

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX
(CFR-CDF)

**OPINION OF THE E.U. NETWORK OF INDEPENDENT EXPERTS ON
FUNDAMENTAL RIGHTS REGARDING THE PARTICIPATION OF E.U. CITIZENS IN
THE POLITICAL PARTIES OF THE MEMBER STATE OF RESIDENCE.**

**AVIS DU RESEAU U.E. D'EXPERTS INDEPENDANTS EN MATIERE DE DROITS
FONDAMENTAUX RELATIF A LA PARTICIPATION DES CITOYENS DE L'U.E. AUX
PARTIS POLITIQUES DE L'ETAT MEMBRE DE RESIDENCE**

March 2005

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The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union. The content of this opinion does not bind the European Commission. The Commission accepts no liability whatsoever with regard to the information contained in this document

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Le Réseau UE d'Experts indépendants en matière de droits fondamentaux a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Elvira Baltutyte (Lituanie), Florence Benoit-Rohmer (France), Martin Buzinger (Rép. slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Dean Spielmann (Luxembourg), Pavel Sturma (Rép. tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par O. De Schutter, assisté par V. Van Goethem.

Les documents du Réseau peuvent être consultés via :

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The EU Network of Independent Experts on Fundamental Rights has been set up by the European Commission (DG Justice and Home Affairs), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoit-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Dean Spielmann (Luxemburg), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by O. De Schutter, with the assistance of V. Van Goethem.

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INTRODUCTION

1. Article 19 of the EC Treaty gives every citizen of the Union residing in a Member State of which he/she is not national the right to vote and stand as a candidate at municipal and European Parliament elections in the Member State of residence, under the same conditions as nationals of that Member State. According to Article 12 of the EC Treaty, any discrimination on grounds of nationality is prohibited within the scope of application of the Treaty.

Article 39 and 40 of the Charter of Fundamental Rights confirm the electoral rights of non-national Union citizens in municipal and European parliamentary elections in their country of residence. Article 12 of the Charter provides for freedom of association in particular in political matters. Furthermore, Article 21(2) of the Charter prohibits any discrimination on the grounds of nationality in the field of application of Union law, corresponding thus to Article 12 of the EC Treaty.

The Report from the Commission to the European Parliament and the Council on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections and the Second report of the European Commission on Citizenship of the Union underline that the principle of non-discrimination, enshrined in Article 19 of the EC Treaty, also means that citizens of the Union must be able to take part fully in the political life of the Member State of residence, with special reference to affiliation to existing political parties or even the founding of new political parties.

2. Before summarizing the findings of the Network, two preliminary remarks should be made. All the Member States are bound by the European Convention on Human Rights, Article 14 of which prohibits any discrimination in the enjoyment of the rights and freedoms this instrument sets forth. Among those rights and freedoms, are the freedom of expression (Art. 10) and the freedom of association (Art. 11), which must be interpreted as comprising the right to form and join political parties. Article 16 of the European Convention on Human Rights states however that “Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens”. This provision of the Convention should not be misinterpreted.

First, appears less relevant today than it was when the Convention was initially drafted. Indeed, it was invoked neither in *Cissé v. France* ((Appl. n° 51346/99, judgment of 9 April 2002 (forced evacuation of the Saint-Bernard church in Paris, occupied since more than two months by undocumented aliens and their supporters)), nor in *Zaoui v. Switzerland* (Appl. n° 41615/98, non-admissibility decision of 18 January 2001 (Algerian national whose means of communication had been confiscated to deprive the applicant from the possibility to diffuse international propaganda in favor of the Algerian opposition parti Front Islamique du Salut)) by the defending State, and may be considered as falling in desuetude.

Second, the European Court of Human Rights has taken the view that Article 16 ECHR may not be invoked where a citizen of the Union seeks to exercise his/her rights under the Convention. In *Piermont v. France*, a case in which the applicant, at the material time a German national member of the European Parliament whose rights under the Convention had been restricted by France when she attempted to take part in a demonstration for the independence of New Caledonia, the defending government alleged that Article 10 ECHR could not be relied upon by the applicant, as she was a German national and thus an « alien » in the meaning of Article 16 ECHR. The Court considered that, although the argument Ms Dorothée Piermont sought to ground on her possession of the citizenship of the Union, could not be accepted, « since the Community treaties did not at the time [1986] recognise any such citizenship. Nevertheless, it considers that Mrs Piermont's possession of the nationality of a member State of the European Union and, in addition to that, her status as a member of the European Parliament do not allow Article 16 of the Convention to be raised against her, especially as the people of the [overseas territories] take part in the European Parliament elections. In conclusion, this

provision (art. 16) did not authorise the State to restrict the applicant's exercise of the right guaranteed in Article 10 ».¹

Third, Article 53 ECHR prohibits a reading of the European Convention on Human Rights which would rely on this instrument in order to deny protection afforded under other international or national instruments for the protection of human rights : « Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party ».

Therefore, insofar as Articles 12 and 19 EC are to be interpreted as guaranteeing the right of each citizen of the Union residing on the territory of a Member State other than the State of which he/she is a national to join political parties and to form political parties, thereby participating in the political life of the host Member State, Article 16 ECHR may not be invoked to restrict these rights. On the contrary, such restrictions should be considered in violation of the European Convention on Human Rights, and therefore also of the general principles of law which the European Court of Justice ensures respect of in the field of application of Union law. The citizens of the Union are entitled to the full enjoyment of Articles 10 and 11 of the Convention in the Member State in which they reside, even though they may be non-nationals of that State. Any difference in treatment on the grounds of the nationality should be treated as highly suspect,² as emphasized in the recent case-law of the European Court of Human Rights, although the Court does admit that the establishment of a citizenship of the Union between the Member States constitutes a legitimate reason for creating a difference in treatment between the citizens of the Union and third country nationals³.

3. Article 3 of the Convention on the participation of foreigners in public life at local level (ETS n° 144, opened for signature in Strasbourg on 5.2.1992) obliges each Party to that instrument to undertake

...to guarantee to foreign residents, on the same terms as to its own nationals:

1. the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises;

2. 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 their interests. In particular, the right to freedom of association shall imply the right of foreign residents to form local associations of their own for purposes of mutual assistance, maintenance and expression of

¹ Eur. Ct. HR, *Piermont v. France* judgment of 27 April 1995, § 62.

² See Eur. Ct. HR, *Gaygusuz v. Austria*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1141 (where the Court concludes that the denial to the applicant of an emergency assistance granted to persons who had exhausted their entitlement to unemployment benefit and satisfied the other statutory conditions laid down in the applicable Unemployment Insurance Act (*Arbeitslosenversicherungsgesetz*) but for the condition of nationality imposed by that statute, constituted a violation of Article 14 ECHR); Eur. Ct. HR (2nd section), *Koua-Poirrez v. France* (Appl. N° 40892/98), judgment of 30 September 2003 (same conclusion where non-contributory social benefit such as allowances for disabled adults [*allocation aux adultes handicapés*] were at stake, at § 46 : “very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention”).

³ See Eur. Ct. HR, *Moustaquim v. Belgium*, judgment of 18 February 1991, Series A n°193, § 49 (where the Court considers that the applicant, a Moroccan national, has not been discriminated in the enjoyment of his private and family life despite the fact that an EU citizen might have been better protection from the risk of expulsion for public order motives, stating : “As for the preferential treatment given to nationals of the other member States of the Communities, there is an objective and reasonable justification for it as Belgium belongs, together with those States, to a special legal order”). This was repeated in the judgment of the Court in the case of *C. (Chorfi) v. Belgium*, 7 August 1996, *Rep.* 1996-III, § 38 (where the Court adds a reference to the notion of citizenship of the Union). Whether or not a difference in treatment between citizens of the Union and other foreigners will be admissible under Article 14 ECHR will depend on the right at stake and whether a reasonable and objective justification may be offered in favored of this differential treatment.

their cultural identity or defence of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association.

However, this Convention does not mention explicitly a right to form or join political parties,⁴ and is therefore of limited relevance for the question examined in this Opinion.

4. The conclusions of the comparative overview, comprising the 25 Member States, are the following. A vast majority (16) of the Member States recognises the right of the non-national Union citizens both to join existing political parties and to found a new political party in the Member State in which they reside (these rights were the subject of question 1). In 13 Member States (**Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Ireland, Italy, Luxemburg, the Netherlands, Sweden** and the **United Kingdom**), this recognition is based on the absence of any restriction based on nationality in the applicable legislation : in those States therefore, the law does not affirmatively recognize the right of Union citizens to become members of existing political parties or to found new political parties, but neither does it impose any obstacle on the exercise of these rights. The situation in two of these States is more problematic, however. In **Finland**, non-nationals are not similarly situated as Finnish nationals with regard to the registration of a political association,⁵ while in **Germany** Section 2 (3) of the Political Party Act states: “*Political organizations are not deemed to be parties if: 1. most of their members or the members of their executive committees are foreigners (...)*”, thus creating a difference in treatment between German nationals and aliens. However, in both these countries, Article 12 EC might be relied upon in order to disapply these provisions of national legislation which create a difference in treatment between nationals and other EU citizens. In three other States (**Hungary, Latvia, and Portugal**), such a right is explicitly recognized either in the laws or in the Constitution. However, in **Portugal**, although the legislation guarantees the right of non-national Union citizens residing in the country to become a member of an existing political party or to found a new political party, Article 20 (4) of the Law on Political Parties establishes that «aliens and stateless persons that are legally resident in Portugal and who become members of a political party *enjoy the rights of participation that are compatible with the political rights they are entitled to*», which implies that non-nationals are not entitled to equal and full membership rights ; and in **Latvia**, Article 45, part 3 of the *Law on Civil Society Organisations and Their Associations* as amended on 31 March 2004 by the *Saeima*, provides that : « ... *only political parties having 200 citizens can be registered and work. In a political party (organisation) with more than 400 members not less than a half of members shall be citizens* » – therefore non-nationals may not be said to be recognized identical rights to the Latvians with respect to the founding of political parties. Two other countries (**Slovenia** and **Spain**) make a distinction between the right to found a political party and the right to become a member of a political party. Finally, in seven Member States (the **Czech Republic, Estonia, Greece, Lithuania, Malta, Poland, and the Slovak Republic**), non-nationals may neither become members of political parties, nor found political parties, although with respect to **Malta** this prohibition is not absolute and remains subject to interpretation. Apart from the discrimination this entails between nationals and other citizens of the Union, in violation of Article 12 EC, this situation seems difficult to reconcile with the right of all citizens of the Union to vote and stand for elections in local and European Parliament elections in the State in which they reside. In **Estonia**, it is anticipated that the problem will be solved

⁴ Indeed, the Explanatory Report appears to warn against such an expanded reading, stating in § 30 that : with regard to the right of foreign residents to form associations of their own, the same paragraph specifically speaks of local associations; it also defines one purpose of such associations as "defence of their interests in relation to matters falling within the province of the local authority". This qualification seems appropriate in view of the more restrictive provisions applying to political associations of aliens in certain member states, not least on account of the possible foreign relations implications of the activities of associations which aim to exert political influence in the country of origin. Restrictions which are exclusively applicable to aliens are less relevant on the local level than at national level: political activities of foreign residents are more likely to be considered inappropriate when they affect national policy questions than when only local problems are at issue'. It should be added that this Convention only concerns the participation of foreigners in public life *at local level*.

⁵ Indeed, in **Finland**, according to Section 2, subsection 1-2, of the the Act on Political Parties, an existing association can be registered (recognized) as a political party only if it provides a list of at least 5000 supporters that have the right to vote in parliamentary elections. As only Finnish citizens are entitled to vote in parliamentary elections, this means that foreigners, including non-national Union citizens may only found a political party with at least 5000 adult Finnish citizens who declare their support to the party in question.

in 2005 (see question 3): on 26 January 2005, the Constitution Committee of the Parliament Riigikogu initiated the amendments of paragraph 5 of the Party Act which would bring the Act in accordance with EU norms and enable EU citizens of other member States become members of Estonian political parties. In the other six Member States of this last group, no other reforms seem to be anticipated in the near future : indeed, in **Lithuania**, the draft Law on the amendment of the Law on Political Parties (presented by the member of Seimas) was registered (draft Law No.XP-220) on 21 January 2005, providing for the right to join political parties not only of Lithuanian citizens but also of other permanent residents of the administrative unit, however the amendment was however revoked shortly after its introduction.

5. Even in the 18 Member States where non-nationals who are EU citizens may freely *become members of existing political parties*, there may be practical obstacles to the effective exercise of this right (question 2, a)). Insofar as non-nationals may take part only in municipal elections and in the elections for the European Parliament, there are fewer incentives for them to join local political parties and participate actively in the political life of the country of residence. Some political parties, such as the Danish People's Party in **Denmark**, or (at the time of writing of the report at least) the Socialist Party (PASOK) in **Greece**, may impose a condition of nationality for becoming a member, and it is uncertain where the balance should be struck between, on the one hand, the right of the citizens of the Union not to be discriminated against on the basis of nationality in the field of application of the treaty (Article 12 EC), and on the other hand, the freedom of association of the party, which may include the freedom to define without interference the conditions of membership. It is clear from the case-law of the European Court of Justice that the requirement of non-discrimination on the basis of nationality is invocable against private persons as well as against the public authorities. We may reason by analogy with the following findings made by the European Court of Justice with respect to Article 48 of the EC Treaty (now Article 39 EC):⁶

29 Under that provision, freedom of movement for workers within the Community entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

30 It should be noted at the outset that the principle of non-discrimination set out in Article 48 is drafted in general terms and is not specifically addressed to the Member States.

31 Thus, the Court has held that the prohibition of discrimination based on nationality applies not only to the actions of public authorities but also to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services (see Case 36/74 Walrave v Union Cycliste Internationale [1974] ECR 1405, paragraph 17).

32 The Court has held that the abolition, as between Member States, of obstacles to freedom of movement for persons would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise of their legal autonomy by associations or organisations not governed by public law (see Walrave, paragraph 18, and Case C-415/93 Union Royale Belge des Sociétés de Football Association and Others v Bosman and Others [1995] ECR I-4921, paragraph 83).

33 Since working conditions in the different Member States are governed sometimes by provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons, limiting application of the prohibition of discrimination based on nationality to acts of a public authority risks creating inequality in its application (see Walrave, paragraph 19, and Bosman, paragraph 84).

