3 is more generally worded than the current Act. This means that the provision will also include instances in which the returning officer cannot place a cross in the electoral register due to reasons other than loss of power or communication. For example, the proposal for Section 2-5, subsection 4 entails that voting is now considered to be an application to be included in the electoral register for persons eligible to vote who have not been registered in the Population Registry in Norway in the past ten years. It will not be possible to place a cross beside the names of these voters because their names will not appear in the electoral register before they vote. See also the remarks to Section 8-4, subsection 5. Another new inclusion in subsection 3 is that, for county council and municipal council elections, the ballot papers for the two elections must be placed in separate envelopes. Under current law, the ballot paper envelope must be placed in a cover envelope together with a *polling card*. This has now been changed to *information about the voter's identity*. The change has been made to show that it is not necessary to place a physical polling card in the cover envelop.

*Subsection 4* continues Section 8-4, subsection 4 of the current Election Act. The provision entails a derogation from the general rule in subsection 2 regarding the placing of the ballot paper directly into a ballot box. Examples of "Special circumstances" are instances in which it is not possible to have a stable electronic electoral register available. This may also include prisons, where the majority are included in electoral registers in other municipalities, and large scale use of ballot paper envelopes will still be necessary. A decision stipulating that a ballot paper envelope must be used cannot be handed down for all returning officers in a municipality without the condition regarding *special circumstances* having been met for the locations in question. The electoral committee must carry out a specific assessment for each individual polling station to determine whether the condition has been met. The electoral committee's authority may not be delegated.

*For Section 6-6 How voters can vote in advance outside their own municipalities*

This section continues Section 8-4, subsections 1 to 5 of the current Election Act, albeit with linguistic changes.

*Subsection 2* states that the provision applies to voters who *are included in the electoral register* in another municipality. This includes both those who are already included in the electoral register in another municipality at the time the voter casts his or her vote, and voters who will be included in the electoral register at a later date, cf. draft Section 2-5, subsection 4. A new addition is that, for county council and municipal council elections, the ballot papers for the two elections must be placed in separate ballot paper envelopes.

*Subsection 3* clarifies that it is the electoral committee that is responsible for forwarding on the advance vote(s) to the municipality where the voter is included in the electoral register.

*For Section 6-7 How voters can vote in advance on Svalbard and Jan Mayen*

This section continues Section 8-4, subsection 1 of the current Election Act and Section 27, subsection 6 of the Election Regulations relating to how the voters can vote in advance on Svalbard and Jan Mayen. A new addition is that, for county council and municipal council elections, the ballot papers for the two elections must be placed in separate ballot paper envelopes, cf. *subsection 2*. Some linguistic changes have also been made.

*For Section 6-8 How voters can vote in advance before ordinary advance voting (early voting)*

General preparatory works: 17.6.3.

The section continues Section 8-4, subsection 1 of the current Election Act and Section 24 a, subsection 4 of the Election Regulations.

A new addition is that, for county council and municipal council elections, the ballot papers for the two elections must be placed in separate ballot paper envelopes, cf. *subsection 2*. Pursuant to Section 24 a, subsection 4 of the Election Regulations, the polling card must be placed in a cover envelope together with the ballot paper envelope. This provision has been amended such that information about the voter's identity must be placed in a cover envelope together with the ballot paper envelope. This means that information about the identity of the voter may appear in a different way to when using polling cards. Otherwise, only linguistic changes have been made.

*Subsection 3* stipulates that it is the electoral committee that is responsible for early votes being sent to the correct municipality.

## Chapter 7. Advance voting abroad

*For Section 7-1 When voters can vote in advance*

General preparatory works: Sections 17.4.4, 17.6.4 and 17.6.6.

*Subsection 1* continues the period for advance voting abroad which is presently stipulated in Section 8-1, subsection 1 and Section 8-1, subsection 2, first sentence. *Subsection 2* continues existing law relating to the voter's responsibility to vote in sufficient time for the vote to be received by the electoral committee before 5 pm on the day following election day. This is presently stipulated in Section 8-1, subsection 3 of the Election Act. Only linguistic changes have been made.

*For Section 7-2 Who may receive advance votes*

*Subsection 1* continues Section 8-2, subsection 2 (a) of the current Election Act. *Subsection 2* continues Section 8-2, subsection 2 (b) of the current Election Act. Only linguistic amendments have been made to this provision.

*For 7-3 Where voters can vote in advance*

*Subsection 1* continues the linguistic changes made in Section 8-3, subsection 4 of the current Election Act, cf. Section 8-2, subsection 2 (a). *Subsection 2* continues Section 8-3, subsection 5 of the current Election Act. Even though the Ministry retains the right to appoint returning officers at other locations abroad, this must be in accordance with objective and non-discriminatory criteria.



Therefore, any differential treatment must be logical and based on criteria such as the number of Norwegian citizens or distance to Norwegian foreign service missions.

*For 7-4 How voters can vote in advance*

This section continues Section 8-4, subsection 1 of the Election Act and Section 27, subsection 6 of the Electoral Regulations. A new addition is that, for county council and municipal council elections, the ballot papers for the two elections must be placed in separate ballot paper envelopes, cf. *subsection 2*.

*For Section 7-5 Postal voting*

General preparatory works: Section 17.6.6.

This is a continuation of Section 8-2, subsection 4 of the current Election Act and Section 28 of the Election Act, with some rewording.

## Chapter 8. Voting on election day

*For 8-1 When voters can vote*

General preparatory works: Section 6.3.4.

The section continues existing law, cf. Sections 9-1, 9-2 and 9-3 of the current Election Act. Linguistic and structural changes have been made in relation to the current Election Act.

*Subsection 3* states that the King in Council shall set the election day. This is in line with current practice and entails that the King can no longer delegate the task of setting the election day to the Ministry.

*Subsection 4* of the provision stipulates that the Sunday prior to election day and the election day constitute the electoral proceedings.

*For Section 8-2 Where voters can vote*

General preparatory works: Sections 17.6.1 and 17.6.5.6.

The provision partially continues existing law, which is currently stipulated in Section 9-3 of the Election Act. Linguistic and structural changes have also been made in relation to the current Election Act.

*Subsection 1* legislates that the municipal council or the electoral committee must, according to delegated authority, place particular emphasis on travel distances and transportation services when deciding on the division into polling districts. This means that financial considerations will not necessarily be decisive if the division results in it being significantly more difficult for a larger number of voters to vote.

Pursuant to *subsection 1, first sentence*, it is generally the electoral committee itself that decides what should be used as a polling station. However, see draft Section 9-5, subsection 1. The requirement that the polling station has to be geographically located in the polling district has not

been continued, cf. *second sentence*. This entails that the electoral committee can decide that the polling station shall not be located in the polling district. For example, the same school can be used as a polling station for multiple polling districts. However, see subsection 1, second sentence.

It is also legislated that the electoral committee can establish extra polling stations for a polling district when necessary, cf. *subsection 3*. The clear starting point is that there must be one polling station for each polling district. The provision can only be applied if unexpected circumstances arise that make it necessary to establish an extra polling station in the polling district to ensure that voters have the opportunity to vote. An example of this is establishing an extra polling station on an island if the bridge to the mainland, where the polling district's polling station is located, has to be closed.

#### *For Section 8-3 Use of electronic electoral register*

The section continues Section 9-5 a, subsection 1 of the current Election Act. The provision entails that municipalities are free to choose between hardcopy electoral registers or electronic electoral registers. If an electronic electoral register is used, this must be used in all of the polling districts in the municipality.

#### *For Section 8-4 How voters can vote at polling stations with electronic electoral registers*

The section largely continues existing law, cf. Sections 9-5 a of the current Election Act. Linguistic and structural amendments have been made to the provision. *Subsection 3, second sentence* of the provision which states that a cross must be placed for each election the voter votes at, is new.

*Subsections 5 and 6* regulate instances in which the ballot paper must not be placed directly in the ballot box, but in a ballot paper envelope.

Subsection 5 applies for the instances in which the returning officer cannot, for various reasons, place a cross beside the voter's name in the electoral register. However, see the separate provision in subsection 6 relating to the instances in which a cross cannot be placed in the electoral register due to lack of contact with the electoral register. There are many reasons for why the returning officer cannot place a cross beside the voter's name in the electoral register, but the voter should still be able to vote. This will most often be because the voter's name is not in the electoral register. This may be due to the voter having a secret address, that the voter has not been registered as a resident of Norway in the Population Registry in the past ten years prior to election day or that the voter is of the view that the electoral register is incorrect and that he or she should have been included in the electoral register. It may also be the case that the voter's name has already been crossed off in the electoral register. The voter shall be permitted to vote in all of these instances, however the ballot paper must be placed in a ballot paper envelope. The ballot paper envelope must be placed in a cover envelope.

Subsection 6 covers the instances in which the returning officer cannot place a cross beside the voter's name because the connection to the electronic electoral register is down. In these instances, the ballot paper envelope must be placed in a contingency envelope.

*For Section 8-5 How voters can vote at polling stations with hardcopy electoral registers*

The section largely continues Sections 9-5 of the current Election Act and Section 31 of the current Election Regulations. *Subsection 3, third sentence* of the provision which stipulates that a cross must be placed beside the name of each voter who has voted, is new.

## Chapter 9. Joint provisions for voting

*For Section 9-1 Announcement of when and where voters can vote*

General preparatory works: Section 17.6.1.

*Section 9-1, subsection 1* continues existing law regarding the electoral committee's responsibility for announcing the time and place of voting, cf. Section 9-3, subsection 3 of the current Election Act and Section 24 of the Election Regulations.

*Subsection 2* of the provision legislates a new obligation for the governor to announce when and where the voters can vote on Svalbard. It is only possible to vote in advance on Svalbard. Therefore, unlike subsection 1, subsection 2 only applies to advance voting.

The regulatory authority in *subsection 3* is new. The Ministry is granted the authority to issue rules in regulations relating to the announcement of when and where voters can vote and regarding changes to the time and place for where and when voters can vote.

*Section 9-2 Who cannot serve as returning officers or electoral officials*

General preparatory works: Section 17.6.2.

The section continues current restrictions on who is able to serve as a returning officer or electoral official. The restrictions on who can participate in the counting process are new.

*For Section 9-3 Identification*

General preparatory works: Section 15.6.

The section entails a principled, but not an actual, amendment to existing law. The general rule in *subsection 1* is that all voters must show identification. *Subsection 2* of the provision continues existing law that a voter who is known to the returning officer may still be permitted to vote without showing identification, cf. Section 8-4, subsection 6 and Section 9-5, subsection 2 of the current Election Act.

*Subsection 3* continues existing law that voters at health and social welfare institutions can have their identities confirmed by a member of staff at the institution who provides proof of his or her own identity, cf. Section 8-4, subsection 6 of the current Election Act. Only people who are residents of or patients at health and social welfare institutions, or prison inmates may confirm their identities in this manner. This does not apply to people who are at such locations when the election is being conducted.

*For Section 9-4 Changes on the ballot paper*

General preparatory works: Section 7.9.

The right to make changes on the ballot paper is stipulated in Section 7-2 of the current Election Act. Section 7-2, *subsection 1* continues the right to cast a preferential vote at county council and municipal council elections. The right to make changes on the ballot paper for parliamentary elections has been amended. Pursuant to existing law, for parliamentary elections the voter can change the order of the candidates and remove candidate names. These rules have not been continued, and have been replaced by the right to cast a preferential vote.

*Subsection 2* continues the right to cast a preferential vote for candidates on other electoral lists (so-called cross-party votes) at municipal council elections.

*Subsection 3* continues existing law that other changes on the ballot paper will not count towards the election result.

#### *For Section 9-5 Access to polling stations*

General preparatory works: Section 16.4.2.

Section 9-5, *subsection 1* continues the requirement that the polling stations are suitable and accessible. This is presently stipulated in Section 8-3, *subsection 1* and Section 9-3, *subsection 2* of the current Election Act.

*Subsection 2*, which relates to the electoral committee being required to announce what polling stations will potentially not satisfy the requirements for suitability and availability, is a new addition. The requirement also entails that the municipality must give notice of specific deficiencies relating to the accessibility of the premises.

#### *For Section 9-6 Organisation of the polling stations*

General preparatory works: Sections 16.5.3.1 and 16.5.3.2.

The provision stipulates requirements for the organisation inside the polling station. This partly continues the requirements in Sections 26 and 30 of the Election Regulations, but sets stricter requirements for organisation than those stipulated in existing law. The municipality is obligated to organise polling stations in such a way that everyone is able to vote. Unlike the present situation, this should not simply be something that must be assigned weight.

However, for some voters with disabilities, it may be not be possible in practice to facilitate them being able to vote alone. They must then receive assistance to vote, cf. draft Section 9-7 relating to the right to assistance.

#### *For Section 9-7 Right to assistance*

General preparatory works: Section 16.5.3.3.

*Subsection 1, first sentence* of the provision does not continue the right to assistance as this is stated in Section 8-4, *subsection 8* and Section 9-4, *subsection 5* of the current Election Act. Pursuant to applicable law, persons who require assistance are entitled to receive such assistance when they vote. Requirements for physical or mental disabilities have been introduced for being entitled to assistance. However, people who are not covered by the right to assistance under this provision will be entitled to guidance from an election worker on how to vote. Such guidance will

not include assistance in the actual act of voting inside the polling booth. However, the election worker can provide guidance on how to vote inside the polling booth and then leave the polling booth to enable the person to vote in private.

*Subsection 1, second sentence* of the provision stipulates that a person who is entitled to assistance can him/herself decide whether he/she wants help from a returning officer or some other self-selected person. This is an amendment to existing law. Pursuant to the current Election Act, the returning officer must be inside the polling booth together with the voter and a self-selected assistant to ensure that the voter is not subjected to undue influence.

*Subsection 2* stipulates that the polling committee shall decide whether a person is entitled to assistance in instances in which a member of the polling committee or an electoral official at the polls is of the view that the person in question does not satisfy the requirements in the provision for receiving assistance. When deciding whether the eligible voter is entitled to assistance, any doubts must be to the benefit of the voter in question. For advance voting, it is sufficient that one of the returning officers is of the opinion that an eligible voter is entitled to assistance.

*For Section 9-8 Placement of the ballot papers*

The provision is new, but is only a codification of applicable practice.

*For Section 9-9 Voting outside the polling station*

This section continues existing law relating to the right to vote outside of the polling station. This is stipulated in Section 9-6 of the current Election Act. The right is extended to also apply when the voter votes in advance.

*For Section 9-10 Rules relating to public order*

General preparatory works: 14.3.

Section 9-10, *subsection 1* continues existing law that it is not permitted to influence voters on the premises where votes are cast. This is currently stipulated in Section 8-5, subsection 1 and Section 9-4, subsection 1 of the Election Act. The fact that the term “canvassing” has been replaced by “voter influence” does not entail any material change.

*Subsection 2* continues the prohibition against committing any actions that may disrupt the act of voting on election day. However, the prohibition is restricted to the actual polling station. The prohibition is also expanded to include polling stations that are used for advance voting.

*Subsection 3* continues the prohibition against unauthorised persons exercising control over who votes at the election. This is presently stipulated in Section 9-4, subsection 1, second sentence of the Election Act. The prohibition is also expanded to include polling stations that are used for advance voting. The prohibition against exit polls or similar questioning of voters at the election is not continued. However, such voter questioning must not disturb the conduct of the election.

*Subsection 4* continues existing law.

*Subsection 5* continues existing law that the chairperson and deputy chairperson of the polling committee may remove any person from the polling station who is behaving in a manner contrary

to the rules in this section. The provision is expanded in relation to existing law such that returning officers in polling stations used for advance voting are also permitted to remove persons acting in violation of the rules.

*For Section 9-11 Ballot boxes*

The section continues existing law in Section 8-4, subsection 9 and Section 9-4, subsection 6 of the current Election Act.

*For Section 9-12 Storage and transport of election materials*

The section continues existing law which is stipulated in Sections 9-8 of the current Election Act.

*For Section 9-13 Regulations*

*Subsection 1* relating to the Ministry being able to issue regulations for announcing the polling stations that do not comply with the requirements in the draft Section 9-5, subsection 1, is a new addition.

*Subsection 2* largely continues existing law which is stipulated in Sections 8-6 and 9-10 of the current Election Act. Pursuant to this provision, among other things, provisions may be stipulated regarding the forwarding of ballots cast and ballot papers from the polling committees at the polling stations to the central polling committee in the municipality.

Chapter 10. Approval of ballots cast and ballot papers, counting, keeping of the election protocol etc.

*For Section 10-1 Approval of ballots cast if the ballot paper is placed directly in a ballot box*

General preparatory works: Section 17.8.7.

The rules relating to approval of ballots cast in Sections 10-1 and 10-2 are largely a continuation of existing law, cf. Sections 10-1, 10-1 a and 10-2 of the current Election Act, with certain material amendments. Linguistic and structural amendments have also been made to the provision.

Section 10-1 must also be viewed in connection with the provisions that regulate how voters can vote, cf. Sections 6-5, 8-4 and 8-5. These provisions stipulate that the returning officer must place a cross beside the voter's name if the voter is included in the electoral register in the municipality and a cross has not already been placed beside the voter's name in the electoral register. The condition in Section 10-1, subsection 1 (b) and Section 10-2, subsection 1 (b) of the current Election Act that the voter has been given the opportunity to cast a vote, has not been continued. This condition is safeguarded by the returning officer stamping the ballot paper before the voter places this in the ballot box.

*For Section 10-2 Approval of ballots cast if the ballot paper is placed in a ballot paper envelope*

General preparatory works: Section 17.7.2, 17.7.3, 17.8.6.

This provision applies for ballots cast when the ballot paper is placed in a ballot paper envelope. Pursuant to the draft bill, the conditions for approving ballots cast when the ballot paper is placed

in a ballot paper envelope are the same for ballot papers cast in advance as for ballot papers cast on election day. This entails a material amendment to Sections 10-1 and 10-2 of the current Election Act, in which the conditions for approving ballots cast on election day when the ballot paper is placed in a ballot paper envelope are the same as for ballots cast where the ballot paper is placed directly in the ballot box.

The condition in Section 10-1, subsection 1 (c) of the current Election Act has not been continued.

*The final subsection* states that ballots cast in advance must, insofar as possible, be approved before the polling station opens. This is an amendment to existing law, which stipulates that they must be approved before election day.

#### *For Section 10-3 Approval of ballot papers*

The provision continues Section 10-3 of the current Election Act.

*Subsection 3* stipulates that if a *printed* ballot paper differs from the approved electoral list, it must be considered as identical to the list. The provision therefore does not apply to handwritten ballot papers. This was only discussed in the general preparatory works to the current Election Act cf. Proposition no. 45 (2001-2002) to the Odelsting, p. 208.

#### *For Section 10-4 Principles for the counting of ballot papers*

General preparatory works: Sections 17.8.1, 17.8.3 and 17.8.5.

The provision is partly new and partly a continuation of Section 10-4 of the current Election Act.

*Subsection 1, first sentence* stipulates that the district electoral committee, county electoral committee and electoral committee shall decide who will conduct the different counts, for example, the polling committees themselves or certain employed electoral officials, and how the ballot papers shall be counted (manual or machine counting). *The second sentence* states that the ballot papers must be counted twice and not three times, as is the case under current law. The provision also states that counting must be conducted using two methods that are actually independent of one another. The same persons or the same equipment cannot be used in both counts, cf. *third sentence*. If both the electoral committee and district electoral committee/county electoral committee wish to use the same persons or the same equipment, the provision states that the electoral committee must use different persons or different equipment for counting the ballot papers.

*Subsection 2, first sentence* entails that, as a general rule, ballot papers must be counted by polling station. This is a new requirement. The requirement does not apply for advance votes which have been received in other municipalities, i.e. that advance votes cast at locations other than the municipality where the voter is included in the electoral register must be counted as a whole in the municipality where the voters are included in the electoral register. *The second and third sentences* stipulate the instances in which the ballot papers can otherwise not be counted for each individual polling station.

*Subsection 3* is a continuation of Section 10-4, subsection 4 of the current Election Act.

*Subsection 4* states that everyone has the right to be present during the counting of the ballot papers. The same is stipulated in existing law for the instances in which the counting is carried out by the polling committee, electoral committee or county electoral committee, since the counting will then take place at a meeting that is open to the public pursuant to Section 11-5 of the Local Government Act. The provision entails that the count is public and ensures that the public has the right to be present at the count, irrespective of how it takes place. The premises where the votes are counted will need to set physical restrictions on the number of people who can be present during the count. The electoral committee can therefore set limits on the number of spectators out of consideration to the progress and safety of the count. The provision presupposes that such limits are reasonable and that access to the count is enforced in a neutral and impartial manner.

The provision in *subsection 5* is new. It entails that, for example, when the ballot papers have been counted per polling station for advance voting or per polling district on election day, the result of the count must be announced per polling station or polling district.

*For Section 10-5 Responsibility for counting advance voting ballot papers*

General preparatory works: Section 17.8.2.1.

The provision is partly new and partly a continuation of Section 10-4, subsection 1 and Section 10-9, subsection 1 of the current Election Act.

The provision in *subsection 1* is new. The provision stipulates that it is the central polling committee that is responsible for the first count of advance ballot papers. The central polling committee does not have to count the ballot papers itself, cf. the draft Section 10-4, subsection 1.

*Subsections 2, 3 and 4* stipulate who is responsible for the final count of advance voting ballot papers at parliamentary elections, county council elections and municipal council elections.

*For Section 10-6 Responsibility for counting polling day ballots*

General preparatory works: Section 17.8.2.2.

The provision is partly new and partly a continuation of Section 10-4, subsection 1 and Section 10-9, subsection 1 of the current Election Act.

The provision in *subsection 1* is new. *The first sentence* states that the general rule is that it is the polling committee at each polling station that is responsible for the first count of polling day ballots. However, the polling committee can still decide that the ballot papers shall not be counted at the individual polling stations, cf. *second sentence*. In this case, pursuant to the *third sentence*, the central polling committee will be responsible for the first count.

*Subsection 2* regulates the counting of ballot papers that are approved pursuant to Section 10-8, subsection 2.

*Subsections 3, 4 and 5* stipulate that the district electoral committee, county electoral committee and electoral committee are responsible for the final count at parliamentary elections, county council elections and municipal county elections respectively.



*For Section 10-7 First Count*

General preparatory works: Section 17.8.4.

The provision is partly new and partly a continuation of Section 10-5 of the current Election Act.

With certain linguistic changes, *subsection 1, first sentence* is a continuation of Section 10-5, subsection 1, first part of the first sentence of the current Election Act. The provision stipulates the latest point at which the counting of ballot papers from advance voting must commence, cf. however there are exceptions in the second sentence.

The *second sentence* stipulates that the counting of advance voting ballot papers can start the day before election day at the earliest, i.e. that counting cannot start earlier than the Sunday before election day. This is a change in relation to the current Election Act, which is interpreted such that the preliminary count cannot start until election day.

*Subsection 2* includes provisions intended to ensure that the principle of a secret ballot is not violated when counting advance votes. The provisions are necessary because advance votes cast outside the municipality may arrive at the municipality after counting has started. The provisions clarify how the principle of a secret ballot in Section 10-5, subsection 1, second part of the first sentence of the current Election Act and Section 37 of the Election Regulations shall be safeguarded.

*Subsection 3* is a continuation of Section 10-5, subsection 2 of the current Election Act.

*For Section 10-8 Approval of ballots cast when the ballot paper has been placed in a ballot paper envelope, and approval of doubtful ballot papers*

General preparatory works: Section 17.8.6.

If the voter casts an advance ballot in a different municipality to where the voter resides, the ballot paper must be placed in a ballot paper envelope and then placed in a cover envelope. The same must occur in certain other instances, for example, if the voter has a secret address or votes externally in a polling district with a hardcopy electoral register. *Subsection 1* states that it is the central polling committee that decides whether such ballots shall be approved. Pursuant to *subsection 2*, the central electoral committee shall decide whether ballot papers from approved ballots cast and when a ballot paper envelope was used, shall be approved and whether doubtful ballot papers that have been set aside, shall be approved.

*For Section 10-9 Forwarding of material to the Electoral Committee*

Applicable law does not regulate the forwarding of election materials to the electoral committee in connection with municipal council elections. Pursuant to the Commission's proposal, cf. Section 10-5, subsection 1 and Section 10-6, subsection 1, the local polling committees and the central polling committee are responsible for the first count of the ballot papers. The electoral committee is responsible for the final count at municipal council elections. The Commission therefore proposes to regulate the forwarding of election materials from the polling committees at the polling stations and the central polling committee to the electoral committee in connection with municipal council elections in the same manner as for forwarding election materials to the district electoral

committee and county electoral committee at parliamentary elections and county council elections. Reference is made to the remarks to the draft Section 10-11.

*Subsection 2, first sentence* states that the ballot papers must be sorted as corrected and uncorrected ballot papers. This is due to checks of preferential votes.

*For Section 10-10 Control and final count at municipal council elections*

General preparatory works: Section 17.8.2

With one material exception, the section otherwise continues the provisions in Section 10-6 of the current Election Act.

*Subsection 4* stipulates that if the electoral committee finds errors in decisions to approve or reject ballots cast or ballot papers, the electoral committee shall correct such errors. This is new in relation to existing law.

*For Section 10-11 Forwarding of material to the District Electoral Committee and County Electoral Committee*

General preparatory works: Section 17.8.9

The provision is partly new, but also largely continues the provisions in Section 10-8 of the current Election Act.

For parliamentary elections, the electoral committee shall send the materials referred to in *subsection 1* to the district electoral committee. The same materials must be sent to the county electoral committee for county council elections, the The provision in Section 10-8, subsection 1 (c) of the current Election Act that all polling cards from advance voting need to be sent has not been continued.

The polling committee's election protocol in *subsection 1 (d)* includes both the protocol of the polling committee at each of the polling stations in the municipality and the central polling committee in the municipality. For pedagogical reasons this has still been specified in the wording of the Act.

A new addition in relation to existing law is that ballot papers that have been set aside as doubtful must be sorted separately, cf. *subsection 2, second sentence*. This must be done to ensure that there is a genuine check of whether the central polling committee has undertaken a correct assessment of the doubtful ballot papers, cf. Section 10-12, subsection 4.

*Subsection 3* is largely a continuation of existing law. However, some linguistic changes have been made to the provision to emphasise the requirement in the Act that election materials must be sent in a safe manner. The electoral committee cannot send the election materials using the quickest method if this is not deemed safe.

*For Section 10-12 Check and final count for parliamentary elections and county council elections*

General preparatory works: Section 17.8.2

The section continues the provisions in Section 10-9, subsection 1 of the current Election Act relating to checks conducted by the county electoral committee at parliamentary elections and county council elections and Section 10-6, subsection 4 relating to the registration of corrections made to ballot papers, with the exception that the county electoral committee's authority at parliamentary elections has now been assigned to the district electoral committee.

*For Section 10-13 Election protocol*

The provision is a continuation of the contents of Section 10-7 of the current Election Act relating to the keeping of the election protocol, albeit with certain adjustments resulting from the establishment of a district electoral committee for parliamentary elections and a central polling committee in the municipality for all elections. The term *polling committee* in the provision includes both the polling committees at the polling stations and the central polling committee.

*For Section 10-14 Regulations*

General preparatory works: Section 17.8.3

The provision is a continuation of Section 10-10 of the current Election Act. Among other things, this entails that the Ministry can issue regulations with rules for how discrepancies between the counting of ballot papers is to be managed and requirements for keeping the election protocol.

## Chapter 11. Allocation of seats and returning of members

Chapter 11 has been partly restructured. The rules for parliamentary elections are stated first. Sections 11-1 to 11-3 concern constituencies and the allocation of seats between these. These are provisions that are relevant prior to a parliamentary election. The final result of parliamentary elections is regulated in Sections 11-4 to 11-13. There are extensive changes to the bodies that are responsible for the various tasks associated with parliamentary elections. The district electoral committee is a new body and takes over the county electoral committee's responsibility under current law for determining the election result at parliamentary elections. For the National Electoral Committee to also serve as the appeal body regarding election results for seats at large, the tasks relating to the allocation and returning of members for the seats at large have been assigned to the Ministry.

Following this are the rules for county council elections and municipal county elections. The county council and municipal council are elected directly from the county and the municipality respectively. Determining the election result for county council elections is regulated in Sections 11-14 to 11-18, while Sections 11-19 to 11-23 concern the election result for municipal council elections.

*For Section 11-1 Constituencies for parliamentary elections*

General preparatory works: Section 5.2.8

The provision is partly new and partly a continuation of Section 11-1 of the current Election Act. *Subsection 2* is new and is equivalent to Section 41 a of the Election Regulations. This provision lists the municipalities that make up the constituencies. The number of constituencies and the division of these form the basis for the allocation of seats that must take place pursuant to the new

Section 11-3. It is also these constituencies that shall be used at the election. This provision must be updated with all decisions pertaining to the constituencies and with any changes to municipality names that have occurred before the allocation of seats takes place pursuant to Section 11-3.

*For Section 11-2 Number of members of the Storting*

General preparatory works: Section 5.5.6

The provision is a continuation of Section 11-2 of the current Election Act. The difference between direct seats that are elected from each constituency and seats at large that are elected based on the number of votes polled from the entire country is a consistent theme in the chapter.

*For 11-3 Number of seats in the Storting from each constituency*

General preparatory works: Sections 5.4.7 and 5.5.6, cf. Appendix 7.

The provision replaces Section 11-3 of the current Election Act and there are several amendments to existing law.

*Subsection 1* stipulates that the allocation of seats in the Storting shall take place before *each* parliamentary election, not every eight years as stipulated in existing law. The allocation shall therefore take place every four years. The allocation is based on the constituency structure stipulated in Section 11-2, subsection 2 and changes to the constituency boundaries must therefore be approved before a new allocation of seats takes place in order to come into effect at the next parliamentary election.

A requirement has also been included that all constituencies must have a minimum of four seats. Since all constituencies must have one seat at large, cf. Section 11-1, this means that each constituency must have a minimum of three direct seats.

*Subsections 2 and 3* address the general rule for allocating seats between the constituencies and is an amendment to existing law. Subsection 2 stipulates that each constituency must first be allocated one seat. Subsection 3 concerns the allocation of the remaining seats. Surface area has been removed from the calculation used to allocate seats and this is therefore an amendment to existing law. The allocation is carried out using the Sainte-Laguë method. Unlike when determining the election result, in this case the “pure” Sainte-Laguë method shall be used, i.e. the first divisor is 1. This is a continuation of existing law. The number of inhabitants will continue to be used as the basis for the calculation. By inhabitants is meant the number of people who are registered as residents in the constituency and the number is based on information from the central population registry.

*Subsection 4* continues existing law regarding how to manage a situation in which two or more constituencies have the same quotient and possibly the same number of inhabitants.

*Subsection 5* explains what is required to ensure the minimum requirement that all constituencies have four seats. If, following the allocation, a constituency has less than four seats in total, this constituency must be removed from the allocation. The constituency will then receive the number of seats required for the constituency to have a total of four seats. There must then be a new

allocation of seats pursuant to subsection 2, 3 and possibly 4, for the other constituencies that does not include this constituency and its four seats.

*Subsection 6* largely continues existing law, but the Ministry's duty to announce the calculation is specified. This is linked together with the introduction of a right to appeal the allocation of seats between the constituencies.

*For Section 11-4 Allocation of the directly elected seats at parliamentary elections*

General preparatory works: Sections 5.5.6 and Appendix 7.

The provision regulates how the direct seats are allocated between the lists and largely continues Section 11-4, subsections 2 and 3 of the current Election Act, albeit with some linguistic changes.

*For Section 11-5 Returning of the directly elected members at parliamentary elections*

General preparatory works: Sections 7.9.1 and Box 7.1.

*Subsections 1, 2 and 4* of the provision continue parts of Section 11-5 of the current Election Act. *Subsection 3* is new, and is the result of the introduction of a new preferential voting system at parliamentary elections. The members are returned according to the number of preferential votes they have received and the increased share of the poll that is given. If no candidates have received preferential votes or if multiple candidates have received an equal number of preferential votes, the order in which the candidates are listed on the ballot paper will determine who is elected.

*For Section 11-6 Announcement of the election result at parliamentary elections*

General preparatory works: Section 20.4.3.4

This provision is new. The election result must be announced as soon as possible, and the announcement will have implications for when the deadline for appealing the election result will expire. The starting point for what must be announced will be the information in the district electoral committee's minute book. The election result involves both determining the number of members each list shall have and returning the members elected from each list.

*For Section 11-7 The district electoral committee's forwarding of information to the Storting and the Ministry*

*Subsection 1* is a continuation of Section 10-7, subsection 3, with the clarification that the copy must be sent to the Ministry instead of the National Electoral Committee. This is because responsibility for allocating the seats at large has been transferred from the National Electoral Committee to the Ministry.

*Subsection 2* is new and relates to the change to the appeals system. A copy of the election result must be sent as soon as possible together with the appeals that have been received up until that time. Appeals that are subsequently received and the assessment of these must be forwarded on.

*For Section 11-8 Allocation of seats at large between the parties at parliamentary elections*

General preparatory works: Sections 5.6.7 and Appendix 7.

The provision largely continues existing law, cf. Section 11-6 of the current Election Act, albeit with certain material amendments. The provision only concerns the allocation of the seats at large between the parties. The rules for the constituencies in which the parties shall receive their seats at large have been moved to a separate provision in Section 11-9.

*Subsection 1* states that it is now the Ministry that allocates the seats at large, instead of the National Electoral Committee. This relates to the role of the National Electoral Committee in the appeals process.

*Subsection 2* regulates the parties that can receive seats at large. The electoral threshold has been reduced from four to three per cent. However, the starting point for calculating the electoral threshold has been continued and is the approved ballot papers. This means that blank ballot papers are not included. Furthermore, a new requirement has been introduced for being able to receive seats at large. In addition to being registered in the Register of Political Parties, the party must have submitted lists in all of the country's constituencies.

*Subsections 3 to 5* continue existing law. The provision in subsection 5 shall take into consideration that the arrangement for seats at large does not adjust for the fact that parties may have received more direct seats than what they would have received if the entire country was a constituency. This procedure may have to be repeated before determining the correct allocation.

*For Section 11-9 Allocation of seats at large between the constituencies at parliamentary elections*

General preparatory works: Section 5.6.7

The provision largely continues existing law, cf. Section 11-6 of the current Election Act. *Subsection 1* stipulates that it is now the Ministry that allocates seats at large to the constituencies, instead of the National Electoral Committee. This relates to the role of the National Electoral Committee in the appeals process. The remainder of the provision continues existing law.

*Section 11-10 Returning of seats at large at parliamentary elections*

General preparatory works: Section 5.6.7

The provision largely continues existing law, cf. Section 11-7 of the current Election Act, albeit with certain linguistic changes. The provision stipulates that it is the Ministry that returns the members who are elected through the seats at large system. This relates to the role of the National Electoral Committee in the appeals process. The seats at large are returned in accordance with the same rules as the directly elected seats. If a party has already had a member elected from the constituency, the first alternative will be assigned the seat at large. A new candidate from the list will then move up and become the alternate member.

*For Section 11-11 Announcement of seats at large at parliamentary elections*

General preparatory works: Section 20.4.3.4

This provision is new. The announcement requirement entails that the names of the candidates who receive seats at large, the constituencies in which they receive seats and their party affiliation must be announced. The figures that form the basis for the calculation and allocation of the seats at large to the constituencies must also be announced. This relates to the introduction of a right to appeal the allocation of seats at large between the constituencies. The announcement must be made as soon as possible and will be of significance to the deadline for appealing the allocation and the returning of the seats at large.

*For Section 11-12 Credentials for the members returned to the Storting*

The provision continues Section 11-8 in the current Election Act, albeit with certain exemptions. Responsibility for the credentials is transferred to the Ministry. This relates to the Ministry's new responsibility for the seats at large. Since the returning of the seats at large will be of importance to the candidates that are elected as members and alternate members from the different constituencies, it is practical to continue the provision that the credentials of all members and alternate members are issued together. The credentials are issued per constituency.

*For Section 11-13 Information to the members returned to the Storting*

General preparatory works: Section 11.3.4.1.

The provision largely continues existing law, cf. Section 11-9 of the current Election Act, albeit with certain amendments. *Subsection 1* states that the Ministry has assumed responsibility for issuing credentials to the returned members. *Subsection 2* has been amended following the introduction of an unconditional right to exemption from inclusion on an electoral list prior to the election. The option to apply for an exemption from election following the election has therefore been removed. For candidates who are elected from more than one constituency, subsection 2 also clarifies that notification of the election which is received must be sent to all district electoral committees that are affected.

*Section 11-14 Allocation of seats at county council elections*

General preparatory works: Section 6.3.

The provision continues Section 11-10, subsection 1 of the current Election Act, albeit with certain linguistic changes. The rules for returning candidates have been moved to a separate provision (Section 11-15).

*For Section 11-15 Returning of the elected members at county council elections*

General preparatory works: Sections 7.9.2 and Box 7.1.

With the exception of subsection 3, the provision is a continuation of existing law, cf. Section 11-10, subsections 2 to 4 of the current Election Act, however certain linguistic changes have been made.

*Subsection 3* entails a change to the preferential voting system for county council elections. The preferential voting system that has been introduced is equivalent to the preferential voting system that currently applies for municipal council elections, with the exception of cross-party votes. There are no restrictions on the number of candidates who can receive an increased share of the poll at

county council elections. Candidates are returned according to the number of preferential votes they have received, when consideration has been made to the increased share of the poll that has been given. If no candidates have received preferential votes or if multiple candidates have received an equal number of preferential votes, members are returned in the order in which they appear on the ballot paper.

*For Section 11-16 Information to the members returned to the county council*

The provision continues Section 11-11 of the current Election Act, albeit with some linguistic changes.

*For Section 11-17 Announcement of election result at county council elections*

*General preparatory works: Section 20.4.3.4*

This provision is new. The election result must be announced as soon as possible, and the announcement will have implications for when the deadline for appealing the election result will expire. The starting point for what must be announced will be the information in the county electoral committee's minute book.

*For Section 11-18 The county electoral committee's forwarding of information to the county council*

The provision is essentially a codification of applicable practice, but it is now the assessment of the appeals by the National Electoral Committee, and not the Ministry, that must be enclosed. This relates to the change in the appeals system.

*For Section 11-19 Allocation of seats at municipal council elections*

*General preparatory works: Section 6.2 and Box 7.1.*

The provision continues Section 11-12, subsection 1 and Section 7-2, subsection 3, final sentence of the current Election Act, albeit with certain linguistic changes. The rules for the returning of members have been moved to a separate provision (Section 11-20). The provision continues the principles for calculating the total vote polled by each list, which is of key importance when allocating the seats. Cross-party votes for candidates who are not eligible for election must be kept outside of the election result and are not included in the allocation of seats between the lists.

*For Section 11-20 Returning of members elected at municipal county elections*

*General preparatory works: Section 7.9.3*

The provision continues, albeit with some linguistic changes, existing law that is currently stipulated in Section 11-12, subsections 2 to 4 of the Election Act. Preferential votes both take the form of a cross beside the candidate's name on the list and cross-party votes from other lists, cf. draft Section 9-4, as well as an increased share of the poll from the list proposers, cf. draft Section 5-3.

*For Section 11-21 Information to the members of the municipal council returned*

The provision continues, albeit with some linguistic changes, Section 11-12 of the current Election Act.



*For Section 11-22 Announcement of the election result at municipal council elections*

General preparatory works: Section 20.4.3.4

This provision is new. The election result must be announced as soon as possible, and the announcement will have implications for when the deadline for appealing the election result will expire. The starting point for what must be announced will be the information in the electoral committee's minute book.

*For Section 11-23 The electoral committee's forwarding of information to the municipal council*

The provision is essentially a codification of applicable practice, but it is now the assessment of the appeals by the National Electoral Committee, and not the Ministry, that must be enclosed. This relates to the change in the appeals system.

## Chapter 12. Election by majority ballot in the case of elections to the municipal council

Pursuant to the draft Section 3-4, persons included on a list proposal have the right to be exempt from appearing on the list if they provide written notification of this. This rule is not applicable for election by majority ballot because such elections do not have a list proposal that someone may request an exemption from inclusion on. It is also not applicable to introduce a rule that persons who are elected at elections by majority ballot can request an exemption from election. This is because such a solution may result in there not being a fully constituted municipal council.

*For Section 12-1 When an election by majority ballot shall be held*

General preparatory works: Section 6.3.3.

This is a continuation of Section 12-1 of the current Election Act, albeit with some linguistic changes.

*For Section 12-2 How voters can vote*

General preparatory works: Section 6.3.3.

This is a continuation of Section 12-2 of the current Election Act, albeit with some linguistic changes.

*For Section 12-3 Election result*

General preparatory works: Section 6.3.3.

This is a continuation of Section 12-3 of the current Election Act, albeit with some linguistic changes.

## Chapter 13. Approval

*For Section 13-1 Approval of parliamentary elections*

General preparatory works: Sections 20.4.2, 21.4.1, 21.4.2 and 21.4.3.

*Subsections 1 and 2* continue existing law that it is the newly returned Storting that shall decide whether the parliamentary election is valid, and that the Storting shall ensure that any errors are corrected insofar as this is possible, cf. Section 13-3, subsections 1 and 2 of the current Election Act. However, see Section 14-11, subsection 4, pursuant to which the National Electoral Committee can declare the parliamentary election invalid.

*Subsection 3 (a)* is largely a continuation of the provision in Section 13-3, subsection 3 of the current Election Act. There are some linguistic changes, as well as certain material amendments. The condition that there is a *preponderance of probability* will be satisfied if it is more probable than not that the errors committed have influenced the election result. The condition that the error must have influenced *the overall allocation of seats between the lists*, entails that the election cannot be declared invalid if the allocation of seats between the lists is correct. This applies even if there is a preponderance of probability that an error has occurred that has resulted in incorrect persons from a list being elected, i.e. that there has been an error relating to the returning of members. For parliamentary elections, the allocation of the directly elected seats and seats at large must be viewed in context. The condition is not satisfied as long as each party has, on the whole, received the correct number of seats in the Storting, even though some parties have been assigned seats in different constituencies to what they would have received if the errors had not been committed.

An example can illustrate the content of this provision. At the parliamentary election, Party A received a nationwide total of 31 seats - 30 direct seats and 1 seat at large. Party B received 7 direct seats. Various errors were made during the election and there is a preponderance of probability that the errors resulted in Party A having received one less direct seat, and Party B having received one seat too many. However, with a new allocation of the seats at large based on the new allocation of direct seats, Party A loses its seat at large, while Party B gains one. Therefore, on the whole, the parties would have received the same total number of seats even if the errors had not occurred. In an instance such as this, the condition that the errors must have influenced the overall allocation of the seats between the lists will not be satisfied.

If an error is made that affects a list that is not from a registered political party, the assessment of whether the allocation of seats has been influenced must be made for each constituency, even if several different lists used the same heading on the electoral list.

*Subsection 3 (b)* is new. The provision applies when the objective conditions in Sections 151 to 154 of the Norwegian Penal Code have been satisfied. It is not a requirement that the subjective conditions for criminality must exist, i.e. subjective guilt and capability for guilt (sanity).

*Subsection 3 (c)* covers cumulation of (a) and (b).

*Subsection 4* stipulates that parliamentary elections may only be declared invalid in the municipalities where there is a preponderance of probability that the illegal circumstances, cf. subsection 3 (a) and (b), influenced the distribution of votes to the different lists.

*Subsection 5* stipulates that a new election must be held in the municipalities where the Storting declared the election invalid. This can occur without it being necessary for the Storting to hand down a separate decision regarding this. Pursuant to applicable law, the Storting may, in special cases, order a new election in the entire constituency, even if the error does not apply to all of the municipalities in the county. This provision has not been continued.

*Subsection 6* is new.

*For Section 13-2 Approval of county council elections*

General preparatory works: Sections 20.4.2, 21.4.1, 21.4.2 and 21.4.3.

*Subsection 1* continues the provision in Section 13-4, subsection 1 of the current Election Act that it is the newly returned county council that decides whether the election is valid, cf. however see Section 14-11, subsection 1, pursuant to which the National Electoral Committee may declare the election invalid.

*Subsection 2* is new. The provision stipulates that the county council cannot hand down a decision on whether the election is valid until the appeal process has concluded. This means that the county council must wait until the appeal deadline has expired and, if appeals have been received, a decision cannot be made until the National Electoral Committee has completed its appeal process. This subsection also states that if the National Electoral Committee has found that the election is invalid, the county electoral committee cannot hand down a decision that the election is valid.

*Subsection 3* is new and clarifies part of what is assumed to follow from principles in general administrative law and the system for the Election Act, cf. Proposition no. 45 (2001–2002) to the Odelsting, p. 283.

With one exception, *subsection 4* is identical to Section 13-1, subsection 3. For county council elections, all members are elected directly. There are no seats at large and only one constituency. Therefore, the issue to be assessed at county council elections is whether there is a preponderance of probability that the errors committed influenced the allocation of the seats between the lists in the county, not the overall allocation between the lists in the entire country, which is the case for parliamentary elections. Reference is otherwise made to the remarks to Section 13-1, subsection 3.

*Subsection 5* is new. This provision states that the county council is bound by decisions handed down by the National Electoral Committee in appeal cases, cf. subsection 2. This entails that if the National Electoral Committee has considered an appeal from a voter regarding the conduct of the election, the county council must accept the National Electoral Committee's assessment of whether the election is invalid as a result of the factual circumstances. The county electoral committee cannot review the National Electoral Committee's assessment of the matter that was appealed.

*Subsection 6* stipulates that county council elections may only be declared invalid in the municipalities where there is a preponderance of probability that the illegal circumstances have influenced the allocation of votes to the different lists.

*Subsection 6* is new. The county council must notify the National Electoral Committee if the county council declares the election in one or more municipalities to be invalid, cf. Section 15-1, subsection 2, which states that the National Electoral Committee shall decide whether a new election shall be conducted.

*For Section 13-3 Approval of municipal council elections*

The section is identical to Section 13-2, with the exception of Section 13-2, subsection 6, which is not applicable for municipal council elections. Reference is therefore made to the remarks to Section 13-2.

## Chapter 14. Appeal

*For Section 14-1 What may be appealed*

General preparatory works: Section 20.4.3.4

The section continues what can be appealed pursuant to Section 6-8, 13-1, subsection 1 and Section 13-2, subsection 1 of the current Election Act. In addition, the draft bill entails a significant expansion in terms of what can be appealed.

Pursuant to *Section 14-1 (a)*, an appeal can be brought for breach of *all* the provisions in the Constitution relating to elections, and breach of *all* the provisions in the Election Act and Election Regulations relating to how elections shall be *prepared and conducted*. Section 14-1 (a) therefore provides a legal basis on which to also appeal matters that are referred to in (c) and (d). These provisions are therefore essentially unnecessary. However, they have been included for pedagogical reasons. With regard to appeals of the Ministry's allocation of seats in the Storting to the constituencies, this will come under (a).

With regard to *Section 14-1 (b)*, reference is made to the remarks to Section 13-1, subsection 3 (b).

*Section 14-1 (c)*, which states that appeals can be brought regarding the election result determined by the district electoral committee, county electoral committee and electoral committee, cf. Sections 11-4, 11-5, 11-14, 11-15, 11-19 and 11-20, is a continuation of existing law.

(d) is new. The provision permits appeals of decisions handed down by the Ministry relating to how the seats at large shall be allocated between the parties and constituencies, cf. Sections 11-8 to 11-10.

The provisions in *Section 14-1, (e) to (g)* are also new. These provisions permit appeals of decisions by the Storting, county council or municipal council, cf. Sections 13-1 to 13-3, to declare an election valid, or possibly invalid.

*For Section 14-2 Parliamentary elections. Who can appeal against errors relating to the preparation and conduct of elections etc.*

General preparatory works: Section 20.4.3.5

The provision is partly new and partly a continuation of Section 13-1, subsection 1 and Section 6-8 of the current Election Act.

*Section 1, first sentence* states that appeals can be brought against matters referred to in Section 14-1, (b) to (c). Appeals being able to be brought against matters referred to in (a) and (c) is a continuation of Section 13-1, subsection 1, first sentence of the current Election Act. The reference to (b) clarifies that it is also possible to appeal that the *objective conditions* in Sections 151 to

154 of the Norwegian Penal Code have been satisfied. See the remarks to Section 13-1, subsection 3 (b). The *second sentence* is a continuation of applicable law.

*Subsection 2* is new.

*Subsection 3* is new in that the lists are granted the right to appeal as a list. Pursuant to applicable law, the right of appeal is reserved for persons who are eligible to vote. The right of appeal includes circumstances that occur both in the municipalities in the constituency and at constituency level. Section 5-6, subsection 4 states that it is the representation committee for the list that can appeal under this subsection.

The provision in *subsection 4* is new. Appeals pursuant to this subsection must be brought by the central authority of a registered political party, i.e. the executive body of the party, cf. Section 3, subsection 2 (b) of the Political Parties Act.

*Subsection 5* continues Section 6-8 of the current Election Act. Appeals pursuant to this subsection must be brought by the central authority of a registered political party, cf. Proposition no. 45 to the Odelsting (2001–2002) p. 239.

*For Section 14-3 County council elections. Who can appeal against errors relating to the preparation and conduct of elections etc.*

General preparatory works: Section 20.4.3.5

The provision is partly new and partly a continuation of Section 13-2, subsection 1 and Section 6-8 of the current Election Act.

The section is identical to Section 14-2, which concerns parliamentary elections, with the exception of Section 14-2, subsection 4, which is not applicable for county council elections. Reference is therefore made to the remarks to Section 14-2.

*For Section 14-4 Municipal council elections Who can appeal against errors relating to the preparation and conduct of elections etc.*

General preparatory works: Section 20.4.3.5

The provision is partly new and partly a continuation of Section 13-2, subsection 1 and Section 6-8 of the current Election Act.

The section is identical to Section 14-2, which concerns parliamentary elections, with the exception of Section 14-2, subsection 4, which is not applicable for municipal council elections. Reference is therefore made to the remarks to Section 14-2.

*For Section 14-5 Who may appeal the approval of an election*

General preparatory works: Section 20.4.3.5

The provision is new and introduces a right to appeal decisions by elected bodies regarding whether an election is valid.

*Subsection 1* regulates the right of appeal in connection with parliamentary elections. The general rule is that the lists that have submitted lists for the election are permitted to appeal. Section 5-6, subsection 4 stipulates who can appeal on behalf of the list. Candidates who have stood for election also have the right to appeal, but only if the grounds for the appeal are that the list has received too few seats. It is thus not possible to appeal the approval of the election if the incorrect person has been elected. This is due to the fact that the requirement for a new election relates to errors that influence the allocation of seats between the lists. Further conditions for the right of appeal are stipulated in subsection 4.

*Subsections 2 and 3* apply to the right of appeal for municipal council elections and county council elections and, in terms of content, are identical to subsection 1. Reference is therefore made to the remarks to this subsection.

*Subsection 4* stipulates that the right of appeal is conditional upon the complainant having a genuine need, on his/her own behalf, for having the appeal decided. This is therefore a specific regulation of the legal interest, which takes precedence ahead of the provisions in the Public Administration Act and Dispute Act relating to legal interest. Subsection 4 stipulates that a list can only appeal that the list in question was affected by the asserted error. It is thus not possible to appeal on behalf of other lists.

The right of appeal for candidates has been similarly restricted. It can only be appealed that an error has affected the seat the candidate would have received. If it is asserted that an error has resulted in a list having received one less seat, only the candidate that would have received this seat has an individual right of appeal. A candidate further down on the list will not be able to appeal this matter.

#### *For Section 14-6 Appeal deadlines*

General preparatory works: Section 20.4.3.6.

The provision is partly new and otherwise replaces Section 13-1, subsection 2, Section 13-2, subsection 2 and Section 6-8 of the current Election Act. The general appeal deadline has been changed to four days, but for some appeals the appeal deadline is still seven days.

*Subsection 1* states that the appeal deadline is four days, calculated from election day, unless otherwise stipulated in subsection 2 to 7. The appeal deadline will therefore generally be the Friday after election day.

*Subsection 2* is new and applies to appeals regarding the allocation of seats in the Starting to the constituencies.

*Subsection 3* applies to appeals regarding the approval of list proposals and continues existing law.

*Subsection 4* applies to appeals of decisions relating to corrections to the electoral register. The appeal deadline of seven days is continued for these appeals, however the appeal deadline will start to run from when notice of the decision was received by the complainant, not from the election day, which is what applies under existing law.

*Subsection 5* applies to appeals of the election result. This includes both appeals of the allocation of seats between the lists and appeals regarding the returning of candidates. The appeal deadline has been changed to four days from when the election result is announced.

*Subsection 6* is new and applies to the allocation of the seats at large. This subsection therefore only applies to parliamentary elections.

*Subsection 7* is new and sets a seven day deadline for appealing decisions on whether an election is valid.

*For Section 14-7 Requirements for the appeal*

General preparatory works: Sections 20.4.3.3 and 20.4.3.6.

The provision is partly new and replaces Section 13-1, subsection 3 of the current Election Act.

*Subsection 1* stipulates that the appeal must be in writing, which is in accordance with applicable law. It stipulates that the appeal must also state the factual circumstances on which the appeal is based (the grounds for the appeal). This has not previously been legislated. Appeals may be submitted electronically.

*Subsections 2 and 3* stipulate who the appeal must be submitted to. Appeals must be submitted to the electoral committee in the municipality where the matter being appealed has occurred. If a decision is being appealed, the appeal must still be submitted to the body that handed down the decision.

*Subsection 4* regulates instances in which there is an appeal of a matter that may be of significance to both the county council election and municipal council election. In this case, the appeal shall be considered to be an appeal of both elections. In practice, it may be that matters relating to the election in a municipality will also be of significance to the county council election. The electoral committee must then inform the county electoral committee of the appeal.

*Subsection 5* stipulates that the appeal shall be deemed to have been received in time if it *has been received* by the electoral committee, the body that handed down the appealed decision, the appellate instance, the Ministry, the Norwegian Directorate of Elections, or the Administration of the Storting before the appeal deadline has expired. It is not sufficient that the appeal has been posted in time. If the appeal has been sent to the incorrect body, it must immediately be sent to the correct body.

*Subsection 6* is new and regulates how an appeal against a decision by the Storting on whether an election was valid must be submitted. The Supreme Court is the appellate instance and in order to appeal a decision by the Storting on whether an election is valid, an action must be brought against the Storting. The standard rules for hearing cases in the Supreme Court shall apply insofar as these are applicable.

*For Section 14-8 Procedure of the body that the appeal is submitted to*

General preparatory works: 20.4.3.3.

*Subsection 1, first sentence* states that if the appeal concerns a decision, the body that handed down the decision must reverse the decision if the body agrees with the appeal. *The second sentence* further states that if the body that handed down the decision does not agree with the appeal, it must send the appeal to the appellate instance together with its assessment of the appeal. A new addition is that this is specified in the Election Act, but existing law stipulated in Section 33, subsection 2 and 4 of the Public Administration Act shall apply for individual decisions.

*Subsection 2* applies to appeals against matters that are not decisions. If the electoral committee agrees with the appeal, the matter must, if possible, be remedied, cf. first sentence. Pursuant to *subsection 2*, the electoral committee must send the appeal to the National Electoral Committee together with its assessment of the appeal if the electoral committee disagrees with the appeal or if it is not possible to remedy the situation.

Pursuant to Section 33, paragraph two, third sentence of the Public Administration Act, the subordinate instance shall dismiss an appeal if the conditions for considering the appeal are not fulfilled. The provision applies to individual decisions. *Subsection 3* states that this shall not apply for appeals of individual decisions pursuant to the Election Act. Such appeals shall instead be sent to the appellate instance together with the grounds for why the appeal must be dismissed. Furthermore, appeals that are not appeals of individual decisions must be sent to the appellate instance, even if the conditions for considering the appeal are not satisfied, cf. draft Section 14-11, subsection 1, which states that the National Electoral Committee must dismiss the appeal in such instances.

*Subsection 4* states that the appeal must be considered *without undue delay*. With regard to the content of this term, see Proposition no. 75 (1993–94) to the Odelsting: *The Act relating to amendments to the Public Administration Act etc.*, p. 59.

*Subsection 5* stipulates that the section does not apply to appeals of decisions by the Storting on whether an election is valid. The draft Section 14-12 applies here.

#### *For Section 14-9 Appellate instances*

General preparatory works: Section 20.4.3.3.

The section regulates the bodies that consider the different appeals at the different elections. Most of the content is new.

*Subsection 1* states that it is a plenary session of the Supreme Court shall decide appeals against decisions by the Storting on whether a parliamentary election was valid. The National Electoral Committee decides all other appeals relating to parliamentary elections, county council elections and municipal council elections, cf. *subsection 2*. This is new, despite the fact that, pursuant to the current Election Act, the National Electoral Committee decides on appeals relating to parliamentary elections. However, the Commission's proposal for the composition of the National Electoral Committee differs considerably from how the National Electoral Committee shall be composed under existing law.

Pursuant to *subsection 3*, decisions by the National Electoral Committee cannot be brought before the courts. There is also not currently a right to bring decisions by the appeal body before the



courts, cf. Section 13-2, subsection 4, final sentence of the current Election Act. The Supreme Court considers appeals regarding the validity of decisions by the Storting on whether an election was valid, cf. subsection 1.

*For Section 14-10 Administrative procedures of the National Electoral Committee*

General preparatory works: Section 20.4.3.3.

This provision is new.

*Subsection 1, first sentence* states that the National Electoral Committee hands down decisions based on the written submissions it has received from the complainants and electoral authorities. The hearings are generally held in camera, i.e. no one other than the members of the National Electoral Committee, and possibly someone from the secretariat, shall be present during the discussion and the appeal decision. However, pursuant to the *second sentence*, the National Electoral Committee may decide that it can be open to the public. Pursuant to the *third sentence*, the National Electoral Committee can consent to the complainants or electoral authorities being permitted to present their views at an oral hearing. The condition for holding such hearings is that there are *special grounds* for this. This may, for example, be if there are circumstances that will be difficult to present in a written submission, but which can more easily be presented orally. It may also be that there is such a high level of public interest in the appeal case that it is necessary for the sake of trust in the decision that an oral hearing is held. *Subsection 4* states that oral hearings should normally be open to the public. There must be a high threshold for making an oral hearing closed i.e. the hearing must be open to the public unless there are compelling considerations for making it a closed hearing. This may be, for example, that confidential information will emerge at the hearing.

*Subsection 2* stipulates that the complainant shall be given the opportunity to provide remarks to the statements from body the appeal was submitted to.

Pursuant to *subsection 3*, the National Electoral Committee has the authority to collect information and statements from public bodies and individuals who have participated in the election. Those who are asked to contribute information and statements are obligated to answer inquiries from the National Electoral Committee.

*Subsection 4* is worded in the same manner as Section 34, paragraph two, first sentence of the Public Administration Act. This provision states that the National Electoral Committee has full authority in reviewing the appeal. The provision further states that the National Electoral Committee must consider the appeal as it stands on the date it is considered by the National Electoral Committee.

*Subsection 5, first sentence* states that the Public Administration Act and the Freedom of Information Act apply to the activities of the National Electoral Board insofar as they are applicable. The National Electoral Committee is a body of the Storting, and without such a provision, these acts will not apply to the National Electoral Committee, cf. Section 4, paragraph four of the Public Administration Act and Section 2, paragraph three of the Freedom of Information Act. *The second sentence* stipulates that decisions by the National Electoral Committee must be justified in accordance with the rules for individual decisions in the Public Administration Act. For individual

decisions, this follows directly from the first sentence. The second sentence is only of independent importance when there is an appeal against matters for which an individual decision has not been handed down.

Pursuant to *subsection 6*, the National Electoral Committee shall consider appeals without undue delay. Reference is made to the remarks to Section 14-8, subsection 4. For the National Electoral Committee, the provision entails that it cannot expect to consider the appeals until the election has been conducted. If the appeal is considered before the result of the election is clear, the National Electoral Committee cannot determine whether there is a preponderance of probability that the matters which have been appealed have influenced the allocation of seats between the lists. The National Electoral Committee must therefore be content with determining whether the rules have been violated. If it is clear that the errors committed will not in themselves result in an invalid election, the National Electoral Committee must also make a note of this.

*Subsection 7, first sentence* states that decisions by the National Electoral Committee shall be made public. There are no specific requirements for how the announcement should be made, but in order to achieve the objective of the provision, the announcement must take place in a manner that is publicly accessible. For parliamentary elections, decisions by the National Electoral Committee must be reported to the Storting's Presidium, cf. *second sentence*.

#### *For Section 14-11 Decisions by the National Electoral Committee*

General preparatory works: Sections 20.4.3.5, 21.4.1, 21.4.2 and 21.4.3.

This provision is new.

*Subsection 1* applies to the dismissal of an appeal. Firstly, this may only take place if the conditions for considering the appeal are not satisfied, for example, because the complainant does not have a right of appeal, or because the appeal was not submitted by the deadline. This is in accordance with applicable law. Secondly, an appeal may be dismissed if the same grounds for the appeal have already been considered. This is new. The following example illustrates the rule: The National Electoral Committee has previously considered an appeal of a matter and found that the conditions for declaring the election invalid had not been satisfied. If someone subsequently appeals the municipal council's approval of the election with the claim that the election should not have been approved, and asserts grounds for this appeal which the National Electoral Committee has already found did not influence the election result, the National Electoral Committee must dismiss the appeal.

*Subsection 2* states that if the National Electoral Committee finds that an error has occurred, but that the conditions for invalidity have not been met, the National Electoral Committee must find in favour of the complainant that an error has occurred. This is a codification of applicable practice.

Pursuant to *subsection 3*, the National Electoral Committee may order electoral bodies to correct errors. It is assumed that the appeal bodies may also do this in accordance with existing law.

*Subsection 4* stipulates the conditions for when an election shall be declared invalid. Reference is made to the remarks to Section 13-1, subsection 3.

*Subsection 5* stipulates that the election may only be declared invalid in the municipalities where there is a preponderance of probability that the illegal circumstances have influenced the allocation of votes to the different lists.

After the National Electoral Committee has considered all of the appeals, the National Electoral Committee must determine whether there is a preponderance of probability that the illegal circumstances that it found had occurred, influenced the overall allocation of seats between the lists, cf. *subsection 6*. See the remarks to Section 13-1, subsection 3.

*Subsection 7* states that a new election shall be held in the municipality if the National Electoral Committee declares the election in the municipality to be invalid.

*Subsection 8* regulates the situation in which the county council or municipal council has decided that a county council election or municipal council election is invalid. In such cases, the National Electoral Committee shall decide whether a new election shall be held, cf. draft Section 15-1, subsection 2. If the National Electoral Committee finds that the conditions for a new election are not satisfied, subsection 8 stipulates that the National Electoral Committee must then declare the election to be valid.

*Subsection 9* states that all members of the National Electoral Committee must be present for the National Electoral Committee to be able to hand down a decision. This entails that if one member cannot be present, the member must be replaced by an alternate member in order for the National Electoral Committee to form a quorum.

#### *Section 14-12 The appeal process in the Supreme Court*

General preparatory works: Sections 20.4.3.3, 21.4.1, 21.4.2 and 21.4.3.

This provision is new.

*Subsection 1* stipulates when an action shall be dismissed. Reference is made to the remarks to the draft Section 14-11, subsection 1.

*Subsection 2, first sentence* regulates when an appeal (action) of a decision by the Storting can be rejected. Reference is made here to the corresponding provision in Section 30-9, subsection 2 of the Dispute Act. The *second sentence* states that a plenary session of the Supreme Court shall hear an appeal that the Appeals Committee has granted leave for.

*Subsection 3* regulates when the Supreme Court shall declare a parliamentary election invalid. Reference is made to the remarks to Section 13-1, subsection 3.

*Subsection 4* stipulates the rules for the municipalities in which a new election shall be held. Reference is made to the remarks to Section 13-1, subsection 4.

The election cannot be declared invalid on the basis of errors that can be corrected, cf. *subsection 5*.

A new election shall be held in the municipalities where the Supreme Court declares the election invalid, cf. *subsection 6*.

*Subsection 7* regulates the situation in which the Storting has decided that the parliamentary election is invalid and this decision has been appealed. If the Supreme Court finds that the conditions for declaring the election invalid are not satisfied, a plenary session of the Supreme Court shall hand down a judgment declaring the election to be valid.

## Chapter 15. New election

### *Section 15-1 When and how a new election shall be conducted*

General preparatory works: Section 21.4.4.

*Subsection 1* stipulates that a new election shall be held if the Storting, Supreme Court or National Electoral Committee declares an election to be invalid, cf. the draft Sections 13-1, 14-12 and 14-11. The provision is partly new and partly a continuation of Section 13-3, subsection 4 of the current Election Act.

*Subsection 2* states that a new election shall not be automatically held, even if the county council or municipal council declares an election to be invalid. It is the National Electoral Committee that must decide whether a new election shall be conducted. The National Electoral Committee can review all aspects of the case.

*Subsection 3* stipulates separate rules for use of the electoral register in the event of a new election. The provision continues Section 13-5, subsection 1 of the current Election Act.

*Subsection 4* is new and stipulates rules for the use of the electoral lists in the event of a new election.

*Subsection 5* continues the regulatory authority in Section 13-5, subsection 2 of the current Election Act, but the authority is restricted to being able to derogate from the rules for deadlines and right to vote in advance.

### *For Section 15-2 Who will serve as members of the Storting in the event of a new election*

General preparatory works: Section 22.5.8.

The provision stipulates that the newly elected members will serve in the office until there is final approval of the new election. This entails a continuation of Storting practice.

### *For Section 15-3 Who will serve as members of the county council or municipal council in the event of a new election*

General preparatory works: Section 22.5.8.

The provision contains rules on whether it is the new or the previous members of the county council or municipal council who will serve in this office in the event of a new election. Equivalent rules have also been proposed for subordinate bodies in the county authorities and municipalities, cf. draft Section 20-2.

*Subsection 1* states that the term of office for the sitting members of the county council or municipal council will be extended until final approval of a new election in instances in which the National

Electoral Committee declares the election invalid before the constituent meeting of the county council or municipal council.

*Subsection 2* regulates the situation in which the county council or municipal council declares the election to be invalid. If the National Electoral Committee agrees that the election is invalid and decides that a new election must be held, the newly elected members of the county council or municipal council shall serve in these offices until final approval of a new election.

## Chapter 16. Emergency preparedness

*For Section 16-1 Postponed or extended elections or new election in connection with parliamentary elections*

General preparatory works: Section 22.5.

The provision is new and introduces an emergency preparedness provision in connection with parliamentary elections. The provision legislates the right to postpone or extend the polls or to hold a new election on the basis of extraordinary events. The Commission proposes including a legal basis in Section 16-1 that is equivalent to what is stipulated in Article 54 of the Constitution. The emergency preparedness provisions in Section 16-1 of the Election Act and Article 54 of the Constitution will not pose a legal obstacle to the authorities acting outside the framework of these provisions, as long as the measures are in line with constitutional emergency law. Constitutional emergency law and the Emergency Preparedness Act may still apply, for example, in wartime situations or if it is not possible for the Storting or Government to form a quorum.

*Subsection 1* legislates the right of the Storting to postpone or extend the election. An initial condition is that *something* extraordinary has occurred. When concerning the term “extraordinary”, a high threshold must be set for the serious events that are covered by the condition. Conditions that can meet the requirement for something extraordinary are natural disasters such as floods, earthquakes, etc. Other examples include terrorism, sabotage of infrastructure, nuclear accidents and serious epidemics. These examples are not exhaustive. The Commission does not want this to include wartime situations, and *something extraordinary* does not include such incidents. In wartime situations, constitutional emergency law and the Emergency Preparedness Act will take over. Pursuant to Section 1 of the Emergency Preparedness Act, if war prevents the Storting from exercising its functions, the King is empowered to make all necessary decisions for safeguarding the interests of the Kingdom. The situation this provision pertains to is if the Storting is completely unable to exercise its functions. If the Storting has convened or can be convened, more restricted powers for the King will apply pursuant to Section 3 of the Emergency Preparedness Act.

Furthermore, it is a requirement that the extraordinary event is *liable to prevent* a significant proportion of the voters from voting. “*Liable*” means that it may be sufficient in certain instances that there is a risk of or potential for voters being prevented from voting due to the event. It is not a requirement for postponing or extending the election that it is able to be established that the voters are actually prevented from voting. Among the reasons for this is that the scope of an extraordinary event may be uncertain on the date the decision to postpone or extend the election needs to be made. The decision to postpone the election must be made before the polls open, while the decision to extend the election must be made before the polls close. The condition that the voters are “*prevented*” from voting includes various consequences of the extraordinary event that may

stop voters from voting. This includes not only an injury or illness that can quickly be established or physical obstacle such as blocked roads, but also fear, unrest or other social and psychological reactions resulting from the event.

A further condition is the qualification requirement that *a significant proportion of the voters* are potentially prevented from voting due to the event. It is not sufficient that a limited number of voters in one or more municipalities are affected by a natural disaster or other extraordinary events, even when the event is extremely serious. A significant number - a significant proportion of the voters - must be potentially prevented from voting due to the event. The basis for the condition must also be that this concerns voters, i.e. people with the right to vote.

The authority to postpone or extend the election has been assigned to the Storting. In order to incorporate guarantees against abuse, the provision requires that a two-thirds majority of the members of the Storting must decide to postpone or extend the election. This constitutes a stricter majority requirement than what is stipulated in Article 121 of the Constitution, cf. Article 73, for considering proposed constitutional amendments. Such a strict majority requirement reflects the fact that there needs to be a high threshold for being able to apply this provision.

Extending the polls on election day can either take place by the authorities cancelling voting and opening the polls at a later time, or by allowing the polls to continue over a longer period than was originally stipulated. The election may only be extended by one day.

*Subsection 2* stipulates the condition that *a decision to postpone or extend can only be made insofar as this is necessary for ensuring voters have the opportunity to vote*. This is a requirement for proportionality between the decision to postpone or extend and the objective of ensuring that voters have the opportunity to vote. The necessity requirement is primarily focussed on the decision of whether the election should even be postponed or extended. If there are other less invasive alternatives for achieving the objective, the postponement or extension will not be necessary. Secondly, the election cannot be postponed or extended to a greater extent than is necessary for ensuring that voters have the opportunity to vote. This means that the election cannot be postponed or extended in more municipalities or over a longer period of time than is necessary for ensuring that voters have the opportunity to vote. Finally, the final sentence states that the maximum deadline for postponing or extending the election is one month after the originally stipulated date of the election. This means that if the King in Council has set 10 September as the election day, the postponed or extended election must be held no later than 10 October.

*Subsection 3* legislates the right for the King in Council to extend or postpone the election when the Storting cannot be convened. Such a decision will mean that all cabinet ministers who are present can be held constitutionally liable if the provision is abused. Furthermore, a condition for the King in Council being able to order a postponement or extension is that the Storting is unable to form a quorum. Unlike the Storting's right under subsection 1 to postpone the election for up to one month, the right of the King in Council to postpone the election is restricted to seven days. The same restrictions that are stipulated in subsections 1 and 2 will otherwise apply.

*Subsection 4* legislates the right of the Storting to order a new election. The authority to order a new election is assigned to the outgoing Storting. This means that decisions relating to new elections must be made before the new Storting is convened. A new election entails that the entire election is held once more, and that all voters must vote again in the municipalities where a new

election is being held. Unlike the rules for postponing and extending an election in subsections 1, 2 and 3, no external timeframe has been set for the deadline for when the new election must have been completed. However, there is also a restriction in the form of the new election not being able to be conducted later than is necessary, cf. *second sentence*, which states that a decision to hold a new election may only be made insofar as this is necessary for ensuring that voters have the opportunity to vote. Like postponements and extensions, new elections may only be conducted in the municipalities where this is necessary for ensuring that the voters are able to vote.

*For Section 16-2 Postponed or extended elections or new election in connection with county council or municipal council elections*

General preparatory works: Section 22.5.

The section is equivalent to Section 16-1, and the only difference is that it applies to county council elections and municipal council elections. Reference is therefore made to the remarks to Section 16-1.

*For Section 16-3 New election*

The provision stipulates that the provisions relating to the conduct of a new election that is held on the grounds of invalidity apply correspondingly to a new election held on the grounds of an extraordinary situation.

*For Section 16-4 First count of advance voting ballot papers*

General preparatory works: Section 22.5.3.

The provision regulates the counting of advance voting ballot papers in connection with a postponed or extended election.

*Subsection 1* states that if the election is extended, the counting cannot start or continue until the day before the extended election. No special rules have been stipulated in the event that the election is postponed. It will then follow from the draft Section 10-7, subsection 1, second sentence that counting cannot begin until the day before the postponed election.

*Subsection 2* stipulates that, if the election is postponed or extended and the counting of advance votes has started, this must be stopped. Counting cannot restart or resume until the day before the postponed or extended election. The purpose of the provision is to ensure that voters who vote at postponed or extended elections are not aware of the preliminary result in the municipality.

*For Section 16-5 Who will serve as members of the Starting in the event of a new election*

General preparatory works: Section 22.5.8.

The provision stipulates that the newly elected members will remain in office until there is final approval of the new election.

*For Section 16-6 Who will serve as members of the county council or municipal council in the event of a new election*

General preparatory works: 22.5.8.

*Subsection 1* stipulates that if the county council or municipal council has not held its constituent meeting on the date the King in Council decides that a new election shall be held, the term of office shall be extended for the sitting members of the county council or municipal council.

*Subsection 2* regulates situations in which the newly elected county council or municipal council has held its constituent meeting before a decision on a new election has been made. In these situations, the newly elected members of the county council or the municipal council shall remain in office until final approval of the new election.

## Chapter 17. New determination of election result during an electoral term. Returning of alternate members

*For Section 17-1 New determination of the result of an election to the Storting*

General preparatory works: 13.3.2.1.

The section continues existing law stipulated in Section 14-1 of the current Election Act that there must be a new determination of the election result if a member's seat in the Storting or an alternate member's seat remains vacant. The credentials of the elected member or alternate member, cf. *subsection 2*, shall be approved by the Storting, cf. Article 64 of the Constitution.

*For Section 17-2 New determination of the result of a county council or municipal council election*

General preparatory works: 13.3.2.2.

The section continues existing law which is stipulated in Sections 14-2, 11-11 and 11-13 of the current Election Act.

## Chapter 18. Use of ICT

*For Section 18-1 Electronic election implementation system*

General preparatory works: Section 12.1.4.

The provision is new and legislates the use of a state ICT system.