34 The Court has also ruled that the fact that certain provisions of the Treaty are formally addressed to the Member States does not prevent rights from being conferred at the same time

⁶ Case C-281/98, *Angonese*, [2000] ECR I-4139 (judgment of 6 June 2000).

on any individual who has an interest in compliance with the obligations thus laid down (see Case 43/75 Defrenne v Sabena [1976] ECR 455, paragraph 31). The Court accordingly held, in relation to a provision of the Treaty which was mandatory in nature, that the prohibition of discrimination applied equally to all agreements intended to regulate paid labour collectively, as well as to contracts between individuals (see Defrenne, paragraph 39).

35 Such considerations must, a fortiori, be applicable to Article 48 of the Treaty, which lays down a fundamental freedom and which constitutes a specific application of the general prohibition of discrimination contained in Article 6 of the EC Treaty (now, after amendment, Article 12 EC). In that respect, like Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), it is designed to ensure that there is no discrimination on the labour market.

Moreover, the question may be asked whether the Member State not reacting to an instance of discrimination on grounds of nationality against a citizen of the Union in the scope of application of the EC Treaty is not, itself, in violation of its obligations under Community law.⁷

6. With respect to the right of non-nationals to *found political parties* also, practical obstacles may lie in the way of this right being effectively exercised, even where it is recognized formally. In certain States, rules on the public funding of political parties advantage traditional political parties, having achieved a certain degree of representativeness through electoral processes, which may constitute a disadvantage for the establishment of new political parties, for instance on the initiative of newly arrived immigrants, including citizens of the Union having exercised their right to move within the Union (**Ireland**). As already mentioned, in **Finland, Germany and Latvia**, non-nationals, whether they are citizens of the Union or not, may only found political parties with a determined number of nationals of those States, which not only constitutes a difference in treatment between nationals and citizens of the Union who are nationals from other EU Member States, but also may seriously restrict the effectiveness of the right to found political parties for EU citizens who are non-nationals, where that required threshold is high – although this discrimination may potentially be set aside by invoking Article 12 EC.

In English:

Question 1.

Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

Question 2.

- a) If yes, are there any practical barriers of exercise of this right by residing non-national Union citizens?
- b) If not, is this right recognised practically and could be exercised by residing non-national Union citizens without any obstacles?

Question 3. Is there any legislation envisaged to mend this discrimination on grounds of nationality?

En français:

Question 1.

Votre Etat membre prévoit-il dans sa législation le droit de tout citoyen de l'Union qui y réside de se faire membre d'un parti politique ou de fonder un nouveau parti politique sans restrictions?

⁷ Case C-265/95, *Commission c. France* [1997] ECR 6959 (judgment of 9 December 1997).

Question 2.

a) Si oui, les citoyens de l'Union qui ne sont pas des nationaux de l'Etat membre rencontrent-ils des obstacles pratiques à l'exercice de ce droit?

b) Si non, ce droit est-il malgré tout reconnu en pratique et peut-il être exercé sans rencontrer d'obstacles?

Question 3.

Et existe-t-il des projets, et lesquels, visant à mettre un terme à cette forme de discrimination fondée sur la nationalité entre ressortissants des Etats membres?

SUMMARY TABLE OF RESPONSES

Question 1.

Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations ?

Austria	<p>In Austria, the founding of political parties is regulated in a very liberal way in section 1 of the Political Parties Act 1975 (<i>Parteiengesetz</i>) at constitutional level. Austrian nationality is neither a requirement for founding a political party in Austria nor for becoming a member of a political party in Austria. Since the citizenship of the founder(s) may not be examined by the Ministry of the Interior on the occasion of the lodgement of a party statute, it is impossible for the Ministry to state whether there has been a case so far where a non-Austrian national founded a party. Consequently, any permanent organisation of people who jointly aim at influencing the political scene in Austria may decide to establish itself as a political party. However, if the organisation does not focus on the participation in Austrian politics but on the exercise of political influence in another state (e.g. by a group of exiled persons), it is only possible to found a (political) association under the Associations Act (<i>Vereinsgesetz</i>).</p> <p>Section 1(3) of the Political Parties Act forbids that laws be enacted that are specifically designed to restrict the activities of the political parties. Only provisions enacted at constitutional level may limit that freedom, such as the Prohibition Act 1947 (<i>Verbotsgesetz</i>) forbidding the organisation of parties with national socialist ideas. Every authority that would have to deal with a political party which might fall under the Prohibition Act (e.g. the ordinary courts in a civil law dispute, the election authorities, etc.) must, as a preliminary question, decide whether or not the party at issue in fact acquired legal personality. In the latter case, the founder(s) of a prohibited party may then submit an individual complaint to the Constitutional Court.</p>
Belgium	<p>Although political parties are not explicitly protected by the Constitution, Article 27 of the Belgian Constitution guarantees the freedom of association and prohibits subjecting this right to preventive measures. The Law acknowledges the existence of political parties only in a partial and sectorial manner i.e. through the legislation relating to the public financing of the political parties, the regulation of the election campaigns and, to a lesser extent, in the electoral legislation.</p> <p>The answer to this first question is therefore a positive one: under the terms of Article 27 of the Belgian Constitution, the citizens of the European Union have the right to become members of a political party or to found a new political party without restrictions (with the exception of the acceptable restrictions under Article 27 of the Constitution).</p>
Cyprus	<p>Cyprus law does not essentially regulate the functioning of political parties nor does it provide for their registration. In fact, there is no legislation on political parties as such (there is no legislation as to what a political party is, who can found a political party, who can be a member of a political party, the conditions of its establishment etc.). There are however certain laws regulating specific aspects of political parties :</p> <ul style="list-style-type: none"> - Law 199/1989 as amended by Laws 3/1990 and 49(I)/1998 on the <i>Rights of Political Parties to Acquire, Posses and Command Immovable and Movable</i>

	<p><i>Property and its Circumstances</i>, regulates the acquisition of property by political parties. It provides a definition of political parties for the purposes at stake. In order for a political party to be able to acquire property, it has to be registered at the Record of Registered Political Parties kept by the Director of the Ministry of Interior. No other restriction is imposed by this law and no distinction is made for political parties found by Cypriot or EU citizens, or political parties which have members other than Cypriot citizens.</p> <ul style="list-style-type: none"> - Law amending the <i>Law on the Cyprus Broadcasting Corporation</i> (L. 212/1987, Νόμος Τροποποιών τον περί Ραδιοφωνικού Ιδρύματος Κύπρου Νόμον) provides a definition of political parties for the purposes at stake. However it places no restrictions upon political parties established by EU citizens or political parties which have members EU citizens. <p>The general definition of a political party is only found in the jurisprudence of the Supreme Court and more specifically in the case of <i>Pitsillos v. C.B.C.</i> (3 CLR 208 (1982 II)).</p>
Czech Republic	<p>The association in political parties in the Czech Republic is regulated by the Bill of Fundamental Rights (Art. 20) and, more in details, by Act 424/1991 Coll., on the Association in Political Parties and Political Movements. Both the documents reserve the right to found political parties and to become a member thereof <i>exclusively</i> to the citizens of the Czech Republic. The non-nationals (including the citizens of the EU Member States) therefore do not dispose of the given rights.</p>
Denmark	<p>The Danish Constitution (1953) does not mention political parties and the organizational structures of political parties are not regulated by other national legislation. Therefore no explicit legislative guarantees or obstacles as such exist. Political parties are perceived as private entities and no specific regulations are required by Danish legislation for becoming a member of an existing political party. In stead the internal structural organization takes form as an agreement between private parties. The normal requirements to become a member of a political party are a certain age and an acknowledgement of the political aim of the party.</p> <p>With regard to the founding a new political party, aliens residing legally in Denmark have the same right to take part in political organizations as Danish citizens. According to the Danish Constitution section 78, citizens have the rights to form associations for any lawful purpose without permission. It is presumed that the protection applies irrespective of citizenship. Non-citizens, legally residing in Denmark have the same right as Danish citizens to form associations. Since no legislative regulation of the organizational structures or the founding of political parties exists, non-national Union citizens residing in that State are free to establish a political party.</p> <p>Ordinary requirements for political parties running for parliament are the following (Parliamentary Election Act 27- 06-2004 No. 704, section 11-12):</p> <ul style="list-style-type: none"> - Those parties which were represented in the prior parliament and continue to be represented in the parliament are entitled to participate in the new election ; - New political parties, which at least 15 days before the election register at the Minister of Interior a number of voters which equals 1/175 of the total number of voters from the last election (approximately 20.000 persons) ; - The German Minority Party if the party registers at least 15 days before the election (no requirement for registration of a certain number of voters). <p>To be <i>nominated</i> for a parliamentary election, the nominated person has to fulfill</p>

	<p>the requirements to <i>vote</i> for parliamentary elections; in addition the individual must not have been convicted for a crime which makes him or her unworthy for a seat in the parliament (this is decided by members of parliament) cf. PEA section 4 and the Danish Constitution section 33.</p> <p>The presumption that ‘non-national EU citizens’ are entitled to take part in the political life is confirmed by the fact that they are eligible for election in the municipal council and in the European Parliament.</p>
Estonia	<p>As of the time of writing, the Estonian Party Act is not yet in conformity with EU Law : Article 5 of the Party Law states that members of the parties have to be citizens of Estonia (Riigi Teataja I 1994, 40, 654).</p> <p>The Expert has contacted two major Estonian parties – the Liberal-Democratic Party <i>Reformierakond</i> and the Social-Democratic Party (<i>Sotsiaaldemokraatlik Erakond</i>). The Liberal-Democratic Party does not currently yet have applications from EU citizens of other member States; the Social Democratic Party recognized the problem and informed that on an intermediary basis, the Social-Democratic Party has solved it by the way of creating a Supporting Member status. The Social Democratic Party has such supporting members – EU citizens from other member States yet living in Estonia - already.</p>
Finland	<p>Although Finnish law guarantees without any limitations the right of non-national Union citizens residing in Finland to become a member of an existing political party, they may not freely found a new political party. Finnish law regulates political parties through two instruments with the status of an Act of Parliament: The Act on Associations (No. 503 of 1989) and the Act on Political Parties (No. 10 of 1969). Only associations first registered under the Act on Associations are eligible for recognition as political parties under the Act on Political Parties.</p> <p>According to Section 10, subsection 2, of the Act on Associations, membership in associations that aim at influencing public affairs (typically political parties), is restricted to persons who are either Finnish citizens or who have their domicile in Finland. According to Section 35, subsection 3, of the Associations Act, the chairperson of any association must be domiciled in Finland. However, in associations that aim at influencing public affairs (typically political parties), any board member of an association must be domiciled in Finland. There are no distinctions between Finnish citizens and foreigners as to the right to found an association. Consequently, non-national Union citizens residing in Finland enjoy full rights to found or join associations and to be elected to positions of trust within them. This includes also associations that aim at influencing public affairs.</p> <p>However, the Act on Political Parties includes a provision that puts non-national Union citizens in an inferior position as to the registration of an association as a political party. According to Section 2, subsection 1-2, of the Act, an existing association can be registered (recognized) as a political party only if it provides a list of at least 5000 supporters that have the right to vote in parliamentary elections. As only Finnish citizens are entitled to vote in parliamentary elections, this means that foreigners, including non-national Union citizens cannot found a political party without joining forces with at least 5000 adult Finnish citizens who declare their support to the party in question.</p>
France	<p>The French Law does not mention the right of any citizen of the Union residing in France to become a member of a political party or to found a new political party without restrictions. The founding of a political party is governed by the « Law on association » of 1st July 1901. If the activity of the political parties is protected by the freedom of association, it remains subject to certain restrictions, notably as regards the fact that an association must have a lawful aim and must respect the</p>

	principles of national sovereignty and democracy.
Germany	<p>There are no limitations for non-national Union citizens to become a member of an existing political party. However one has to differentiate the regulation of parties at the EU level, at the federal and regional level, and regional party organizations at the municipal level.</p> <p>Non-national EU citizens with residence in Germany have the right to vote and stand as a candidate at European Parliament elections (Section 6 European Electoral Law [Europawahlgesetz] and at county and municipal elections. On these two levels, EU citizens may fully take part in the political life of parties. In the elections to the Federal Parliament or to regional parliaments on the other hand, only German citizens are entitled to participate (see Section 1 (1), 12 (1) and 15 (1) of the Federal Electoral Law [Bundeswahlgesetz] and the relative provisions of the State electoral Laws [Landeswahlgesetze]). For this reason political parties may not be dominated by foreigners. Section 2 (3) Political Party Act states: “<i>Political organizations are not deemed to be parties if: 1. most of their members or the members of their executive committees are foreigners; or 2. the registered seat of business is located outside the purview of the present Law.</i>” If one of these prerequisites exists, the political organisation in question is not a party but an association of foreigners. This provision does not distinguish between third country citizens and EU citizens. But commentators of Article 21 Basic Law (Constitution) argue that because of Article 12 EC this provision would not apply to EU citizens. That considering citizens of the Union are not subject to any limitations in becoming a member of an existing political party or in founding a new one.</p>
Greece	<p>Article 29 (1) of the Constitution provides : <i>«Les citoyens Hellènes ayant droit de vote, peuvent créer librement des partis politiques ou y adhérer; l’organisation et l’activité des partis doivent servir le libre fonctionnement du régime démocratique. Les citoyens n’ayant pas encore obtenu le droit de vote peuvent adhérer aux sections de jeunesse des partis».</i></p> <p>It is sometimes considered that Article 29(1) of the Constitution shall be interpreted in the light of Article 28 of the Constitution which guarantees the participation of the State in the European process. Accordingly Article 29 (1) of the Constitution would apply to any citizen of the Union. However this interpretation does not constitute the dominant position yet. The opinion could nevertheless be supported that if Article 29 (1) of the Constitution recognizes certain rights to Greek citizens, it does not prohibit, at least explicitly, the participation of foreigners in the existing political parties. The parties remain free to adopt their own statute and nothing seems to prevent them from envisaging the participation of non-nationals in the activity of the party, or even their admission as members of the party.</p>
Hungary	<p>The current Hungarian regulation as May 1, 2004 allows for every non-national European citizen residing in Hungary to become a member of an existing political party or to found a new one without any limitations.</p> <p>Act no. XXIX of 2004 on the amendment, repeal of certain laws and determination of certain provisions relating to Hungary’s accession to the European Union (2004. évi XXIX. törvény az európai uniós csatlakozással összefüggő egyes törvénymódosításokról, törvényi rendelkezések hatályon kívül helyezéséről, valamint egyes törvényi rendelkezések megállapításáról), which entered into force on 1 May 2004, modified Article 8 of Act no. II of 1989 on the right to assembly:</p> <p><i>« (1) Any Hungarian citizen or other nationals with residence or immigration permit may become a member of the social organization’s board of trustees or representative body, if he/she is not enjoined from participating in the public affairs.</i></p>

(2) Only those can be founders or officers of a party, who have the right to vote in the parliamentary elections or in the election of the representatives of local governments and mayors. »

According to the new Article 70 s. (3) of the Constitution, which entered into force on the day of entry into force on the 1 May 2004, citizens of a Member State of the European Union residing in Hungary, even if they are not nationals to the Republic of Hungary, if they are of voting age, have the right to vote and to stand as a candidate in municipal elections.

Ireland	<p>There is no legislation which explicitly guarantees the right of non-Irish EU citizens to become members of established political parties in the State. However, at present none of the political parties currently represented in the Dáil discriminate on the grounds of nationality and accept as members non-Irish citizens. In the case of certain parties the entitlement to membership of non-nationals is contingent on their eligibility to vote.</p> <p>Section 25 of the Electoral Act 1992 (as substituted by Section 11 of the Electoral (Amendment) Act 2001) provides that a political party may be registered on the Register of Political Parties by the Registrar of Political Parties to contest Dáil, European and local elections as well as elections to Údarás na Gaeltachta. The party shall be registered provided that it is organised in the state and has not less than 300 members, each of whom have reached the age of 18 years and at least 50% of whom are registered in the register of electors. If the party is applying for registration as a party organised to contest the elections in part of the state only then the requirement is that the party have no less than 100 recorded members. However, if the application for registration is made on behalf of a party which at the time of application has at least one member of the Dáil or a representative of the European Parliament that party shall also be entitled to registration.</p>
Italy	<p>There is no limitation in the Italian legislation to the right of non-national Union citizens to become members of an existing political party or to found a new political party. Article 49 of the Italian Constitution reads: “<i>All citizens have the right to freely associate in parties to contribute to determining national policies through democratic processes</i>”. There are also no practical barriers to the exercise of these rights.</p> <p>The Italian legislation has always qualified the political parties among the private and free associations, without a general regulation of their public function. The Italian Parliament has never passed a legislation regarding the internal life of political parties and the problem of the right to membership for the foreigners has never been regulated. Therefore, a lot of parties have always allowed the membership of the foreigners, and sometimes they have even assigned to foreigners some executive posts. Moreover, this right is explicitly stated in the internal charters of certain Italian parties.</p> <p>According to the legislation about the right to vote and to stand as a candidate at elections to the European Parliament and the municipal elections, there are no obstacles to the right of every non-national Union citizen to become members of an existing political party or to found a new political party, even if he/she is not residing in Italy.</p>
Latvia	<p>The 1992 <i>Law on Civil Society Organisations and Their Associations</i> continues to regulate the establishment and participation in political parties in Latvia. The Law allows for Latvian citizens and non-citizens to form political parties and be members therein. However, the participation of non-citizens is subject to certain requirements. On 31 March 2004, the <i>Saeima</i> amended the <i>Law on Civil Society Organisations and Their Associations</i>. In accordance with the amended Article 45, part 3: « <i>In Latvia, only political parties having 200 citizens can be registered and work. In a political party (organisation) with more than 400 members not less than a half of members shall be citizens</i> ».</p>
Lithuania	<p>The Law on Political Parties (the last version adopted on 23 March 2004) provides that only Lithuanian citizens have the right to freely join political parties, to participate in their activities and to secede (Art. 3 of the Law), as well as to found them (Art. 5 of the Law).</p>
Luxemburg	<p>There is no legislation defining the political parties in Luxemburg. Accordingly</p>

	<p>political parties are <i>de facto</i> organisations, which are often registered as non-profit-making associations. The Law of 7th January 1999 on the partial refunding of electoral campaigns' expenses to political parties and political groups running for the elections to the "Chambre des Députés" and to the European Parliament is the only instrument that defines the political parties.</p> <p>Accordingly since the law does not mention the right of every non-national Union citizen residing in Luxemburg to become a member of an existing political party or to found a new political party without any limitations, the principle of equality before the law implies that the European citizens have the same rights than the citizens of Luxemburg to become members or to found political parties in Luxemburg.</p>
Malta	<p>Section 56(2) of the Constitution of Malta puts « foreign interference » on the same level as corrupt practices: in fact where any foreign interference <i>may reasonably be supposed to have affected the result of an election, any person entitled to vote at that election may refer the matter to the Constitutional Court for its decision.</i> The definition given to « foreign interference » can therefore have important ramifications. It has been defined in the Foreign Interference Act, which contains two basic prohibitions (breaching any of these two prohibitions amounts to a criminal offence) :</p> <ul style="list-style-type: none"> - The prohibition of any foreigner from participating in any political activity taking place during the time period starting from nine months prior to the dissolution of parliament to the publication of results of general elections. At any other time, a foreigner must give written notice, five days in advance, of the intention to organise a political activity to a Monitoring Committee. It is debatable whether the definition of 'political activity' is restricted to those activities focusing on national elections, or whether it is wider. - The prohibition, at any moment in time, of the provision of money or equipment as gifts by non-Maltese citizens to political parties or persons. <p>A strict interpretation of the Foreign Interference Act would mean that the right of Non-Maltese residents to participate in political life is greatly restricted, since it can potentially hinder the participation of non-Maltese in municipal or European Parliament elections should these be scheduled to take place during the run-up of a general election, a difficulty that could be avoided with careful planning. Secondly the Act would seem to require all non-Maltese citizens participating in the main electoral parties to be compartmentalised so as to avoid infringing the Act; non-Maltese citizens would not be able to participate fully in Maltese Political Parties, and would only be able to establish a new political party with difficulty.</p>
The Netherlands	<p>Under Dutch law, political parties do not have a special status; nor are they subjected to any special rules in terms of membership requirements. Articles G1 to G3 of the Electoral Law [<i>Kieswet</i>] simply state that every "political grouping that is an association with full legal personality" [<i>"politieke groepering die een vereniging is met volledige rechtsbevoegdheid"</i>] can apply for registration for elections.</p> <p>The legal position of associations is defined in Book 2 of the Civil Code [<i>Burgerlijk Wetboek</i>]. It does not contain any specific rules as regards political groupings, nor does it say anything about the nationality of the members (or founders) of an association. There is only one requirement that is indirectly related to nationality: if an association decides that its statutes are to be enshrined in an official act of a notary public [<i>notariële acte</i>] then this act should be in Dutch. It is highly unlikely, however, that this language requirement would be seen as discriminatory.</p>

	The presumption that ‘non-national EU citizens’ are entitled to take part in the political life is confirmed by the fact that they are eligible for election in the municipal council [<i>gemeenteraad</i>] and in the European Parliament.
Poland	<p>Polish legislation does not guarantee in its legislation the right of non-national Union citizens to be a member of an existing political party and to found a new political party.</p> <p>Article 11 of the Polish Constitution provides that political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means. According to Article 2 of the Act on Political Parties only Polish citizens, at the age of 18, can be members of political parties.</p>
Portugal	Portugal guarantees in its legislation the right of non-national Union citizens residing in the country to become a member of an existing political party or to found a new political party. However, Article 20 (4) of the Law on Political Parties establishes that «aliens and stateless persons that are legally resident in Portugal and who become members of a political party <i>enjoy the rights of participation that are compatible with the political rights they are entitled to</i> ». They are thus not entitled to equal and full membership rights.
Slovak Republik	<p>The legislation of the Slovak Republic does not guarantee the right of non-national Union citizens residing on the territory of the Slovak Republic either to become a member of an existing political party or to found a new political party. According to the law of the Slovak Republic, only citizens of the Slovak Republic are entitled to become a member of existing political party or to found a new political party. Pursuant to the Article 29 (2) of the Slovak Constitution, (only) citizens may establish political parties and political movements and associate therein.</p> <p>On 4 February 2005 the National Council of the Slovak Republic (the Parliament) approved a new law on political parties and political movements (Act no. 85/2005), which will enter into force on 1 June 2005. This new law regulates the conditions of foundation of political party and political movement, registration of parties, conditions of dissolution of parties, rights and obligations of parties, administration and financing of parties. As the previous one however, the new law does not contain any provision that would allow non-national EU citizens residing on the territory of the Slovak Republic to become a member of an existing political party or to found a new political party.</p>
Slovenia	<p>The relevant legislation regarding political parties, their membership and financing is the Political Parties Act (Official Journal, nos. 62/94, 13/98 – Constitutional Court ruling, 1/99, 70/2000, 51/2002 and 94/02 – Constitutional Court ruling) which determines the conditions a party is to fulfil in order to be allowed to function in the Republic of Slovenia (Article 3 of the Political Parties Act).</p> <p>Article 4 of the Political Parties Act determines that a party may be founded by no less than 200 adult citizens of the Republic of Slovenia who sign a declaration on the founding of a party. This provision therefore excludes the non-national Union citizens residing in Slovenia from the circle of persons being able to found a party.</p> <p>The non-national EU citizens may, however, become party members.</p>
Spain	The law does not explicitly ensure the right for EU citizens to become a member of a political party or to found a political party in Spain. Nevertheless, one could infer from the applicable standards in this field (<i>Loi organique 6/2002, du 27 de juin, relative aux partis politiques, Loi organique 4/2000, du 11 janvier, relative aux droits et libertés des étrangers en Espagne, Loi organique 14/2003, du 20 novembre, réformant, entre autres, la loi sur les étrangers</i>) that non-national EU

	<p>citizens do not have the right to found a political party but have the right to become members of existing political parties.</p>
Sweden	<p>The freedom of association may be restricted only in respect of organized groups whose activities are of a military or quasi-military nature, or constitute persecution of a population group of a particular race, skin color or ethnic origin (<i>Regeringsformen</i>, Chapter 2, § 14). The issue of the foundation of political parties is regulated in a very relaxed way in Sweden.</p> <p>In addition, there are no formal conditions related to citizenship to be fulfilled by the person who applies for membership in a political party. Yet, in Sweden only 8 percent of the population belongs to a political party. Only the parties may nominate candidates to the list among which voters choose in municipal, regional and parliamentary elections. For that purpose political parties register their name (designation) and the election candidates with a special authority- the Election authority (<i>Valmyndigheten</i>). The application for registration must be supported by at least 1 500 persons from all over the country and who are entitled to vote in general elections. The required numbers are respectively 100 persons entitled to vote in county council elections and 50 persons in municipal election (Chapter 5, § 6, the Election Act, <i>Vallagen</i>, SFS 1997:147). Of significance to be mentioned here is the fact that there are no provisions in Swedish law requiring the registration of political parties, <i>i.e.</i> this occurs merely on voluntary basis.</p> <p>The Instrument of Government provides protection to all Swedish citizens against coercion to divulge an opinion of a political nature or to belong to any political association. Nevertheless, according to Chapter 2, § 22 (1) a foreign national within the realm of Sweden is equated with Swedish citizens in respect of protection against coercion to belong to a religious community or other association (including political party).</p>
United Kingdom	<p>There is no legislation or other law that specifically governs the formation or membership of political parties and there are no formal restriction on non-nationals (whether from Union countries or elsewhere) founding or becoming members of the type of legal entities (associations or corporate bodies) on which political parties are (or could be) based. They thus have the same freedom to found or join political parties that is enjoyed by British citizens.</p> <p>In principle the issue of membership will always be a matter for the political party concerned but the exclusion of non-nationals from any association of more than twenty-five persons by reason of their nationality would be contrary to the Race Relations Act 1976, s 25. This provision is likely to cover most, if not all, political parties but it was not adopted with them particularly in mind.</p> <p>It is unlikely that the duty imposed by the Human Rights Act 1998, s 6(1) on public authorities to act compatibly with the right to freedom of association and the prohibition on discrimination in Articles 11 and 14 of the European Convention on Human Rights would add anything in this regard since political parties would not be regarded as public authorities for this purpose and, given the terms of Article 16, it is far from clear that the exclusion of non-nationals would be seen as contrary to the requirements of the Convention.</p>

Question 2 a).

If yes, are there any practical barriers of exercise of this right by residing non-national Union citizens?

Austria	While it is legally possible in Austria for a non-national Union citizen or a third state national to become a member of an existing political party or to found a new political party, an inherent consequential barrier to full political participation may be seen in the fact that the right to vote and to stand as a candidate in elections are rights confined, in principle, to Austrian citizens (Articles 26, 95 and 117 of the Austrian Constitution). The sole exception to that rule can be found in Art. 117 of the Austrian Constitution which, in conformity with the EC Treaty, confers the right to vote and to stand as a candidate at municipal level also to non-national Union citizens.
Belgium	The conditions for becoming member of Belgian political parties – which are defined in the statutes of the parties – do not in general mention the issue of the nationality of the candidate. The conditions determined by the parties relate for instance, to the age of the candidate, the agreement with the programme of the party, the participation in the life of the party, the exclusivity of the membership etc. Since the nationality of the members of political parties does not constitute a condition for their membership, little information is available on this issue. Whilst the reasons for this are not identified, the limited information available on this issue - limited to executive officers in the political parties - shows however a relatively weak participation of this part of the population to the political life in Belgium.
Cyprus	
Czech Republic	
Denmark	
Estonia	
Finland	
France	
Germany	There might be certain barriers arising out of the statutes of political parties (for instance quota regimes).
Greece	
Hungary	
Ireland	<p>The practical barriers that exist relate to the funding of political parties and restrictions on individual political donations to political parties. These do not discriminate overtly against non-national Union citizens.</p> <p>Because certain privileges attach to established political parties that have achieved a certain level of success in general elections there is a possibility of indirect discrimination against newly-established political parties including any such parties established by non-national Union citizens.</p>
Italy	There are no practical barriers to the exercise of this right.
Latvia	<p>EU citizens ought to be included in the lists of political parties or their associations if they want to stand as candidates for the elections of the European Parliament. Since the <i>Law on Organisations</i> requires that there be a minimum number, which is fairly high, of Latvian citizens for a political party to be registered, this is to be considered as a barrier on the right to stand as candidates in EU elections for both Latvian citizens and the EU citizens if and when they are members of political parties.</p> <p>It is true that EU citizens alone cannot form a political party in Latvia for the purposes of the European or municipal elections. Latvian non-citizens permanent residents for decades cannot do that either. Thus the right to form a political party in</p>

	Latvia can be exercised only together with a group of Latvian citizens. The number of Latvian citizens required is fairly high.
Lithuania	
Luxemburg	It seems that – in practice – there has never been an attempt by foreigners to set up a political party in Luxemburg. Nevertheless EU citizens are members of existing political parties and some of them were even registered on the lists for the elections (either at the municipal level or at the national level).
Malta	The Foreign Interference Act has rarely been resorted to and never during the last few years. Interpretation, judicial, is therefore scarce and uncertain. It might therefore be possible to read the Act in such a manner as to restrict it solely to the carrying out of political activities connected with a general election leaving non-Maltese residents with the legal freedom to act within existing political parties.
The Netherlands	
Poland	
Portugal	
Slovak Republik	
Slovenia	The Constitutional Court has not as yet perceived any practical barriers regarding the exercise of the right of citizens of the Union to become members of a political parties in Slovenia, the only barrier, of course, concerns the elections to the National Assembly and elections of the President, for which only Slovenian citizens have the right to vote for and to be elected.
Spain	As regards the membership of EU citizens to Spanish political parties, there exists no data on the possible obstacles which they might encountered in practice.
Sweden	
United Kingdom	<p>Notwithstanding that the United Kingdom has signed but not ratified the Council of Europe's Convention on the Participation of Foreigners in Public Life at Local Level, non-national Union citizens can be candidates and vote in European, local, Northern Ireland Assembly, Scottish Parliament and Welsh Assembly elections. However, only those who are citizens of the Republic of Ireland are eligible to vote or to stand in parliamentary elections (although non-national Union citizens could be appointed as members of the House of Lords). For some this denial of any possibility of participating in the latter elections might lead to them considering that membership of, or involvement in, a political party would not be worth their while.</p> <p>Apart from this, the short-term residence in the United Kingdom of many non-national Union citizens and the possible absence of the connections on which political life is based, there do not appear to be any significant practical barriers to non-national Union citizens either forming or joining political parties.</p>

Question 2 b).