Pursuant to *subsection 1* of the provision, the Ministry is responsible for providing an election implementation system. The State currently offers an Electronic election administration system (EVA) that is operated and developed by the Norwegian Directorate of Elections.

Pursuant to *subsection 2*, the municipalities and county authorities are obligated to use the system provided by the Ministry at any time.

*Subsection 3* of the provision includes a legal basis for the Ministry to issue rules in regulations on the use and protection of the system. Setting requirements for the protection of the system means



that requirements can be set for both the provider of the system (currently the Norwegian Directorate of Elections) and for the users of the system. Regulations can also be issued for the information that the municipalities must enter into the system, with associated deadlines for this.

## Chapter 19. Miscellaneous provisions

### *For Section 19-1 Pilot schemes in connection with elections*

General preparatory works: 4.3.6.4 and 19.1.2.1.

This is a continuation of Section 15-1 of the current Election Act, albeit with some linguistic changes.

### *For Section 19-2 Storage, disposal and destruction of election materials*

General preparatory works: 19.1.2.1.

This is a continuation of Section 15-2 of the current Election Act, albeit with some linguistic changes.

### *For Section 19-3 Access to the electoral register and the other material*

General preparatory works: 19.1.2.1.

This is a continuation of Section 15-3 of the current Election Act, albeit with some linguistic changes.

### *For Section 19-4 Duty of secrecy*

General preparatory works: 19.1.2.1.

*Subsection 1* is new. The provision imposes a duty of secrecy on anyone who performs an assignment in connection with the election, if, as a result of the assignment, they obtain knowledge of how a voter has voted.

*Subsection 2* continues the provision in Section 15-4, subsection 2 of the current Election Act. The provision in Section 15-4 of the current Election Act that the provisions of the Public Administration Act relating to the duty of secrecy apply correspondingly in the case of elections, has not been continued. However, this does not constitute a material amendment, because the Public Administration Act states that it also applies in connection with elections.

### *For Section 19-5 Calculation of deadlines*

General preparatory works: 19.1.2.1.

The section is a continuation of Section 15-5, subsections 1 to 3 of the current Election Act, albeit with some linguistic changes.

### *For Section 19-6 Exceeding deadlines*

General preparatory works: 19.1.2.1.

This is a continuation of Section 15-5, subsection 4 of the current Election Act, albeit with some linguistic changes. *Notice* also includes statements and messages.

*For Section 19-7 Data for election statistics*

General preparatory works: 19.1.2.1.

This is a continuation of Section 15-7 of the current Election Act, albeit with some linguistic changes.

*For Section 19-8 Exemptions that apply for Oslo*

General preparatory works: 19.1.2.1.

This is a continuation of Section 15-8 of the current Election Act, albeit with some linguistic changes. Since Oslo is the only municipality that constitutes a separate county, the section has been amended to only apply to Oslo and not as a general rule for these types of municipalities.

*For Section 19-9 Expenses covered by the State*

General preparatory works: 19.1.2.3.

This is a continuation of Section 15-9 of the current Election Act, albeit with some linguistic changes. The Commission considers it appropriate here to make reference to the revenue system. This was not previously specified, but does not entail a substantive change.

*For Section 19-10 Monitoring of elections*

General preparatory works: 19.1.2.1.

This is a continuation of Section 15-10 of the current Election Act.

*For Section 19-11 Publication of election results and prognoses*

General preparatory works: 19.3.2.

This is partly a new provision and partly a continuation of Section 9-9 of the current Election Act.

*Subsection 1* is partly new and regulates the right to *release* information about actual voting figures and election results. This provision stipulates that it is no longer permitted for the electoral authorities to release information about election results before 9pm. This includes prognoses that have been prepared based on the number of votes polled. This also applies to releasing information to media outlets that had previously entered into special agreements with the electoral authorities. This subsection also constitutes a prohibition against disclosing information about the election results for municipalities, including for municipalities that end voting before 9 pm. The provision continues the prohibition in Section 9-9 of the current Election Act that election results cannot be made public until 9 pm on election day.

*Subsection 2* continues existing law and relates to the publication of prognoses that are based on exit polls or other types of surveys conducted at the polls, i.e. on election day and the Sunday.

*For Section 19-12 Fines for contravention*

General preparatory works: 19.1.2.4.

*Subsections 1 to 3 and subsections 6 to 8* continue Section 15-11, subsections 1 to 4, sixth and seventh sentences of the current Election Act, albeit with some linguistic changes.

*Subsection 4* also now makes it possible to impose fines for contravention on individuals. If an employee of an enterprise is responsible for the violation by virtue of being an employee at the enterprise, the fine for contravention will still be imposed on the enterprise.

*Subsection 5* continues Section 15-11, subsection 5 of the current Election Act, however it is now the Norwegian Media Appeals Board (Klagenemnda for mediesaker) that is the appeal body for fines for contravention that have been imposed.

## Chapter 20. Entry into force, transitional provisions and amendments to other Acts

*For Section 20-1 Entry into force*

*Subsection 1* states that the Act will enter into force from the date determined by the King. The current Election Act will be simultaneously repealed.

*Subsection 2* states that the King can decide that different parts of the Act shall enter into force on different dates. Similarly, different parts of the current Election Act can be repealed on different dates.

### For Section 20-2 Amendments to other Acts

*For amendments to the Sami Act*

Section 2-6 a

The provision is new and corresponds to Section 2-4 of the draft new Election Act.

Section 2-10 a

The provision is new and corresponds to Section 19-1 of the draft new Election Act.

*For amendments to the Local Government Boundaries Act*

Section 4, subsection 2.

General preparatory works: Section 5.7.5.4.

*Subsection 2* regulates the consequences of municipal mergers that cross constituency boundaries. In such instances, the Storting shall hand down a decision on which constituency the new municipality will belong to. The provision also introduces a restriction on the merger not entering into force until this decision has been handed down. Subsection 2 will only apply when two or more municipalities belonging to different constituencies are merged together.

This provision must be viewed in connection with the fact that it is now being proposed to include the names of all municipalities in Section 11-1 of the Election Act to clarify which constituency each of the municipalities belong to. In some cases, parliamentary resolutions pursuant to Section 4, subsection 2 will have to be followed up by an amendment to Section 11-1 of the Election Act, but such a statutory amendment does not need to have been adopted before the municipal merger can enter into force. There is no requirement that the merger must have entered into force before it can be used as a basis for dividing into constituencies.

## Section 6

General preparatory works: Section 5.7.5.4.

*Subsection 1* is a continuation of the King having the authority to hand down a decision to adjust the boundaries between municipalities.

*Subsection 2* is new and regulates the consequences of boundary adjustments that include municipalities in different constituencies. As is the case with the new Section 4, subsection 2, the Storting must decide what constituency the municipalities that gain new residents will belong to. The municipality that loses residents will remain in its original constituency. If a boundary adjustment is made, whereby an area with residents is moved from municipality A to municipality B and, at the same time, another area with residents is moved from municipality B to municipality A, it will need to be clarified as to what constituency both of the impacted municipalities will belong to. As is the case with Section 4, such boundary adjustments will not enter into force until the Storting has decided which constituencies the municipalities will belong to.

This does not apply if the boundary adjustment only includes surface area, because surface area has no influence over the allocation of seats under the Commission's proposal.

*Subsection 3* changes who is authorised to adjust the boundaries between counties, and establishes that such decisions must be made by the Storting. This replaces the rule that the King may move up to one municipality between counties. As is the case for subsection 2, exceptions have been made for adjustments that only apply to surface area. Such adjustments can still be made by the King.

## 25 Draft Bill

### Draft new Act relating to parliamentary and local government elections (Election Act).

#### Chapter 1. The purpose and applicability of the Act

##### *Section 1-1 The purpose and applicability of the Act*

- (1) The Act shall ensure free and fair elections.
- (2) The Act applies to the election of members to the Storting, county councils and municipal councils.

#### Chapter 2. Right to vote and electoral register

##### *Section 2-1 Right to vote at parliamentary elections*

- (1) Norwegian citizens who have reached the age of 18 by the end of the election year are eligible to vote at parliamentary elections.
- (2) In order to vote, the voter must be included in the electoral register of a municipality.

##### *Section 2-2 Right to vote at county council and municipal council elections*

(1) Norwegian citizens who have reached the age of 16 by the end of the election year are eligible to vote in county council elections and municipal council elections if they are or have been registered in the Population Registry as being resident in Norway.

(2) Persons who are not Norwegian citizens are eligible to vote if they have reached the age of 16 by the end of the election year and meet one of the following conditions:

- a) They have been registered in the Population Registry as being resident in Norway in the three years prior to Election Day.
- b) They are nationals of another Nordic country and were registered in the Population Registry as being resident in Norway no later than 30 June in the year of the election.

(3) In order to vote, the voter must be included in the electoral register of a municipality.

##### *Section 2-3 Responsibility for keeping and updating the electoral register*

(1) The Ministry is responsible for keeping and updating electoral registers.

(2) The Ministry is responsible for all municipalities having an electoral register of all persons entitled to vote in the municipality.

(3) The electoral register must be updated up to and including the Saturday prior to Election Day.

##### *Section 2-4 Responsibility of the Population Registry Authority*

(1) The Population Registry Authority shall, at its own initiative and in an appropriate manner, make the following available to the election authorities:

- a) a preliminary electoral register based on the voting eligibility terms as of 2 January in the year of the election, for use in preparing the elections,
- b) information on who will be entered in the municipality's electoral register as of 30 June.

(2) The duty of secrecy does not prevent the disclosure of information pursuant to subsection 1.

(3) The Population Registry Authority shall transfer updates to the preliminary electoral register as of 2 January and updates to the electoral register as of 30 June to the Ministry.

##### *Section 2-5 The municipality in which voters shall be included in the electoral register*

(1) Persons eligible to vote who are residents of Norway shall be included in the electoral register in the municipality where they were registered in the Population Registry as being resident on 30 June in the year of the election.

(2) Persons eligible to vote who reside on Svalbard and Jan Mayen shall be included in the electoral register in the municipality where they were most recently registered in the Population Registry as being a resident.

(3) Persons eligible to vote who reside outside of Norway, but who have been registered in the Population Registry as being resident in Norway in the previous 10 years prior to Election Day, shall be included in the electoral register in the municipality where they were most recently registered in the Population Registry as being a resident.

(4) Persons eligible to vote who have not been registered in the Population Registry as being resident in Norway in the previous 10 years prior to Election Day, shall be included in the electoral register in the municipality to which they vote.

#### *Section 2-6 Availability of the electoral register for public inspection*

(1) The Electoral Committee shall make the electoral register available for public inspection as soon as possible. The electoral register shall be on display for such inspection up to and including Election Day.

(2) The Electoral Committee shall announce the time and place of display and must also provide information about the how voters should proceed in having errors in the electoral register corrected.

#### *Section 2-7 Correction of the electoral register*

(1) Any person who believes that he or she or any other person has been erroneously included in or omitted from the electoral register in the municipality may demand that the error be corrected.

(2) The demand and the grounds for this must be in writing and sent to the Electoral Committee in the municipality.

#### *Section 2-8 Notification of amendments to the electoral register*

If the electoral register is amended following a demand for correction or after the Electoral Committee has been made aware of an error, the Electoral Committee must send notification of the amendment to the persons this applies to as soon as possible. The Electoral Committee must also send notification to the persons this applies to if a demand for correction is rejected.

#### *Section 2-9 Polling cards*

(1) All persons eligible to vote who are included in the electoral register in a municipality and who have a domestic residential address, (with the exception of Svalbard and Jan Mayen), shall receive a polling card.

(2) The Ministry is responsible for distributing polling cards.

#### *Section 2-10 Regulations*

The Ministry may issue regulations on the:

- a) registration of voters, processing and updating of the preliminary electoral register and electoral register as of 30 June, as well as excerpts of the electoral register for pilot purposes,
- b) access to and use of copies of the electoral register,
- c) production, design, distribution and use of polling cards.

### **Chapter 3. Eligibility and duty to accept election**

#### *Section 3-1 Eligibility and duty to accept election at parliamentary elections*

A person is eligible for election to the Storting and bound to accept election if he or she is eligible to vote at the election and is not disqualified from election pursuant to Section 3-3.

*Section 3-2 Eligibility and duty to accept election at county council or municipal council elections*

A person is eligible for election to the county council or municipal council and bound to accept election if the following conditions are met:

- a) He or she is eligible to vote at municipal and county council elections and has reached the age of 18 by the end of the year in which the election is held.
- b) He or she is registered in the Population Registry on Election Day as being resident in the municipality for municipal council elections or in one of the municipalities in the county for county council elections.
- c) He or she is not disqualified from election pursuant to Section 3-3.

*Section 3-3 Disqualified from election*

(1) Justices of the Supreme Court are disqualified from election to the Storting. However, they are eligible for election if they resign from office before the list proposal is approved.

(2) Disqualified from election to county councils or municipal councils are:

- a) the county governor and the assistant county governor,
- b) the chief municipal executive of the county authority or municipality and his or her alternate,
- c) heads of municipal affairs, heads of department and managers at the equivalent level in the county authority or municipality,
- d) secretaries for the county council or municipal council,
- e) person responsible for the accounting function in the county authority or municipality,
- f) persons who perform audits of the county authority or municipality,
- g) employees of the secretariat of the county council or municipal council who have had authority delegated to them by the council.

(3) Persons who would otherwise be disqualified from election to the county council or municipal council due to their position may still be eligible for election if they resign from their position before the county council or municipal council commences its functions.

*Section 3-4 Exemption from inclusion on an electoral list*

Persons who do not wish to run for office on an electoral list shall be exempt from inclusion on the list if they give written notice of this by the deadline set by the District Electoral Committee, County Electoral Committee or Electoral Committee.

**Chapter 4 Electoral bodies**

*Section 4-1 National Electoral Committee*

(1) The Storting shall appoint a National Electoral Committee after each parliamentary election. The National Electoral Committee shall consider appeals relating to the election, cf. Section 14-1, (a) to (d) and (f) and (g).

(2) The National Electoral Committee shall have five members. The chair and two other members must be judges. Three joint alternate members shall be appointed for the members who are judges, and two joint alternate members shall be appointed for the other members.

(3) The National Electoral Committee shall serve for four years from 1 January the second new year after the parliamentary election.

(4) The following persons cannot be appointed to the National Electoral Committee:

- a) members of the government,
- b) members and alternate members of the Storting, county councils and municipal councils,

c) state secretaries and political advisers in the ministries and the Storting.

(5) Members and alternate members of the National Electoral Committee who stand for election to the Storting, county council or municipal council must resign from the National Electoral Committee.

(6) The Storting may release a member or alternate member from the position when he or she requests this for personal reasons or he or she has been in gross violation of the duties incumbent on the position.

(7) In special cases, the Storting may release one or more members or alternate members from the position if this is necessary for the National Electoral Committee to be able to perform its duties.

(8) Decisions to release a member or alternate member from the position require two-thirds of the votes, however only a normal majority is required when the person him or herself requests to be released from the position

(9) When a member or alternate member of the National Electoral Committee dies or resigns pursuant to subsections 5, 6 or 7, the Storting shall appoint a new member or alternate member for the remainder of the Storting's term of office.

(10) Members and alternate members of the National Electoral Committee may be re-appointed.

(11) The Administration of the Storting shall function as the secretariat for the National Electoral Committee. The Storting cannot instruct the Administration of the Storting when it functions as the secretariat for the National Electoral Committee.

(12) The Storting shall determine the remuneration to the National Electoral Committee's members and alternate members.

#### *Section 4-2 District Electoral Committee*

At parliamentary elections, each constituency shall have a District Electoral Committee with a minimum of three members. The county council in the county authority where the constituency is located shall itself elect the chair, deputy chair and other members and alternate members. In the City of Oslo, the municipal council itself shall elect the chair, deputy chair and other members and alternate members.

#### *Section 4-3 County Electoral Committee*

At county council elections, each constituency shall have a County Electoral Committee with a minimum of three members. The county council itself shall elect the chair, deputy chair and other members and alternate members.

#### *Section 4-4 Electoral Committee*

Each municipality shall have an Electoral Committee with a minimum of three members. The municipal council itself shall elect the chair, deputy chair and other members and alternate members.

#### *Section 4-5 Polling committees*

(1) On Election Day, each polling station shall have a polling committee with a minimum of three members.

(2) Each municipality shall also have a central polling committee with a minimum of three members.

(3) The municipal council shall elect the chair, deputy chair and other members and alternate members of the polling committees. The municipal council can delegate authority to the electoral committee to appoint the polling committees.



## **Chapter 5. Requirements concerning and treatment of list proposals**

### *Section 5-1 Requirements concerning list proposals*

(1) A list proposal must contain information about:

- a) which election the list proposal applies to,
- b) the heading of the list proposal,
- c) which candidates are standing for election on the list proposal,
- d) who has signed the list proposal.

(2) If the list proposal has been submitted by a registered political party, the heading shall be the registered name of the party. The heading must otherwise not be able to be confused with the name of a registered political party, a registered Sami political unit or with the heading of other list proposals in the same constituency.

(3) Candidates may only be included on one list proposal in the constituency. The candidates shall be listed with their forename(s), surname and year of birth. The candidates' occupation or residence may be shown on the list proposal. This shall be done if it is necessary to avoid confusing the candidates.

(4) A list proposal shall not contain any other information to the voters than what is stipulated in this section.

(5) The same party or group may only submit one list in each constituency.

### *Section 5-2 The number of candidates on a list proposal*

(1) At parliamentary elections a list proposal shall contain the names of at least five candidates. The proposal may include a maximum of six more names than members that shall be elected from the constituency.

(2) At county council elections, the list proposal shall contain the names of at least five candidates when the county council has 35 to 41 members. When the county council has 43 to 49 members, the list proposal shall contain the names of at least seven candidates. When the county council has 51 or more members, the list proposal shall contain the names of at least nine candidates. The proposal may include a maximum of six more names than members that shall be elected.

(3) At municipal council elections, the list proposal shall contain the names of at least five candidates when the municipal council has 11 to 33 members. When the municipal council has 35 to 41 members, the list proposal shall contain the names of at least six candidates. When the municipal council has 43 or more members, the list proposal shall contain the names of at least seven candidates. The proposal may include a maximum of six more names than members that shall be elected.

(4) The names of the candidates must be placed in sequence.

### *Section 5-3 Increased share of the poll*

(1) List proposers can give an increased share of the poll to candidates on the list proposal.

(2) Candidates with an increased share of the poll are given an increase in their personal share of the poll which corresponds to 25 per cent of the number of ballot papers cast for the list at the election.

(3) At parliamentary elections and county council elections, the proposers can give an increased share of the poll to the number of candidates they decide.

(4) At municipal council elections, the proposers can give an increased share of the poll to a certain number of candidates at the top of the list proposal. The proposers can give an increased share of the poll to the following number of candidates:

- a) up to four when the municipal council has 11 to 23 members,
- b) up to six when the municipal council has 25 to 53 members,
- c) up to 10 when the municipal council has 55 or more members.

(5) The names of candidates with an increased share of the poll must appear at the top of the list proposal and in boldface.

#### *Section 5-4 The number of signatures on a list proposal*

(1) List proposals from parties included in the Register of Political Parties which received no fewer than 5,000 votes in the entire country at the previous parliamentary election must be signed by two of the members of the executive committee of the party's local branch who are responsible for the constituency to which the list applies. The same applies to parties that have been included in the Register of Political Parties subsequent to the previous parliamentary election. If a registered political party submits a list proposal together with an unregistered group, the provisions in subsection 2 will nevertheless apply.

(2) List proposals from other proposers must be signed by at least the number of persons equivalent to 1 per cent of the number of persons eligible to vote in the constituency at the previous election. At municipal council elections, the signatures of 1,000 people will always be sufficient.

(3) The signatories must be eligible to vote in the constituency.

#### *Section 5-5 Appendices to list proposals*

List proposals shall have the following appendices:

- a) list of the dates of birth and residential addresses of those who have signed the list proposal,
- b) list of the candidates' dates of birth,
- c) assurance from candidates who are not registered in the Population Registry as being resident in the constituency for county council elections or in the municipality for municipal county elections, that they will be registered there on Election Day,
- d) assurance from candidates who, due to their position, are not eligible for election in county council elections or municipal council elections, that they will resign from their position before the county council or the municipal council takes office.

#### *Section 5-6 Representatives and representation committees*

(1) If a list proposal from a registered political party is signed by two members of the executive committee of the party's branch responsible for the constituency to which the list applies, cf. Section 5-4, subsection 1, these two members of the executive committee shall be the elected representative and alternate representative for the list proposal. The executive committee of the local branch is the representation committee.

(2) For other list proposals, the two top signatories on the list proposal are the representative and alternate representative respectively. The top five signatories are the representation committee and the next three are alternate representatives.

(3) The representative and alternate representative have the authority to negotiate with the District Electoral Committee, County Electoral Committee or Electoral Committee regarding changes to the list proposal.

(4) The representation committee has the authority to withdraw the list proposal and to appeal the election on behalf of the electoral list.

(5) If it is unclear as to who is entitled to represent a registered political party at the local level and thereby the right to submit a list for this party, the election authorities shall obtain a

statement from the party's executive body and use this as a basis, cf. Section 3, subsection 2 (b) of the Party Act.

*Section 5-7 Deadline for submitting the list proposal*

(1) The deadline for submitting a list proposal is 12 noon on 31 March in the year of the election.

(2) For parliamentary elections and county council elections, the list proposal is deemed to have been submitted when it has been received by the county authority.

(3) For municipal council elections, the list proposal is deemed to have been submitted when it has been received by the municipality.

(4) If fewer than two list proposals have been submitted for a municipal council election when the deadline expires, the municipal council itself may postpone the deadline until 12 noon on 30 April.

(5) List proposals submitted pursuant to subsection 4 must include confirmation from the candidates that they consent to being included on the list.

*Section 5-8 Withdrawal of a list proposal*

The representation committee may withdraw the list proposal at any time before it is approved. Notice of withdrawal must be given to the District Electoral Committee for parliamentary elections, the County Electoral Committee for county council elections and the Electoral Committee for municipal council elections. Such notice must have been received by the District Electoral Committee, County Electoral Committee or Electoral Committee before the list proposal has been approved.

*Section 5-9 Who is responsible for approving the list proposal*

(1) At parliamentary elections, the District Electoral Committee shall approve or reject list proposals and withdrawals of list proposals.

(2) At county council elections, the County Electoral Committee shall approve or reject list proposals and withdrawals of list proposals.

(3) At municipal council elections, the Electoral Committee shall approve or reject list proposals and withdrawals of list proposals.

(4) Decisions concerning approval or rejection must have been handed down no later than 1 July in the year of the election.

*Section 5-10 The electoral authorities' treatment of the list proposals*

(1) The list proposals shall be made available for public inspection as these are received.

(2) If a list proposal at the time of its submission does not satisfy the requirements in this Act, the electoral authorities shall, in cooperation with the representatives of the list proposal, seek to bring the proposal into conformity with the Act.

(3) If the withdrawal of a list proposal does not satisfy the requirements in this Act, the electoral authorities shall, in cooperation with the representation committee for the list proposal, seek to bring the withdrawal into conformity with the Act.

(4) The electoral authorities shall notify all candidates on the list proposals of the fact that they have been placed on a list proposal and inform the candidates of their right pursuant to Section 3-4 to be exempt from inclusion on the electoral list.

(5) The electoral authorities shall order signatories or candidates who appear on more than one list proposal in the constituency to give notice by a specified deadline of the list proposal on which they wish to appear. If they do not respond by the deadline, they will be placed on the list proposal that was received first.

*Section 5-11 Changes to list proposals after the deadline for submission*

(1) After the deadline for submitting list proposals has expired, the proposers may only make the changes that are necessary for enabling the list proposal to be in compliance with the requirements in this Act.

(2) If a candidate is removed from the list proposal, the list can be supplemented with a new name. In such an event, the representative for the list proposal can decide whether the name shall be inserted in the empty position or whether the subsequent candidates shall move up in an unchanged order, and that the list is then supplemented with a new name at the bottom. When a new name is to be inserted, the representative shall enclose a declaration from the new candidate that he or she is willing to stand as a candidate on the list.

*Section 5-12 Announcement of approved electoral lists*

When the list proposals have been approved, the electoral authorities shall make the electoral lists available for public inspection. The electoral authorities shall announce the headings on the approved electoral lists and the locations where they are on display.

*Section 5-13 Printing of ballot papers*

(1) At parliamentary elections, the District Electoral Committee is responsible for ballot papers being printed for all the approved electoral lists in the constituency.

(2) At county council elections, the County Electoral Committee is responsible for ballot papers being printed for all the approved electoral lists in the constituency.

(3) At municipal council elections, the Electoral Committee is responsible for ballot papers being printed for all the approved electoral lists in the municipality.

(4) The ballot papers must be ready for use when the ordinary advance voting starts on 10 August.

*Section 5-14 Regulations*

The Ministry may issue regulations relating to the processing of list proposals and concerning the design, printing and distribution of ballot papers. The Ministry may also issue regulations relating to requirements for electronic signatures pursuant to Section 5-4.

## **Chapter 6. Advance voting in Norway**

*Section 6-1 When voters can vote in advance*

(1) Domestic voters can vote in advance in the period from 10 August until and including the Friday before Election Day. On the Friday before Election Day, advance voting shall end no later than 6 pm.

(2) Voters on Svalbard and Jan Mayen can vote in advance in the period from 1 July until and including the penultimate Friday before Election Day.

(3) The polling station shall close at the stipulated time. Voters who have arrived before closing time shall be permitted to vote.

(4) Voters who cannot vote in the period from 10 August until and including Election Day may vote in advance in the period from 1 July until regular advance voting starts on 10 August (early voting). These voters must contact the municipality and request to be able to vote, cf. Section 6-8. This subsection does not apply to voters on Svalbard and Jan Mayen.

*Section 6-2 Number of returning officers*

A minimum of two returning officers must be present when the voter casts an advance ballot in Norway. This does not apply when voters cast advance ballots on Svalbard and Jan Mayen.

*Section 6-3 Who appoints returning officers*

- (1) The Electoral Committee appoints returning officers domestically.
- (2) The Governor appoints returning officers on Svalbard.
- (3) The Ministry appoints returning officers on Jan Mayen.

*Section 6-4 Where voters can vote in advance*

- (1) The Electoral Committee itself decides where in Norway voters can vote in advance.
- (2) Voters who reside at health and social welfare institutions, and in prisons must be able to vote in advance at these locations.
- (3) Voters may apply to vote in advance at the place where they are, if, due to illness or disability, they cannot vote in advance at the locations referred to in subsection 1. The Electoral Committee itself sets the deadline for when an application to vote in advance pursuant to this subsection must have been received by the municipality. The deadline cannot be set earlier than the final Tuesday before Election Day. The deadline for applications shall be made public. This subsection does not apply to voters on Svalbard and Jan Mayen.
- (4) The Governor decides where on Svalbard voters may vote in advance.
- (5) The Ministry decides where on Jan Mayen voters may vote in advance.

*Section 6-5 How voters can vote in advance in their own municipalities*

- (1) The voter must, while hidden from view and unseen, select the ballot paper, make any changes and fold the ballot paper so that his or her selections are not visible.
- (2) If the voter is included in the electoral register in the municipality and a cross has not already been placed beside the voter's name in the register, the returning officer must stamp the ballot paper and place a cross beside the voter's name. A cross must be written for each election the voter has voted at. The voter him or herself must place the ballot paper in a ballot box.
- (3) If the returning officer cannot place a cross beside the voter's name in the electoral register, the returning officer must stamp the ballot paper before the voter him or herself places this in a ballot paper envelope and seals the envelope. At county council elections and municipal council elections, the ballot papers for each election are placed in their separate ballot paper envelopes. The returning officer places the ballot paper envelope(s) together with information about the voter's identity in a cover envelope and seals the cover envelope. The voter must place the cover envelope in a ballot box.
- (4) In special cases, the Electoral Committee may itself decide that some advance voting locations shall use ballot paper envelopes and cover envelopes instead of the ballot paper being placed directly in a ballot box. The voting will then take place as described in subsection 3.

*Section 6-6 How voters can vote in advance outside their own municipalities*

- (1) The voter must, while hidden from view and unseen, select the ballot paper, make any changes and fold the ballot paper so that his or her selections are not visible.
- (2) Voters who are included in the electoral register of another municipality must use a ballot paper envelope. When the ballot paper has been stamped, the voter places this in a ballot paper envelope and seals the envelope. At county council elections and municipal council elections, the ballot papers for each election are placed in their separate ballot paper envelopes. The returning officer places the ballot paper envelope(s) together with information about the voter's identity in a cover envelope and seals the cover envelope. The voter must place the cover envelope in a ballot box.
- (3) The Electoral Committee shall ensure that the cover envelope is sent to the municipality where the voter is included in the electoral register.

*Section 6-7 How voters can vote in advance on Svalbard and Jan Mayan*

(1) The voter must, while hidden from view and unseen, select the ballot paper, make any changes and fold the ballot paper so that his or her selections are not visible.

(2) The voter places the ballot paper in a ballot paper envelope and seals the envelope. At county council elections and municipal council elections, the ballot papers for each election are placed in their separate ballot paper envelopes. The returning officer places the ballot paper envelope(s) together in a cover envelope and seals the cover envelope. The returning officer must then write the following on the cover envelope:

- a) the name and address of the Electoral Committee,
- b) the voter's name and national identity number,
- c) the voter's address at his or her place of residence on 30 June in the year of the election, or possibly the most recent address in Norway if the voter has given notice that he or she has moved abroad,
- d) time and place the vote was cast.

(3) The returning officer and the voter then sign the cover envelope.

*Section 6-8 How voters can vote in advance before the ordinary advance voting (early voting)*

(1) The voter must, while hidden from view and unseen, select the ballot paper, make any changes and fold the ballot paper so that his or her selections are not visible.

(2) The returning officer must stamp the ballot paper before the voter him or herself places it in a ballot paper envelope and seals the envelope. At county council elections and municipal council elections, the ballot papers for each election are placed in their separate ballot paper envelopes. The returning officer places the ballot paper envelope(s) together with information about the voter's identity in a cover envelope and seals the cover envelope. The voter must place the cover envelope in a ballot box.

(3) The Electoral Committee shall ensure that the cover envelope is sent to the municipality where the voter is included in the electoral register.

## **Chapter 7. Advance voting abroad**

*Section 7-1 When voters can vote in advance*

(1) Voters abroad may vote in advance in the period from 1 July until and including the penultimate Friday before Election Day.

(2) Voters themselves are responsible for casting advance ballots in sufficient time for the votes to have been received by the Electoral Committee by 5pm the day after Election Day.

*Section 7-2 Who may receive advance votes*

(1) Members of the Foreign Service at Norwegian Foreign Service missions, (with the exception of honorary Foreign Service missions), are returning officers abroad. The Ministry of Foreign Affairs may appoint returning officers at honorary Norwegian Foreign Service missions. The head of mission may appoint one or more of the mission's officials to serve as returning officers.

(2) The Ministry appoints returning officers at other locations abroad.

*Section 7-3 Where voters can vote in advance*

(1) Voters abroad can vote in advance at Norwegian Foreign Service missions, (except for honorary Foreign Service missions). However, they may still vote at honorary Foreign Service missions if the Ministry of Foreign Affairs has appointed returning officers at such locations. The head of mission may decide that voters can cast advance ballots outside the area of the mission.

(2) The Ministry decides where voters can otherwise vote abroad.

#### *Section 7-4 How voters can vote in advance*

(1) The voter must, while hidden from view and unseen, select the ballot paper, make any changes and fold the ballot paper so that his or her selections are not visible.

(2) The voter places the ballot paper in a ballot paper envelope and seals the envelope. At county council elections and municipal council elections, the ballot papers for each election are placed in their separate ballot paper envelopes. The returning officer places the ballot paper envelope(s) together in a cover envelope and seals the cover envelope. The returning officer must then write the following on the cover envelope:

- a) the name and address of the Electoral Committee,
- b) the voter's name and national identity number,
- c) the voter's address in Norway registered in the Population Registry on 30 June in the year of the election, or possibly the most recent address if the voter has given notice that he or she has moved abroad,
- d) time and place the vote was cast.

(3) The returning officer and the voter then sign the cover envelope.

#### *Section 7-5 Postal voting*

If a voter who is abroad is unable to visit a returning officer, the voter him or herself may cast a postal vote without a returning officer being present. Section 7-4 applies equivalently insofar as this is applicable. The voter must write the information on the cover envelope.

## **Chapter 8. Voting on election day**

#### *Section 8-1 When voters can vote*

(1) Parliamentary elections shall be held in all municipalities on the same Monday in the month of September in the final year of the electoral term of each Storting.

(2) County council and municipal council elections shall be held in all municipalities on the same Monday in the month of September every four years. The elections are held in the second year of each Storting's term of office.

(3) The King in Council shall set the Election Day.

(4) The municipal council may itself decide that, in one or more places in the municipality, polling shall also take place on the Sunday before Election Day. This Sunday and Election Day together constitute the polls.

(5) The Electoral Committee itself decides when the polling stations shall open and close. The municipal council may itself, with endorsement from at least one-third of its members, decide to keep the polling stations open longer than stipulated by the Electoral Committee. A decision must be handed down no later than at the same time as the budget decision for the year in which the election is to be held. On Election Day, polling stations will close no later than 9 pm.

(6) The polling station shall close at the stipulated time. Voters who have arrived before closing time shall be permitted to vote.

#### *Section 8-2 Where voters can vote*

(1) The municipal council decides how the municipality shall be divided into polling districts. The municipal council can delegate this authority to the Electoral Committee. When determining how to divide the municipality into polling districts, particular emphasis must be placed on travel distances and transportation services. The municipality must inform the

Norwegian Mapping Authority of any changes to the polling district structure by 31 March in the year of the election.

(2) The Electoral Committee itself decides the locations that shall be polling stations. There must be one polling station for each polling district. The Electoral Committee can establish extra polling stations for a polling district if this is necessary for ensuring that voters have the opportunity to vote.

#### *Section 8-3 Use of electronic electoral register*

The Electoral Committee itself can decide whether the municipality shall use an electronic electoral register or a hardcopy electoral register.

#### *Section 8-4 How voters can vote at polling stations with electronic electoral registers*

(1) When polling stations open, voters who are included in the electoral register in the municipality are able to vote in the order in which they arrive.

(2) The voter must, while hidden from view and unseen, select the ballot paper, make any changes and fold the ballot paper so that his or her selections are not visible.

(3) If the voter is included in the municipality's electoral register and a cross has not already been placed beside the voter's name in the register, the returning officer shall stamp the ballot paper and place a cross beside the voter's name. A cross must be written for each election the voter has voted at. The voter him or herself must place the ballot paper in a ballot box.

(4) The ballot papers must be counted in the polling district where the voter cast his or her vote, even if the voter is included in the electoral register in another polling district.

(5) If the returning officer cannot place a cross beside the voter's name in the electoral register, the returning officer must stamp the ballot paper before the voter him or herself places this in a ballot paper envelope and seals the envelope. At county council elections and municipal council elections, the ballot papers for each election are placed in their separate ballot paper envelopes. The returning officer places the ballot paper envelope(s) together with information about the voter's identity in a cover envelope and seals the cover envelope. The voter must place the cover envelope in a ballot box.

(6) If the returning officer cannot place a cross beside the voter's name in the electoral register because the connection to the electoral register is down, the returning officer must stamp the ballot paper before the voter him or herself places this in a ballot paper envelope and seals the envelope. At county council elections and municipal council elections, the ballot papers for each election are placed in their separate ballot paper envelopes. The returning officer places the ballot paper envelope(s) in a contingency envelope together with information about the voter's identity. The voter places the contingency envelope in a ballot box. In municipalities with two-day elections, any contingency votes received on Sunday shall be processed and crossed off in the electronic electoral register before the polling stations open on Monday.

#### *Section 8-5 How voters can vote at polling stations with hardcopy electoral registers*

(1) When polling stations open, voters who are included in the electoral register in the municipality are able to vote in the order in which they arrive.

(2) The voter must, while hidden from view and unseen, select the ballot paper, make any changes and fold the ballot paper so that his or her selections are not visible.

(3) If the voter is included in the polling district's electoral register and a cross has not already been placed beside the voter's name in the register, the returning officer shall stamp the ballot paper and place a cross beside the voter's name. A cross must be written for each election the voter has voted at. The voter him or herself must place the ballot paper in a ballot box.



(4) If the returning officer cannot place a cross beside the voter's name in the electoral register, the returning officer must stamp the ballot paper before the voter him or herself places this in a ballot paper envelope and seals the envelope. At county council elections and municipal council elections, the ballot papers for each election are placed in their separate ballot paper envelopes. The returning officer places the ballot paper envelope(s) in a cover envelope, seals the cover envelope and writes the information about the voter's identity. The voter must place the cover envelope in a ballot box.

(5) Subsection 4 also applies for voters who vote at a polling station that was established pursuant to Section 8-2, subsection 2, third sentence.

## **Chapter 9. Joint provisions for voting**

### *Section 9-1 Announcement of when and where voters can vote*

(1) The Electoral Committee shall announce when and where voters can vote.

(2) The Governor shall announce when and where voters can vote on Svalbard.

(3) The Ministry may issue regulations relating to the announcement of the time and place of voting and changes to the time and place of voting.

### *Section 9-2 Who cannot serve as returning officers or electoral officials*

(1) A person who appears on an electoral list for a parliamentary election or county council election is ineligible to serve as a returning officer or election official in the municipalities in the constituency. The person also cannot participate in the counting in the constituency or in any of the municipalities in the constituency.

(2) A person who appears on an electoral list for a municipal council election cannot participate in the counting or serve as a returning officer or election official in the municipality.

### *Section 9-3 Identification*

(1) Voters must present identification.

(2) If a voter is known to the returning officer, the returning officer may instead confirm the voter's identity.

(3) An employee who presents identification can verify the identities of voters at health and social welfare institutions and in prisons.

(4) The Ministry may issue regulations relating to the requirement to present identification.

### *Section 9-4 Changes on the ballot paper*

(1) Voters may cast preferential votes for candidates on the ballot paper by placing a cross in the box beside the candidates' names.

(2) At municipal council elections, voters may also cast preferential votes for candidates on other electoral lists by listing the candidate names on the ballot paper. Such preferential votes may be given to as many candidates that correspond to one quarter of the number of members who are to be elected to the municipal council. However, voters can always cast a preferential vote for a minimum of five candidates from other lists. When a voter casts a preferential vote for an eligible candidate on another list, a list vote is transferred to the list on which this candidate appears.

(3) Any other changes on the ballot paper will not count towards the election result.

### *Section 9-5 Access to polling stations*

(1) Domestic polling stations must be suitable for voting and accessible to voters. Voters must be able to enter the polling stations unassisted. If there are special grounds for doing so,

voting may take place at premises that do not satisfy the requirements in the first and second sentences. This subsection does not apply for Svalbard and Jan Mayen.

(2) The Electoral Committee shall announce which polling stations do not meet the requirements in subsection 1.

#### *Section 9-6 Organisation of the polling stations*

The Electoral Committee must ensure that the polling stations are organised such that everyone is able to vote.

#### *Section 9-7 Right to assistance*

(1) A voter who, due to physical or mental disability, is unable to vote alone, may ask a returning officer for assistance to vote. A returning officer or a person selected by the voter him or herself may assist the voter.

(2) If a member of the polling committee or an election official at the polling station is of the view that the voter does not meet the requirements for receiving assistance pursuant to subsection 1, the polling committee will decide whether the voter meets the requirements. For advance voting, it is sufficient that one of the returning officers finds that the voter meets the requirements.

#### *Section 9-8 Placement of ballot papers*

Ballot papers must be placed in such a way that the selections the voter has made are not visible to unauthorised persons.

#### *Section 9-9 Voting outside the polling station*

If the voter is unable to enter the polling station, two returning officers may accept the voter's vote directly outside of the polling station.

#### *Section 9-10 Rules relating to public order*

(1) Voter influence is not permitted at the polling station.

(2) It is also not permitted to commit acts at the polling station and its immediate surroundings that may disrupt the election.

(3) It is not permitted for unauthorised persons to keep check of who casts votes.

(4) Returning officers and election officials must prevent unauthorised persons from obtaining knowledge about the use of the different ballot papers for the electoral lists.

(5) A returning officer working with advance voting or the chair or deputy chair of the polling committee may remove any person who is behaving in a manner that is contrary to the rules in this section.

#### *Section 9-11 Ballot boxes*

Ballot boxes used for domestic voting must be sealed.

#### *Section 9-12 Storage and transport of election materials*

The Electoral Committee must ensure that election materials are stored and transported in a secure manner.

#### *Section 9-13 Regulations*

(1) The Ministry may issue regulations relating to the announcement of the polling stations that do not meet the requirements in Section 9-5, subsection 1.

(2) The Ministry may issue regulations relating to the organisation and conduct of the voting, and the storage and transportation of election materials.

## **Chapter 10. Approval of ballots cast and ballot papers, counting, keeping of the election protocol etc.**

### *Section 10-1 Approval of ballots cast if the ballot paper is placed directly in a ballot box*

If the ballot paper is placed directly in a ballot box, the ballot cast is approved when the returning officer has placed a cross beside the voter's name in the electoral register.

### *Section 10-2 Approval of ballots cast if the ballot paper is placed in a ballot paper envelope*

(1) If the ballot paper is placed in a ballot paper envelope, the ballot cast must be approved by the central polling committee, which will place a cross beside the voter's name in the electoral register if the following conditions are met:

- a) The voter is included in the electoral register in the municipality.
- b) The ballot cast contains sufficient information for the identity of the voter to be determined.
- c) The ballot cast was delivered to the correct returning officer.
- d) There are no grounds to believe that the cover envelope has been opened.
- e) The voter has not previously had a ballot approved.
- f) The ballot cast was received by the Electoral Committee by 5pm the day after Election Day.

(2) The condition in subsection 1 (c) does not apply for postal voting.

(3) The ballot cast by the voter is approved when the voter has been crossed off in the electoral register.

(4) Advance votes must, insofar as possible, be approved before the election.

### *Section 10-3 Approval of ballot papers*

(1) A ballot paper shall be approved if:

- a) it bears a public stamp,
- b) it is clear as to which election the ballot paper applies,
- c) it is clear as to which party or group the voter has voted for,
- d) the party or group has submitted a list in the constituency.

(2) A ballot paper for another constituency can only be approved if it applies to a registered political party.

(3) If a printed ballot paper differs from the approved electoral list it shall be considered identical to the electoral list. Any corrections on the ballot paper must then be disregarded.

### *Section 10-4 Principles for the counting of ballot papers*

(1) The District Electoral Committee, County Electoral Committee and Electoral Committee shall decide who will count the ballot papers and how counting will take place. The ballot papers shall be counted twice, using independent methods. The Electoral Committee cannot use the same people and the same equipment that the District Electoral Committee and County Electoral Committee will use.

(2) As a general rule, the ballot papers shall be counted for each polling station. For advance voting, this only applies if a minimum of 60 votes have been received at the polling station. At polling stations, this only applies if the part or parts of the electoral register the count applies to include(s) a minimum of 100 names.

(3) Ballot papers cast in advance and ballot papers cast at polling stations shall be counted separately.

(4) Everyone has the right to be present during the count.

(5) The result of the first and final count shall be announced.

### *Section 10-5 Responsibility for counting advance voting ballot papers*

(1) The central polling committee is responsible for the first count of advance voting ballot papers.

(2) The District Electoral Committee is responsible for the final count at parliamentary elections.

(3) The County Electoral Committee is responsible for the final count at county council elections.

(4) The Electoral Committee is responsible for the final count at municipal council elections.

#### *Section 10-6 Responsibility for counting polling day ballots*

(1) The polling committee in each constituency is responsible for the first count of the polling day ballots. The Electoral Committee itself can decide that counting shall not take place at the individual polling stations. If so, the central polling committee is responsible for the first count.

(2) The central polling committee is responsible for the first count of polling day ballots that are in ballot paper envelopes and doubtful ballot papers that have been set aside by the polling committees.

(3) The District Electoral Committee is responsible for the final count at parliamentary elections.

(4) The County Electoral Committee is responsible for the final count at county council elections.

(5) The Electoral Committee is responsible for the final count at municipal council elections.

#### *Section 10-7 First Count*

(1) The first count of advance voting ballot papers must start no later than four hours before the final polling station in the municipality has closed. Counting can start the day before Election Day at the earliest.

(2) Counting may only start if a minimum of 60 advance ballots have been received. Of these, 30 advance ballots must be kept out of the first count and then mixed together with advance ballots that arrive after counting has begun. If a minimum of 60 advance ballots has not been received, counting shall start as soon as all of the advance ballots have been approved.

(3) The first count of polling station ballot papers shall commence as soon as possible after polling station voting has concluded.

#### *Section 10-8 Approval of ballots cast when the ballot paper has been placed in a ballot paper envelope, and approval of doubtful ballot papers*

(1) The central polling committee decides whether ballots cast when the ballot paper has been placed in a ballot paper envelope shall be approved.

(2) The central polling committee decides whether ballot papers from approved ballots cast when the ballot paper was placed in a ballot paper envelope, shall be approved, and whether doubtful ballot papers set aside by the polling committee shall be approved.

#### *Section 10-9 Forwarding of material to the Electoral Committee*

(1) At municipal council elections, the polling committees and the central polling committee must send the following material to the Electoral Committee as soon as possible:

- a) approved ballot papers,
- b) ballots cast and ballot papers that the central polling committee has rejected,
- c) cover envelopes from advance voting abroad and on Svalbard and Jan Mayen,
- d) copy of the election protocol of the polling committee and central polling committee,

e) copy of appeals that have been received.

(2) The approved ballot papers must be sorted into corrected and uncorrected polling station ballots and corrected and uncorrected ballot papers cast in advance. Ballot papers that have been set aside as doubtful must be sorted individually.

(3) The material shall be packed in good order and in properly sealed packaging and sent using the quickest and safest means.

*Section 10-10 Control and final count for municipal council elections*

(1) The Electoral Committee shall review the conduct of the municipal council election in the municipality based on the material that it has been sent pursuant to Section 10-9.

(2) The Electoral Committee shall count the ballot papers from the first count once more.

(3) The final count shall start immediately after the first count has concluded and all votes have been received by the Electoral Committee.

(4) If the Electoral Committee finds errors in decisions to approve or reject votes or ballot papers, or errors in the counting, such errors must be corrected.

(5) In the final count of the ballots papers, the Electoral Committee shall also register the corrections that voters have made on the ballot papers. The Electoral Committee shall then determine the number of list votes polled by the individual lists. Each ballot paper counts for as many list votes as the number of members to be elected to the municipal council. The figure is adjusted for list votes cast for and received from other lists.

*Section 10-11 Forwarding of material to the District Electoral Committee and County Electoral Committee*

(1) For parliamentary elections and county council elections, the Electoral Committee shall send the following material to the District Electoral Committee and County Electoral Committee as soon as possible:

- a) approved ballot papers,
- b) ballots cast and ballot papers that the central polling committee has rejected,
- c) cover envelopes from advance voting abroad and on Svalbard and Jan Mayen,
- d) copy of the election protocol of the polling committee, central polling committee and Electoral Committee,
- e) copies of appeals that have been received.

(2) The approved ballot papers must be sorted into corrected and uncorrected polling station ballots and corrected and uncorrected ballot papers cast in advance. Ballot papers that have been set aside as doubtful must be sorted individually.

(3) The material shall be packed in good order and in properly sealed packaging and sent using the quickest and safest means.

*Section 10-12 Control and final count for parliamentary elections and county council elections*

(1) The District Electoral Committee shall review the conduct of the parliamentary election in the municipalities based on the material it is sent pursuant to Section 10-11.

(2) The County Electoral Committee shall review the conduct of the county council election in the municipalities based on the material it is sent pursuant to Section 10-11.

(3) The District Electoral Committee and County Electoral Committee shall count the ballot papers from the first count once more.

(4) If the District Electoral Committee or County Electoral Committee finds errors in decisions to approve or reject votes or ballot papers, or errors in the counting, such errors must be corrected.

(5) In the final count of the ballots papers, the District Electoral Committee and County Electoral Committee shall also register the corrections that voters have made on the ballot papers. The number of votes for each list is the same as the number of ballot papers each list has received for all of the municipalities in the constituency combined.

#### *Section 10-13 Election protocol*

(1) The polling committee shall keep a protocol of its conduct of the election.

(2) The Electoral Committee shall keep a protocol of its review of the polling committees' conduct of the municipal council election, the final count, the election result and preparations for and conduct of the election. For parliamentary elections and county council elections, the Electoral Committee shall also keep an overall protocol of the conduct of the election in the municipality.

(3) The District Electoral Committee shall keep a protocol of its review of the conduct of the parliamentary election in the municipalities and of the final count and election result.

(4) The County Electoral Committee shall keep a protocol of its review of the conduct of the county council election in the municipalities and of the final count and election result.

(5) For parliamentary elections, the District Electoral Committee shall send a copy of the election protocol to the Storting and the Ministry.

#### *Section 10-14 Regulations*

The Ministry may issue regulations relating to the approval of ballots cast and ballot papers, the counting of ballot papers and keeping of the election protocol.

## **Chapter 11. Allocation of seats and returning of members**

### *Section 11-1 Constituencies for parliamentary elections*

(1) The country is divided into 19 constituencies.

(2) For elections to the Storting, members and their alternate members are elected from the following constituencies:

- a) Østfold constituency, which consists of the municipalities of Aremark, Fredrikstad, Halden, Hvaler, Indre Østfold, Marker, Moss, Rakkestad, Råde, Sarpsborg, Skiptvet and Våler (Viken).
- b) Akershus constituency, which consists of the municipalities of Asker, Aurskog-Høland, Bærum, Eidsvoll, Enebakk, Frogn, Gjerdrum, Hurdal, Lillestrøm, Lunner, Lørenskog, Nanndestad, Nes, Nesodden, Nittedal, Nordre Follo, Rælingen, Ullensaker, Vestby and Ås.
- c) Oslo constituency, which consists of the City of Oslo.
- d) Hedmark constituency, which consists of the municipalities of Alvdal, Eidskog, Elverum, Engerdal, Folldal, Grue, Hamar, Kongsvinger, Løten, Nord-Odal, Os, Rendalen, Ringsaker, Stange, Stor-Elvdal, Sør-Odal, Tolga, Trysil, Tynset, Våler (Innlandet), Åmot and Åsnes.
- e) Oppland constituency, which consists of the municipalities of Dovre, Etnedal, Gausdal, Gjøvik, Gran, Lesja, Lillehammer, Lom, Nord-Aurdal, Nord-Fron, Nordre Land, Ringebu, Sel, Skjåk, Søndre Land, Sør-Aurdal, Sør-Fron, Vang, Vestre Slidre, Vestre Toten, Vågå, Østre Toten, Øyer and Øystre Slidre.
- f) Buskerud constituency, which consists of the municipalities of Drammen, Flesberg, Flå, Gol, Hemsedal, Hol, Hole, Jevnaker, Kongsberg, Krødsherad, Lier, Modum, Nesbyen, Nore and Uvdal, Ringerike, Rollag, Sigdal, Øvre Eiker and Ål.
- g) Vestfold constituency, which consists of the municipalities of Færder, Holmestrand, Horten, Larvik, Sandefjord and Tønsberg.

- h) Telemark constituency, which consists of the municipalities of Bamble, Drangedal, Fyresdal, Hjartdal, Kragerø, Kviteseid, Midt-Telemark, Nissedal, Nome, Notodden, Porsgrunn, Seljord, Siljan, Skien, Tin, Tokke and Vinje.
- i) Aust-Agder constituency, which consists of the municipalities of Arendal, Birkenes, Bygland, Bykle, Evje and Hornnes, Froland, Gjerstad, Grimstad, Iveland, Lillesand, Risør, Tvedestrand, Valle, Vegårshei and Åmli.
- j) Vest-Agder constituency, which consists of the municipalities of Farsund, Flekkefjord, Hægebostad, Kristiansand, Kvinesdal, Lindesnes, Lyngdal, Sirdal, Vennesla and Åseral.
- k) Rogaland constituency, which consists of the municipalities Bjerkreim, Bokn, Eigersund, Gjesdal, Haugesund, Hjelmeland, Hå, Karmøy, Klepp, Kvitsøy, Lund, Randaberg, Sandnes, Sauda, Sokndal, Sola, Stavanger, Strand, Suldal, Time, Tysvær, Utsira and Vindafjord.
- l) Hordaland constituency, which consists of the municipalities of Alver, Askøy, Austevoll, Austrheim, Bergen, Bjørnafjorden, Bømlo, Eidfjord, Etne, Fedje, Fitjar, Kvam, Kvinnherad, Masfjorden, Modalen, Osterøy, Samnanger, Stord, Sveio, Tysnes, Ullensvang, Ulvik, Vaksdal, Voss and Øygarden.
- m) Sogn og Fjordane constituency, which consists of the municipalities of Askvoll, Aurland, Bremanger, Fjaler, Gloppen, Gulen, Hyllestad, Høyanger, Kinn, Luster, Lærdal, Sogndal, Solund, Stad, Stryn, Sunnfjord, Vik and Årdal.
- n) Møre og Romsdal constituency, which consists of the municipalities of Aukra, Aure, Averøy, Fjord, Giske, Gjemnes, Hareid, Herøy (Møre og Romsdal), Hustadvika, Kristiansund, Molde, Rauma, Sande, Smøla, Stranda, Sula, Sunndal, Surnadal, Sykkylven, Tingvoll, Ulstein, Vanylven, Vestnes, Volda, Ørsta and Ålesund.
- o) Sør-Trøndelag constituency, which consists of the municipalities of Frøya, Heim, Hitra, Holtålen, Indre Fosen, Malvik, Melhus, Midtre Gauldal, Oppdal, Orkland, Osen, Rennebu, Rindal, Røros, Selbu, Skaun, Trondheim, Tydal, Ørland and Åfjord.
- p) Nord-Trøndelag constituency, which consists of the municipalities of Flatanger, Frosta, Grong, Høylandet, Inderøy, Leka, Levanger, Lierne, Meråker, Namsos, Namsskogan, Nærøysund, Overhalla, Røyrvik, Snåsa, Steinkjer, Stjørdal and Verdal.
- q) Nordland constituency, which consists of the municipalities of Alstahaug, Andøy, Beiarn, Bindal, Bodø, Brønnøy, Bø, Dønna, Evenes, Fauske, Flakstad, Gildeskål, Grane, Hadsel, Hamarøy, Hattfjell, Hemnes, Herøy (Nordland), Leirfjord, Lurøy, Lødingen, Meløy, Moskenes, Narvik, Nesna, Rana, Rødøy, Røst, Saltdal, Sortland, Steigen, Sømna, Sørfold, Træna, Vefsn, Vega, Vestvågøy, Vevelstad, Værøy, Vågan and Øksnes.
- r) Troms constituency, which consists of the municipalities of Balsfjord, Bardu, Dyrøy, Gratangen, Harstad, Ibestad, Karlsøy, Kvæfjord, Kvænangen, Kåfjord, Lavangen, Lyngen, Målselv, Nordreisa, Salangen, Senja, Skjervøy, Storfjord, Sørreisa, Tjeldsund and Tromsø.
- s) Finnmark constituency, which consists of the municipalities of Alta, Berlevåg, Båtsfjord, Gamvik, Hammerfest, Hasvik, Karasjok, Kautokeino, Lebesby, Loppa, Måsøy, Nesseby, Nordkapp, Porsanger, Sør-Varanger, Tana, Vadsø and Vardø.

*Section 11-2 Number of members of the Storting*

(1) 169 members shall be returned to the Storting.

(2) One member is returned from each constituency through the seats at large system.

The other members are elected directly in the constituencies.

*Section 11-3 Number of seats in the Storting from each constituency*

(1) The seats in the Storting must be allocated between the constituencies prior to each parliamentary election. All constituencies must have a minimum of four seats.

(2) All constituencies first receive one seat.

(3) The remainder of the seats are allocated using the Sainte-Laguë method according to the number of inhabitants in each constituency at the end of the penultimate year before the parliamentary election. The number of inhabitants in each constituency is divided by 1–3–5–7, etc. The constituency that has the largest quotient receives the first seat. The constituency that has the second largest quotient receives the next seat and so forth.

(4) If multiple constituencies have the same quotient, the constituency with the highest population will receive the seat. If the constituencies also have the same number of inhabitants, the constituency that will be allocated the seat shall be determined by the drawing of lots.

(5) If a constituency receives fewer than four seats following the allocation of seats in subsections 2, 3 and 4, the constituency must still have four seats. The seats will then be allocated once more without the constituency and the constituency's seats.

(6) The Ministry allocates the seats. The Ministry shall inform the Storting of the outcome and announce the allocation.

#### *Section 11-4 Allocation of the directly elected seats at parliamentary elections*

(1) The District Electoral Committee shall allocate the constituency's directly elected seats between the lists.

(2) The seats are allocated based on the number of votes polled by the lists in the constituency. The Sainte-Laguë method is used for the allocation, with 1.4 as the first divisor. This means that the number of votes that each list has received is divided by 1.4–3–5–7, etc. The number of votes shall be divided as many times as there are seats in the constituency. The list that has the largest quotient receives the first seat. The second seat goes to the list that has the second largest quotient and so forth. If two or more lists have the same quotient, the seat goes to the list that has polled the largest number of votes. If the lists have also received the same number of votes, the list that will be allocated the seat shall be determined by the drawing of lots.

#### *Section 11-5 Returning of the directly elected members at parliamentary elections*

(1) When the number of directly elected seats a list shall receive has been decided, the District Electoral Committee then returns the elected members.

(2) The District Electoral Committee must disregard candidates who are not eligible for election.

(3) The candidates are given the number of preferential votes they received from voters. Candidates with an increased share of the poll are also given the number of preferential votes they are entitled to pursuant to Section 5-3. The members for each list are then returned in sequence according to the number of preferential votes they have received. If multiple candidates have received the same number of preferential votes, the sequence on the list will be the deciding factor.

(4) Each list shall, insofar as possible, be allocated as many alternate members as the number of members it gains, with the addition of three. The alternate members are returned in the same manner as the members.

#### *Section 11-6 Announcement of the election result at parliamentary elections*

The District Electoral Committee shall announce the election result and how this was calculated.

#### *Section 11-7 The District Electoral Committee's forwarding of information to the Storting and the Ministry*



(1) The District Electoral Committee shall send a copy of the election result to the Storting and the Ministry.

(2) The information that is sent shall include an overview of appeals received and the assessment of these appeals by the District Electoral Committee and National Electoral Committee.

*Section 11-8 Allocation of seats at large between the parties at parliamentary elections*

(1) The Ministry allocates the seats at large between the parties based on the election result determined by the District Electoral Committees.

(2) The seats at large are allocated between the registered political parties that have submitted lists in all constituencies and have received no less than three per cent of the approved votes in the entire country.

(3) The seats at large are allocated based on a calculation in which all of the seats in the Storting are allocated between the parties. Votes and seats for lists that do not satisfy the requirements in subsection 2 are excluded. The calculation is based on the total number of votes polled by the parties for the entire country and is carried out using the Sainte-Laguë method, with 1.4 as the first divisor.

(4) The result of the calculation is compared with the number of direct seats the parties have received. The seats at large are allocated to the parties that have received fewer directly elected seats than what results from the calculation.

(5) If a party has received more direct seats than what resulted from the national allocation, there will be a new national allocation in which the parties' votes and seats are excluded.

*Section 11-9 Allocation of seats at large between the constituencies at parliamentary elections*

(1) The Ministry allocates the parties' seats at large between the constituencies. Each constituency must have one seat at large.

(2) For each party that shall receive a seat at large, a weighted quotient is calculated for each constituency. The weighted quotient is calculated as follows:

- a) The party's total vote polled in the constituency is divided by a number that is one greater than twice the number of directly elected seats the party has gained in the constituency.
- b) These quotients are weighted by being divided by the average number of votes per directly elected seat in the constituency

(3) The first seat at large is allocated to the party and the constituency which has the largest weighted quotient. The next seat at large is allocated to the party and the constituency that has the second largest weighted quotient and so forth. If two quotients are equal, the number of votes in the constituency will be the deciding factor. If the parties have also received the same number of votes, the sequence will be determined by drawing lots.

(4) The allocation shall continue until all parties have received the number of seats at large they are entitled to and each constituency has received one seat at large.

*Section 11-10 Returning of seats at large at parliamentary elections*

(1) When it has been decided which parties will receive seats at large and in what constituencies the parties will receive their seats at large, the Ministry shall return the elected members in continued sequence in accordance with Section 11-5.

(2) The Ministry shall also return all alternate members in continued sequence in accordance with Section 11-5.

(3) The Ministry shall disregard candidates who have already been elected as directly elected members, or who are not eligible for election.

*Section 11-11 Announcement of seats at large at parliamentary elections*

The Ministry shall announce how the seats at large have been allocated and how members for the seats at large have been returned

*Section 11-12 Credentials for the members returned to the Storting*

(1) The Ministry issues credentials for all members and alternate members returned to the Storting. The credentials are sent to the Storting.

(2) The Ministry shall keep a protocol of the allocation of seats at large and inform the Storting and District Electoral Committees of the result.

*Section 11-13 Information to the members returned to the Storting*

(1) After having received notice from the Ministry, the District Electoral Committee shall notify the members and alternate members returned of their election.

(2) Candidates who have been elected as a member or alternate member for multiple constituencies shall themselves decide which election to accept. The candidates must send written notice to the District Electoral Committee of which election they will accept within three days of having received information about the election. If a candidate does not send such notice, the election is deemed to have been accepted in the constituency in which the candidate is eligible to vote, or - if he or she is not eligible to vote in any constituency – the constituency which comes first in alphabetical order. If the election the candidate has received is declared invalid, he or she can send a new notice.

*Section 11-14 Allocation of the seats at county council elections*

(1) The County Electoral Committee shall determine the election result for county council elections.

(2) The seats are allocated based on the number of votes polled by the lists in the county using the Sainte-Laguë method, with 1.4 as the first divisor, cf. Section 11-4.

*Section 11-15 Returning of the elected members at county council elections*

(1) When the number of seats a list is entitled to has been decided, the County Electoral Committee returns the elected members.

(2) The County Electoral Committee must disregard candidates who are not eligible for election.

(3) The candidates are given the number of preferential votes they received from voters. Candidates with an increased share of the poll are also given the number of preferential votes they are entitled to pursuant to Section 5-3. The members for each list are then returned in sequence according to the number of preferential votes they have received. If multiple candidates have received the same number of preferential votes, the sequence on the list will be the deciding factor.

(4) Each list shall, insofar as possible, be allocated as many alternate members as the number of members it gains, with the addition of three. The alternate members are returned in the same manner as the members.

(5) If a list gains more seats than there are eligible candidates on the list, the surplus seats are allocated to the remaining lists pursuant to Section 11-14.

*Section 11-16 Information to the members returned to the county council*

The County Electoral Committee shall inform the members and alternate members who have been returned of their election.

*Section 11-17 Announcement of the election result at county council elections*

The County Electoral Committee shall announce the election result and how this was calculated.

*Section 11-18 The County Electoral Committee's forwarding of information to the county council*

(1) The County Electoral Committee shall send a copy of the election result to the county council.

(2) The information sent shall include an overview of appeals received and the assessment of these appeals by the County Electoral Committee and National Electoral Committee.

*Section 11-19 Allocation of the seats at municipal council elections*

(1) The Electoral Committee shall determine the election result in the case of elections to the municipal council.

(2) The seats are allocated based on the number of votes polled by the lists in the municipality using the Sainte-Laguë method, with 1.4 as the first divisor, cf. Section 11-4.

(3) Each vote that a list has received counts for as many list votes as the number of members to be elected to the county council. The figure is adjusted for cross-party votes cast for and received from other lists. A cross-party vote is equivalent to a list vote.

(4) Cross-party votes for candidates who are not eligible for election shall not be counted.

*Section 11-20 Returning of the elected members at municipal council elections*

(1) When the number of seats a list is entitled to has been decided, the Electoral Committee returns the elected members.

(2) The Electoral Committee must disregard candidates who are not eligible for election.

(3) The candidates are given the number of preferential votes they received from voters. Candidates with an increased share of the poll are also given the number of preferential votes they are entitled to pursuant to Section 5-3. The members for each list are then returned in sequence according to the number of preferential votes they have received. If multiple candidates have received the same number of preferential votes, the sequence on the list will be the deciding factor.

(4) Each list shall, insofar as possible, be allocated as many alternate members as the number of members it gains, with the addition of three. The alternate members are returned in the same manner as the members.

(5) If a list gains more seats than there are eligible candidates on the list, the surplus seats are allocated to the remaining lists pursuant to Section 11-19.

*Section 11-21 Information to the members returned to the municipal council*

The Electoral Committee shall inform the members and alternate members returned of their election.

*Section 11-22 Announcement of the election result at municipal council elections*

The Electoral Committee shall announce the election result and how this was calculated.

*Section 11-23 The Electoral Committee's forwarding of information to the municipal council*

(1) The Electoral Committee shall send a copy of the election result to the municipal council.

(2) The information sent shall include an overview of appeals received and the consideration of these appeals by the Electoral Committee and National Electoral Committee.

## **Chapter 12. Election by majority ballot in the case of elections to the municipal council**

### *Section 12-1 When an election by majority ballot shall be held*

(1) A municipal council election shall be held by majority ballot if there are fewer than two approved list proposals.

(2) The Electoral Committee shall announce that the election is to be held by majority ballot and issues information concerning what rules apply to the election.

### *Section 12-2 How voters can vote*

(1) Voters use the same ballot paper when voting for members and alternate members.

(2) The ballot paper may contain no more than as many names as there shall be elected members of the municipal council, and as many alternate members.

### *Section 12-3 Election result*

(1) At the determination of the election result, those votes that have been cast for members are counted first. If no distinction has been made on the ballot paper between members and alternate members, those listed first are regarded as members in the number permitted, and the following names as those of alternate members in the number permitted. If a ballot paper contains more names listed as members or alternate members than the number permitted, the names that are listed last in order are disregarded.

(2) A name may only be listed once on each ballot paper.

(3) Those who poll the most votes for members are elected in the number that shall be elected as members of the municipal council.

(4) Those who poll the most votes when the votes for members and alternate members are counted together, are elected as alternate members in the order shown by the number of votes cast and in such number as corresponds to that of the members.

(5) If multiple candidates receive the same number of votes, the candidate who is returned shall be determined by lot.

## **Chapter 13. Approval of elections**

### *Section 13-1 Approval of parliamentary elections*

(1) The newly returned Storting decides whether the election of members to the Storting is valid.

(2) The Storting shall ensure that any errors are corrected insofar as this is possible.

(3) If it is not possible to correct errors, the election shall be declared invalid:

- a) when there is breach of the provisions in the Constitution of Norway, Election Act or Election Regulations relating to how elections shall be prepared and conducted, and there is a preponderance of probability that this has influenced the overall allocation of the seats between the lists,
- b) when the objective conditions in Section 151 to Section 154 of the Norwegian Penal Code have been met and there is a preponderance of probability that this has influenced the overall allocation of seats between the lists,
- c) when there is there is a preponderance of probability that the circumstances referred to in (a) and (b) have collectively influenced the overall allocation of seats between the lists.

(4) The election may only be declared invalid in the municipalities where there is a preponderance of probability that the unlawful circumstances have influenced the allocation of votes to the different lists.

(5) If the Storting declares the election to be invalid in one or more municipalities, a new election must be held in these municipalities.

(6) The Storting must be informed of decisions by the National Electoral Committee in appeal cases before the Storting shall determine whether the election is valid. If appeal proceedings before the National Electoral Committee have not concluded on the date the Storting decides whether the election is valid, the credentials for members of the Storting may only be temporarily approved.

#### *Section 13-2 Approval of county council elections*

(1) The newly returned county council decides whether the election of members of the county council is valid.

(2) The county council cannot decide whether an election is valid until it is clear that no matters relating to the election have been appealed or that, after concluding the appeals process, the National Electoral Committee has not declared the election to be invalid.

(3) The county council shall ensure that any errors are corrected insofar as this is possible.

(4) If it is not possible to correct errors, the election shall be declared invalid:

- a) when there is breach of the provisions in the Constitution of Norway, Election Act or Election Regulations relating to how elections shall be prepared and conducted, and there is a preponderance of probability that this has influenced the allocation of the seats between the lists,
- b) when the objective conditions in Section 151 to Section 154 of the Norwegian Penal Code have been met and there is a preponderance of probability that this has influenced the allocation of seats between the lists,
- c) when there is there is a preponderance of probability that the circumstances referred to in (a) and (b) have collectively influenced the allocation of seats between the lists.

(5) The county council cannot declare the election invalid on the basis of circumstances that the National Electoral Committee has rejected as grounds for invalidity.

(6) The election may only be declared invalid in the municipalities where there is a preponderance of probability that the unlawful circumstances have influenced the allocation of votes to the different lists.

(7) If the county council declares the election in one or more municipalities to be invalid, the National Electoral Committee must be notified of this.

#### *Section 13-3 Approval of municipal council elections*

(1) The newly returned municipal council decides whether the election of members of the municipal council is valid.

(2) The municipal council cannot decide whether an election is valid until it is clear that no matters relating to the election have been appealed or that, after concluding the appeals process, the National Electoral Committee has not declared the election to be invalid.

(3) The municipal council shall ensure that any errors are corrected insofar as this is possible.

(4) If it is not possible to correct errors, the election shall be declared invalid:

- a) when there is breach of the provisions in the Constitution of Norway, Election Act or Election Regulations relating to how elections shall be prepared and conducted, and there is a preponderance of probability that this has influenced the allocation of the seats between the lists,
- b) when the objective conditions in Section 151 to Section 154 of the Norwegian Penal Code have been met and there is a preponderance of probability that this has influenced the allocation of seats between the lists,
- c) when there is there is a preponderance of probability that the circumstances referred to in (a) and (b) have collectively influenced the allocation of seats between the lists.

(5) The municipal council cannot declare the election invalid on the basis of circumstances that the National Electoral Committee has rejected as grounds for invalidity.

(6) If the municipal council declares the election invalid, the National Electoral Committee must be notified of this.

## **Chapter 14. Appeal**

### *Section 14-1 What may be appealed*

The following may be appealed:

- a) breach of the provisions in the Constitution of Norway, Election Act and Election Regulations relating to how the election must be prepared and conducted,
- b) that the objective conditions in Sections 151 to 154 of the Norwegian Penal Code have been met,
- c) the election result determined by the District Electoral Committee, County Electoral Committee and Electoral Committee,
- d) the Ministry's allocation of seats at large to parties and constituencies, and returning of candidates,
- e) a decision by the Storting on whether a parliamentary election was valid,
- f) a decision by the county council on whether a county council election was valid,
- g) a decision by the municipal council on whether a municipal council election was valid.

### *Section 14-2 Parliamentary elections. Who can appeal against errors relating to the preparation and conduct of elections etc.*

(1) Anyone who is entitled to vote may appeal the matters referred to in Section 14-1, (a) to (c) in the constituency where they are included in the electoral register. Those who are not included in the electoral register may also appeal if the appeal concerns the right to vote or access to vote.

(2) Those who have voted in advance or have attempted to vote in advance outside the constituency in which they are registered to vote may appeal the conduct of the advance voting in the municipality where they voted in advance or attempted to vote in advance.

(3) Anyone who has submitted a list may appeal the matters referred to in Section 14-1, (a) to (c) in the constituency in which the list was submitted.

(4) Registered political parties that have submitted lists in all of the country's constituencies for parliamentary elections may appeal the matters referred to in Section 14-1 (d).

(5) Registered political parties may appeal a decision by the District Electoral Committee to approve a list proposal if the appeal concerns violation of the exclusive right to use the party name.

### *Section 14-3 County council elections. Who can appeal against errors relating to the preparation and conduct of elections etc.*

(1) Anyone who is entitled to vote may appeal the matters referred to in Section 14-1, (a) to (c) in the county where they are included in the electoral register. Those who are not included in the electoral register may also appeal if the appeal concerns the right to vote or access to vote.

(2) Those who have voted in advance or have attempted to vote in advance outside the county in which they are registered to vote may appeal the conduct of the advance voting in the municipality where they voted in advance or attempted to vote in advance.

(3) Anyone who has submitted a list may appeal the matters referred to in Section 14-1, (a) to (c) in the county in which the list was submitted.

(4) Registered political parties may appeal a decision by the County Electoral Committee to approve a list proposal if the appeal concerns violation of the exclusive right to use the party name.

*Section 14-4 Municipal council elections. Who can appeal against errors relating to the preparation and conduct of elections etc.*

(1) Anyone who is entitled to vote may appeal the matters referred to in Section 14-1, (a) to (c) in the municipality where they are included in the electoral register. Those who are not included in the electoral register may also appeal if the appeal concerns the right to vote or access to vote.

(2) Those who have voted in advance or have attempted to vote in advance outside the municipality in which they are registered to vote may appeal the conduct of the advance voting in the municipality where they voted in advance or attempted to vote in advance.

(3) Anyone who has submitted a list may appeal the matters referred to in Section 14-1, (a) to (c) in the county in which the list was submitted.

(4) Registered political parties may appeal a decision by the Electoral Committee to approve a list proposal if the appeal concerns violation of the exclusive right to use the party name.

*Section 14-5 Who may appeal the approval of an election*

(1) Anyone who has submitted a list at a parliamentary election may appeal a decision by the Storting on whether the election was valid. Candidates who are of the opinion that the list should have received more seats may also appeal.

(2) Anyone who has submitted a list at a county council election may appeal a decision by the county council on whether the election was valid. Candidates who are of the opinion that the list should have received more seats may also appeal.

(3) Anyone who has submitted a list at a municipal council election may appeal a decision by the municipal council on whether the election was valid. Candidates who are of the opinion that the list should have received more seats may also appeal.

(4) The right of appeal for all those who have submitted lists shall only apply when the complainant asserts that alleged errors have impacted on the complainant's list. The right of appeal for candidates only applies when they claim that the asserted error(s) has/have impacted on the seats they are allocated.

*Section 14-6 Appeal deadlines*

(1) Unless otherwise stipulated in subsections 2 to 7 of this section, the general appeal deadline is four days after Election Day.

(2) The deadline for appealing the Ministry's allocation of seats in the Storting between the constituencies is seven days after the allocation was announced.

(3) The deadline for appealing decisions by the District Electoral Committee, County Electoral Committee or Electoral Committee to approve or reject a list proposal is seven days after the headings on the approved electoral lists were announced.

(4) The deadline for appealing a decision to correct the electoral register is seven days from when the complainant received notice of the decision.