If not, is this right recognised practically and could be exercised by residing non-national Union citizens without any obstacles?

Austria	
Belgium	
Cyprus	<p>It can be concluded that despite the fact that Cyprus does not <i>guarantee</i> in its legislation or jurisprudence the right of every EU citizen residing in the Republic to become a member of a political party or to found a new political party, in practice this right is recognised and no obstacles have been put into place which restrict EU citizens from becoming members of political parties or from founding their own political parties. To sum up, in light of the fact that <i>first</i>, the legislation and jurisprudence of Cyprus does not touch upon this question, <i>second</i>, in no way restrict the right of anyone to be part of a political party and found a new one, and <i>third</i>, the definition of a political party derived from the jurisprudence of the Supreme Court may also include any party established by EU citizens or any party having as members EU citizens, EU citizens residing in Cyprus can become a member of an existing political party and can found a new political party. Their freedom to do so can also be considered as part of their freedom of association recognised in the Constitution.</p> <p>This opinion is further substantiated by the fact that the Charter of most of the political parties in Cyprus either provides that those residing in the Republic can be registered as members of the party (which includes EU citizens residing in the Republic), or explicitly states that EU citizens are allowed to get registered as members of the party.</p>
Czech Republic	<p>As the Czech legislation in the matter is clear – it does not allow the non-nationals to become a member of an existing political party or to found a new political party – , the right is recognized neither in theory nor in practice.</p> <p>However, this is no obstacle to the right of non-national Union Citizen to become a candidate of the existing political party in the elections to the European Parliament. Their course is regulated by Law No. 62/2003 Coll., on Elections to the European Parliament and on Amendments to Certain Acts adopted in 2003, which transposes the Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.</p>
Denmark	<p>The Danish Constitution (1953) does not mention political parties and the organizational structures of political parties are not regulated by other national legislation. Therefore no explicit legislative guarantees or obstacles as such exist.</p> <p>Since no specific regulations are required according to Danish legislation, the regulation of internal structural organization takes form as an agreement between private parties. The normal requirements to become a member of a political party are typically a certain age and an acknowledgement of the political aim of the party.</p> <p>However, at least one example of a requirement of Danish citizenship for becoming a member the a party exists: For becoming a member of the Danish Peoples’ Party the applicant must, according to the internal rules of the party, be at least 14 years of age, <i>be a Danish Citizen</i> and not be a member of any other political party.</p>
Estonia	
Finland	The clause in Section 2, subsection 1-2, of the Act on Political Parties has not been

	challenged in practice. If more than 5000 non-national Union citizens residing in Finland were to seek recognition of an association as a political party, the matter would be decided by the Ministry of Justice, subject to appeal before the Supreme Administrative Court. In these proceedings, the applicants could claim that the clause in question is in manifest conflict with Sections 6 (non-discrimination) and 13 (freedom of association) of the Finnish Constitution and should therefore be set aside by virtue of Section 106 of the Constitution. In addition, they could claim that the provision in question is in breach of Finland's international human rights obligations, duly incorporated into Finnish law and having priority in respect of the 1969 Act on Political Parties, either by virtue of the <i>lex posterior</i> status of the treaties in question or on the basis of the doctrine of human-rights conform application of legislation, reflected in Section 22 of the Constitution.
France	There is nothing in practice that prevents citizens of the Union residing in France from actively participating in the life of political parties, or from founding their own political party. As regards the statutes of the 16 accredited French political parties, none of them prohibits the membership of EU citizens or non-EU citizens. However, the statistics on the participation of EU citizens to the local and European elections attest little enthusiasm and very relative interest with regard to Union citizenship.
Germany	
Greece	In practice, for instance, the " Coalition radicale de la gauche " has easily accepted the membership of several foreigners, including third-country nationals. According to the recent declarations of his chairman, the principal party of the opposition, the socialist party ("PASOK"), will soon amend its statutes in order to recognize the possibility for the non-nationals (including third-country nationals) to become member of the party. However, it seems that there has never been a talk of creating a political party by non-nationals.
Hungary	
Ireland	
Italy	These rights are recognised in practice.
Latvia	
Lithuania	
Luxemburg	
Malta	
The Netherlands	<p>The Netherlands does <i>not</i> "guarantee" in its legislation the right of every non-national Union citizen to become a member of (or establish) a political party. The issue is simply not addressed. But at the same time Dutch law <i>does</i> guarantee their right to participate in municipal and European elections. Since it is hardly conceivable that one could effectively run for a seat in the municipal council or the EP independently, i.e. without being member of a political party, it is clear that the legislator has assumed that anybody, irrespective of nationality, can establish or join a political party.</p> <p>In an attempt to assess the political participation of 'non-national EU citizens' in practice, the Expert has asked the six largest - in terms of their representation in Parliament – political parties (CDA, VVD, PvdA, D66, Groen Links and SP) how many members of foreign nationality they had. It turned out that none of these parties registers the nationality of their members. It was estimated that there were two or three 'non-national EU candidates' for the last elections, but nobody was sure.</p>
Poland	This right is not recognised practically. Non-national Union citizens cannot be members of political parties in practice (according to the above-mentioned article of the Constitution).
Portugal	

Slovak Republik	<p>The right of non-national EU citizens residing in the Slovak Republic to become a member of an existing political party or to found a new political party is not recognised even practically.</p> <p>As regards the elections to the municipal self-government bodies as well as elections to the bodies of self-government regions, non-national EU citizens residing in the Slovak Republic may be nominated and put on nomination paper of any political party as independent candidates provided that a political party would agree and approve his or her nomination, or, they may file nomination papers as independent candidates under the same conditions as citizens of the Slovak Republic. However, an independent candidate, both Slovak citizen as well as non-national EU citizen residing in the Slovak Republic, unlike a political party which takes part in municipal and regional elections, in order to become eligible as candidate, he or she must submit a petition signed by a number of voters of the constituency in which he or she stands as a candidate, together with his or her nomination paper.</p> <p>As regards the elections to the European Parliament, only a political party, not an independent candidate, may file the nomination paper for the elections. However an independent candidate, either Slovak citizen or non-national EU citizen and third-country national residing in the Slovak Republic, who is willing to exercise his or her right to stand as a candidate at elections to the European Parliament, may do so only through political party provided, that the political party puts him or her on its nomination paper.</p>
Slovenia	The Constitutional Court is not aware of the right to found a political party being recognized to the non-national EU citizens in practice and so far there have not been any steps taken to amend this legislation.
Spain	
Sweden	
United Kingdom	

Question 3.**Is there any legislation envisaged to mend this discrimination on grounds of nationality?**

Austria	Not aware of any pending legislation.
Belgium	Not aware of any pending legislation.
Cyprus	Not aware of any pending legislation.
Czech Republic	Currently, no amendments to the Bill of Fundamental Rights (Art. 20) and Act 424/1991 Coll., on the Association in Political Parties and Political Movements, that would guarantee the right to become a member of an existing political party or to found a new political party to non-nationals is being prepared (or even envisaged).
Denmark	Not aware of any pending legislation.
Estonia	On 26 January 2005, the Constitution Committee of the Parliament Riigikogu initiated the amendments of paragraph 5 of the Party Act which would bring the Act in accordance with EU norms and enable EU citizens of other member States become members of Estonian political parties. It is anticipated that the law will be adopted in 2005.
Finland	Not aware of any pending legislation.
France	The issue of the existence of discrimination within the French political parties turns out to be a very delicate one. There are certain malfunctioning in the political system, more precisely in the upward mobility within the ranks of the political parties.
Germany	Not aware of any pending legislation.
Greece	Not aware of any pending legislation.
Hungary	Not aware of any pending legislation.
Ireland	Not aware of any pending legislation.
Italy	Not aware of any pending legislation.
Latvia	There is a plan to prepare a new <i>Law on Political Parties</i> during 2005.
Lithuania	On 21 January 2005 the draft Law on the amendment of the Law on Political Parties (presented by the member of Seimas) was registered (draft Law No.XP-220). It provides for the right to join political parties not only Lithuanian citizens but also other permanent residents of the administrative unit. It was stated, that the aim of the amendment was to put the Law into line with the Art. 119 of the Constitution and to grant the possibility for permanent residents of the administrative units to participate in the active political life. This amendment was however revoked shortly after its introduction.
Luxemburg	Not aware of any pending legislation.
Malta	Not aware of any pending legislation.
The Netherlands	Not aware of any pending legislation.
Poland	There is no legislation envisaged to allow this group to be members of political parties.
Portugal	
Slovak Republik	Not aware of any pending legislation.
Slovenia	Not aware of any pending legislation.
Spain	Nothing is discussed on these issues. There is no political or scientific debate with regard to the founding of political parties or the membership of EU citizens to existing Spanish political parties.
Sweden	Currently, there is no legislation envisaged to mend the limitations on the right to vote and to be elected in general elections for non-Swedish citizens. However, the issue was discussed in a recent report presented by a commission of inquiry which was appointed by the Government (SOU 2004:49, <i>Engagemang, mångfald och integration</i> , pp. 23-49, Stockholm 2004).
United	Not aware of any pending legislation.

Kingdom	
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LIST OF RESPONSES STATE-BY-STATE

AUSTRIA

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

Yes, in Austria, the founding of political parties is regulated in a very liberal way in section 1 of the Political Parties Act 1975 (*Parteiengesetz*)⁸ at constitutional level. Austrian nationality is neither a requirement for founding a political party in Austria nor for becoming a member of a political party in Austria. Since the citizenship of the founder(s) may not be examined by the Ministry of the Interior on the occasion of the lodgement of a party statute, it is impossible for the Ministry to state whether there has been a case so far where a non-Austrian national founded a party. Consequently, any permanent organisation of people who jointly aim at influencing the political scene in Austria may decide to establish itself as a political party. However, if the organisation does not focus on the participation in Austrian politics but on the exercise of political influence in another state (e.g. by a group of exiled persons), it is only possible to found a (political) association under the Associations Act (*Vereinsgesetz*). The party obtains legal personality after the lodgement of its party statute with the Ministry of the Interior. The Parliamentary materials⁹ show that the legislator clearly wanted to ensure that parties were not subject to interference by any administrative authority or could be adversely affected by a simple Act of Parliament, even though the parties and their members would have to observe the general laws as anybody else. Accordingly, section 1 § 3 of the Political Parties Act forbids that laws be enacted that are specifically designed to restrict the activities of the political parties. Only provisions enacted at constitutional level may limit that freedom, such as the Prohibition Act 1947 (*Verbotsgesetz*)¹⁰ forbidding the organisation of parties with national socialist ideas. In a reported judgement¹¹ of the Constitutional Court dating from 1983 concerning a “party against foreigners” whose statute was rejected by the Minister of the Interior for its xenophobic and national socialist contents, the judges employed a historic interpretation and quashed the negative decision arguing that the Minister did not have the right to refuse the lodgement of a party’s statute or to interfere with the founding of the party in any other way; rather the prohibition was directly effective by act of law and therefore the party could not acquire legal personality. In other words, every authority that would have to deal with a political party which might fall under the Prohibition Act (e.g. the ordinary courts in a civil law dispute, the election authorities, etc.) must, as a preliminary question, decide whether or not the party at issue in fact acquired legal personality.¹² In the latter case, the founder(s) of a prohibited party may then submit an individual complaint to the Constitutional Court.

2 a. If yes, are there any practical barriers of exercise of this right by residing non-national Union citizens?

While it is legally possible in Austria for a non-national Union citizen or a third state national to become a member of an existing political party or to found a new political party, an inherent consequential barrier to full political participation may be seen in the fact that the right to vote and to stand as a candidate in elections are rights confined, in principle, to Austrian citizens (Articles 26, 95 and 117 of the Austrian Constitution). The sole exception to that rule can be found in Art. 117 of the

⁸ Federal Law Gazette (BGBl) 404/1975.

⁹ Parliamentary materials, sten.prot. 150th session/NR (XIII GP) pp. 14596-14601.

¹⁰ Federal Law Gazette (BGBl) 25/1947 as amended.

¹¹ VfGH 01.03.1983, B 195/82.

¹² Cf. judgements of the Constitutional Court reported in VfSlg. 10.705, 11.258.

Austrian Constitution which, in conformity with the EC Treaty, confers the right to vote and to stand as a candidate at municipal level also to non-national Union citizens.¹³

¹³ This was recently confirmed by the Constitutional Court when it declared unconstitutional provisions in the Vienna Municipal Electoral Regulations that would have expanded the right to vote and to stand as candidate to third state nationals (VfGH 30.06.2004, G 218/03).