(5) The deadline for appealing the election result determined by the District Electoral Committee, County Electoral Committee or Electoral Committee is four days after this was announced

(6) The deadline for appealing the Ministry's allocation of seats at large days is four days after the allocation was announced.

(7) The deadline for appealing decisions by the Storting, county council and municipal council regarding whether an election is valid is seven days after the decision was announced.

#### *Section 14-7 Requirements for the appeal*

(1) An appeal must be in writing and must state the factual circumstances on which the complainant has based the appeal (grounds for the appeal).

(2) The appeal must be submitted to the Electoral Committee in the municipality where the subject matter of the appeal took place.

(3) If the appeal concerns a decision, the appeal must be submitted to the body that handed down the decision.

(4) If the appeal relates to grounds that are of importance to both county council elections and municipal council elections, it shall be deemed to apply to both elections.

(5) An appeal has been submitted in time if it has been received by the Electoral Committee, the body that handed down the appealed decision, the appellate instance, the Ministry, the Norwegian Directorate of Elections, or the Administration of the Storting before the appeal deadline has expired.

(6) An appeal against a decision by the Storting on whether the parliamentary election is valid must be brought before the Supreme Court through an action against the Storting, cf. Section 9-2 of the Dispute Act.

#### *Section 14-8 Procedure of the body that the appeal is submitted to*

(1) If the body that handed down the decision agrees with the appeal, it must reverse the decision. If the body does not agree with the appeal, it must send the appeal to the National Electoral Committee together with a statement of its position on the appeal.

(2) If the appeal concerns something other than a decision and the Electoral Committee agrees with the appeal, the situation must be remedied insofar as possible. If the situation cannot be remedied, or the Electoral Committee does not agree with the appeal, the Electoral Committee must send the appeal to the National Electoral Committee together with a statement of its position on the appeal.

(3) Section 33, subsection 3, third sentence of the Public Administration Act does not apply. The appeal must instead be sent to the National Electoral Committee together with a report on why the appeal should be dismissed.

(4) The appeal must be considered without undue delay.

(5) This section does not apply to appeals of decisions by the Storting on whether an election was valid.

#### *Section 14-9 Appellate instances*

(1) A plenary session of the Supreme Court decides on appeals of decisions by the Storting on whether a parliamentary election was valid, cf. Section 14-1, (e).

(2) The National Electoral Committee decides on appeals in accordance with Section 14-1, (a) to (d) and (f) and (g).

(3) Decisions by the National Electoral Committee are final and cannot be brought before the courts.

#### *Section 14-10 Administrative procedures of the National Electoral Committee*

(1) The National Electoral Committee decides on appeals at a meeting following a written hearing. The National Electoral Committee can decide whether the meeting shall be open to the public. The National Electoral Committee can consent to an oral hearing if there are special grounds for this. Oral hearings are normally open to the public.



(2) The National Electoral Committee must give the complainant the opportunity to provide remarks to statements submitted in accordance with Section 14-8, subsections 1, 2 and 3.

(3) The National Electoral Committee may require information and statements from public bodies and individuals who were involved in the election.

(4) The National Electoral Committee can review all aspects of the case and take new circumstances into account.

(5) The Public Administration Act and Freedom of Information Act apply for the National Electoral Committee insofar as they are appropriate. Decisions by the National Electoral Committee must be justified in accordance with the rules for individual decisions in the Public Administration Act.

(6) The appeal must be considered without undue delay.

(7) Decisions by the National Electoral Committee in appeal cases must be announced. When all appeal cases are concluded, the Storting's Presidium must be notified of all decisions by the National Electoral Committee in appeal cases which apply to parliamentary elections.

#### *Section 14-11 Decisions by the National Electoral Committee*

(1) The National Electoral Committee shall dismiss an appeal if the conditions for considering the appeal have not been met or if the same grounds for appeal have already been considered.

(2) If the National Electoral Committee finds that an error has occurred, but that the conditions for invalidity pursuant to subsection 4 have not been met, the National Electoral Committee must find in favour of the complainant that an error has occurred.

(3) The National Electoral Committee can order the electoral bodies to correct errors insofar as this is possible.

(4) If it is not possible to correct errors, the election shall be declared invalid:

- a) when there is breach of the provisions in the Constitution of Norway, Election Act or Election Regulations relating to how elections shall be prepared and conducted, and there is a preponderance of probability that this has influenced the overall allocation of the seats between the lists,
- b) when the objective conditions in Section 151 to Section 154 of the Norwegian Penal Code have been met and there is a preponderance of probability that this has influenced the overall allocation of seats between the lists,
- c) when there is there is a preponderance of probability that the circumstances referred to in (a) and (b) have collectively influenced the overall allocation of seats between the lists.

(5) The election may only be declared invalid in the municipalities where there is a preponderance of probability that the unlawful circumstances have influenced the allocation of votes to the different lists.

(6) When the National Electoral Committee has considered all of the appeals, it must decide whether there is a preponderance of probability that the illegal circumstances have, on the whole, influenced the overall allocation of the seats between the lists. In this assessment, the National Electoral Committee can take into consideration matters that were not appealed.

(7) If the National Electoral Committee declares the election in a municipality to be invalid, a new election must be held in the municipality.

(8) If the county council or municipal council has decided that the election was invalid, the National Electoral Committee shall declare the county council election or municipal council election to be valid if the conditions for invalidly have not been met.

(9) All members of the National Electoral Committee must be present for a decision to be handed down.

#### *Section 14-12 The appeal process in the Supreme Court*

(1) If the conditions for hearing an action against a decision by the Storting have not been met, the Appeals Committee of the Supreme Court may dismiss the action in a ruling.

(2) If the Appeals Committee unanimously finds it to be clear that the action cannot succeed, the Appeals Committee may dismiss the action in a ruling. Conversely, the Appeals Committee may refer the action for a hearing by a plenary session of the Supreme Court.

(3) A plenary session of the Supreme Court shall, in a judgment, declare the parliamentary election invalid:

- a) when there is breach of the provisions in the Constitution of Norway, Election Act or Election Regulations relating to how elections shall be prepared and conducted, and there is a preponderance of probability that this has influenced the overall allocation of the seats between the lists,
- b) when the objective conditions in Section 151 to Section 154 of the Norwegian Penal Code have been met and there is a preponderance of probability that this has influenced the overall allocation of seats between the lists,
- c) when there is there is a preponderance of probability that the circumstances referred to in (a) and (b) have collectively influenced the overall allocation of seats between the lists.

(4) The election may only be declared invalid in the municipalities where there is a preponderance of probability that the unlawful circumstances have influenced the allocation of votes to the different lists.

(5) The election must not be declared invalid if it is possible to correct the errors.

(6) If a plenary session of the Supreme Court declares the election to be invalid in one or more municipalities, a new election must be held in these municipalities.

(7) A plenary session of the Supreme Court shall, in a judgment, declare a parliamentary election to be valid if the conditions for invalidity have not been met.

### **Chapter 15. New election**

#### *Section 15-1 When and how a new election shall be conducted*

(1) A new election shall be held if the Storting, Supreme Court or National Electoral Committee declares an election to be invalid.

(2) If the county council or the municipal council declares an election invalid, the National Electoral Committee must decide whether to hold a new election. A new election shall only be conducted if, after a full review, the National Electoral Committee finds that the election was invalid.

(3) In the event of a new election, the electoral register from the original election shall be used. People who have died or lost the right to vote before the new election must be removed from the electoral register. People who were incorrectly entered in or omitted from the original electoral register must also be removed or entered in the electoral register.

(4) In the event of a new election, the electoral lists from the original election shall be used. Candidates who have died or are no longer eligible for election must be removed from the electoral lists. If candidates are removed from the electoral list, the representative for the electoral list can insert new names.

(5) If necessary for the practical conduct of the new election, the Ministry may issue regulations relating to exemptions from the provisions in this Act regarding deadlines and the right to vote in advance.

*Section 15-2 Who will serve as members of the Storting in the event of a new election*

If a new election is to be held, the newly elected members will remain in office until there is final approval of the new election.

*Section 15-3 Who will serve as members of the county council or municipal council in the event of a new election*

(1) If the National Electoral Committee declares the county council election or municipal council election invalid before the constituent meeting of the new county council or municipal council, the term of office of the sitting members of the county council or municipal council will be extended until final approval of the new election.

(2) If the newly elected county council or municipal council declares the election invalid and the National Electoral Committee then decides that a new election shall be held, the newly-elected members of the county council or municipal council shall remain in office until final approval of the new election.

**Chapter 16. Emergency preparedness***Section 16-1 Postponed or extended elections or new election in connection with parliamentary elections*

(1) If an extraordinary event has occurred that is liable to prevent a significant proportion of the voters from voting, the Storting can, with the votes of two-thirds of the Members of the Storting, extend the election by up to one day or postpone the election.

(2) A decision to extend or postpone can only be made insofar as this is necessary for ensuring voters have the opportunity to vote. The election must be concluded within one month after the day set as Election Day by the King in Council.

(3) If the Storting cannot meet, the King in Council can extend the election by up to one day or postpone the election by up to seven days. The restrictions referred to in subsections 1 and 2 also apply for the King's decision.

(4) If an extraordinary event has occurred that has prevented a significant proportion of the voters from voting, the sitting Storting can, with the votes of two-thirds of the Members of the Storting, decide that a new election shall be held. A decision to hold a new election can only be made insofar as this is necessary for ensuring voters have the opportunity to vote.

*Section 16-2 Postponed or extended elections or new election in connection with county council or municipal council elections*

(1) If an extraordinary event has occurred that is liable to prevent a significant proportion of the voters from voting, the King in Council may extend the election by up to one day or postpone the election.

(2) A decision to extend or postpone can only be made insofar as this is necessary for ensuring voters have the opportunity to vote. The election must be concluded within one month after the day set as Election Day by the King in Council.

(3) If an extraordinary event has occurred that has prevented a significant proportion of the voters from voting, the King in Council may decide that a new election shall be held. A decision to hold a new election can only be made insofar as this is necessary for ensuring voters have the opportunity to vote.

*Section 16-3 New election*

In the event of a new election pursuant to Sections 16-1 or 16-2, Section 15-1, subsections 3 to 5 will correspondingly apply.

*Section 16-4 First count of advance voting ballot papers*

If the election is extended, the counting of advance voting ballot papers, cf. Section 10-7, cannot start or continue until the day before the extended election.

If counting has started, it should be stopped until it can be started or continued in accordance with the previous sentence.

*Section 16-5 Who will serve as members of the Storting in the event of a new election*

If a new election is to be held, the newly elected members will remain in office until there is final approval of the new election.

*Section 16-6 Who will serve as members of the county council or municipal council in the event of a new election*

(1) If the King in Council decides that a new election must be held pursuant to Section 16-2, subsection 3 before the constituent meeting of the new county council or municipal council, the term of office of the sitting members of the county council or municipal council will be extended until final approval of the new election.

(2) If the King in Council decides that a new election must be held pursuant to Section 16-2, subsection 3 after the constituent meeting of the newly elected county council or municipal council, the newly elected members of the county council or municipal council will remain in office until final approval of the new election.

**Chapter 17. New determination of election result during an electoral term. Returning of alternate members***Section 17-1 New determination of the result of an election to the Storting*

(1) The Storting must notify the District Electoral Committee if the seat of a member or alternate member in the Storting will remain vacant. The District Electoral Committee will then determine a new election result.

(2) The District Electoral Committee issues credentials to the new member or alternate member. The credentials must show the number in the order of members or alternate members the elected member or alternate member shall have. If the credentials apply to an alternate member, these must also state the name of the member who the alternate member shall replace. The credentials are to be sent to the Storting.

(3) The District Electoral Committee shall inform the new member or alternate member about the election.

*Section 17-2 New determination of the result of a county council or municipal council election*

(1) The chairman of the county council shall notify the County Electoral Committee if the seat of a member of the county council remains vacant. The chairman of the municipal council shall notify the Electoral Committee if the seat of a member of the municipal council remains vacant. The County Electoral Committee or Electoral Committee must then determine a new election result.

(2) If the chairman of the county council or chairman of the municipal council considers this necessary, the County Electoral Committee or Electoral Committee shall also determine a new election result when the seat of an alternate member has become vacant.

(3) The County Electoral Committee or Electoral Committee shall inform the new member or alternate member about the election.

(4) If the seat of an alternate member has become vacant and cannot be filled through a new election result, the group that has been given a vacant alternate member's seat may itself propose who should fill the seat. The group must then notify the County Electoral Committee

or Electoral Committee, which will select the proposed person if he or she is eligible for election and has confirmed that he or she consents to being elected. If the municipal council election is held as an election by majority ballot, the municipal council shall select a person to fill the vacant seat. Subsection 4, second sentence applies correspondingly.

## **Chapter 18. Use of ICT**

### *Section 18-1 Electronic election implementation system*

(1) The Ministry is responsible for making an ICT system for conducting elections available to the municipalities and county authorities.

(2) The municipalities and county authorities shall use this system.

(3) The Ministry may issue regulations relating to the use and protection of the system.

## **Chapter 19. Miscellaneous provisions**

### *Section 19-1 Pilot schemes in connection with elections*

(1) The King in Council can approve pilot schemes:

- a) in which elections are conducted in ways that differ from the provisions in this Act,
- b) with direct election of other elected bodies than those to which this Act applies.

(2) The King in Council stipulates further conditions for pilot schemes and decides what provisions can be derogated from.

### *Section 19-2 Storage, disposal and destruction of election materials*

The storage, disposal and destruction of election materials after the election is over shall take place in accordance with Act no. 112 of 4 December 1992 relating to archives and records and the Regulations issued in pursuance thereof.

### *Section 19-3 Access to the electoral register and the other material*

(1) Access to the electoral register can only be granted to:

- a) public servants when this is necessary for them to be able to perform their work tasks,
- b) researchers for research purposes where consent has been given by the Population Registry Authority,
- c) others when stipulated in this Act or Regulations to the Act.

(2) Access to the rest of the election material may only be granted to researchers for research purposes with the consent of the correct authority.

### *Section 19-4 Duty of secrecy*

(1) Anyone who, in the course of assignments relating to the election, obtains knowledge of how a voter has voted, has a duty of secrecy in respect thereof.

(2) Any person who assists a voter in the process of casting a vote and in so doing obtains knowledge of how the voter has voted has a duty of secrecy in respect thereof.

### *Section 19-5 Calculation of deadlines*

(1) If a date that is the basis of a deadline falls on a Saturday or public holiday, the deadline will start to run from the first subsequent weekday.

(2) If the deadline expires on a Saturday or a public holiday, the deadline is extended until the first subsequent weekday.

(3) If a date that is the earliest point in time for an action pursuant to this Act falls on a Saturday or a public holiday, the action cannot be carried out until the first subsequent weekday.

(4) If a date that is the latest point in time for an action pursuant to this Act falls on a Saturday or public holiday, the action can be also be carried out on the first subsequent weekday.

### *Section 19-6 Exceeding deadlines*

If notice is given or an appeal submitted after the expiration of a deadline pursuant to this Act, such notice or appeal may only be considered if the deadline was exceeded due to circumstances outside of the control of the person who submitted the notice or appeal and these circumstances were disproportionately burdensome to overcome.

### *Section 19-7 Data for election statistics*

The District Electoral Committees, County Electoral Committees and Electoral Committees have a duty to provide the Ministry or Statistics Norway with the data that the Ministry or Statistics Norway deem necessary for announcing election results or producing official election statistics.

### *Section 19-8 Exemptions that apply for Oslo*

(1) The provisions in this Act relating to county council elections do not apply for the City of Oslo.

(2) Voters who are included in the electoral register in other municipalities may still vote in advance in Oslo for the county council election in their own county.

### *Section 19-9 Expenses covered by the State*

The State covers expenses incurred by municipalities and county authorities in the conduct of their statutory duties in connection with parliamentary elections through transfers via the revenue system for municipalities and county authorities.

### *Section 19-10 Monitoring of elections*

(1) The Ministry may accredit national and international election observers from institutions or organisations to monitor the conduct of elections to the Storting or to municipal and county councils.

(2) The municipalities have an obligation to accept accredited election observers and facilitate the monitoring of elections.

### *Section 19-11 Publication of election results and prognoses*

(1) It is not permitted to release information about or publish election results until 9 pm on Election Day.

(2) It is not permitted to publish prognoses produced on the basis of investigations undertaken on Election Day or the day prior until 9 pm on Election Day.

### *Section 19-12 Fines for contravention*

(1) If an enterprise is in wilful or negligent contravention of Section 19-11, the Norwegian Media Authority may impose a fine for contravention of up to 28 times the basic amount in the National Insurance Scheme. In this context "enterprise" means a company, cooperative enterprise, society or other association, sole trader, foundation, estate or public enterprise.

(2) In assessing the amount of the fine, special emphasis shall be placed on:

- a) the seriousness of the contravention,
- b) whether the enterprise could have prevented the contravention through guidelines, instruction, training, checks or other measures,
- c) whether the contravention was committed to promote the interests of the enterprise,
- d) whether the enterprise has or could have benefited from the contravention,
- e) whether the enterprise was previously in violation of the prohibition in Section 19-11,
- f) the financial capacity of the enterprise.

(3) The fine for contravention accrues to the public treasury and is enforceable by execution.

(4) Fines for contravention pursuant to subsection 1 can also be imposed on persons who do not act on behalf of an enterprise.

(5) A decision to impose a fine for contravention can be appealed to the Media Appeals Board.

(6) The King may not issue general instructions for the enforcement of the provision to the Norwegian Media Authority or the Media Appeals Board, nor may the King issue orders concerning execution of authority in individual cases or reverse decisions.

(7) The Media Appeals Board cannot reverse a decision made by the supervisory body of its own initiative.

(8) The Ministry may issue regulations relating to the implementation of the provisions in this section, including the collection of fees and payment deadlines.

## **Chapter 20. Entry into force, transitional provisions and amendments to other Acts**

### *Section 20-1 Entry into force*

(1) The Act enters into force from such date as the King decides. Act no. 57 of 28 June 2002 relating to parliamentary and local government elections (the Election Act) shall be repealed from the same date.

(2) The King may enforce and repeal the individual provisions at different times.

### *Section 20-2 Amendments to other Acts*

1. Act no. 56 of 12 June 1987 relating to the Sámi Parliament and other Sámi legal matters (Sámi Act) shall be amended as follows:

The new Section 2-6 a shall read:

#### *Section 2-6 a Responsibility of the Population Registry Authority*

The Population Registry Authority shall, on its own initiative and in an appropriate manner, make the following available to the election authorities:

- a) a preliminary electoral register based on the voting eligibility terms as of 2 January in the year of the election, for use in preparing the elections,
- b) information on who will be entered in the municipality's electoral register as of 30 June.

The duty of secrecy does not prevent the disclosure of information pursuant to subsection 1.

The Population Registry Authority shall transfer updates to the preliminary electoral register as of 2 January and to the electoral register as of 30 June to the Sámi Parliament.

The new Section 2-10 a shall read:

#### *Section 2-10 a Pilot schemes in connection with elections*

The King can approve pilot schemes in which elections are conducted in ways that differ from the provisions in this Act.

The King stipulates further conditions for pilot schemes and decides what provisions can be derogated from.

(2). Act no. 70 of 15 June 2001 relating to the determination and alteration of local government boundaries (the Local Government Boundaries Act) shall be amended as follows:

The new Section 4, paragraph two shall read:

*If an amalgamation includes municipal areas in different constituencies, the Storting shall decide what constituency the municipal area shall belong to. Such an amalgamation will not enter into force until a decision has been handed down regarding what constituency the municipal area shall belong to.*

Section 6 shall read:

*Section 6 Decisions relating to boundary adjustment*

The King hands down decisions on the adjustment of boundaries between *municipal areas*.

*If the boundary adjustment includes municipal areas in different constituencies and the adjustment does not only apply to surface area, the Storting shall decide what constituency the municipal areas that receive new inhabitants will belong to. Such a boundary adjustment will not apply until a decision has been handed down regarding what constituency the municipal area shall belong to.*

*The King hands down decisions on the adjustment of boundaries between counties. If the adjustment only applies to surface area, the King may hand down a decision.*

3. Act no. 102 of 17 June 2005 relating to certain aspects concerning the political parties (Political Parties Act) shall be amended as follows:

Section 3, subsection 2 (d), first sentence shall read:

d) declarations from at least 10,000 persons who are eligible to vote in parliamentary elections that they request that the party's name is registered.

4. Act no. 83 of 22 June 2018 relating to municipalities and county authorities (the Local Government Act) is amended as follows:

Section 5-5, subsection 3 shall read:

The county council determines its own number of members. The number of members shall be an uneven number and it shall meet the following requirements for the number of members:

- a) The county council shall have no fewer than 35 members in county authorities that do not have more than 300,000 inhabitants.
- b) The county council shall have no fewer than 43 members in county authorities with more than 300,000, but not more than 500,000 inhabitants.
- c) The county council shall have no fewer than 51 members in county authorities with more than 500,000 inhabitants.

Section 7-1, new subsections 6 and 7 shall read:

If the term of office for the sitting members of the municipal council or county council is extended due to a new election, cf. Section 15-3, subsection 1 and Section 16-6, subsection 1 of the Election Act, the term of office shall be extended correspondingly for members of other elected bodies in the municipalities and county authorities by up to two months.

If the newly returned members of the municipal council or county council remain in office due to a new election, cf. Section 15-3, subsection 2 and Section 16-6, subsection 2 of the Election Act, the members of other elected bodies in the municipalities and county authorities shall remain in office for up to two months until final approval of the new election for the municipal council or county council.



Section 27-2, subsection 2 shall read:

The legality of the following cannot be reviewed:

- a) other procedural decisions than those stated in subsection 1 (b) and (c),
- b) decisions on employment, dismissal with notice or dismissal without notice,
- c) the question of *whether* a decision is contrary to the provisions laid down in or pursuant to the Public Procurement Act,
- d) *decision on whether the municipal council election or the county council election is valid, cf. Section 13-2, subsection 1 and Section 13-3, subsection 1 of the Election Act.*

## 26 Proposed amendments to the Constitution of Norway

### *Article 14, paragraph one*

Article 14, paragraph one shall read:

The King may appoint state secretaries to assist members of the Council of State with their duties outside the Council of State. Each individual state secretary shall act on behalf of the member of the Council of State to whom he or she is attached, to the extent determined by that member.

–

### *Article 14, paragraph two*

#### *Alternative 1:*

Article 14, paragraph two shall read:

Members of the Storting cannot be appointed as state secretaries or employed as political advisers in government ministries.

–

#### *Alternative 2:*

Article 14, paragraph two shall read:

Members of the Storting cannot be employed as political advisers in government ministries.

–

### *Article 50, paragraph one*

#### *Alternative 1:*

Article 50, paragraph one, first sentence shall read:

Norwegian citizens who have completed their eighteenth year or will complete their eighteenth year in the year the election is held shall have the right to vote at parliamentary elections.

–

#### *Alternative 2:*

Article 50, paragraph one, first sentence shall read:

Norwegian citizens who have completed their sixteenth year or will complete their sixteenth year in the year the election is held shall have the right to vote at parliamentary elections.

–

*Alternative 3:*

Article 50, paragraph one, second sentence shall read:

Persons who are not Norwegian citizens have the right to vote on the same terms if they have been registered in the Population Registry as resident in Norway for the last six years prior to Election Day.

–

*Article 50, paragraph two*

Article 50, paragraph two shall read:

The extent to which Norwegian citizens who are resident outside the realm on Election Day but meet the conditions above have the right to vote, is prescribed by law.

–

*Article 50, paragraph three:*

Article 50, paragraph three is repealed.

*Article 53**Alternative 1:*

Article 53 shall read:

A member convicted of criminal offences may be stripped of his or her office in accordance with what is prescribed by law.

–

*Alternative 2:*

Article 53 is repealed.

*Article 54*

Article 54 shall read:

Elections to the Storting shall be held every fourth year by the end of September.

If an extraordinary event has occurred that is liable to prevent a significant proportion of the voters from voting, the Storting can, with the votes of two-thirds of the Members of the Storting, extend the election by up to one day or postpone the election.

A decision to extend or postpone can only be made insofar as this is necessary for ensuring voters have the opportunity to vote. The election must be concluded within one month after the day set as Election Day by the King in Council.

If the Storting cannot meet, the King in Council can extend the election by up to one day or postpone the election by up to seven days on the same conditions as referred to in paragraphs two and three.

If an extraordinary event has occurred that has prevented a significant proportion of the voters from voting, the sitting Storting can, with the votes of two-thirds of the Members of the Storting, decide that a new election shall be held. A decision to hold a new election can only be made insofar as this is necessary for ensuring voters have the opportunity to vote. The elected members will remain in office until final approval of the new election.

A newly returned Storting cannot reverse a decision by a previous Storting to hold a new election.

–

#### *Article 55*

Article 55 shall read:

The election shall be conducted in the manner prescribed by law.

–

#### *Article 56, paragraph one*

##### *Alternative 1a:*

Article 56, paragraph one shall read:

The realm is divided into 19 constituencies.

–

##### *Alternative 1b:*

Article 56, paragraph one shall read:

The realm is divided into 13 constituencies.

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##### *Alternative 1c:*

Article 56, paragraph one shall read:

The realm is divided into 12 constituencies.

–

##### *Alternative 1d:*

Article 56, paragraph one shall read:

The realm is divided into 11 constituencies.

–

##### *Alternative 2:*

Article 56, paragraph one shall read:

The number of constituencies shall be prescribed by law. The number of constituencies must be approved with a two-thirds majority and no less than two-thirds of the Members of the Storting must be present. Changes to the number of constituencies must be approved at the

first or second meeting of the Storting following an election if these changes will enter into force at the next parliamentary election.

–

*Article 56, paragraph two*

*Alternative 1:*

Article 56, paragraph two shall read:

The boundaries between the constituencies shall be prescribed by law.

–

*Alternative 2:*

Article 56, paragraph two shall read:

The boundaries between the constituencies shall be prescribed by law. The boundaries between the constituencies must be approved with a two-thirds majority and no less than two-thirds of the Members of the Storting must be present. Adjustments to the boundaries between the constituencies must be approved at the first or second meeting of the Storting following an election if such adjustments will enter into force at the next parliamentary election.

–

*Article 57, paragraph one*

Article 57, paragraph one shall read:

169 Members shall be returned to the Storting.

–

*Article 57, paragraph two*

*Alternative 1:*

Article 57, paragraph two shall read:

Each constituency shall receive one seat and the remaining seats shall be allocated based on the number of inhabitants, using the Sainte-Laguë method.

–

*Alternative 2:*

Article 57, paragraph two shall read:

The number of Members of the Storting to be elected from each constituency is determined on the basis of a calculation of the ratio between the number of inhabitants and surface area of each constituency and the number of inhabitants and surface area of the entire realm. In this calculation, each inhabitant counts as one point and each square kilometre counts as 1.8 points.

–

*Article 57, paragraphs three to five*

Article 57, paragraphs three to five shall read:

All constituencies shall have a minimum of four seats.

The seats shall be allocated between the constituencies every fourth year.

Further provisions on the allocation of the seats between the constituencies are prescribed by law.

–

*Article 58*

Article 58 shall read:

Elections are held separately for each municipality.

–

*Article 59, paragraph one**Alternative 1:*

Article 59, paragraph one shall read:

In each constituency, one Member shall be assigned a seat at large based on the total number of votes cast in the entire realm. The other Members in the constituency shall be assigned direct seats based on the total number of votes cast in the constituency.

–

*Alternative 2:*

Article 59, paragraph one shall read:

The seats at large shall be returned based on the number of votes cast in the entire realm. The candidates are returned in the order in which they appear on the parties' national lists.

–

*Article 59, paragraph two**Alternative 1a:*

Article 59, paragraph two, first sentence shall read:

The directly-elected Members shall be returned from each constituency in elections by proportional representation according to the Sainte-Laguë method, with 1.4 as the first divisor.

–

*Alternative 1b:*

Article 59, paragraph two, first sentence shall read:

The directly-elected Members are returned from each constituency in elections by proportional representation according to the Sainte-Laguë method, with 1.2 as the first divisor.

—

*Alternative 2a:*

Article 59, paragraph two, second sentence shall read:

The direct seats are allocated between the lists that have received at least three percent of the approved votes in the constituency.

—

*Alternative 2b:*

Article 59, paragraph two, second sentence shall read:

The direct seats are allocated between the lists that have received at least four percent of the approved votes in the constituency.

—

*Article 59, paragraph three:*

*Alternative 1a:*

Article 59, paragraph three shall read:

The seats at large are allocated between the registered political parties that have submitted lists in all constituencies and have received no less than three per cent of the approved votes in the entire realm.

—

*Alternative 1b:*

Article 59, paragraph three shall read:

The seats at large are allocated between the registered political parties that have submitted lists in all constituencies and have received no less than four per cent of the approved votes in the entire realm.

—

*Alternative 1c:*

Article 59, paragraph three shall read:

The seats at large are allocated between the registered political parties that have submitted lists in all constituencies and have received no less than five per cent of the approved votes in the entire realm.

—

*Alternative 2:*

Article 59, paragraph three shall read:

The seats at large are allocated between the registered political parties that have received no less than four per cent of the approved votes in the entire realm.

–

*Alternative 3:*

Article 59, paragraph three shall read:

The seats at large are allocated between the registered political parties that have submitted lists in all constituencies and have received no less than three per cent of the approved votes in the entire realm or have won at least one direct seat.

–

*Alternative 4a:*

Article 59, paragraph three shall read:

The seats at large are allocated between the registered political parties that have received no less than three per cent of the approved votes in the entire realm or have won at least one direct seat.

–

*Alternative 4b:*

Article 59, paragraph three shall read:

The seats at large are allocated between the registered political parties that have received no less than four per cent of the approved votes in the entire realm or have won at least one direct seat.

–

*Article 59, paragraph four*

*Alternative 1:*

Article 59, paragraph four shall read:

The seats at large are allocated based on the total number of votes polled by the parties in the entire realm. Votes and seats for lists that do not satisfy the requirements in paragraph three are excluded. A calculation is carried out using the Sainte-Laguës method, with 1.4 as the first divisor. The seats at large are assigned to the parties that have received fewer directly elected seats than the result of this calculation.

–

*Alternative 2:*

Article 59, paragraph four shall read:

The seats at large are allocated based on the total number of votes polled by the parties in the entire realm. Votes and seats for lists that do not satisfy the requirements in paragraph three are excluded. A calculation is carried out using the Sainte-Laguës method, with 1.2 as the first divisor. The seats at large are assigned to the parties that have received fewer directly elected seats than the result of this calculation.

–



*Article 59, paragraph five*

*Alternative 1:*

Article 59, paragraph five shall read:

Further provisions on the constituencies in which the parties shall receive the seats at large are prescribed by law.

—

*Alternative 2:*

Article 59, paragraph five shall read:

Further provisions on the returning of seats at large from the parties' national lists are prescribed by law.

—

*Article 59, paragraph six*

Article 59, paragraph six shall read:

List alliances are not permitted.

—

*Article 60*

Article 60 is repealed.

*Article 61*

*Alternative 1:*

Article 61 shall read:

No one can be elected as a Member without having the right to vote.

—

*Alternative 2:*

Article 61 shall read:

No one may be elected as a Member without having the right to vote and without having completed their eighteenth year or having completed their eighteenth year in the year when the election is held.

—

*Article 62, paragraph one**Alternative 1:*

Article 62, paragraph one shall read:

Members of the Supreme Court may not stand for election.

–

*Alternative 2:*

Article 62, paragraph one shall read:

Officials who are employed in government ministries, except for state secretaries and political advisers, may not stand for election. Members of the Supreme Court and officials employed in the diplomatic or consular services may also not stand for election.

–

*Article 62, paragraph two*

Article 62, paragraph two shall read:

Members of the Council of State, state secretaries and political advisers in government ministries may not attend meetings of the Storting as representatives.

–

*Article 63*

Article 63 shall read:

Everyone is obliged to be entered on an electoral list, unless they give written notice that they do not wish to be entered on the applicable electoral list. Rules for when and how such notice must be given are prescribed by law.

All who are elected as representatives are obliged to accept election.

Those who are elected as representatives for two or more constituencies must give notice of what election they will accept. Rules for when and how such notice must be given are prescribed by law.

–

*Article 64*

Article 64 shall read:

The Members elected are furnished with credentials. The Storting decides whether the credentials are lawful.

All who have submitted a list at a parliamentary election may appeal a decision by the Storting. Further provisions relating to the right of appeal and grounds for appeal are prescribed by law. The Supreme Court shall decide on appeals.

If the Storting, Supreme Court or National Electoral Committee declares an election to be invalid, the Members elected shall remain in office until final approval of a new election.

–

*Article 71*

Article 71 shall read:

The Members elected shall be Members of the Storting for four successive years.

The Storting may issue further rules for compassionate leave and short-term leave on other grounds.

A Member may only be granted leave for the remainder of the term of office if this is to perform other tasks that are of national interest.

The Member must apply for leave herself or himself.

–

*Article 72*

Article 72 shall read:

After each parliamentary election, the Storting shall appoint a National Electoral Committee consisting of five members. The chair and two other members must be judges. Three joint alternate members shall be appointed for the members who are judges, and two joint alternate members for the other members.

The National Electoral Committee shall serve for four years from 1 January in the second new year after the parliamentary election.

The following persons cannot be appointed to the National Electoral Committee:

- a) members of the government,
- b) members and alternate members of the Storting, county councils and municipal councils,
- c) state secretaries and political advisers in government ministries and in the Storting.

Members and alternate members of the National Electoral Committee who stand for election to the Storting, county council or municipal council must resign from the National Electoral Committee.

The Storting may release a member or alternate member from the position when he or she requests this for personal reasons or he or she has been in gross violation of the duties incumbent on the position.

In special cases, the Storting may release one or more members or alternate members from the position if this is necessary for the National Electoral Committee to be able to perform its duties.

Decisions to release a member or alternate member from the position require two-thirds of the votes, however only a normal majority is required when the person herself or himself requests to be released from the position.

Further provisions concerning the National Electoral Committee are prescribed by law.

–

## 27 Remarks to the proposed amendments to the Constitution of Norway

### *Article 14, paragraph one*

*The King may appoint state secretaries to assist members of the Council of State with their duties outside the Council of State. Each individual state secretary shall act on behalf of the member of the Council of State to whom he or she is attached, to the extent determined by that member.*

–

In *paragraph one*, only linguistic changes have been proposed in the Bokmål version. It is proposed that “Beskikket” is changed to “utnevne”, which is more in line with the actual use of the term, cf. Document 19 (2011–2012) p. 17. It is further proposed that “vedkommende” be changed to “dette medlemmet” to clarify who the right applies to. These amendments will result in greater similarity between the Bokmål version and the Nynorsk version.

### *Article 14, paragraph two*

#### *Alternative 1:*

*Members of the Storting cannot be appointed as state secretaries or employed as political advisers in government ministries.*

–

The proposal is supported by the *majority of the Commission (Anundsen, Grimrud, Hagen, Hoff, Høgestøl, Nygreen, Strømmen, Tørresdal, Aardal and Aatlo)*.

*Paragraph two* is new and introduces the restriction that Members of the Storting cannot be appointed as state secretaries or employed as political advisers in government ministries. It is the 169 Members of the Storting who may be in office at any time that cannot be appointed as state secretaries or employed as political advisers in government ministries. Alternate members who do not sit in the Storting may continue to be state secretaries or employed as political advisers in government ministries. The provision must be viewed in connection with Article 62, paragraph two of the Constitution. Under this provision, sitting state secretaries and political advisers who are elected to the Storting will retain the position, but will not be able to sit in the Storting until after they have resigned from the position. If a sitting state secretary or political adviser is elected as the first alternate member and there is a need to bring in an alternate member, someone must be moved above the person in question and become the next alternate member.

#### *Alternative 2:*

*Members of the Storting cannot be employed as political advisers in government ministries.*

–

The amendment is supported by a *minority of the Commission (Holmås)*.

The proposal is similar to alternative 1, but only includes a prohibition against employing members of the Storting as political advisers.

*Members Christensen, Giertsen, Holmøyvik, Røhnebæk, Stokstad, Storberget and Aarnes* do not wish to insert a provision in the Constitution that restricts the government’s right to bring members of the Storting into the government apparatus.

*Article 50, paragraph one**Alternative 1:*

*Norwegian citizens who have completed their eighteenth year or will complete their eighteenth year in the year the election is held shall have the right to vote at parliamentary elections.*

—

The proposal is supported by *the majority of the Commission (Anundsen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Røhnebæk, Tørresdal, Aardal, Aarnes and Aatlo)*.

Linguistic changes have been proposed in the Bokmål version that bring the provision more in line with the Nynorsk version. The linguistic amendments also make the text more precise, cf. the grounds provided by the Constitutional Language Committee in Document 19 (2011–2012) p. 49:

It was the view of the Committee that the wording “at the latest in the year when the election is held, have completed their eighteenth year” cannot be misunderstood in practice, but could have been more precisely formulated. If one turns 18 years of age in the year when the election is held, but not until after the election, it is too early to say that one “has completed their eighteenth year” no later than this year when he or she exercises the right to vote. The Committee has selected a more precise and slightly more detailed expression: “who have completed their eighteenth year or will complete their eighteenth year in the year [...]”.

*Alternative 2:*

*Norwegian citizens who have completed their sixteenth year or will complete their sixteenth year in the year the election is held shall have the right to vote at parliamentary elections.*

—

The proposal is supported by *a minority of the Commission (Christensen, Holmås, Høgestøl, Nygreen, Stokstad, Storberget and Strømmen)*.

The amendment entails that the voting age at parliamentary elections will be lowered to 16. The proposal must be viewed in connection with the proposal for Article 61, alternative 2.

*Alternative 3:*

*Persons who are not Norwegian citizens have the right to vote on the same terms if they have been registered in the Population Registry as resident in Norway for the last six years prior to Election Day.*

—

The proposal is supported by *a minority of the Commission (Christensen, Holmås and Nygreen)*. The proposal is an addition to alternative 1 and 2.

The amendment entails that foreign citizens will have the right to vote after six years of residence in Norway.

*Article 50, paragraph two*

*The extent to which Norwegian citizens who are resident outside the realm on Election Day, but meet the conditions above, have the right to vote, is prescribed by law.*

—

The proposal involves linguistic amendments that must be viewed in connection with the other paragraphs in Article 50.

*Article 50, paragraph three:*

*Article 50, paragraph three is repealed.*

It is proposed that this paragraph is repealed. This means that there will no longer be a right to prescribe special rules for depriving persons who, on election day, are manifestly suffering from a seriously weakened mental state or a reduced level of consciousness from having the right to vote. At present, no provisions have been prescribed pursuant to Article 50, paragraph three. The Commission is also of the view that it would not be applicable to prescribe such rules in the future.

*Article 53*

*Alternative 1:*

*A Member convicted of criminal offences may be stripped of his or her office in accordance with what is prescribed by law.*

—

The proposal is supported by *the majority of the Commission (Christensen, Giertsen, Grimsrud, Hagen, Holmøyvik, Høgestøl, Røhnebæk, Stokstad, Storberget, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo)*.

Paragraph one (a) currently provides a legal basis on which to prescribe rules that the right to vote may only be lost due to a conviction for a criminal offence. The Norwegian Penal Code no longer includes any provision for being able to deprive a person of the right to vote and it is also not considered applicable to introduce any such provisions.

Paragraph one (b) currently states that the right to vote will be lost by entering the service of a foreign power without the consent of the government. The provision is difficult to control, is highly invasive (for example, it also includes civilian employment in the ministries in other countries) and cannot be assumed to function preventatively. There has also recently been greater acceptance for allowing dual citizenship. Dual citizenship makes it more problematic having this provision regarding the loss of the right to vote. Under the current provision, doing military service in another country will result in loss of the right to vote in Norway.

It is therefore proposed that the contents of the current Article 53 are repealed.

It is also proposed to replace the current contents of Article 53 with a provision concerning dismissal from the position as a Member of the Storting. The purpose of this is to provide clear statutory authority for Section 56 of the Norwegian Penal Code, which permits members of the Storting to be dismissed from the position.

*Alternative 2:*

*Article 53 is repealed.*

The proposal is supported by *a minority of the Commission (Anundsen, Hoff, Holmås and Nygreen)*. These members also wish to repeal the current Article 53, but do not wish to introduce the legal basis to prescribe by law the right to dismiss a member of Storting from his or her position.

#### Article 54

*Elections to the Storting shall be held every fourth year by the end of September.*

*If an extraordinary event has occurred that is liable to prevent a significant proportion of the voters from voting, the Storting can, with the votes of two-thirds of the Members of the Storting, extend the election by up to one day or postpone the election.*

*A decision to extend or postpone can only be made insofar as this is necessary for ensuring voters have the opportunity to vote. The election must be concluded within one month after the day set as Election Day by the King in Council.*

*If the Storting cannot meet, the King in Council can extend the election by up to one day or postpone the election by up to seven days on the same conditions as referred to in paragraphs two and three.*

*If an extraordinary event has occurred that has prevented a significant proportion of the voters from voting, the sitting Storting can, with the votes of two-thirds of the Members of the Storting, decide that a new election shall be held. A decision to hold a new election can only be made insofar as this is necessary for ensuring voters have the opportunity to vote. The elected members will remain in office until final approval of the new election.*

*A newly returned Storting cannot reverse a decision by a previous Storting to hold a new election.*

—

The current provision is continued in *paragraph one*, albeit with linguistic changes.

*Paragraphs two to five* are new and introduce an emergency preparedness provision to extend or postpone the election or conduct a new election, due to extraordinary events that have occurred. It is also proposed that the provision be included in Section 16-1 of the Election Act. The emergency preparedness provisions in Section 16-1 of the Election Act and Article 54 of the Constitution will not pose a legal obstacle to the authorities acting outside the framework of these provisions, as long as the measures are in line with constitutional emergency law. Constitutional emergency law and the Emergency Preparedness Act may still apply, for example, in wartime situations or if it is not possible for the Storting or Government to form a quorum.

*Paragraph two* concerns the general rule that the Storting may decide to extend or postpone the election. Such decisions must be handed down with the support of two-thirds of the Storting's 169 members. It is not necessary that all members of the Storting are present, but there must be a minimum of 113 members who vote for the proposal. Therefore, the necessary two-thirds majority is calculated based on the total number of members of the Storting and not the members who are present. This differs from how constitutional amendments are adopted, cf. Article 73, third sentence and Article 121 of the Constitution.

Several conditions must be met in order to hand down a decision pursuant to paragraph two. The first condition for being able to extend or postpone the election is that *an extraordinary event* has occurred. When concerning the term "extraordinary", a high threshold must be set for the serious events that are covered by the condition. Furthermore, it is a requirement that the extraordinary event is *liable to prevent* a significant proportion of the voters from voting. "*Liable*" means that it may be sufficient in certain instances that there is a risk of or potential for voters being prevented from voting due to the event. The condition that the voters are "*prevented*" from voting includes various consequences of the extraordinary event that may stop voters from voting.

A further condition is the qualification requirement that *a significant proportion of the voters* are potentially prevented from voting due to the event. It is not sufficient that a limited number of voters in one or more municipalities are affected by a natural disaster or other extraordinary events, even if the event is serious. A significant number, i.e. a significant proportion of the voters, must be

potentially prevented from voting due to the event. The basis for the condition must also be that this concerns voters, i.e. people with the right to vote.

Extending the polls on election day can either take place by the authorities cancelling voting and opening polling stations at a later time, or by allowing the election to continue over a longer period than was originally stipulated. The election may only be extended by one day.

*Paragraph three* sets a restriction that a decision to postpone or extend may only be made insofar as this is *necessary* for ensuring voters have the opportunity to vote. This is a requirement for proportionality between the decision to postpone or extend and the objective of ensuring that voters have the opportunity to vote. The necessity requirement is primarily focussed on the decision of whether the election should even be postponed or extended. The necessity requirement is also focussed on the length of the extension or postponement. The election cannot be postponed or extended in more municipalities than is necessary for ensuring that voters have the opportunity to vote. The election may also not be extended or postponed longer than necessary. Furthermore, it is not possible to extend or postpone the election for more than one month after the originally stipulated date for the election.

*Paragraph four* legislates the right for the King in Council to extend or postpone the election if the Storting cannot form a quorum. Such a decision also entails that all ministers who are present may subsequently be held constitutionally liable if the provision is misused. The King in Council may only postpone the election for seven days. The same restrictions that are stipulated in paragraphs two and three otherwise apply.

*Paragraph five* permits the Storting, on the same conditions as those stipulated in paragraphs two and three, to order a new election. The authority to order a new election is assigned to the outgoing Storting. This means that a decision to hold a new election must be handed down before the new Storting meets. This provision is in addition to the ordinary rules for new elections. A new election may also not be ordered for more municipalities or held later than is necessary. *Paragraph five, final sentence* also stipulates that the elected members will remain in office until final approval of the new election. This corresponds to the general rules for new elections stipulated in Section 16-5 of the draft new Election Act.

*Paragraph six* is also new and stipulates that a newly returned Storting cannot reverse the decision of a previous Storting to hold a new election.

#### *Article 55*

*The election shall be conducted in the manner prescribed by law.*

—

The provision has been linguistically reworked, and the term "the polls" has been replaced with "the election". It is no longer sufficient to have rules for the polls because a large proportion of voters vote during the advance voting period.

It is proposed that the second sentence in the current provision is removed, which would entail that the Storting shall no longer decide on appeals concerning the right to vote. It is proposed in Section 14-9 of the Election Act that the National Electoral Committee shall also consider appeals relating to the right to vote.

#### *Article 56*

Article 56 of the Constitution presently has no text. The proposed new provision corresponds with what is currently regulated in Article 57, paragraph two and part of the final paragraph in the



Constitution. The provision regulates the number of constituencies and provides statutory authority to stipulate provisions relating to the boundaries between these constituencies and a separate provision is proposed to differentiate this from the allocation of seats between the constituencies.

*Article 56, paragraph one*

*Alternative 1a:*

*The realm is divided into 19 constituencies.*

–

*Alternative 1b:*

*The realm is divided into 13 constituencies.*

–

*Alternative 1c:*

*The realm is divided into 12 constituencies.*

–

*Alternative 1d:*

*The realm is divided into 11 constituencies.*

–

The various proposals under alternative 1a to 1d are supported by *the majority of the Commission (Anundsen, Grimsrud, Hagen, Hoff, Holmøyvik, Holmås, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aarnes and Aatlo)*. The proposal entails including the number of constituencies in the Constitution.

The Commission is divided in its view on how many constituencies there should be. The majority of the Commission is in favour of 19 constituencies, cf. the current Article 57, paragraph two. In line with the view of the minority of the Commission, it has also been proposed that the figure of 19 is replaced by another desired figure.

With regard to the number of constituencies, the members have taken the following positions:

*19 constituencies:* Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Nygreen, Røhnebæk, Stokstad, Tørresdal and Aarnes.

*13 constituencies:* Hoff and Aardal.

*12 constituencies:* Holmøyvik, Storberget, Strømmen and Aatlo.

*11 constituencies:* Holmås and Høgestøl.

*Alternative 2:*

*The number of constituencies shall be prescribed by law. The number of constituencies must be approved with a two-thirds majority and no less than two-thirds of the Members of the Storting must be present. Changes to the number of constituencies must be approved at the first or second meeting of the Storting following an election if these changes will enter into force at the next parliamentary election.*

–

The proposal is supported by *a minority in the Commission (Christensen, Giertsen, Høgestøl, Storberget and Aardal)*.

The amendment means that the number of constituencies is no longer stated in the Constitution. The provision replaces paragraph two in the current Article 57. It is proposed that the number of constituencies be regulated by law, but that a corresponding requirement for changing the number of constituencies is prescribed by law, for example, by constitutional amendment. The requirement for a two-thirds majority corresponds with the requirement in Article 121 of the Constitution, and the requirement that two-thirds of the members of the Storting must be present corresponds with the requirement in Article 73, third sentence of the Constitution. However, there is no requirement for an intermediate election. The time limit in paragraph three relates to a certain period of time being required before an election to make potential necessary adaptations. This also ties in with it being proposed in Article 57 that the calculation of seats shall take place every four years.

#### *Article 56, paragraph two*

##### *Alternative 1:*

*The boundaries between the constituencies shall be prescribed by law.*

—

The proposal is supported by *a majority of the Commission (Anundsen, Christensen, Giertsen, Holmås, Høgestøl, Røhnebak, Storberget, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo)*. The provision entails that the boundaries between the constituencies are prescribed by law and continues existing law, cf. the current Article 57, paragraph six.

##### *Alternative 2:*

*The boundaries between the constituencies shall be prescribed by law. The boundaries between the constituencies must be approved with a two-thirds majority and no less than two-thirds of the Members of the Storting must be present. Adjustments to the boundaries between the constituencies must be approved at the first or second meeting of the Storting following an election if such adjustments will enter into force at the next parliamentary election.*

—

The proposal is supported by *a majority of the Commission (Grimsrud, Hagen, Hoff, Holmøyvik, Nygreen and Stokstad)*.

*The first sentence* is identical to the majority proposal. *The second and third paragraphs* set special requirements for adjusting the boundaries between the constituencies. The requirement for a two-thirds majority corresponds with the requirement in Article 121 of the Constitution, and the requirement that two-thirds of the members of the Storting must be present corresponds with the requirement in Article 73, third sentence of the Constitution. However, there is no requirement for an intermediate election. The time limit in the third sentence relates to a certain period of time before an election being required in order to make potentially necessary adjustments. This also ties in with it being proposed in Article 57 that the calculation of seats shall take place every four years.

#### *Article 57, paragraph one*

*169 Members shall be returned to the Storting.*

—

Linguistic changes have been proposed to the Bokmål version, while the Nynorsk version is unchanged.

*Article 57, paragraph two*

*Alternative 1:*

*Each constituency shall receive one seat and the remaining seats shall be allocated based on the number of inhabitants, using the Sainte-Laguë method.*

—

The proposal is supported by a majority of the Commission (Anundsen, Christensen, Hagen, Hoff, Holmøyvik, Høgestøl, Nygreen, Røhnebæk, Stokstad, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo).

The proposal entails that the seats shall be allocated between the constituencies by first assigning all constituencies one seat each. The remaining seats shall be allocated based on the number of inhabitants in the constituency in accordance with the Sainte-Laguë method. In this allocation, it is the “pure” Sainte-Laguë method with the first divisor of 1 that is used. *Members Anundsen, Christensen, Hagen, Holmøyvik, Høgestøl, Røhnebæk, Strømmen, Aardal, Aarnes and Aatlo* are of the view that this method of allocation should be used irrespective of the number of constituencies the country is divided into.

*Members Hoff, Nygreen, Stokstad and Tørresdal* find that this method works with the current constituencies, but that it does not sufficiently take regional considerations into account when there are fewer and larger constituencies. Therefore, if the constituencies are structured according to the new counties, these members will retain the current surface area factor of 1.8 (see alternative 2).

*Alternative 2:*

*The number of Members of the Storting to be elected from each constituency is determined on the basis of a calculation of the ratio between the number of inhabitants and surface area of each constituency and the number of inhabitants and surface area of the entire realm. In this calculation, each inhabitant counts as one point and each square kilometre counts as 1.8 points.*

—

*Members Giertsen, Grimsrud, Holmås and Storberget* support this proposal. The proposal involves continuing the current method for allocating the seats between the constituencies, i.e. based on the number of inhabitants and surface area, cf. the current Article 57, paragraph five. Some linguistic changes have been made to the Bokmål version.

*Article 57, paragraphs three to five*

*All constituencies shall have a minimum of four seats.*

*The seats shall be allocated between the constituencies every fourth year.*

*Further provisions on the allocation of the seats between the constituencies are prescribed by law.*

—

*Paragraph three* is an exemption from paragraph two and stipulates that all constituencies must have a minimum of four seats. If, following the allocation in paragraph two, a constituency has received fewer than four seats, this constituency shall still be assigned a total of four seats. This constituency and the four seats it has received are then removed from the calculation and there is a new allocation of seats for the remaining constituencies in accordance with paragraph two.

*Paragraph four* stipulates that the allocation of seats must now take place every fourth year prior to each parliamentary election. This entails a change in relation to existing law, where the seats are only re-allocated every eight years.

*Paragraph five* stipulates that further rules for this can be prescribed in the Election Act.

#### *Article 58*

*Elections are held separately for each municipality.*

–

It is proposed that “the polls” is amended to “elections” to reflect the fact that the election not only consists of the polls, but also of the advance voting period. The fact that elections take place in each municipality is a key element in how elections are conducted, and it is therefore proposed to continue this in the Constitution.

It is proposed that the second sentence of the applicable provision: “At the polls votes shall be cast directly for representatives to the Storting, together with their proxies, to represent the entire constituency”, is removed. The reason for this is that the introduction of seats at large has changed the electoral system. Voters no longer only vote directly for members of the Storting from the constituency. The votes cast by the voters also determine the allocation of seats at large in a national result, cf. Article 59 of the Constitution.

#### *Article 59*

The provision largely continues the current Article 59, however linguistic changes have been made, and some elements of the electoral system have been moved to other paragraphs. The proposed system is that Article 56 regulates the number of constituencies and the division of these, Article 57 regulates the allocation of the 169 seats between the constituencies and Article 59 regulates the actual election result, i.e. how the votes are converted into seats.

#### *Article 59, paragraph one*

##### *Alternative 1:*

*In each constituency, one Member shall be assigned a seat at large based on the total number of votes cast in the entire realm. The other Members in the constituency shall be assigned direct seats based on the total number of votes cast in the constituency.*

–

The proposal is supported by a majority of the Commission (Anundsen, Christensen, Giertsen, Grimrud, Hagen, Hoff, Holmøyvik, Nygreen, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo).

The proposal continues existing law: It stipulates that one seat in each constituency shall be elected through the seats at large system, based on the number of votes cast in the entire country.

The remainder of the seats in each constituency are direct seats and are elected through the number of votes cast in the constituency.

*Alternative 2:*

*The seats at large shall be returned based on the number of votes cast in the entire realm. The candidates are returned in the order in which they appear on the parties' national lists.*

—

A minority of the Commission (Holmås, Høgestøl and Strømmen) supports this proposal. The proposal regulates the election and returning of seats at large in a system in which the seats at large are entered on a national list.

*Article 59, paragraph two*

*Alternative 1a:*

*The directly-elected Members shall be returned from each constituency in elections by proportional representation according to the Sainte-Laguë method, with 1.4 as the first divisor.*

—

A majority of the Commission (Anundsen, Christensen, Giertsen, Grimrud, Hagen, Hoff, Holmøyvik, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo) support this proposal. Paragraph two regulates how the direct seats are elected. It continues the content in paragraphs one and two in the current Article 59.

*Alternative 1b:*

*The directly-elected Members are returned from each constituency in elections by proportional representation according to the Sainte-Laguë method, with 1.2 as the first divisor.*

—

A minority of the Commission (Holmås, Høgestøl, Nygreen and Strømmen) supports this proposal. The proposal is identical to alternative 1, except for the first divisor being reduced to 1.2.

*Alternative 2a:*

*The direct seats are allocated between the lists that have received at least three percent of the approved votes in the constituency.*

—

Members Christensen, Giertsen, Hagen, Hoff, Holmøyvik, Stokstad, Tørresdal and Aardal support this proposal. The proposal involves introducing an electoral threshold of five per cent for the constituency seats. The proposal is in addition to the proposals under alternative 1.

Members Christensen, Giertsen and Hagen were of the view that such an electoral threshold should only be introduced if Viken becomes one constituency. Members Hoff, Holmøyvik, Stokstad, Tørresdal and Aardal were of the view that such an electoral threshold should be introduced irrespective of the size of the constituency.

*Alternative 2b:*

*The direct seats are allocated between lists that have received at least four percent of the approved votes in the constituency.*

—

*Members Anundsen, Grimsrud, Røhnebæk, Storberget, Aarnes and Aatlo support this proposal. The proposal involves introducing an electoral threshold of four per cent for the constituency seats.*

*The proposal is in addition to the proposals under alternative 1.*

*Members Røhnebæk, Aarnes and Aatlo were of the view that such an electoral threshold should only be introduced if Viken becomes one constituency. Members Amundsen, Grimsrud and Storberget were of the view that such an electoral threshold should be introduced irrespective of the size of the constituency.*

*Members Holmås, Høgestøl, Nygreen and Strømme were of the view that no electoral threshold should be introduced for constituency seats.*

*Article 59, paragraph three:*

The Commission has divided into many different proposals. The disagreement relates to 1) the level of the electoral threshold (three, four or five per cent), 2) whether there should be a requirement that the parties must have submitted lists in all constituencies in order to receive seats at large and 3) whether parties that receive at least one direct seat should be able to receive a seat at large, even if they are not above the electoral threshold.

*Alternative 1a:*

*The seats at large are allocated between the registered political parties that have submitted lists in all constituencies and have received at least three per cent of the approved votes in the entire realm.*

—

*Members Christensen, Hagen, Hoff, Holmøyvik, Stokstad and Tørresdal support this proposal.*

*Paragraph three replaces paragraph five in the current Article 59. Two key amendments to existing law are proposed by reducing the requirement for being allocated seats at large from four to three per cent of the approved votes in the entire country. Approved votes means votes cast for a party or a list and that are included in the election result. Blank votes and rejected votes shall not be included. This continues existing law. It is also proposed to introduce a requirement that the party must have submitted lists in all constituencies in order to be allocated seats at large. It is also clarified in the wording that only registered political parties can be allocated seats at large. This is also a continuation of existing law. If two registered political parties submit a list together, this list may be allocated seats at large provided that the other requirements of having submitted lists in all constituencies and having received more than three per cent of the votes have been satisfied. However, if a registered political party submits a list together with an unregistered list, the requirements in paragraph two will not be satisfied. This is also a continuation of existing law.*

*Alternative 1b:*

*The seats at large are allocated between the registered political parties that have submitted lists in all constituencies and have received no less than four per cent of the approved votes in the entire realm.*

—

*Members Grimsrud, Aarnes and Aatlo* support this proposal.

This proposal is identical to alternatives 1a and 1c, except for it being proposed that the electoral threshold remains at five per cent.

*Alternative 1c:*

*The seats at large are allocated between the registered political parties that have submitted lists in all constituencies and have received at least five per cent of the approved votes in the entire realm.*

—

*Members Anundsen and Storberget* support this proposal.

This proposal is identical to alternatives 1a and 1b, except for it being proposed that the electoral threshold is increased to five per cent.

*Alternative 2:*

*The seats at large are allocated between the registered political parties that have received no less than four per cent of the approved votes in the entire realm.*

—

*Member Giertsen* supports this proposal. This member was of the view that it should not be a requirement that lists have to be submitted in every constituency in order to receive seats at large. Other than this, the proposal is identical to alternative 1c.

*Alternative 3:*

*The seats at large are allocated between the registered political parties that have submitted lists in all constituencies and have received no less than three per cent of the approved votes in the entire realm or have won at least one direct seat.*

—

*Members Høgestøl and Aardal* support this proposal. These members were of the view that parties which have received at least one direct seat should be able to receive seats at large, even if they have not received at least three percent of the approved votes in the entire realm. Other than this, the proposal is identical to alternative 1a.

*Alternative 4a:*

*The seats at large are allocated between the registered political parties that have received no less than three per cent of the approved votes in the entire realm or have won at least one direct seat.*

—

*Members Holmås, Nygreen and Strømmen* support this proposal. These members were also of the view that parties which have received at least one direct seat should be able to receive seats at large, even if they have not received more than three percent of the approved votes in the entire realm. Unlike alternative 3, this proposal does not involve a requirement that the parties must have submitted lists in the entire country in order to be allocated seats at large.

*Alternative 4b:*

*The seats at large are allocated between the registered political parties that have received no less than four per cent of the approved votes in the entire realm or have won at least one direct seat.*

—

*Chairman of the Commission Røhnebæk* supports this proposal. The proposal has the same content as alternative 4a, with the exception of an electoral threshold of four per cent. It also has the same content as alternative 2, except that parties that have received at least one direct mandate should also be able to receive seats at large.

*Article 59, paragraph four**Alternative 1:*

*The seats at large are allocated based on the total number of votes polled by the parties in the entire realm. Votes and seats for lists that do not satisfy the requirements in paragraph three are excluded. A calculation is carried out using the Sainte-Laguës method, with 1.4 as the first divisor. The seats at large are allocated to the parties that have received fewer directly elected seats than what results from the calculation.*

—

The proposal is supported by a majority of the Commission (*Anundsen, Christensen, Giertsen, Grimrud, Hagen, Hoff, Holmøyvik, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal, Aarnes and Aatlo*). The proposal continues the contents of the present Article 59, albeit with certain linguistic changes.

*Alternative 2:*

*The seats at large are allocated based on the total number of votes polled by the parties in the entire realm. Votes and seats for lists that do not satisfy the requirements in paragraph three are excluded. A calculation is carried out using the Sainte-Laguës method, with 1.2 as the first divisor. The seats at large are allocated to the parties that have received fewer directly elected seats than what results from the calculation.*

—

A minority of the Commission (*Holmås, Høgestøl, Nygreen and Strømmen*) supports this proposal. The proposal is identical to alternative 1, except for the first divisor being reduced to 1.2.

*Article 59, paragraph five**Alternative 1:*

*Further provisions on the constituencies in which the parties shall receive the seats at large are prescribed by law.*

—

The proposal is supported by a majority of the Commission (*Anundsen, Christensen, Giertsen, Grimrud, Hagen, Hoff, Holmøyvik, Nygreen, Røhnebæk, Stokstad, Storberget, Tørresdal, Aardal,*



*Aarnes and Aatlo*). The proposal continues the current Article 59, paragraph six, albeit with minor linguistic changes.

*Alternative 2:*

*Further provisions on the returning of seats at large from the parties' national lists are prescribed by law.*

–

A minority of the Commission (*Holmås, Høgestøl and Strømme*) supports this proposal. The proposal authorises statutory provisions to be established for returning seats at large through a system in which the seats at large are elected from national lists.

*Article 59, paragraph six*

*List alliances are not permitted.*

–

The proposal entails that the prohibition against list alliances is continued, cf. the current Article 59, paragraph three.

*Article 60*

*Article 60 is repealed.*

It is proposed that the current Article 60 is repealed. The provision currently reads (Bokmål version): "Whether and in what manner those entitled to vote may deliver their ballot papers without personal attendance at the polls shall be determined by law." This is assumed to regulate the right to determine legal rules for advance voting periods, cf. Arne Fliflet, *Kongeriket Norges grunnlov: Grunnloven med kommentarer* (Oslo: Universitetsforlaget, 2005). The distinction between the polls and advance voting period has changed significantly since the content of this provision was established. Uniform changes are also proposed for the use of the term "the polls", cf. proposed new Article 55. Article 60 will thereby no longer have any independent importance.

*Article 61*

*Alternative 1:*

*No one may be elected as a Member without having the right to vote.*

–

A majority of the Commission (*Anundsen, Christensen, Giertsen, Grimsrud, Hagen, Hoff, Holmøyvik, Høgestøl, Røhnebæk, Storberget, Tørresdal, Aardal, Aarnes and Aatlo*) support this proposal. The proposal means that the voting age and eligibility age will remain the same, cf. the proposals for Article 50, paragraph one.

A minor linguistic change is proposed in the Bokmål version. No amendment is proposed in the Nynorsk version. The proposed amendment makes the wording equivalent for both language forms.

*Alternative 2:*

*No one may be elected as a Member without having the right to vote and without having completed their eighteenth year or having completed their eighteenth year in the year when the election is held.*

—

*A minority of the Commission (Holmås, Nygreen, Stokstad and Strømmen) supports this proposal. The proposal must be viewed in connection with the proposal to reduce the voting age to 16, cf. the proposal for Article 50, paragraph one, alternative 2.*

*Article 62, paragraph one**Alternative 1:*

*Members of the Supreme Court may not stand for election.*

—

*A majority of the Commission (all but Anundsen) support this proposal.*

The proposal entails that the pool of eligible candidates is expanded. This means that civil servants employed in government ministries and civil servants employed in the diplomatic or consular services are now eligible for election. The prohibition against members of the Supreme Court being elected to the Storting is continued. The wording has also been amended, and it is proposed that “may not be elected as representatives” be changed to “may not stand for election”. This has been done to clarify that members of the Supreme Court also cannot appear on approved electoral lists and relates to the proposed changes to the rules for exemptions. In order to be eligible for election and stand as a candidate on an electoral list, Supreme Court judges must have resigned from their positions before the electoral lists are approved.

*Alternative 2:*

*Officials who are employed in government ministries, except for state secretaries and political advisers, may not stand for election. Members of the Supreme Court and officials employed in the diplomatic or consular services may also not stand for election.*

—

*Member Anundsen was of the view that the group of people who are not eligible for election pursuant to Article 62, paragraph one should be continued. However, a condition should apply for everyone in this group that they cannot stand for election - which is what was proposed for members of the Supreme Court in alternative 1.*

*Article 62, paragraph two*

*Members of the Council of State, state secretaries and political advisers in government ministries may not attend meetings of the Storting as representatives.*

—

The proposal continues the current Article 62, paragraph two, however the provision has been linguistically updated.

### Article 63

*Everyone is obliged to be entered on an electoral list, unless they give written notice that they do not wish to be entered on the applicable electoral list. Rules for when and how such notice must be given are prescribed by law.*

*Everyone who is elected as a member is obliged to accept election.*

*Those who are elected as members for two or more constituencies must give notice of what election they will accept. Rules for when and how such notice must be given are prescribed by law.*

—

*Paragraphs one and two* correspond to paragraph one in the current Article 63, however some amendments have been proposed. In 2020, amendments were adopted to Article 63, paragraph one (c) that introduced the right to an exemption from inclusion on an electoral list for candidates who do not wish to be included on an electoral list. Further to this, it is proposed that the grounds for exemption in (a) and (b) are removed. The general option to request an exemption pursuant to (c) will also cover the matters regulated by (a) and (b).

An exemption must be sought before the electoral lists are approved, such that voters are aware of what candidates are standing for election. As a follow-up to this, a new paragraph two has also been proposed which states that the candidates who are elected have a duty to accept the election.

*Paragraph three* is a continuation of paragraph two in the current Article 63 relating to situations in which a candidate is elected from two or more constituencies. Only linguistic changes were made here.

### Article 64

*The Members elected are furnished with credentials. The Storting decides whether the credentials are lawful.*

*All who have submitted a list at a parliamentary election may appeal a decision by the Storting. Further provisions relating to the right of appeal and grounds for appeal are prescribed by law. The Supreme Court shall decide on appeals.*

*If the Storting, Supreme Court or National Electoral Committee declares an election to be invalid, the Members elected shall remain in office until final approval of a new election.*

—

*Paragraph one* continues the current Article 64. Some linguistic changes have been made to the Bokmål version.

*Paragraphs two and three* are new and are linked to the new appeals system that is being proposed. *Paragraph two, first sentence* introduces a right to appeal decisions by the Storting on whether an election was valid. Decisions which find that an election is valid or invalid can both be appealed. Only those who have submitted lists at parliamentary elections have a right of appeal under this provision. This entails a restriction in comparison with other election-related appeals. Further provisions relating to the right of appeal and grounds for appeal are prescribed by law, cf. *second sentence*. This allows for restrictions to be set for the grounds for appeals and further requirements for having an interest in an appeal. *The third sentence* assigns decisions relating to appeals of decisions by the Storting on whether an election is valid to the Supreme Court. In order to appeal in accordance with this provision, an action must be brought against the Storting, cf. draft Section 14-7 of the new Election Act.

*Paragraph three* addresses the consequences of a parliamentary election being declared invalid. A new election will then have to be conducted and the elected members will remain in office until final approval of the new election.

*Article 71, paragraph one*

*The Members elected shall be Members of the Storting for four successive years.*

—

*Paragraph one* continues the content of the current Article 71. Linguistic changes have been made to the Bokmål version.

*Article 71, paragraphs two to four*

*The Storting may issue further rules for compassionate leave and short-term leave on other grounds.*

*A Member may only be granted leave for the remainder of the term of office if this is to perform other tasks that are of national interest.*

*The Member must apply for leave herself or himself.*

—

*A majority of the Commission (Anundsen, Grimsrud, Hagen, Hoff, Holmøyvik, Holmås, Høgestøl, Nygreen, Stokstad, Strømmen, Tørresdal, Aardal, Aarnes and Aatlo) support this proposal.*

*A minority of the Commission (Christensen, Giertsen, Røhnebæk and Storberget) has made reference to the issue of further regulation of the right to exemption being within the Storting's remit. The minority does not consider it necessary to include rules for leave in the Constitution.*

*Paragraphs two, three and four are new and concern the right to leave from the Storting. Paragraph two proposes a legal basis on which the Storting may issue further rules for compassionate leave and shorter periods of leave. It is assumed that this will, in practice, entail the continuation of existing law.*

*Paragraph three* allows for longer periods of leave to be granted. It is proposed that this may only be granted if the member of the Storting shall perform tasks that are of national interest.

*Paragraph four* stipulates that the member herself or himself must apply for leave. This requirement applies to leave in accordance with both paragraph two and paragraph three.

*Article 72*

*After each parliamentary election, the Storting shall appoint a National Electoral Committee consisting of five members. The chair and two other members must be judges. Three joint alternate members shall be appointed for the members who are judges, and two joint alternate members for the other members.*

*The National Electoral Committee shall serve for four years from 1 January in the second new year after the parliamentary election.*

*The following persons cannot be appointed to the National Electoral Committee:*

- a) members of the government,*
- b) members and alternate members of the Storting, county councils and municipal councils,*
- c) state secretaries and political advisers in government ministries and in the Storting.*

*Members and alternate members of the National Electoral Committee who stand for election to the Storting, county council or municipal council must resign from the National Electoral Committee.*

*The Storting may release a member or alternate member from the position when he or she requests this for personal reasons or he or she has been in gross violation of the duties incumbent on the position.*

*In special cases, the Storting may release one or more members or alternate members from the position if this is necessary for the National Electoral Committee to be able to perform its duties.*

*Decisions to release a member or alternate member from the position require two-thirds of the votes, however only a normal majority is required when the person herself or himself requests to be released from the position.*

*Further provisions concerning the National Electoral Committee are prescribed by law.*

—

The provision is new and it is proposed that this be included in Article 72 of the Constitution, which presently has no text. The provision concerns the appointment of the National Electoral Committee. This National Electoral Committee has a different function and shall be composed in a different manner to how the National Electoral Committee is composed under current law.

*Paragraph one* stipulates that it is the Storting that appoints the National Electoral Committee and that this must take place after every parliamentary election. It is a requirement that three of the members must be judges. The chair must be a judge. Judges must be appointed to fixed terms. Rules are also stipulated for the appointment of alternate members.

*Paragraph two* regulates the National Electoral Committee's term of office. The Committee is appointed after each parliamentary election, cf. paragraph one, and will function for four years from 1 January in the second new year after the election. This period of time will ensure that the National Electoral Committee has finished with the previous parliamentary election before the new National Electoral Committee takes over. The newly-appointed National Electoral Committee will therefore first be responsible for appeals relating to local government elections in the year in which the Committee is appointed and then two years later for appeals relating to the parliamentary election.

*Paragraph three* sets restrictions for who can be appointed to the National Electoral Committee. If a member of the National Electoral Committee is standing for election during the period in which he or she is a member of the National Electoral Committee, he or she must resign from the Committee, cf. *paragraph four*. However, the person in question may still be re-appointed to the next National Electoral Committee if he or she is then eligible. The latest point in time at which the person in question must resign from the National Electoral Committee is when the electoral lists are approved.

*Paragraphs five, six and seven* concern when and how the Storting can release a member from the position. This may be done if the person in question requests this for personal reasons or he or she has been in gross violation of the duties incumbent on the position. If the member himself or herself wishes to be released from the position, the Storting can hand down the decision with a normal majority. However, if a member is to be released from the position against his or her will, it is necessary that the decision is passed with two-thirds of the votes.

Alternate members are equated with members and the rules that apply for relieving a member from the position also apply for alternate members.

Pursuant to *paragraph eight*, further statutory provisions can be established for the National Electoral Committee.

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# 1 [[vedlegg reset]]

## Appendix 1.

### The appeal system for parliamentary elections

Eirik Holmøyvik<sup>528</sup>

#### 1 Introduction

In this memo I will provide an overview of some of the legal starting points for a new appeal system for parliamentary elections. I will discuss two questions:

The first question is whether the current appeal system that is stipulated in the Constitution of Norway and the Norwegian Election Act (section 2) is in compliance with international standards for election legislation (section 3). The background to this is the criticism from the Organization for Security and Co-operation in Europe (OSCE) and Venice Commission in 2010 (section 4). In addition, precedent from the European Court of Human Rights (ECtHR) has consequences for Norway's obligations under the European Convention on Human Rights (ECHR) (section 5). Therefore, the question is whether the Election Act Commission must consider making changes to the current appeal system.

The second question is what requirements the international standards set for a potential new Norwegian appeal system for parliamentary elections. The answer to this question will be presented in the review of the international standards and ECtHR practice.

The answer to the first question will be that the current Norwegian appeal system, which has the Norwegian Parliament (Storting) as the final instance, should not be continued. Therefore, for the continued work of the Election Act Commission, I will provide a brief overview of the appeal systems used by our Nordic neighbours and the United Kingdom (section 6). Finally, I will outline some possible models for a Norwegian appeal system and identify assessments that the Election Act Commission will have to make in its continued work (section 7).

I do not discuss the appeal system for county council and municipal council elections in this memo. However, the viewpoints in the memo concerning the issue of judicial review versus political or administrative review of election disputes may still be able to be transferred to county council and municipal council elections because these are exempt from judicial review under the current Election Act.<sup>529</sup>

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<sup>529</sup>See Section 13-2, subsection 4 of the Election Act. See, however, Rt. 1962, p. 751 which allows the general administrative law doctrine of abuse of power to permit judicial review in special cases. However, it is uncertain as to whether this position stands up against the subsequent and explicit provision in Section 13-2, subsection 4 of the Election Act.

## 2 The current appeal system for parliamentary elections

The current appeal system for parliamentary election is controlled by two rules in the Constitution of Norway. Article 55 of the Constitution states that disputes regarding the right to vote shall be settled by the electoral committee, whose decision may be appealed to the Storting. Article 64 of the Constitution states that the validity of credentials furnished to members elected shall be adjudged by the Storting. Therefore, it is the Storting as the final instance that settled disputes regarding the right to vote prior to parliamentary elections and which settles disputes relating to the conduct of elections through final validation of the election result.<sup>530</sup>

Settling disputes between private parties or between private parties and the State based on rules of law and with final and enforceable effect belong under the judicial function of the State. It is not disputed in Norwegian constitutional law that the Storting exercises exclusive judicial authority in election disputes through Articles 55 and 64 of the Constitution.<sup>531</sup> The Constitution prevents the courts from reviewing decisions by the Storting in election disputes.

Chapter 13 of the Election Act stipulates supplementary rules for the appeal system in accordance with how the Constitution differentiates between appeals concerning the right to vote and appeals concerning the conduct of the election. For appeals relating to the right to vote or the possibility of casting a vote, the electoral committee is the first instance, while the Storting is the appellate instance and receives recommendations from the National Electoral Committee (Section 13-1). For appeals concerning the preparation and conduct of parliamentary elections, the electoral committee is the first instance, while the National Electoral Committee is the appellate instance. Decisions by the National Electoral Committee must then be approved by the newly returned Storting (Section 13-3, subsection 1). As mentioned, Article 64, second sentence of the Constitution states that only the Storting may declare an election in a municipality or county invalid and order a new election. Section 13-3, subsection 3 of the Election Act stipulates that this shall only occur if any error has been committed which may be deemed to have had an influence on the outcome of the election, and which it is not possible to correct.

In addition, Section 13-1 of the Election Act contains rules regarding the right of appeal and deadlines.

## 3 European standards for election laws

The key European standard for election legislation is the Venice Commission's Code of Good Practice in Electoral Matters from 2002.<sup>532</sup> The Venice Commission is a body subordinate to the Council of Europe, and the standards it develops can be considered to apply for the Council of Europe member states. It should be noted that these are not legally binding standards. Reports from

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<sup>530</sup> Decisions handed down by the Storting in connection with election-related appeals take place based on recommendations from the credentials committee together with a preparatory credentials committee appointed by the previous Storting, cf. Sections 1 and 3 of the Storting's Rules of Procedure.

<sup>531</sup>See, for example, Eivind Smith, *Konstitusjonelt demokrati*, fourth edition, Bergen 2017 p. 262.

<sup>532</sup>See Venice Commission CDL-AD(2002)23, *Code of Good Practice in Electoral Matters*, available electronically at [http://www.venice.coe.int/webforms/documents/CDL-AD\(2002\)023rev.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev.aspx).



the Venice Commission are formally only advisory and are politically binding in the same way as “soft law”. However, it is important to be aware that the ECtHR has largely interpreted the standards in Code of Good Practice in Electoral Matters into Article 3 of Protocol 1 of the ECHR (see section 5 below), which is legally binding for the member states.

In the Code of Good Practice in Electoral Matters, procedural safeguards when conducting elections are defined in Part 2, Chapter 3. Section 3.3 concerns the right of appeal:

### 3.3. *An effective system of appeal*

- a. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.
- b. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.
- c. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.
- d. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.
- e. The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.
- f. All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.
- g. Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).
- h. The applicant’s right to a hearing involving both parties must be protected.
- i. Where the appeal body is a higher electoral commission, it must be able *ex officio* to rectify or set aside decisions taken by lower electoral commissions.

With regard to the question of the appellate instance, section 3.3 (a) states that a separate and independent electoral committee and the courts are acceptable institutions. For elections to parliament, the Code of Good Practice in Electoral Matters accepts that parliament considers appeals in the first instance, but categorically states that the right of appeal and final appeal to a court must always be possible. In other words, the Norwegian appeal system outlined in section 2 above does not comply with the Council of Europe’s standards.

Another question is what guidelines the Code of Good Practice in Electoral Matters provides for the work of the Election Act Commission on a new Norwegian appeal system for election-related disputes. The Code of Good Practice in Electoral Matters also includes a report with explanations and clarifications of the standards. This explains the requirement for court proceedings and nuances of importance to the Election Act Commission’s assessment of possible appeals systems

are expressed.<sup>533</sup> In the report, the Venice Commission explains that the reason for the prohibition against the parliament deciding whether an election is valid is that it can result in political decisions. Therefore, the Venice Commission only accepted that parliament can decide that an election is valid in the first instance when such a system has been incorporated, but added that a judicial appeal must always be possible. The choice of wording here is important, because Section 3.3 (a) of the Code of Good Practice in Electoral Matters requires an appeal to a “court”, while the explanation in the report only requires that the final appeal process for parliamentary elections is “judicial”.

In my view, we need to understand the Code of Good Practice in Electoral Matters in such a way that it does not necessarily require that the appeal body is a court, but that an appeal body must at least meet with the same requirements for legal certainty as a court when concerning the appeal process. Therefore, the appeal process must also be judicial if the final decision is made by a body outside the courts: This interpretation is strengthened by the report’s discussion of the appeal process for electoral commissions. Here the report notes that even if electoral commissions have the advantage over courts in that they are specialised in the field, out of consideration to legal certainty there should be “some form of judicial supervision in place”, typically a court. Therefore, the Code of Good Practice in Electoral Matters requires that the appeal body is “judicial”, not that it is formally part of the state’s court hierarchy. The requirement for a judicial review of election disputes sets requirements for the appeal body’s formal and actual independence, legal expertise, impartial composition, authority to make binding decisions and procedural safeguards such as adversarial proceedings.<sup>534</sup>

Part 2, Section 3.3 of the Code of Good Practice in Electoral Matters also lists a number of requirements for the appeal body’s authority, right of appeal and deadlines. To the best of my knowledge, the applicable Norwegian rules in Chapter 13 of the Election Act comply with these requirements, with the exception of the requirement for brief deadlines for decisions (Section 3.3 (g)).

#### **4 Criticism from the Venice Commission and the OSCE/ODIHR.**

In 2010, the Norwegian government (represented by what was then known as the Ministry of Local Government and Regional Development) asked the Venice Commission for an opinion on the Norwegian appeal system for election disputes. This request was predicated by remarks from the Office for Democratic Institutions and Human Rights under the Organisation for Security and Cooperation in Europe (OSCE/ODIHR) in connection with the 2009 parliamentary election. In these remarks, the OSCE/ODIHR noted that the Norwegian appeal system for election disputes did not include a judicial review and that this diverged from international standards. The OSCE/ODIHR

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<sup>533</sup>See Venice Commission CDL-AD(2002)23 *Code of Good Practice in Electoral Matters*, Explanatory Report, II. 3.3.

<sup>534</sup>This type of functional approach is in accordance with the ECtHR’s interpretation of the term “tribunal” pursuant to Article 6 of the ECHR. See the Venice Commission’s amicus curiae brief to the ECtHR from 2019 in the Grand Chamber case *Muge-mangango v. Belgium*, CDL-AD(2019)021-e, *Amicus curiae brief for the European Court of Human Rights in the case of Muge-mangango v. Belgium on procedural safeguards which a State must ensure in procedures challenging the result of an election or the distribution of seats, adopted by the Council for Democratic Elections*, available electronically at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)021-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)021-e).

also noted that the Election Act did not contain any deadlines for ensuring the prompt settlement of election disputes.

The Venice Commission submitted an opinion together with the OSCE/ODIHR in December 2010.<sup>535</sup> The conclusion was that the system of having the Storting as the final instance in election disputes diverged from international standards such as the Code of Good Practice in Electoral Matters. The report made reference to the fact that, under international standards, all final decisions in election disputes, including for parliamentary and local government elections, had to be made by a court. Final resolution of disputes relating to the election result should be able to be decided by "high judicial body, such as the Supreme Court."<sup>536</sup>

With regard to possible models for bringing Norwegian election laws into compliance with international standards, the report made reference to several possible models:

45. Allowing for final appeal on all electoral complaints can be achieved through various approaches: by using for appeals relevant bodies from the existing court structure, as is the case in Switzerland; by using an ad-hoc system of judicial bodies for all stages of the complaints and appeals process, as is the case in the United Kingdom; or by creating a standing specialised legal structure for complaints, as in Mexico. But international standards and commitments call for the final right of appeal to a court from decisions on all electoral matters made by the National Election Committee and Parliament of Norway, in the case of national elections, or the Ministry, in the case of local elections.

When considering the rather categorical conclusion that final resolution of election disputes must be decided by a court, it is interesting that the Venice Commission and OSCE/ODIHR also made mention of ad-hoc "judicial bodies" and "a specialized legal structure for complaints". In my view, it is reasonably clear that the Venice Commission and OSCE/ODIHR did not require that all election disputes have to be brought before and finally decided by the ordinary courts. Special courts were explicitly mentioned as an alternative, but it is my view that there is nothing in the report to indicate that the appeal body needs to be formally defined as a court. As mentioned above, the key factor is that, irrespective of what part it plays in the state's institutional structure, the appeal body is able to make a final decision on election disputes following a judicial review.

In the report, the Venice Commission and the OSCE/ODIHR advised Norway to introduce deadlines for considering election-related disputes and proposed different models for this.<sup>537</sup>

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<sup>535</sup>See Venice Commission (CDL-AD(2010)046 Joint Opinion on the Electoral Legislation of Norway, available electronically at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)046-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)046-e).

<sup>536</sup>See Venice Commission (CDL-AD(2010)046 Joint Opinion on the Electoral Legislation of Norway, paragraph. 44.

<sup>537</sup>See Venice Commission (CDL-AD(2010)046 Joint Opinion on the Electoral Legislation of Norway, paragraph. 44–47.

## 5 Requirements in the European Convention on Human Rights for resolving election disputes

### 5.1 Basic principle

Rights relating to parliamentary elections are regulated in Protocol 1, Article 3 of the European Convention on Human Rights (ECHR).

#### Right to free elections

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

Despite there being no mention in the Convention text regarding the resolution of election disputes, the ECHR has established that “the existence of a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections.”<sup>538</sup> Therefore, Article 3 of Protocol No. 1 of the ECHR sets requirements for the legislation of the member states to provide effective examination of election appeals during the entire election process.

The question is whether the ECHR sets requirements for election disputes having to be heard by courts or whether an administrative body or the parliament itself can be the final arbiter for such disputes. In connection with this, there is reason to note that, at least in the case of election disputes relating to the actual election result, the ECtHR has consistently found that such disputes are political and not “civil rights and obligations” which grant the right to a court hearing under Article 6 of the ECHR.

However, the development of ECtHR precedent indicates that the right to a court hearing is considered an important guarantee for effective examination of election disputes. An important judgment in connection with this is *Grosaru v. Romania* from 2010. I will therefore provide some specific remarks regarding this judgment and the facts of the case.

### 5.2 The ECtHR’s judgment in *Grosaru v. Romania*

When assessing the mechanisms for dispute resolution in the Norwegian system, the judgment in *Grosaru v. Romania* is important for two reasons: Firstly, the judgment applies to a dispute resolution system that has major similarities to the system used in Norway. Secondly, this judgment was the first time the ECtHR established that election appeals not being heard by a court could constitute a violation of the right to effective legal remedy in Article 13 of the ECHR.

The *Grosaru* judgment concerned a dispute over the allocation of a seat in parliament which, pursuant to Romanian electoral law, was reserved for the Italian minority in Romania. The applicant had been a candidate in the 2000 parliamentary election and was of the opinion that he had won the seat by having received the most votes on a national basis. However, the Central Electoral Office had allocated the seat to another candidate. This other candidate had received fewer votes on

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<sup>538</sup>For example, see *Namat, Aliyev v. Azerbaijan*, Judgment 8 April 2010, Application no. 18705/06 paragraph 81.

a national basis, but had received the most votes in one of the constituencies. The law was unclear as to how the seat should be correctly allocated in a situation such as this. The Central Electoral Office's interpretation of the law was that territorial representation had to take precedence over national representation. An appeal to the Central Electoral Office was dismissed and the applicant then submitted his case to the Romanian Constitutional Court, which also dismissed the appeal on the grounds that it did not have jurisdiction. The applicant then brought his case before the Chamber of Deputies of the Romanian Parliament, which dismissed the appeal on the same grounds as the Central Electoral Office.

As a background to the interpretation of Article 3 of Protocol No. 1 of the ECHR, the ECtHR presented a comparative overview of dispute resolution models in Council of Europe member States. This showed variations in the dispute resolution models within four main categories. In some countries, including Romania, the central electoral authority was the appeal body. The most common model involved different types of courts or independent appeal institutions for election disputes, such as the Valprövningsnämnden (Electoral Review Board) in Sweden. Switzerland had its own model in which the cantonal government was the appeal body. However, a decision from this body could still be appealed to the federal supreme court. The fourth category was the parliament itself, as the final instance, deciding whether the election result was valid. For this, the ECtHR made reference to three countries. Belgium, Luxembourg and Italy. The ECtHR therefore overlooked the fact that Norway also has this model. With regard to this final model, the ECtHR stated that validation of the election result by parliament did not prevent judicial review if the parliament's validation only served as a means of political supervision.<sup>539</sup> However, on a general basis, the ECtHR referred to the fact that the tendency in Europe was for disputes concerning election results to be heard by courts, and that this development was also in accordance with the Venice Commission's requirement for judicial review, since neither parliaments nor electoral commissions offer equivalent guarantees of legal certainty.<sup>540</sup>

In light of these introductory remarks, it is not surprising that the ECtHR was critical of the fact that the applicant's appeal had first been heard by the Central Electoral Office and then the Chamber of Deputies of the Romanian Parliament as the final instance.

In accordance with established practice, the ECtHR found that the most important objective of Article 3 of Protocol No. 1 of the ECHR was to protect against arbitrary infringement on the right to free and fair elections, including the right to stand for election. This also includes protection against arbitrary decisions when determining the election result. The ECtHR then set three general requirements for preventing arbitrary decisions in connection with the final election result: 1) The decisions must be made by a body "which can provide a minimum of guarantees of its impartiality", 2) the discretion enjoyed by the body concerned must not be exorbitantly wide and it must be circumscribed, with sufficient precision, by law, and 3) the procedures for decisions on election

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<sup>539</sup>See *Grosaru v. Romania*, Judgement 2 March 2010. Application no. 78039/01 paragraph 30.

<sup>540</sup>See *Grosaru v. Romania*, Judgement 2 March 2010. Application no. 78039/01 paragraph 26.

results - in this instance the allocation of seats - must be such as to guarantee a fair and objective decision and prevent any abuse of power.<sup>541</sup>

The specific question for the ECtHR was whether Romanian electoral laws had been arbitrarily interpreted and implemented in violation of Article 3 of Protocol No. 1 of the ECHR. The conclusion was that the ECHR had been violated due to two circumstances. Firstly, the rules in the Romanian electoral law relating to the allocation of seats for national minorities were not clear enough to satisfy the requirements of precision that are set in the ECHR. Secondly, and this is what is of key importance to the issue to be addressed by the Election Act Commission, the ECtHR concluded that the applicant had not had access to a proper and impartial appellate instance. The ECtHR placed emphasis on the fact that the Central Electoral Office and, to an even greater extent, the Chamber of Deputies Validation Commission, were composed of representatives from political parties with strong personal interests in the decision. The ECtHR's grounds were as follows:

54. Moreover, the Court notes that the Central Electoral Office and the Chamber of Deputies Validation Commission examined the applicant's challenge and rejected it as being ill-founded. In the Court's opinion, however, an individual whose appointment as an MP has been rejected has legitimate grounds to fear that the large majority of members of the body having examined the lawfulness of the elections, more specifically the members representing the other political parties of the Central Electoral Office, may have an interest contrary to his own. The rules of composition of that body, made up of a large number of members representing political parties, do not therefore appear to be such as to provide a sufficient guarantee of impartiality. The same conclusion holds good a fortiori for the Chamber of Deputies Validation Commission.

55. Furthermore, the Court notes that no national court ruled on the interpretation of the legal provision at issue. Thus, the Supreme Court of Justice rejected the applicant's challenge as being inadmissible, considering that the decisions of the Central Electoral Office were final. Subsequently, the Constitutional Court informed the applicant that it had no jurisdiction in electoral matters. In that connection, the Court points out that in *Babenko* (cited above), it had ruled that the fact that the applicant's allegations had been examined in the context of judicial proceedings was significant.

56. That approach has, moreover, been confirmed by the Venice Commission in its Code of Good Practice in Electoral Matters, which recommends judicial review of the application of electoral rules, possibly in addition to appeals to the electoral commissions or before parliament (see paragraph 22 above). The comparative-law materials also show that several Council of Europe member States have adopted judicial review and only a few States still maintain purely political supervision of elections (see paragraph 28 above).

Since the applicant's case had not been heard by a court, the ECtHR also assessed whether Romania had violated Article 13 of the ECHR regarding the right to an effective remedy before a national authority in the event of "procedural" allegations of violations of rights and freedoms set forth

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<sup>541</sup>See *Grosaru v. Romania*, Judgement 2 March 2010. Application no. 78039/01 paragraph 47.

in the Convention.<sup>542</sup> The ECtHR found that this was the case and, as grounds, simply made reference to paragraphs 55 and 56 of the judgment cited above. Since the ECtHR emphasised in these paragraphs that no court had heard the appeal, and made reference to the recommendation of the Venice Commission regarding judicial review, it is obvious that the ECHR should be interpreted in such a way that electoral systems that do not offer a judicial review of the election result will clearly be in violation of the states' obligations under Article 13 of the ECHR to offer an effective remedy against violations of the Convention, which in this case was the right to free and fair elections.<sup>543</sup>

However, it is not certain that we have to interpret the Grosaru judgment in such a way that Article 13 of the ECHR always requires a judicial review of election appeals. In the judgment, the ECtHR did not expand on what is generally needed to satisfy the requirement for an effective remedy for election appeals. This was noted by Judge Ziemele in a special vote in which he made reference to the fact that the court's only grounds for concluding that there was no effective remedy were that it was not possible to appeal to a court. Judge Ziemele did not disagree with the conclusion in this case, but questioned whether Article 13 of the ECHR always required a court hearing for election appeals or whether systems for administrative appeals can provide complainants with an effective remedy against violation of their rights under the Convention.<sup>544</sup>

There is reason to note that the ECtHR was critical of whether the Central Electoral Office in Romania was sufficiently impartial despite it having specific legal expertise in the form of seven of its 23 members being supreme court judges. The problem was that the other sixteen members were representatives of the political parties.<sup>545</sup> This indicates that caution should be shown when including representatives from political parties in a dispute resolution body in connection with elections. In any event, when read in light of Article 13, Article 3 of Protocol No. 1 of the ECHR requires the appeal body for election disputes to be impartial.

In the Grosaru judgment, the ECtHR did not further define what is generally meant by the requirement for an impartial appeal body. In this assessment, the obvious solution may be to refer to the ECtHR's extensive precedent relating to Article 6, which grants the right to a fair and public hearing by an impartial tribunal. The actual legal definition of impartial must remain the same for all of

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<sup>542</sup>See *Grosaru v. Romania*, Judgement 2 March 2010, Application no. 78039/01 paragraph 62. In cases where the appeal has been the subject of national court proceedings, the ECtHR will not test Article 13, cf. *Paunović and Milivojević v. Serbia*, Judgement 24 May 2016, Application no. 41683/06 paragraph 68.

<sup>543</sup>The fact that a judicial review is of importance to the appeal hearing not being arbitrary in nature was also stated in *Babenko v. Ukraine*, Décision 4 May 1999, requête en 43476/98.

<sup>544</sup>In connection with this, Judge Ziemele made reference (paragraph 5 of the special vote) to section 3.3 of the Venice Commission's *Code of Good Practice in Electoral Matters* equating electoral commissions with courts as appeal bodies in election appeals. However, he nevertheless emphasised that equating electoral commissions with courts only applies to the first appeal body in election disputes. The same section in the Venice Commission's guidelines states that it must always be possible in parliamentary elections to bring a final appeal before a court.

<sup>545</sup>See *Grosaru v. Romania*, Judgement 2 March 2010. Application no. 78039/01 paragraph 54 and 34.

the articles in the ECHR, even if the threshold may vary in terms of the context and the body this applies to. In a number of judgments involving Article 6, the ECtHR has emphasised that “impartial” involves both a subjective and objective test. The subjective test involves establishing that a judge, or in this case an appeal body, held any personal prejudice in a given case or held some other bias when deciding on the case. The objective test involves looking for external factors relating to the institution such as composition and procedure, which may raise doubts among outside parties as to whether the institution will act impartially in a specific case. The ECtHR applied such an objective test in the Grosaru judgment and this should therefore provide guidance for the Election Act Commission’s assessments relating to a new system for appeals in Norway.

### 5.3 ECtHR precedent following the Grosaru judgment.

The legal opinion in the Grosaru judgment was later continued in *Paunović and Milivojević v. Serbia* from 2016.<sup>546</sup> In this case the Serbian parliament had terminated the applicant’s mandate as a member of parliament. The applicant then brought the case before the Serbian supreme court and the constitutional court, seeking the annulment of parliament’s decision. Both courts dismissed the appeal on procedural grounds. On this point, the ECtHR found that the applicant had not had access to an effective remedy pursuant to Article 13 of the ECHR for protecting his rights under Article 3 of Protocol 1.<sup>547</sup> The Serbian government argued to the ECtHR that the applicant could have brought a civil action against the state, but this claim was rejected by the ECtHR because the government could not establish that the courts had the authority to reverse a decision by parliament. Therefore, the position would appear to be that when parliament alone decides on disputes relating to the allocation of seats or other post-election disputes, there must be access to a judicial review or an equivalent judicial process for these decisions.

The question of whether the parliament’s final validation of the election result satisfies the requirements in Protocols 1-3 and Article 13 of the ECHR is expected to be clarified in principle by the ECtHR in the near future. In June 2019, the Grand Chamber of the ECtHR agreed to hear a case against Belgium which specifically applies to this question of principle.<sup>548</sup> The question in the case of *Mugemangango v. Belgium* is whether the parliament considering election appeals without the option of appealing to an independent and impartial body, provides adequate and sufficient procedural guarantees against arbitrary decisions. In this specific case, the Walloon parliament had rejected a complaint from a candidate that errors had occurred during the counting of ballots after the 2014 elections. The Belgian system, which will now be reviewed by the Grand Chamber of the ECtHR, does not differ significantly from the Norwegian appeal system for parliamentary elections. The judgment will therefore be highly applicable to Norway both in terms of the result and any procedural requirements the ECtHR will set for the hearing of appeals regarding the validation of

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<sup>546</sup>See *Paunović and Milivojević v. Serbia*, Judgement 24 May 2016, Application no. 41683/06.

<sup>547</sup>See *Paunović and Milivojević v. Serbia*, Judgement 24 May 2016, Application no. 41683/06 paragraph 72 cf. 46-48.

<sup>548</sup>See *Mugemangango c. Belgique*, no. 310/15. See also Venice Commission’s CDL-AD(021)2019-e, *Amicus curiae brief for the European Court of Human Rights in the case of Mugemangango v. Belgium on procedural safeguards which a State must ensure in procedures challenging the result of an election or the distribution of seats, adopted by the Council for Democratic Elections*, available electronically at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(021\)021-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(021)021-e).



election results. The hearing was held in December 2019 and the judgment is expected in the first half of 2020.

A summary of ECtHR precedent demonstrates that a judicial review of election disputes generally satisfies the requirement in Article 3 of Protocol no. 1 of the ECHR for effective and actual review of election disputes (see 5.1 above).<sup>549</sup> However, it is not the case that a formal judicial review is sufficient if this does not result in an actual review of the dispute or does not provide adequate guarantees against arbitrary decisions.<sup>550</sup> Irrespective of how a future Norwegian appeal system is designed, it must ensure that the appeal body has sufficient expertise and is composed in such a way that it can undertake an independent and impartial review of election disputes.

#### 5.4 The European Convention on Human Rights and Norwegian law

I would note that Article 3 of Protocol no. 1 of the ECHR applies as Norwegian law pursuant to Section 2, subsection 1 (a) of the Norwegian Human Rights Act.<sup>551</sup> In the event of a conflict between the ECHR and other Norwegian law, including the Election Act, Section 3 of the Human Rights Act states that the ECHR shall take precedence. However, this preferential right for the ECHR does not apply in relation to the Constitution, and therefore also does not apply in relation to the rules in Articles 55 and 64, second sentence of the Constitution regarding election appeals. However, the individual right to free and fair elections is also protected in Article 49, paragraph one, second sentence of the Constitution. This right was inserted in the Constitution in connection with the Human Rights Reform in 2014. The preparatory works to the new Article 49, paragraph one, second sentence indicate that, when concerning this area, we must also interpret the Constitution in light of Article 3 of Protocol no. 1 of the ECHR and ECtHR precedent.<sup>552</sup> When interpreting Article 3 of Protocol no. 1 of the ECHR, the ECtHR has referred to the right to effective review of election disputes as "one of the essential guarantees of free and fair elections."<sup>553</sup> There is thus reason to believe that Norwegian courts will do the same for the corresponding right in Article 49, paragraph one, second sentence of the Constitution.<sup>554</sup>

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<sup>549</sup>The principle judgment is *Babenko, v. Ukraine*, Décision May 4, 1999, requête en 43476/98. For a subsequent judgment in which the ECtHR found that a national judicial review is satisfactory, see *Uspaksich v. Lithuania*, Judgement 20 December 2016, Application no. 14737/08.

<sup>550</sup>In a new and important judgment, the ECtHR concluded that the appeals procedure of Russian courts following the 2011 parliamentary elections did not satisfy the requirements in Article 3 of Protocol no. 1 of the ECHR, cf. *Davydov and others v. Russia*, Judgement 30 May 2017, Application no. 75947/11 paragraph 333-334. Another judgment concerning the absence of judicial review is *Namat Aliyev v. Azerbaijan*, Judgement 8 April 2010, Application no. 18705/06.

<sup>551</sup> Act no. 30 of 21 May 1999 relating to the strengthening of the status of human rights in Norwegian law.

<sup>552</sup> See Document no. 16 (2011–2012) p. 253 and Recommendation 169 S (2012–2013) p. 16.

<sup>553</sup>For example, see *Namat, Aliyev v. Azerbaijan*, Judgment 8 April 2010, Application no. 18705/06 paragraph 81.

<sup>554</sup>See Rt. 2015 p. 93 and HR-2016-2554-P.

At the same time, Articles 55 and 64, second sentence of the Constitution clearly state that the Storting shall be the final arbiter of election disputes. In light of the clear wording in these articles and the fixed and long-term practice, it is difficult to make a restrictive interpretation of the Storting's authority in light of the more recent rule in Article 49, paragraph one, second sentence. Such a restrictive interpretation would have required a clear basis in the Storting's constitutional resolution in 2014, which was not the case. This means there is clear conflict between the more recent right to free and fair elections in Article 49, paragraph one, second sentence of the Constitution when interpreted in light of the ECHR, and the rules in Articles 55 and 64, second sentence of the Constitution relating to election appeals.

## 5.5 Conclusion

The review of ECtHR precedent demonstrates that Article 3 of Protocol no. 1 of the ECHR requires that there is an actual and effective review of election disputes. The requirement includes a prerequisite that election disputes can, in the final instance, be subject to judicial review by an impartial appeal body. Courts clearly satisfy these requirements, however, depending on the circumstances, other bodies may also satisfy the requirements.

If we look at the current Norwegian appeal system for election disputes (section 2), it is difficult to see that this complies with the above-mentioned requirements under the ECHR. Election disputes cannot be brought before the courts and the Storting is the final appeal body. When assessed objectively, the Storting is not impartial in this context. The parties and members of the newly returned Storting will have their own interests when concerning the outcome of appeals relating to the election result. It is also doubtful as to whether the Storting's consideration of election appeals satisfies the requirement for judicial review.

## 6 Brief summary of the systems in other countries

### 6.1 Introduction

Europe presently has several different models for appeal systems in connection with election disputes. I have not conducted a systematic assessment, but it appears clear that the most common model in Europe at present is the right to have election appeals heard within the ordinary court system. This may be decided with final and enforceable effect by the constitutional court, as is the case in Germany, in the ordinary supreme court, which is the case in Switzerland, or in the administrative court, which is what occurs in Finland.<sup>555</sup>

Another model involves special election tribunals or other independent appeal bodies. In Greece, appeals of the election result are considered by a special tribunal composed of the presidents and members of the various highest courts.<sup>556</sup> In the United Kingdom, appeals of the election result are considered by ad-hoc election tribunals consisting of two judges that are established for each

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<sup>555</sup>See the overview in the Venice Commission CDL-AD(2009)054 Report on the cancellation of election results, paragraph 36 et seq.

<sup>556</sup>See Article 100 of the Greek Constitution.

individual appeal.<sup>557</sup> In Sweden, all election-related appeals are decided by a special election review board.

A third model is the one we have in Norway, which allows the parliament to decide on appeals of the election result. In some countries this also includes election-related appeals. This model is also found in the Netherlands, Denmark, Iceland, Luxembourg, Italy and Belgium.<sup>558</sup>

Since all three models can be found in the Nordic countries, I will examine the Nordic systems for election appeals in more detail below.

## 6.2 Denmark

Together with Norway, Denmark is one of the few countries in Europe where the parliament is the final instance for appeals relating to election disputes.<sup>559</sup> Article 33 of the Constitution of Denmark corresponds to Article 64, second sentence of the Constitution of Norway and states that “The Danish Parliament itself shall determine the validity of the election of any Member and decide whether a Member has lost his eligibility or not.” The specific rules are stipulated in Chapter 11 of the 2017 Danish Election Act. Anyone who is entitled to vote can appeal a parliamentary election and this is sent to the Minister for Economic Affairs and the Interior, who then forwards it on to the Danish Parliament (Folketing) (Section 87). As is the case in Norway, decisions by the Folketing cannot be brought before the courts. However, it has been advocated in Danish legal theory that, in extraordinary cases, such as when a decision by the Folketing on the allocation of seats is characterised by abuse of power and harassment of political opponents, the courts can review such matters.<sup>560</sup> The courts can also review decisions by the electoral authorities regarding whether the conditions for voting eligibility in Article 29 of the Constitution of Denmark are satisfied. These are questions regarding whether the person in question has Danish citizenship, has reached legal age and whether he/she is legally incapable.<sup>561</sup>

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<sup>557</sup>See Article 120 et seq of the Representation of the People Act (1983).

<sup>558</sup>In Belgium, decisions relating to the preparation of elections and candidate registration can be brought before the appeals court for a final decision. The Constitutional Court can also review disputes regarding election campaign financing. However, appeals concerning the conduct of the election and election result cannot be brought before the courts. See Article 27 et seq of the 2014 Belgian Election Act.

<sup>559</sup>Decisions regarding the approval of names of political parties and entering people on electoral lists are handed down by the Electoral Board, which is an independent body, cf. Section 17 of the Danish Election Act.

<sup>560</sup>See Jens Peter Christensen, Jørgen Aalbæk Jensen and Michael Hansen Jensen, *Grundloven med kommentarer*, København 2015 p. 247–248, and Jens Peter Christensen, Jørgen Aalbæk Jensen and Michael Hansen Jensen, *Dansk Statsret*, 2. udgave, København 2016 p. 82-83.

### 6.3 Sweden

In Sweden, appeals relating to parliamentary elections are decided by a special election review board appointed by the Riksdagen (Swedish Parliament).<sup>562</sup> The appurtenant section of the Constitution of Sweden (Form of government) states that the decisions by the Election Review Board are final and cannot be reviewed by the courts.<sup>563</sup> This means that the Election Review Board (valprövningsnemnda) is the final instance for all election-related appeals, and the Board can review all decisions made by the administrative electoral authorities.<sup>564</sup> The Election Review Board can review the election result, annul elections and order a new election in a constituency if it finds that there were errors that may have influenced the result. The Election Review Board can also order a witness hearing to be held in a court and collect evidence in accordance with the same rules as the courts.<sup>565</sup>

The members of the Election Review Board are elected by the Swedish Parliament (Riksdagen) after each ordinary parliamentary election and the members will sit on the board until the next ordinary parliamentary election has been approved. The board has seven members. The chair is elected separately and must be or have been a judge and may not be a member of the Swedish parliament. However, there are no special requirements for the other six members and they are presently all from different parties in the Swedish parliament.<sup>566</sup>

### 6.4 Finland

Finland follows a model involving judicial review.<sup>567</sup> All appeals of the election result must be brought before the ordinary administrative courts, which consider cases in accordance with an urgent procedure ("brådskande ordning"). Decisions by this instance can then be appealed to the Supreme Administrative Court (Högsta förvaltningsdomstolen). If the administrative court finds that election proceedings were in violation of the law, and that the violation "clearly" influenced the election result, a new election must be ordered in the relevant constituency. The Finnish Election Act differentiates between two types of election appeals. Appeals regarding a decision on the election result being in violation of the Act can be brought by the person the decision directly

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<sup>562</sup>The Election Review Board also considers appeals at local government elections, Sami parliament elections, elections to the European Parliament and referendums.

<sup>564</sup>See the Swedish Elections Act 2005:837, Chapter 15, Section 3.

<sup>565</sup>See the Swedish Elections Act 2005:837, Chapter 15, Section 12.

<sup>566</sup>Three of the members of the current Election Review Board represent the Social Democratic Party, two are from the Moderate Party and one member is independent, but was elected to parliament for the Swedish Democrats. Of the alternate members, three are from the Social Democratic Party, two are from the Moderate Party and one is from the Centre Party. There are a total of eight parties represented in the Swedish parliament following the 2014 election.

<sup>567</sup>See Chapter 8 of Finnish Election Act no. 714 of 2 October 1998.

applies to, the candidates and the party. Appeals regarding errors in the election proceedings that influenced the election result can be brought by anyone with the right to vote.<sup>568</sup>

## 7 Assessments

Based on what is discussed above, it is clear in my view that the current Norwegian appeal system for election disputes must be changed. Even though, like Norway, some European countries still allow parliament to decide on election disputes, this system conflicts with prevailing European standards for election legislation. It is also uncertain as to whether a specific decision by the Storting as the appeal body would comply with the requirements for impartiality in Article 3 of Protocol 1 of the ECHR and the right to effective legal remedy in Article 3.

There are a number of ways in which a new Norwegian appeal system for election disputes could be arranged. I will list three possible models with their various advantages and disadvantages. All these models involve bodies that make the final decision in election disputes. The prerequisite is that, like the current system, election disputes are considered by the electoral committee (at the different levels) in the first instance.

### *The ordinary courts*

The advantage of transferring election disputes to the ordinary courts is that the courts can provide an impartial and adequate judicial review, which readily satisfies the requirements in the ECHR. Use of the ordinary courts would also not require institutional changes or innovations. Potential disadvantages of using the ordinary courts could be that they have less expertise in election law, have inadequate resources and need to make decisions within a short period of time. The prompt consideration of election disputes in particular will require adapting the procedural rules. The system can also be adapted to the special features of election appeals, for example, by election disputes being able to be appealed directly to the court of appeal, with a final decision by the Supreme Court.

### *Special election tribunals*

The advantage of special election tribunals is that these will be able to obtain specialist expertise within election law and would be on standby in connection with elections and able to quickly consider cases. A special election tribunal would be an innovation in Norway law and, from a political and professional perspective, there has traditionally been a certain amount of scepticism towards special tribunals in Norway.<sup>569</sup> However, we still have several special tribunals in Norway, for example, the Labour Court,<sup>570</sup> Land Consolidation Courts,<sup>571</sup> Finnmark Land Tribunal<sup>572</sup> and the

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<sup>568</sup>Members of the municipal council for appeals in connection with municipal council elections.

<sup>569</sup>See the most recent recommendation to the Special Courts Committee in Official Norwegian Report (NOU) 2017: 8 *Special courts in new areas? - Assessment of new judicial arrangements for parental disputes, child welfare and foreign matters*.

<sup>570</sup>See Section 33 of the Labour Disputes Act.

<sup>571</sup>See Section 2 of the Courts of Justice Act.

<sup>572</sup>See Section 36 of the Finnmark Act.

Court of Impeachment.<sup>573</sup> Ad hoc election tribunals can be established for each appeal (as is the case in the United Kingdom) or can be permanent tribunals composed of judges from other courts on a rotational basis.

### *Special electoral committee*

The advantage of a special electoral committee is the same as for special election tribunals referred to above. The difference between a committee and a tribunal may be formal if the committee is composed of people who satisfy the requirements for judges and if the appeals process satisfies the guarantees of legal certainty associated with court proceedings. In Norwegian law there is no sharp functional distinction between judicial and administrative reviews. We have several committees in Norway that are formally administrative bodies, but, in practice, function as courts, for example, the National Insurance Court and the County Social Welfare Boards. The prerequisite for an electoral committee must be that it can impartially decide on election disputes following a judicial review that satisfies the requirements in the ECHR. In light of ECtHR precedent and the Venice Commission's clear recommendation regarding judicial review, a potential Norwegian election appeals committee should be more strongly represented by judges than in Sweden (see 6.3). This would provide the committee with legal expertise equivalent to that of a court and make it objectively impartial. For example, an election appeals committee can have seven members, of whom four are lawyers who can serve as judges and three are laymen. The members of the committee can be elected by the Storting and serve until the next parliamentary election. Sitting members of the Storting should not be able to be elected as members of the committee. To make the committee more objectively impartial, the group of people who cannot be elected can be expanded to include cabinet ministers, state secretaries, political advisors in the ministries and in the Storting, and others who may have a special interest in committee decisions. For the same reason, members who are included on electoral lists must resign from the committee. Therefore, alternate members should also be elected to the committee.

We can also envisage a hybrid model based on what stage of the election process the appeal applies to. For example, disputes regarding the right to vote before an election can be heard by the ordinary courts, while appeals concerning the conduct of the election in general and the election result can be heard by a special election tribunal or election committee.

Some of the same questions apply for all of the models. One question is the level at which the appeal system shall be regulated. In my view, the rules pertaining to the right of appeal and the composition and expertise of the appeal body should be stipulated in the Constitution. Other rules such as rules for deadlines and procedural rules can be stipulated in the Election Act. Other questions are the requirements for the actual appeal and conditions for reversing the election result. The present rule that the error must have influenced the election result should be continued. In order to prevent misuse of the appeal system, the Election Act Commission can also consider introducing a minimum requirement for appeals of the election result, for example, in the form of a

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<sup>573</sup>See Article 86 of the Constitution of Norway.

minimum number of signatures.<sup>574</sup> Other questions relate to deadlines and procedural rules. These must be adapted to the model for the appeal body and I will therefore not go into further details on this here.

## 1 **[[vedlegg reset]]**

### Appendix 2.

## **“... a natural division with a strong foundation in the circumstances of the country”.<sup>575</sup> The historical prerequisites for constituency structure at parliamentary elections<sup>576</sup>**

by Yngve Flo<sup>577</sup>

The bastion of Norwegian democracy - the Storting Chamber (stortingssalen) at Karl Johans gate 22 - was designed in a manner that differs from most other chambers among the world's national assemblies. While parliamentarians in other countries are usually grouped according to what party they belong to, the members of the Storting are placed according to their home county, i.e. the geographic area from which they were elected. The members for each constituency sit in a continuous row along the horseshoe-shaped Storting Chamber. For example, all seven members from the county of Oppland sit in seats 83 to 89, and together make up the *Oppland Bench*.

These days, the most fundamental political dividing lines are undeniably between parties and between party constellations. When viewed in this light, one can easily characterise the placement of seats according to constituency as a reminder of a forgotten time, a time before the party system was established. However, one can just as easily find arguments claiming that geography still plays an important role in parliamentary life. Geography typically manifests itself in localisation disputes, in issues regarding what areas should be prioritised when distributing scarce resources, and in matters with a more fundamental or ideological dimension, often associated with the centre-periphery dimension that is of such importance in Norwegian politics. For individual parliamentarians, their placement on a county bench is a reminder to them that they have an assignment that not only involves demonstrating loyalty to a party, but also being a voice in national politics for the people in their respective home districts. The county benches sometimes act as a joint group and

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<sup>574</sup>Such a requirement can be found in other countries, for example, Germany, and is accepted by the ECtHR, cf. X.v. v. Germany, Decision 7 May 1979, Application no. 8227/1978.

<sup>575</sup>Representative Trond Hegna (Labour Party) characterises the county division of representation to the Storting for rural areas, St. 1952, p. 2884. 1952, p. 2884.

<sup>576</sup>This memo was prepared on assignment from the Ministry of Local Government and Modernisation (KMD) via the Secretariat for the Election Act Commission. It also draws from a follow-up research project on the municipal and regional reform that was conducted under the direction of the KMD-financed Demos programme (Research Council of Norway).

<sup>577</sup>Researcher at Uni Research Rokkan Centre.

can make common cause.<sup>578</sup> Perhaps this attachment to the county, which manifests itself through the electoral system and physically combined county benches, contributes to “grinding off the edges” of parliamentary life, and creating unity across party lines? In any case, it has been claimed by political scientists that the county organisation contributed to developing the distinctive consensus in Norwegian political life in the decades following the Second World War.<sup>579</sup>

Counties play a key role in the Norwegian electoral system. If, in this instance, we limit ourselves to looking at the 2017 parliamentary election and previous eleven elections,<sup>580</sup> parliamentary elections have taken the form of a competition for a variable number of seats within the framework of 19 constituencies that have been divided in such a way to correspond with the Norwegian county structure, and thereby also with the Norwegian county council structure and organisational structure of the political parties.

These 19 constituencies most certainly do not constitute separate spheres: The party agenda is largely the same across county borders and certain matters of national interest have been discussed with the same level of fervent enthusiasm from one end of the country to the other. Since the system of seats at large was introduced in 1989, the returning of members has also been more directly linked. Since 2005, the system has, in practice, entailed that voters from the entire country are involved in influencing who will be assigned the “final seat” in each county. At the same time, there is no doubt that the election is largely reflected by the county context, by the county's own characteristics and history, by the gallery of political personalities - and by how much weight the county has on the political scales, manifested by the variable number of members every county has the right to elect. The political preferences can be very different from county to county. Some counties always stand out as being “redder”, “bluer” or “greener” than the national average.

The county has been an important “basic unit” in the Norwegian political system since the Storting was established in the reborn Norwegian state of 1814 - and the current division of the Storting into county benches dates all the way back, with some adjustments, to 1952. However, the constituency structure may now be facing its most comprehensive changes in several generations. The Regional Reform, (which was the resolution passed by the Storting in June 2017), entails that the number of counties will be reduced from the current 19 to 11, (in most cases effective from new year 2020). With four<sup>581</sup> exceptions, all of the of the country's county authorities (and about

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<sup>578</sup>To the best of this writer's knowledge, there are no (comparative) studies of how the county benches functioned, however press reports show that, among other things, the parliamentary county groups received delegations from their home county, travelled on joint excursions to the home county or participated in conferences with representatives of municipalities, county authorities, business and industry etc. from the home county. For example, see the report “Ny Østfold-benk vil slåss for jobber og flyplass” from *fredrikstad24.no*, 13 September 2017.

<sup>579</sup>Rommetvedt, Hilmar 1992: “The Norwegian Storting: The Central Assembly of the Periphery” (p. 89). *Scandinavian Political Studies*, Vol. 15 – No. 2, 1992. Wiley-Blackwell.

<sup>580</sup>This number was 20 at the 1969 parliamentary election, because Bergen and Hordaland were separate constituencies (see the reference to this below).

<sup>581</sup>Nordland, Møre og Romsdal, Rogaland and Oslo (which is a combined municipality and county authority).



70 per cent of the country's inhabitants), will be included in the agreed mergers of two or three county authorities. The regional reform essentially involves the restructuring of regional self-government, but at the same time, it has also long been in the cards that the state shall “follows suit”, at least through a corresponding change to the *county*, such as territorial or geographical administrative entities. Among other things, this is reflected by the fact that the office of county governor has largely been reorganised in accordance with the new county boundaries.<sup>582</sup>

Therefore, the question is: Should the constituencies for parliamentary elections also be changed to ensure these are the same as the new county boundaries? *In formal terms*, the answer is not a simple one. The electoral system was not an integrated part of the regional reform, and reducing the number of constituencies (and allocation of seats between the constituencies) therefore also requires amendments to the Constitution. At the same time, we hear it being expressed that there is no real way around this. Since a decision on the merits appears to have already been made through the Regional Reform, the question now is how quickly the reluctance and unnecessary formalism can be overcome in order to achieve the constitutional amendment that “has to” be made.

Among other things, this attitude was expressed in an editorial in *Adresseavisa* in February 2018. The county authorities in Nord-Trøndelag and Sør-Trøndelag started merger talks before the regional reform had been initiated at national level, and the formal merger was carried out already by New Year 2018, i.e. two years before the mergers in other parts of the country. The newspaper was critical of the government not doing its part to ensure that the inhabitants in the two former counties could vote in a combined constituency at the 2021 parliamentary election, but instead had to wait at least four more years.

We cannot understand that it is necessary to have two constituencies for seven whole years after the counties were merged. (...) If it has been agreed that there is to be a unified Trøndelag, then it has also been agreed that Trøndelag must be represented in the Storting as a unified region. It makes little sense that the Trønders who are standing at the next election will be elected from two counties that no longer exist. (...) Representing one's previous county in the Storting for the next term of office contributes to maintaining a county boundary that no longer exists. (...) If one has first said A, then one also has to say B.<sup>583</sup>

The purpose of this memo is to provide a historical insight into the primary discussion concerning the constituency structure at parliamentary elections. This work would have been meaningless if one were to accept the precondition of *automaticity* or *causality* between changing the county structure (county authority structure) and changing the constituencies for parliamentary elections. In principle, these are different issues, and it would also be problematic if, by agreeing to a political-administrative reform, the Storting had placed itself in a coercive situation where there was no genuine alternative to amending the Constitution. Or put in another way: The fact that the Storting

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<sup>582</sup>The “discrepancy” is that Oslo will be part of the same county governorship such as Østfold, Akershus and Buskerud, without being part of the same county/county council as the other three.

<sup>583</sup>Editorial “Trøndelag må være ett fylke, også ved valget”, *Adresseavisa*, 15 February 2018.

answers "A" to a question through legislative authority and a simple majority, should not in turn result in the Storting then being forced to answer "B" to a completely different question as a constitutional assembly that requires a qualified majority.

This approach most definitively does *not* constitute a rejection of the existence of good, logical reasons for ensuring there is a connection between the geographical framework around the county/county authority and constituencies at parliamentary elections (see the conclusion of the memo). However, reducing the number of constituencies from 19 to 11 will have implications. Irrespective of whether parliamentary elections continue to be held with the current 19 constituencies or whether the number is reduced to 11 (or possibly if there is some form of interim solution), it will still be an important crossroad, with consequences for the electoral system and the political system as a whole. This is a choice that must not be made while on autopilot.

It is precisely history, and knowledge of how this part of the electoral system has developed, that can hopefully strengthen the ability to make an informed decision. This memo provides a condensed and largely chronological account of what has historically emerged as the fundamental thinking regarding the constituency structure, and particularly in relation to the connection with/deviation from the political-administrative structure. It is based on a few strategically selected effects in connection with assessments and reforms, either in the electoral system or in the political-administrative organisation at the intermediate level of the governing body and the actual changes in the electoral system and the main lines of the principle debate on the electoral system are only superficially discussed.<sup>584</sup>

It must already be stated in the introduction that this form of debate has been relatively non-existent in Norwegian political discourse. Part of the explanation for this is that the "county boundaries" have held such a strong position in the public consciousness that alternative principles for delineation - whether this be for constituencies or regional self-government - have often been perceived as having little relevance. In addition, when alternatives to the established counties have been discussed, the issue of what should constitute a constituency (principally relating to size and, in practical terms, relating to specific boundaries) has largely been absent from discussions concerning the electoral system. *That* discussion has generally quickly faded away, usually in favour of the more politically heated discussion about the allocation of seats and thus about geographical and party-political representation. The principle behind the division into constituencies and the connection to the organisation of regional self-government also appears to have received little *professional* attention, even though the connection has been discussed, for example, in literature that

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<sup>584</sup>For a brief overview of the actual changes to the electoral system see, among others, Official Norwegian Report (NOU) 2001: 3 *Velgere, valordning, valgte*, p. 28–32, and the respective volumes of the four volume work *Det norske Storting gjennom 150 år* (released in connection with the 150 year anniversary of the Constitution of Norway in 1964, cf. later references to the single volume). In a corresponding work that was published in connection with the 200th anniversary in 2014, Bernt Aardal wrote briefly about the changes over the past 50 years, and identified the most important fundamental issues of conflict. Aardal, Bernt: "Valgordningen – proporsjonalitet og distriktsrepresentasjon", in Narud, Hanne Marthe, Knut Heidar and Tore Grønlie (ed.): *Stortingets historie 1964–2014*. Fagbokforlaget.

addresses a possible joint election day for local government and parliamentary elections and studies of the party organisations.<sup>585</sup>

## 1 The county as a constituency, the county as a self-governing level

The division of Norway into counties is, probably to a greater extent than many Norwegians have considered, important for how we live our lives. The county is a geographical basis for a number of public functions and processes, and also functions (probably to a large extent as a consequence of what the county represents in a political and administrative sense) structurally, among other things, for civil society and media activities. The county boundary is a framework for communities and a basis for political self-awareness, albeit to highly variable degrees. It would hardly be a bold claim to make that county identities are less rooted in central and densely populated areas than in peripheral and rural areas and that other forms of local or regional affiliation are generally more strongly developed than the connection to one's county.

Prior to the most recent regional reform, the country structure was characterised by an unusually high level of stability and continuity. The division of the kingdom's territory into *amts* (which was the term used until the change of names and terms in 1919) was a product of the absolute monarchy and dated back to the year 1671, and the amt structure largely "inherited" the geography from an even older principle for the territorial organisation of state power.<sup>586</sup> The number of amts was originally 12 and several new entities were subsequently created through divisions. The present-day county structure is very similar to the amt structure in 1814. The most important changes that have taken place since then have been the country's northernmost amt being divided into what we know today as Troms og Finnmark (1865), and the merger of the "urban county" of Bergen with the surrounding Hordaland (1972).<sup>587</sup>

The county was thus a "basic unit" in absolute monarchy Norway, and served as a framework for the new, centrally controlled administrative apparatus under which the amt governors were to loyally represent and defend the royal power in the kingdom's various districts.<sup>588</sup> When the new branches of government were conceived at Eidsvoll in 1814, established government structures were largely continued at local and regional level. The amt continued as a basic territorial entity, and the amt governors as the most important body in the "district civil service" - alternative solutions do not appear to have even been discussed. The truly revolutionary institutional innovation took place centrally through the establishment of the Storting as the legislative and legitimate

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<sup>585</sup>For the latter topic, see, among others, Saglie, Jo and Erik Aarebrot 2012: "Knutepunktet i partiene: fylkespartienes rolle(r)", in Reitan, Marit, Jo Saglie and Eivind Smith (ed.): *Det norske flernivådemokratiet*. Abstrakt forlag.

<sup>586</sup>See, among other things, the reference words "amt" and "len" in Fladby, Rolf, Steinar Imsen and Harald Winge 1995 (1974): *Norsk historisk leksikon*. Cappelen.

<sup>587</sup>In addition, there have been a number of changes to the county boundaries in connection with municipal mergers and municipal boundary adjustments, the most comprehensive of these being when Aker was merged with Oslo in 1948.

<sup>588</sup>The section is based on chapter 2 in Flo, Yngve 2014: *Statens mann, fylkets mann. Norsk amtmanns- og fylkesmannshistorie 1814–2014*. Fagbokforlaget.

authority, and as an expression of the principle of popular sovereignty. However, this institution was also designed in such a way that it was influenced by the previous structure, with the amt being selected as the basic geographical entity in the system of representation for the rural areas.

In his account of how the Norwegian Storting was created, Sverre Steen noted that the electoral system established in the Constitution was, in principle, the same as for the election to the Norwegian Constituent Assembly (Riksforsamlinga), and that the system "*was not debated at all*". It appears as if Steen assumed that the amt was always going to be a constituency, and that the choice of such a large geographical entity - which meant that each individual voter could not have been capable for having personal knowledge or familiarity with the relevant parliamentary candidates - in turn contributed to the system being based on indirect elections (in multi-member constituencies), not direct representation. "*When an entire amt was to make up one constituency, who should the voters have then voted for in a direct election?*" Steen asks rhetorically.<sup>589</sup>

An important feature of the Norwegian electoral system from 1814 and up until the start of the 1950s was that voters in rural areas and voters in urban areas (townships) voted separately, and that the actual balance of power between the two voter bases was as follows: Two-thirds of the total number of members (which from the start was variable and based on the number of voters) were to come from rural areas and one-third from urban areas. This was a system that was deliberately intended to give the urban areas far stronger representation than their population numbers would warrant, however the population increase in the urban areas resulted in them being even more overrepresented than they should have been - a factor which in 1859 led to the adoption of the so-called "Farmer's paragraph" (through the amendment of Article 57 of the Constitution), which ensured that rural areas were assigned the expected two-thirds of the members - and for the first time defined the number of members to be elected from each district. However, rural areas were still underrepresented as late as the 1949 parliamentary election, which was the last election at which there was a distinction between urban and rural districts, although demographic developments had contributed to almost evening out the disparity.<sup>590</sup>

The distinction between urban and rural areas and the over-representation of the townships was largely due to the fact that the officials themselves were important premise providers to the electoral system, as they were for the constitutional work more generally. In their eyes, the system increased the chance of competent people - such as themselves - being able to assert themselves in national political life. In our case, it is more important to emphasize that the electoral system also reflects a notion of fundamental conflicts of interest between urban and rural areas and a general need to protect the two from each other (the notion of protecting urban areas from rural areas was strongest from the start). Legally, socially, economically and culturally, the urban areas

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<sup>589</sup>Steen, Sverre 1964: "Hvordan Norges Storting ble til", introduction to Kaartvedt, Alf: <sup>589</sup>Det Norske storting gjennom 150 år. *Fra Riksforsamlingen til 1869* (Volume 1). Gyldendal. Cited from p. 16 and 17.

<sup>590</sup>At the 1949 election, the rural districts had 67.0% of voters and the urban districts had 33.0% (compared with 66.6% and 33.3% of the members), cf. Table 304 in *Statistisk årbok for Norge 1950* (SSB). The disparity was significantly higher at the 1945 election, when the rural districts had 71.1% of voters and the urban districts had 28.9%, cf. Tables 3 and 4 in *Stortingetsvalet 1945*, NOS X.132, 1947 (Office of the Stortinget). During the intervening period, the urban municipality of Aker had been incorporated into Oslo (effective from 1 January 1948).

represented something different to the rural areas, and thus had other needs and interests to safeguard, including in a political sense. Based on this logic, it was perceived as being more expedient to link towns and cities that were not large enough to elect their own member of the Storting into one unified national political constituency, than to let the people in the towns and cities vote together with the people in rural areas: 6 out of 10 urban districts in 1815 and 10 out of 26 urban districts in 1900 made up this form of interconnected districts.

The notion of the fundamental divide between city and country also became clear when the municipal constitution was adopted in 1837, and the principle of popular sovereignty was also applied at local government level. The municipal constitution manifested itself in the municipal executive *laws* - one for urban municipalities and one for rural municipalities. Characteristic for the rural areas was that they were united under a common overarching structure, i.e. *the amt municipality*, the forerunner to the present day county authority. This was a body under which the rural municipalities could manage their common responsibilities. From the beginning, amt municipality life was most about controlling and sanctioning decisions made by the civil service, but as the decades passed, there was greater scope for initiative and social entrepreneurship.<sup>591</sup>

It could be that the establishment of amt municipalities originated from a conscious notion that the amt should be strengthened as a political force, and that the connection with the amt as a national political constituency was important in this respect. However, the sources provide no evidence for this view and the relatively trivial ambitions on behalf of the amt municipalities from the start make such a connection unlikely. It is reasonable to claim that use of the amt as a framework for both the national political and inter-municipal activities of the inhabitants of the rural areas was due to the fact that the amt was already an established and "natural" territorial entity. The decisive factor in the amt being selected as the permanent framework for organised municipal cooperation was that, already prior to 1837, there was a basic geographical entity for collecting taxes and the new municipal constitution stipulated that the amt governors should have the administrative leadership - something that was natural and which made the amt an obvious choice.

For more than a hundred years, and until well into the post-war period, there was an entrenched notion that deliberations and decisions that had been made within the frameworks of amt municipalities or county councils were apolitical in nature.<sup>592</sup> It is correct that the amt municipality was an economic union, a common "household" for the rural municipalities, but it was still strange to think of this institution as "political". Typically, party politics was a force that first really made its presence felt in county municipal life in the 1960s (see the discussion below). Among other things, this applies to the system of representation for: As a cooperative body between the rural municipalities, the county council was, for a long time, in practice a council of mayors, and it normally only assembled once a year. As voters, the inhabitants had a distant relationship to county municipal life. The system of indirect representation to the county council via the municipalities was still in place up until 1975.

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<sup>591</sup>For information about amt municipalities in the oldest period, see Steen, Sverre 1973: *Amt og stat 1837–1860*. Cappelen.

<sup>592</sup>The general characteristics of the political culture in the amt municipalities and county authorities are based on Flo, Yngve 2015: Flo, Yngve 2015: *For byfolk og bønder 1940–2015. Rogaland fylkeskommunes historie*, Volume II. Fagbokforlaget.

When that is said, there is still every reason to believe that the link between the county as the framework for municipal life and as the cornerstone for parliamentary life meant that *practices developed* for transverse lines of communication. Amt and county municipal life was increasingly about reaching agreement on measures - primarily related to transport, health care and education - which required the financial involvement of the state in order to be realised. There is unfortunately no systematic historical research on these lines of communication, but it is highly probable that the members on the Storting's county benches were generally well-informed about and involved in policy-making on the home front, and saw it as their duty to promote the "will of the county" at Løvebakken (location of the Storting). This not only concerns the contact network that existed, but also that the county's national politicians themselves were largely recruited from a local political elite. In Norway, local politics has largely served as a gateway into national politics. To provide a small illustration it can be noted that 11 of the 13 permanent members from the amts in Trøndelag and Nordland in the period from 1900 to 1903 had backgrounds as mayors and thus also as members of the amt.<sup>593</sup> Furthermore, it was relatively common as far up as until the post-war period that amt and county governors sat in the Storting while also holding this office (which therefore included the role as administrative head of the amt municipality or county authority). It is true that, to a certain extent, the seat in the Storting was "included in the deal" for new county governors, and this was most probably due to the belief that it was important for voters to have the amt governor as their spokesperson and "ambassador" in the country's highest popularly-elected assembly.<sup>594</sup>

## 2 Single-member constituencies: a brief farewell to the county

Throughout the more than 200-year-long history of the Norwegian electoral system, the 15 years and five terms of office from 1906 to 1921 were something very distinctive. During that period, the Storting was elected by way of majoritarian elections in single-member constituencies. The various motives behind the changes to the electoral system that first took place in 1905, and then in 1919 - when a system of proportional representation elections was introduced - are detailed at length by Rolf Danielsen and Tim Greve in "Stortingets historie".<sup>595</sup> The onset of party politics and the significant expansion of the right to vote (which made the system of indirect representation ineffective) had contributed to hastening the need for reform. The most important factor from our perspective is that these 15 years represented a temporary break from the "county line" during the history of the Norwegian electoral system. There was not a complete break from the traditional system, since individual parliamentarians from rural areas still represented the amt, and the allocation of seats between the amts was still regulated. However, each amt was divided into as many separate constituencies as the amt had members. For example, the six members for Nordland at the 1906 election were respectively elected for Vesteraalen, Lofoten, Nordre Salten, Søndre

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<sup>593</sup> The police archive at the Norwegian Centre for Research Data, supplemented with information from *lokalhistoriewiki.no* and other local historical sources.

<sup>594</sup>Flo, Yngve 2014: *Statens mann, fylkets mann. Norsk amtmanns- og fylkesmannshistorie 1814–2014*. Fagbokforlaget, p. 186, 271 and 291–293, 263ff.

<sup>595</sup>Danielsen, Rolf 1964: *Det Norske Storting gjennom 150 år. Tidsrommet 1870–1908* (Volume 2). Gyldendal, p. 1–26; Greve, Tim 1964: *Det Norske Storting gjennom 150 år. Tidsrommet 1908–1964* (Volume 3). Gyldendal, p. 1–30.

Salten, Nordre Helgeland and Søndre Helgeland. The rural population elected a total of 82 members at this election, and these were thus divided into 82 different constituencies.

This division into constituencies was not a goal in itself. On the contrary, it was argued from several quarters that the break with the amt as a constituency was an unfortunate consequence of the electoral system that had now been implemented. The new electoral system could result in less cooperation and more competition between different geographical areas, something that undermined internal unity in the amt, and thus also the function of the amt as a municipal union. This weakness was also acknowledged by the Constituency Commission, which foreshadowed the change to the electoral system. Local Interests would probably have a more prominent place under a system with single-member constituencies than what was desired. *“The local and special interests of the small constituencies, which may conflict with one another, may easily weaken the interests of the larger district, the amt, which cannot be disregarded when one takes into consideration that an amt forms an economic entity.”*<sup>596</sup> The counter arguments were also presented in the chamber of the Storting when the electoral reform was discussed and adopted in May 1905.<sup>597</sup>

Ironically enough, since this electoral system of 1905 was scrapped, the process surrounding it has given us the starting point for identifying features of the amt as a unified constituency that were valued. The amts were large enough for the mutual contradictions to balance each other out, something that promoted cooperation and moderation rather than raw "power politics". This also applies to amt municipal life and the amt benches in the Storting. Those who sought to represent the entire amt also had to appeal to the entire amt. This mechanism had now disappeared, and precisely because the new districts were so much smaller, and because local interests would be even more strongly asserted, it was generally emphasised that they should be as homogeneous as possible - to ensure that the single-member constituencies would not be ravaged by internal conflict. In its submission, the Constituency Commission had attempted to organise the constituencies with a view to the fact that rural areas were grouped together when *“economic and other interests must be assumed to be essentially the same”* - something that had not fully succeeded, since it was, in practice, inevitable that there would have to be mergers between rural areas *“whose interests are diverse and in some cases even completely contradictory”*.<sup>598</sup> The submission regarding the division of single-member constituencies was sent for consultation, and the consultative input largely reflected the notion that the districts had to be as homogeneous as possible, both commercially and culturally and in other ways.<sup>599</sup>

The period of majoritarian elections in single-member constituencies was thus relatively brief. It is unclear whether and to what extent the constituency structure itself, and the localism it may have

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<sup>596</sup> Recommendation concerning the division of the kingdom into single-member constituencies, prepared by the Parliamentary Constituency Commission established in 1900, p. 15. (August 1903, appendix to Proposition no. 76 (1903–04).

<sup>597</sup> See the statements by Gunnar Rystad (Conservative Party), St. 1904–05, p. 2415 and Thore Olsen Wølstad (Moderate Liberal Party), St. 1904–05, p. 2425.

<sup>598</sup> Recommendation from the Constituency Commission, p. 15.

<sup>599</sup> Doc. no. 14, 1905–06.

promoted, contributed to the system being discarded after such a short period of time. In any case, this was not decisive, and the very skewed party-political representation created by this electoral system, and the subsequent weakening of legitimacy, were in any case far more important factors. The new system had to ensure better proportionality. The new electoral system that entered into force from and including the 1921 parliamentary election was not a return to the system that existed prior to 1905. Among other things, the system with indirect elections was not re-introduced, and the number of members to the Storting was increased significantly - from 126 in 1918 to 150 in 1921. However, the electoral system was again based on proportional representation elections and with the county as the constituency for voters in rural areas, where the number of members varied from three to eight. The urban areas were divided among fewer constituencies than previously (total of 11), all of which had between three and seven members.

It may again appear as if the county was a "natural" geographical framework for the constituencies in rural areas when the system of single-member constituencies was abandoned at the start of the 1920s. A majority of the Constituency Commission emphasised that the continuity and institutional framework the amt municipalities represented for rural areas was a resource. The proposed division was based on the amt " *joining the previously known administrative divisions of the country, divisions whose populations have common institutions and common interests*".<sup>600</sup> However, the division into urban districts was not nearly as natural. The system of "linking" cities and town (i.e. townships) into unified constituencies - which was necessary as long as there were not enough seats in the Storting for each town or city to have at least one - had also previously created strong dissatisfaction, primarily because junior partners in this partnership could risk being "eternally" cut off from representation. Haugesund, which was a new township from 1866, had to elect electors together with Stavanger, and the people of Haugesund were to repeatedly learn that power prevailed: Stavanger took the members of the Storting.<sup>601</sup> The fact that the number of urban constituencies had been significantly reduced since 1921 meant that the system of "linking" had to be expanded. For example, the six cities of Bodø, Narvik, Tromsø, Hammerfest, Vardø and Vadsø had to elect four members jointly, while the eight cities of Notodden, Skien, Porsgrunn, Brevik, Kragerø, Risør, Arendal and Grimstad sent five members to Løvebakken. Many were critical of the manner in which the urban districts were designed. Did these groups constitute logical unions? Was the difference between city and country still so fundamental that it was more natural, for example, for residents of Bodø and Vardø (with 75 km as the crow flies and several days' travel between them) to vote together, than for the citizens of the cities to vote together with the inhabitants immediately outside their respective city limits? Was it even possible as an elected representative to represent and safeguard the interests of such entities? Hedmark representative Wollert Konow (constituency of Søndre Bergenhus) objected to the fact that the cities linked into the same constituency did not have the internal connection and meeting point that the rural areas had through the amt, and that voters and members were therefore strangers to each other: "(...) *in the cities*

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<sup>600</sup>Recommendation S. XXXVIII, 1919, p. 22. The fact that this was alluding precisely to the amt municipality, was specified in a special remark from commission member Karl Sanne: The amt was such an old and well-established entity in popular consciousness, that it was not unnatural to return to the original district structure in the Constitution, which applied from 1814 to 1906. "In many respects, the amts are still unifying entities, the various rural areas meet at the amt councils, and a number of common institutions and common interests link them together within the amt", Sanne noted. Recommendation, p. 25

<sup>601</sup>Danielsen, Rolf 1964: *Det Norske Storting gjennom 150 år. Tidsrommet 1870–1908* (Volume 2). Gyldendal, p. 2–3.



*where one has never had any connection, which will be merged into a single entity, where perhaps the man who is elected as a member never gets to do more with the other cities than travelling around and giving speeches (...) .”*<sup>602</sup>

Thus, the crux of the problem was the entrenched notion that city and country were two different spheres of interest that required a certain amount of protection from each other. At this point in time, the idea of reducing the legal divide between city and country had asserted itself on several fronts. In 1900, a committee that aimed to bring about the first comprehensive review of the local government laws, advocated replacing the two laws with a single law, and otherwise reorganising the existing special state laws. Laws that regulated schools, relief for the poor and the tax system had an urban and a rural version. The Committee was of the opinion that the special laws for city and country had contributed to creating artificial contradictions, *“that weaken the interest of unified social work and divide the forces that promote this”*. The draft bill also meant that the towns and cities, at least in part, were to be part of the amt municipalities. However, this work did not result in any change, and the legal barrier between urban and rural municipalities would remain in place for more than half a century.<sup>603</sup>

It was not until the period around the First World War that strong initiative was taken to remove the distinction between city and country when concerning representation in the Storting. In the recommendation from the strengthened constitutional committee prior to the new electoral system of 1921, the majority had recommended 22 constituencies; a system which meant that only Kristiania (now Oslo), Bergen, Trondhjem and Stavanger were separated as single urban constituencies (the two former also constituted their own amts), while the other towns and cities were to vote together with the rural districts within their own amts. And the principal argument was precisely that such a system had major advantages over linking different cities from different amts.<sup>604</sup> What is more natural, polemicised spokesman Christian Fredrik Michelet (Conservative Party) in the Storting, *“than these cities voting together with the surrounding area from which they came, and on which they are so deeply dependent?”* The cities shared all of their common interests with the surrounding area, *“if the surrounding areas suffer, then the cities suffer, and all spiritual life bears the same imprint”*.<sup>605</sup>

However, it was not possible in 1921 to mobilize a majority of the Storting for such a system. This was partly because it would have been difficult to do so without also revoking the so-called “Farmer's paragraph” (bondeparagrafen), which many, for different reasons, believed still had a purpose. In addition, not everyone shared the view that there was a fundamental community of interest between city and country. In fact, Carl Joachim Hambro (Conservative Party) actually

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<sup>602</sup>St. 1919, p. 2951.

<sup>603</sup>The quote is from “Indstilling til Lov om det kommunale Selvstyre”, p. 11 (appendix to Proposition no. 16 (1909)), see also the review in Flo, Yngve 2014: *Statens mann, fylkets mann. Norsk amtmanns- og fylkesmannshistorie 1814–2014*. Fagbokforlaget, p. 54 ff. and 186 ff.

<sup>604</sup>Recommendation S. XXXVIII, 1919, quoted from p. 23.

<sup>605</sup>St. 1919, p. 2652.

wanted to maintain the system with single-member constituencies and considered the amt districts - at least those encompassing the cities - as unnatural and therefore a source of conflict. There were so many contradictions that the interests of the districts and the interests of the cities would come to the fore. *“They will push them forward on the surface, whereas one would take no notice of them with a natural division of constituencies.”*<sup>606</sup>

### 3 The post-war period: City and country – hand in hand

From the end of the 1940s until the mid-1960s, a number of reforms took place in political and administrative life that helped to tear down the formal divides between city and country. The significant change to the system for parliamentary elections in 1952 - which gave us the district structure that, with minor adjustments, we now have today - can thus be interpreted into a larger reform context, where the most comprehensive changes concerned what the local and regional political-administrative apparatus would look like.

The reforms in the local and regional part of the governance system aimed to build a municipal apparatus that could function as the backbone of the welfare state.<sup>607</sup> Municipalities and county authorities were intended to have significant responsibility for realising national objectives. In order for the municipal service to master this task, it had to undergo a whole series of reforms, of which the new municipal structure (planned from 1946 and primarily realised during the first half of the 1960s) is the best known. In order for the system to be effective and to be able to realize what would later be referred to as the generalist municipality principle - which entails fundamental equality between municipalities; a prerequisite for a universal welfare state based on the municipality - it was not possible to continue the traditional divide between city and country. Reducing these divisions also proved to be a necessary precondition for being able to achieve a rational municipal structure. A new local government act for both city and country was approved in 1954. Furthermore, the requirements for urban and rural municipalities in various forms of special legislation were also evened out or removed.

In our situation, the institutional changes in the county authority are the most important. Effective from new year 1964 (through the Act relating to county authorities), the county authority was transformed from a rural union into a joint body for all municipalities in the county, including the towns and cities. How dramatic this change was varied, naturally enough, depending on the number of large cities each county had within its boundaries. However, nowhere was county authority life ever “one and the same”. The county authority took on important tasks, not least through the responsibilities they were assigned (and for a large part had already been assigned) in the health care/hospital system, in higher education and in transport. While the deliberations in the county council had previously been routine and took the form of horse-trading between rural areas, it was now an arena for political discussion, even with scope for visionary thinking on behalf of the entire county. The members of the county council remained (until 1975) as envoys for their home municipalities, but they grouped themselves into parties, something that also contributed to building

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<sup>606</sup>St. 1919, p. 2944.

<sup>607</sup> The overview of the principal features of political development in local government is based in particular on Flo, Yngve 2004: *Staten og sjølvstyret. Ideologiar og strategiar knytt til det lokale og regionale styringsverket etter 1900*. University of Bergen.

bridges across the divide between city and country. During the 1960s, the county authority became a completely different *political* force to what it had been before.

When it came to the electoral system for the Storting, this was something that, deep into the post-war period, "everyone" wanted to change. Tim Greve wrote that no one was particularly satisfied with the constituency structure of 1919, which involved the linking of townships in the same district. The expectation was that there would soon be new and more appropriate solutions, however this expectation was never met. The interwar period saw a flurry of proposed changes that all failed to mobilize constitutional majorities. After the war (in 1948), a new Electoral System Commission was established. The most important objective was not in itself to change the constituencies, but to bring about an electoral system that would ensure greater correlation between the voting power and the representation of the political parties. The Commission was in favour of a seats at large system, however the governing Labour party instead proposed changing the number of districts such that voters in the cities would be part of a combined county constituency together with voters in rural areas - something that would also have had this form of equalising effect. In the end, the Labour Party received sufficient support and the proposed new constituency structure was approved as part of a "package solution" which also involved revoking the "Farmer's paragraph".<sup>608</sup>

The political discourse in connection with the electoral system being revised again testifies to the fact that the boundaries themselves were of lesser importance when compared with objectives linked to party political and geographical representation. Mathematical fairness was not possible to achieve - and perhaps not desirable either - but a division into twenty constituencies equivalent to *entire* counties clearly represented a solution that ensured acceptable size and laid down conditions for a system with acceptable party political and geographical representation. In the Storting debate, some speakers assigned importance to the advantages of uniting city and country under a common framework, and that it was precisely the county that constituted this framework. Johan Wiik (Labour Party) emphasized the close connection between city and country. For the municipality of Levanger, which he put forward as an example, it was far less natural to form a constituency together with the city of Trondheim in the neighbouring county in the south, which had been the arrangement up until then, than to vote together with the rural areas in Nord-Trøndelag. "*That is where the community is. The rural areas and small towns in the counties are united on so many economic and cultural initiatives. They are only separated in one way: when the county is to elect its representatives to the Norwegian parliament.*"<sup>609</sup> His party colleague Trond Hegna was the person who most explicitly emphasized the value of continuing to build on and strengthen the county as a framework for the constituencies:

Our current electoral system has many good aspects. Its structure based on constituencies ensures that the individual parts of the country have permanent representation. Dividing representation of rural areas into counties is a natural division that is strongly rooted in the living

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<sup>608</sup>This section is based on the work of Greve, Tim 1964: *Det Norske Storting gjennom 150 år. Tidsrommet 1908–1964* (Volume 3). Gyldendal, p. 7–16.

<sup>609</sup>St. 1952, p. 2860.

conditions in the country, and is also naturally based on the system that was introduced from the very start of our constitution.<sup>610</sup>

The county represented historical continuity, however something new was added during the first few decades of the post-war period in that it was now functioning as a framework for a genuine community of interest across old divisions between city and country. The institutional prerequisites for developing this union were strengthened from two sides by the inhabitants being brought together in a national political sense by changing the constituencies, and by them being brought together in a county political sense. There are many indications that, during precisely this period, the county developed into an even more important link across the political system. The emergence of county policy and the strengthening of the county as a building block in the national political electoral system also contributed to the county association in the *party organisations* being more important as a common denominator for the party's commitment to the municipalities, at county level and on behalf of the county within the framework of a larger, national system of governance.