1. Votre Etat membre prévoit-il dans sa législation le droit de tout citoyen de l'Union qui y réside de se faire membre d'un parti politique ou de fonder un nouveau parti politique sans restrictions?

Introduction

En Belgique, les partis politiques ne sont pas consacrés explicitement par la Constitution; l'article 27 de la Constitution reconnaît le droit de s'associer et interdit de soumettre ce droit à des mesures préventives¹⁴. La loi quant à elle ne reconnaît l'existence des partis politiques que de manière partielle et sectorielle, à travers la législation relative au financement public des partis politiques et la réglementation des campagnes électorales et, dans une moindre mesure, dans la législation électorale.

En l'absence de législation organique relative aux partis politiques, les lois suivantes (ainsi que leurs arrêtés d'application) constituent les principaux instruments dans ce domaine: la Loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales engagées pour les élections des Chambres fédérales ainsi qu'au financement et à la comptabilité ouverte des partis politiques (*M.B.*, 20 juillet 1989), la Loi du 2 avril 2003 modifiant la loi du 4 juillet 1989 (*M.B.*, 16 avril 2003), la Loi du 23 juin 1999 modifiant l'article 23 de la loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales engagées pour les élections des Chambres fédérales ainsi qu'au financement et à la comptabilité ouverte des partis politiques (*M.B.*, 19 août 1999), la Loi du 12 février 1999 insérant un article 15ter dans la loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales engagées pour les élections des Chambres fédérales, ainsi qu'au financement et à la comptabilité ouverte des partis politiques et un article 16bis dans les lois sur le Conseil d'Etat, coordonnées le 12 janvier 1973 (*M.B.*, 18 mars 1999), la Loi du 19 novembre 1998 modifiant la loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales engagées pour les élections des Chambres fédérales ainsi qu'au financement et à la comptabilité ouverte des partis politiques (*M.B.*, 10 décembre 1998), la Loi du 19 février 2003 modifiant la loi du 23 mars 1989 relative à l'élection du Parlement européen en ce qui concerne l'indication des partis politiques au-dessus des listes de candidats sur les bulletins de vote (*M.B.*, 21 mars 2003).

Définition des partis politiques

L'article 1^{er} de la loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales engagées pour les élections des Chambres fédérales ainsi qu'au financement et à la comptabilité ouverte des partis politiques définit un parti politique de la façon suivante :

« L'association de personnes physiques, dotée ou non de la personnalité juridique, qui participe aux élections prévues par la Constitution et par la loi, qui, conformément à l'article 117 du Code électoral, présente des candidats aux mandats de représentant et de sénateur dans chaque circonscription électorale d'une communauté ou d'une région et qui, dans les limites de la Constitution, de la loi, du décret et de l'ordonnance, tente d'influencer l'expression de la volonté populaire de la manière définie dans ses statuts ou son programme ».

Le Code électoral ne connaît pas, en règle, la notion de parti politique. Le système belge de représentation proportionnelle est fondé sur la notion de « liste » de « candidats » se présentant dans chaque circonscription électorale. Ainsi, par exemple, de l'article 17 §1er. du Code électoral dispose:

« L'administration communale est tenue de délivrer des exemplaires ou copies de la liste des électeurs, dès que cette liste est établie, aux personnes qui agissent au nom d'un parti politique, qui en font la demande par lettre recommandée adressée au bourgmestre au plus tard le 33e jour précédant celui de l'élection et qui s'engagent par écrit à présenter une liste de candidats à la Chambre ou au Sénat. Chaque parti politique peut obtenir deux exemplaires ou copies de cette liste à titre gratuit, pour autant qu'il dépose une liste de candidats, soit à la Chambre, soit au Sénat, dans la circonscription électorale où est située la commune auprès

¹⁴ « Les Belges ont le droit de s'associer; ce droit ne peut être soumis à aucune mesure préventive »

de laquelle la demande de délivrance de la liste a été introduite conformément à l’alinéa 1er. »

Conclusion

La réponse à cette première question est positive: en vertu de l’article 27 de la Constitution, les citoyens de l’Union européenne ont le droit « de se faire membre d’un parti politique ou de fonder un nouveau parti politique sans restrictions » (sauf les restrictions acceptables au regard de l’article 27 de la Constitution).

2 b. Si non, ce droit est-il malgré tout reconnu en pratique et peut-il être exercé sans rencontrer d’obstacles?

Création d’un parti politique

En règle générale, le législateur belge est réticent à aborder la question des partis politiques ; les partis politiques sont considérés comme des associations quelconques, en général des « asbl » (association sans but lucratif). Leur organisation relève entièrement de la responsabilité des partis eux-mêmes et se traduit au travers de leurs statuts. Ils sont toutefois tenus d’observer certains principes démocratiques inscrits, notamment, à l’article 15ter introduit par la Loi du 12 février 1999 dans la loi du 4 juillet 1989 précitée:

« § 1er. Lorsqu'un parti politique par son propre fait ou par celui de ses composantes, de ses listes, de ses candidats, ou de ses mandataires élus, montre de manière manifeste et à travers plusieurs indices concordants son hostilité envers les droits et libertés garantis par la Convention de sauvegarde des droits de l'homme et des libertés fondamentales du 4 novembre 1950, approuvée par la loi du 13 mai 1955, et par les protocoles additionnels à cette Convention en vigueur en Belgique, la dotation, qui en vertu du présent chapitre est allouée à l'institution visée à l'article 22 doit, si une chambre bilingue du Conseil d'Etat le décide, être supprimée dans les quinze jours par la Commission de contrôle à concurrence du montant décidé par le Conseil d'Etat. (...)

§ 2. Un pourvoi en cassation contre l'arrêt du Conseil d'Etat est ouvert devant la Cour de cassation dans un délai de trente jours. Ce pourvoi n'a pas d'effet suspensif.

§ 3. La procédure ainsi que les modalités d'audition des intéressés sont fixées par arrêté royal délibéré en Conseil des ministres ».

Les partis politiques sont tenus, en outre, de respecter les législations et réglementations spécifiques en matière de droit électoral (en ce qui concerne, notamment, la constitution et le dépôt de listes électorales et de candidatures).

Il n’existe cependant pas de mécanismes de contrôle des activités des partis politiques en dehors des mécanismes de contrôle financier - et judiciaires - tels, par exemple, la « Commission de contrôle des dépenses électorales et de la comptabilité des partis politiques » instituée auprès de la Chambre des représentants et du Sénat.

Adhésion aux partis politiques

En règle générale, les conditions d’adhésion aux partis politiques, inscrites dans les statuts des partis, ne font aucune mention de la nationalité. Les conditions fixées par les partis ont trait, par exemple, à l’âge, à la concordance avec les idées du parti, à l’implication dans la vie du parti ou à la non-adhésion à d’autres partis (des exceptions sont parfois prévues pour ce qui concerne l’adhésion à des partis politiques européens de même « couleur »).

Comme la nationalité des membres des partis politiques ne constitue pas une condition d’adhésion à ceux-ci, peu d’information est disponible à ce sujet. Aucun des partis politiques ne semble disposer de statistiques relatives à la nationalité de leurs *membres*. Il y a lieu de noter toutefois deux études du Centre de recherche et d’information socio-politiques (CRISP) au sujet, notamment, de la nationalité des « *cadres intermédiaires* » du Parti socialiste (PS), du Parti écologiste (ECOLO), du Parti social

chrétien (PSC, aujourd'hui nommé « CDH ») et du Mouvement réformateur (MR)¹⁵. Dans ces études, la notion de « cadres intermédiaires » couvre, non pas les militants de base, mais les militants exerçant des responsabilités locales ou départementales (élus locaux, anciens élus ou candidats malheureux à des élections) souvent présents aux congrès des partis. Il semble que, de façon générale, la présence de cadres non belges ou d'origine non belge dans les partis politiques en Belgique est insignifiante sinon marginale.

Gardant à l'esprit que la définition de « cadres » est susceptible de varier d'un parti à l'autre, les résultats être résumés comme suit :

- PS : L'écrasante majorité des cadres socialistes est de nationalité belge (97,2%), une très faible minorité est de nationalité italienne (1,7%). Ces résultats sont légèrement plus nuancés lorsque la nationalité du père des cadres est examinée (89,8% des délégués ont un père belge et 6,3% ont un père de nationalité italienne) . Les autres nationalités sont présentes de façon marginale voire inexistantes.

- ECOLO : L'écrasante majorité des cadres d'ECOLO est de nationalité belge (97,8%). L'examen de la nationalité des pères des délégués nuance légèrement ces chiffres : 85,6% ont un père belge, 4,4% ont un père italien et 2,8% un père français. Les autres nationalités sont présentes de façon marginale voire inexistantes.

- PSC : L'écrasante majorité des cadres sociaux-chrétiens est de nationalité belge (98,3%) et 1,2% est de nationalité italienne. Cependant, 91,8% des congressistes ont un père belge et 2,9 % ont un père de nationalité italienne. Les autres nationalités sont présentes de façon marginale voire inexistantes.

- MR : L'écrasante majorité des cadres réformateurs est de nationalité belge (96,7%). Cependant 87,9% des cadres réformateurs ont un père belge et 2,1% ont un père de nationalité italienne. Les autres nationalités sont présentes de façon marginale voire inexistantes.

Conclusion

En vertu de l'article 27 de la Constitution, les citoyens de l'Union européenne ont le droit « de se faire membre d'un parti politique ou de fonder un nouveau parti politique sans restrictions » (sauf les restrictions acceptables au regard de l'article 27 de la Constitution).

Tout en en identifiant pas les causes, le peu d'information disponible à ce sujet - limitée aux *cadres* des partis - montre toutefois une participation relativement faible de cette frange de la population à la vie politique en Belgique.

¹⁵ P. Delwit, B. Hellings, E. Van Haute, « Les cadres intermédiaires du Parti socialiste et d'Ecolo – Profils, comportements et positionnements », *Courrier Hebdomadaire du CRISP*, 2003, n°1801-1802 ; P. Delwit, B. Hellings, E. Van Haute, « Les cadres intermédiaires du Mouvement réformateur et du PSC », *Courrier Hebdomadaire du CRISP*, 2003, n°1804-1805.

1. Does Cyprus guarantee in its legislation the right of every non-national Union citizen residing in Cyprus to become a member of an existing political party or to found a new political party without any limitations?

Cyprus law does not essentially regulate the functioning of political parties nor does it provide for their registration. In fact, there is no legislation on political parties as such. For example, there is no legislation as to what a political party is, who can found a political party, who can be a member of a political party, the conditions of its establishment etc. There are however certain laws regulating specific aspects of political parties.

For example, the Law 199/1989 as amended by Laws 3/1990 and 49(I)/1998 entitled the *Rights of Political Parties to Acquire, Posses and Command Immovable and Movable Property and its Circumstances*,¹⁶ regulates the acquisition of property by political parties. For the purposes of the said law, “a political party is the party which is represented at the House of Parliament and any other group of people or organisation which is considered as a political party according to the concept of the average citizen, who is acquainted with the internal political reality of Cyprus, and considering its organisation, institutions, aims and popularity and which managed to safeguard at least 3% of the votes at the latest Parliamentary election.”¹⁷ In order for a political party to be able to acquire property, it has to be registered at the Record of Registered Political Parties kept by the Director of the Ministry of Interior.¹⁸ The registration takes place after an application by the political party which includes its Charter, emblem and name.¹⁹ No other restriction is imposed by this law and no distinction is made for political parties found by Cypriot or EU citizens, or political parties which have members other than Cypriot citizens. It has to be remembered however, that this law (and obviously the definition of a political party as laid down in this law) is relevant only in so far as the acquisition of property by political parties is concerned and in no way regulates other facets of political parties.

Another example of a specific law on political parties is the *Law amending the Law on the Cyprus Broadcasting Corporation*.²⁰ The definition of a political party according to this law goes along the lines with the previously mentioned law: “a political party is the party which is represented at the House of Parliament and any other group of people or organisation which is considered as a political party according to the concept of the average citizen, who is acquainted with the internal political reality of Cyprus, and considering its organisation, institutions, aims and popularity.”²¹ This law places no restrictions upon political parties established by EU citizens or political parties which have members EU citizens. As with the law 199/1986, law 212/1987 is only relevant in so far as political parties’ representation at the Cyprus Broadcasting Corporation is concerned.

The general definition of a political party is only found in the jurisprudence of the Supreme Court and more specifically in the case of *Pitsillos v. C.B.C.*²² According to this case “a useful test, though by no means an exclusive one [as to what a political party is] is the following: Would a reasonable man living in Cyprus and acquainted with the realities of the country identify the said party as a political one? His decision in turn would depend on the practical and theoretical aims of the association, its institutions and organisation, regional and countrywide, as well as the response of the public to it. Past popularity as such, at any one time, is by no means decisive [...]”²³

¹⁶ Νόμος που Προνοεί για το Δικαίωμα των Πολιτικών Κομμάτων να Αποκτούν, Κατέχουν και Διαθέτουν Ακίνητη και Κινητή Ιδιοκτησία και τις Προϋποθέσεις για αυτό, Ν. 199/1986.

¹⁷ *Ibid.*, section 2.

¹⁸ *Ibid.*, section 5 and 6.

¹⁹ *Ibid.*, section 8.

²⁰ L. 212/1987, Νόμος Τροποποιών τον περί Ραδιοφωνικού Ιδρύματος Κύπρου Νόμον.

²¹ *Ibid.*, section 2.

²² 3 *CLR* 208 (1982 II).

²³ *Ibid.*, p. 218.

Therefore, the law of Cyprus, including the jurisprudence of the Supreme Court does not provide anything on the issue of whether EU citizens residing in the republic can become a member of an existing political party or found a new political party.

In light of the fact that first, the legislation and jurisprudence of Cyprus does not touch upon this question, second, in no way restrict the right of anyone to be part of a political party and found a new one, and third, the definition of a political party derived from the jurisprudence of the Supreme Court may also include any party established by EU citizens or any party having as members EU citizens, we are of the opinion that EU citizens residing in Cyprus can become a member of an existing political party and can found a new political party. Their freedom to do so can also be considered as part of their freedom of assembly recognised in the Constitution.²⁴

2. If not, is this right recognised practically and could be exercised by residing non-national Union citizens without any obstacles?