#### **4 The 1970s: No to larger counties, and no to larger constituencies**

Among the series of committees and commissions that throughout history have worked to prepare proposals for changes to the electoral system, we find the Electoral System Commission of 1968, which was chaired by Sverre Stray (Conservative Party). This commission distinguished itself by the fact that it explicitly proposed fewer and larger constituencies than the counties as one - at least hypothetical - alternative. It is noticeable that the models that involved changing constituencies were not discussed in relation to the institutional or political links that existed with the county authority and county politics. The model which involved fewer constituencies (referred to in the recommendation as "Primary Type F") was generally referred to as a model with logical, built-in equalization in terms of party representation. Dissatisfaction with the skewed mathematical distribution that arose with regard to party-political voter support and representation was therefore also a primary reason for why the commission was established.

However, the only defence for the model with fewer constituencies was from two commission members belonging to minor left-wing parties, Finn Gustavsen (Socialist People's Party) and Reidar T. Larsen (Communist Party of Norway). The essential element for these members was that larger constituencies meant more seats in each district, which provided conditions for more differentiated representation in the Storting. Gustavsen and Larsen argued that not only was the list so low that it was easier for parties with a lower percentage of the vote to take one of the last seats, underrepresented groups such as women and youths would also more easily be able to attain "safe" positions on the party list. From the point of view of planning and co-operation on a regional scale, they also considered that it would be an advantage if the candidates for the Storting saw themselves as "*representatives of a larger region and not just for a single county*."<sup>611</sup> The model of larger constituencies was not supported by the vast majority of the commission. Without further elaboration, the commission stated that it did not consider there to be "*sufficient grounds to abandon the traditional system of counties as constituencies*", and that "*nothing significant will be achieved*

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<sup>610</sup>St. 1952, p. 2884.

<sup>611</sup>Doc. no. 7, 1971–72, Recommendation to the Storting's Presidium from the Electoral System Commission, p. 28.

by moving away from the system of counties as constituencies".<sup>612</sup> The Storting's deliberations at the end of May 1972 confirmed that there was no political will for comprehensive reform of the constituency structure.<sup>613</sup>

The adjustments that *have* been made to the actual constituency structure since 1952 have been in the form of an "automatic" adaptation to changes to the county boundaries – changes that have in turn been driven by new municipal boundaries. The most important of these originated from Bergen's need to increase its area and the merger with the urban municipalities of Arna, Fana, Laksevåg and Åsane in 1972. With independent status as a county, Bergen (like Oslo) was not part of any county authority in 1964. However, in practice, the merger in 1972 was unwise to carry out without the urban municipality, when transitioning to the "new" Bergen, relinquishing its status as a separate county and being a part of Hordaland. This meant that Bergen became part of Hordaland county authority, and shortly thereafter the Constitution was amended in order for Bergen to also be a part of Hordaland as a constituency for parliamentary elections prior to the 1973 election. The question at this point was not *whether* the constitutional amendment should take place, but how this should be done from a purely legal perspective. When the technical implementation of the merger was discussed in 1967, the Ministry of Local Government had simply "assumed" that the Storting would, in the wake of changes to the municipal and county structures, make the necessary amendments to the constituency structure established in the Constitution.<sup>614</sup>

Even though the county structure has, in practice, been relatively stable in the post-war period, there have been several initiatives to bring about more drastic changes. The pattern is generally the same and the primary motive has been to create an elected intermediate level with new, and usually more expansive boundaries, i.e. fewer and larger county authorities, and discussions and considerations related to the constituency structure for parliamentary elections have been a "spin-off" or side-effect. The first in a series of such initiatives was channelled through the so-called County Structure Committee of 1961 (chaired by county governor Hans Gabrielsen - recommendation in 1965). Even though it was the county's general function as a principle of territorial division that was discussed in this committee, it can be said that the committee's primary purpose was to assess whether the institutional changes to the county authority that were adopted through the Act relating to county authorities, should be followed up by redrawing geographical boundaries. When the committee was appointed it was noted that it could be beneficial to discuss any reforms in relation to the organisation of constituencies in Article 58 of the Constitution.

A large minority proposed reducing the number of counties to seven, something that necessitated this type of discussion. Typical for the process involving the County Structure Committee - including the subsequent political consideration - was that the discussion concerned the adjustments to political-administrative boundaries, the constituency structure and the allocation of seats could be implemented through ordinary law, and what should or had to take the form of a constitutional amendment. It was the time aspect in particular, i.e. the time it took to make an amendment to the

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<sup>612</sup>Doc. no. 7, 1971–72, p. 28 and 29.

<sup>613</sup>St. 1971–72, p. 3069–3112.

<sup>614</sup>See the discussion in Proposition no. 17 (1967–1968), p. 30–34.

Constitution, that caused headaches. The committee stated that changes to both the constituencies for parliamentary elections and the allocation of seats should essentially be able to be implemented pursuant to ordinary law *“in accordance with the principles for the allocation of seats that have already been stipulated in Article 58 of the Constitution”*, despite it still not being clear *“that it would be an advantage if Article 58 of the Constitution could be brought into line with a new county structure”*.<sup>615</sup> The legal department at the Ministry of Justice was consulted. The department presented the issue as a legal grey area, however the statement concluded that it would, in all respects, be unconstitutional to merge two constituencies into one exclusively through formal law, even if this was only an intermediate arrangement before a constitutional amendment could be enacted.<sup>616</sup>

However, the issue of *whether* and *why* there should be a correlation between the constituency structure and county authority structure hardly rated a mention in the County Structure Committee's work. It is true that the Committee was open to the principle that one could think differently. It noted that the linking of constituencies and counties had always been understood as being *“a purely practical arrangement”*. The minority, which wanted to reduce the number of entities, also stated that it could be possible *“to allow the existing counties to remain and, by law, implement a new division into county authorities that is more or less independent of the county boundaries. The existing counties would therefore remain in place as constituencies for parliamentary elections.”*<sup>617</sup> However, this was not taken any further. In its statement, the legal department noted that it was advisable to revise the county authority structure without amending the Constitution (i.e. the division into constituencies), but laconically stated: *“It has not been considered as to whether this is possible in practice.”*<sup>618</sup> The absence of discussion was probably an expression of the fact that a system with more parliamentary constituencies than county authorities was, in actual fact, only a theoretical construction, and possibly as a transitional phenomenon.

The most substantial (if not rather general and shifting) considerations relating to why there should be a correlation between the constituency and the county authority, can be found in the Ministry of Local Government's report to the Storting based on the committee's work. The Ministry emphasised the value of strengthening the *“feeling of cohesion and community”* associated with the county, and noted that the objective of the county structure must be *“to establish entities for regional management and administration that create the best possible basis for harmonious and balanced material, social and cultural development and growth in society as a whole, and (...) that the issue of delimitation therefore cannot be viewed in isolation, but must be considered in its full*

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<sup>615</sup>Recommendation relating to review of the county structure (appendix to Report no. 64 (1969–1970) to the Storting, p. 136–137.

<sup>616</sup>Statement of 9 December 1966 from the Ministry of Justice's legal department (appendix 3 to Report no. 64 (1969–1970) to the Storting.

<sup>617</sup>Recommendation relating to review of the county structure (appendix to Report no. 64 (1969–1970) to the Storting, p. 137.

<sup>618</sup>Statement of 9 December 1966 from the Ministry of Justice's legal department (appendix 3 to Report no. 64 (1969–1970) to the Storting.

*context.*<sup>619</sup> Inherent in these statements was probably also the view that the county authority structure and national political constituency structure should correspond.

The idea of a new geographical division of county authorities did not eventuate during that process. However, ambitions grew for a new round of institutional reform within the framework of existing geographical structures. A strong initiative for reform in local and regional administration, which was driven by the slogans of democratisation, decentralization and efficiency, was launched in 1971 - and with the Main Committee for Local Government Reforms at the helm, a "new" county authority was created in the middle of the decade, with direct elections (to replace indirect representation over the municipalities), with direct county tax (instead of equalization of expenses for the individual municipalities) and with control over own administration (instead of relying on the county governor's administrative apparatus).<sup>620</sup>

In the present situation it is important to assign importance to the ambition of creating conditions for a more robust county policy, i.e. strengthening the county as a political level. At the same time, it is striking that reform work which otherwise set up a broad, principled and ideological discussion about the conditions for democracy and about the geographical axis in the governance system, did so little to emphasise the link between national political citizenship and municipal/county authority citizenship. For example, the committee that recommended direct elections to the county council - elections which, as should be noted, were to be based on the same constituencies as the parliamentary elections - did not discuss any political precedents of having a common "demos" for county political and national political elections. The connection between the various electoral proceedings was instead discussed on a more "technical" level, such as the nominations process and election results for county council elections being modelled around what applies for parliamentary elections. The report listed possible benefits of holding county council elections at the same time as parliamentary elections, but concluded that it was more expedient to bring the two local government elections together, among other things, because local and regional issues could then more easily be assigned a prominent place in the election campaign.<sup>621</sup>

## **5 The 2000s: Regionalisation ambitions - from defeat to breakthrough**

The county authority that was "new" in 1975 was never quite what the reformers had envisaged. It is not the purpose of this memo to provide an extensive overview of the problems and underlying explanations<sup>622</sup>, however it may be worth noting that several of the larger cities were not exactly content with being within the county authority framework. Among other things, this was due

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<sup>619</sup>Report no. 64 to the Storting (1969–70), p. 50 and 52.

<sup>620</sup>Official Norwegian Report (NOU) 1974: 53, *Goals and guidelines for reforms in local government*.

<sup>621</sup>Official Norwegian Report (NOU) 1972: 13, *Election of county council*.

<sup>622</sup>For such a review, see, among other things, Chapter 5 in Flo, Yngve 2015: *For byfolk og bønder 1940–2015. Rogaland fylkeskommunes historie*, Volume II. Fagbokforlaget.

to the cities finding it more natural and expedient for they themselves to manage the tasks that were defined as county municipal, for example, within transport and business development.

As time went by, and certainly from the 1990s, the view was increasingly more often expressed that new and comprehensive reforms were required. Generally speaking, we can say that there were two main alternatives: On the one side there were those who wanted to abolish the county authorities (and introduce a “two-tier” model”), while on the other were those looking for different ways of revitalising the county authorities. In turn, the strategies for revitalising the county authorities can be said to have had two principal elements: Firstly, this involved transferring power and authority to the new entities. In particular, there were many who expressed hope that the county authorities would be developed as a *regional policy actor*, and that they would be characterised more as community developers and less as service providers. Secondly, the extension of this was finding a different and wider geographical framework: The number of county authorities should be reduced. The desire to create fewer and larger county authorities (often referred to, according to the European pattern, as “regions”) was rooted in the notion that size in itself provides organisational economies of scale and greater political power and impact, and enables current and future tasks to be best carried out within a larger geographical area. For example, the Division of Responsibilities Commission (Oppgåvefordelingsutvalet) emphasised in 2000 that the existing county structure did not include regions where it was natural to view business and industry, settlement patterns and transport structure in context.<sup>623</sup> Another important factor was that state agencies had gained an increasing degree of freedom from the county framework and had selected other and more “tailor-made” principles for dividing their district apparatus. This created challenges for coordination “across” the intermediate level of the governance system and contributed to reinforcing the notion that the traditional county structure represented something that was “obsolete”.

Did the renewed focus on the county authority structure also mean renewed focus on the national political constituencies? We find there are certain approaches to this discussion. A new Election Act Commission chaired by county governor Sigbjørn Johnsen was convened in 1997 and this work was followed up by a proposition and proposed amendments to the Election Act in spring 2002.<sup>624</sup> The Commission made reference to the debate on the organisation of the political-administrative intermediate level and found that the number of constituencies should still remain at the same level, i.e. 19. The Commission wrote that “...it is (...) fully possible to have a different structure for the constituencies than the administrative entities in regions,” and argued, among other things, that Finnmark could easily end up without having members in the Storting in an electoral system that had a larger region in Northern Norway and a certain element of preferential voting.<sup>625</sup> The Ministry of Local Government did not agree with this thought process. On the contrary, it noted in the proposition that any changes in the county structure could give “grounds to consider” an adjustment of the constituency structure. “It may seem natural and appropriate to link the number of constituencies (and number of seats at large) not just to geographic entities, but also to administrative

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<sup>623</sup>Official Norwegian Report (NOU) 2000: 22, *On the division of responsibilities between the state, region and municipality*.

<sup>624</sup>Official Norwegian Report (NOU) 2001: 3, <sup>624</sup>Voters, electoral system, elected representatives, cf. Proposition no. 45 (2001–2002).

<sup>625</sup>Official Norwegian Report (NOU) 2001: 3, p. 79-80.



entities.”<sup>626</sup> In a newspaper interview with *Aftenposten* in autumn 2004, the then Minister of Local Government Erna Solberg (Conservative Party) elaborated on the need for such a connection. At this time, both the District Commission and the interest group KS had recently submitted respective proposals. The District Commission proposed five to eight regions, while KS proposed seven. Solberg advised against making such changes without also changing the parliamentary constituencies. *“If we retain the old constituencies, the parties will organise themselves according to these old county boundaries. We will then get the power struggle that we presently have between different county authorities that will take place internally within the new body. The situation will therefore be very unstable (...).”*<sup>627</sup>

Solberg appeared to be of the view that the lack of connection between the elected regions and the national political constituency structure would create some form of “phantom pain” in that the old counties would assert themselves and this would result in a destructive, geographical-based conflict within the new regional governing bodies. However, her premise was that the party organisation would follow the parliamentary constituencies, not the new regions. We of course do not know what value this has when applied to the present situation, when the parties have all already appeared to have organised themselves in accordance with the new county (municipal) structure. It is also important to note that the statements from Solberg came during a situation in which, as a proponent for a two-tiered model, she was completely opposed to new, popularly-elected regions. She therefore could have had a strategic interest in presenting this reform as being as inextricably linked to a constitutional amendment that required a qualified majority.

In 2005, Solberg was replaced as Minister of Local Government by Åslaug Haga (Centre Party) and Haga quickly began work on preparing a regional reform that was based on fewer and larger entities. The project ran aground in the New Year of 2008, partly as a result of a lack of support within the red-green government. However, the report to the Storting from December 2006 entitled “Regional benefits - regional future” stands out as a rare example of a policy document that discusses the connection between the regional governance structure and system of representation and national political constituency structure.

The report outlined various possible principles for dividing the regions, including an “intermediate model” that did not differ much from the existing counties, and a “regional model” that covered two or more existing counties. An important benefit associated with the latter model was that it provided scope for retaining the county as the constituency for regional elections - and thereby also for parliamentary elections. In other words, this was a solution that gave the opportunity to realize regional reform, without having to change the constitutionally-defined parliamentary constituencies, and without severing the link between a national political and regional political “demos”. The report emphasised that the government’s principal desire was a link between the constituency structure for regional elections and for parliamentary elections. This was beneficial for the voters and provided better conditions for *“political interaction”* – a type of interaction that was not specified or elaborated on in the document. Retaining the county as the constituency safeguarded a *“well-established”* identity linked to the existing counties, and the structure had *“deep historical roots and*

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<sup>626</sup>Proposition no. 45 (2001–2002) to the Storting, p. 86.

<sup>627</sup>Article “– Valgkretser må følge nye regiongrenser”, *Aftenposten*, 12 October 2004.

*traditions, and voters are used to precisely this structure in situations other than elections*". The county structure ensured a good balance for the allocation of seats between different parts of the country at parliamentary elections, and also meant that both the business sector and the voluntary sector could avoid changing the organisational structure to maintain contact with the regional level. A model that involved dividing existing constituencies had corresponding negative effects, particularly if a model was chosen with different constituencies for regional and parliamentary elections. This was presented as an excessively strong break with the past and not particularly expedient. Among other things, this was because the model entailed that "*new regional identities*" had to be constructed. <sup>628</sup>

Åslaug Haga's regional reform was defeated in 2008. However, a new regional reform was given the green light by the Storting in 2017. This involved the number of counties and county authorities being reduced from 19 to 11. It is worth noting that no entities shall be divided under the regional reform and none of the new county boundaries will pass through established constituencies for county council and parliamentary elections.<sup>629</sup> The government and cooperative parties agreed in advance that the issue of constituency structure for parliamentary elections should not be altered through the reform and could potentially "*be assessed through an extensive official report*".<sup>630</sup> However, as stated in the introduction, expectations have been expressed from various quarters that the constituencies must be changed as quickly as possible and need to correspond with the new county structure. Among other things, it has been emphasized that the political parties have largely organised themselves or are in the process of organising themselves in accordance with the new county structure, and that it will be difficult for the party to organise its work in two or three constituencies in 2021, especially after the new counties have voted as a combined entity in the county council elections in 2019. <sup>631</sup>

The new Storting that was elected in September 2017 did not have a majority to cancel the regional reform as a whole or to "reverse" any of the approved mergers of the county authorities. The required institutional merger processes are already underway and other organisations and

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<sup>628</sup>Report no. 12 (2006–2007). The electoral systems were discussed in Chapter 7, and direct quotes are from p. 80, 81 and 89.

<sup>629</sup>The exception is the adjustments to county boundaries that occur as a result of the *local government reform* and merger of municipalities from two different counties.

<sup>630</sup>"The local government reform continues", agreement of 22 February 2017, signed by Helge André Njåstad (Progress Party), Frank Jenssen and Ingjerd Schou (Conservative Party), Geir Toskedal (Christian Democratic Party) and André Skjelstad (Liberal Party), and accessed from [venstre.no](http://venstre.no).

<sup>631</sup>Among other things, see the statements from the leader of the new Trøndelag Labour Party, Anne Mevassvik: "*We have to operate with two lists and we have to nominate from two parts of the county, while the parties are an organisation in which we work as a county party. (...) The fact that Trøndelag will become two constituencies in 2021 complicates everything for those of us who have merged the county parties (...)*", and statements from the then member of the Storting Sveinung Rotevatn (Liberal Party): "*It will be strange to have to merge the parties and campaign in new regional councils in 2019 and then go back to the old county constituencies in 2021.*". Cited from the articles "Klager på at Trøndelag må deles i to valgdistrikt" (*Adresseavisen*, 14 February 2017) and "Valgloven skal moderniseres" (*Kommunal Rapport*, 6 April 2017).

entities are already in the process of adapting to the new structure. The more closely integrated the new entities are, the more difficult it will be in practice to make further changes to the county authority structure.

There are nevertheless a few factors relating to the regional reform that are particularly worth noting when it comes to connections to any changes in the national political electoral system. In the first stage, the regional reform manifested itself as a “geographic reform” and an institutional merger, however, as of the summer of 2018, there is still much we do not know about the new entities. Among other things, this concerns the amount of power and authority the county authorities will have - the extent to which the ambition to transfer central government duties and responsibilities will be realised<sup>632</sup> - and whether the inhabitants will take ownership of and link their identities to the new counties and county authorities. Both of these elements can influence the objective need, i.e. what is to be gained (and lost), from linking the parliamentary constituencies to the new counties as a geographical framework.

Secondly, it must be established that the political support for and legitimacy of the reform is not as strong as majority decisions would conceivably attest to. The regional reform was brought forward by a government formed by the Conservative Party and Progress Party, two parties that have long preferred a two-tier model, and then only after demands from the two supporting parties (Liberal Party and Christian Democratic Party) during the 2013-2017 parliamentary period. The right-wing parties have loyally supported reform at a national level, however prominent spokespersons have nevertheless made no secret of the fact that this was a reform they were pressured to implement, and that they prefer a two-tier model.<sup>633</sup> Despite the local parties often having been driving forces for mergers in discussions between county authorities, the Red-Green opposition parties in the Storting have been strongly critical of the Regional Reform.<sup>634</sup> The specific mergers of the county authorities have come about partly as a result of talks between the county authorities, and partly through parliamentary resolutions in instances in which an agreement was unable to be reached

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<sup>632</sup>An expert committee chaired by Professor Terje P. Hagen was established by the Ministry of Local Government in spring 2017 with a mandate “to assess the transfer of additional duties and responsibilities from the central government to the new county authorities, with a focus on responsibilities, duties and authority that support the role of the county authorities as community developers”. The committee’s report was presented in February 2018 (the mandate is cited following the summary on page 9).

<sup>633</sup>“... I have not supported the regional reform. (...) The government parties did not have a majority and do not have a majority. (...) ... this is a child of negotiations in the Storting,” said Ministry of Local Government and Modernisation *Monica Mæland* (Conservative Party) in May 2018. Helge André Njåstad (Progress Party), who chaired the Standing Committee on Local Government when the regional reform was approved, stated immediately after the decision was made that the Progress Party had always been opposed to the regional level. “The number of county councils will be halved. We are in not in favour of county authorities, but it is better to have 10 than 19,” he said. See the interview with Mæland in the article “– Har ikke gått i tog for regionreformen”, *Plan* no. 1/2018, and the statements from Njåstad in the article “Vil rydde opp etter de blå”, *Klassekampen*, 9 June 2017.

<sup>634</sup>Among other things, leader of the Labour Party Jonas Gahr Støre has on several occasions referred to the reform as a “botchwork”. See the articles “Støre: Regionreformen er et makkverk” (*Dagsavisen* 11 October 2017) and “– Bruk stemmeretten! Jeg ville stemt nei” (*Finnmark Dagblad*, 7 May 2018).

at local level. Several of the specific mergers, and the merger of Troms and Finnmark in particular, have created discord.

All in all, one must cautiously conclude that the institutional basis for county authorities is still contentious, and that, among other things, it is not clear that the geographical structure that has now been adopted will "stand up". Major or minor changes may occur under other political preconditions, and then, in principle, in the form of resolutions with the barest possible majority in the Storting. It is not inconceivable, if one models the parliamentary constituencies on the county authorities, that it will subsequently be discovered that important prerequisites have changed or that expectations have not been met.

## 6 Size and integrity, institutional hubs and distinctive local conditions

As has been stated on several occasions, it is not a simple task to identify the motives that have formed the basis for the division of constituencies for parliamentary elections throughout history. They were implicit or "obvious", and issues relating to constituency structure were completely overshadowed by other and more politically explosive trade-offs. However, a common element is that "history" or "tradition" are often put forward as important arguments. One might suspect that such arguments are rooted in an exaggerated reverence for "the way things worked before," however they most probably have more substance than that. Continuity and stability in themselves are a resource - it is a matter of each district itself being or subsequently being perceived as a natural community, and that the district structure as a whole provides a predictable framework for parliamentary elections. *Legitimacy* from the voters has therefore been a key word, and in a Norwegian context it is obvious that, in one way or another, this feeds off the connection to the county. The challenge with the current situation is that it is not clear as to what kind of solution best represents "history" or "tradition". In a certain sense, both of the principal solutions, i.e. to *change* and *not to change* the constituencies, represent both continuity and a break with the past.

With a historically based "connection to the county", most emphasis can be placed on what we can refer to as the institutional community, first and foremost the connection to the county authority, but also other parts of social and organizational life that are structured in accordance with the county boundaries. In that case, "history" would suggest that the constituency structure should be changed in accordance with what has become the new, formal county structure and it would in fact represent a break with the past to maintain the existing constituencies. However, it is precisely because the county structure has been so stable, that the perception of what constitutes natural basic units in the national political electoral system is most strongly linked to what is already established. It is the *people* and, in and of itself, the *territory* that first and foremost make up the community, not the institutional frameworks and links. When articulated in this manner, "history" suggests that one should stick to the existing constituency structure and that adapting to the new county boundaries would therefore represent a break with the past.

Finding a suitable constituency structure concerns much more than where the boundaries should be set. All adjustments have consequences for how the electoral system functions as a whole, and it is thus not only legitimate, but also absolutely necessary that the district structure is partly discussed regardless of how the political-administrative system is designed and distinctive local conditions. The number of constituencies and the weighting between them have a major impact on the system as a whole. An electoral system with 11 constituencies functions differently to an

electoral system with 19 constituencies and through, among other things, the built-in equalizing effect, provides grounds for asking whether there is even a need for mechanisms for party-political equalization between districts. And, as always, it will probably transpire that it is inadvisable to discuss the electoral system on a "purely principled" basis. Politicians have always been preoccupied with who will benefit and who will lose out when adjustments are made to the system. What is "good" and what is "bad" can hardly be discussed independently of a normative standard and strategic interests. A system with fewer and larger constituencies would probably mean that more parliamentary committees would be represented on the individual benches. This may entail that the bench as a whole will be better able to take more overall responsibility for the constituency, and become a more attractive channel for lobbying/access to national politics. An electoral system with fewer constituencies and more available seats in each of the constituencies will probably also make it easier for the minor parties to win direct seats and for new parties to gain a foothold.

In addition to such general assessments relating to the size of the constituencies, it is clear that it is necessary to discuss the actual need to link the national political electoral system to the county authorities. In rural areas, the connection between the county as a constituency and the county as a municipal community dates all the way back to when the laws governing local government were introduced. With regard to the urban areas, from an overall historical context this connection is much more recent (even though it has functioned for more than half a century - since 1964) and this may have contributed to the "county" generally being a less important frame of reference in urban areas than in rural areas.

As has already been noted, many have expressed a clear expectation that there must be a connection between the constituency and the county municipal community, however it is not always so easy to determine what the benefit is. (Parts of) arguments can just as easily be pieced together and grouped as follows:

- A connection provides a practical and transparent system, among other things, for the voters, who are then part of the same "demos" (and partly relate to the same politicians/candidates) both in county council elections and parliamentary elections, and for party organizations, which will then be structured both around county politics and national politics, something which, among other things, is important from a nominations context.
- The connection between county and national politics provides certain synergies. Close ties between a local political elite and other actors from the county on the one hand and the county bench in the Storting on the other result in the emergence of arenas or channels to define and disseminate "county requirements" in national politics.
- When there is no such connection, the county authority as a political union and common identity will suffer. In a new county authority made up of two former counties that are permitted to continue as national political constituencies, it is conceivable that district interests will be strengthened or prolonged, and have a destructive effect on the community. There is a greater risk of having politicians who are not interested in the county as a whole. In order to build new political unions and county identities, it is important to remove traces of the old ones.

The problem here of course is to determine the realities behind the various motives, and how much emphasis one should place on the value of a connection and the risks of there not being a connection. Will Norwegian voters really be confused if there are different constituencies for

parliamentary and county council elections? Will the county branch of the party really have difficulty being involved in two or more nomination processes and "district election campaigns"? Will the link between local needs and national politics really deteriorate if there is no longer the connection in the constituency? Unfortunately, no research exists that can provide us with good answers to these questions. However, political debate on this topic may assist us in finding the answers.

Ultimately, the trade-offs must result in specific assessments relating to the actual geopolitical landscape. There generally only appear to be two alternatives: maintain the existing constituency structure or adjust the constituency structure in accordance with the new county structure. However, the regional reform involves seven different county mergers and different forms of intermediate solutions may be envisaged. There may be better conditions for merging constituencies in some groups than in others. If one looks at Norwegian tradition, arguments relating to commonality and contradictions in terms of interests and economic, social and cultural prerequisites have been of key importance in assessing what is a sensible constituency structure. Based on this logic, the fact that the county has, in one sense or another, been perceived as different (especially if there is a junior partner that requires some form of "protection" against senior partners, among other things, related to the prerequisites for success in the nomination processes for the party), would argue in favour of maintaining the existing constituencies. The argument that counties that are divided as constituencies undermine the intentions of the regional reform can also be turned upside down: In instances in which regional reform has met with opposition, the precise fact that the existing counties have continued as constituencies may appear conciliatory, and contribute to improving the preconditions required for co-operation.

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## Appendix 3.

### The importance of the constituency structure

Bjørn Erik Rasch<sup>635</sup>

#### 1 Introduction

Through the electoral system, the votes cast by voters are converted into seats in a representative assembly. Electoral systems must deal with a multitude of factors for the election results to be unambiguous and legitimate, and these factors are most often highly complex. The electoral systems used in democracies differ from one another along a variety of dimensions. This includes such things as how votes are cast and how much information is contained in a vote, the electoral formula that determines exactly how votes count and the division of a country into constituencies of different types and sizes. Of the aforementioned factors, it was for a long time common practice to look at the electoral formula, of which majoritarian elections and proportional representation elections represent the main categories, as the most important dimension. It is now often the constituency structure that is emphasised. For example, Shugart and Taagepera (2018: 30) refer to the constituency structure and, more specifically, the average number of seats per district, as “arguably the single most important number for election outcomes.” If one is aware of the arrangement with regard to districts, there is a great deal that follows.

In this memo, we will provide a more detailed overview of the importance of the constituency structure for selected political factors associated with elections and parliamentary work. For some of these political consequences, such as the importance of the districts to the party system, the research has been extensive (Herron, Pekkanen and Shugart 2018). With regard to the importance of the districts to parliamentary work, the research is far more sporadic, and there are few robust findings to go by. This is particularly the case when one looks at smaller regional differences within systems with proportional representation elections.

In the next section, we will provide more detailed descriptions of different types of electoral systems, particularly based on the types of constituencies that are used. We also provide an overview of constituency structures in European countries, and place the Norwegian electoral system into this context. The next part of the memo addresses the most important political consequences of the electoral system's constituency structure according to how these are presented in the specialist literature. This therefore primarily concerns the party system and to some extent the role of member. The memo ends with a brief conclusion.

#### 2 Electoral systems and constituency structure

A large number of electoral systems are used in practice, and the diversity of these systems increases if historical examples are also included. There is a distinction between majoritarian elections and proportional representation elections, but such simple dichotomy does not capture the rich subtleties that apply. Many have proposed means by which to classify electoral systems,

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however none have achieved widespread acceptance. Newer, more nuanced typologies can also quickly become very complex, and it is easy to lose track (Bormann and Golder 2013: 362; Blais 1988; Taagepera and Shugart 1989; Lijphart 1994; Shugart and Wattenberg 2001; Colomer 2004).

Table 3.1 distinguishes between six types of electoral systems, and these encompass the most important aspects of the variation we see in practice in present-day democratic elections (Rasch 2000: 88). The first dimension distinguishes between electoral systems with one level or one type of seats and those that have two or more levels - besides the nature of seats at the upper level. The second dimension distinguishes between the type of seats at the lower or only level of the electoral system. Either these basic seats are made up of individual districts (single-person districts) or districts in which there are multiple seats to be filled (multi-member districts or group districts). The traditional distinction between majoritarian elections and proportional representation elections (PR) is thus shown in lines 1 and 2. If we look exclusively at Europe, there are few countries that conduct majoritarian elections in individual districts and the two most important of these are undoubtedly the United Kingdom and France. The actual election formula is not like-for-like in the two countries, and instead of the system of “first-past-the post” (the most votes wins) that is used in the United Kingdom, France uses a system with run-off elections in the instances in which no candidate receives a majority in the first round. The system that we refer to as proportional representation elections (column 2) is very widespread. In these elections, the country is divided into larger or smaller - equal or different - districts from which multiple people are elected, or the entire country makes up one constituency. Countries that are not divided into districts are the Netherlands and Israel, as well as a number of countries in Eastern European that have emerged in recent years (Russia, Slovakia, Serbia and Montenegro). The actual electoral formula varies widely in these PR countries – and can be candidate-centred (Ireland, Finland) or based on party lists.

*Table 3.1 Main categories of electoral systems. A distinction is made between a lower level with basic seats (which can consist of either individual constituencies or group constituencies) and an upper level with a number of separate seats or seats at large. The electoral systems that only have one level, fall inside the first column. Selected European countries from recent years.*

		Levels	
	One level	Separate PR seats at the upper level	Seats at large at the upper level (compensatory)
Basic seats in individual constituencies	1 <i>Majoritarian elections</i> (France, United Kingdom, Norway 1906–18)	3 <i>Mixed PR</i> (Lithuania, Georgia)	<i>Mixed PR</i> (Germany, Albania, Ukraine, Hungary)
Basic seats in group constituencies	2 <i>Standard PR</i> (Finland, Ireland, Iceland, Spain, Netherlands, Belgium, Russia, Norway 1921–1985)	4 <i>Parallell PR</i> (Historical examples)	6 <i>Seats at large - PR</i> (Denmark, Norway, Sweden, Estonia)

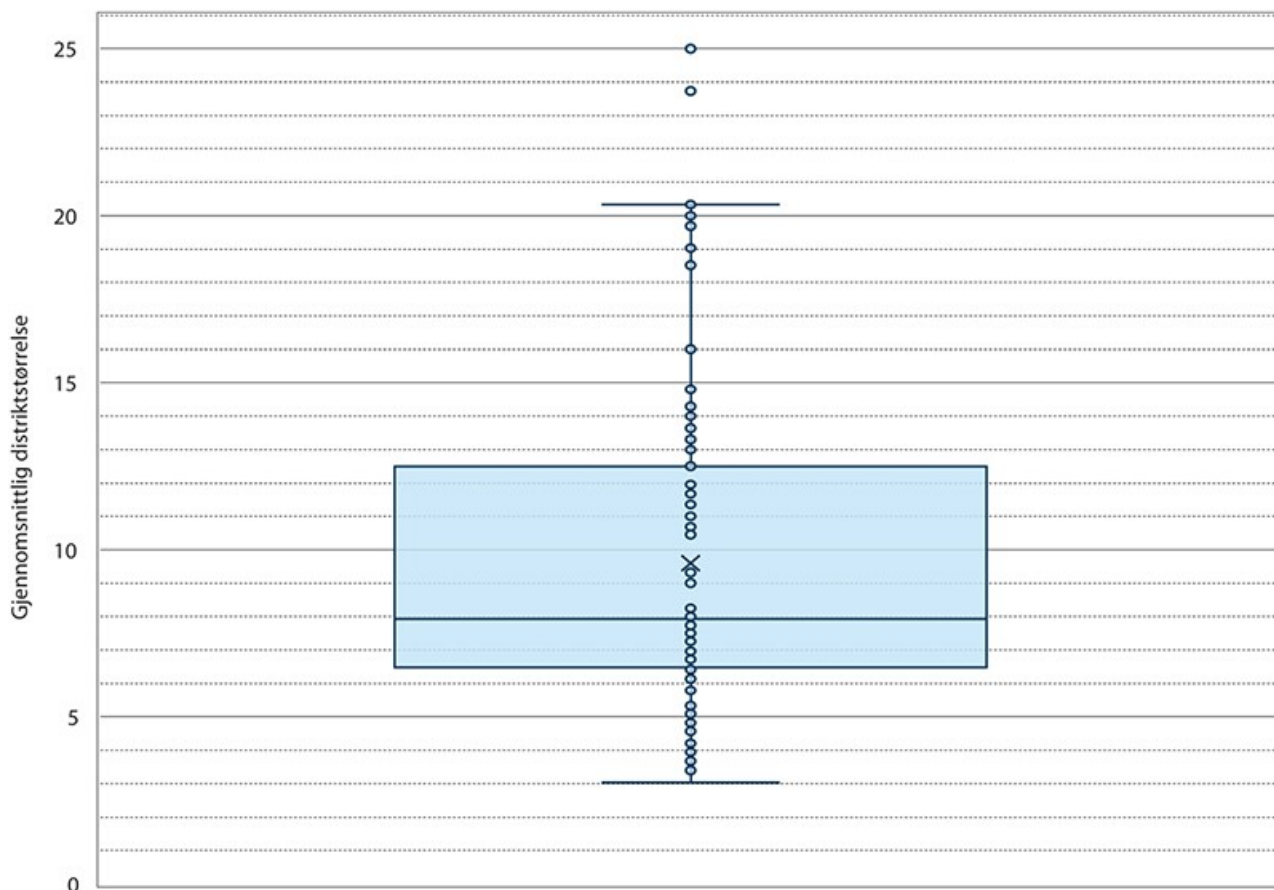


Source: Inter-Parliamentary Union, Parline Database on National Parliaments; Borman and Golder Database, [www.mattgolder.com](http://www.mattgolder.com).

In recent decades, there has been an increasing tendency to establish multi-level electoral systems. For example, Norway took the leap from standard proportional representation elections to a two-level system with seats at large (column 6) from the 1989 election (Aardal 2002). Typical for this category of electoral system is that the majority of seats are allocated by district and that there are not many seats at large to allocate (11 per cent in Norway and Sweden, 22 per cent in Denmark and 26 per cent in Estonia). Only a handful of European countries have chosen this form. It is possible to envisage that the seats at the upper level are not used for adjusting, but are allocated completely separately (column 4). No European country presently has such a system.

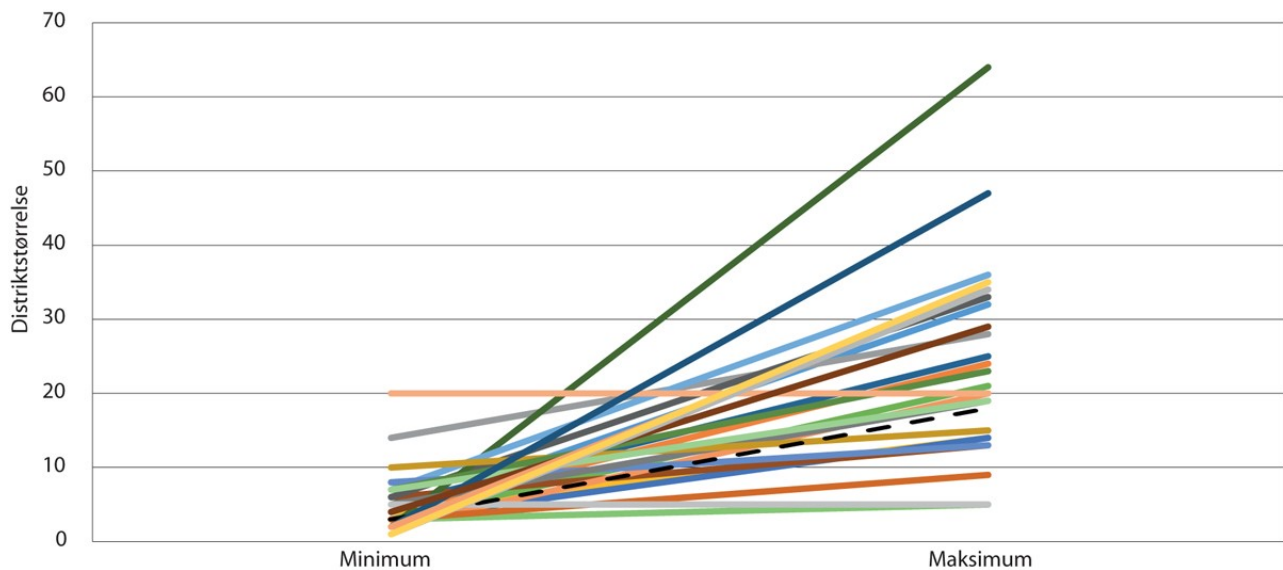
Some mixed electoral systems have gradually emerged which combine elections in individual constituencies with an upper level of seats that are allocated proportionately. There are again two possibilities depending on whether the seats that are allocated at the upper level are separate (column 3) or have the purpose of evening out differences that have arisen at the lower level (column 5). The latter-mentioned system was established in (West) Germany after the Second World War, with one half of the seats in individual constituencies and the other half as seats at large. There are now similar systems in certain other countries in Eastern Europe (such as Ukraine, Hungary and Albania), even though the connection between the two types of seats can take a rather different form to what is the case in Germany. Lithuania and Georgia have similar systems, but the upper level is not equalising (the prevalence of this system in Europe has decreased slightly in recent years).

It is our understanding that some form of district division is common in PR systems. Figure 3.1 shows the average district size in European elections after 1945 (the time range is of course shorter for countries that became democracies at a later stage). Seats at large that are allocated nationally have not been included. For Norway, the average size of the districts is generally just under 8 seats (150/19) and the 19 seats at large are in addition to this. This is at about the horizontal line in the box in Figure 3.1, which is simply the median in the allocation (i.e. that in half of the elections in these countries there are more district seats on average, while there are fewer in the other half). The box itself includes half of the observations (from the first to the third quartile), with the average value marked as a cross slightly above the median. The "whiskers" essentially mark the minimum and maximum, but in this case there are a few observations that are particularly high (so-called outliers). The variation in the average constituency size is therefore between just over 3 seats and 25 seats, while the majority are around 8-10 seats. A potential reform process, with fewer and, on average, larger constituencies, will of course move Norway higher up the figure. If one envisages 11 districts without a separate group of seats at large, the average size will be over 15. From a comparative perspective, this means that Norway would move to the upper quartile in Figure 3.1. In this situation with 11 districts, around 33 seats at large are required to remain within the box (the middle half of the observations). At the same time, larger districts reduce the need for seats at large to prevent disproportionate party-related outcomes at elections.



*Figure 3.1 Boxplot with average district size in European proportional representation elections to parliaments after 1945. Upper houses/senates are not included. Countries with elections in single constituencies and countries with only one constituency are also not included. For Germany (and other countries with a similar electoral systems), the PR part of the system is included, but seats at large (and the equivalent 'upper tiers') are otherwise disregarded.*

One factor is the average size of the constituencies in PR systems. Another question is whether there are major variations between different districts within each country. There are few countries that operate with multi-member districts that are exactly the same size (Macedonia with 20 member electorates and Malta with 5 member electorates). An idea of how this relates is stated in Figure 3.2. Two countries stand out with very large maximum districts, namely Germany (if one takes into account the allocation of the seats at large among the states) and Portugal. Otherwise, the main impression is that the smallest districts most often have well under 10 seats, while it is relatively rare that the largest have more than 30 seats. The steeper the line is, the greater the difference between the smallest and largest sections. The line for Norway (dotted in the figure) could easily be (much) steeper if the constituencies were adjusted as a result of the regional reform.



*Figure 3.2 Minimum and maximum district size for proportional representation elections in Europe (existing electoral systems without single constituencies or where the entire country is one constituency). Norway (without seats at large) is shown with a dotted line. N=27 countries.*

In systems with single-member constituencies, it is a challenge to draw up the electoral map in such a way that all votes carry more or less the same weight and without minority voters being disfavoured and specific parties being favoured. In the United States, for example, there are many court decisions and a large volume of literature related to this problem – and the risk of so-called gerrymandering (Engstrom 2013; Seabrook 2017; McGann et al. 2016). There are fewer problems associated with drawing up the electoral map for proportional representation elections, particularly when the districts are larger. This is true even if some places may experience distortions in the allocation of seats among the constituencies that gives voters very different vote weights (malapportionment).<sup>636</sup> However, it is often considered illegitimate not to allocate the seats to districts as proportionally as possible – while the districts are kept intact. This has been sparsely studied from a comparative perspective, but in an analysis from some years ago, Norway, and particularly Iceland, were the worst among the Nordic countries.

Various forms of administrative entities are used when dividing into districts. For practical reasons relating to the election process, it is difficult to do anything else. This may concern municipalities, counties or regions, or a combination of such entities. For example, in Sweden, it is largely the counties (län) that make up the constituencies, however the three largest (Västra Götaland, Skåne and Stockholm) are divided into several constituencies (five, four and three, respectively). The Stockholm region in particular would have been a much larger constituency than the others if it had not been divided up. It is here that Stockholm municipality is separated from the other municipalities in the county. When transferred to Norwegian conditions in the event of a regional reform, the following can be done in the same fashion: If a region will be very large in terms of population (such as Viken) or in terms of surface area (a merged Troms and Finnmark), it is possible to

<sup>636</sup>The surface area factor in the Norwegian system is one such element that systematically favours voters in larger, sparsely populated areas.

combine municipalities (or possibly use the existing counties) in such a way that there are constituencies that are considered more appropriate.

There are several aspects of electoral systems that are not revealed through the basic, district-oriented typology we have presented. The electoral formula is one such aspect. This is particularly important if the constituencies are consistently small. If the entire country makes up one constituency, then the electoral formula - for example, if the D'Hondt, Sainte-Laguë or other method is used - is of less importance. Factors such as electoral thresholds also come into the picture, and a large proportion of European countries have incorporated one or more barriers that prevent minor parties from getting "full value" for the votes they have polled.

### 3 Political consequences of constituency delineation

The focus in this section is addressing the political consequences of constituency delineation in electoral systems. It can be difficult to identify significant consequences of institutional details such as this. In many instances, the consequences may be limited or negligible, while there are social forces and political divisions that "call the shots". Clark and Golder (2006) are among those who have emphasised this. However, Shugart and Taagepera (2018), argued strongly in favour of an institutional perspective and demonstrated empirically (and logically) that this, in any case, concerns certain aspects of electoral systems (but not all) and certain types of consequences. We will start with the importance of constituency delineation for the party system, which is a major field of research with a significant volume of literature over several decades. Duverger (1954) is the modern starting point for these types of studies, even if their roots date back much further (Riker 1982).

#### 3.1 Party fragmentation

If we envisage a district with two seats to be allocated at an election in which multiple parties are involved, it is clear that only one or two parties will be represented. The size of the district sets an upper limit on the number of parties that can win seats. In a country divided into many of these types of two seat districts, it is equally clear that more than two parties can be represented in the elected assembly. This is because different parties can stand for election in different parts of the country or the same parties can participate in all parts of the country, but receive different levels of support.

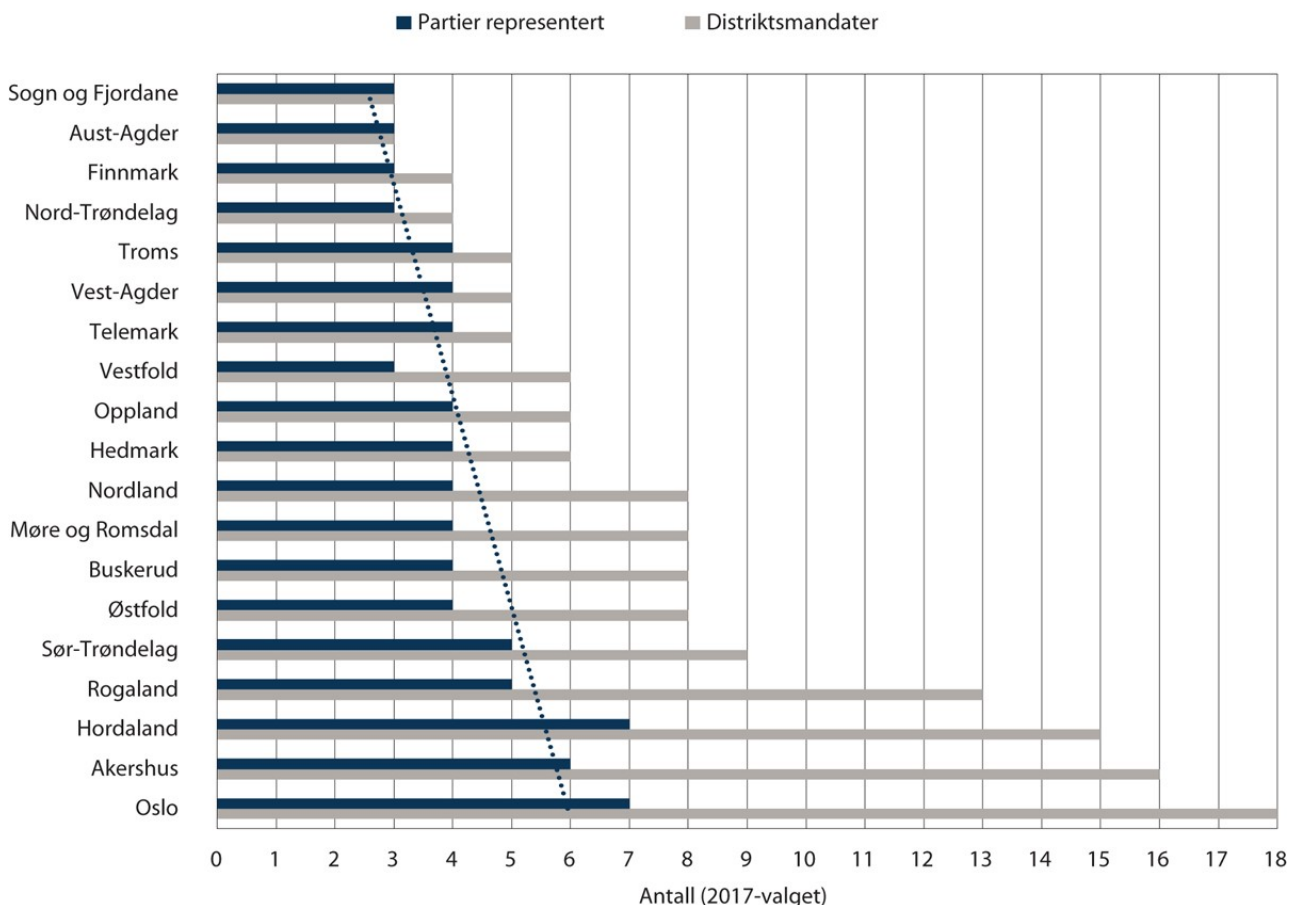
Duverger (1954; 1986) noted that majoritarian elections in single-member constituencies have a tendency to be two-party systems, while proportional representation elections are most often associated with multi-party systems. If we only look at situations in which the choice is between candidates, the so-called  $M+1$  rule has been formulated (Cox 1997: 99–122). According to this rule,  $M$  is the number of seats in the district, and  $M+1$  sets an upper limit for viable candidates at the elections in the district. This means that most of the votes in a single-member constituency, i.e. where only one member will be elected, will go to the two main competitors, while there will be far fewer votes for the third candidate.<sup>637</sup> This becomes more difficult as the districts get bigger (and  $M$

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<sup>637</sup>A simple example to illustrate this is (democratic) presidential elections. These are primarily conducted using two methods. Firstly, the system in many republics is that the candidate with the most votes wins and therefore only one round of voting is held. The second possibility is that a run-off election is held if no candidate gains a majority in the first round. In the event of a run-off election, only the two strongest candidates from the first round can participate. Based on the  $M+1$  rule, it should be expected that two main candidates will crystallise in the first type of election (first-past-the-post) (since  $M=1$ ), while in the second

increases). Assuming that voters are well-informed about the public support for the various candidates, it will still be the case that candidates who have no chance will attract few votes, and the attention of the voters will be focused on those who have a genuine chance of being elected.

If we go from electing candidates to electing between parties - or lists of candidates - it then immediately becomes more complicated. List election means that those who stand for a party have coordinated their efforts and that multiple candidates from the same list can be elected. Therefore, the  $M+1$  rule no longer applies in the same manner, and in large districts there are normally parties *well below*  $M+1$  that win seats. Figure 3.3 provides a simple illustration of this. Here we can see the size of the districts at the most recent parliamentary election (without seats at large, because there was not the same level of local competition) and number of parties that won at least one seat. In the smallest counties, all of the seats allocated in 2017 went to different parties. In the medium-sized counties, there were largely four parties that received seats (Vestfold was the exception with three), and it was generally the case that there was no fifth party with a realistic chance of winning a seat. The largest counties saw even more parties winning seats (for example, in Akershus there was also another party that had a chance of taking the final seat). It appears clear from the example that larger districts mean more parties, but this is far from the upper limit for the number of viable candidates (if it had only been a candidate election).



example, there will often be three main candidates as election day approaches. The first round of voting is thus  $M=2$  (there are two that proceed to the next round). This is consistent with empirical findings (Jones 1999, 2004; Rasch 2000: 117).

*Figure 3.3 Number of district seats and number of parties in the counties at the 2017 parliamentary election.*

There are two mechanisms that are decisive for party diversity in a district. Firstly, as has already been suggested, a psychological effect makes itself felt among voters. Some voters who prefer a party that has little chance of getting elected would rather support someone who has a realistic chance of being elected rather than "waste" their vote on parties with no chance. Simply (and rather inaccurately) put: The small parties get smaller and the big parties get bigger. This form of strategic conduct undermines the support of all but those who are considered to have a chance of winning seats.

Secondly, a mechanical effect can also assert itself. This involves the actual electoral formula and how votes are converted into seats. For example, it may be the case that the electoral formula does not treat competitors in the district equally or neutrally and that there are distortions that benefit the larger parties. D'Hondt's method is one such method that provides an advantage to larger parties (particularly if the districts are not very large), while Sainte-Laguë's method is neutral if the first divisor is not increased (as occurs in the Scandinavian countries). The party neutrality associated with the Sainte Laguë method is gradually eroded by the increase in the first divisor.

It is consistently the former (psychological) mechanism that is more important for the party system than the later (mechanical), even though this may vary somewhat. Studies have gradually emerged which essentially demonstrate that tactical or strategic voting is a reality in proportional representation elections in the same way as for majoritarian elections (Cox 1997; Aardal and Rasch 2015; Jenssen 2015, see also Helland and Saglie 2003).

Table 3.2 provides an example of how district size affects the party system. This shows the allocation of seats at the 2017 parliamentary election in the three counties of Akershus, Buskerud and Østfold, counties that have 16, 8 and 8 district seats respectively. Together with the overall distribution of votes, it shows that the Labour Party (Ap) and Progress Party (FrP) had a very good result, while a number of small parties are underrepresented. If all 32 district seats were to be allocated in one operation, as if the region of Viken was a constituency, a total of four seats would then change hands. The Labour Party and Progress Party would lose two seats each and these would instead go to the much smaller parties of Socialist Left (SV), Liberal (V), Green (MDG) and Christian Democratic (KrF).

*Table 3.2 Calculation using the number of votes and allocation of seats for the counties of Akershus, Buskerud and Østfold at the 2017 parliamentary election, compared with the allocation of seats for a merged region with an unchanged distribution of votes.*

Parties	Percentage of votes Merged	Number of seats for the separate counties of Akershus, Buskerud and Østfold	Percentage of seats when merged (Viken)
Conservative Party (H)	28%	9 (28%)	9 (28%)
Labour Party (Ap)	28%	11 (34%)	9 (28%)
Progress Party (FrP)	16%	7 (22%)	5 (16%)
Centre Party (Sp)	8%	3 (9%)	3 (9%)
Socialist Left Party (SV)	5%	1 (3%)	2 (6 %)
Liberal Party (V)	5%	1 (3%)	2 (6 %)
Green Party (MDG)	3%	0	1 (3%)
Christian Democratic Party (KrF)	3%	0	1 (3%)
Red Party (Rødt)	2%	0	0
Total	98%	32 (99%)	32 (99%)

In one sense, the example is unrealistic: There is every reason to assume that the number of votes polled would have been different if voters had voted in a merged region where small parties generally have a greater chance of winning seats than in the separate counties. Among other things, this is due to the above-mentioned psychological effect. However, the example still has a few very general points. Firstly, larger districts mean that more parties are represented and larger districts result in a fragmentation of the party system. Secondly, the size of the district has implications for the degree of proportionality. It can easily be seen in Table 3.2 that the allocation of seats for a merged region is closer to the distribution of votes than the allocation of seats for the counties separately (comparing the percentage distributions). It is the case that for every distribution of votes (and electoral formula), the allocation of seats will be more proportionate as the size of the district increases.

At the same time, we need to be aware that the proportionality in the electoral system is partly dynamic and can change over time as the support for the parties changes. In fact, it would largely appear to be the case that Norwegian electoral reforms have immediately ensured that the

allocation of seats better reflects the votes cast by voters, but that proportionality gradually weakens again over time as parties and voters have adapted to the new rules (see Figure 3.4).<sup>638</sup>

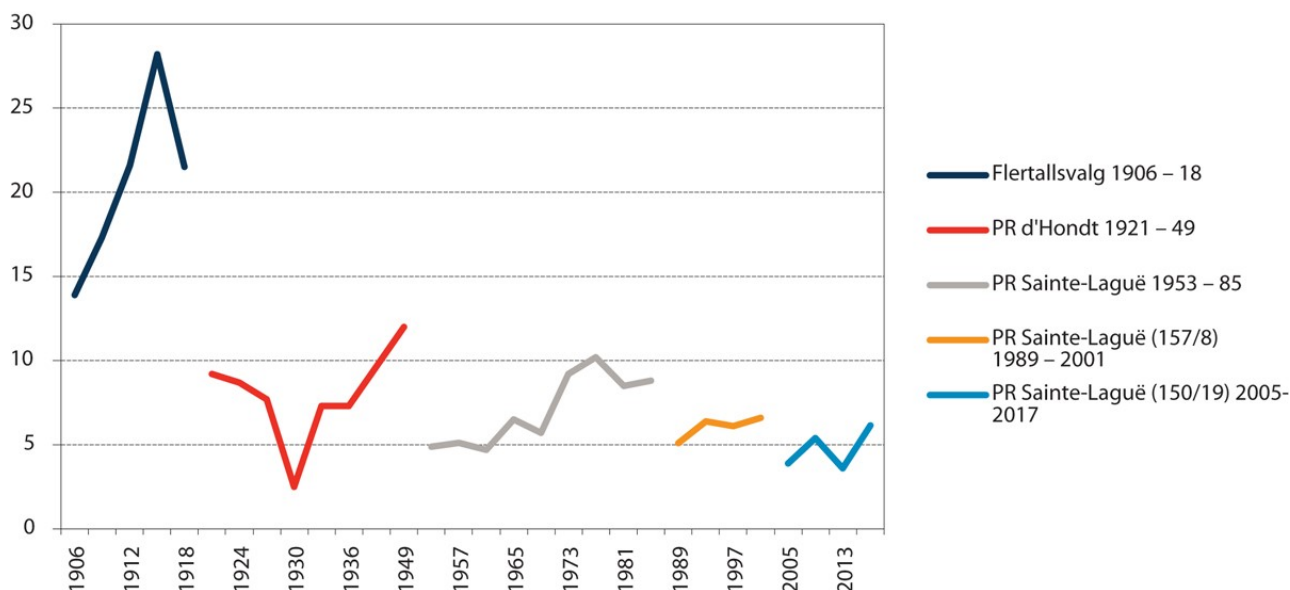


Figure 3.4 The proportionality of Norwegian elections since 1906, measured using the Loosemore-Hanby Index. Different electoral systems.

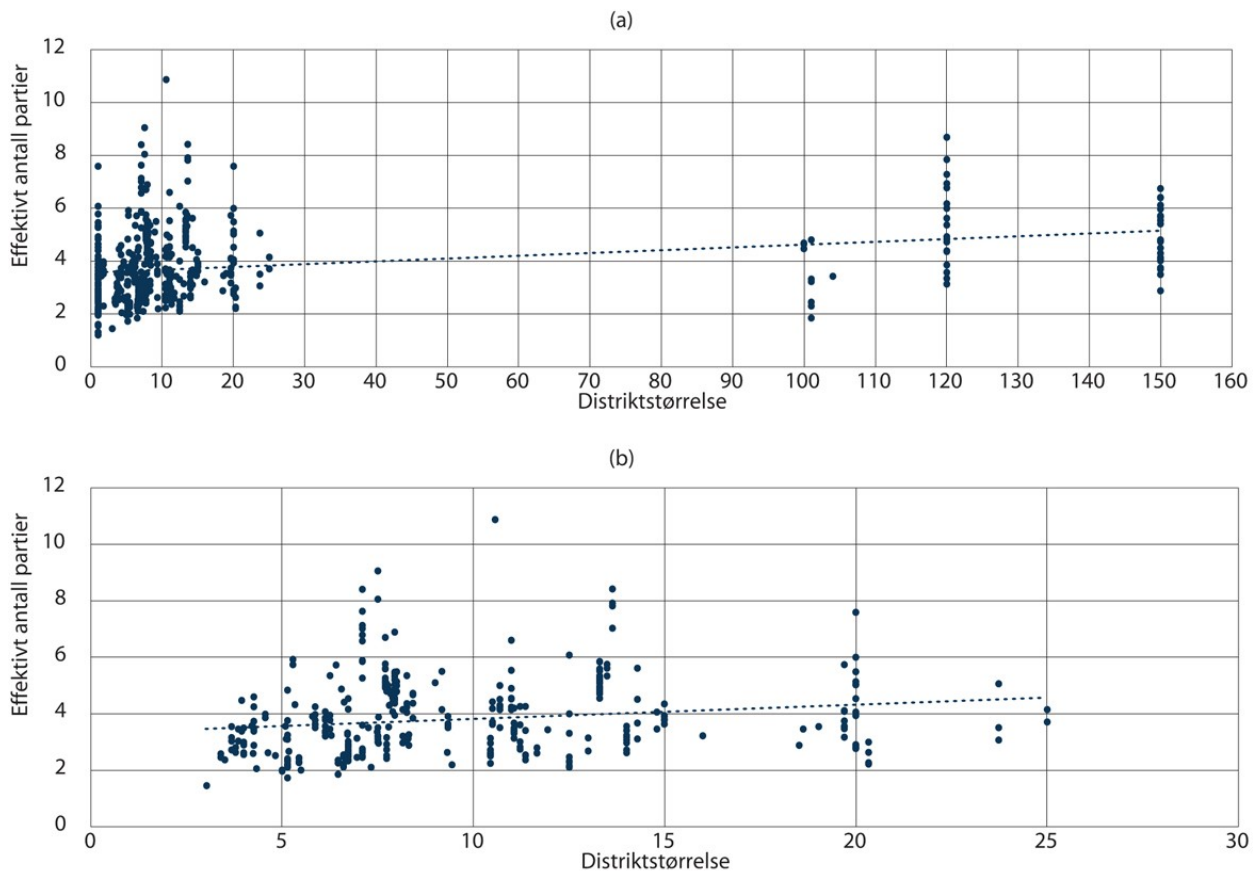
We can further illustrate the relationship between districts and the party system by including a comparative picture. Figure 3.5 shows the relationship between the average district size and the party system in democratic elections in European countries (including Israel and Turkey) in the period after 1945. With regard to the party system, it is not the number of parties that is used, but rather a measure that takes into consideration the relative sizes of the parties. For example, there can be a two-party system even if more than two parties are represented, if the two parties are relatively similar and completely dominant. A pure five-party system exists when there are five parties of equal size. However, when the parties have an uneven number of seats, the system may be anything from one-party dominance to a five-party system. This is determined when calculating the effective number of parties (Laakso and Taagepera 1979).<sup>639</sup> The dotted line of the figures shows the trend in the material. Even though we now include simple as well as complex, multi-tiered electoral systems and perhaps seats at large, there is - despite a large spread - a tendency towards greater party diversity when the average district size increases. This tendency is

<sup>638</sup>There are a number of ways of measuring proportionality, and these can produce slightly different results. One of the simplest of these, i.e. the Loosemore-Hanby index, has been used here. The index value for a specific election is produced by adding and halving the absolute values for the discrepancy between each party's share of the vote and share of the seats allocated (Loosemore and Hanby 1971). When the index value is close to zero, the allocation of seats is completely proportional.

<sup>639</sup>The effective number of parties is calculated by dividing 1 by the aggregate total of squared proportions for each party's representation in the legislative assembly.



documented in more detail in comparative analyses at constituency level (Potter 2014; Singer and Stephenson 2009; Singer and Gershman 2018; Monroe and Rose 2002; van de Wardt 2017).<sup>640</sup>



*Figure 3.5 Average district size and number of parliamentary parties. Elections in European democracies after 1945 (not including elections in Russia, Serbia and Ukraine). N=518.*

To the far right of the top figure (3.5a) are the Dutch (150 seats) and Israeli (120 seats) elections. For both of these countries, seats are allocated with the entire country as one constituency. There has been a fairly strong fragmentation of the party system in the Netherlands during this period (to between 7 and 8 parties), particularly since the 1990s. The electoral system has changed little during this time, while the district size has remained constant. There has similarly been a very strong fragmentation of the Israeli party system over time, despite the electoral system remaining the same. One factor in particular that changed the party system, which was close to a two-party system for a long time, was the introduction of direct elections of the prime minister in 1996. This meant that voters no longer had to think about the question of government when they cast their vote, and the result was that the two major, traditional governing parties saw their share of the vote dramatically reduced. When the system involving the direct election of the head of

<sup>640</sup>It is essentially social heterogeneity (or political geography) that, together with the size of the constituency, effectively explain the number of parties. More recent studies have also shown that major variation in the size of constituencies in a country, (where some can then be very large), pushes more party diversity than what the average size of the districts would otherwise indicate.

government was repealed (2001), the old party system did not return – the fragmentation continued. Similar variations can also be seen in some other countries. The effective number of parties in the Danish Parliament increased dramatically at the "earthquake election" of 1973, but has since stabilized at a lower level. The increase in Norway from a level in excess of three to slightly above four occurred in 1989, which was the first election with seats at large.

The bottom figure (3.5b) enlarges the area located to the left of the top figure. These are elections in countries that have several districts. Norway has had an average of around eight districts (excluding seats at large), and an effective number of parties averaging up to four since 1945 (more than four since 1989). There are of course many factors that are of importance to the development of a party system. The district structure in the electoral system is only one of these.

Legislative assemblies are of different sizes. In some more recent analyses, it has been argued that this should be taken into account when discussing the significance of district structure to the degree of party fragmentation (Taagepera 2007; Shugart and Taagepera 2018: 101 ff.). It has been shown that the effective number of parties can be rather well predicted based on the product of the number of seats in the elected assembly and the average number of districts ("the seat product model"), despite countries with multiple types and/or levels of districts complicating this picture somewhat.<sup>641</sup>

### 3.2 Voter turnout

The fact that voter turnout is normally higher in proportional representation elections than majoritarian elections in single-member constituencies is a well-established finding and something that could also be observed in a number of countries when they transitioned to proportional representation elections. Voter turnout also increased in Norway when the PR system was adopted in 1921. Subsequent analyses have shown that there were complex reasons for the increased voter turnout. One factor is that voters who do not support any of the main candidates in a majoritarian election will choose to stay at home rather than vote for a candidate with no chance or vote tactically for someone they do not particularly like. More people will have the opportunity to genuinely express their preferences at proportional representation elections. However, it has also been demonstrated in the case of Norway that there were major differences in the intensity of competition in the single-member constituencies around the country and, when there was little competition for a seat, there were fewer who found their way to the polling stations. Since there were many constituencies of this type ("safe seats"), voter turnout was generally limited (Cox et al. 2016). In a larger comparative analysis, Selb (2009) demonstrated that the degree of local competition is generally of vital importance for voter turnout at elections.

What are the mechanisms behind higher voter turnout in proportional representation elections? We have already mentioned one of the factors, i.e. when there are more parties with a chance of winning seats in a constituency, there are also more voters who will be able to properly express their preferences. Fewer will stay at home because they cannot find a party to vote for and wasted votes represent less of a problem. The fact that there is competition for more seats and that more

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<sup>641</sup>More specifically, it demonstrates both empirically and logically that the effective number of parties  $ENPP = (MS)^{1/6}$ , where M is the average district size and S is the number of seats in the relevant assembly.

parties see a chance to win a seat (than in single-member constituencies) also contributes to broader efforts to mobilise voters. This also increases voter turnout (Smith 2018).

The next question that can be asked is whether voter turnout will also vary systematically within the PR systems, depending on the size of the constituencies. Is it the case that turnout is higher in the largest constituencies? Figure 3.6 illustrates this for the most recent Norwegian elections. The picture is not clear-cut and there is considerable variation at each level of district size, however the trend is still in line with expectations: Voter turnout is highest in the largest constituencies. At the same time, it must be stressed that this is a simple, bivariate correlation at an aggregate level, that has not been controlled for factors that election polls tell us influence one's inclination to vote. Despite this, it is reasonable to assume that any adjustment of the map so that constituencies will generally become larger will not have a negative impact on voter turnout.

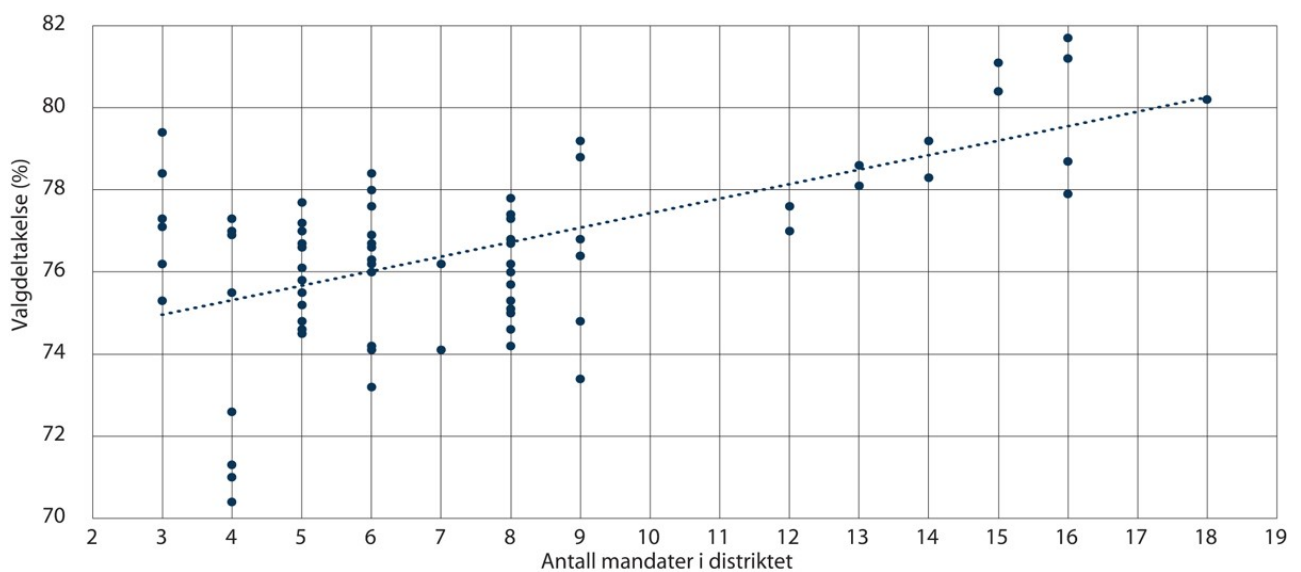


Figure 3.6 District size (without seats at large) and turnout by county at the 2005–2013 elections.

### 3.3 Parliament

The method in which members of parliament are elected may influence the organisation, behaviour and roles in parliament. An important reason for this is that the electoral rules can encourage members to act in certain ways if they want to contribute to re-election for themselves or their own party (Mayhew 1974). However, the empirical evidence does not always clearly show that incentives associated with the electoral system are of importance, at least not in terms of the finer nuances within the same type of electoral system (for example, minor differences in district size at proportional representation elections). There is little evidence of the electoral system having an effect on parliamentary organisation, including the committee system and the status and role of committees (Martin 2018).

Heidar and Karlsen (2018) recently studied the understanding that members of the Storting have of their own role in the conflict between the party and home district. Given the electoral system that we have, which is a PR system with local nomination processes and (for all practical purposes) closed party lists, it is not surprising that it is very common among the members to identify

the party and the party's voters in the home district as the core focus of their role as member. It is not the voters in the country as a whole or (all) voters in the home district who members primarily seek to safeguard the interests of. At the same time, it is important that there is mention of representing one's own party's voters in the home district in appropriate arenas and in decision-making processes, rather than engaging in "constituency service" for the home district on a more individual basis (Arter 2018). The latter is much more characteristic of parliaments for which members are elected from single-member constituencies where each member alone represents a constituency. Data from various work conducted by Audrey and Depauw (2018; 2014) indicates that there are also major differences between how the role of member is perceived inside systems with proportional representation elections. The degree of voter influence due to preferential voting explains some of the variation. Norway appears to be one of the countries where members have their strongest focus on the party's own voters and most strongly see themselves as party delegates. A Swedish study suggests that there are some differences in how the role of member is performed depending on the size of the constituency (Karlsson 2018). When it comes to questioning activity in the Storting, there are also signs that it may be of significance as to whether the member holds a final seat or is the only representative from his/her party in a county (Rasch 2011). However, there are no very clear effects, and a reform process that adjusts the district structure would be unlikely to have much impact.

In a Norwegian context, not all parliamentary parties are of course represented in all counties. However, informal norms have developed to some degree within the parties (Heidar and Karlsen 2018). In smaller parties, unrepresented counties are often allocated between the members to enable all counties to have a responsible contact. If there are larger parties with multiple members in a county, the areas of responsibility or points of contact are divided among the members. Both the constituency structure and the party system will determine how this manifests itself in practice, and it may therefore also be influenced by changes in the size of the constituencies. If we go back to Table 3.2 and the example of three separate counties versus one large constituency, far more will depend on informal allocation mechanisms in the latter case if it is to be ensured that all parts (geographically) of the merged constituency are equally safeguarded. At the same time, representation will be broader if more parties win seats - parties that perhaps have had to look after this area indirectly and informally via members for other constituencies.

## 4 Conclusion

The research into the consequences of the constituency structure in electoral systems is extensive, however is concentrated on relatively few issues. What has gained particular attention is the importance of the constituency structure for the party system and the degree of party fragmentation, for the representativeness or proportionality of the elections, and, to some extent, for voter turnout. Reasonably clear connections have also been demonstrated in these areas and it has been shown that institutional details relating to the size of the constituencies actually have (independent) effects. Larger districts mean more parties, a higher degree of proportionality and a certain tendency towards higher voter turnout.

With regard to the importance of the districts to the work of members in parliament, the role of parliamentarian and contact with the voters, the research on this is limited. There are few robust findings or clear links other than comparisons of parliamentarians who are elected in single-member constituencies versus those who are elected in multi-member constituencies. The lack of clear

findings may be a contributing factor to the research in this area not being particularly extensive (it is difficult to publish non-findings).

The result of larger districts is that there is a lower threshold for representation (which, admittedly, can be influenced by an electoral threshold). In a sense, this provides greater openness towards various minority views, and new movements that may emerge. At the same time, a certain fragmentation of the party system must be expected and that there will be more parties that compete for and win seats.<sup>642</sup> Party fragmentation means more difficult conditions for governance, at least as long as we are dealing with parliamentary systems. Forming governments becomes more complicated and building a responsible majority behind decisions can be more challenging. Greater party diversity can also easily result in greater polarisation. The other side of the coin concerns representativeness. All else being equal, larger districts mean more proportional election results. In other words: On the one hand you have party fragmentation and more difficult conditions for governance, while on the other you have an allocation of mandates that is more in tune with voter preferences. How these considerations should be weighed up against each other when structuring districts - undoubtedly one of the most important aspects when designing electoral systems - is not a (purely) specialist question, but rather a normative or political question. There is no blueprint - some will emphasise governance and others representativeness, and both are of course legitimate.

However, it is possible to identify systems in which the considerations are optimally safeguarded. Following an in-depth analysis of the degree of disproportionality and governance (accountability/party system) in a large number of countries over a period of up to 60 years, Carey and Hix (2011) concluded that there is a "sweet spot" for electoral systems (see also St-Vincent et al. 2016). By using proportional representation elections with small to medium-sized districts, little is lost in terms of proportional election results, while at the same time, particular fragmentation of the party system is avoided - and there is thus a good foundation for accountability and governance. If we return to Norway and the adjustment of the constituencies in accordance with the regional reform, we are left with a district structure that is somewhat off what Carey and Hix (2011) considered optimal. There is little to be gained in terms of reducing disproportionality, but this risks greater fragmentation of the party system.

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<sup>642</sup>Ziegefeld (2013) makes a subtle distinction, despite the general context being rather clear. In some instances, when the support for small parties is geographically concentrated, there does not need to be any particular difference in the representation they receive if the districts are large or small. The author demonstrated this through simulations of elections in India (the single-member constituencies used were converted to multi-member constituencies of various sizes) and Israel (instead of the entire country as one constituency, various constituency structures were used).

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## Appendix 4.

### **Preferential voting at parliamentary elections: Consequences of different electoral systems**

Johannes Bergh<sup>643</sup> and Jo Saglie<sup>644</sup>

#### **1 Introduction<sup>645</sup>**

At present, voters at Norwegian parliamentary elections have no influence over the people who are elected from party lists. It is true that it is possible to adjust the lists by renumbering the order and removing candidates. However, such changes will only be effective if more than half of a party's voters in a county make exactly the same change. To the best of our knowledge, this has never occurred. The previous Election Act Commission (Official Norwegian Report (NOU) 2001: 3) proposed the introduction of a system of preferential voting that would include both parliamentary elections and county council elections, however the Storting decided to only introduce preferential voting at county council elections.

Preferential voting at parliamentary elections was again placed on the agenda during the 2010s. On assignment from the Ministry of Local Government and Modernisation, the Institute for Social Research conducted an extensive study of the potential consequences of changes to the rules for preferential voting at parliamentary elections, the results of which were published in a longer report (Bergh et al. 2014) and summarized in a shorter journal article (Bergh et al. 2016). The report included a review of the research into the consequences of preferential elections on voter behaviour, candidates, election campaigns and the parties. Simulations were also conducted of election outcomes based on the preferential voting systems at county council elections and for elections in Sweden, for which we used data for preferential votes cast at the 2013 parliamentary election.

More specifically, in the report we simulated more specific outcomes using different combinations of three variables. Two of these are aspects of the preferential voting system which the Storting itself can decide on. Our starting point for this was the differences that are found between the system for Norwegian county council elections and the preferential voting system in Sweden:

- Opportunity to cast one preferential vote as opposed to multiple preferential votes. At county council elections, voters can cast preferential votes for as many candidates on the list as they wish, while voters in Sweden can only cast one preferential vote.

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<sup>645</sup>This memo was written on assignment from the Ministry of Local Government and Modernisation, for use in the work of the Election Act Commission. We would like to thank Dag Arne Christensen for his remarks to an earlier draft.



- Different electoral thresholds (including 5% and 8%). In order for preferential votes to have an effect at county council elections, at least 8 per cent of the list's voters must have cast a preferential vote for a candidate. In Sweden, the figure is 5 per cent of the list's voters.

However, the third variable is something that is outside of the Storting's control:

- Percentage of voters who cast a preferential vote. Our starting point for this was the actual level of preferential voting at parliamentary elections and the scope of preferential voting at municipal council elections.

This memo is based on the report from 2014, however focusses on simulations of two alternative preferential voting systems that were proposed in the Storting in June 2016. At that time, the Storting considered proposed changes to the preferential voting system for parliamentary elections. The Ministry had proposed introducing the same system that is used for county council elections. A majority supported the introduction of a genuine form of preferential voting at parliamentary elections, but there was no majority support for a specific system. The Christian Democratic Party (Kristelig Folkeparti) and Socialist Left Party (Sosialistisk Venstreparti) each proposed their alternative systems for preferential voting. The Storting decided to ask the government to return with a new proposal for a preferential voting system, in which these alternative proposals would also be considered.<sup>646</sup>

Therefore, the topic of this memo is how these two systems may function and the consequences they could have when compared with the preferential voting systems that were previously assessed. We will first summarise some main results from the previous simulations, and describe the conditions on which both the previous and the new simulations are based. We then conduct simulations of each of the two models under different conditions. In the next section, we compare the two models with each other, and with those that were assessed in the 2014 report. Following this is a brief discussion of the possible consequences of the merger of constituencies in accordance with the new county structure, and we then conclude with a summarising discussion.

## 2 Main results from previous simulations<sup>647</sup>

Our previous simulations are of course based on a number of assumptions, which we will describe in more detail below. The effects that a preferential voting system may have will depend on a number of factors. The specific design of the preferential voting system is of course important. A low electoral threshold and the possibility of casting more than one preferential vote provides greater scope for voter influence. The effects will also depend on factors that are outside the actual electoral system: To what extent do voters exercise the right to cast a preferential vote? To what extent do candidates use the opportunity to conduct a personal election campaign? To what extent

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<sup>646</sup>See the minutes of the Storting's meeting of 10 June 2016, <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Stortinget/2015-2016/160610/6/>, and the recommendation of the Control and Constitution Committee: Recommendation to the Storting 402 L (2015–2016).

<sup>647</sup>This section is largely based on Bergh et al. (2014, 2016).

do internal conflicts occur within the parties? And to what extent do the parties nominate their most popular candidates at the top of the lists?

In the previous simulations, an important question was what consequences the electoral system would have for who is elected to the Storting: How many of the present members would have lost their seats to candidates with more preferential votes if the preferential voting system had been different? This touches on a core element of the debate, i.e. the trade-off between the opportunity for voters to decide which people should represent them, and the parties' desire to secure seats for candidates who are important to the party's parliamentary work.

We estimated the extent of what we refer to as voter-elected members. These are members who would have been elected in a preferential voting system, but not if the parties' rankings were decisive. The fact that voters primarily vote for the top candidates limits the extent of voter-elected members, because voters often give their preferential vote to candidates who would have been elected regardless. However, while there is often consensus between voters and parties about who should be given preference, preferential voting may provide the impetus for change. We cannot rule out the possibility that, in certain situations, voters will vote for candidates who the party has not prioritised - this could be uncoordinated or an organised campaign.

Experiences from Sweden and county council elections indicate that the extent of voter-elected members will be modest. However, the simulations that were based on the preferential votes at the 2013 parliamentary election indicate that the extent could be somewhat greater. With an electoral threshold of 8 per cent, the proportion of voter-elected representatives varied from between 7 and 14 per cent, depending on whether voters could cast one or more preferential votes, and the number of voters who cast preferential votes. With an electoral threshold of 5 per cent, the proportion of voter-elected members varied between 11 and 23 per cent.

Both experiences from Sweden and simulations of Norwegian parliamentary elections and county council elections indicate that there is a difference between larger and smaller parties. Large parties are strongly impacted by voters' preferential votes when there is no electoral threshold. An electoral threshold weakens this effect for the larger parties. Small parties have the most voter-elected members when viewed in relation to their total number of members. One probable explanation is that most of the county parties have a limited number of known candidates. If the county party has five candidates elected to the Storting, the candidates further down the list will often be too unknown to pass the electoral threshold. However, when a county party only has one candidate elected, the second candidate may often be well-known enough to be competitive. Furthermore, fewer votes will be required (in absolute numbers) for a small county party to reach the electoral threshold, something that may make it easier to mobilise voters. Since small parties will often only have one member elected from each county, they may generally be more exposed to replacements as a result of preferential voting.

### **3 Assumptions for the simulations<sup>648</sup>**

Simulations of this type must be based on a number of assumptions, which may be more or less reasonable, and we still do not know for certain how accurate these would be if an actual election

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<sup>648</sup>Large parts of this section are from Bergh et al. (2014, 2016).

with preferential voting was held. We have used the assumptions that formed the basis for the simulations in 2014 and which the new simulations in this memo are based on. We have used data from the 2013 parliamentary election which was made available to us by the Ministry of Local Government and Modernisation, to make comparisons with the previous analyses of preferential voting systems.

When this memo was largely complete we were also given access to data from the 2017 parliamentary election (from the Norwegian Directorate of Elections). We have only used this data to study the degree and variation of list correction in 2017 when compared to 2013. The type of list correction that we use in our simulations was somewhat less prevalent in 2017 than in 2013.<sup>649</sup> There is thus no reason to believe that the impact of corrections made by voters in our simulations would have been greater if we had used figures from 2017. It is probable that the impact would have been slightly less.

We utilised the fact that voters now have the option to express preferences. Voters can renumber list candidates, i.e. change the ranking of the candidates. They can also remove candidates. One particular aspect of the present preferential voting system is that it is not possible for voters to cast a positive vote for the first candidate on a party's list. These candidates can only be renumbered down the list or removed.

As mentioned, the current preferential voting system has no real effect on the composition of the Storting. Despite this, 11.9 per cent of voters chose to renumber and/or remove candidates on the lists at the 2013 election. Based on this, we simulate what the result of the 2013 parliamentary election would have been with a genuine preferential voting system. Since removing candidates or other forms of "negative votes" will not be introduced in a new preferential voting system, removing candidates and renumbering downwards were excluded from the simulations. We have therefore used renumbering upwards on the list as a substitute for preferential votes. All renumbering upwards will be used in the simulations as if these were preferential votes.

The problem with this method is that we do not have preferential votes for the first candidate (since it is not possible to renumber the first candidate upwards). We solved this problem by looking at the ratio between the number of negative votes (candidates removed and renumbering downwards) and positive votes (renumbering upwards) on each individual list. It transpired that there is a close correlation between the number of negative and the number of positive votes for each candidate. Politicians who are well-known, and have a great deal of media attention, receive both positive and negative preferential votes. We calculated the ratio between the number of positive and negative votes on each party's list. To do this, we removed the first candidate, who of course does not receive any positive votes. This ratio is then used to calculate a hypothetical number of positive votes for the first candidate based on the number of negative votes for the person in question. In practice, the calculation of positive votes for the first candidate means that the majority of first candidates receive many preferential votes and are guaranteed of election when the

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<sup>649</sup>This applies to renumbering upwards on the list. A total of 507,000 such corrections were made in 2013, compared with 420,000 in 2017. The median number for renumbering upwards on the list was 24 per candidate in 2013. The corresponding figure in 2017 was 22.

preferential votes are used as a basis. The indisputable experience from local elections in Norway is that the first candidate receives the most preferential votes.

When the first candidate on each list has been assigned preferential votes in this manner, we can conduct simulations of the effect of the preferential votes. However, an important element of uncertainty is the question of how many voters will use the opportunity to vote for a person. In the first round of simulations, we used actual preferential voting figures from the 2013 parliamentary election, (as described above). We therefore assumed that the voters can cast an unlimited number of preferential votes (which is the case in the current system).

In the second round of simulations, we attempted to take into consideration that more voters would probably take the opportunity to cast a preferential vote if this was introduced as a system that had an actual influence on the composition of the Storting. We therefore assumed that voters will be just as inclined to correct the lists as they are for municipal council elections (for which the preferential voting system has been established and is relatively widely used). In each county, we multiplied all the preferential voting figures by a factor that gives a preferential vote frequency that is on par with the municipal council elections in 2007, where around 40 per cent of voters cast a preferential vote.<sup>650</sup> This does not change the pattern of the preferential voting, only the volume. In practice, this means that it will be easier to exceed the electoral thresholds for the preferential votes to count.

In some of the analyses we also conducted a third round of simulations in which we wanted to imitate a system where each voter can only cast one preferential vote. It is difficult to simulate this type of system, because we do not know whether the pattern of preferential voting would have changed with such a system. We assume that this pattern would not have changed. We also assume that each voter only casts one preferential vote, i.e. that, on the whole, the same number of preferential votes was cast as there were voters who corrected the lists at the parliamentary election. However, we also retain the assumption that the proportion of voters who correct the lists is at the same level as the municipal council elections. It would appear unlikely that this proportion would be as low as it was at the 2013 parliamentary election if a genuine system for preferential voting was introduced for parliamentary elections.

There are also other elements of uncertainty in the simulation. A fundamental problem is that the calculations are based on votes that were cast under a different electoral system to what has been proposed. An important caveat is that the parties' list proposals would most likely have been adapted to a new electoral system: Popular politicians who do not want to be elected will no longer receive a "place of honour" at the bottom of the lists, because it will not be possible to give them a position that guarantees they will not be elected. It is therefore important to establish that these simulations provide only estimates – which are based on a number of assumptions – and do not provide a blueprint for how a new electoral system will function. However, by simulating different variations of the two electoral systems proposed by the Christian Democratic Party and Socialist

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<sup>650</sup>We used figures for preferential voting at the 2007 election, because we had these available. It probably would not have made much of a difference to the results if we had used figures from the 2011 election.

Left Party, we will still be able to provide an impression of the variations that can be found within each model, and the frameworks in which these variations take place.

#### **4 System for municipal council elections: increased share of the poll with and without an electoral threshold**

We will first look at the model proposed by the Christian Democratic Party. This preferential voting system is based on the system that is practiced at Norwegian municipal council elections, where voters can cast an unlimited number of preferential votes and the parties can give an increased share of the poll to a certain number of candidates. There will be rules for the number of candidates on a list that can be given an increased share of the poll (as is the case for municipal council elections), and rules for the number of members who are elected from each constituency. The increased share of the poll shall function in the same manner as for municipal council elections, i.e. it corresponds to 25 per cent of all the votes received by a list. We can use an example to illustrate how the system for municipal council elections works. If a candidate with an increased share of the poll receives, for example, 100 preferential votes, and the party receives 1,000 votes, this candidate will have 350 votes when the party's seats on the municipal council are to be allocated ( $100 + 1,000 \times 0.25$ ). Therefore, an increased share of the poll gives candidates a major advantage.

However, the Christian Democratic Party's proposed preferential voting system for parliamentary elections also includes an element that is not found in the system for municipal council elections, i.e. an electoral threshold of eight per cent. A candidate must therefore receive preferential votes from at least eight per cent of the list's voters for the preferential votes to count in the returning of members.

Thus, the proposal entails that two different mechanisms for strengthening the parties' influence over who is elected are combined within the same electoral system, i.e. *both* an increased share of the poll (as for the current system for municipal council elections) and the electoral threshold (as for the current system for county council elections). One objection could be that this combination appears unnecessarily complicated. We will therefore also simulate a preferential voting system with an increased share of the poll *without* an electoral threshold, in addition to the Christian Democratic Party's proposal.

The greatest challenge in simulating a preferential voting system that is based on the system that is practiced at municipal council elections is to specify the number of candidates that are given an increased share of the poll on each list. It is true that the proposal assumes that a limit shall be set for the number of candidates who can be given an increased share of the poll, but we do not know where this limit will be set. It is essentially impossible to predict how many candidates to whom each county party will give an increased share of the poll. For example, will the Hordaland Conservative Party only give an increased share of the poll to Erna Solberg (Prime Minister of Norway), to three candidates or to eight candidates? At municipal council elections, we see that there are many trade-offs behind the decision to prioritise a certain number of candidates. On the one hand, parties want to protect certain politicians who are important for the party, while on the other hand, there is also a desire to give voters influence. How such trade-offs play out will most likely vary between parties and counties - which is what we currently see at municipal council elections.

To solve this problem, we will simulate outcomes using four different assumptions:

- One possibility is that we assume that the parties want as much control as possible over candidate selection. If so, it would be rational to give an increased share of the poll to *the number of* candidates the county party had elected at the previous election. If the party has the same number of candidates elected at the next election, these candidates will be virtually “protected” (see, for example, Bergh, Bjørklund & Hellevik 2010). There will of course be changes in party support during the term of office and, based on opinion polls at the time the nominations are decided, the county parties may obtain an even better estimate of the number of candidates they will have elected. For the sake of simplicity, we have chosen to assume that the parties will give an increased share of the poll to the number of list candidates the party had elected at the previous election (in 2009). This is simulation #1 in Tables 4.1 and 4.2 below.
- Another possibility is that the county parties give an increased share of the poll to *fewer* candidates than they had elected at the previous election (for example, one less). If so, the candidates who receive an increased share of the poll will most often be assured of a seat, provided that the party has any members elected. All of the remaining candidates participate on an equal footing for the remaining seats and the “list fill” will not be assured of not being elected. This is the basis for simulation #2 in Tables 4.1 and 4.2, where we assume that the parties give an increased share of the poll to one candidate less than the party had elected at the previous election.
- A third possibility is that the county parties give an increased share of the poll to *more* candidates than they had elected at the previous election (for example, one or two more). If so, the choice that voters have will, in practice, most often be between the candidates who have an increased share of the poll, but none of these are assured of a seat. However, the “list fill” at the bottom of the lists will usually be assured of not being elected. This is the basis for simulation #3 and #4 in Tables 4.1 and 4.2, for which we respectively assume that the parties give an increased share of the poll to one and two candidate(s) more than the party had elected at the previous election.

We have no basis on which to state whether any of these scenarios is more probable than the other, but we will at the very least be able to provide an impression of the *variations* this method allows for.

The proposal entails that a voter shall be able to cast multiple preferential votes and we have therefore used this assumption as a basis. However, like we did in the 2014 report, we have simulated outcomes from different levels of preferential voting.

In Table 4.1 we present simulations which assume that preferential voting is at the same level as for the 2013 parliamentary election, i.e. that 12 per cent cast a preferential vote. In the table, we then vary the electoral threshold (no threshold, 5% and 8%), and the number of candidates to whom the parties give an increased share of the poll (as described below).

*Table 4.1 Simulations of the effect of preferential voting at parliamentary elections when using the system for municipal council elections and with electoral thresholds of 0, 5 and 8 per cent for preferential votes to count. Assumes that preferential voting is at the same level as the 2013 parliamentary election. Number of members elected due to preferential voting. Election result from 2013.*

	No electoral threshold				Electoral threshold of 5%				Electoral threshold of 8%				Election result 2013
	#1	#2	#3	#4	#1	#2	#3	#4	#1	#2	#3	#4	
Total	28	31	22	27	7	9	6	5	4	5	1	2	169
Socialist Left Party (SV)	1	2	1	1	1	2	1	1	1	1	0	0	7
Labour Party (Ap)	6	6	10	12	0	0	1	1	0	0	0	0	55
Centre Party (Sp)	0	2	0	0	0	2	0	0	0	1	0	0	10
Green Party (MDG)	0	0	0	0	0	0	0	0	0	0	0	0	1
Christian Democratic Party (KrF)	1	1	0	0	0	0	0	0	0	0	0	0	10
Liberal Party (Venstre)	3	3	0	0	1	1	0	0	1	1	0	0	9
Conservative Party (Høyre)	13	15	6	7	4	4	2	0	2	2	0	0	48
Progress Party (FrP)	4	2	5	7	1	0	2	3	0	0	1	2	29

#1 Assumes that the parties will give an increased share of the poll to the number of candidates on the list who the party had elected at the previous election (in 2009).

#2 Assumes that the parties will give an increased share of the poll to *one candidate less* than the number the party had elected at the previous election (in 2009).

#3 Assumes that the parties will give an increased share of the poll to *one candidate more* than the number the party had elected at the previous election (in 2009).

#4 Assumes that the parties will give an increased share of the poll to *two more candidates* than the number the party had elected at the previous election (in 2009).

We see that some candidates would have been replaced when using this system unless a form of electoral threshold was introduced. In our four different models without an electoral threshold, the result is from 22 to 31 voter-elected members. This quickly falls to between 5 and 9 voter-elected members with an electoral threshold of 5 per cent and between 1 and 5 voter-elected members with an electoral threshold of 8 per cent. Therefore, based on the proposal that has been put forward, it appears that voter influence will be severely limited and the number of replacements very modest with this level of preferential voting.

If we look at differences between the parties, this simulation (like those that were published in the 2014 report) shows that the majority of replacements would have taken place in the major parties when we make the calculations without an electoral threshold, but that this difference evens out when the electoral threshold is introduced and increased. However, there are so few candidates who are replaced in the calculations with an 8 per cent electoral threshold that we can hardly claim that small parties are impacted worse than others.

However, there are different parties that are affected in the four different models with the different assumptions regarding the number of candidates that receive an increased share of the poll from the parties. In models 1 and 2, where the parties gave an increased share of the poll to the same – or lower – number of candidates elected at the previous election, the Conservative Party has the most replacements. However, in models 3 and 4, where the parties gave an increased share of the poll to more candidates than they had elected at the previous election, the Labour Party has the most replacements (in the model without an electoral threshold). We believe this reflects the fact that the Conservative Party had major gains at the 2013 election. As a result, the party could bring in a relatively large number of candidates without an increased share of the poll in models 1 and 2, which meant that the preferential votes did not have any effect on the selection of these candidates. Correspondingly, the Labour Party suffered a setback at this election. In models 3 and 4, the party would therefore have had many more candidates with an increased share of the polls than those who were actually elected, a factor which also provides scope for preferential votes having an impact.

Table 4.2 has been designed in the same manner as Table 4.1, but here we have increased the preferential voting to the same level as the municipal council elections. This has little impact on the simulations without an electoral threshold. However, in the models with an electoral threshold, the number of replacements is clearly higher than in Table 4.1, since more preferential votes mean that more candidates clear the electoral threshold. We get between 13 and 27 voter-elected members with an electoral threshold of 5 per cent and between 9 and 16 voter-elected members with an electoral threshold of 8 per cent. There are also no clear signs that the small parties are affected more by replacements than the large parties.



*Table 4.2 Simulations of the effect of preferential voting at parliamentary elections when using the system for municipal council elections and with electoral thresholds of 0, 5 and 8 per cent for preferential votes to count. Assumes that preferential voting is at the same level as the municipal council elections. Number of members elected due to preferential voting. Election result from 2013.*

	No electoral threshold				Electoral threshold of 5%				Electoral threshold of 8%				Election result 2013
	#1	#2	#3	#4	#1	#2	#3	#4	#1	#2	#3	#4	
Total	29	33	23	27	21	27	13	17	14	16	9	9	169
Socialist Left Party (SV)	1	2	1	1	1	2	1	1	1	2	1	1	7
Labour Party (Ap)	6	6	10	12	4	6	4	6	2	2	2	3	55
Centre Party (Sp)	0	2	0	0	0	2	0	0	0	2	0	0	10
Green Party (MDG)	0	0	0	0	0	0	0	0	0	0	0	0	1
Christian Democratic Party (KrF)	1	1	0	0	1	1	0	0	0	0	0	0	10
Liberal Party (Venstre)	3	3	0	0	3	3	0	0	3	3	0	0	9
Conservative Party (Høyre)	13	15	6	7	9	10	4	5	5	5	2	1	48
Progress Party (FrP)	5	4	6	7	3	3	4	5	3	2	4	4	29

#1 Assumes that the parties will give an increased share of the poll to the number of candidates on the list who the party had elected at the previous election (in 2009).

#2 Assumes that the parties will give an increased share of the poll to *one candidate less* than the number the party had elected at the previous election (in 2009).

#3 Assumes that the parties will give an increased share of the poll to *one candidate more* than the number the party had elected at the previous election (in 2009).

#4 Assumes that the parties will give an increased share of the poll to *two more candidates* than the number the party had elected at the previous election (in 2009).

## 5 Weighted increased share of the poll

We will then look at the model proposed by the Socialist Left Party. This is a system whereby all candidates are given an increased share of the poll that is *weighted* based on the candidate's position on the list. Like the system for municipal council elections, this increased share of the poll is a factor that must be multiplied by the number of votes a list receives. However, unlike the system for municipal council elections, the increased share of the poll is *weighted*. The final candidate on the list gets the lowest increased share of the poll and this share then increases by 3 percentage points for each position up the list. As stated in the proposal, the point is "that advance rankings are provided before the preferential votes are added."<sup>651</sup>

This system is not used for other Norwegian elections, but Aanund Hylland (2001: 539–540) proposed a similar scheme in an appendix to the recommendation from the previous Election Act Commission. According to Hylland (2001: 540), a feature of this system is that "the party's influence is thus weighted, and it is not a case of all or nothing, such as in the present rules for municipal council elections".

The proposal is geared towards using the final place on the list as a basis. For the final candidate, the increased share of the poll is equal to the number of votes the list has received multiplied by 1. For the second final candidate, the increased share of the poll is the number of votes for the list multiplied by 1.03, and for the third final candidate, this number is 1.06. This continues up the list, and all candidates have thereby received an increased share of the poll. The increased share of the poll is then added to the preferential votes and this total determines who is elected.

We would note that this aspect of the proposal has features that are problematic. As we know, the number of lists candidates varies between the constituencies, and may also vary between parties within the same constituency. The first places are therefore assigned different weightings in the different constituencies and different parties. It is easier to conduct the simulations if we use the first place as a basis and then *reduce* the increased share of the poll by 3 percentage points for each place down the list. We have therefore given the first candidate an increased share of the poll that is equal to the number of votes the list has received multiplied by 1. For the second candidate, the increased share of the poll will be the number of votes for the list multiplied by 0.97, and this continues down the list.

If the principle of a weighted increased share of the poll was to be adopted, we would propose using this method of calculation. There would be no material difference in the results. A potential problem could arise if we have merged constituencies that are equivalent to the new counties,

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<sup>651</sup>Recommendation to the Storting 402 L (2015–2016). Available at <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2015-2016/inns-201516-402/>

because the result would then be such long lists of candidates in each constituency that this method would bring us down to less than zero for the candidates at the bottom of the lists. This can be solved by the lowest candidates being given the same (and the lowest) percentage.

Furthermore, it should be noted that while three percentage points may not sound like much, it will have a major impact on lists containing a large number of names. In Oslo, most of the lists have 25 candidates, which means there is a 75 percentage point difference in the increased share of the poll between the first candidate and the final candidate. This is far more than the 25 percentage points in the current system for municipal council elections and in the Christian Democratic Party's proposal. Therefore, in addition to the proposal from the Socialist Left Party, we consider it useful to also simulate a model where we change the increased share of the poll by one percentage point (instead of three) for each place down the list.

The proposal for a weighted increased share of the poll includes no electoral threshold. It has not been specified as to whether voters can cast one or more preferential votes under this system. As we also did in 2014, we will simulate both options, as well as different levels of preferential voting. The results for a model with a difference of three percentage points for the increased share of the poll are presented in Table 4.3.

*Table 4.3 Simulations of the impact of preferential votes at parliamentary elections when using a “weighted increased share of the poll”. Each place on the list has an increased share of the poll that is 3% higher than the position below. Different assumptions concerning the level of preferential voting. Number of members elected due to preferential voting. Election result from 2013.*

	Preferential voting at the same level as the 2013 parliamentary election - possible to cast multiple preferential votes	Preferential voting at the same level as municipal council elections - possible to cast multiple preferential votes	Preferential voting at the same level as municipal council elections - possible to cast one preferential vote	Election result 2013
Total	4	10	6	169
Socialist Left Party (SV)	0	0	0	7
Labour Party (Ap)	0	4	3	55
Centre Party (Sp)	0	0	0	10
Green Party (MDG)	0	0	0	1
Christian Democratic Party (KrF)	0	0	0	10
Liberal Party (Venstre)	0	0	0	9
Conservative Party (Høyre)	1	2	1	48
Progress Party (FrP)	3	4	2	29
Total	4	10	6	169

Briefly summarised, this model gives a small number of replacements. The number of voter-elected members varies between four in the model, where the level of preferential voting is the same as at the 2013 parliamentary election, and 10, when increased to the same level at municipal council elections. When we assume that it is only possible to cast one preferential vote, but keep the same level of preferential voting as at municipal council elections, six members will be replaced. In this model, only the larger parties experience members being replaced.

What then happens if we reduce the importance of the position on the list by changing the increased share of the poll by one percentage point for each position instead of three? Table 4.4 shows that the number of replacements then increases and varies between 12 and 23 candidates. In these simulations, the small parties also experience replacements, however most of these occur in the major parties.

*Table 4.4 Simulations of the impact of preferential votes at parliamentary elections when using a “weighted increased share of the poll”. Each position on the list has an increased share of the poll that is 1% more than the position below. Different assumptions concerning the level of preferential voting. Number of members elected due to preferential voting. Election result from 2013.*

	Preferential voting at the same level as the 2013 parliamentary election - possible to cast multiple preferential votes	Preferential voting at the same level as municipal council elections - possible to cast multiple preferential votes	Preferential voting at the same level as municipal council elections - possible to cast one preferential vote	Election result 2013
Total	12	23	15	169
Socialist Left Party (SV)	1	2	2	7
Labour Party (Ap)	5	8	6	55
Centre Party (Sp)	0	1	0	10
Green Party (MDG)	0	0	0	1
Christian Democratic Party (KrF)	0	0	0	10
Liberal Party (Venstre)	0	1	0	9
Conservative Party (Høyre)	2	5	3	48
Progress Party (FrP)	4	6	4	29
Total	12	23	15	169

## 6 A comparison of the different preferential voting systems

We will now further compare the different models, both with each other and with the models that were studied in the 2014 report. Some key figures are collated in Figure 4.1, where the black columns represent preferential voting at the same level as parliamentary elections and the grey columns represent preferential voting at the same level as municipal council elections. Our starting point can be a system in which there is no electoral threshold or increased share of the poll. According to our calculations, 60 members would then have been replaced. With the system for county council elections (electoral threshold of 8 per cent), 24 members would have been replaced with a high level of preferential voting, and 11 with a low level.

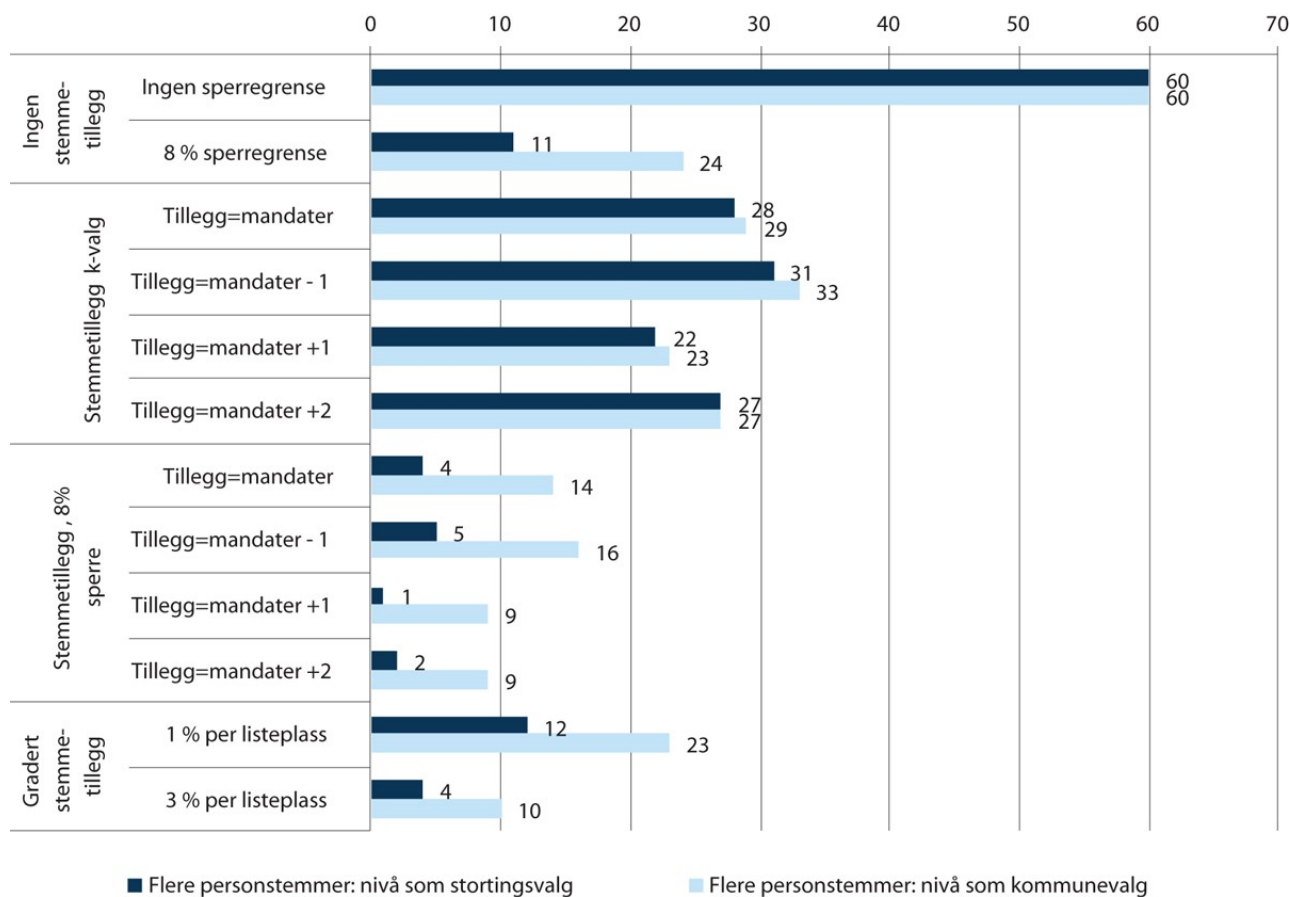


Figure 4.1 Summary of the simulations. Number of members that would have been replaced with different electoral systems. Election result from 2013.

If we look at the proposals from the Christian Democratic Party (increased share of the poll based on the model for municipal council elections) and Socialist Left Party (weighted increased share of the poll), we see that there would clearly have been fewer members replaced. For preferential voting at parliamentary election level, there would be an insignificant number of members replaced in both models (between 1 and 4 seats). As the level of preferential voting increases, the number of replacements also increases (to between 9 and 16 seats). In other words, both proposals will result in clearly fewer voter-elected members than the system we have for county council elections and which the government proposed to also introduce for parliamentary elections.

When we modify the proposals from the Christian Democratic Party and Socialist Left Party we can also have a higher number of replacements. According to our calculations, a model such as that used for municipal council elections, which involves an increased share of the poll, but has no electoral threshold, will result in the replacement of 22-33 seats. An adjusted model for a weighted increased share of the poll, where the position on the list is of less importance (one percentage point per list position, instead of three), gives the same number of replacements as the system for county council elections. However, it is worth noting that the replacements are distributed somewhat differently among the parties. As shown in Table 4.4, an adjusted Socialist Left model results in the Labour Party replacing between 5 and 8 candidates (depending on the level of preferential voting), and a total number of replacements for the Socialist Left Party, Centre Party, Christian Democratic Party and Liberal Party of between one 1 and 4 candidates. Using the system for

county council elections, the corresponding figures for the Labour Party are 2-5 candidates, and 3-7 candidates for the smaller parties (Bergh et al. 2014: 86, 89). In other words, when compared with the system for county council elections, an adjusted model with a weighted increased share of the poll appears to make the smaller parties slightly less exposed to replacements, while making the largest parties slightly more exposed.

One question of interest is what effect these preferential voting systems will have on gender balance in the Storting. As we have seen, some of the proposed models have minimal effect on the personal composition, and thus also the gender balance. We have calculated the percentage of women in the Storting for the type of simulations that give the *most* replacements within each of the four Tables 4.1–4.4. 67 women were elected to the Storting at the 2013 parliamentary election. In the selected simulations, the number of women varies between 66 and 70. Therefore, based on these calculations it does not appear as if the gender balance in the Storting will be particularly affected.

## 7 What happens with new constituencies?

In parallel with the debate on the preferential voting system, there are also discussions about whether the constituencies should be merged in order for them to match the new county boundaries. Simulations of election outcomes with a different number of constituencies would therefore be useful. Such simulations could be carried out by combining the lists of the parties in the current counties and then treating the relevant merged counties as one constituency.

However, there are significant elements of uncertainty relating to these types of simulations – which come on top of the uncertainty in the previous simulations. There is a risk that the results may not be very reliable and we have therefore not carried out these types of simulations. The fundamental challenge is that we do not know how the parties will compile their lists and how the voters will react to these in such merged counties/constituencies.

More specifically, there are two problems. Firstly, such simulations will be based on actual personal preferences that voters have expressed in the current counties. On average, candidates in small counties would have received fewer “preferential votes” than candidates in large counties. Therefore, if the results in a large county and small county are combined, the candidates in the large county will come out best. It is conceivable that this will also be the result of a possible merger of constituencies, but a simulation would not be realistic enough to arrive at a conclusion on this. In this type of simulation, well-known politicians who have an appeal outside their own county, will have a poor outcome. For example, it is unrealistic to assume that Trygve Slagsvold Vedum (Leader of the Centre Party) will only receive preferential votes from Hedmark, and none from Oppland.

Second, we do not know how the lists will be compiled. For example, when concerning the merger of Hordaland and Sogn og Fjordane, we do not know which candidates from Hordaland and which candidates from Sogn og Fjordane would have been nominated in positions that would have assured them of seats in the Storting *without* preferential votes – and who therefore could have lost these seats *due to* preferential votes. It is problematic to assume that precisely the same members would be elected, because new constituencies will also affect how each party's seats are allocated between the counties.

However, what we have done in order to be able to discuss this issue is to calculate *the allocation of seats* in a system with 11 constituencies. This provides us with a basis on which to discuss the extent to which this may have consequences for the effects of preferential voting. As mentioned, the 2014 report indicated that small county parties, for example, parties with only one member, would be more heavily impacted by preferential voting. We have seen that this is less likely to occur in the proposals put forward by the Christian Democratic Party and Socialist Left Party. However, a relevant point is how new constituencies can influence the prevalence of county parties that only gain one member, and are therefore vulnerable in terms of replacements. On the one hand, it is reasonable to believe that the small parties will have more than one member elected in some of the merged counties, and there will thus be fewer "single-person county parties." On the other hand, small parties that do not currently have members from the relevant counties could, for example, have one candidate elected from counties that have been merged. If so, the trend would be in the opposite direction.

We have calculated the prevalence of such single-person county parties using the seat calculation tool Celius, which was developed by Bernt Aardal. Unlike the previous analyses in this memo, we have used the result of the 2017 parliamentary election. The result is presented in Table 4.5.

*Table 4.5 "Single-person county parties" for 19 and 11 constituencies (number, and as a percentage of the party's members of the Storting). Calculated based on the 2017 parliamentary election.*

	Actual election result (19 constituencies)		11 constituencies (one seat at large in each)	
	Number	Percentage	Number	Percentage
Labour Party (Arbeiderpartiet)	3	6	0	0
Progress Party (Fremskrittspartiet)	9	33	0	0
Conservative Party (Høyre)	8	18	0	0
Christian Democrat Party (Kristelig Folkeparti)	6	75	4	50
Green Party (Miljøpartiet De Grønne)	1	100	2	100
Red Party (Rødt)	1	100	1	100
Centre Party (Senterpartiet)	11	58	4	22
Socialist Left Party (Sosialistisk Venstreparti)	9	82	7	64
Liberal Party (Venstre)	6	75	4	50
Total	54	32	22	13

Table 4.5 shows that fewer constituencies clearly produce fewer single-person county parties. An example can illustrate this development: The Centre Party received one seat from each of the three counties of Akershus, Østfold and Buskerud in 2017. If these three constituencies are merged into Viken, the party would have three seats from the merged constituency - something



which should, in principle, make the party less vulnerable to replacements due to preferential voting. On the other hand, it is, to a small extent, the case that the parties that come under the electoral threshold for seats at large would now receive more direct seats from the merged constituencies. This would then give more single-person county parties, but there is only one such instance in the available material: MDG would have received a direct seat from Viken.

However, it must be added that a party's vulnerability is not only dependent on the extent of single-member county parties, but also the level of preferential voting. This may be influenced by a merger. An argument given in the professional literature is that large constituencies with more candidates can result in fewer preferential votes, because voters will then have a more distanced relationship to the candidates (Renwick & Pilet 2016: 25). On the other hand, it is not difficult to envisage that merging constituencies will result in the mobilisation of voters to ensure representation from one's own region. This may especially apply when one of the merged parties is numerically inferior and is concerned that preferential votes will weaken the former county's representation. Finnmark is an obvious example.

## 8 Summary and discussion

Compared with the system for county council elections, we see that the preferential voting systems that have been proposed by Christian Democratic Party and Socialist Left Party will strengthen the parties' influence over who is elected. It would also appear to be the case that the small parties may be less exposed to members being replaced. On the other hand, these systems can set such high limits for voters being able to influence the preferential voting that one is left without a real preferential vote (even if this also depends on the level of preferential voting). This reflects the fundamental trade-off inherent in the issue of a preferential voting system. Many want to grant voters more influence. Many also want to ensure that parties are able to prioritise between their own candidates. Both considerations are reasonable, but it is simply not possible to achieve both at the same time.

We have also seen that adjusted variations of these two proposals can give voters slightly more influence – and correspondingly less influence for the parties. This can be achieved by removing the electoral thresholds from the Christian Democratic Party's original proposal and by reducing the difference between the list placements in the Socialist Left Party's model for a weighted increased share of the poll.

The preferential voting models based on the system for municipal council elections and on a weighted increased share of the poll also have certain characteristics that the simulations do not directly affect, but which there may still be reason to discuss further. The Christian Democratic Party's model has the benefit of it being known from municipal council elections. All else being equal, it would be beneficial to avoid having too many different electoral systems within a country, because this could make the system confusing for voters. At the same time, it must be said that the Christian Democratic Party's model differs from the one we recognise from municipal council elections, in that it combines two mechanisms for protecting the parties' priority candidates – electoral threshold and increased share of the poll – within the same electoral system.

The model for municipal council elections is also a model that allows for rather different strategies from the parties. Some county parties may choose to limit voter choice as much as possible by giving an increased share of the polls to exactly the number of candidates they assume will be

elected. If the party succeeds in anticipating the allocation of seats when the nomination is decided, voter influence can, in practice, be eliminated. Other county parties may choose to increase the scope for voters and allow more places to be decided by preferential voting. The model also has a complicating element. It assumes that rules must be set for the number of candidates who can be given an increased share of the poll. The question will then be where this limit should be set and what constitutes a reasonable limit.

The model for a weighted increased share of the poll is generally more basic due to the fact that it does not - as Hylland put it - make the question of the increased share of the poll an “all or nothing” question. Here one avoids having to set limits for the number of candidates who can be given an increased share of the poll - limits that can perhaps be perceived as arbitrary. On the other hand, this is a system that is unknown to Norwegian voters and an information campaign would be required if it was to be introduced.

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## Appendix 5.

### Which electoral system gets the most voters to vote?

#### The connection between electoral systems and voter turnout<sup>652</sup>

By Johannes Bergh<sup>653</sup> and Atle Haugsgjerd<sup>654</sup>

## 1 Introduction

There is a broad consensus in Norway that high voter turnout is desirable. This view applies across political parties, interest groups and other key political actors. There is thus often a demand for research into measures that can contribute to increasing voter turnout or that can prevent a decline in participation in the long term. When discussing possible changes to election laws in Norway it is natural to question whether proposed changes can influence voter turnout or possibly whether there are certain changes that should be made to positively influence voter turnout. The objective of this memo is to contribute to this discussion by presenting research-based knowledge on the link between electoral systems and voter turnout. To what degree is voter turnout influenced by specific types of electoral systems?

Before we look at what previous research tells us about this question, there may be reason to take a step back and reflect over voter turnout in general. Why is there a broad consensus that high voter turnout is desirable? Three reasons are often given for this:

1. Voter turnout is an expression of the health of a democracy and an expression of the general level of political enthusiasm and involvement among the population.
2. A high voter turnout gives a clear mandate to elected politicians and legitimacy to political decisions and the democratically representative form of government.
3. A high voter turnout can also mean equal voter turnout across groups and thereby also equal political influence.

The first, and to some extent the second reason, do not concern the level of participation in itself, but an underlying phenomenon that high voter turnout can be an expression of. A high level of enthusiasm and involvement among the population is desirable, and is something that can be expressed through a high voter turnout. At the same time, political decisions made by elected officials can gain legitimacy if there was a high level of participation in the proceeding political

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<sup>652</sup>This memo was written on assignment from the Ministry of Local Government and Modernisation, and is intended to be a contribution to the work of the Election Act Commission in proposing amendments to Norwegian election legislation.

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process. Changes to election legislation that increase voter turnout without influencing the level of enthusiasm and involvement among the population or that strengthen the mandate of elected politicians, cannot be justified in this manner. However, the final point can be used to justify all types of measures that create more equitable participation between groups.

The research literature on voter turnout has become very extensive over time and spans a wide range of explanatory factors. It has become common practice to sort these explanatory factors into three groups: individual, contextual and institutional factors (for example Aardal 2002). Individual explanations focus on the characteristics associated with individual voters. Individual resources (cognitive as well as financial), cost-benefit assessments (self-interest) and civic duty/norms are key perspectives in this category. For example, research shows that low-educated, young people who are poorly socially integrated and have little interest in politics, participate less in elections (see Smets and Van Ham (2013) for a review of this literature). Contextual explanations, on the other hand, focus on social and political factors in one's surroundings that may have an impact on the individual voter's inclination to vote. For example, research shows that small political entities with tight social networks and a high level of prosperity often have high voter turnouts (Blais 2006). Finally, institutional factors concern the institutional framework conditions for conducting elections. These factors are of particular interest when discussing how voter turnout can be affected, because they are easier to change than both the individual characteristics of the voters and their social and political surroundings.

Overall voter turnout is a function of explanations at all three levels. In other words, there is no single factor alone that determines the level of participation, but rather a complex interaction between individual, contextual and institutional factors. There is thus little reason to believe that an amendment to the Election Act alone would have decisive consequences for voter turnout. The single factor that probably matters the most for voter turnout is policy content (the political context). We know that when the outcome of an election is uncertain (Blais 2000), voters feel that a lot is at stake (Stockemer 2017), and the government alternatives are clear (Aardal and Valen 1995), which results in increased voter turnout.

With that said, this memo is about the importance of institutional factors. And as we shall see, previous research gives reason to believe that such factors may have a certain, albeit not a very large, effect on voter turnout. In the following, we will review what the research literature tells us about institutional factors that may relate to voter turnout. We find it useful to distinguish between two types of institutional factors. First, we discuss aspects of the electoral system that could *indirectly* influence voter turnout. Here we look at: 1) majoritarian elections versus proportional representation elections, 2) degree of party political proportionality, 3) preferential voting, and 4) voter registration and accessibility. These are factors that may contribute to realising all of the three reasons highlighted above for why voter turnout is often considered desirable. We then discuss institutional factors that will *directly* influence voter turnout, so-called "mechanical" measures. There is a high degree of certainty that these measures will have a positive effect on voter turnout, but will not necessarily contribute to realising all of the three reasons for why high voter turnout is desirable. In this part we focus on (5) joint election day (for national and local government elections), and (6) compulsory voting. We will see that research into mechanical measures not only concerns the size of the increase in voter turnout that these types of systems produce, but also the consequences other than increased voter turnout caused by these measures.

Because the research literature into the link between electoral systems and voter turnout has gradually become very extensive, we have actively made use of summary analyses of previous research in the field (so-called meta-analyses) (Aardal 2002; Blais 2006; Blais and Aarts 2006; Cancela and Geys 2016; Geys 2006; Highton 2017; Hooghe 2018; Smith 2018; Stockemer 2017; Van der Meer 2017). These studies summarise what almost four decades of empirical research into voter turnout has taught us. In addition, we will highlight important individual studies in which they supplement this overall work. Finally, our ambition is to provide an overview of important contributions regarding Norwegian conditions.

## **2 Majoritarian elections versus proportional representation elections**

If one was to reduce all the complexity and variation in electoral systems in the world down to a single dichotomy, one would have to choose the distinction between majoritarian elections and proportional representation elections. As a general rule, majoritarian elections are based on constituencies that only elect one candidate and the seat goes to the party or candidate that receives the most votes. In proportional representation elections (so-called PR systems), the seats are allocated according to the percentage of the votes the individual lists or parties have received. The number of seats in each constituency may vary (Aardal 2010). Like the vast majority of European democracies, Norway moved away from a majoritarian system during the first half of the 1900s (1919) and introduced a proportional representation electoral system (see Boix 1999 for a comparative historical overview).

It was long the wide-spread view in international professional literature that proportional representation elections contribute to higher voter turnout than majoritarian elections. Early studies by Jackman (1987) and Powell (1986) highlighted PR as being one of the strongest drivers of high voter turnout, and a large volume of work inspired by these pioneering studies arrived at the same conclusion. In his meta-analysis based on 83 aggregate studies published between 1968 and 2004, Geys (2006) concluded that proportional representation systems contribute to increased voter turnout. Norwegian reviews of the research literature have arrived at the same conclusion (Aardal 2002; Christensen and Midtbø 2001). The single study by Blais and Carty (1990) can serve as an example of the group of studies that form the basis for this conclusion. They used data from 509 national elections in 20 countries and compared voter turnout in countries with majoritarian elections and proportional representation elections. They found that the positive effect of proportional representation elections (relative to majoritarian elections), when controlled for a number of contextual factors which are also considered to influence voter turnout, was 7.4 percentage points. This effect is representative for this group of studies (Blais and Aarts 2006:186).

However, a number of more recent studies in the field have moderated previous conclusions that proportional representation systems (necessarily) contribute to high voter turnout. Two recent meta-analyses summarize the principal findings in this latest literature. Stockemer (2017) conducted an analysis of 130 aggregate studies of voter turnout published between 2004 and 2013. He concluded that PR had no effect on voter turnout in the majority of studies. When majoritarian elections and proportional representation elections were measured as a contradiction and not as a question of degrees (i.e. through a dichotomous variable), there was no connection between the electoral system and voter turnout in 80 per cent of the analysis models in the data he reviewed. Cancela and Geys (2016) also reported more moderate findings than previous research. Their meta-analysis was an update of the previously mentioned study by Geys (2006), but the data was

supplemented by an additional 102 studies published between 2002 and 2015. They found that proportional representation elections had a positive influence on voter turnout in approximately half of the studies.

The more mixed results have led the research field to question both the *external* validity (generalisability) and the *internal* validity (whether there is a causal connection) of the link between electoral system and voter turnout. With regard to generalisability, it is still the case that the majority of studies from western democracies find a positive link between PR and voter turnout (Smith 2018). However, research studying voter turnout in other regions of the world, and especially in Latin America, has produced divergent results (for example, Fornos, Power and Garand 2004). Stockemer (2017) identified a broader range of data from non-Western democracies as a possible reason for more recent research having found weak(er) links between PR and voter turnout. As a consequence, the field has become interested in the external factors which may explain that the strength of the link between the electoral system and voter turnout varies between different regions around the world. We presently have little systematic knowledge on this issue, but new research is imminent. Stockemer (2017:712) summarised this as follows: “The question should no longer be: do PR, the number of parties or development increase turnout? But rather: under what conditions or in which socioeconomic and cultural contexts do PR, the number of parties or development increase turnout?”

Another question concerns whether there is a *causal connection* between the type of electoral system and voter turnout. Until now, the majority of studies in the field have used a research design which involves the use of data from many countries and the voter turnout in countries with majoritarian elections is compared with the turnout in countries with proportional representation elections (controlled for other factors that are also expected to influence the level of voter turnout). One problem with this type of study is that it is difficult to determine causal connections. There will always be a possibility that differences between countries other than those related to the electoral system will influence voter turnout. In their review of the literature, Blais and Aarts (2006:186) emphasised that the effect of PR on voter turnout tends to be lower the greater the number of socioeconomic variables that have been controlled for.

A related problem concerns the mechanisms at voter and party level that explain a possible causal connection between PR and high voter turnout. Without understanding *why* PR systems create high voter turnout, we cannot be certain that observed links are actually an expression of causality. Two arguments are often presented as an explanation that PR systems can contribute to high voter turnout (Blais and Aarts 2006). First, proportional representation creates multiple parties (Cox 1997). A wider selection of parties provides voters with more choice when voting and therefore a greater chance of them finding a party that “matches” their political preferences. Multiple parties can also strengthen the overall ability of the parties to mobilise voters. Secondly, the actual competition for seats at majoritarian elections in single-member constituencies will be low because it is clear in advance as to which party/candidate will win certain constituencies. The fear that one’s vote will be of no actual significance to the outcome of the election (wasted vote), can in turn contribute to people remaining at home on election day. However, in PR systems there is greater competition between the parties, something that can also contribute to increased voter turnout.

However, studies of the link between the number of parties and voter turnout have found that systems with many parties tend to have *lower* voter turnout (Blais and Aarts 2006). In other words, if

PR contributes to higher voter turnout, it is *not* because these systems have multiple parties. Smith (2018) highlighted two possible explanations for this surprising finding. One possibility is that a wide selection of parties increases the costs of voting because it is more demanding for voters to decide (Downs 1957). Alternatively, voters may be less motivated to vote if the government alternatives are unclear (Jackman 1987). These types of situations are created more often in party systems with many smaller parties. For now, it is still uncertain as to which mechanisms explain how and why PR influences voter turnout.

However, a few recent studies have attempted to determine a causal explanation by using research designs suitable for identifying causal effects. The study by Cox, Fiva and Smith (2016) is particularly interesting in a Norwegian context. They used data from the Norwegian electoral reform in 1919 when the country transitioned from majoritarian elections in single-member constituencies to proportional representation elections (see Valen 1981 for a historical overview). The authors used panel data to compare voter turnout at constituency level before and after the reform (they used the pre-reform constituency structure of 82 rural districts and 41 urban and township districts). By doing so, they minimised the possibility that observed correlations in the data between the electoral system and voter turnout were actually the result of factors that were omitted from the analysis model. The study showed that voter turnout increased in constituencies where pre-reform competition between candidates was low, while voter turnout decreased in constituencies where competition was generally high. In other words, the reform resulted in minor differences in voter turnout between constituencies. Because most of the constituencies had a low level of competition in the period prior to the reform (i.e. during majoritarian elections), they found a net positive effect from transitioning to PR.

For his part, Eggers (2015) utilised a peculiarity of the French election laws. While French municipalities with less than 3,500 inhabitants have majoritarian elections, municipalities with higher populations have proportional representation elections. He used this system to compare municipalities immediately above and below this cut-off point of 3,500 inhabitants, and found that PR had an effect of approximately one percentage point (from 69% to 70%). Finally, Funk and Gathmann (2013) analysed the significance of the transition from majoritarian elections to proportional representation elections in Swiss cantons. They found an effect of as much as 16 percentage points, which must be considered unusual. One explanation for this discrepancy may be that Switzerland has an unusually low voter turnout from a European perspective, despite having proportional representation elections.

Therefore, on average, the voter turnout is slightly higher in countries with proportional representation elections than in countries with majoritarian elections. However, it is still unclear whether this is a *generally applicable causal connection*. Despite more recent reviews of the literature expressing a more cautious attitude towards the effect of PR than earlier research on this topic, certain causal studies indicate that there is some effect from proportional representation electoral systems. There is a great deal to suggest that there was such an effect when the Norwegian Election Act was amended in 1919.

### **3 Degree of proportionality**

The choice between proportional representation elections and majoritarian elections that we have looked at is decisive to the degree of party political proportionality in an electoral system, i.e. the degree of correlation between the support parties receive from voters and the composition of

parties in the parliament. However, party political proportionality also varies *between* PR systems and *within* PR systems over time. A series of institutional reforms have gradually contributed to a general increase in proportionality in Norway (measured using Gallagher's method of least squares) (Aardal 2011). Simply put, these reforms have benefited small parties and disadvantaged large parties. Furthermore, the Norwegian electoral system is still not among the most proportional in Europe. Countries such as the Netherlands and Denmark have higher party political proportionality than Norway while, for example, Italy, Spain and Portugal have significantly lower levels of party political proportionality.<sup>655</sup>

The most important factor for the degree of party political proportionality in PR systems is the size of the constituencies - larger constituencies mean a higher degree of proportionality. In addition, factors such as the design of the electoral threshold system, number of seats at large and method of calculation (including the first divisor) are of importance to the correlation between the distribution of voters and composition of parties in the parliament. These are features of the Norwegian electoral system that are regularly the subject of public debate. Therefore, in this context it is natural to look more closely at how the degree of party political proportionality in an electoral system influences voter turnout. However, before addressing this, it is important to note that the degree of proportionality is not only a function of the institutional framework for conducting elections, but also of the respective election result. For example, whether a party ends up above or below the electoral threshold will influence proportionality at an election. As a consequence, the proportionality of an electoral system may vary within a *stable* institutional framework.

Party political proportionality appears to have an effect on voter turnout that is similar to the significance of proportional representation elections (relative to majoritarian elections). This means that, on average, voter turnout is higher in more proportional electoral systems (Blais and Aarts 2006). Such a finding is not particularly surprising, since the degree of proportionality in an electoral system is partly a function of precisely the distinction between proportional representation elections and majoritarian elections. However, more specific institutional factors that also influence proportionality, such as the size of constituencies, also appear to have a separate effect on voter turnout (Jackman 1987; Powell 1986). Larger constituencies make it easier for small parties to establish themselves in parliament. This increases the correlation between the distribution of votes and the allocation of seats. However, recent research has moderated this conclusion somewhat. Stockemer (2017) found that the size of the constituencies had a positive effect on voter turnout in about half the studies he reviewed.

At the same time, research in the field shows that there is uncertainty relating to both the generalisability of this connection and its attributes as a causal connection. The above-mentioned findings primarily apply to Western countries, while studies that focus on Latin America find no correlation or negative correlations. Furthermore, it is also unclear as to the extent to which there is a causal connection, or whether other underlying factors may explain the correlation between proportionality and voter turnout in Western countries. Blais and Aarts (2006:190) summarized the literature on proportionality and voter turnout as follows:

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<sup>655</sup>See [https://www.tcd.ie/Political\\_Science/people/michael\\_gallagher/EISystems/Docts/ElectionIndices.pdf](https://www.tcd.ie/Political_Science/people/michael_gallagher/EISystems/Docts/ElectionIndices.pdf)



If we confine ourselves to research pertaining to contemporary advanced democracies, there seems to be a consistent pattern: turnout is higher in more proportional systems with higher district magnitude. However, no such pattern appears to emerge in Latin America and the association is much weaker when a larger sample of countries is considered. The impact of electoral systems on turnout is either contingent on other contextual factors or it is much weaker than the initial pioneer studies had led us to think.

There is thus reason to believe that there is a weak positive correlation between proportionality and voter turnout in our part of the world.

## 4 Preferential voting

Preferential voting may contribute to high voter turnout because it increases voter influence. With a preferential voting system, voters can not only influence the balance of power *between* the parties, but also influence which candidates *within* each party are elected. This type of system may also make the election more tangible and personal for voters and thereby stimulate increased participation (Karvonen 2004). On the other hand, it has been argued that the parties have stronger incentives to mobilise voters when they have full control over the candidates on the lists and in what order. This may contribute to reducing voter turnout in systems with preferential voting (Robbins 2010).

There have been relatively few empirical studies conducted of the correlation between preferential elections and (national) voter turnout, and the studies that are available paint an unclear picture of the effect these systems have. Most of the studies that have been carried out show no systematic correlation between preferential voting and voter turnout. Blais and Aarts (2006) demonstrated that voter turnout in countries with proportional representation *and* preferential voting (Finland, Ireland, Luxemburg, the Netherlands, Poland and Switzerland) was almost identical to voter turnout in PR systems with closed lists (Bulgaria, Norway, Portugal, Spain and Romania) (66% versus 67%). Karvonen (2004) arrived at a similar result. He compared the average voter turnout in 75 democracies from 1945 to 1997 and concluded that “all in all, there is not sufficient evidence to support the hypothesis about a positive correlation between preferential voting and electoral participation” (Karvonen 2004:223). Renwick and Pilet (2016) and Mattila (2003) also found no correlation between preferential voting and voter turnout. Like these findings, the evaluation of the pilot scheme of direct elections for mayors in 48 Norwegian municipalities in 2007 concluded that this system did not contribute to higher voter turnout (Christensen and Aars 2008). On the other hand, Robbins (2010) found a negative effect from preferential voting (in addition to the negative effects of other institutional systems that transfer power from the parties to the voters), while a recent causal study from Spain arrived at the opposite result. Sanz (2017) utilised the fact that preferential voting is practiced in Spanish municipalities over a certain size, but not among the smallest municipalities. By comparing municipalities with and without preferential voting (through a so-called *regression discontinuity design*) he found a small positive effect: preferential voting increases voter turnout by 1-2 percentage points.

The removal of candidates is another related topic. Bergh, Christensen, Hellevik and Aars (2009) analysed the effects of reintroducing the removal of candidates at municipal council elections in Norway. They used data from previous elections when this was part of the electoral system to determine the potential effects of reintroducing the removal of candidates. Will reintroducing the removal of candidates influence voter turnout? They found that there is little reason to expect such

an effect. On the one hand, being able to remove candidates was a popular system which many took advantage of. If reintroduced, it could contribute to a generally positive attitude towards the subsequent election which, all else being equal, may have a positive effect on voter turnout. On the other hand, this outcome is highly uncertain, and the authors argued that there is no reason to expect long-term effects. They therefore had little faith in reintroducing the removal of candidates as a means of permanently increasing voter turnout. There is also no reason to believe that the frequency of list corrections will be affected.

## **5 Voter registration, identification papers on election day and availability**

Wolfinger and Rosenstone (1980) documented at an early stage that voter registration has a negative effect on voter turnout. In their analysis of American voters they found an effect of between 5 and 9 percentage points. This correlation has since been confirmed by a number of studies. In his meta-analysis Stockemer (2017) found that non-automatic voter registration negatively correlated with voter turnout in 17 of the 28 models included in the data. In their meta-study, Cancela and Geys (2016) analysed 35 papers which studied voter registration and found a negative correlation with voter turnout in a whole 91% of these studies.

Stricter requirements for identification papers on election day in a number of US states have sparked a great deal of debate among the American public over the past decade. One concern has been that tightening up the laws in this field has negative consequences for voter turnout. However, more recent US studies indicate that the effect of these types of measures is more modest than is often believed. Highton (2017) reviewed US research in the field and argued that earlier studies probably overestimated the magnitude of this effect. He instead highlighted a small group of studies which used a research design suitable for identifying causal effects. These estimated negative effects of between zero and four percentage points in voter turnout (Alvarez, Bailey and Katz 2011; Dropp 2013). However, he also noted that the magnitude of these effects could have been due to the fact that law changes being studied were relatively new, and the long-term effects could outweigh the short-term effects. Furthermore, these types of measures may affect groups differently. A recent study from the US found that strict requirements for identification papers on election day have a particularly negative impact on turnout among minorities (Hajnal, Lajevardi and Nielson 2017). This goes against the objective of voter turnout being equal across groups in society, and such an effect can also have party political consequences.

International research shows that institutional factors that increase accessibility and thus lower the costs of voting are linked to voter turnout. For example, Franklin (2002) found that systems such as postal voting and two-day elections (the option to also vote on a day of rest) contribute to high voter turnout. Gerber, Huber and Hill (2013) analysed the introduction of a so-called "all-mail election" in the US state of Washington. On the one hand, the reform permitted voters to vote from home by being able to place the ballot paper in their own mailbox (or in public mailboxes). On the other hand, public polling stations were removed. They found that this reform increased voter turnout by between two to four percentage points.

However, analyses of the effect of accessibility from a Norwegian perspective have produced more modest results. Christensen, Arnesen, Ødegård and Bergh (2013) analysed the effect of two-day elections in Norway with data from the local government elections in 2011, and found no effect on voter turnout at municipal level. The same applied to Christensen and Midtbø (2001) in

their analysis of voter turnout in Norwegian municipalities at the 1997 parliamentary election. Bergh and Christensen (2012) studied whether the pilot scheme for an e-election in 2011, where voters in 20 Norwegian municipalities were given the option of voting online, was significant to voter turnout in these municipalities. The pilot scheme is relevant because it was an example of a radical increase in accessibility by it being made significantly easier to vote. The pilot scheme did not result in higher voter turnout.

Therefore, the big picture is that there is a link between voter turnout and accessibility, but that we have probably progressed so far in making voting accessible in Norway that there is not much more that can be improved. At the same time, a high level of accessibility is popular with voters, and it is conceivable that reducing accessibility may have a negative effect on voter turnout. The study by Bergh and Saglie (2011) may serve as an example of this. An arrangement was introduced at the Sami parliamentary elections in 2009 whereby people who lived in a municipality where less than 30 people were registered in the Sami Parliament's electoral register could no longer vote on election day. They instead had to vote in advance. In other words, the option of voting on election day was removed, which entailed an actual reduction in accessibility. This measure caused voter turnout to drop by approximately 20 percentage points. If one looks at the Sami parliamentary election in 2009 as an experiment for testing the significance restricting accessibility has on voter turnout, one can therefore conclude that accessibility has an effect.

## **6 Joint election day**

We will now move on to discussing institutional factors that will, with a high degree of certainty, contribute to higher voter turnout. We referred to these as mechanical measures in the introduction. The first measure of this type is to have a joint election day for national and local elections. Elections to the national assembly are often regarded as so-called "first-order elections" that are characterised by major media attention and the election of an executive (national) authority. Local government elections, on the other hand, can be understood as "second-order elections" where the issues that are in focus are not (necessarily) of national importance, and voters are somewhat less motivated to participate (Reif and Schmitt 1980). From a Norwegian context, the overall voter turnout in the post-war period has been approximately 11 per cent lower for municipal council elections than for parliamentary elections, and this difference has been increasing over time. While voter turnout for parliamentary elections has been relatively stable, voter turnout for municipal council elections has been decreasing since the start of the 1960s (Aardal 2002). If we compare the municipal council elections in 2015 with the 2017 parliamentary election, there was an 18 percentage point difference in voter turnout.

With a joint election day, the interest in national elections would most probably result in increased voter turnout for local government elections. Cancela and Geys (2016) found support for this assumption in their meta-study. Virtually all of the studies they looked at in their work found that a system for a joint election day contributed to increased voter turnout at local government elections. Two examples from Scandinavia can illustrate this point. In Denmark – where the executive authority can call a new parliamentary election at any time within a four-year period – municipal council elections were held at the same time as the parliamentary election in 2001. In that year, voter turnout was approximately 15 percentage points higher than the average turnout for municipal council elections in Denmark (Elklit, Svensson and Togeby 2007). In Sweden, a system with a joint election day for all elections was introduced in 1970. Experiences from Sweden clearly show

that this type of system reduces the “turnout gap” between national and local elections (SOU 2001:65).

However, the literature pertaining to joint election days not only relates to the increase in voter turnout that such a system will produce, but also the consequences for political engagement and involvement in local politics. One particular concern highlighted in both the Swedish evaluation of joint election days (SOU 2001:65) and by the previous Norwegian Election Act Commission (NOU 2001: 3), was whether the interest in local government elections and the issues that are of central importance in these types of elections would be overshadowed by the interest in the national election. The Norwegian Election Act Commission placed a great deal of emphasis on this concern. The Commission recommended that parliamentary elections remain separate from municipal council and county council elections in order to “contribute to the specific priorities in local politics being clearly presented, and thus focussing on the priorities that are of importance to voters at a local level.” Therefore, a strong argument can be made for considering other measures for increasing voter turnout than the actual date of the election (Official Norwegian Report (NOU) 2001: 3, 122)”. From a Swedish perspective, it was argued that, despite having separate election days, Norwegian local politics was still so completely dominated by national political issues that there was little to lose in introducing a joint election day. With references to Norwegian experiences, it was concluded that “[even] in a system with separate election days, the national political arena will still dominate the local arena” (SOU 2001:65, 98).

On the whole, recent research into local Norwegian democracy paints a picture of Norwegian local politics that has little in common with the Swedish description of Norwegian conditions. Based on a review of all six local democracy surveys from 1995 to 2015, Bjørklund (2017) found that local issues play a bigger role in the electorate's choice of party than national political issues, and he found that the election campaign in each municipality was characterised more by local politics than national political issues. He also showed that the importance of local issues to both the reasons voters had for electing a party and the focus of election campaigns had strengthened over time. Furthermore, we know that welfare issues – where municipalities play an important role as both the producer and provider of welfare services – often dominate Norwegian elections, and especially in local government elections (Bergh and Karlsen 2017). Finally, research shows that local newspapers are an essential source of information about the political situation in Norwegian municipalities; both as a source for political issues and as a source of information about the candidates standing for election (Karlsen 2017). Even though national politics of course plays a significant role in Norwegian local government elections, voter enthusiasm for and interest in Norwegian local politics is, in other words, also *locally* based. Therefore, while introducing a joint election day may result in a higher voter turnout for local government elections, it may also weaken engagement and involvement in local politics because national politics would become more dominant.

## 7 Compulsory voting

Finally, we will look more closely at another so-called mechanical measure for increasing voter turnout, i.e. compulsory voting. Compulsory voting entails giving citizens a statutory duty to participate in elections (which must not be confused with a duty to vote for one of the parties standing for election) (Birch 2009). While it is a trend that an increasing number of countries are introducing preferential voting, the development in the use of compulsory voting is moving in the opposite direction. Countries such as Italy, the Netherlands, Chile and some regions of Austria have all moved away from this system. Compulsory voting is currently practiced in 27 countries in the

world. The majority of these countries are located in Latin and Central America, but the system is also practiced in European countries such as Belgium, Bulgaria, Cyprus, Liechtenstein and Luxembourg. Varying degrees of penalties for not voting are imposed on citizens of countries with compulsory voting. In some of these countries, there are no consequences if one does not vote. However, the most common penalty is fines, and in countries such as Belgium, Peru and Uruguay, citizens risk more far-reaching penalties if they abstain from voting (Birch 2009).<sup>656</sup>

Compulsory voting undoubtedly contributes to higher voter turnout. *The International Institute for Democracy and Electoral Assistance* (International IDEA) has calculated that the average difference in voter turnout between countries with compulsory voting (including both countries with and without penalties for not voting) and countries without compulsory voting is 7.4 percentage points. Most comparative studies in the field find effects of between 5 and 10 percentage points (for example, Blais and Dobrzynska 1998). Recently published literature reviews confirm this correlation (Cancela and Geys 2016; Stockemer 2017). However, there are major variations in voter turnout within the group of countries with compulsory voting. While voter turnout in a country with strict penalties for not voting such as Belgium has traditionally been above 90%, voter turnout in a country like Paraguay, where citizens are aware that there is no penalty for not voting, is below 70% (Dassonneville, Hooghe and Miller 2017).

Supporters of compulsory voting emphasise the fact that increased voter turnout often leads to more equal voter turnout across (socioeconomic) groups, and thus more equal political influence (Lijphart 1997). A number of empirical studies confirm that voter turnout is less socially stratified in countries with compulsory voting than in countries without compulsory voting (for example Dassonneville, Hooghe and Miller 2017; Singh 2015). This means that the differences in voter turnout between, for example, high and low-educated groups – as well as differences along other social and political stratification variables that predicate turnout – are *lower* in systems that practice compulsory voting than in countries where voting is voluntary. In other words, compulsory voting creates greater equality in terms of voter participation. At the same time, there is reason to note that this equality is achieved through a system that deprives citizens of the right to abstain from voting in elections, which many consider to be a fundamental democratic right (for example Abraham 1955).

Therefore, what consequences will such a change in the composition of the electorate have for the overall knowledge and enthusiasm for politics among voters? There is a comprehensive volume of literature that has studied whether compulsory voting has positive effects on voter knowledge, and enthusiasm for and involvement in politics (Dassonneville, Hooghe and Miller 2017; Loewen, Milner and Hicks 2008; Selb and Lachat 2009; Sheppard 2015; Shineman 2018). On the one hand, it may be the case that a duty to vote stimulates voters into becoming more engaged in political issues and thus increases both political interest and political knowledge among the electorate. On the other hand, these types of positive ripple effects of (mandatory) voting are not necessary. Instead, it may be the case that a system of compulsory voting essentially forces unmotivated voters to vote against their will, without this changing their attitude towards politics. If so, the proportion of unmotivated/uninformed voters (of the total electorate) will increase on election day.

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<sup>656</sup>See also <https://www.idea.int/data-tools/data/voter-turnout/compulsory-voting>

On the whole, the research paints a disparate picture of the effects compulsory voting has on voter knowledge and enthusiasm for politics. On the one hand, there are studies that find negative effects of compulsory voting. In their study of Belgian voters, Selb and Lachat (2009) found that politically disinterested voters who are forced to vote rarely vote in line with their own political preferences. They therefore concluded that “claims that CV promotes equal representation of political interests are therefore questionable”. Another group of studies found no (significant) effects of compulsory voting (Dassonneville, Hooghe and Miller 2017; Loewen, Milner and Hicks 2008). The study conducted by Bergh (2013) of the pilot scheme for 16 year-olds being granted the right to vote in 20 Norwegian municipalities in 2011 is especially worth noting. 16 and 17-year olds in the municipalities that were part of the pilot scheme were permitted to vote, while the same age group in the rest of country was not permitted to vote. This made it possible to study the effect of voting on interest, enthusiasm and understanding of politics. The results showed that the pilot scheme had no positive effect on these factors.

However, a final group of studies found positive effects relating to compulsory voting (Gordon and Segura 1997; Sheppard 2015). Of particular interest is the study by Shineman (2018). She conducted an experiment among convicted persons in the USA, a group with very low voter turnout. The experiment group was paid to vote, and (not surprisingly) this resulted in a strong increase in voter turnout. No further requirements were set for the experiment group other than casting a vote. However, it transpired that the former convicted persons who voted also spent time following the election campaign and familiarising themselves with political issues. Voting thus resulted in them becoming more informed about politics.

Finally, it is worth noting that the literature on the ripple effects compulsory voting has for political involvement and knowledge consists of studies that examine overlapping, but nevertheless distinct, dependent variables. While some contributions study the effect of compulsory voting on voters' political (factual) knowledge (for example Loewen, Milner and Hicks 2008; Sheppard 2015), other studies focus on the ability of voters to vote in line with their own political preferences (for example, Dassonneville, Hooghe and Miller 2017; Selb and Lachat 2009). One must therefore exhibit caution when comparing results across studies. All in all, the conclusion must be that by depriving citizens of their right to abstain from voting, compulsory voting undoubtedly contributes to increased voter turnout. However, it remains unclear as to whether this type of system contributes to achieving greater enthusiasm for and knowledge about the political system of governance.

## 8 Conclusion

Overall voter turnout is always the result of a number of different factors. The individual characteristics of voters, the social and political context in which the election is held, and the institutional framework for conducting elections are important for the overall level of voter turnout. The factor that is probably of most importance to voter turnout is policy content. Voters must feel that their vote is important, such as in instances in which the outcome of the election is uncertain. Furthermore, we know that financial and cognitive resources, social integration and political interest are factors at an individual level that are of key importance to turnout. Because there is no single factor that determines the level of participation, there is thus little reason to believe that an amendment to the Election Act alone would have decisive consequences for voter turnout. However, in this memo we have still seen that institutional factors can have a certain effect on voter turnout. PR systems, a high degree of proportionality, the absence of voter registration and high level of accessibility are associated with somewhat higher voter turnout. We have also seen that there is a

high degree of certainty that measures such as a joint election day for national and local government elections and compulsory voting will result in higher voter turnout. However, it is unclear whether these types of mechanical measures will contribute to achieving increased political involvement among the population.