The opinion expressed above, is further substantiated by the fact that the Charter of most of the political parties in Cyprus either provides that those residing in the Republic can be registered as members of the party²⁵ (which includes EU citizens residing in the Republic), or explicitly states that EU citizens are allowed to get registered as members of the party.²⁶ Indeed, six out of the seven political parties in Cyprus allow EU citizens to get registered and some of them have EU citizens residing in the Republic as their members (e.g. AKEL, EDEK).

As regards the right of every non-national EU citizen residing in the Republic to found a new political party, we have not established a precedent that substantiates the opinion raised above on their freedom to found a new political party. No such issue has so far arisen, that is, EU citizens have not attempted so far to establish a new political party in the Republic.

From the above mentioned, it can be concluded that despite the fact that Cyprus does not guarantee in its legislation or jurisprudence the right of every EU citizen residing in the Republic to become a member of a political party or to found a new political party, in practice this right is recognised and no obstacles have been put into place which restrict EU citizens from becoming members of political parties or from founding their own political parties.

²⁴ Article 21 writes: “(1) Every person has the right to freedom of assembly. (2) Every person has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. Notwithstanding any restriction under paragraph 3 of this Article, no person shall be compelled to join any association or to continue to be a member thereof. (3) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are absolutely necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person, whether or not such person participates in such assembly or is a member of such association. (4) Any association the object or activities of which are contrary to the constitutional order is prohibited. (5) A law may provide for the imposition of restrictions on the exercise of these rights by members of the armed forces, the police or gendarmerie. (6) Subject to the provisions of any law regulating the establishment or incorporation, membership (including rights and obligations of members), management and administration, and winding up and dissolution, the provisions of this Article shall also apply to the formation of companies, societies and other associations functioning for profit.”

²⁵ AKEL’s Charter article 2 writes: “Member of AKEL could be any permanent resident of Cyprus and any Cypriot citizen residing at a country in which AKEL operates [...]”; EDEK’s Charter article 12 goes along the same lines. DISY’s Charter article 3 provides that “member of DISY can be any Cypriot citizen residing in Cyprus [...] Non Cypriot residents as well as foreigners residing in Cyprus may be registered as members after the decision of the Political Office of the party.” Similar to DISY’s wording can be found at the Charter of DHKO.

²⁶ The Charter of the EURODI article 4 provides: “member can be any EU citizen [...] provided he/she has completed a period of 6 months of residence in the Republic.” The Charter of the Green party in article 5 provides that “member of the Greens can be any EU citizen residing permanently in Cyprus.”

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

The association in political parties in the Czech Republic is regulated by the Bill of Fundamental Rights (Art. 20)²⁷ and, more in details, by Act 424/1991 Coll., on the Association in Political Parties and Political Movements.²⁸ Both the documents reserve the right to found political parties and to become a member thereof exclusively to the citizens of the Czech Republic. The non-nationals (including the citizens of the EU Member States) therefore do not dispose of the given rights.

2 b. If not, is this right recognized practically and could be exercised by residing non-national Union citizens without any obstacles?

As the Czech legislation in the matter is clear (and it does not allow the non-nationals to become a member of an existing political party or to found a new political party), the right is recognized neither in theory nor in practice.

However, this is not an obstacle to the right of non-national Union Citizen to become a candidate of the existing political party in the elections to the European Parliament. The historically first elections to the European Parliament on the territory of the Czech Republic took place on 11-12 June 2004. Their course was regulated by Law No. 62/2003 Coll., *on Elections to the European Parliament and on Amendments to Certain Acts*²⁹ adopted in 2003, which transposes the Council Directive 93/109/EC *laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals*. Only a limited number of citizens of other EU Member States – 99 in total – voted in the elections to the European Parliament on the territory of the Czech Republic. Among the candidates, there were 5 non-nationals (out of 806 candidates).³⁰ One non-national – a German citizen – was elected (as a candidate of the KSČM: Communist Party of Bohemia and Moravia) to the European Parliament on the territory of the Czech Republic.

3. Is there any legislation envisaged to amend this discrimination on grounds of nationality?

Currently, no amendments to the Bill of Fundamental Rights (Art. 20) and Act 424/1991 Coll., on the Association in Political Parties and Political Movements, that would guarantee the right to become a member of an existing political party or to found a new political party to non-nationals is being prepared (or even envisaged).

²⁷ Ústavní zákon č. 2/1993 Sb., *Listina základních práv a svobod* (Constitutional Act 2/1993 Coll., *Bill of Fundamental Rights*).

²⁸ Zákon č. 424/1991 Sb., *o sdružování v politických stranách a politických hnutích* (Act 424/1991 Coll., *on the Association in Political Parties and Political Movements*).

²⁹ Zákon č. 62/2003 Sb., *o volbách do Evropského parlamentu a o změně některých zákonů* [Act No. 62/2003 Coll., *on Elections to the European Parliament and on Amendments to Certain Acts*].

³⁰ The 5 non-nationals disposed of the citizenship of the following countries: Germany, France, Ireland, Italy, and United Kingdom. However, two of them were originally Czech nationals, having been later deprived of, resp. having waived the Czech citizenship, and having acquired a foreign one.

DENMARK

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

The Danish Constitution (1953) does not mention political parties and the organizational structures of political parties are not regulated by other national legislation. Therefore no explicit legislative guarantees or obstacles as such exist.

Becoming a member of an existing political party - In Denmark political parties are perceived as private entities and no specific regulations are required by Danish legislation. Instead the internal structural organization takes form as an agreement between private parties. The normal requirements to become a member of a political party are a certain age and an acknowledgement of the political aim of the party.

Founding a new political party - Aliens residing legally in Denmark have the same right to take part in political organizations as Danish citizens. According to the Danish Constitution section 78 citizens have the rights to form associations for any lawful purpose without permission. It is presumed that the protection applies irrespective of citizenship. Non-citizens, legally residing in Denmark have the same right as Danish citizens to form associations.

Since no legislative regulation of the organizational structures or the founding of political parties exists, non-national Union citizens residing in that State are free to establish a political party.

Legislation relevant in relation to specific elections

Municipal and county elections - Non-national Union citizens above the age of 18 and with a permanent residence in the municipality, have the right to vote and to stand for election for the municipal council and county council. (*Consolidated Act on Municipal Elections 18-04-2001 No. 263, section 1 and 3*).

Church Board elections - Any member of the Danish National Church (Folkekirken), aged 18 and a Danish citizen *or* has had an uninterrupted permanent residence for at least one year, have the right to vote and have the right to stand for election. (*Consolidated Act on Church Board Elections 16-03-2004 No. 16, section 2*).

Election to the European Parliament - Any EU citizen aged 18 or over who is permanently resident in Denmark has full voting rights in Danish elections to the European Parliament. Any EU citizen aged 18 or over and in full possession of his right to stand as a candidate in his Member State of origin is entitled to stand for election to the European Parliament. (*Act on Election of Danish Members to the European Parliament 02-02-2004 No. 52, section 3 and 6*).

Parliamentary elections - According to the Danish Constitution section 29 and Parliamentary Election Act (PEA) section 1 (Folketingsvalglovens § 1) only Danish citizens above the age of 18 and with permanent residence in Denmark can vote for parliamentary elections.

To be nominated for a parliamentary election, the nominated person has to fulfill the requirements to vote for parliamentary elections; in addition the individual must not have been convicted for a crime which makes him or her unworthy for a seat in the parliament (this is decided by members of parliament) cf. PEA section 4 and the Danish Constitution section 33.

Ordinary requirements for political parties running for parliament are the following:

- 1) Those parties which were represented in the prior parliament and continue to be represented in the parliament are entitled to participate in the new election.
- 2) New political parties, which at least 15 days before the election register at the Minister of Interior a number of voters which equals 1/175 of the total number of voters from the last election (approximately 20.000 persons).
- 3) The German Minority Party if the party registers at least 15 days before the election (no requirement for registration of a certain number of voters).

(Parliamentary Election Act 27- 06-2004 No. 704, section 11-12).

2b. If not, is this right recognized practically and could be exercised by residing non-national Union citizens without any obstacles?

Since no specific regulations are required according to Danish legislation, the regulation of internal structural organization takes form as an agreement between private parties. The normal requirements to become a member of a political party are typically a certain age and an acknowledgement of the political aim of the party.

However, at least one example of a requirement of Danish citizenship for becoming a member the a party exists: For becoming a member of the Danish Peoples' Party the applicant must, according to the internal rules of the party, be at least 14 years of age, *be a Danish Citizen* and not be a member of any other political party.³¹

3. Is there any legislation envisaged to mend this discrimination on grounds of nationality?

Various national anti-discrimination legislation exists, however *not* regarding non-national Union citizens and their possibility to join a political party or to found a new political party. The organizational structures of political parties are not regulated by national legislation. Therefore no explicit legislative guarantees or obstacles as exist.

National anti-discrimination legislation

- The Danish Constitution section 70 stipulates: No one can, based on their faith or decent, be deprived of the access to the full enjoyment of their civil and political rights or avoid the ordinary duties of a citizen.³²
- Act on Ethnic Equal Treatment³³
- Act on Prohibition against Differential Treatment on the Labour Market etc.³⁴
- Act on Prohibition on the grounds of Race etc.³⁵
- The Criminal Code section 266 b § 2 and § 1.³⁶

Denmark has among other international conventions signed and ratified both the European Convention on Nationality, (ETS No. 166) and the International Convention on the Elimination of All Forms of Racial Discrimination.

³¹ <http://www.danskfolkeparti.dk/cgi-files/mdmgfx/file-53-17728-27451.doc> (in Danish only).

³² Act No. 169, 5-06-1953.

³³ Act No. 374, 28-05-2003.

³⁴ Act No. 459, 12-06-1996.

³⁵ Act No. 626, 29-09-1987

³⁶ Consolidated Act No. 960, 21-09-2004. Section 266b concerns "Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding 2 years". According to § 2 it is an aggravating circumstance if the expression takes form as propaganda.

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

As of the time of writing this report, the Estonian Party Act is not yet in conformity with the EU Law. Article 5 of the Party Law states that members of the parties have to be citizens of Estonia.³⁷

I contacted two major Estonian parties – the Liberal-Democratic Party *Reformierakond* and the Social-Democratic Party (*Sotsiaaldemokraatlik Erakond*). The Liberal-Democratic Party Does not currently yet have applications from EU citizens of other member States; the Social Democratic Party recognized the problem and informed that on an intermediary basis, the Social-Democratic Party has solved it by the way of creating a Supporting Member status. The Social Democratic Party has such supporting members – EU citizens from other member States yet living in Estonia - already.

On 26 January 2005, the Constitution Committee of the parliament Riigikogu initiated the amendments of § 5 of the Party Act which would bring the Act in accordance with EU norms and enable EU citizens of other member States become members of Estonian political parties. It is anticipated that the law will be adopted in 2005.

³⁷ Riigi Teataja I 1994, 40, 654.

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

Finnish law regulates political parties through two instruments with the status of an Act of Parliament: The Act on Associations (No. 503 of 1989) and the Act on Political Parties (No. 10 of 1969). Only associations first registered under the Act on Associations are eligible for recognition as political parties under the Act on Political Parties.

According to Section 10, subsection 2, of the Act on Associations, membership in associations that aim at influencing public affairs (typically political parties), is restricted to persons who are either Finnish citizens or who have their domicile in Finland. According to Section 35, subsection 3, of the Associations Act, the chairperson of any association must be domiciled in Finland. However, in associations that aim at influencing public affairs (typically political parties), any board member of an association must be domiciled in Finland. There are no distinctions between Finnish citizens and foreigners as to the right to found an association. Consequently, non-national Union citizens residing in Finland enjoy full rights to found or join associations and to be elected to positions of trust within them. This includes also associations that aim at influencing public affairs.

However, the Act on Political Parties includes a provision that puts non-national Union citizens in an inferior position as to the registration of an association as a political party. According to Section 2, subsection 1-2, of the Act, an existing association can be registered (recognized) as a political party only if it provides a list of at least 5000 supporters that have the right to vote in parliamentary elections. As only Finnish citizens are entitled to vote in parliamentary elections, this means that foreigners, including non-national Union citizens cannot found a political party without joining forces with at least 5000 adult Finnish citizens who declare their support to the party in question.

Consequently, the answer to the question is no. Although Finnish law guarantees without any limitations the right of non-national Union citizens residing in Finland to become a member of an existing political party, they may not freely found a new political party.

2. b) If not, is this right recognised practically and could be exercised by residing non-national Union citizens without any obstacles? Is there any legislation envisaged to mend this discrimination on grounds of nationality?

The clause in Section 2, subsection 1-2, of the Act on Political Parties has not been challenged in practice. If more than 5000 non-national Union citizens residing in Finland were to seek recognition of an association as a political party, the matter would be decided by the Ministry of Justice, subject to appeal before the Supreme Administrative Court. In these proceedings, the applicants could claim that the clause in question is in manifest conflict with Sections 6 (non-discrimination) and 13 (freedom of association) of the Finnish Constitution and should therefore be set aside by virtue of Section 106 of the Constitution. In addition, they could claim that the provision in question is in breach of Finland's international human rights obligations, duly incorporated into Finnish law and having priority in respect of the 1969 Act on Political Parties, either by virtue of the *lex posterior* status of the treaties in question or on the basis of the doctrine of human-rights conform application of legislation, reflected in Section 22 of the Constitution.

1. Votre Etat membre prévoit-il dans sa législation le droit de tout citoyen de l'Union qui y réside de se faire membre d'un parti politique ou de fonder un nouveau parti politique sans restrictions?

La Constitution du 7 octobre 1958 reconnaît aux citoyens de l'Union résidant en France le droit de vote et d'éligibilité aux élections municipales, encore qu'ils ne peuvent exercer les fonctions de maire ou d'adjoint ni participer à la désignation des électeurs sénatoriaux et à l'élection des sénateurs (article 88-3)³⁸. Ils jouissent également des mêmes droits pour les élections au Parlement européen depuis la transposition de la directive n°93/109/CE du 6 décembre 1993 par la loi n°94-104 du 5 février 1994. Les dispositions régissant l'inscription des ressortissants de l'Union européenne sur les listes complémentaires apparaissent quant à elles aux articles L.O. 227-1 à L.O. 227-5 du Code électoral.