Finally, there is reason to note that, perhaps more important than the individual elements of the electoral system, is the system's overall legitimacy. Legitimacy is directly linked to voter turnout, and if citizens do not perceive the election process to be fair, voter turnout decreases (Birch 2010; Hooghe 2018). In addition, the legitimacy of the electoral system may have political consequences beyond election participation. The general rule is that conducting elections in democracies results in increased trust in the representative form of government (Van der Meer 2017). An electoral system that is perceived as illegitimate can spread distrust and may also have negative consequences for the legitimacy of other parts of the political system (Craig, Martinez, Gainous and Kane 2006; Nicholson and Howard 2003).

Electoral systems constitute fixed framework conditions for the conduct of elections. At the same time, they are also the result of changes over time and political compromises. This also applies to the Norwegian electoral system. It has been revised at regular intervals, and most recently in 2003. Over time, Norwegian voters have exhibited a high degree of trust in elections being conducted in the correct manner. Data from the 2013 Election Survey shows that only a very small group (4%) was critical of the election process. In other words, the manner in which elections are conducted in Norway contributes to a high level of trust in the political system.

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## Appendix 6.

### Security in democratic processes in Norway

#### Report – the election process

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*Proactima AS*

## 1 Summary

In June 2017, the Government appointed an Election Act Commission to establish proposals for a new Election Act and to assess the electoral system. In order to strengthen the knowledge base concerning security in democratic processes in Norway, as well as to strengthen efforts to produce an Election Act that also ensures there is a high level of trust in the population, Proactima AS has prepared a report on assignment from the Election Act Commission. The report focuses on threats to democratic processes that relate to political influence campaigns and the actual conduct of elections, vulnerabilities in the digital value chain, consequences from use of technology in the election process, connection to the rules and regulation, and on measures that may contribute to improving security.

The report has a systematic approach based on methodology for a risk and vulnerability analysis at an overarching level. In addition to experience-based assessments, a review was conducted of literature, articles and news, as well as work meetings and interviews with the Ministry of Local Government and Modernisation, Directorate of Elections, Election Act Commission, election officials and a selection of municipalities and with Microsoft.

An overall assessment was conducted of the threats and hostile actors, and 20 phenomena/events were selected as a basis for assessing the need for different forms of security

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measures. For each of these, the report has examined the probability of the event occurring through assessments of threats and methods, as well as of barriers and vulnerabilities. Consequences are evaluated in relation to five requirements for democratic elections that are defined in the report:

- *Free participation* – That all candidates for the election and voters have and receive access to participate by the process being perceived as safe and possible - and that the election is secret.
- *Enlightened and informed* – That voters receive enough information, correct information and balanced information that enables them to make an "informed choice" (vote).
- *Correct* – That the votes cast actually constitute the result. Correct electoral register, correct registration, correct number of votes
- *Conducted in line with plan* – That the election is actually able to be held (and is not prevented by sabotage, natural events, system errors or organisational deficiencies).
- *Trust* – That trust in the democratic election process among the population is maintained (including verifiability and transparency).

In addition, the dimensions have strength of knowledge, i.e. knowledge of the phenomenon and pace of change associated with changes in the future have been assessed in relation to influencing risk.

The assessments demonstrate that the greatest risk associated with the democratic election process relates to the influence of candidates and voters prior to election proceedings. Characteristic of many of the phenomena in these areas is that there is limited knowledge of the phenomena and the effects that these may have. There is also a high pace of change. This is not only an expression of rapid technological and cultural development, particularly within data analysis and communication, but also of a continually changing threat landscape, both nationally and internationally.

One phenomenon that strongly contributes towards risk is micro-targeting of information. The use of algorithms, machine learning and artificial intelligence makes highly sensitive information about voters available. This information can be used to target information for the purpose of influencing voters in the direction desired by a (hostile) actor, without voters themselves being aware of it.

Events of a more technical nature that relate to the digital value chain have been consistently found to contribute less to risk than influencing events. Despite the extensive and robust protection of, for example, the election administration system (EVA), there are vulnerabilities in the digital value chain that are linked to technological changes, complexity, challenges with expertise and long value chains. However, the principal reason for why the overall risk is considered limited in this area is that there is still wide-spread use of manual processes when conducting elections which ensure controls and redundancy. For example, this applies to identifying voters and the casting of ballots, and the required manual counting of ballots

The report also shows that reduced trust in elections, authorities and democracy is the dominant consequence of such events. Almost all of all phenomena/events will have a negative impact on the trust dimension. Characteristic of trust is also that fact that an attack does not necessarily have to succeed in order for trust to be eroded. Furthermore, increasing threats and risks associated with voter influence, especially through the use of digital tools and social media, can have major

consequences for how enlightened and informed voters are (the basis for genuine elections) and the free participation for both candidates and voters.

The least affected element at present is elections being conducted correctly, and this is again due to the manual processes in the election process. However, this is an area that may require the introduction of significant security measures in the future to prevent increased risk if the present-day manual processes are also digitised.

To ensure the security of democratic processes relating to elections, it is recommended that the following regulatory measures are also considered in the future:

- *Regulation of security requirements for the conduct of elections for regional and local actors*
- *Establishment of legal basis to supervise security regulations for elections.*
- *Assess the relevance of the Security Act for the election process.*
- *Assess and clarify changes in roles and responsibilities/authority between local and central actors in the election process to safeguard requirements and controls if security requirements are regulated and a supervisory authority is created.*
- *Legislate requirements for authorities at all levels of the election process having to use digital infrastructure and software from the central electoral authorities (EVA).*
- *Establish an emergency preparedness provision in the election legislation.*
- *Continue regulatory requirements for two independent counts of the votes after elections.*
- *Assess the need for regulating the use of micro-targeting as a tool in election campaigns.*
- *Establish/clarify the legal basis for penalising hacking and attempted hacking of election systems.*

In addition, the report provides suggestions for other possible measures which are focussed, for example, on future studies, support schemes for parties and editor-controlled media, technological measures and barriers and the development of knowledge and a robust society.

## **2 Description of the assignment**

### **2.1 Background**

In June 2017, the Government appointed an Election Act Commission to establish proposals for a new Election Act and to assess the electoral system. The Commission has a broad mandate and will examine all aspects of the election process (Norwegian Government, 2017). The mandate states that the Commission's work shall ensure “continued high confidence in the electoral system and the conduct of elections in the future”.

The mandate further emphasises that “The Commission shall base its work on research and empirical knowledge and shall contribute to increased understanding of democracy and elections.” and that “The Commission may request special in-depth information and/or investigations in individual areas.”

In autumn 2018, the Secretariat of the Election Act Commission requested a report on “security in democratic processes in Norway”. The report was awarded to Proactima AS, with support from subcontractors Netsecurity AS and Aeger Group AS.

The Election Act Commission has requested a report that investigates various threats to democratic process in connection with the conduct of elections in Norway. Cybersecurity and risks associated with the increased use of technology in the election process must be a key part of the analysis. The Election Law Commission also requested that the report describes the consequences that the threats and risks may have for trust in the electoral system and to advise on how central and local electoral authorities can best address these challenges in a prudent manner.

The Election Act Commission emphasised that the legitimacy of democracy depends on the people who are elected representing the will of the people and elections being conducted properly and in a manner that inspires confidence.

As a background to the assignment, the Election Act Commission stated the following:

There is now extensive use of technology in the election process. This ensures that elections are conducted efficiently, but also has consequences for security and can impact on trust in elections. The use of technology brings with it risks associated with the digital value chains. In some areas this may be simple to manage and the risk can be tolerated, while in other areas, stronger security requirements will need to be set. A particular challenge in this area is that it is not only actual breaches of security that could lead to an erosion of trust. If someone is able to prove that they can gain (or have gained) unauthorised access to the system, this may be enough to destroy trust in the system.

The use of digital technology when conducting elections varies between different countries. While many countries are very conservative and use manual solutions, there are other countries that have digitised much of the election process and that conduct elections via the internet. Estonia is an example of the latter. In Norway we use a digital election administration system known as EVA to support elections for municipal councils, county councils and the Storting, however voting still takes place manually. Pilot schemes for e-elections were carried out in 2011 and 2013, but were not continued as part of the electoral system after the pilot schemes were concluded.

There has been a great deal of attention relating to cybersecurity and influence operations linked to elections in recent years, including in the United States, France and Sweden. When combined with private companies contributing to influence campaigns, something that was exemplified by the Cambridge Analytica scandal and the hacking of servers, this demonstrates that trust in fair and transparent democratic processes and elections in digitised societies is being challenged. Digital vulnerabilities and cyber attacks as a political means of exerting pressure are also considered a genuine threat here in Norway. This was confirmed by the Norwegian Intelligence Service in their report Fokus 2018 (Focus 2018), which describes the sustained intelligence activities carried out against Norway and an escalation in Russian influence activity against democratic processes and public opinion. They also identified the continued development of capacities for digital sabotage.

Transparency has been an important cornerstone of the election process in Norway and an important prerequisite for the high level of confidence. In Norway, much of the responsibility for the election process is decentralised. The municipalities have the greatest responsibility for the practical implementation, since most of this work is done by the electoral committee in the municipality. All the electoral committee's meetings are open, including meetings where the

counting of ballots takes place. This facilitates good control at local level, from both local media and the population. The local responsibility also means that digital solutions must be adapted to local needs.

## 2.2 Purpose

The purpose of the report is to highlight security issues relating to elections and that are relevant to the assessments that the Election Act Commission shall conduct in its work. The Election Act Commission further stated that:

An important objective of the report is to strengthen the knowledge base for security in connection with the democratic processes in Norway. This concerns both political influence campaigns and the actual conduct of elections. This will provide the Election Act Commission with the necessary knowledge and understanding of the current situation, and assist in strengthening efforts to formulate a new Election Act that ensures a democratic, secure and accountable electoral system both now and in the future. The assignment shall also contribute to greater insight and understanding into how the need for security and emergency preparedness measures impact on transparency, division of responsibilities and the regulatory framework.

The report shall shed light on aspects of security in the democratic processes in Norway in connection with the conduct of elections. It shall contribute to strengthen efforts to produce an Election Act that also ensures there is a high level of trust in the population.

The report shall identify and assess threats, vulnerabilities and risk associated with the conduct of elections, including prior to elections, and measures and activities shall be recommended that can address the identified risk and safeguard the democratic processes.

The terms of reference summarise the four research questions that need to be answered in the report:

1. What are the threats to democratic processes in connection with the conduct of elections in Norway? This includes political processes and the influencing of opinions prior to elections, as well as practical implementation of the election itself. Both the possibility of different types of attacks and unintended events that may have an impact on the implementation of the election must be highlighted. The threats must be described both with regard to their probability and consequences, as well as any impact they may have on trust in the democratic system.
2. How are vulnerabilities spread along the digital value chain when conducting elections? Out of consideration to the scope of the assignment, this part of the assignment must be limited to a more general overview. It will be appropriate to show what responsibilities the different actors have for the different parts of the value chain, as well as their ability to check compliance with the rules and to ensure compliance.
3. What societal consequences does the use of technology have for the election process? The provider is requested to highlight and discuss the consequences technology and protection of the digital value chains have for the distribution of responsibilities between different levels. The State now issues guidelines for the design of the system, but is limited in its ability to set technical requirements. An assessment is also requested of the connection to rules and regulations. Finally, an assessment is also requested regarding transparency and how this is properly ensured, while at the same time safeguarding security requirements.

4. What measures for preventing and remedying damage should be implemented in order to protect democratic processes in connection with the conduct of elections in Norway? The provider is requested to present suggestions for possible measures that may contribute to enhancing the security of the democratic process in Norway.

## **2.3 Delimitations**

The report was prepared from November 2018 until March 2019 and is a rough study that is intended to serve as supporting documentation to the work of the Election Act Commission relating to security in democratic processes. The purpose was to identify areas that are important for the Election Act Commission to consider in their continued work. The report focuses on security elements that are relevant for safeguarding democratic processes and therefore does not cover all aspects involved in safeguarding democratic values and principles in society, or in connection with elections.

By agreement with the client, the focus of the report was restricted to activities relating to parliamentary elections. These elections are considered to cover many of the most relevant elements, and the assessment will, on the whole, also be relevant to election processes in Norway in general. It was also agreed to focus on the period with a direct connection to the conduct of elections and not the periods between elections.

Methodology for risk assessments was used in the report to ensure a systematic and structured review of the relevant areas. The assessments identify and highlight areas that are considered to be of high risk and importance to the safe and secure conduct of elections in Norway. Areas that the Election Act Commission should take into consideration under their mandate are also recommended, as well as certain measures that should be implemented and/or considered by the authorities from a longer term perspective. However, the report does not address whether the risk can be accepted and whether recommended measures or regulation should be implemented. It will be the responsibility of the authorities to assess and decide on this.

Conclusions and recommendations will include important elements that Proactima feels should form the basis for and be taken into consideration in connection with the regulatory framework and regulatory amendments, and for assigning roles and responsibilities in the processes. However, the report will not include recommendations for specific regulatory requirements or legal assessments concerning the development of the regulations.

Descriptions of systems and vulnerabilities, especially in the digital value chain, have been kept at a general level. This is based not only on an assessment of the appropriateness for the work of the Election Act Commission and restrictions on the time and scope of the report, but also to achieve the prerequisite of the report being able to be used publicly and that it does not contain classified information or information that should not be disclosed.

## **3 The system being assessed**

### **3.1 Democracy and democratic values**

Democracy must be separated from other desirable societal goals such as peace, human rights, religious freedom, stability and property rights. Some human rights are necessary in order to have democracy, such as freedom of expression and freedom of organisation and assembly, however



they do not define democracy (Berghagen, 2009). Other societal goals can often be the result of well-ordered democracies, such as peace and greater equality, but it is still other phenomena that we strictly define as democracy.

A broadly entrenched understanding of what defines democracy as a form of government is that democracy sets rules for sharing the burdens and benefits in society, and that those who are assigned responsibility for making the decisions are elected from, can be regularly replaced by and are accountable to the members of society (Rose, 2009). When applying this understanding, elections play an absolutely vital role in safeguarding democracy.

One of the great, more recent democracy theorist, Robert A. Dahl, identified five key criteria as standards for an ideal democracy. It will be difficult to fully live up to each of these criteria in practice. However, they represent ideal aspirations, and if these are more or less absent, democracy could be said to be imperfect:

1. Voting equality at the decisive stage
2. Control of the agenda
3. Enlightened understanding
4. Effective participation
5. Inclusiveness

Criteria 1 and 5 reflect the requirement that all competent members are potential participants and stand on an equal footing. Ideally, no person shall, by virtue of inherited status, education or income, be entitled to more influence than the average man and woman.

Control of the agenda means that there is no one above the democratic assembly who is filtering what is appropriate for democracy. This shall also be part of democratic self-determination - power binding must be self-imposed.

In reality, the third and fourth criteria involve rather strict requirements for social order in terms of enabling citizens to be fully fledged members of the democracy. Enlightened understanding requires education and expertise for understanding what the various alternatives in an election entail, while genuine participation on an equal footing requires societal infrastructure where there is open access to joint communication platforms, and where it is possible to communicate one's opinions to the other members of the democracy. The strong wording of the appurtenant article in the Constitution of Norway pertaining to freedom of expression (Article 100, paragraph six): "*The authorities of the state shall create conditions that facilitate open and enlightened public discourse*", can be viewed based on this final fundamental, democratic requirement.

Well-functioning social systems with relatively high levels of socio-economic equality and institutional trust and where there is a strong civic spirit, clearly have better prerequisites for defending and further developing a democratic form of society (Kymlicka, 2001; Galston 1991; Pogge, 2008). Together with the other Scandinavian countries, Norway is well positioned in these areas. Trust in fellow citizens and political institutions is very high in comparative terms (Den Europeiske Union, 2018; Wollebæk, 2011); as is the socioeconomic equality. These societal prerequisites are perhaps the most important protection against the identified threats to democracy because they entail that attempted destructive activities will not only encounter institutional resistance, but also

expected and widespread resistance from citizens. American historian Timothy Snyder claims that the latter is the most important democratic value for combating tyranny (Snyder, 2017).

## Democratic models

Based on the widespread common understanding of what constitutes democracy, different traditions emerge that place a different emphasis on what considerations are the most important in democracy. There are three traditions in particular that set the tone for discussions on how democracy can best be preserved, strengthened and further developed: a) competitive democracy, b) participatory democracy, and c) deliberative democracy (Shorten, 2015; Rasch, 2007).

- a. Competitive democracy, which is also referred to as the aggregative or liberal model of democracy, envisions society as consisting of competing elites who more or less hold each other in check (Schumpeter, 1952). Democracy is essentially about replacing an elite group when they have no longer proven themselves worthy of this trust. In this tradition, knowledge is an important prerequisite for a well-functioning democracy, and because one observes that ordinary people often lack updated knowledge of many social issues, this tradition is not as concerned about increasing voter participation in-between elections when compared with the other democratic traditions. Essentially, the mindset is that many questions are best left to those who know the most about these (cf. Brennan, 2016). Within this tradition, one has historically had a clear glimpse of how institutional solutions ensure the division of power and the democratic element that is given overwhelming priority is safeguarding the actual elections.
- b. Participatory democracy, which is also referred to as a republican model of democracy, has a wider view of what is important in democracy (Pettit, 2014; Skinner, 1978; Pateman 1970). Democracy involves much more than the actual election proceedings. It is about citizens caring about and engaging in the fabric of society in their daily lives. Democracy has an element of lifestyle, and, from this perspective, having freedom in one's life also requires that one's political freedom is used to be involved in how societal conditions are formed. If one does not do this, then there will be others who, in practice, will decide on one's behalf and one's freedom will therefore be curtailed (Taylor, 1991). Community and collective orientation constitute a prerequisite for this thinking, but without it implying that, within this tradition, one conceptually belongs to the right or, perhaps especially, to the left of politics.
- c. Deliberative democracy focusses on how the democratic decisions are made so that they are sensible and a consequence of argumentative deliberation in which the impacted parties have been able to speak (Habermas, 1996; Gutmann and Thompson, 2004). German sociologist and philosopher Jürgen Habermas' characteristic understanding was that this is about the power of the best argument (Habermas, 1996). From this perspective, democratic decisions must not be an expression of the will of the majority, but rather the will of the majority that has, so to speak, been subject to quality control through a preceding debate. In this debate, the different opinions are tested by their arguments being subject to critical scrutiny. This understanding of democracy entails that the public, or the public sphere, plays an important role in key issues being debated and that the debate influences the decision-makers. The democracy's common discourse takes place in public. The forums where decisions are made, the formation of will in Habermas' terminology, must therefore be linked to this common discourse. In other words, the sphere for the formation of will (decision-making level), should have channels not only to affected parties, but also to groups that can present compelling arguments.

The media is assigned a key role as a mediator between the spheres for the formation of opinion and will.

In practice, any democracy will have elements of all three of these understandings or models, and, at the point at which these intersect, preparation, implementation and follow-up of elections will be a very important part of safeguarding the democratic values. The objective of the Election Act is to facilitate "*free, direct and secret elections*". In the assignment relating to this report, the Election Act Commission also emphasised that "*The legitimacy of democracy is dependent on the people who are elected representing the will of the people and elections being conducted properly and in a way that inspires confidence*". Security in the election process is important for safeguarding several of the democratic principles (but not all). In the report, we have chosen to focus on five characteristics of the election process that are important for safeguarding democratic principles - and which may be impacted by threats, if election security is inadequate.

- *Free participation* – That all candidates for the election and voters have and receive access to participate by the process being perceived as safe and possible - and that the election is secret.
- *Enlightened and informed* – That voters receive enough information, correct information and balanced information that enables them to make an "informed choice" (vote).
- *Correct* – That the votes cast actually constitute the result. Correct electoral register, correct registration, correct number of votes.
- *Conducted in line with plan* – That the election is actually able to be held (and is not prevented by sabotage, natural events, system errors or organisational deficiencies).
- *Trust* – That trust in the democratic election process among the population is maintained (including verifiability and transparency).

### **3.2 Overall description of system - elections**

Figure 6.1 shows a simplified overview of the system that is assessed in this report. The purpose is to provide a general overview of relevant phases, threats, actors and systems/elements in the election process, and that are considered and assessed in this work. The principle outline has generally been used as a basis for the considerations in the report and has formed the basis for identifying and assessing risk.

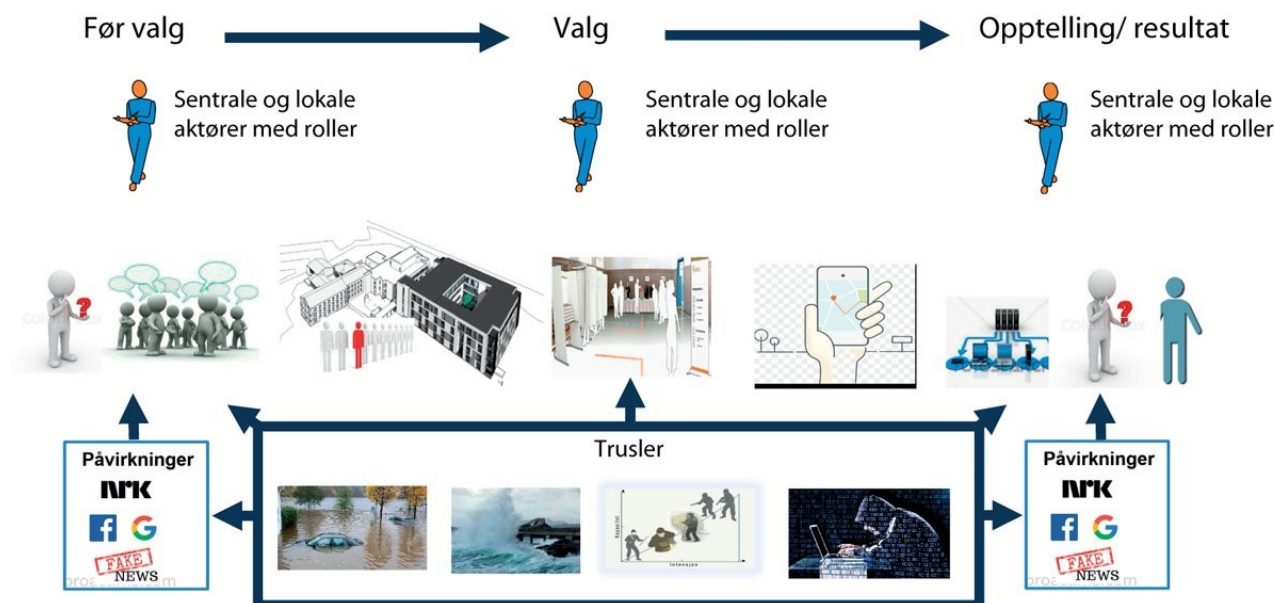


Figure 6.1 General principle outline – system

The principle outline is divided into three main phases: 1) before the election, 2) the voting process, and 3) counting/determining the election result and publication of the result. Each of these phases contains several actors, elements, and activities, for example:

Before the election:

- The parties and candidates stand for election (lists).
- Voters decide who to vote for.
- The electoral register is checked and retrieved.
- Systems and materials are set up and prepared.

During the election:

- Receiving of early votes and advance votes.
- Checks against the electoral register.
- Checks and voting at polling stations on the election day(s).
- Preparing for counting.

After the election:

- Preliminary counting, final counting and control counting of votes (manually and possibly electronically).
- Election result.
- Publication of result.
- Approval of election.

The various elements are described in more detail in the report.

There are different threats and hostile actors for each of the phases. Some threats are intentional, i.e. there is a hostile actor who deliberately tries to "attack" the election. This may be, for example, by influencing voters to vote differently than they otherwise would have. Here one can differentiate

between legitimate and illegitimate influence. A political party which is attempting to convince voters to vote for their party through open debate is an example of legitimate influence. However, if someone secretly tries to influence voters through, for example, targeted messages that are more or less true, the influence will not have this legitimacy. Attempting to influence the count so that the result will not be correct is undoubtedly illegitimate. Other threats against the election are unintentional, i.e. not done deliberately. Examples include an election worker pressing the wrong key on a computer or voters not being able to participate in the election due to weather conditions or fire.

The various threats will threaten various elements and parts of the system described in the Figure. The elements may be processes and central or local actors, they may be aimed directly at candidates or voters, or focus on digital systems or polling stations.

The report focuses on what are considered to be the most relevant threats to security in the election process, how these can threaten values that are important for safeguarding elections, and in what manner. Barriers and vulnerabilities related to these values, as well as effects in different areas if the threats are realised are considered. This enables us to determine how critical (consequences and associated probability) different phenomena and events are for the democratic election processes.

### 3.3 The election process

The Norwegian electoral system is based on principles of direct elections and proportional representation elections in multi-member constituencies, where both political parties and other groups can submit lists for the elections.

For parliamentary elections, the country is divided into constituencies which correspond to the counties, including the City of Oslo, which is a separate county. Members of the municipal council and county council are elected at municipal and county council elections, where each of the municipalities and each county represent a constituency. The term of office for all of these elections is four years and the municipal and county council elections are held at the same time between two parliamentary elections. Election day is set on a Monday in the first two weeks of September in the election year.

Requirements for the conduct of elections are stipulated in the Election Act (Ministry of Local Government and Modernisation, 2002), and further provisions issued through regulations. The purpose of the Election Act is to *“establish such conditions that citizens shall be able to elect their representatives to the Storting, county councils and municipal councils by means of a secret ballot in free and direct elections”*. A number of other laws and regulations also apply for elections, including the Public Administration Act, Freedom of Information Act, Norwegian Penal Code, Alcohol Act and Regulations relating to official flag days.

In Figure 6.2, the Norwegian Directorate of Elections summarises the principal responsibilities and tasks associated with the election process:

Roller i valggjennomføringen		
<b>Kommuner og fylkeskommuner</b>  <b>Valggjennomføring</b> <ul style="list-style-type: none"> <li>• Forberede valg</li> <li>• Stemmegivning</li> <li>• Opptelling og oppgjør</li> <li>• Innrapportering av valgresultater</li> </ul> <ul style="list-style-type: none"> <li>• Evaluere og forbedre valggjennomføringen</li> </ul>	<b>Valgdirektoratet</b>  <b>Støtte til valggjennomføring</b> <ul style="list-style-type: none"> <li>• Forberede valg</li> <li>• Tilrettelegge for stemmegivning</li> <li>• Tilrettelegge for opptelling og oppgjør</li> <li>• Tilgjengeliggjøre valgresultater og prognoser</li> </ul> <ul style="list-style-type: none"> <li>• Veilede i lov- og forskriftsforståelse</li> <li>• Forarbeid til lov- og forskriftsendringer</li> </ul> <ul style="list-style-type: none"> <li>• Evaluere og forbedre valggjennomføringen</li> <li>• Forvalte tilskuddsordning(er)</li> </ul>	<b>Kommunal- og moderniseringsdepartementet</b>  <b>Regulverksforvaltning</b> <ul style="list-style-type: none"> <li>• Lov- og forskriftsendring</li> </ul> <b>Valggjennomføring</b> <ul style="list-style-type: none"> <li>• Evaluere valggjennomføringen</li> </ul> <b>Myndighetsutøvelse</b> <ul style="list-style-type: none"> <li>• Klagebehandling</li> <li>• Valgobservasjon</li> </ul> <b>Sekretariat for Riksvalgstyret</b>

Figure 6.2 Roles during the election process

Source: The Norwegian Directorate of Elections - reproduced with permission

In addition, the Storting has a role as both legislator and the body that approves elections.

Primary responsibility for conducting elections is with the individual municipalities. The Norwegian Directorate of Elections provides guidance and training in conducting elections, in the use of the election systems (EVA), and to election officials in the municipalities. Use of the election systems (EVA) is not a statutory requirement. The municipalities and county authorities configure and secure the computer environments in which the local systems (EVA Scanning) are operated, and the municipalities themselves are responsible for training their election workers.

The actual conduct of the election is roughly divided into four phases: preparation, voting, counting and determining the election result. Voting covers the earliest voting period (1 July – 9 August), the advance voting period (10 August – Friday before election day (September 6, 2019)) and the election day(s) in September.

The municipalities' electoral registers are displayed in hardcopy form during June of the election year to enable the information to be checked by citizens themselves.

When a voter casts a vote, he/she is crossed off in the electronic electoral register or hardcopy electoral register, depending on what is used by the municipality. Votes are cast on paper ballots and are placed in a ballot box at the polling station.

When the polling station closes, the polling committee checks that the content of the ballot box is correct by checking that the number of ballot papers matches the number of names crossed off in the electoral register and by sorting between ordinary ballots and those that will require subsequent extra processing.

The electoral committee is responsible for the preliminary count and final count in the municipalities. The preliminary count is carried out manually in all municipalities. When the preliminary count has been approved, the final count can be carried out. The electoral committee is also responsible for this. The final count can either be conducted manually (like the preliminary count), or by machine through the use of scanners.

The county electoral committee is responsible for checking all ballot papers and checking all minute books from all municipalities in the county authority. The county electoral committee conducts another control count of all ballot papers and compares the result with the results from the electoral committees.

For parliamentary elections, it is the Storting's credentials committee that finally reviews all protocols and minute books and evaluates the validity of the election (approves the election).

### 3.4 The digital value chain

In Norway, a digital election administration system known as EVA is used to support elections to municipal councils, county councils and the Storting, however voting still takes place manually. EVA is developed, operated and secured by the Norwegian Directorate of Elections, while the data environments the locally connected systems operate in are configured and secured by the municipalities and county councils. When conducting elections in municipalities and county authorities, EVA provides administrative support during all four phases referred to above, (see Figure 6.3).



Figure 6.3 Conducting elections with EVA

Source: The Norwegian Directorate of Elections - reproduced with permission

EVA consists of three primary applications: EVA Admin, EVA Scanning, and EVA Result. EVA Admin is a standard web application that is centrally operated and administered by the Norwegian Directorate of Elections, and is made available through a web browser on municipal or county authority PCs. EVA Scanning is a locally installed application that is operated by municipalities and county authorities. The application was developed by the Norwegian Directorate of Elections and the installation files are made available for municipalities or county authorities. EVA Result is the Norwegian Directorate of Elections' internal application that sends figures between the application and to other stakeholders such as media outlets. Figure 6.4 from the Norwegian Directorate of Elections outlines the flow of data to and from the applications.

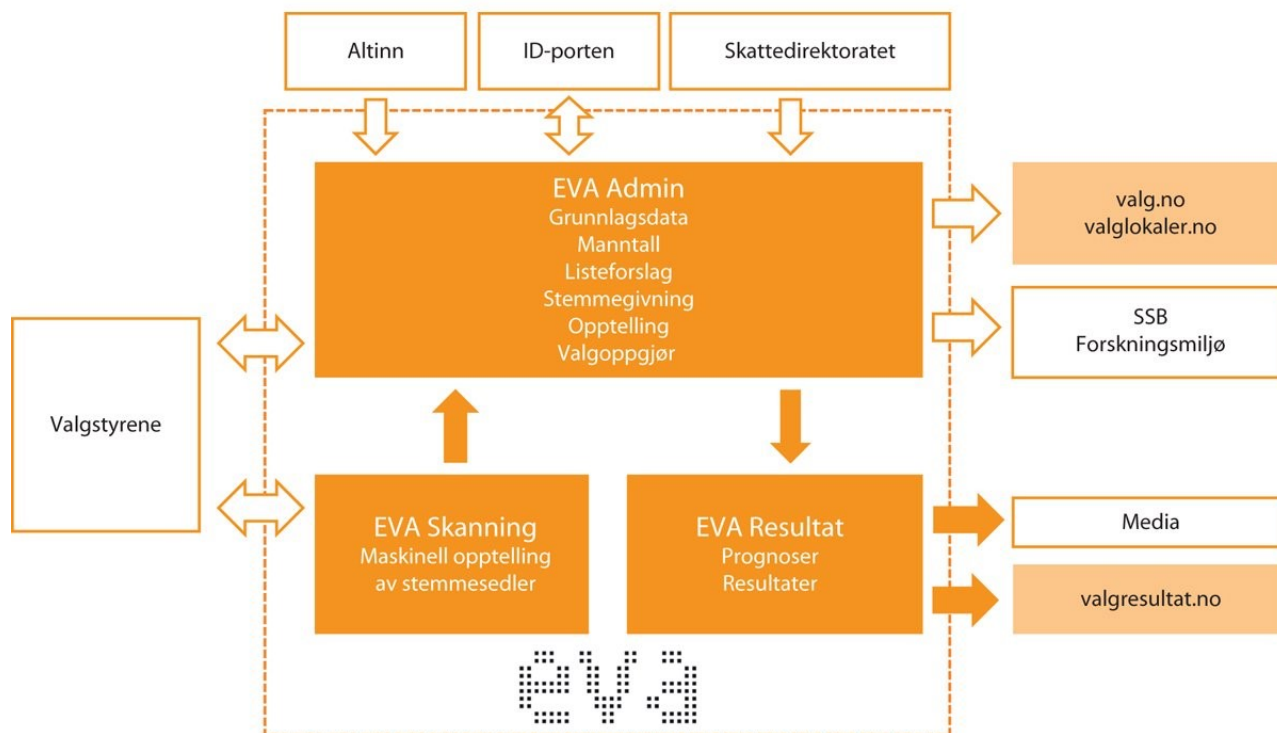


Figure 6.4 Flow of data in, to and from EVA

Source: The Norwegian Directorate of Elections - reproduced with permission

The entire digital value chain includes a number of actors and components that can both function as barriers and potentially constitute vulnerabilities in the systems. The electoral register is transferred/retrieved from databases at the Norwegian Directorate of Taxes, where providers of equipment and software, developers, operators and employee users are part of the chain. The same applies to equipment and applications at the Norwegian Directorate of Elections (EVA).

The municipalities and county authorities have access to key applications in EVA and receive local application and installation files for EVA Scanning from the Norwegian Directorate of Elections. However, the municipalities and county authorities themselves are responsible for equipment, security, maintenance and use. There are guidelines for use and security, as well as framework agreements for providers of support for EVA scanning. However, it is up to municipalities and county authorities as to whether and to what extent they wish to follow the recommendations or use providers that have a framework agreement with the Norwegian Directorate of Elections. There can therefore be interfaces with different providers of both equipment and software, and of support services, as well as their own employees who can set up, operate and maintain.

## 4 Methodological approach

Both the system to be assessed and the content of the assignment are complex and require interdisciplinary expertise and a systematic approach. At the same time, the assignment is limited in time and scope, which makes it necessary to stay focused on the most relevant issues in terms of supporting the work to be carried out by the Election Act Commission.

In order to meet the need for interdisciplinary expertise, the work has been carried out by a multi-faceted team that has covered, among other things:



*Elections and election proceedings* – knowledge of politics and democratic processes, the Election Act and electoral systems, knowledge of the election administration system, experience and knowledge and various methods and systems for conducting elections, actors, roles and levels in the election process.

*Technological expertise*– Cybersecurity/ICT security, digital value chains, vulnerabilities, digital sabotage, technological opportunities and risks, digital actors and capacities.

*Threats*– threat assessments, identification of actors and intentions, capacity for executing threats, attack vectors, national risk landscape.

*How society and voters are influenced* – news and media, communication, human reactions, use of digital media, influencing activities, stakeholders.

*Risk and vulnerability assessments* – method and research approach, investigative expertise, overall risk picture, project management and coordination, assessments of measures and their effect, understanding of regulations and development of regulations.

Methods for qualitative risk analysis are characterised by being process-based, interdisciplinary, and systematic and provide a good basis for focusing time and resources on the most important issues and phenomena. Therefore, we have chosen to base the work on methodology for a risk and vulnerability analysis at an overarching level. Broadly speaking, the main steps outlined in, for example, the internationally recognized standard ISO 31000 (ISO, 2018), have been used as support and assistance in compiling the report, however these have been adapted to goals, needs, focus from the client and experiences in the project team. This type of systematic approach largely ensures that relevant and important elements are covered, discussed and assessed during the course of the report.

The three main steps that have been carried out in an adapted form as a basis for this report are:

#### *Scope, context and criteria*

Through the establishment of context, information has been collected and assessed to develop a broad and joint understanding of electoral processes and challenges, as well as to identify important areas for further analysis. The establishment of context has covered:

- *Collection of information/national and international experiences*: In addition to the combined experience of the multifaceted project team, information and experiences with electoral systems, processes, threats and vulnerabilities, both internationally and in Norway, have been obtained. International experiences have been obtained by reviewing literature, articles and news (see the reference list). At a national level, there were also a number of work meetings and interviews with the Ministry of Local Government and Modernisation, Directorate of Elections, Election Act Commission, Microsoft and election officials in a selection of municipalities of different sizes and types.
- *Assessment of values*: In order to carry out an appropriate assessment of risk when conducting elections, the criteria for democracy and qualities that are required for conducting elections to safeguard these principles are identified. The report highlights various values that need to be protected when conducting elections in order for the requirements to be

safeguarded, for example, in the form of digital systems, information, premises, voters or candidates.

- *Threat assessment:* In addition to identifying and assessing unintended events that may impact the electoral processes, a description is provided of the actors that may have the desire/intention to influence/damage the electoral process, as well as their capacity and means to do so.

### *Risk and vulnerability assessment*

Risk and vulnerability assessments have been carried out to identify and assess potential incidents and phenomena that may occur before, during and after the election. In order to ensure a systematic process in which all relevant factors are included, different approaches to this have been used. This means that there was a focus on possible phenomena/incidents in relation to the actual election process, the digital value chain, the various requirements that need to be safeguarded for elections (with regard to democratic principles) and from a general, professional perspective. The approach used for the risk and vulnerability assessment was based on the international standard ISO 31000 (ISO, 2018).

Existing barriers to, and any vulnerabilities in relation to the relevant incidents/phenomena have been assessed and described. Consequences which the incident or phenomenon may have for the five requirements for elections that are described in Chapter 3.1 (free participation, enlightened and informed, correct, conducted in line with plan and trust) are assessed together with the amount of knowledge we have about the phenomenon, how it may be transferred to other fields and areas and how quickly the phenomenon changes.

We conclude with a summary/overall assessment of how important/critical the phenomenon is for security in the election process and the ability of society/the authorities to change or influence negative consequences.

### *Risk management*

Risk management will include identifying appropriate measures, deciding on implementation and following up implementation and effect. This report focuses on identifying possible measures relating to individual phenomena and incidents (in the incident forms enclosed), however the principal objective is to recommend certain measures at an overall level that are relevant to the focus and work of the Election Act Commission.

Decisions relating to measures, implementation and follow-up are the responsibility of the Norwegian authorities and are not part of the scope of this report.

Further details on the risk analysis method used in the investigative work are shown in Appendix 1.<sup>664</sup>

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<sup>664</sup>The appendices are only available at regjeringen.no.

## 5 Threats to democratic processes in connection with elections in Norway

### 5.1 Threats to democracy and to elections?

Based on the different models of democracy referred to at the start of this report, there are a number of fundamental threats to democracy. From the perspective of the competitive democracy model (Schumpeter, 1952), threats to democracy will, theoretically, readily arise when, over time, there is no reasonably stable replacement of the elite, even if elections are held regularly. Examples of the latter are the illiberal democracies that we see unfolding in Hungary, Russia or Turkey. Another threat is interference in the election process itself, for example, if cyber attacks result in misreporting or destroying effective implementation. In principle, the latter is not only serious by virtue of the actual incidents, but is also as a threat to the level of trust in a democracy.

When viewed using the democratic republican model (Pettit, 2014; Skinner, 1978; Pateman 1970), overall democratic participation, not only during elections but also in the period between elections, will be an essential consideration. Recruitment to democratic positions and to the parties in particular could be a critical point, and the same applies to the extent to which members of society feel and exhibit civic spirit.

Based on the deliberative model of democracy (Habermas, 1996; Gutmann and Thompson, 2004), the election campaign and political debates play a key role in democracy. The debate must be enlightening and tendencies towards a fragmentation of the public can have a disruptive effect on learning in a common public. The same applies to public discourse that is perverted by fake news, echo chambers or segregated democratic discourse in different groups that lack common argumentative dissent.

Threats to the democratic processes, and the hostile actors behind them, could therefore target all these areas in order to weaken democracy (as summarised in the descriptions of systems at the start of the report) by weakening free participation, enlightened and informed elections, correct elections, elections conducted according to plan and trust in elections and processes.

Attacks on, influencing of or “fraud” associated with elections are not new phenomena. However, in the Western world, this is an area that is often associated with non-democratic states and to a lesser extent Western democracies. Society is changing. We are seeing an increased political influence activity in Europe. Election processes are being increasingly exposed to influence from a number of actors, including actors outside the country’s borders. The focus on threats to elections in the democratic countries has increased significantly in recent years. The extensive international discussions and focus have accelerated significantly in connection with the United States presidential election in 2016 and the Brexit vote in the United Kingdom that same year. Among other things, it was revealed that detailed information about Facebook users had been collected, analysed, sold and used for targeted messages during the United States election campaign<sup>665</sup>.

It has been revealed in recent years that state actors, including Russia, have actively used the production and spread of fake news to influence political processes and election processes in a

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<sup>665</sup><https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>

number of countries (USA, France, Netherlands, Germany and United Kingdom). In February 2019, a number of media outlets<sup>666</sup> cited reports that the United States had, among other things, blocked internet access for the Russian “troll factory” Internet Research Agency in St. Petersburg in connection with the United States midterm elections in autumn 2018. The troll factory is also alleged to have operated during the US election in 2016.

Allegations of manipulating votes via so-called voting machines (which are used for electronic voting) have been a hot topic in recent years. In 2018, a group of hackers at the DEFCON Voting Village convention demonstrated, among other things, that American voting machines could be hacked remotely, and that a machine could be hacked locally in the space of two minutes by using a pen (while the average voting time was six minutes).<sup>667</sup>

Many factors influence who is exposed to election influence, who the actors are, and what methods are used. This includes everything from global political development and power balance, social trends and radicalisation to local factors and technological developments.

## 5.2 Threats against Norway, hostile actors and instruments

The assessment of actors is based on open intelligence sources/threat assessments from, for example, the Norwegian Police Security Service (PST) and the Norwegian Intelligence Service, and other sources of information are continually cited in the text.

There are several reasons for why Norway is not a particularly attractive target when concerning influencing election results and elections. Norway is a small country with limited influence and power in many international fields. Foreign policy is characterised by a high level of consensus so that there is little to gain from changing the composition of the Storting. Norwegian society is characterised by a high level of confidence in democracy, the processes surrounding elections and politicians – which makes it more challenging to influence opinions through, for example, fake news. Radicalised groups have a limited presence and there is also a high level of transparency in such a small society – which also makes influence campaigns harder to implement (PST, 2019).

At the same time, Norway and the Nordic countries are some of the foremost examples of liberal democracies. Several countries with completely different forms of government may have an interest in demonstrating how unsuitable this is as a system of government. Norway is a member of the United Nations and NATO and thus is a part of an international commitment. The Norwegian involvement in the High North and the Arctic is of interest to several actors, both for political and commercial reasons.<sup>668</sup> An almost entirely digital society gives threat actors a large area of attack on social media and in cyberspace in general. In combination with what is often described as low vigilance in security issues (“naivety”), this can provide potential for influence.

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<sup>666</sup><https://www.nrk.no/urix/trump-blokkerte-russisk-trollfabrikk-1.14448589>

<sup>667</sup><https://defcon.org/images/defcon-26/DEF%20CON%2026%20voting%20village%20report.pdf>

<sup>668</sup>Nordlys 2 January 2019, nyttårstale General Kjell Grandhagen <https://fr-ca.facebook.com/pg/ndebatt/posts/>

### 5.2.1 Hostile actors

The potential for threats against democratic election processes can be categorised within three groups of primary actors: State, non-state and individual actors.

Examples of **state actors** are typically Russia and China, but can also include close partners such as the United States, United Kingdom and Sweden. There is continual legitimate (open) and covert (secret) influence from other states to garner influence and the ability to influence Norwegian positions on important strategic issues. Russia is a dimensioning hostile actor in terms its capacity and demonstrated willingness to attack<sup>669</sup> and is described and considered in greater detail in Appendix 4 to this report.

Despite Chinese policy having changed markedly under current leader Xi Jinping, China has traditionally had a strong policy of *not interfering in the internal affairs of other states*. China has growing interests in the Arctic and the High North in connection with its *One-Belt Initiative*, where it wants to open an ice-free sea route for trade via sea routes through the Arctic. China also wants access to opportunities to extract natural resources such as minerals and gas in the Arctic.<sup>670</sup>

Norway-China relations have been frigid for a long time. However, this relationship is softening in connection with increased trade and cooperation within research, business and industry. China could pose a threat to Norway in the cyber domain, through cyber attacks and espionage within several sectors of society. Cyber attacks have been carried out from China against Norway, which means that the threat from China can in no way be discounted, however this will probably be largely focussed on critical infrastructure, research, finance, business and industry (Norwegian Intelligence Service, 2019). It is unlikely that China will have an interest in influencing democratic processes and elections in Norway, and will prefer to concentrate its political influence on, for example, Australia and Canada and other countries with large Chinese exile groups.

The most prominent **non-state actors** are networks associated with Islamic extremism and political groups on the extreme right or left.

There have generally been few incidents of violence and terrorism committed by such groups that have targeted elections or election processes. Despite increasing right-wing extremism in Europe, the threat from these types of groups is not considered to be particularly serious in Norway. There are several reasons for this, however the principal reason is weak organisation and absence of clear leadership figures (PST, 2019). However, if there were to be violent demonstrations or other violent acts that targeted elections or the election process, these would most likely be limited in scope, poorly organised and occur in regional geographical areas in Norway where enclaves of these groups already exist, such as Trondheim, Kristiansand and some sub-groups in Eastern Norway. It is also probable that any violence from these groups would be focussed on certain issues and individuals that they may have strong antipathy against and not necessarily the election as such.

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<sup>669</sup><https://www.nupi.no/Arrangementer/2017/Paavirkningsoperasjoner-og-desinformasjon-som-verdensfenomen>

<sup>670</sup><https://www.vg.no/nyheter/utenriks//0EdWdG/kina-vil-bli-supermakt-i-norske-farvann>

**Individual actors** may sympathise with the causes of the above-mentioned actors, but may also have other motives for acting. Typical examples of this type of actor are Anders Behring Breivik and radical Islamists.

There have been some attacks by solo actors against parliaments and politicians from radical Islamist groups in the Netherlands, Germany and Canada, but thus far no major attacks. Attacks by Islamist groups in Norway that target elections are considered unlikely.

Other individual actors that could potentially influence elections and democratic processes may be large corporations, think tanks and individuals, who by influencing opinions and/or providing monetary support for parties or individuals, have the objective of influencing the outcome or direction of the election or process.

Each of these can, in turn, be linked to a number of underlying actors to achieve their goals. As illustrated in Figure 6.5, the underlying actors may be recruited, pressured, opportunistic or autonomous. Recruited actors will willingly act in accordance with the objectives of the principal actor, and are directly controlled by the principal actor. Pressured actors will unwillingly act in accordance with the objectives of the principal actor, and are directly controlled by the principal actor. Opportunistic actors will willingly act in accordance with the objectives of the principal actor, but will not be under their control. Autonomous actors will act in accordance with the objectives of the principal actor without the principal actor controlling this, and without wanting this him/herself (but through his/her own agenda).

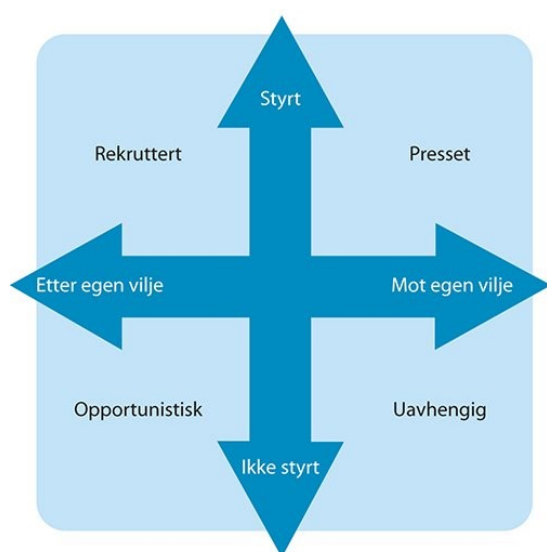


Figure 6.5 Underlying actors

### 5.2.2 Analysis of dimensioning actor

Based on the sources cited above and in the text, a more in-depth analysis of Russia as a hostile actor was made in Appendix 4 to this report. Russia is a dimensioning actor for Norway when concerning our geographical location, international interests and Russia's capabilities. An analysis is therefore of interest in order to understand possible intentions, policy instruments/methods and capacity. The analysis is based on open intelligence sources and sources otherwise cited in the text.

### 5.3 Influence through the internet/social media

Influencing society and voters with the goal of changing attitudes or behaviour is and has been an important part of public debate and conducting election campaigns. Influence is the goal of political debate – to gain more supporters for one's own/party's position and win a majority in order to shape social development. Working to change a voter's opinion and perception of what is right and wrong or best and worst in such an open debate is both legitimate and necessary for the political system to function. The intention is known and clear.

However, in recent years in particular there has been a major focus, both nationally and globally, on influence and attempts to influence elections by using means that are not legitimate. It is not difficult to see that influence by using incorrect/false information is not desirable. When truths and untruths are mixed together, or elements are taken out of context or only parts of an issue are highlighted, it becomes more difficult to distinguish between what is desirable and legitimate influence, and what is undesirable and illegitimate influence. Undesired influence can be said to have bad intentions, while desired influence has good intentions. The challenge is to define what is good and what is bad. Different points of view will often give different answers. In some countries, attempts have been made to define undesired influence of national elections as influence that comes from outside the country's borders. However, experiences and cases from recent years have shown that hostile state actors also establish domestic influence activities in the country they wish to influence. Another important characteristic of undesired influence is that it is often concealed. This means that the person who is the target of this influence does not know who is responsible and what the intention of this may be (or that an actual attempt is being made to influence them).

If news or allegations are presented without context it is more difficult to know whether the statements being made are right or wrong. Short messages online are a good arena for spreading information that is apparently correct but that has been taken out of context. If a news item contains parts that a voter recognises and believes are correct, it is easy to give credence to what is being read or heard.

If parts of the news item are erroneous, the combination of correct and incorrect makes it more difficult to expose the error or untruth. The politically independent American research centre Pew Research Centre<sup>671</sup> has researched people's media habits and is of the view that people under the age of 50 get half of their news through digital media. They were also of the view that people find it easier to accept information that confirms their own beliefs and can more easily dismiss information that does not confirm their own viewpoints. Stephen Lewandowsky works at the University of Bristol and is one of the world's foremost experts on what is known as counterfactual thinking. He has stated that<sup>672</sup> people often start with a pre-conceived belief (cognitive motivation) - and then focus all of their thinking on supporting that belief.

The present-day digitisation and extensive use of social media platforms provide hostile actors with a large area of attack which allows them to reach many voters within a short period of time.

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<sup>671</sup><https://www.pewresearch.org/>

<sup>672</sup><https://journals.sagepub.com/doi/abs/10.1177/0963721416654436?journalCode=cdpa>

The rapid spread and sharing of news also places pressure on the editor-controlled media. The pressure to publish quickly can contribute to media outlets that are normally considered serious disseminating incorrect content because the sources were not properly checked - if at all. By doing so, they contribute to legitimising the incorrect news. In 2017, the NGO Freedom House (USA) investigated the approaches that different countries have towards fake news and demonstrated in their report<sup>673</sup> that at least 30 countries pay commentators to create and disseminate fake news. A research report in the academic journal *Science* from 2018 (Soroush, Deb and Sinan, 2018) described how fake news spreads more often than real news. The researchers used six different fact-checking organisations to determine if the news was real. They were of the view that there was a 70 per cent higher chance of fake news being retweeted than real news.

More and more information about individual citizens is available in the digital sphere in different parts and fragments. When this is combined with algorithms that can analyse large amounts of data, it provides the opportunity to determine a great deal about an individual's preferences, views and interests. This can be used to organise the everyday life of an individual, but at the same time opens up the possibility of providing him/her with one-sided information that strengthens preconceived opinions (counter-arguments are not presented). In the worst case, a hostile actor can determine how an individual voter can be vulnerable to influence, and without the voter being aware of this, adapt information and messages so that opinions and perceptions are pushed in the direction that the hostile actor desires.

When undesired influence is difficult to define, it is also difficult to prevent. It is a difficult task to find the balance between removing illegitimate influence and engaging in censorship and preventing freedom of expression.

### 5.3.1 Use of influence against election processes

#### *Influence of politicians*

There has been a focus in recent years, both nationally and internationally, on attempts (and the implementation) of information gathering and influence aimed at political parties and candidates standing for election. A number of incidents and examples have emerged following, for example, the 2016 US election, but it was also confirmed here in Norway prior to the 2017 parliamentary election<sup>674</sup> that there had been a hacker attack which targeted, among others, the Labour Party and Norwegian Armed Forces. There are a number of starting points that serve as motivation for such attacks. Politicians and political and other state bodies hold decision-making positions and influence the political direction both nationally and internationally. Obtaining information about plans, strategies and directions – and also influencing these, is of interest to state and other important stakeholders. Both by carrying out attacks and using the access and information that are obtained, the actor can influence and reduce trust in politicians, parties and democratic processes in general. In addition, the use of information can enable the actor to both pressure and influence

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<sup>673</sup><https://freedomhouse.org/article/new-report-freedom-net-2017-manipulating-social-media-undermine-democracy>

<sup>674</sup><https://www.aftenposten.no/norge/i/A1OEz/Nasjonalt-sikkerhetsmyndighet-Avansert-gruppe-sto-bak-hackerangrep-i-Norge>



individuals and organisations into procuring more information or contributing to decisions that benefit the actor in some other way.

Another method of inflicting damage on parties and candidates is discrediting politicians. This can have a direct impact on who is able to participate in the political work. Discrediting can result in a politician losing his/her position and influence for a long time and/or permanently, and thereby potentially shifting the balance of the political landscape. Discrediting particularly high-profile politicians more generally can also weaken trust in the system and democracy (there is no point in voting, politicians cannot be trusted, it is all a mess etc.). Smear campaigns or so-called "dirt files" have become familiar concepts in the political media landscape. This usually means that information is spread in a more or less coordinated manner using several different channels, with the aim of negatively affecting the reputation of the politician, organisation or party in question. Characteristic of this is that the information contains elements of truth, however is often taken out of context or only reveals parts of the truth. The information often concerns areas/fields in which the politicians in question are forced to make statements to refute the allegations or defend themselves. In very many cases, the discrediting ends with the politicians being "removed" from the political landscape, since what they have done is not considered compatible with the role.

Online abuse and the general climate of discourse over the internet are considered by many to be increasing problems. Unlike "discrediting", online abuse will typically prevent politicians or others from participating in the debate because they themselves do not want to shoulder the burden this entails - not because they lose the debate or are not allowed to have a position. Online abuse often involves negative statements and opinions that are not necessarily about matters that are true or false. The media is constantly reporting how the language used in public discourse has hardened and that the limits for what constitutes "acceptable" are being continually moved. Public debate - with respect for the views of others - is being placed under constant pressure, and extremist viewpoints are being endorsed more often than before. Online abuse can contribute to certain groups refraining from participating in the democratic process and elections.

### *Influencing voters*

Fake news has always existed, however has gained increasing focus in the public debate, particularly following the United States presidential election in 2016. There are widespread discussions about whether and the extent to which falsehoods, misleading and incorrect information and fake news impact elections - and how these forms of influence can be stopped/reduced. Being able to separate facts and fake news from opinions and different sides of an issue is a major challenge in terms of removing this phenomenon from the election debate, without causing questions to be raised about censorship and reduced freedom of expression. In many cases, fake news starts on social media platforms and spreads to more traditional media. This is often legitimised by using other tools and phenomena such as echo chambers and avatar networks. Fake news about politicians and elections can quickly have major consequences. Information, communication and consequences develop rapidly - and even if something is subsequently revealed to be fake news, the damage and consequences can be irreversible.

"Deep fake" is also a growing phenomenon in digital media. This involves AI technology being used to produce and/or change sounds and images to present something that did not actually occur. Technological developments in this field make it increasingly more difficult to reveal that such sounds/images are in fact fake. "Deep fake" changes our view of what constitutes evidence. Now,

not even live images can be considered the truth. Producing "deep fakes" does not require specialist knowledge, and can largely be done by anyone.

For several years, there has been a growing industry among digital channels to have the opportunity to influence people's perceptions of what is popular, what are normal/correct opinions and what is "trendy". This is done by using both fake profiles (profiles for non-existent users) and actual profiles to follow, like and dislike companies, websites, posts and people. The actual "clicking" can be performed by both algorithms that auto-generate, for example, likes, and by workers employed in so-called "click farms" where they are paid to click on specific websites, posts, etc. These workers may also have created and administer a large number of fake profiles. The use of fake profiles is a violation of the terms and services at, for example, Facebook. Fake clicks are not regulated, which means that this service can be advertised on Finn.no. Purchases of fake clicks and fake followers are currently used by reputable websites. Therefore, fake clicks are a means of "normal" influence work. A growing phenomenon has also been large so-called "avatar networks", that are fake profiles (which only exist online) that can be used to exert massive influence over various issues and areas. These avatars are controlled by "influence operators" and have a high degree of in-built security. For example, the system will protect the operator from using IP addresses outside the geographic region where the avatar in question is located or from posting information that is in a language other than the one the avatar is listed with.

In Scandinavia, there is a high level of trust in the authorities and systems, and we take it for granted that the election result is correct. However, the most recent election in Sweden shows that doubts were also raised about this<sup>675</sup>. The internet connection went down for a period during the counting. When the network came back online, the "position" of the parties had changed significantly. This resulted in suspicions of the results having been altered/manipulated and these suspicions quickly spread among different media outlets. This may have a direct political purpose, for example, promoting one's own views or casting doubt on the interests and intentions of others. However, this is, not least, liable to undermine trust in the authorities, systems and democratic processes, and establish distrust.

In today's digital society, the collection, analysis and sale of user information is a growing industry. Algorithms, machine learning and artificial intelligence are used to collect data and analyse information with a level of efficiency that we have never been anywhere close to. The result is access to extremely detailed information about internet users, who today make up the vast majority of us. In its simplest form, it may involve isolated information about interests and preferences for products. However, by using algorithms and artificial intelligence it has been demonstrated that it is possible to analyse and identify, with astonishing accuracy, the preferences and political and religious views, ethnicity, sexual orientation and other deep personality traits of the users. The result is access to highly sensitive information that can be used both for completely innocent purposes and for more questionable purposes - whether consciously or unconsciously. By using the most detailed and sensitive information that is generated about internet users, information and messages can be micro-targeted at individual users to influence them in the desired direction of the actor. Such influence can be targeted directly at decisions and choices of a political nature,

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<sup>675</sup><https://www.isdglobal.org/isd-publications/smearing-sweden-international-influence-campaigns-in-the-2018-swedish-election/>

however can also be used more generally to polarize, create unrest, reinforce prejudices and establish mistrust (and often in combination with other phenomena such as fake news). Cases such as Cambridge Analytica and the use of sensitive user information during the United States election campaign in 2016 have brought this issue to light<sup>676</sup>.

## 5.4 Cyber attacks

A cyber attack involves someone attempting to expose, destroy, or damage/alter digital data and/or systems or to render these inaccessible. At a time where there is a major focus on digitalisation, cyber security has become an issue that is reported in news around the country on an almost daily basis. There are continual reports of companies having their systems breached, inadequate security in systems and concerns about artificial intelligence and machine learning. There is already a strong focus on cyber security in connection with election processes, despite electronic elections not yet having been established in Norway.

Cyber security characterizes the Norwegian media coverage, and awareness of the threats among citizens has become a daily debate. Both individuals and a number of companies have themselves experienced having their secrets exposed, assets encrypted and held for ransom, or their identities misused. We have seen the email accounts of political parties being hacked and sensitive information going astray.<sup>677</sup> Companies in Norway have been on the verge of bankruptcy because attackers with little expertise have managed to hack into the infrastructure and then encrypt all servers in return for ransom money. Visma went public with their cyber attack in 2019, which they believed involved state-affiliated actors having managed to hack into the information systems to steal commercially sensitive information.<sup>678</sup>

The cyber threat is real, it is progressive and it is rapidly evolving. The majority of products have vulnerabilities and even widely-used and known products such as Microsoft Windows have monthly, critical security updates. A critical security update is a change in the software that is intended to prevent threats from having easy access to a computer, for example, viruses that are able to spread on networks, without users being able to do anything about it. This is completely normal and is typical for the complex and comprehensive programme code contained in an operating system. Despite this, society still manages to continue more or less as before. Much of the reason for this is that there are several layers of security through measures such as firewalls, anti-virus programmes and other security technologies. However, there is no doubt that the software is always vulnerable, and sometimes the technology fails to protect us.

Cyber crime has become "big business." Terrorist/hacking organisations like The Dark Overlords advertise for new employees and offer starting salaries of up to an incredible NOK 500,000 per month<sup>679</sup>. The costs resulting from cybercrime worldwide total in the billions, and in the United

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<sup>676</sup><https://www.nrk.no/nyheter/cambridge-analytica-1.13973142>

<sup>677</sup><https://www.aftenposten.no/norge/politikk/i/RAVQW/Arbeiderpartiet-utsatt-for-hacker-angrep>

<sup>678</sup><https://www.recordedfuture.com/apt10-cyberespionage-campaign/>

<sup>679</sup><https://thehustle.co/dark-overlord-hacker-cybercrime-software-engineer-hiring/>

Kingdom, annual losses are estimated at NOK 320 billion<sup>680</sup>. As early as 2009, Symantec released a report stating that revenues from cyber crime had exceeded revenues from drug sales<sup>681</sup>.

It is important not to underestimate the capabilities and motivation of the attackers. In 2010, a virus was discovered that was able to obstruct Iran's uranium mining facilities for several years. Among other things, the virus was distributed via USB chips at conferences on uranium extraction. Furthermore, the creators of the virus only wanted it to infect and spread to computers that were of Iranian origin. The virus was designed to take over computer systems connected to industrial control systems, but only of a specific type, i.e. the one used to control uranium extraction facilities. The virus was then used to camouflage itself in the control systems, and then to gradually but purposefully prevent the effective extraction of uranium<sup>682</sup>.

The cyber domain has also become a critical area for Norway. Technology is moving so fast that ordinary people struggle to keep up. It will also be a challenge that technology is evolving so rapidly that politicians who, among other things, need to make decisions regarding defence mechanisms such as digital border defence, are unable to keep pace with developments.

#### 5.4.1 Cyber attacks and elections

Perhaps the most important challenge of the cyber domain in connection with elections is that it is used as a platform and a tool to influence various community groups. Some of the most relevant phenomena of this type are described in more detail above.

In 2018, Switzerland had developed and wanted to roll out a safe and secure internet-based system for electronic voting. This was planned to be launched in 2019. However, at the start of 2019, weaknesses were discovered in the system which would have enabled a single individual to influence the election in any direction he or she may have wanted<sup>683</sup>. The Swiss system was hacked, but it had not yet been put into production. The authorities tested the software online so that anyone who wanted to could see if they could find errors and vulnerabilities (often called a "bug bounty" programme). Such a programme allows experts and ordinary people to attempt to detect vulnerabilities in exchange for a payment if they report these vulnerabilities. In the case of Switzerland, the state offered up to 50,000 Swiss Francs as payment if the vulnerability enabled a user to manipulate the election without being detected.

Despite significant measures involving built-in security, routines, protection and testing, intrusion into critical infrastructure such as election systems cannot be completely discounted/prevented. It must be assumed that infrastructure is, or could be, compromised, and that, in addition to attempting to stop intrusion, tools and processes must be established that can discover, detect and

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<sup>680</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60943/the-cost-of-cyber-crime-full-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60943/the-cost-of-cyber-crime-full-report.pdf)

<sup>681</sup>[https://www.symantec.com/content/en/us/home\\_homeoffice/media/pdf/norton\\_cybercrime\\_exposed\\_booklet.pdf](https://www.symantec.com/content/en/us/home_homeoffice/media/pdf/norton_cybercrime_exposed_booklet.pdf)

<sup>682</sup><https://www.csoonline.com/article/3218104/what-is-stuxnet-who-created-it-and-how-does-it-work.html>

<sup>683</sup>[https://motherboard.vice.com/en\\_us/article/zmakk3/researchers-find-critical-backdoor-in-swiss-online-voting-system](https://motherboard.vice.com/en_us/article/zmakk3/researchers-find-critical-backdoor-in-swiss-online-voting-system)

prevent damage. The previous paradigm was to invest in maximum protection, and attempt to plug all leaks. It is now acknowledged that even the best defence may fail. The paradigm is shifting towards a more detection-oriented IT environment that also focuses on detection and management to prevent damage if the defence is penetrated.

Although election systems have been compromised, for example in the form of hacking, this does not mean that the “fight” has been lost. The hostile actors are looking to achieve their objectives, such as influencing the election. This is no simple task and if they can be detected and “thrown out” before they achieve their objectives, then damage has in fact been prevented. At the same time, if the public becomes aware of such attacks, this may create unrest and erode trust in systems and processes.

There are many opportunities to attack IT environments that support the type of election infrastructure that Norway currently uses. This can be done via the people who operate the infrastructure, with or via service providers, through errors and vulnerabilities in software or in the underlying hardware that is used.

We have (in 2019) 356 municipalities in Norway. The smallest municipality is Utsira with only a few hundred inhabitants, while municipalities such as Oslo have several hundred thousand inhabitants (almost 700,000 as of 1 January 2019).<sup>684</sup>

The operation of IT systems is a complicated task, and something that the vast majority of private enterprises struggle with today. Basic routines such as software updates, backup copying and segmentation into networks are often forgotten or not done on a regular enough basis. There is no reason to believe that Norwegian municipalities are any different. Scanning equipment and PCs used in the municipality are exposed to hacking, or may be preconfigured with viruses from the providers. A municipal PC is used to access both EVA Scanning and EVA Admin, the systems that are used for managing the scanning of ballot papers and administering election proceedings. In the event of such an intrusion, a planted virus will be able to alter the information that is supplied to EVA Admin, in the same way that a bank Trojan can make your browser change the amounts and account numbers that are entered when banking online. Inadequate protection and monitoring of the IT equipment that is used enables viruses to be introduced. A camouflaged virus will be difficult to detect and stop.

When using machines to count votes, the ballot papers are scanned with a scanner and then read by software owned and developed by the Norwegian Directorate of Elections (EVA Scan). However, it is the municipalities that install EVA Scan locally and that handle equipment, software and use (without or without support from the provider). This system has several possibilities for errors in/manipulation of the number of votes through the software:

- Scanners may display the incorrect “image” (for example, crosses are consistently moved to another party).
- The programme EVA Scan may read something different to what is shown in the scanned image.

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<sup>684</sup><https://www.ssb.no/befolkning/statistikker/folkemengde/aar-per-1-januar>

- Errors in/manipulation of transfers between scanner and reader and between EVA Scan and EVA Admin.

The electronic election administration system (EVA) is developed and operated by the Norwegian Directorate of Elections (Vdir), and is also physically located with Vdir. As is also the case for equipment and software operated by the municipalities, it would be possible to “break into” EVA, which is centrally operated. For example, there may be vulnerabilities in the programme code developed by Vdir, vulnerabilities introduced in the hardware, vulnerabilities in third party software or that hostile actors gain access to the network where critical infrastructure is operated via other means, for example, virus on an employee’s PC.

The electoral register contains the names of those who are entitled to vote in Norway – and is transferred to the election administration system from the Norwegian Directorate of Taxes. Manipulating the electoral register can enable “non-existing” people to cast votes that influence an election or allow multiple votes to be cast with the same identity. The electoral register could be manipulated either by the Norwegian Directorate of Taxes being hacked from the outside or by the actual register being altered by someone with access. Since the electoral register entered in the election administration system is periodically overwritten by an updated register from the Norwegian Directorate of Taxes, manipulation of the basic data at the Directorate would appear to be the most expedient course of action for a hostile actor. Generally speaking, meeting in person and having identification checked are necessary for casting a vote in Norway. This makes it very challenging and, not least, resource-intensive, to use multiple manipulated votes. However, when voting from abroad, it is possible to send postal votes without identifying oneself by meeting in person.

For most potential cyber attacks against elections in Norway (in addition to those directly related to influencing and influence operations), the greatest potential for harm at present will be in the loss of trust among the population and the possibility that systems and the election process may be sabotaged. Since voting is not digitised and counting still takes place manually in parallel with machine counting, it would be difficult to manipulate election results. In the event of a transition to, for example, electronic voting and/or solely machine counting, vulnerabilities in this area may change significantly.

## 5.5 Unintended events

Election security may also be threatened by unintended events. Examples of such unintended events are:

- *Natural events*, for example, extreme weather, floods, landslides, pandemics or other special natural events that make it difficult or impossible to access polling stations.
- *Accidents*, for example, fire at polling station, destruction of election materials, water damage in server rooms that knocks out computer servers and faults in socially critical infrastructure (roads, power supply, internet).
- *Involuntary errors when conducting elections*, for example, typing errors on a computer, errors in connection with manual counting, incorrect use of scanners and various forms of misunderstanding or confusion that impact on the election process.
- *Other unintended events or phenomena*, for example, web search algorithms being designed to generate hits to websites containing information that the algorithm “thinks” the

voter is interested in. When viewed in an election context, “echo chambers” can easily arise in these types of groups, where voters do not receive balanced information before making a choice, but only receive more information that reinforces preconceived opinions and beliefs.

Unintended events are, more so than intended events, identified, assessed and managed for the present-day election process, for example, through contingency plans in municipalities and centrally - and through the Norwegian Directorate of Elections’ procedures and routines. Therefore, this report has not placed much emphasis on identifying all imaginable, unintended events that could be of importance to election proceedings.

Furthermore, in many cases, unintended events have been implicitly included in the report, despite such events not being explicitly assessed. Unintended events are often contributing causes of other undesired events that have been included in the analysis. For example, errors in the counting of votes can be caused by both (unintended) inattention and (intended) manipulation of scanners. Similarly, lack of access to systems and premises may be due to both (unintended) extreme weather and an (intended) bomb threat. However, in many cases there will be different mechanisms that are initiated to manage intended and unintended events, and there will often also be differences in vulnerability in relation to intended and unintended events. To safeguard this, vulnerabilities and risk mitigation measures are assessed and proposed for both unintended and intended causes in instances in which both categories are relevant.

## **6 Assessment of vulnerabilities and risks associated with important events and phenomena**

In order to provide a better basis for assessing the need for security measures of various forms, a process has been carried out in the report for identifying and selecting relevant events and phenomena that may impact the five requirements for conducting elections that were defined at the start of chapter 3.1:

- *Free participation* – That all candidates for the election and voters have and receive access to participate by the process being perceived as safe and possible - and that the election is secret.
- *Enlightened and informed* – That voters receive enough information, correct information and balanced information that enables them to make an “informed choice” (vote).
- *Correct* – That the votes cast actually constitute the result. Correct electoral register, correct registration, correct number of votes.
- *Conducted in line with plan* – That the election is actually able to be held (and is not prevented by sabotage, natural events, system errors or organisational deficiencies).
- *Trust* – That trust in the democratic election process among the population is maintained (including verifiability and transparency).

Appendix 2 to the report contains some detailed descriptions, considerations and assessments relating to the selected phenomena/events. It is important to emphasise that the extent and form of the individual phenomena are not standardised, and that one phenomenon will rarely occur in isolation or independently of the others. The categorisation has therefore been made in order to shed light on risks, vulnerabilities and relevant security measures as best as possible in relation to the objective of the report. Security measures that shall be introduced must therefore be assessed

in relation to their effect in several different areas - including in addition to the phenomena described in appendix 2. This is emphasised in the recommendations made in chapter 8.

Relevant phenomena/events are identified with a view to revealing security challenges associated with election proceedings, and not all challenges relating to the safeguarding of democratic principles (as defined, for example, by Robert A. Dahl, see chapter 3.1). We have chosen to focus more on intentional acts than on natural events and unintended errors and events in connection with the conduct of elections. Risks relating to natural events and unintended errors have largely already been addressed in detail in risk assessments conducted by the Ministry of Local Government and Modernisation, the Norwegian Directorate of Elections and the municipalities.

20 phenomena/events have been selected based on their relevance to the five requirements stipulated above – and on the threat assessment in chapter 5. The forms presented in appendix 2 shed light on and assess the intentions and capabilities of threat actors in relation to the specific phenomenon, as well as barriers and vulnerabilities associated with the current conduct of elections in Norway. Together, these assessments represent a consideration of the probability aspect.

Each phenomenon includes an assessment of the potential negative effect the phenomenon may have on the five requirements for conducting elections. This addresses the impact aspect.

An assessment has also been carried out of other dimensions that influence risk and which are important to take into consideration when managing risk:

- The amount of knowledge one has about the phenomenon (as opposed to uncertainty - strength of knowledge)
- How rapidly the phenomenon changes over time (for example, in terms of technological developments or social trends – pace of change)
- How manageable the risk related to the phenomenon is (whether, for example, it can be addressed with regulatory requirements – manageability)

Table 6.1 below provides a brief summary of the phenomena/events that are assessed (the forms for each phenomenon can be found in appendix 2). The phenomena are not listed in priority order according to risk, but are, to some extent, sorted according to the type of phenomenon. As mentioned, there are no clear dividing lines between the phenomena, but the "type of phenomenon" is generally indicated in the final column of the table.