La création d'un parti politique est régie par la loi d'association du 1^{er} juillet 1901. Si l'activité des partis politiques français est garantie par la liberté d'association, il n'en demeure pas moins qu'elle fait l'objet de certaines restrictions. L'article 3 de la loi sus mentionnée énonce notamment que "*[t]oute association fondée sur une cause ou en vue d'un objet illicite, contraire aux lois, aux bonnes mœurs, ou qui aurait pour but de porter atteinte à l'intégrité du territoire national et à la forme républicaine du Gouvernement est nulle et de nul effet*". En outre l'article 4 de la Constitution française dispose que les partis et groupements qui concourent à l'expression du suffrage "*(...) doivent respecter les principes de la souveraineté nationale et de la démocratie*". En cas de violation desdites dispositions, les partis fautifs encourent une dissolution prononcée par décret du Président de la République pris en Conseil des Ministres, susceptible de recours auprès des juridictions judiciaires.

Par contre aucune mention n'est faite dans la législation française du droit de tout citoyen de l'Union résidant en France de se faire membre d'un parti politique ou de fonder un nouveau parti politique sans restrictions.

2 b. Si non, ce droit est-il malgré tout reconnu en pratique et peut-il être exercé sans rencontrer d'obstacles?

Rien ne s'oppose en pratique à ce que les citoyens de l'Union résidant en France participent activement, voire qu'ils fondent leur propre parti³⁹. Sur les 16 partis politiques français agréés, aucun n'interdit dans ses statuts l'adhésion aux citoyens européens ou non européens.

Pour les élections municipales des 11 et 18 mars 2001, le ministère de l'Intérieur a recensé 166 122 citoyens européens vivant en France inscrits sur les listes électorales complémentaires sur un total de 1 224 492 personnes, ainsi que 991 candidats européens pour 255 788 candidats de nationalité française. Ils ne sont que 204 sur les 83 445 conseillers municipaux élus dans les communes de plus de 3 500 habitants à provenir d'autres pays de l'Union européenne⁴⁰. Par ailleurs, alors qu'en 1999 un seul candidat citoyen de l'Union aux élections parlementaires européennes avait été élu en France - le franco-allemand Daniel Cohn-Bendit sur la liste des Verts -, le score reste le même en 2004. L'ancien pilote finlandais et député européen sortant Ari Vatanen a été élu en France, deuxième sur la liste UMP du Sud-Est⁴¹.

³⁸ L'article 88-3 résulte de la loi organique n°98-204 du 25 mai 1998 qui transpose en droit interne la directive n°94/80/CE du 19 décembre 1994.

³⁹ Pour preuve le journaliste franco-britannique Julian Nundy, membre fondateur de l'association "*Les Européens en France*" visant à promouvoir les candidatures des non-nationaux, s'est finalement allié à "*Africagora*" qui milite pour la promotion des minorités. Ils ont formé une liste, "*Diversité pour l'Europe*", aux élections parlementaires européennes de 2004 dans deux circonscriptions (Isle de France et Sud-Est).

⁴⁰ essentiellement des Portugais (83), des Italiens (28), des Espagnols (23), des Belges (21), des Allemands (17) et des Britanniques (16). S'y ajoutent 8 Néerlandais, 3 Suédois, 2 Irlandais, 1 Danois, 1 Grec et 1 Finlandais. Sources du Ministère de l'Intérieur et de l'INSEE.

⁴¹ Ce choix, imposé par Michel Barnier avec l'appui de l'Elysée, a suscité des critiques acerbes chez les cadres locaux.

Enfin, lors des élections municipales françaises, 13,8 % des ressortissants européens se sont inscrits en 2001 contre respectivement 3,8 %, 5,9% et 12,1% à l'occasion des élections au Parlement européen de 1994, 1999 et 2004.

Difficile dans ces conditions de parler d'obstacles compte tenu des taux de participation léthargiques des citoyens européens aux élections municipales et européennes. Les statistiques en annexe ne semblent guère autoriser l'enthousiasme, elles attestent au contraire de l'intérêt très relatif que suscite l'octroi de la citoyenneté de l'Union.

3. Et existe-t-il des projets, et lesquels, visant à mettre un terme à cette forme de discrimination fondée sur la nationalité entre ressortissants des Etats membres?

La question de la discrimination au sein des partis politiques français s'avère très délicate. Comme l'a démontré la conférence de presse sur les discriminations dans les partis politiques français du 12 octobre 2004⁴², il y a dysfonctionnement dans le système politique, plus précisément dans le système d'ascension sociale au sein des partis politiques français.

Sur le plan institutionnel, il convient de mentionner qu'une Haute Autorité de Lutte contre les Discriminations et pour l'Egalité a été créée par la loi n° 2004-1486 du 30 décembre 2004. Pour le moment, nul ne sait quelle sera sa mission exacte et si elle sera compétente pour connaître des discriminations entre ressortissants français et ressortissants communautaires. Il semblerait plutôt que ce soit les discriminations raciales qui soient visées.

La haute autorité est en effet compétente pour connaître de toutes les discriminations, directes ou indirectes, prohibées par la loi ou par un engagement international auquel la France est partie. Elle crée auprès d'elle un comité consultatif permettant d'associer à ses travaux des personnalités qualifiées choisies parmi les représentants des associations, syndicats, des organisations professionnelles et toutes autres personnes ayant une activité dans le domaine de la lutte contre les discriminations et pour la promotion de l'égalité.

Elle peut demander des explications (art.5), assister les victimes de discriminations dans la constitution de leur dossier (art.7) et charger un ou plusieurs de ses membres ou de ses agents de procéder à des vérifications sur place (art.8). Elle mène également des actions de communication et d'information propres à assurer la promotion de l'égalité (art.15).

Annexe :

Electeurs communautaires en France. Elections au Parlement européen, juin 1994 :

Origine	Electeurs inscrits	Electeurs potentiels	Taux d'inscription (%)
Britanniques	4978	63522	7.8
Allemands	4128	64285	6.4
Belges	6574	57587	11.4
Danois	249	4867	5.1
Espagnols	6927	204371	3.4
Grecs	203	6865	3
Irlandais	351	5521	6.3
Italiens	14113	224800	6.3
Luxembourgeois	162	3000	5.4

⁴² Conférence organisée par l'Association de la Presse Etrangère et hébergée par le Centre d'Accueil de la Presse Etrangère – Maison Radio France, dont le compte-rendu est disponible sur le site web http://pasdevagues.levillage.org/breve.phd3?id_breve=110

Litvaniens	15	683	
Maltais	0	140	
Polonais	80	28751	
Slovaques	5	1328	
Slovènes	40	661	
Tchèques	15	1566	
Sous-total des 10 nouveaux :	126 (?)*	37572	
Total à 25 :	147660	1221115	12.1

Sources : S. Strudel, « *La citoyenneté de l'Union : l'incertaine construction d'un corps électoral européen* », in B.Cautrès/D. Reynié, (dir.), *L'opinion européenne 2001*, Presses de Sciences Po et Fondation Robert Schuman, Paris, 2001, p. 53-64; Ministère de l'Intérieur et INSEE.

*NB : il existe des divergences entre l'INSEE et le Ministère de l'Intérieur au sujet des statistiques relatives à la participation électorale des citoyens des 10 nouveaux Etats membres de l'Union résidant en France.

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

There are no limitations for non-national Union citizens to become a member of an existing political party. But in detail it has to be differentiated between parties on the EU level, parties on the federal and regional level and regional party organizations on the municipal level. There is a connection with franchise/eligibility.

(1) In accordance with Article 19 EU Treaty non-national EU Citizens with residence in Germany have the right to vote and stand as a candidate at European Parliament elections (Section 6 European Electoral Law [Europawahlgesetz]. Therefore EU citizens may take fully part in the political life of parties (see Article 191 EU Treaty) and of other associations which have a membership organization and set out to influence the formation of political opinions.

(2) On the federal and regional (Land) level the special function of political parties has to be taken in consideration. According to Article 21 (1) sentence 1 Basic Law (Constitution) “Political parties shall participate in the formation of the political will of the people.” And Section 2 (1) Political Party Act [Gesetz über die politischen Parteien] defines political parties as “associations of citizens who set out to influence ... the formation of political opinions at federal or Land level *and to participate in the representation of the people in the Federal Parliament (Bundestag) or regional parliaments (Landtage)*...” That means that political parties, per definitionem, are primarily responsible for coordinating political interests and preparing and holding elections. In the elections to the Federal Parliament or to regional parliaments, however, only German citizens are entitled to participate (see Section 1 (1), Section 12 (1) and Section 15 (1) Federal Electoral Law [Bundeswahlgesetz] and the relative provisions of the state electoral Laws [Landeswahlgesetze]). For this reason political parties may not be dominated by foreigners. Section 2 (3) Political Party Act states: “Political organizations are not deemed to be parties if: 1. most of their members or the members of their executive committees are foreigners; or 2. the registered seat of business is located outside the purview of the present Law.” If one of those prerequisites exists, the political organisation in question is not a party but an association of foreigners.

This provision does not distinguish between third country citizens and EU citizens. Commentators of the Basis Law (Constitution), however, interpret Section 2 (3), regarding EU citizens, restrictively⁴³. Because of Article 12 EU Treaty that provision would not apply to EU citizens. [There is an indication of this interpretation that the new Act on the General Freedom of movement for EU Citizens {Freizügigkeitsgesetz/EU}, which in Section 11 states what provisions of the Residence Act [Aufenthaltsgesetz] should apply mutatis mutandis on EU citizens, excludes Section 47. According to Section 47 (1) Residence Act a foreigner’s political activities may be restricted or prohibited under special, in detail specified, conditions.] These considerations indicate that EU citizens are not subject to any limitations in becoming a member of an existing political party or in founding a new one. – Up to now, however, the problem did not yet get practical relevance in Germany.

(3) The municipal level has to be distinguished from the Federal level. In accordance with Article 19 EC Treaty, Article 28 (1) sentence 3 Basic Law rules: “In county and municipal elections, persons who possess citizenship in any member state of the European Community are also eligible to vote and to be elected in accord with European Community law.” The county and municipal elections are stated by the municipal electoral law of each Land. They rule the preparation and realization of these elections. For example, the Act on Municipal Elections in the Land of North Rhine-Westphalia [Gesetz über die Kommunalwahlen im Lande Nordrhein-Westfalen] in section 7 states that a person is

⁴³ See H. H. Klein in Maunz-Dürig, Komm. z. Grundgesetz, Art. 21 Rdnr.245 (2001).

entitled to vote who is a German within the meaning of Article 116 (1) Basic Law or who is a national of a member state of the European Community. According to section 15 nominations may be submitted not only by political parties but also by groups of qualified electors and by single candidates. As EU citizens have the right to vote and stand as a candidate at municipal elections, they easily may participate not only in political parties but also in such groups or found them. Non-national Union citizens are in so far and on this municipal level in Germany able to take fully part in the political life of their State of residence.

2 a. If yes, are there any practical barriers of exercise of this right by residing non-national Union citizens?

Within the mentioned legal framework there are no practical barriers exercising the right to participate in the political life. There might be certain hurdles, however, arising out of the statutes of political parties (for instance quota regimes).

3. Is there any legislation envisaged to mend this discrimination on grounds of nationality?

There is no legislation envisaged to change the described law.

1. Votre Etat membre prévoit-il dans sa législation le droit de tout citoyen de l'Union qui y réside de se faire membre d'un parti politique ou de fonder un nouveau parti politique sans restrictions?

L'article 29 para. 1 de la Constitution grecque dispose que «*Les citoyens Hellènes ayant droit de vote, peuvent créer librement des partis politiques ou y adhérer; l'organisation et l'activité des partis doivent servir le libre fonctionnement du régime démocratique. Les citoyens n'ayant pas encore obtenu le droit de vote peuvent adhérer aux sections de jeunesse des partis*».

Selon certains professeurs du droit constitutionnel, l'article 29 par. 1 doit être interprété sous l'angle de l'article 28 de la Constitution qui garantit la participation du pays au processus européen. Par conséquent, l'article 29 par. 1 s'appliquerait à tout citoyen de l'Union. Cette interprétation ne constitue pas encore l'approche dominante.

On pourrait, néanmoins, soutenir que si l'article 29, par. 1 de la Constitution reconnaît certains droits aux citoyens grecs, il ne prohibe pas pour autant, du moins explicitement, la participation d'étrangers aux partis politiques existants. Les partis sont libres d'adopter leur propre Statut. Rien ne semble les empêcher de prévoir la participation de non-ressortissants au fonctionnement du parti, voire leur admission en tant que membres. Tout autre est la question, cependant, de l'inclusion de non-ressortissants aux listes des candidats du parti aux élections.

Encore faut-il ajouter à cet endroit qu'en application de la Décision du Conseil du 25 juin 2003 et 23 septembre 2003 modifiant l'acte portant élection des représentants au Parlement européen au suffrage universel direct, annexée à la décision 76/787/CECA, CEE, Euratom du Conseil du 20 septembre 1976, le Parlement hellénique a voté la loi 3216/2003⁴⁴. La loi ne fait que "ratifier" la Décision en question, en reprenant textuellement son contenu et en l'incorporant dans l'ordre juridique hellénique avec les effets juridiques prévus à l'article 28, par. 1 de la Constitution. En d'autres termes, la Décision du Conseil, telle qu'incorporée dans l'ordre juridique hellénique, l'emporte sur toute autre loi contraire. La loi 3216/2003 entra en vigueur le 1^{er} avril 2004⁴⁵.

2 b. Si non, ce droit est-il malgré tout reconnu en pratique et peut-il être exercé sans rencontrer d'obstacles?

En pratique, il semble que la "Coalition radicale de la gauche" a admis plusieurs étrangers, y compris des ressortissants d'États tiers, en tant que membres, sans que cela soulève des problèmes. En revanche, il n'a jamais été question, à notre connaissance, de la création d'un parti politique par des non-ressortissants.

À titre d'information, on mentionnera également qu'en vue des élections locales et préfectorales du 13 et 20 octobre 2002, le Gouvernement a mené une campagne d'information afin de promouvoir la participation des citoyens des autres Etats membres de l'Union. En février 2002, le Ministre de l'Intérieur a envoyé une circulaire à toutes les mairies et les communes du pays, concernant la procédure à suivre pour l'inscription des citoyens de l'Union sur les listes électorales et rappelant que la condition de résidence d'au moins deux ans avait été abrogée. Cependant, des articles parus dans la presse ont fait état d'une certaine confusion et d'un manque d'information dans un nombre de

⁴⁴ Νόμος 3216/2003 «Κύρωση της απόφασης του Συμβουλίου της 25ης Ιουνίου 2002 και της 23ης Σεπτεμβρίου 2002 για την τροποποίηση της πράξης εκλογής των αντιπροσώπων στο Ευρωπαϊκό Κοινοβούλιο με άμεση, καθολική ψηφοφορία, η οποία είναι προσαρτημένη στην απόφαση 76/787/EKAX, EOK, EYPATOM» [Loi no 3216/2003 «Ratification de la Décision du Conseil du 25 juin 2003 et 23 septembre 2003 modifiant l'acte portant élection des représentants au Parlement européen au suffrage universel direct, annexé à la décision 76/787/CECA, CEE, Euratom du Conseil du 20 septembre 1976 »].