*Table 6.1 Overview of phenomena/events that have been specifically assessed*

ID	Event/phenomenon	Brief description of the topic/starting point for the topic discussed	Principal type



1	Local or central political influence on the election	Elected representatives play a relatively large role in the Norwegian election process. There are also electoral committees at different levels and, as the final instance, the elected Storting, which approves the election and thus its legitimacy. This may raise questions about the influence politicians have on the election. The courts do not have a role as an appellate instance in the Norwegian system, a fact that has garnered criticism from the Organization for Security and Co-operation in Europe (OSCE), among others.	Approval of elections/appeals
2	Different opportunities to participate in the election campaign	Policies may be influenced by certain parties and organisations being given better opportunities to participate in election campaigns due to them being provided with, for example, financial means and access to major media outlets. Furthermore, parties that have gained support, whether consciously or unconsciously, find that there are expectations for focus and	Influencing candidates and parties

		views on various issues when support is given.	
3	Monitoring/ influencing election candidates and political parties	In recent years there has been a great deal of national and international attention surrounding attempts at (and execution) of information gathering and influence aimed at political parties and candidates running for election. A number of incidents and examples have emerged following, for example, the 2016 United States election, but it was also confirmed here in Norway prior to the 2017 parliamentary election, that there had been a hacker attack which targeted, among others, the Labour Party and Norwegian Armed Forces.	Influencing candidates and parties
4	Discrediting politicians	Deliberate discrediting of politicians can target individual politicians and specific parties, and thus have a direct impact on who is able to participate in the political work. Discrediting can often result in a politician losing his/her position and influence for a long	Influencing candidates and parties

		<p>time and/or permanently, and thereby potentially shifting the balance of the political landscape. Discrediting particularly high-profile politicians more generally can also weaken trust in the system and democracy.</p>	
5	Online abuse of politicians	<p>Online abuse and the general climate of discourse over the internet are considered by many to be increasing problems. Unlike "discrediting", online abuse will typically prevent politicians or others from participating in the debate because they themselves do not want to shoulder the burden this entails - not because they lose the debate or are not allowed to have a position.</p>	Influencing candidates and parties
6	Fake news influences the election	<p>Fake news has always existed, however has gained increasing focus in the public debate, particularly following the United States presidential election in 2016. There are widespread discussions about whether and to what extent falsehoods, misleading and incorrect information and fake news impact</p>	Influencing voters

		elections - and how these forms of influence can be stopped/reduced.	
7	Click farms, fake followers, and avatar networks	<p>For several years, there has been a growing industry among digital channels to have the opportunity to influence people's perceptions of what is popular, what are normal/correct opinions and what is "trendy".</p> <p>These methods are particularly suited to polarizing the political landscape, by legitimizing radical views – and giving the impression that marginal views are more common popular beliefs. They can also provide an "echo chamber effect" by people with radical views having these views confirmed, instead of encountering resistance when they are expressed.</p>	Influencing voters
8	Doubt is created about the accuracy of the election result	Groups or individuals can create campaigns to sow doubt about the result after an election and indicate that this was manipulated or incorrect. This may have a direct political purpose, for example, promoting one's own	Influencing voters

		views or casting doubt on the interests and intentions of others. However, this is, not least, liable to undermine trust in the authorities, systems and democratic processes, and establish distrust.	
9	Threats result in people not daring to cast their vote	Hostile actors can make threats that result in voters not daring to go to polling stations, for example, a bomb threat. Bomb threats can be called in, or rumours of attacks can spread on social media.	Influencing voters
10	Micro-targeting of information	In today's digital society, the collection, analysis and sale of user information is a growing industry. Algorithms, machine learning and artificial intelligence are very effectively used to collect data and analyse information. The result is access to very detailed information about internet users. In its simplest form, it may involve isolated information about interests and preferences for products. However, by using algorithms and artificial intelligence, it has been demonstrated in recent times that it is	Influencing voters

		<p>possible to analyse and identify, with astonishing accuracy, the preferences and political and religious views, ethnicity, sexual orientation and other deep personality traits of the users. The result is access to highly sensitive information that can be used both for completely innocent purposes and to influence voters in an election situation.</p>	
11	Online subcultures - a place for everyone	<p>The growing use of digital platforms for information and communication has led to the creation of a number of more or less closed online communities where information and opinions are exchanged. These types of forums have always existed, but the internet has enabled them to flourish, with easily accessible groups and like-minded people. Many communicate with and obtain a great deal of information from these types of online groups, and in many cases, these groups are made up of people with the same fundamental views on an issue or area.</p>	Influencing voters

		<p>“Echo chambers” can easily arise in these types of groups, where voters do not receive balanced information before making a choice, but rather receive more information that reinforces preconceived opinions and beliefs.</p>	
12	Manipulated electoral register	<p>The electoral register contains the names of those who are entitled to vote in Norway – and is transferred to the election administration system from the Norwegian Directorate of Taxes. Manipulating the electoral register can enable “non-existing” people to cast votes that influence an election or allow more votes to be cast with the same identity.</p>	Technical influence
13	Errors in or misuse of local IT infrastructure	<p>The operation of IT systems is a complicated task, and something that the vast majority of private enterprises struggle with today. Basic routines such as software updates, backup copying and segmentation into networks are often forgotten or not done on a regular enough basis. It can be expected that much of</p>	Technical influence

		<p>the same applies in Norwegian municipalities which need to manage equipment and software locally when conducting elections. An attack on and via local infrastructure could potentially also affect key systems.</p>	
14	Error in vote counting	<p>The counting of votes is a critical part of the election process. Errors in the number of votes can occur when votes "disappear", are added or are changed/incorrectly located/incorrectly counted. The counting process presently takes place both manually and by machine.</p>	Technical influence
15	The electoral system is manipulated – centrally	<p>The Electronic election administration system (EVA) is developed and operated by the Norwegian Directorate of Elections (Vdir), and is also physically located with Vdir. As is also the case for equipment and software operated by the municipalities, it would be possible to "break into" EVA, which is centrally operated. For example, there may be vulnerabilities in the programme code</p>	Technical influence



		<p>developed by Vdir, vulnerabilities introduced in the hardware, vulnerabilities in third party software or that hostile actors gain access to the network where critical infrastructure is operated via other means, for example, virus on an employee's PC. The election administration system is part of a long digital value chain that represents new challenges in terms of vulnerability.</p>	
16	The result is manipulated	<p>As described under "The electoral system is manipulated – centrally", there will also always be opportunities to "break into" central election systems. The results can be manipulated in EVA Admin, EVA Result, in the transfer of data to the media and valgresultat.no and also directly at, for example, valgresultat.no.</p>	Technical influence
17	Inadequate access to system and premises	<p>Polling stations or critical election systems becoming inaccessible can prevent people from being able to vote, prevent votes from being counted or prevent results from being</p>	Technical influence

		generated and disseminated.	
18	Breach of confidentiality	An important principle when conducting elections in Norway (cf. Election Act) is that the election must be secret. This means that everyone should be able to cast their ballot without anyone knowing how they have voted. This principle is strictly enforced at the polling stations by the voting booth being off limits to anyone other than the voter when the voter is casting his/her ballot. Confidentiality regarding results is also important for the conduct of elections. How is confidentiality affected by possible future changes to the electoral system?	Technical influence
19	Involuntary errors in the conduct of elections	There are a number of possibilities for making errors in connection with the conduct of elections. This may involve procedural errors related to the election laws, technical errors with a number of different consequences and the equivalent for human errors in the implementation. Rapid technological development, a long	Others

		period of time between the conduct of elections and varying ownership of election-related tasks, also present challenges in terms of the required expertise.	
20	Low voter turnout	Low turnout is more of a democratic problem than a security challenge. However, low voter turnout is often a negative consequence of security challenges and a result of the erosion of trust in authorities, democratic processes and electoral systems.	Other

### 6.1 Risks associated with events and phenomena

For each event/phenomenon, the probability aspects, consequence aspects and the other aforementioned dimensions that influence risk have been assessed on a single scale. High value is an expression that the dimension strongly contributes towards risk. The detailed assessment can be found in the individual form in Appendix 2.

By summarising the risk contributions for all of the dimensions for each event/phenomenon, an indication is given of the risk contribution each of these is considered to make to the security of the election process. Figure 6.6 visualizes the factors which contribute to the overall risk assessment for all 20 events/phenomena.

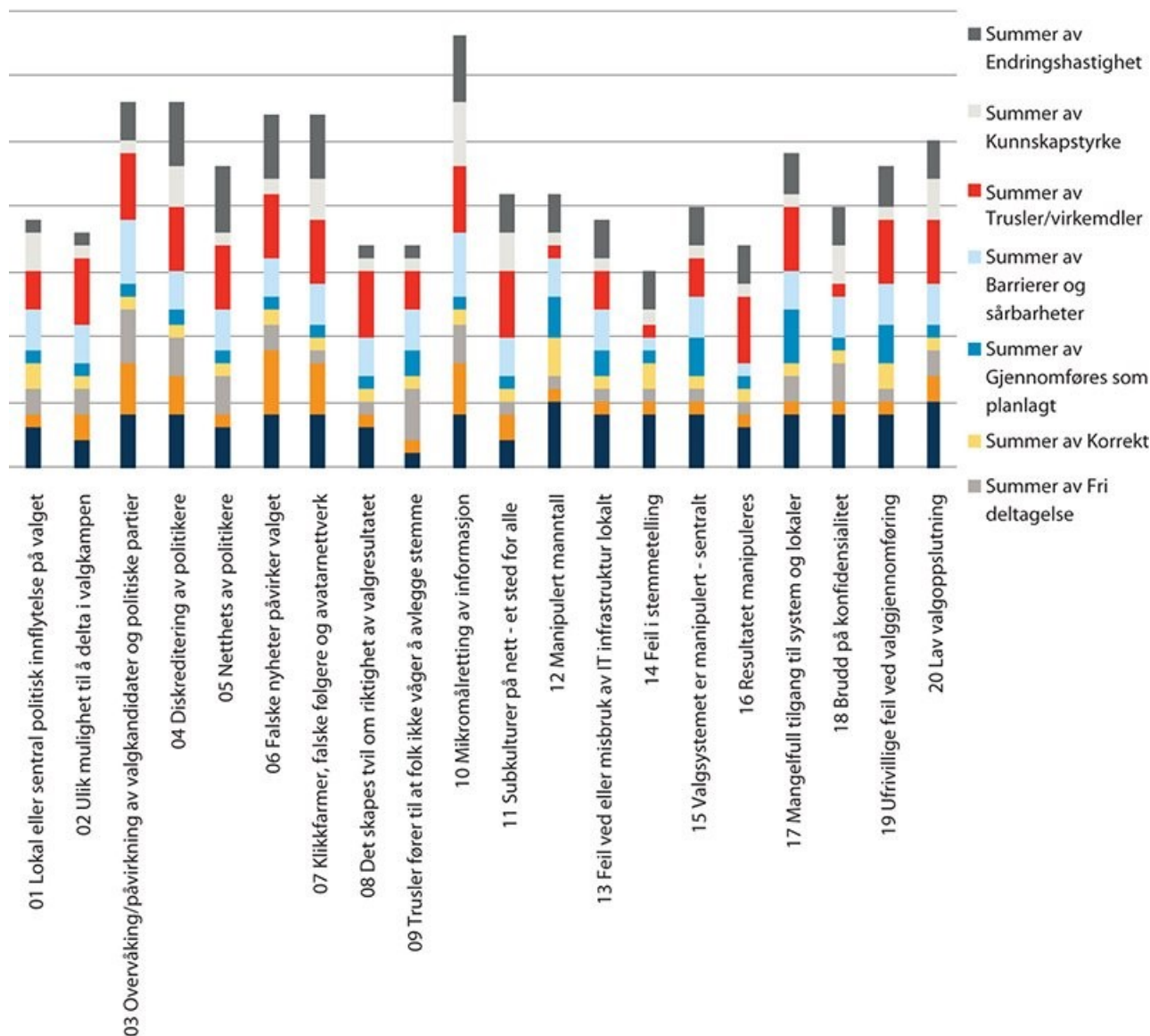


Figure 6.6 Compilation with summary of dimensions that influence risk for all evaluated phenomena/events.

The assessments demonstrate that the greatest risk associated with the democratic election process relates to the influence of candidates and voters prior to election proceedings. Characteristic of many of the phenomena in these areas is that there is limited knowledge of the phenomena and the effects that these may have. There is also a high pace of change. High pace of change is an expression of rapid technological and cultural development, particularly within data analysis and communication, but also of a continually changing threat landscape, both nationally and internationally.

One phenomenon that strongly contributes towards risk is micro-targeting of information. Society - and not least Norwegian society - is characterised by rapid digitisation. Both privately and professionally, a huge proportion of voters are active users of the internet and digital tools that collect detailed information about each and every one of us. When this information is combined with the use of algorithms, machine learning and artificial intelligence which analyses the information in a

highly efficient manner, the result is the existence of very sensitive information about voters concerning, for example, health, sexual orientation, religious beliefs, political views and other preferences. This information can be used to target information for the purpose of influencing voters in the direction desired by a (hostile) actor, without the voters themselves being aware of this. This also continually demonstrates the effectiveness of such micro-targeting. This phenomenon is assigned a high overall risk assessment, because micro-targeting is an effective and readily available tool that is difficult to protect against. The effect is substantial, knowledge of the phenomenon is limited and the pace of change is rapid.

Events of a more technical nature that relate to the digital value chain have been consistently found to contribute less to risk than the influencing events described above. Extensive work has been done and continues to be done on protecting the election administration system EVA and associated equipment and components and this protection presently appears to be robust. However, vulnerabilities will always exist in the digital value chain, for example, due to rapid technological changes, complexity and challenges in having the requisite expertise. Not least, the electoral process and associated systems and components will also be characterised by the challenges associated with long and complex digital value chains. In these value chains, with their services, components, interwoven systems and dependencies, one event or exploitation of a vulnerability “far away” may have profound consequences for central and local systems and components in the election process. However, the principal reason for why the overall risk is considered limited in this area is that there is still wide-spread use of manual processes that ensure control and redundancy. For example, this applies to identifying voters and casting of ballots, and the required manual counting of ballots. These manual processes represent a significant barrier against system failures obstructing election proceedings and from hostile actors being able to manipulate votes and results. It would be extremely capacity-intensive to simultaneously manipulate both electronic systems and manual processes carried out by election workers.

One phenomenon that has gained considerable focus since the 2018 Swedish election is campaigns that seek to raise doubts about whether the election result was correct and which indicate that electoral fraud has taken place. Making such claims requires little effort on the part of a hostile actor. Utilizing social media to spread false information and half-truths that are based on conspiracy theories and the like, can be a very effective tool for eroding confidence in the form of governance, systems and processes. In Norway there is a significant barrier in the form of the general high level of trust in the authorities and systems, while Norwegian society, even when compared to Sweden, has few problems with polarization and active radicalised groups. However, Norway is less mature than Sweden in terms of preventive measures to ensure there is robust information and media, knowledge and competence development in different groups and in the public debate concerning these types of threats to democracy.

## **6.2 Types of consequences of events and phenomena**

As previously described, events and phenomena are assessed in terms of the severity and types of consequences these will have for the election if they are used/realised. For each of the 20 described phenomena, a valuation has been made of the consequences for the five areas of free participation, enlightened and informed, correct, conducted according to plan and trust (see the description of these at the start of chapter 6).

Figure 6.7 illustrates how the different consequence dimensions are impacted by the phenomena and events that are assessed. As the figure shows, reduced trust in elections, authorities and democracy is the absolute dominant overall consequence. The realisation of almost all phenomena and events will negatively affect the trust dimension. It is also a characteristic of this dimension that one does not necessarily have to succeed in realizing the attacks/events. The mere fact that the attack has been carried out and then subsequent doubts about whether it succeeded – or could have succeeded – can be enough to negatively affect trust. Trust is fundamental to the legitimacy and function of the democratic system of government. When it is shown as to how vulnerable this dimension is to present day and future threats, this emphasises the importance of working to uphold and strengthen the high level of trust in democracy that exists in Norwegian society.

Furthermore, increasing threats and risks associated with voter influence, especially through the use of digital tools and social media, can have major consequences for how enlightened and informed voters are (the basis for genuine elections) and free participation for both candidates and voters.

On the whole, the consequences, and thereby the need for, focus and measures related to the three dimensions listed above (trust, enlightened and informed, free participation) would appear to be significantly more pronounced than the consequences for correct elections and the ability to conduct elections. The principal reason for this is that voter identification, voting, counting and checks are largely carried out using manual processes instead of, or in addition to, electronic processes. Since large parts of the threat landscape are linked to the digital aspect, analogue/manual activities will represent a powerful barrier.

Figure 6.7 highlights both the overall severity of different consequences and how different consequences are categorised for each event.

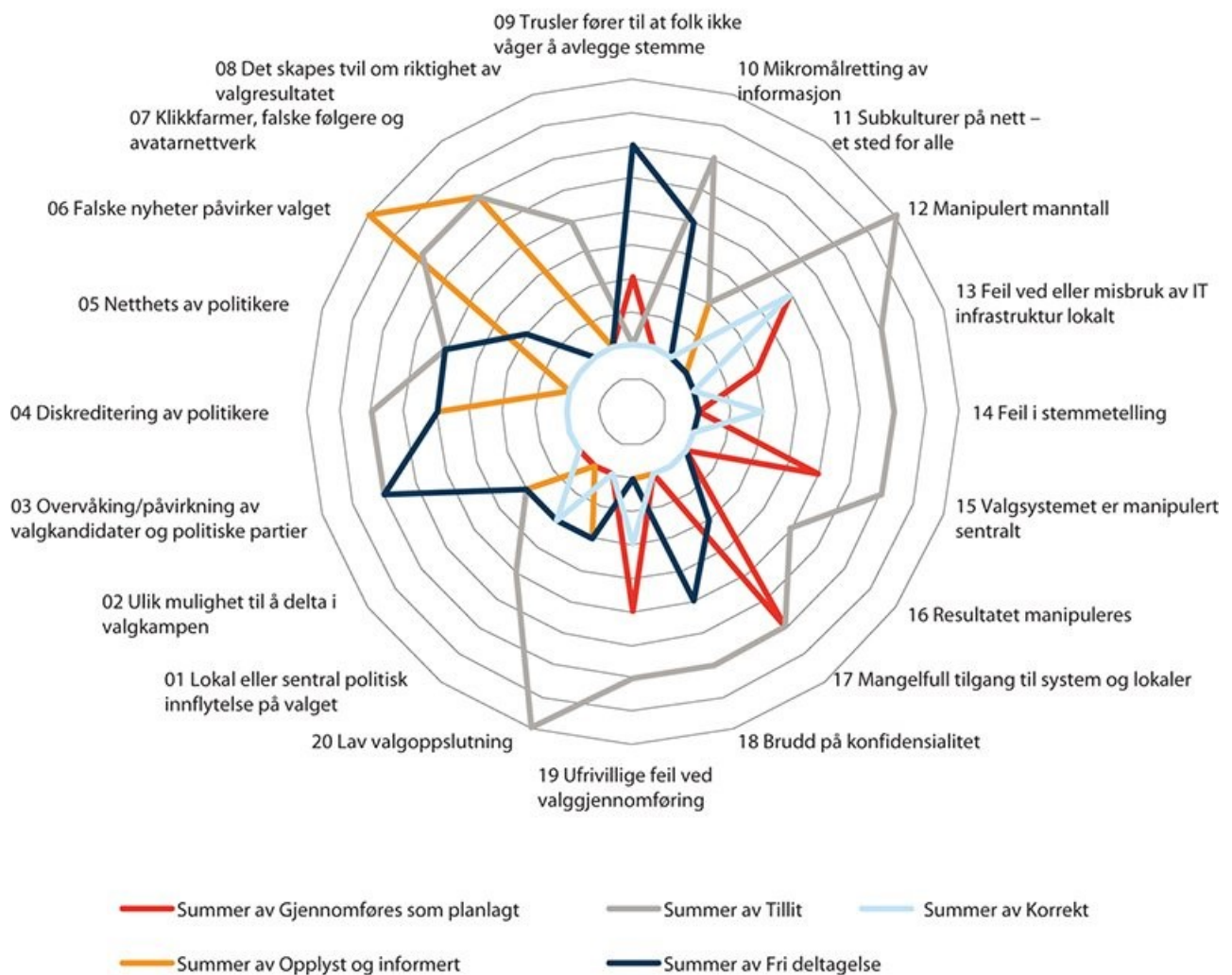


Figure 6.7 Visualising the types of consequences that dominate for each event/phenomenon given that the event occurs

## 7 Risks associated with future changes

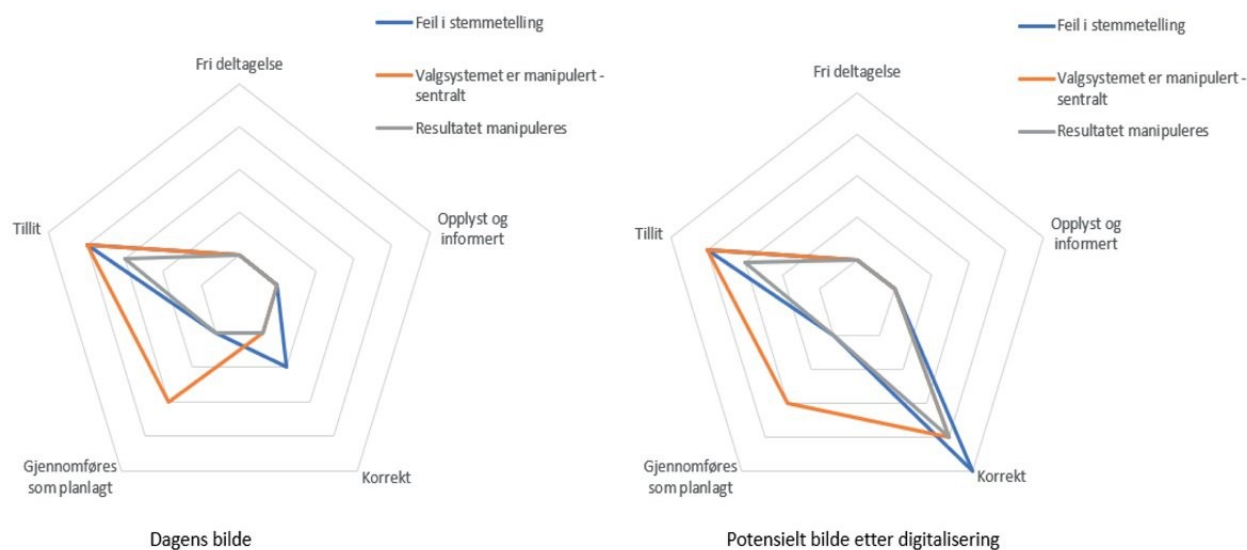
This assignment in this report has been to focus on risks associated with the present conduct of elections and the present assumptions. However, naturally enough, the focus of both the Election Act Commission and the authorities will be to ensure that safe and secure elections will also be able to be conducted in the future. A change in the assumptions that form the basis for the assessments in this report and analysis may also significantly alter the risk associated with elections.

It is only possible to see the contours of some of these risks, while for others we can state with a high level of certainty that they will eventuate. Therefore, the purpose of the recommended measures is to address the most relevant changes in assumptions. Examples of this are:

- Political changes, both internationally and nationally. Changes in the international political climate involving, for example, the UN, NATO and Russia, could make Norway a more attractive target and increase the threat against democratic processes.
- Reduced trust in politicians and systems among the population may increase vulnerability to operations which have the intent of exerting influence and generally result in less stability.

- Digitisation of systems relevant to elections (Population Registry, voting and counting) without parallel manual systems will expose vulnerabilities in relation to manipulating the results of an election and will require more technical security barriers.
- Rapid digitisation of society generally results in the possibility of “fake news” and micro-targeting of information and in doing so can threaten a enlightened and informed society.

Figure 6.8 is an illustration and example of how consequences can change for certain selected phenomena/events (errors in vote counting, manipulation of election system - centrally and result manipulated) in an envisaged development in which manual counting is not required - while at the same time other independent methods of counting have not been implemented.



*Figure 6.8 Illustration of how consequences may change in the event of an envisaged future transition from manual and machine counting of votes, to the full digitization of elections.*

An important element when it comes to protecting a more digitised electoral system in the future (which must be expected) is the paradigm shift that can be seen within IT security. Despite significant measures involving built-in security, routines, protection and testing, it is not fully possible to protect critical infrastructure such as election systems from intrusion. It must be assumed that infrastructure is, or will be, compromised, and that tools and processes must be established that can discover, detect and prevent damage. The previous paradigm was to invest in maximum protection, and attempt to plug all leaks. It is now acknowledged that even the best defence will probably fail at one point or another. The paradigm is shifting towards a more detection-oriented IT environment that also focuses on detection and management to prevent damage if the defence is penetrated.

However, as noted in chapter 6, the very fact that an attack has been carried out and that there are doubts about the effectiveness of this could have major consequences for trust in the democratic processes. This underlines the importance of the population also being aware of the actual risks associated with the event. When it is expected that the system can be hacked, but there is a high level of certainty that the election will still not be affected, it is essential that the population also understands this in order to avoid distrust. In 2018 and 2019, we saw several examples of



major companies reporting that they had been attacked and hacked, but they were able to retain a large degree of trust by demonstrating that they had handled the incident and by being open and transparent about what had occurred. Transparency, information, communication and developing the knowledge of voters and in society are therefore very important for the security of democratic processes.

## **8 Suggestions for possible measures that may contribute to improved security**

Based on assessments made and described in the report, the following are suggestions for possible measures that may contribute to improved security. The principal rationale for the suggestions is the risk and vulnerability assessment in Appendix 2 and a brief summary is provided below. It is emphasised that the suggestions are of an overarching nature and restricted to the areas defined as security in election processes.

Risks associated with the events/phenomena assessed will have varying degrees of manageability. This report has used manageability as a term to describe the extent to which measures can be implemented that effectively prevent or manage an undesired event. High manageability is typically used when effective measures can be decided on (such as regulations and preparedness) at a national level. Low manageability is used for phenomena that have international dimensions or that, for example, require long-term measures for developing knowledge.

Figure 6.9 roughly outlines how the various events are positioned in terms of risk (overall risk contribution), and the possibility of implementing effective measures to reduce risk (manageability). The placement on the "overall risk contribution" axis will correspond to the bar level/summary of risk contributions visualised in Figure 6.6, and include contributions from both probability assessments, impact assessments and the other defined dimensions that affect risk. A high placement on the axis shows a high risk. For manageability, placement on the far right will indicate high manageability for managing risk. For some events, specific measures and regulatory requirements will be suitable for reducing risk. For other events, more longer-term measures focusing on knowledge development and international cooperation are the most appropriate. Many of the events will be classified in the border area between these or may be managed through a combination of different measures. It is important to note that even if it may be difficult to have complete protection from certain undesired events, the risk can be significantly reduced by having good plans and effective contingencies in place when an event occurs. Figure 6.9 is a rough illustration of the structure of the assessments of measures and is not an exact/correct overview.

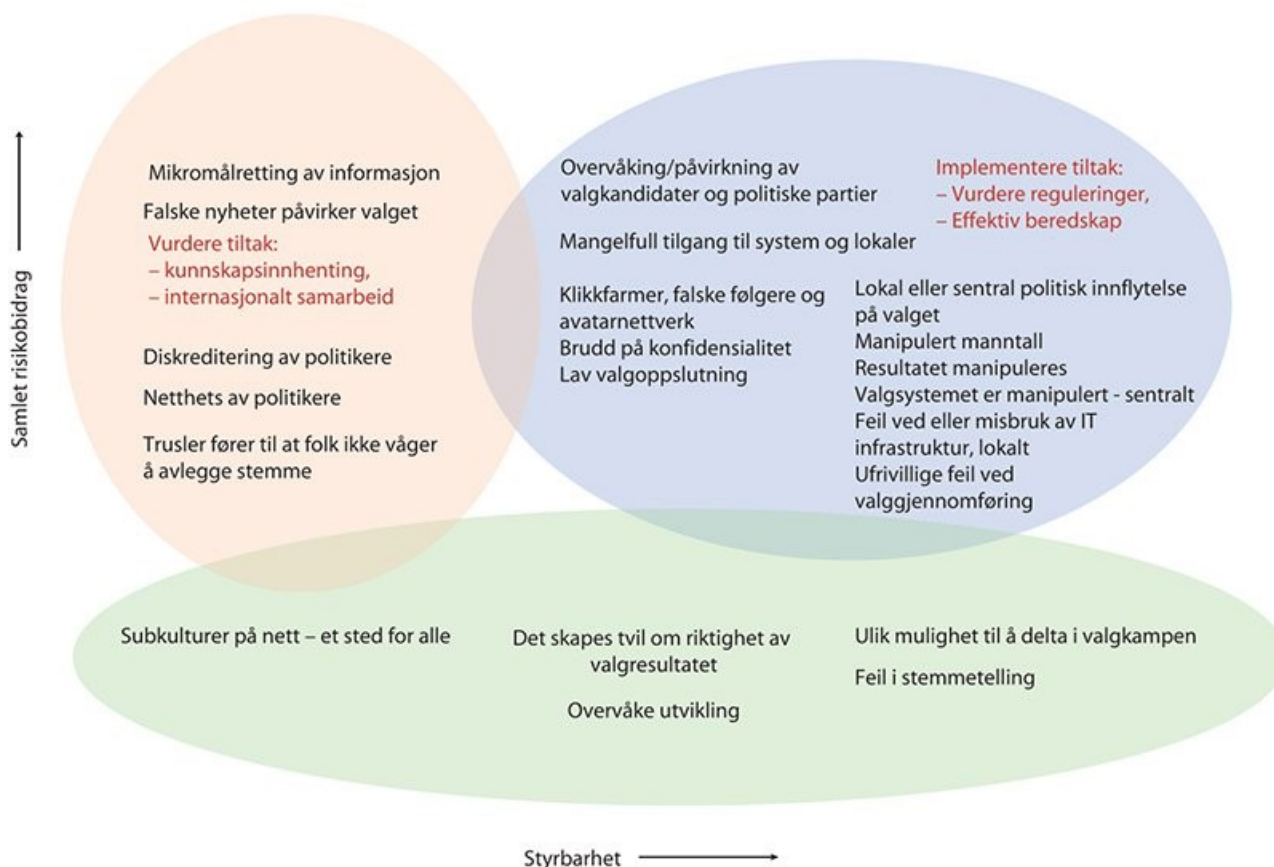


Figure 6.9 Illustration – types of measures suitable for managing different types of events/risks

## 8.1 Suggestions regarding possible measures - regulatory

### Regulating the conduct of elections and legal basis for supervision

In Norway, the values and processes that are important to society are largely governed by safety requirements and regulations from the authorities. For example, this may be to protect the lives and health of employees or in the community/surroundings. It may be to protect functions that are critical to society such as the supply of water and power, or to protect other values that we cherish. Not least, in recent years there has been an increasing focus on - and degree of regulation that is focused on protection against intentional threats (when someone deliberately wishes to cause harm).

The conduct of elections is an important democratic process, and an area that receives a great deal of focus both nationally and internationally because it is perceived as being threatened by the current threat landscape. However, requirements for security in connection with conducting elections are currently only regulated to a very limited degree in the Election Act and Election Regulations. The Norwegian Directorate of Elections has prepared some comprehensive guidelines with recommended physical, technical and procedural/organisational security measures. However, it is voluntary for municipalities and county authorities to follow the recommendations and there is also no legal basis for being able to order municipalities and county authorities to follow these.

The Norwegian Directorate of Elections has prepared training materials and offers training to election officials in municipalities and county authorities. However, following the training is voluntary,

and the local actors themselves are responsible for assessing needs and carrying out training of other election workers. There is thus no legal basis for ordering the local actors to implement training measures.

Suggestions for possible measures:

- *Regulation of security requirements for the conduct of elections for regional and local actors.* A function-based regulatory framework is proposed with a focus on a risk-based approach. This means that the regulation sets requirements for what the measures shall achieve, while local actors are given the freedom with regard to how these are to be achieved. The regulation should cover areas such as technical security for systems and components, physical security of premises and equipment, personnel security, expertise and organisation/routines. In several of these areas, it may be appropriate that the specifications in guides issued by the Directorate of Elections constitute alternative 1 for meeting requirements, while alternative 2 is that, following a risk assessment, the local actor finds other measures that provide an equivalent or higher level of security. This will make the requirements manageable, even for municipalities with limited capacity and expertise within security and risk management. Functional requirements will be robust in relation to changes in technology and methods in different future scenarios (as opposed to specific requirements).
- *Establishment of legal basis to supervise security regulations for elections.* Experience has shown that the use of supervision is vital for ensuring that requirements are implemented. The ability to supervise security measures in connection with the conduct of elections will be an important part of both assessing and reducing risk and vulnerability in society. The legal basis for conducting supervision covers both controls and the ability to issue instructions in line with requirements. It is emphasised that the term “supervision” covers a range of methods and tools for implementation, not just local checks before, during and after election proceedings. There should be an assessment of the most appropriate location for the supervisory function and whether it should have multiple levels (central - regional).

Section 8.3 discusses the issue of regulation versus local self-government.

#### *Relationship to the Security Act*

The new Norwegian Security Act entered into force on 1 January 2019 (Ministry of Justice and Public Security, 2019). An overarching objective of the new Act is to contribute to safeguarding Norway’s democratic form of government. The Act applies to central government, county and municipal bodies and is intended to address “*services, production and other forms of activities that are of such importance that the complete or partial loss of the function will have consequences for the state’s ability to safeguard national security interests*”, which therefore includes the democratic form of government. It appears natural to assess whether the election process comes under such a definition and need for protection. The Ministry of Local Government and Modernisation has stated that such an assessment will be initiated for the election process as part of the Ministry’s work on identifying fundamental national functions. Irrespective of this, it appears a sensible option to look at any overlapping or adjacent areas of regulation for two such socially pervasive statutes as the Security Act and Election Act.

Suggestions for possible measures:

- *Assess the relevance of the Security Act for the election process.* If the election process, systems, equipment etc. fall under the scope of the Security Act, it may potentially also safeguard the suggested measures in (1) and (2) with regard to security requirements and supervision. Assigning such a supervisory responsibility to the security authority may provide greater independence or distance from political structures.

#### *Roles and responsibilities of central and local actors*

The distribution of roles and responsibilities in relation to the conduct of elections is closely linked to the requirements recommended above concerning regulation and supervision. It is implicit in the recommendation regarding regulation and supervision that key actors will then have a greater duty and opportunity to set requirements and check compliance. Consideration can also be made to assigning responsibility for control and follow-up at regional/county level (supervision with municipalities) and local level (internal controls). However, it is a challenge, including in other regulatory areas, that it is such a demanding task to follow up security measures, threats, risks and vulnerabilities and digital systems due to the high level of expertise required. It may therefore be challenging to establish and safeguard good control functions at regional and local level.

Suggestions for possible measures:

- *Assess and clarify changes in roles and responsibilities/authority between local and central actors in connection with the conduct of elections in order to safeguard requirements and controls if (1) and (2) are adopted.*

#### *Use of technology in the conduct of elections - mandatory use of central system*

The Norwegian Directorate of Elections is currently responsible for developing and operating the election administration system EVA, which is offered to all counties and municipalities for conducting elections. There is no legal basis for ordering regional and local authorities to use the system. With current social developments, increased digitisation must also be expected in areas relating to the election process. At the same time, an ever-changing threat landscape and rapid technological development will increase the need for technical expertise to develop, operate and protect digital platforms and software.

Suggestions for possible measures:

- *Legislate requirements that authorities at all levels of the election process must use digital infrastructure and software from central electoral authorities (EVA).* Increased digitisation will place increasingly higher demands on protecting digital equipment, software and infrastructure - and on expertise for being able to safeguard security measures. The option of selecting this locally, combined with highly variable capacity and expertise in the different municipalities opens up the possibility of serious future vulnerability. A mandatory, centrally controlled system reduces this vulnerability by increasing the possibility of managing and implementing stronger security measures when needed, as well as facilitating the tasks carried out by the municipalities.

### *Emergency preparedness provision in the election legislation*

There is no statutory authority in the present electoral system and regulations to, for example, postpone the election if circumstances arise that make this necessary. The election must be conducted – and then possibly declared invalid and conducted once more. An emergency preparedness provision that permits election proceedings to be postponed for shorter periods locally, regionally or centrally, would create a more robust system for managing undesired events. For example, this may include situations in which a threat has been made against polling stations in larger or smaller areas which has deterred voters from going there to vote. There may be weather and climatic conditions that prevent voters from going to the polls or cyberattacks that knock out all or parts of necessary infrastructure. With regard to climatic conditions that may increase the prevalence of extreme weather and the possibility of increased cyber threats and attacks which sabotage infrastructure, arrangements should be made for safer and more efficient emergency preparedness (option to manage the situation). This may also reduce risk by preventing a hostile actor from seeing the same potential for carrying out an attack. The consequences will be less severe.

Suggestions for possible measures:

- *Establish an emergency preparedness provision in the election legislation.* It must be further investigated as to when the legal basis can be applied and by whom (centrally and possibly regionally and locally), but the legal basis must grant the right to postpone election proceedings for more specific and limited periods, both locally and/or centrally.

### *Requirement for independent counting of votes*

There are a number of larger and smaller vulnerabilities in the digital value chain in connection with the conduct of elections, counting of votes and determination of the election result. However, it is presently established in regulations that at least one count of votes cast at the election (preliminary count) must take place manually, in addition to manual procedures for verification and record keeping. This manual count reduces the risk of election results being manipulated to an absolute minimum because it is independent of the machine count that can otherwise be used, and the absence of this would provide significantly greater challenges and requirements for technical security measures both now and into the future.

Suggestions for possible measures:

- *Continue regulatory requirements for two independent counts of the votes after elections.* The requirement for manual counting currently represents a very strong barrier against the manipulation of votes polled and election results. A requirement for independent counts should also be maintained in the event of increased digitisation of the electoral process (such as electronic voting). It is important to ensure that there is actual independence between such counts. For example, two counts carried out by two different instances, but using the same electronic system/software, will not have the same independence as manual and electronic counting.

### *Regulating micro-targeting of information during election campaigns*

Assessing and analysing large amounts of data about voters opens up opportunities for political parties, and others, to (micro) target information and messages, for example, as part of the election campaign. There is serious and, in part, unknown potential for this type of information being used as a tool for influencing work, and it could also be envisaged that finances will create a divide between political actors who can use the tool and those who cannot.

Suggestions for possible measures:

- *Assess the need for regulating the use of micro-targeting as a tool in election campaigns.* Areas such as political advertisements on television are already regulated. The potential of micro-targeting is probably much greater

### *Penalties for cyber attacks*

Hacking has become big business and many criminal actors sell their hacking services to large and small actors who want access to information, or to influence or destroy. Unlike the rest of society, the cyber area is yet to be regulated and there are not always clear definitions of what constitutes a crime and how this should potentially be punished. In the EU, efforts were underway in the spring of 2019 to establish and clarify a system of rules with penalties that can be imposed on those who hack into, for example, election systems. The penalties may be imposed on individuals, organisations and state actors<sup>685</sup>. Sections 151-154 of the Norwegian Penal Code already address the influencing of votes and result to a significant degree, while other forms, for example, sabotage, are not as clearly stipulated.

Suggestions for possible measures:

- *Establish/clarify the legal basis for imposing penalties for hacking and attempted hacking of election systems.* Criteria, scope, responsibility and authority should be further studied for appropriate regulation.

## **8.2 Suggestions for other possible measures:**

In the following, some measures are listed that may be considered for addressing security challenges related to elections, both now and in the future. Reference is made to the analyses which appear in Appendix 2 for assessments which form the basis for these, as well as for several potential measures.

- a. Study of alternative organisation for approval of elections and appeal board. Some possible alternatives are: National elections: Responsibility for the approval of the election and for the appeals system is with a court or a separate dedicated body. (This is common in a number of other countries and Norway has been criticised by election observers for our current system). Consider whether the electoral committees could be chaired by the representative of the administration, court or others if the system of "elected electoral committees" is continued. Consider transferring approval of the election away from elected bodies.

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<sup>685</sup><https://www.politico.eu/article/europe-cyber-sanctions-hoped-to-fend-off-election-hackers/>

- b. Continue requirements for transparency in connection with financial support to parties and support schemes that ensure a “livelihood” for a broad range of parties and organisations.
- c. Maintain and strengthen support schemes for a broad range of media outlets, including opinionated newspapers. Ensure a broad range of information in editor controlled media - journalistic standards (counterweight, balance) - for example, through subsidies.
- d. Strengthen requirements for both central and local actors in the election process in assessing and managing preventable threats.
- e. Strengthen/protect candidates for elections through information and guidance, establish and continue public-private cooperation for research, development and implementation of technological protective measures.
- f. Continue and develop fact-checking functions such as fakta.no, and report fake news that is uncovered.
- g. Support and develop technological measures for exposing and labelling fake news:
  - a. Detection of manipulated images, sounds and film.
  - b. Identification and deletion of fake profiles and networks.
  - c. Identification and labelling of reliable and non-reliable sources of information (directly online).
- h. Consider regulations for being able to prosecute the dissemination of false information (however, it would be problematic to separate deliberate/unconscious misinformation and the degree of "falsehood" without infringing on freedom of expression).
- i. Consider regulations that prevent the purchase and sale of fake clicks as legal influencing tools.
- j. Information initiatives to increase knowledge about democratic processes, influencing and security aimed at different population groups such as children/young people, the elderly, immigrant groups etc. (public enlightenment – build resilience)
- k. Training candidates, the media and the population to detect fake news – especially children/young people.
- l. Training the pool of recruits for political parties and candidates for election in how to manage online abuse - build resilience.
- m. Preparations among the parties – plans for managing online abuse, and support schemes for those affected.
- n. Combine manual processes/expertise and technological initiatives to quality control news and information.
- o. Government authorities can plan well for potential scenarios. Focus on information and knowledge building in society.
- p. Give notice of potential attacks or allegations and increase knowledge and awareness among different groups of people.
  - a. Ensure there are routines and security prior to elections through transparent communication.
  - b. Have clear materials that can be published if anything occurs during the election process (attack).
  - c. Have good emergency preparedness plans, with a specific focus on information and communication.
- q. Awareness campaigns to combat online abuse.
- r. Moderation of comment sections etc. - but with clear rules to avoid conflicting with freedom of expression. Prosecution of serious cases of online bullying.
- s. Ensure focus on safeguarding ICT security and relevance for elections in the digitisation process for the National Population Registry.

- t. Improve checks of employees at the Norwegian Directorate of Elections and election workers and suppliers at all levels (prevent insiders from appearing/being used).
- u. 24/7 online support to election workers.

### 8.3 The effect of the measures on transparency, local autonomy and freedom of expression

The introduction of measures to increase election security may potentially conflict with the upholding of other important values and principles. Below is a brief overview of this, based on the measures that are recommended in this report.

#### *Central and local responsibility – regulation and local autonomy*

This report identifies the possibility of greater regulation of the election process and that central actors are given responsibility and authority for monitoring and controls together with local actors. The claim may be made that this could reduce local autonomy and the strong tradition of the municipalities being responsible for conducting elections.

The following statement was added to Article 49 of the Constitution of Norway in 2016: “The inhabitants have the right to govern local affairs through local democratically elected bodies.”

In principle, there are two key values that justify municipal autonomy:

- local freedom/democratic self-determination
- efficiency because locals know best where the problems are.

This must be balanced against two other values:

- Equality between municipalities in terms of services and quality.
- Efficiency, when standard solutions for the area in question are suitable for everyone.

A general "formula" for the use of discretion versus joint regulation (Rothstein, 1994) is:

- If predictable challenges are to be enforced, there is little need for local discretion/autonomy.
- If there are different challenges in each case, there is a need for/something to gain from permitting extensive local discretion.

In principle, some points argue against stricter national regulation of the election process:

- If interfering with autonomy appears unnecessary.
- If regulation threatens important local values.
- If there is major interference, but this provides little value.
- If an unnecessarily extensive bureaucracy is created for which there is no need.
- If there are clear reasons for why municipalities may have different systems or little central regulation.
- If there is good local expertise with a good knowledge of the threat landscape.
- If issuing overarching orders/carrying out assessments provides little increased security.
- If there is a high level of local technical expertise.



While others advocate for stricter national regulation of the election process:

- If there is a need for specialised knowledge that not everyone possesses.
- If it is easy to make mistakes and this can have major consequences.
- If the "regulatory intervention" itself is minor because it is more technical and does not affect local politics.

Due to the importance of the electoral process for safeguarding democratic values, the assessment in this report is that clearer regulation is appropriate for protecting this process. The regulation that has been proposed is at a functional level and ensures that requirements are set for the parts of the process that need to be safeguarded, while the municipalities retain a large degree of autonomy with regard to how this is to be achieved. This is therefore considered to cause minimal interference in local autonomy.

### *Freedom of expression*

Measures for dealing with undesired influence, including fake news, online abuse, etc., often trigger debates concerning freedom of expression – and may also come into conflict with this. One example is requirements to moderate comment sections, reader letters and other online posts to avoid abuse, offence and false claims. There is of course a difference between moderation that is internal and moderation that is imposed. The first need not be a problem with regard to freedom of expression, while the second obviously will be. Internal moderation of debates can in fact strengthen freedom of expression by preventing the kind of arguments and inaccurate information that will derail the debate. It should be noted that letters from readers are also edited, so not everything is allowed. This would be very different if legislators dictated how reader letters should be edited. The same applies to moderation of comment sections in online newspapers. The editorial staff decides themselves, but should establish common guidelines for complying with general rules of objectivity and allow good posts, irrespective of whether the content is controversial, but remove threats and harassment.

Furthermore, measures designed for detecting information that is directly false will only conflict with freedom of expression to a limited extent (fake videos, images and facts) and should be strengthened. However, in many instances the situation will be that information is partly true or constitutes only a small part of the picture. In such cases, both the labelling and removal of the information, not to mention any penalties imposed on the source, will quickly become a basis for discussion regarding freedom of expression.

There is no hard and fast answer to how the issue should be dealt with or what is right or wrong, but it is important that the issue is continually discussed and addressed.

### *Transparency*

Providing protection against deliberate acts has traditionally often involved shielding, confidentiality and "locked doors". However, with regard to democratic processes and measures that are recommended in this report, transparency itself is often a barrier and an effective measure. Recommending regulations that are functional and risk-based, provides a good starting point for finding good, appropriate and inclusive measures locally. For technical systems, transparency will in

many cases contribute to detecting vulnerabilities (see, for example, Switzerland, which openly asked for help from everyone to find errors and deficiencies in their own election systems).

In order to reduce vulnerability associated with digital election systems, major emphasis is placed on the barrier represented by the parallel manual count and keeping of records during the election. The manual count is transparent and easy to understand and does not challenge transparency. However, it is worth noting that a transition to electronic voting will more readily be perceived as challenging in the interface between technological measures for protecting the confidentiality of voters and votes, and transparency and understanding regarding how the process takes place. This should be taken into account and addressed in a digitisation process.

Measures aimed at understanding and regulating or managing election influence through the use of digital platforms will contribute to greater knowledge and transparency – rather than the opposite.

Parts of the Security Act have a strong focus on protecting the confidentiality of information and vulnerabilities if this will apply to election systems and processes in the future. The most important factor for ensuring transparency will be that measures are implemented following sound assessments of what is necessary to protect - and what is not.

## 9 Summary of the four research questions

Brief reference is made below to the parts of the report where the different research questions are raised (for the actual assessment, reference is made to the relevant part of the report):

1. *What are the threats to democratic processes in connection with the conduct of elections in Norway? This includes political processes and the influencing of opinions prior to elections, as well as practical implementation of the election itself. Both the possibility of different types of attacks and unintended events that may have an impact on the implementation of the election must be highlighted. The threats must be described both with regard to their probability and consequences, as well as any impact they may have on trust in the democratic system.*
  - The report addresses 20 different undesired phenomena/events that may affect the democratic processes in connection with the conduct of elections in Norway. Details related to the assessment of threats and risks can be found in the analysis forms in Appendix 2. Summaries can be found in chapter 6 of the report. The report shows that undesired events relating to various methods of influencing candidates/politicians and voters provide the greatest cause for concern with regard to security in the electoral processes, and that this can not only have a major impact on confidence in the electoral process, but also free participation and whether the election is enlightened and informed.
2. *How are vulnerabilities spread along the digital value chain when conducting elections? Out of consideration to the scope of the assignment, this part of the assignment must be limited to a more general overview. It will be appropriate to show what responsibilities the different actors have for the different parts of the value chain, as well as their ability to check compliance with the rules and to ensure compliance.*
  - The vulnerabilities in the digital value chain appear at an overall level in the analysis forms in Appendix 2 and in the summaries in chapter 6. The report shows that the

manual count of votes that is presently stipulated in regulations constitutes a vitally important barrier against manipulation of the election result in the digital value chain. Responsibility for different actors and the ability to check compliance with requirements are also further highlighted in the recommended measures in chapter 8.1.

3. *What societal consequences does the use of technology have for the election process? The provider is requested to highlight and discuss the consequences technology and protection of the digital value chains have for the distribution of responsibilities between different levels. The State now issues guidelines for the design of the system, but is limited in its ability to set technical requirements. An assessment is also requested of the connection to the system of rules and regulations. Finally, an assessment is also requested regarding transparency and how this is properly ensured, while at the same time safeguarding security requirements.*
  - The report has identified the election process as a critical function for safeguarding democratic values in society and notes how regulations and a clear division of responsibilities in certain areas can contribute to making the election process more robust, including in a more digital future. This is further addressed in the analysis forms in Appendix 2 and the considerations relating to recommended measures in chapter 8.1. In addition, ensuring transparency is discussed in a separate section in chapter 8.3.
4. *What measures for preventing and remedying damage should be implemented in order to protect democratic processes in connection with the conduct of elections in Norway? The provider is requested to present suggestions for possible measures that may contribute to enhancing the security of the democratic process in Norway.*
  - The report summarises proposals for possible measures in chapter 8 and also discusses the dilemma that some measures may also impact on other values, such as local autonomy and freedom of expression.

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## Appendix 7.

### Examples of calculations

The Secretariat

#### 1 Introduction

This appendix contains examples of how the various calculations included in the electoral system are carried out. Examples have been included showing the calculation of how seats are to be allocated between constituencies, calculation of the parties that win direct seats at the parliamentary election, and calculation of the parties that are awarded seats at large, and the constituencies in which the different parties are awarded their seats at large.

An example of the calculation of preferential votes at a municipal council election has been included in Box 7.1 in Chapter 7 regarding preferential voting. A majority of the Commission has proposed an equivalent system for parliamentary elections and county council elections, but without cross-party votes.

#### 2 Allocation of seats among constituencies

The Commission proposes that the allocation of seats among constituencies shall take place in two stages. Firstly, all constituencies shall receive one seat. The remaining seats will then be allocated according to the number of inhabitants and based on the Sainte-Laguë method. Here the “pure version” is used, with 1 as the first divisor.<sup>686</sup> The method involves dividing the number of inhabitants in the constituencies by the number sequence 1–3–5–7, etc. The constituencies with the largest quotients are awarded the seats. The Commission also proposes that all constituencies shall have a minimum of four seats in total. Therefore, once the allocation process is complete, it must be verified that all constituencies have received four seats.

With 19 constituencies and 169 members of the Storting, all of the 19 constituencies first receive 1 seat each. There are then 150 seats left to allocate according to the number of inhabitants.

Table 7.1 shows an example of this. Population figures were used from the second quarter of 2019, and the figures were adjusted to take into account the structural changes that were adopted. The constituencies are ordered by the number of inhabitants. Only the first 4 quotients and the result of the allocation of the 150 seats between the constituencies are shown.

The first quotient is the number of inhabitants divided by 1, i.e. equal to the number of inhabitants. The next quotient is the number of inhabitants divided by 3. For Oslo, this gives:  $683,947 / 3 = 227,982$ . The third quotient is the number of inhabitants divided by 5 or for Oslo:  $683,947/5 = 136,789$ .

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<sup>686</sup>For the election of direct seats between parties, the modified version of the method is used, where the first divisor is increased to 1.4. The other divisors are equivalent to the “pure” method, i.e., 1.4–3–5–7-9, etc.

*Table 7.1 Allocation of seats based on number of inhabitants 150 mandates to be allocated, seat number in brackets*

	1	3	5	7	Number of seats
Oslo	683,947 (1)	227,982 (11)	136,789 (20)	97,707 (28)	19
Akershus	668,001 (2)	222,667 (12)	133,600 (22)	95,429 (29)	19
Hordaland	525,374 (3)	175,125 (15)	105,075 (26)	75,053 (37)	15
Rogaland	476,888 (4)	158,963 (19)	95,378 (30)	68,127 (39)	13
Sør-Trøndelag	331,816 (5)	110,605 (24)	66,363 (40)	47,402 (58)	9
Østfold	297,228 (6)	99,076 (27)	59,446 (45)	42,461 (63)	8
Møre og Romsdal	265,074 (7)	88,358 (31)	53,015 (50)	37,868 (69)	8
Buskerud	264,943 (8)	88,314 (32)	52,989 (51)	37,849 (70)	7
Vestfold	244,478 (9)	81,493 (33)	48,896 (55)	34,925 (78)	7
Nordland	241,851 (10)	80,617 (34)	48,370 (56)	34,550 (81)	7
Hedmark	197,533 (13)	65,844 (41)	39,507 (66)	28,219 (93)	6
Vest-Agder	187,868 (14)	62,623 (42)	37,574 (71)	26,838 (101)	5
Oppland	173,574 (16)	57,858 (47)	34,715 (79)	24,796 (108)	5
Telemark	173,243 (17)	57,748 (48)	34,649 (80)	24,749 (109)	5
Troms	168,197 (18)	56,066 (49)	33,639 (82)	24,028 (113)	5
Nord-Trøndelag	134,428 (21)	44,809 (60)	26,886 (99)	19,204 (140)	4
Aust-Agder	117,734 (23)	39,245 (68)	23,547 (115)	16,819	3
Sogn & Fjordane	108,579 (25)	36,193 (74)	21,716 (125)	15,511	3
Finnmark	75,738 (36)	25,246 (105)	15,148	10,820	2

Oslo takes the first seat because it has the highest population, and Akershus takes the next seat. This continues down the table until Nordland has received its seat. Oslo and Akershus will also

take the next two seats because their second quotient is again higher than the first quotient of the other constituencies.

After having made this allocation, it must then be checked that all constituencies have a minimum of four seats in total. In the example shown, Finnmark first receives one seat and then two seats based on the number of inhabitants, i.e. the constituency has received a total of three seats. Aust-Agder and Sogn og Fjordane receive three seats in the allocation based on the number of inhabitants, and when one adds the seat they received before the allocation based on the number of inhabitants, both of these two constituencies have thus received a total of four seats. Therefore, only Finnmark has not reached the minimum number of seats.

To satisfy the requirement that all constituencies must have a minimum of four seats, Finnmark is assigned four seats directly, and a new allocation is then carried out which does not include Finnmark and the constituency's four seats.

Following this, the starting point is 165 seats. The 18 remaining constituencies will then receive one seat each. There will then be 147 seats left to be allocated based on the number of inhabitants in these 18 constituencies. This is demonstrated in Table 7.2.

*Table 7.2 Allocation of seats based on number of inhabitants (excluding Finnmark) 147 mandates to be allocated, seat number in brackets*

	1	3	5	7	Number of seats
Oslo	683,947 (1)	227,982 (11)	136,789 (20)	97,707 (28)	19
Akershus	668,001 (2)	222,667 (12)	133,600 (22)	95,429 (29)	19
Hordaland	525,374 (3)	175,125 (15)	105,075 (26)	75,053 (36)	15
Rogaland	476,888 (4)	158,963 (19)	95,378 (30)	68,127 (38)	13
Sør-Trøndelag	331,816 (5)	110,605 (24)	66,363 (39)	47,402 (57)	9
Østfold	297,228 (6)	99,076 (27)	59,446 (44)	42,461 (62)	8
Møre og Romsdal	265,074 (7)	88,358 (31)	53,015 (49)	37,868 (68)	7
Buskerud	264,943 (8)	88,314 (32)	52,989 (50)	37,849 (69)	7
Vestfold	244,478 (9)	81,493 (33)	48,896 (54)	34,925 (77)	7
Nordland	241,851 (10)	80,617 (34)	48,370 (55)	34,550 (80)	7
Hedmark	197,533 (13)	65,844 (40)	39,507 (65)	28,219 (92)	6
Vest-Agder	187,868 (14)	62,623 (41)	37,574 (70)	26,838 (100)	5

Oppland	173,574 (16)	57,858 (46)	34,715 (78)	24,796 (106)	5
Telemark	173,243 (17)	57,748 (47)	34,649 (79)	24,749 (107)	5
Troms	168,197 (18)	56,066 (48)	33,639 (81)	24,028 (111)	5
Nord-Trøndelag	134,428 (21)	44,809 (59)	26,886 (98)	19,204 (138)	4
Aust-Agder	117,734 (23)	39,245 (67)	23,547 (113)	16,819	3
Sogn & Fjordane	108,579 (25)	36,193 (73)	21,716 (123)	15,511	3

Finnmark is not included in this allocation. There are thus 147 seats to be allocated between the other constituencies using the same method as before. There are no constituencies in this allocation that receive less than three seats and it is therefore not necessary to repeat the allocation. The final allocation of seats is shown in Table 7.3.

*Table 7.3 Allocation of seats.*

	Total number of seats
Oslo	20
Akershus	20
Hordaland	16
Rogaland	14
Sør-Trøndelag	10
Østfold	9
Møre og Romsdal	8
Buskerud	8
Vestfold	8
Nordland	8
Hedmark	7
Vest-Agder	6
Oppland	6
Telemark	6
Troms	6
Nord-Trøndelag	5
Aust-Agder	4
Sogn & Fjordane	4
Finnmark	4



### 3 Election of direct seats

To demonstrate how the calculation of the direct seats is carried out, the number of votes polled in Finnmark at the 2017 parliamentary election has been used. Finnmark had five seats at this election, four of which were direct seats and one seat at large.<sup>687</sup> To calculate how the seats were allocated between the parties, the starting point is the number of votes polled by the different lists in the constituency. See Table 7.4.

Table 7.4 Election result Finnmark 2019.

	Total number of votes	Percentage of votes polled
Labour Party (Arbeiderpartiet)	12,440	32.0 %
Progress Party (Fremskrittspartiet)	6,994	18.0 %
Centre Party (Senterpartiet)	5,790	14.9 %
Conservative Party (Høyre)	5,600	14.4 %
Socialist Left Party (Sosialistisk Venstreparti)	3,437	8.8 %
Liberal Party (Venstre)	1,644	4.2%
Green Party (Miljøpartiet De Grønne)	836	2.1 %
Christian Democrat Party (Kristelig Folkeparti)	808	2.1 %
Red Party (Rødt)	602	1.5 %
Coastal Party (Kystpartiet)	166	0.4 %
Christians Party (Partiet De Kristne)	141	0.4 %
Health Party (Helsepartiet)	139	0.4 %
Liberals (Liberalistene)	86	0.2 %
Alliance (Alliansen)	79	0.2 %
Pirate Party (Piratpartiet)	76	0.2 %
Democrats in Norway (Demokratene i Norge)	71	0.2 %

The Sainte-Laguë method is used with a first divisor of 1.4 to calculate the allocation of seats between the parties. The method involves dividing the total votes polled by the parties by the number sequence, where 1.4 comes first, then 3–5–7–9 etc.

The first quotient is the total votes polled divided by 1.4. For the Labour Party, this is:  $12,440 / 1.4 = 8,885.7$ . The next quotient is the total votes polled divided by 3. For the Labour Party, this gives:  $12,440 / 3 = 4,146.7$ . This then continues upwards with each odd number.

The parties that then have the largest quotients are awarded the seats. In this case, there are four seats to allocate. It is therefore still not necessary to use more than the first four divisors. Since

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<sup>687</sup>For the sake of simplicity, the actual allocation of seats that occurred in 2017 has been used here. Therefore, Finnmark has five seats, not the four they would have received based on the calculations in section 2.

none of the parties are large enough to receive four direct seats, only the quotients for the first three divisors in Table 7.5 are shown.

*Table 7.5 Quotients for Finnmark 2019. Seat number in brackets*

	Number of votes	Divisor		
		1.4	3	5
Labour Party (Arbeiderpartiet)	12,440	8,885.7 (1)	4,146.7 (3)	2,488.0
Progress Party (Fremskrittspartiet)	6,994	4,995.7 (2)	2,331.3	1,398.8
Centre Party (Senterpartiet)	5,790	4,135.7 (4)	1,930.0	1,158.0
Conservative Party (Høyre)	5,600	4,000.0	1,866.7	1,120.0
Socialist Left Party (Sosialistisk Venstreparti)	3,437	2,455.0	1,145.7	687.4
Liberal Party (Venstre)	1,644	1,174.3	548.0	328.8
Green Party (Miljøpartiet De Grønne)	836	597.1	278.7	167.2
Christian Democrat Party (Kristelig Folkeparti)	808	577.1	269.3	161.6
Red Party (Rødt)	602	430.0	200.7	120.4
Coastal Party (Kystpartiet)	166	118.6	55.3	33.2
Christians Party (Partiet De Kristne)	141	100.7	47.0	28.2
Health Party (Helsepartiet)	139	99.3	46.3	27.8
Liberals (Liberalistene)	86	61.4	28.7	17.2
Alliance (Alliansen)	79	56.4	26.3	15.8
Pirate Party (Piratpartiet)	76	54.3	25.3	15.2
Democrats in Norway (Demokratene i Norge)	71	50.7	23.7	14.2

In order to determine which party receives the first seat, it is necessary to find the largest quotient. It is the largest party that has this and the first seat therefore goes to the Labour Party. The second seat then goes to the Progress Party. For the next seats, the quotients for the Labour Party and the Centre Party are almost the same, but it is the Labour Party that takes the third seat and the Centre Party that takes the fourth seat. If there had been more seats in the constituency, the Conservative Party would have received the next seat.<sup>688</sup>

## 4 Allocation of seats at large

The allocation of seats at large takes place after the election results have been determined in all constituencies and the direct seats have been allocated to the lists. The seats at large are only allocated between registered political parties. In the proposal put forward by the majority of the Commission, the electoral threshold is reduced to three per cent and a requirement is introduced

<sup>688</sup>However, the Conservative Party was assigned the seat at large in the constituency.

for the parties having to submit lists in the entire country in order to be awarded seats at large. When allocating seats at large, the number of votes polled by the parties nationally is used.

The calculation of seats at large consists of two steps. First, there is a calculation of the parties that can claim seats at large and the number of seats at large the various parties can claim. After this has been done, the parties' seats at large are allocated between the constituencies and there must be one seat at large per constituency.

These calculations are based on the number of votes and seats from 2017. The discrepancies between these calculations and the actual election result in 2017 are due to the fact that the electoral threshold in this example is set at three per cent, which is what a majority of the Commission has proposed.

#### 4.1 Allocation of seats at large between the parties

When calculating the parties that win seats at large, the starting point is the 2017 election. In order to carry out the calculation it is necessary to know the number of votes polled by the parties and the share of the votes the parties received, as well as the number of seats at large the parties have already won. This is shown in Table 7.6.

To determine how many parties are above the electoral threshold, the electoral threshold must first be calculated. The electoral threshold is three per cent of the approved votes (votes divided between parties and lists):  $0.03 \times 2,926,836 = 87,805.08$ . Blank votes are not approved and are therefore not included. Parties that received 87,806 or more votes are therefore above the electoral threshold. These parties are marked in italics in Table 7.6.

Table 7.6 Which parties are above the electoral threshold?

	Votes	Percentage	Direct seats
<i>Labour Party (Arbeiderpartiet)</i>	800,947	27.4 %	49
<i>Conservative Party (Høyre)</i>	732,895	25.0 %	42
<i>Progress Party (Fremskrittspartiet)</i>	444,681	15.2%	27
<i>Centre Party (Senterpartiet)</i>	302,017	10.3 %	18
<i>Socialist Left Party (Sosialistisk Venstreparti)</i>	176,222	6.0 %	5
<i>Liberal Party (Venstre)</i>	127,910	4.4 %	4
<i>Christian Democrat Party (Kristelig Folkeparti)</i>	122,797	4.2%	3
<i>Green Party (Miljøpartiet De Grønne)</i>	94,788	3.2 %	1
Red Party (Rødt)	70,522	2.4 %	1
Pensioners' Party (Pensjonistpartiet)	12,855	0.4 %	0
Health Party (Helsepartiet)	10,337	0.4 %	0
Christians Party (Partiet De Kristne)	8,700	0.3 %	0
Liberals (Liberalistene)	5,599	0.2 %	0
Democrats in Norway (Demokratene i Norge)	3,830	0.1 %	0
Pirate Party (Piratpartiet)	3,356	0.1 %	0

Alliance (Alliansen)	3,311	0.1 %	0
Coastal Party (Kystpartiet)	2,467	0.1 %	0
Nordmør List (Nordmørslista)	2,135	0.1 %	0
Feminist Initiative (Feministisk initiativ)	696	0.0 %	0
Communist Party of Norway (Norges Kommunistiske Parti)	309	0.0 %	0
Norway Party (Norgespartiet)	151	0.0 %	0
Values Party (Verdipartiet)	148	0.0 %	0
Community Party (Samfunnspartiet)	104	0.0 %	0
NORDTING	59	0.0 %	0
Total	2,926,836	100.0 %	150

As Table 7.6 shows, there are eight parties that have enough votes to be above the electoral threshold. All of these are registered political parties that submitted lists in all of the country's constituencies. The seats at large must therefore be allocated between these eight parties.

Other parties and lists, and direct seats that they have won, must not be included in the allocation of the seats at large. In this example, the Red Party, which was not involved in the allocation of the seats at large, has won one direct seat. This seat is removed from the calculation and therefore only 168 seats are then included in the calculation.

As with the direct seats, the total votes polled by the eight parties are divided by the divisor in accordance with the modified Sainte-Laguë method. The result of this calculation shows how many seats the various parties would have received if the country was not divided into constituencies, and if seats had been exclusively allocated based on the national vote polled. It is the difference between this and the number of seats the parties have actually won in the respective constituencies that must be corrected with seats at large.

Table 7.7 shows this step. The parties' direct seats are listed in the second column. These are therefore the 150 seats that were already allocated in the constituencies. The third column contains the result of the first calculation of the 168 seats, divided among the parties that are above the electoral threshold. When comparing the two allocations, one can see that two of the parties received more direct seats than they would have received in a national allocation - the Labour Party and Progress Party. Since the parties retain their direct seats, it becomes necessary to remove the Labour Party and Progress Party, and their seats, before a new calculation is made. In the new calculation, the other seats must then be re-allocated.

Table 7.7 First calculation, seats at large

	Direct seats	First calculation 168 seats allocated based on national vote polled
Labour Party (Arbeiderpartiet)	49	48
Conservative Party (Høyre)	42	44
Progress Party (Fremskrittspartiet)	27	26
Centre Party (Senterpartiet)	18	18
Socialist Left Party (Sosialistisk Venstreparti)	5	11
Liberal Party (Venstre)	4	8
Christian Democrat Party (Kristelig Folkeparti)	3	7
Green Party (Miljøpartiet De Grønne)	1	6
Total in the calculation	149	168
<i>Red Party (Rødt)</i>	1	

Therefore, the direct seats awarded to the Labour Party and Progress Party, as well as the Red Party's direct seat, are removed in the second calculation. This is shown in Table 7.8. The parties that are not included in the calculation are marked in italics at the bottom of the table. These 3 parties have a total of 77 direct seats. Therefore, 92 seats have to be allocated among the remaining 6 parties.

This allocation is compared to the number of direct seats the parties have received. For example, the Conservative Party has received 42 mandates, however if the national vote polled had been used as a basis, the party would have received 43 seats. The party therefore receives one seat at large. The Centre Party has received 18 direct seats and would also have received 18 direct seats if the national vote polled had been used as a basis. The party therefore does not require equalisation and receives no seats at large.

Table 7.8 Second calculation, seats at large.

	Direct seats	First calculation 92 seats allocated based on national vote polled	Difference = number of seats at large
Conservative Party (Høyre)	42	43	1
Centre Party (Senterpartiet)	18	18	0
Socialist Left Party (Sosialistisk Venstreparti)	5	10	5
Liberal Party (Venstre)	4	8	4
Christian Democrat Party (Kristelig Folkeparti)	3	7	4
Green Party (Miljøpartiet De Grønne)	1	6	5
Total in the calculation	73	92	19
<i>Labour Party (Arbeiderpartiet)</i>	49		
<i>Progress Party (Fremskrittspartiet)</i>	27		
<i>Red Party (Rødt)</i>	1		

## 4.2 Allocation of seats at large to the constituencies

When the number of seats at large that each party shall receive has been decided, the seats at large are then allocated to the constituencies. The starting point used for this is the parties that are entitled to the number of seats resulting from the previous calculation. There must also be one seat at large from each constituency. Only parties that shall receive seats at large are included in these calculations.

This is done by calculating a quotient for each party for all constituencies. The number of votes polled by the parties in each constituency is divided by the next divisor for the party in the constituency, however the pure Sainte-Laguë method is used in this instance. If the parties have not received seats, the number of votes polled is therefore divided by one, and if the party has received one seat, it is divided by three etc.

### *Example:*

*The Conservative Party has received 104,451 votes and 5 direct seats in Akershus. The sixth divisor is 11. The quotient for the Conservative Party in Akershus will therefore be:  $104,451/11 = 9,495.55$ . In Finnmark, the Conservative Party has received 5,600 votes, but no direct seats. The quotient for the Conservative Party in Finnmark will therefore be:  $5,600/1 = 5,600$ .*

These quotients are then weighted. This is done by dividing the quotient by the number of votes behind each seat in the constituency. This means that the size of the constituency is of no consequence to where the seats at large are awarded.

*Example:*

*In Finnmark, there were a total of 38,909 approved votes and 4 direct seats. This means that the Conservative Party's weighted quotient here will be:  $5,600 / (38,909 / 4) = 0.576$ .*

*In Akershus, there were a total of 337,028 approved votes and 16 direct seats. This means that the Conservative Party's weighted quotient here will be:  $9,495.55 / (337,028/16) = 0.451$ .*

The results of these calculations for each party and for each constituency are shown in Table 7.9.

*Table 7.9 The parties' weighted quotients in all constituencies*

Constituencies	Con- serva- tive Party (Høyre)	Chris- tian Demo- crat Party (Kris- telig Folke- parti)	Green Party (Miljø- partiet De Grønne )	Socia- list Left Party (Sosia- listisk Venst- reparti)	Liberal Party (Venstr e)
Akershus	0.451	0.372	0.591	0.283	0.346
Aust-Agder	0.256	0.294	0.078	0.119	0.098
Buskerud	0.430	0.209	0.216	0.401	0.294
Finnmark	0.576	0.083	0.086	0.353	0.169
Hedmark	0.306	0.108	0.116	0.343	0.140
Hordaland	0.414	0.277	0.526	0.351	0.218
Møre og Romsdal	0.270	0.491	0.172	0.313	0.277
Nordland	0.323	0.194	0.173	0.560	0.208
Nord-Trøndelag	0.197	0.108	0.071	0.202	0.090
Oppland	0.335	0.126	0.141	0.278	0.154
Oslo	0.433	0.385	0.357	0.334	0.303
Rogaland	0.415	0.364	0.334	0.512	0.458
Sogn & Fjordane	0.186	0.130	0.068	0.134	0.122
Sør-Trøndelag	0.373	0.246	0.351	0.231	0.366
Telemark	0.335	0.249	0.123	0.248	0.134
Troms	0.342	0.132	0.142	0.506	0.147
Vest-Agder	0.279	0.210	0.144	0.215	0.181
Vestfold	0.258	0.221	0.176	0.297	0.230
Østfold	0.381	0.339	0.209	0.350	0.193

To determine the constituencies in which the parties are awarded seats at large, the weighted quotients must be ranked by size. The ten largest quotients are ranked in table 7.10.

Table 7.10 The ten largest weighted quotients.

Ranked by size	Quotient	Constituency	Party	Receives seat at large no.
1	0.591	Akershus	Green Party (Miljøpartiet De Grønne)	1
2	0.576	Finnmark	Conservative Party (Høyre)	2
3	0.560	Nordland	Socialist Left Party (Sosialistisk Venstreparti)	3
4	0.526	Hordaland	Green Party (Miljøpartiet De Grønne)	4
5	0.512	Rogaland	Socialist Left Party (Sosialistisk Venstreparti)	5
6	0.506	Troms	Socialist Left Party (Sosialistisk Venstreparti)	6
7	0.491	Møre og Romsdal	Christian Democrat Party (Kristelig Folkeparti)	7
8	0.458	<i>Rogaland</i>	<i>Liberal Party (Venstre)</i>	
9	0.451	<i>Akershus</i>	<del>Conservative Party (Høyre)</del>	
10	0.433	Oslo	<del>Conservative Party (Høyre)</del>	

The largest quotient is the quotient the Green Party has in Akershus, and the party thus receives the first seat at large in Akershus. This is followed by Conservative, Socialist Left, Green, Socialist Left, Socialist Left and Christian Democratic in each of their constituencies. Quotient number 8, which goes to Rogaland and the Liberal Party, must be disregarded because a seat at large has already been allocated in Rogaland.

The next two quotients in the table, i.e. numbers 9 and 10, also do not result in seats at large. Quotient number 9 must be disregarded because the Conservative Party has already received the one seat at large the party is entitled to and therefore cannot be allocated more. Furthermore, the seat at large in Akershus has already been given to the Green Party. Quotient number 10 is disregarded because the Conservative Party must not receive more seats at large. By using the first ten quotients, seven seats at large have thus been allocated. The process continues until all the seats at large have been allocated.



An overview of all the weighted quotients for all constituencies and all parties is included in Table 7.11. The quotients that result in seats at large are highlighted.

*Table 7.11 The parties' weighted quotients in all constituencies, designated by the districts and parties that receive the seats at large*

Constituencies	Con- serva- tive Party (Høyre)	Chris- tian Demo- crat Party (Kris- telig Folke- parti)	Green Party (Miljø- partiet De Grønne )	Socia- list Left Party (Sosia- listisk Venst- reparti)	Liberal Party (Venstr e)
Akershus	0.451	0.372	<b>0.591</b>	0.283	0.346
Aust-Agder	0.256	<b>0.294</b>	0.078	0.119	0.098
Buskerud	0.430	0.209	0.216	<b>0.401</b>	0.294
Finnmark	<b>0.576</b>	0.083	0.086	0.353	0.169
Hedmark	0.306	0.108	<b>0.116</b>	0.343	0.140
Hordaland	0.414	0.277	<b>0.526</b>	0.351	0.218
Møre og Romsdal	0.270	<b>0.491</b>	0.172	0.313	0.277
Nordland	0.323	0.194	0.173	<b>0.560</b>	0.208
Nord-Trøndelag	0.197	0.108	<b>0.071</b>	0.202	0.090
Oppland	0.335	0.126	0.141	0.278	<b>0.154</b>
Oslo	0.433	<b>0.385</b>	0.357	0.334	0.303
Rogaland	0.415	0.364	0.334	<b>0.512</b>	0.458
Sogn & Fjordane	0.186	0.130	<b>0.068</b>	0.134	0.122
Sør-Trøndelag	0.373	0.246	0.351	0.231	<b>0.366</b>
Telemark	0.335	<b>0.249</b>	0.123	0.248	0.134
Troms	0.342	0.132	0.142	<b>0.506</b>	0.147
Vest-Agder	0.279	0.210	0.144	0.215	<b>0.181</b>
Vestfold	0.258	0.221	0.176	0.297	<b>0.230</b>
Østfold	0.381	0.339	0.209	<b>0.350</b>	0.193