⁴⁵ Communiqué de presse du Ministère des Affaires Etrangères du 16 avril 2004.

municipalités⁴⁶. Finalement, le nombre des citoyens de l'Union non nationaux inscrits sur les listes électorales a atteint le chiffre de 2.948 (sur quelque 65.000 citoyens de l'Union établis en Grèce), ce qui représente une augmentation d'environ 100% par rapport au nombre des inscriptions lors du précédent scrutin de 1998.

Et existe-t-il des projets, et lesquels, visant à mettre un terme à cette forme de discrimination fondée sur la nationalité entre ressortissants des Etats membres?

Selon les déclarations récentes de son chef, M. Georges Papandréou, le principal parti de l'opposition, le parti socialiste («PASOK»), va modifier prochainement son statut et reconnaître la possibilité pour les non-ressortissants (y compris les ressortissants d'États tiers) d'adhérer au parti.

⁴⁶ K. Tzilivakis, «Indifference, red tape or sheer lack of info?», *Athens News*, 20.9.2002, p. A12, *idem*, «EU citizens finding it hard to cast their ballot», *Athens News*, 14.6.2002, p. A12.

HUNGARY

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

Act no. XX of 1949 the Constitution of the Republic of Hungary (1949. XX. törvény a Magyar Köztársaság Alkotmányáról) comprehensively amended during the democratic transition by the Act no. XXXI of 1989 in its Article 63 declares the right to establish any kind of associations, including parties as a human right with the following wording: „(1) On the basis of the right of assembly, everyone in the Republic of Hungary has the right to establish organizations whose goals are not prohibited by law and to join such organizations.”

Article 3 of the Constitution also declares the free establishment of parties: „(1) In the Republic of Hungary political parties may be established and may function freely, provided they respect the Constitution and laws established in accordance with the Constitution. (2) Political parties shall participate in the development and expression of the popular will. (3) Political parties may not exercise public power directly. Accordingly, no single party may exercise exclusive control of a government body. In the interest of ensuring the separation of political parties and public power, the law shall determine those functions and public offices which may not be held by party members or officers.”

However Article 8 s. (2) Act no. II of 1989 on the right to assembly (1989. évi II. törvény az egyesülési jogról) contained the following restrictions: „The founder and officer of a party can be only Hungarian citizen. Those members of a party, who are not Hungarian citizens do not have the right to vote and nominate candidates within the party.”

Act no. XXIX of 2004 on the amendment, repeal of certain laws and determination of certain provisions relating to Hungary’s accession to the European Union (2004. évi XXIX. törvény az európai uniós csatlakozással összefüggő egyes törvénymódosításokról, törvényi rendelkezések hatályon kívül helyezéséről, valamint egyes törvényi rendelkezések megállapításáról), which entered into force on 1 May 2004, modified Article 8 of Act no. II of 1989 on the right to assembly: „(1) Any Hungarian citizen or other nationals with residence or immigration permit may become a member of the social organization’s board of trustees or representative body, if he/she is not enjoined from participating in the public affairs.

(2) Only those can be founders or officers of a party, who have the right to vote in the parliamentary elections or in the election of the representatives of local governments and mayors.”

Act no. LXI of 2002 on amending the Constitution modified the circle of the persons entitled to vote and to stand as a candidate in municipal elections. According to the new Article 70 s. (3) of the Constitution, which entered into force on the day of entry into force of the Act promulgating the international convention on the accession to the European Union (1 May 2004), citizens of a Member State of the European Union residing in Hungary, even if they are not nationals to the Republic of Hungary, if they are of voting age, have the right to vote and to stand as a candidate in municipal elections.

The relevant provisions of the Act. no. LXIV. of 1990 on the election of the representatives at local self governments and of the mayors (1990. évi LXIV. törvény a helyi önkormányzati képviselők és polgármesterek választásáról) was also modified with effect from 1 May 2004. The modification of the aforesaid Act abolished the criteria previously provided by the act regarding the right to vote, and now only operates with the concept “voter” [Article 1 of the Act]. The concept “voter”, that is who has the right to vote and to stand as a candidate in municipal elections is determined by the aforesaid (new) Article 70 s. (3) of the Constitution. The Act refers to the Council Directive 94/80/EC, declaring

itself containing a harmonised regulation with that is prescribed by the Directive [Article 64]. A clause of Article 70 s. (2) of the Constitution reserves the right to be elected chief mayor of the capital city or mayor of other settlements for Hungarian nationals; this restriction is possible under Article 5 s. (3) of the Directive

To sum up, the current Hungarian regulation as May 1, 2004 allows for every non-national European citizen residing in Hungary to become a member of an existing political party or to found a new one without any limitations.

IRELAND

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

EU citizens aged 21 years or above may contest European Parliament elections. Council Directive 93/109/EC, which provides for the right for EU citizens to vote and stand for European elections in other Member States, has been transposed into Irish law by means of the European Parliament Elections Act, 1997.

Section 11 of the European Parliament Elections Act 1997 states:

“Subject to the following subsections of this section, every person who has reached the age of 21 years and is either-

- (a) a citizen of Ireland, or
- (b) a national of a Member State other than the State and ordinarily resident in the State,

shall be eligible for election under this Act to be a representative in the Parliament and for nomination under this Act as a replacement candidate.”

Section 25 of the Electoral Act 1992 (as substituted by Section 11 of the Electoral (Amendment) Act 2001) provides that a political party may be registered on the Register of Political Parties by the Registrar of Political Parties to contest Dáil, European and local elections as well as elections to Údarás na Gaeltachta. The party shall be registered provided that it is organised in the state and has not less than 300 members, each of whom have reached the age of 18 years and at least 50% of whom are registered in the register of electors. If the party is applying for registration as a party organised to contest the elections in part of the state only then the requirement is that the party have no less than 100 recorded members. However, if the application for registration is made on behalf of a party which at the time of application has at least one member of the Dáil or a representative of the European Parliament that party shall also be entitled to registration.

All of the above is subject to the conditions of sub-section 5 of Section 11 of the 2001 Act which provides that registration shall not be granted if the name or abbreviation or acronym of the name of the party is indistinguishable from that of another political party, the name of the party comprises more than six words or in the case of a party operating in a particular part of the state the name of the party does not include such reference to that part of the state so as to distinguish the party as so operating. Also, the party’s emblem, if such is registered, must not lead to confusion or be obscene or offensive.

EU citizens residing in Ireland are entitled to stand for election in any European constituency in the state. In order to be eligible to stand a candidate must present a nomination paper to the Returning Officer at a given date before the election. This function may also be carried out by a proposer who is registered as a European elector in the constituency acting on behalf of the candidate. If a candidate is not a member of a registered political party his or her nomination must be assented to by 60 electors registered in the European constituency concerned. The statutory declaration of candidates from outside Ireland and the United Kingdom are sent to the home Member State in order to protect against dual candidacy at European elections.

There is no legislation which explicitly guarantees the right of non-Irish EU citizens to become members of established political parties in the State. However, at present none of the political parties currently represented in the Dáil discriminate on the grounds of nationality and accept as members

non-Irish citizens. In the case of certain parties the entitlement to membership of non-nationals is contingent on their eligibility to vote.

2. If yes, are there any practical barriers of exercise of this right by residing non-national Union citizens?

The practical barriers that exist relate to the funding of political parties and restrictions on individual political donations to political parties. These do not discriminate overtly against non-national Union citizens.

Because certain privileges attach to established political parties that have achieved a certain level of success in general elections there is a possibility of indirect discrimination against newly-established political parties including any such parties established by non-national Union citizens.

3. Is there any legislation envisaged to mend this discrimination on grounds of nationality?

Not aware of any pending legislation.

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

Article 49 of the Italian Constitution reads: “All citizens have the right to freely associate in parties to contribute to determining national policies through democratic processes”. At the beginning, the expression “all citizens” was interpreted by the most part of scholars in the sense that foreigners couldn’t become members of an Italian political party.

Nevertheless, the Italian legislation has always qualified the political parties among the private and free associations, without a general regulation of their public function. So, the Italian Parliament has never passed a legislation about the internal life of political parties and the problem of the right to membership for the foreigners has never been regulated.

Therefore, a lot of parties have always allowed the membership of the foreigners, and sometimes they have even assigned to foreigners some executive posts, like the famous case of the Radical Party that, at the end of seventies, named as its leader a French citizen.

Nowadays, according to the progress of European integration, particularly about the institution of European citizenship, this issue is going to be settled.

According to the legislation about the Right to vote and to stand as a candidate at elections to the European Parliament and the Municipal elections, there are no obstacles to right of every non-national Union citizen to become members of an existing political party or to found a new political party, even if he/she isn’t residing in Italy.

Moreover, this right is explicitly stated in the internal charters of some Italian parties. The internal charter of *Democratici di Sinistra*, for example, with a quite detailed norm, reads that the membership to that Party is open to every woman and every man Italian citizens, residing everywhere, and European Union citizens or other country citizens living in Italy or in a country where the Party has an organisation.

Other parties, like *La Margherita* or *Alleanza nazionale*, prefer to use more generic words like: “all those who agree with the principles and the objectives of the party can become a member of it”.

In conclusion, in the Italian legislation there is no limitation to the right of non-national Union citizens to become members of an existing political party or to found a new political party; there is also no practical barrier to the exercise of the same right.

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

The 1992 *Law on Civil Society Organisations and Their Associations* continues to regulate the establishment and participation in political parties in Latvia.⁴⁷ The Law allows for Latvian citizens and non-citizens to form political parties and be members therein. However, the participation of non-citizens is subject to certain requirements.

On 31 March 2004, the *Saeima* amended the *Law on Civil Society Organisations and Their Associations*.⁴⁸ In accordance with the amended Article 45, part 3,

*“In Latvia, only political parties having 200 citizens can be registered and work. In a political party (organisation) with more than 400 members not less than a half of members shall be citizens.”*⁴⁹

However, Article 45, part 1, of the *Law on Organisations* continues to provide that Latvian citizens or persons having the right to acquire a non-citizen’s passport can be members of a political party.

If Article 45 is read and applied in its entirety it would exclude EU citizens non-nationals in Latvia from the scope of those persons who are entitled to be members of political parties. In any event, during discussions of the draft amendment the question of EU citizens non-nationals was not raised. It is therefore not part of the scope of the Law.

But the question of the membership of EU citizens non-nationals in political parties is somewhat unsettled since the *Law on Elections of the European Parliament* provides for their right to vote and stand as candidates from political parties. This would imply that they have to be admitted to a political party otherwise the right to be a candidate is a nullity. It can be achieved, if part 3 of Article 45 is read separately from part 1 of this article. The new law or amendments to the existing one are necessary.

There is a plan to prepare a new *Law on Political Parties* during 2005.

EU citizens can vote and stand as candidates from Latvia in the elections to the EU Parliament. The regulation of the EU elections is as follows.

On 29 January 2004, the *Saeima* adopted the *Law on Elections to the European Parliament*.⁵⁰ The right to vote is extended to Latvian citizens and EU citizens residing in Latvia if they have reached the age of 18 and are not subject to the restrictions provided for in the Law. The right to be a candidate is extended to persons having reached the age of 21. EU citizens have to reside in Latvia if they want to benefit from this right. It remains unclear what ‘residence’ means since there are different types of residences such as permanent and temporary. Residence of EU citizens is regulated in the secondary legislation adopted by the Government and has been constantly changing in 2004.

⁴⁷ Likums « Par sabiedriskajām organizācijām un to apvienībām », 15.12.1992., *Ziņotājs* [Reporter], no.1/2, 1993.

⁴⁸ Grozījumi likumā « Par sabiedriskajām organizācijām un to apvienībām », 31.03.2004, *Latvijas Vēstnesis*, No. 56, 08.04.2004.

⁴⁹ Ibid.

⁵⁰ *Eiropas Parlamenta vēlēšanu likums*, 29.01.2004., *Latvijas Vēstnesis*, No. 22, 11.02.2004.

EU citizens cannot stand as candidates in the elections to the European Parliament, if “*they cannot be nominated as candidates in a Member State of the European Union of which they are citizens* (Article 5 (2)). Among other restrictions regarding the candidacy the following are listed: (1) a person is devoid of legal capacity, (2) a person spends a term in prison, (3) a person has served a sentence for a serious or a very serious crime and has not been rehabilitated and (4) a person has committed a crime in the condition of mental instability and has been subjected to the restraining measure of a medical character or the case has been closed (Article 5 (1)).

Article 9 provides that the lists of candidates can be submitted by political parties or their associations registered in Latvia. The safety deposit of 1000 LVL has to be paid to the Central Election Commission. The deposit is returned if at least one MP is elected from the list of candidates concerned.

EU citizens ought to be included in the lists of political parties or their associations if they want to stand as candidates for the elections of the EU Parliament. Since the *Law on Organisations* requires that there is a minimum number, which is fairly high, of Latvian citizens for a political party to be registered, this is to be considered as a barrier on the right to stand as candidates in EU elections for both Latvian citizens and the EU citizens if and when they are admitted to the political party. Further restrictions that derive from the criminal behaviour of a person and apply to both Latvian and EU citizens also raise doubt as to their necessity and proportionality in a democratic society. Article 5 (1) restrictions may need to be narrowed down. It is true that EU citizens alone cannot form a political party in Latvia for the purposes of the EU or municipal elections. Latvian non-citizens permanent residents for decades cannot do that either.

LITHUANIA

Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations ? If yes, are there any practical barriers of exercise of this right by residing non-national Union citizens? If not, is this right recognised practically and could be exercised by residing non-national Union citizens without any obstacles ?

The Law on Political Parties (the last version adopted on 23 March 2004) provides that just Lithuanian citizens have the right to freely join political parties, to participate in their activities and to secede (Art. 3 of the Law), as well as to found them (Art. 5 of the Law).

As regards the right of EU citizens to vote and stand as candidates in municipal elections the Constitution of the Republic of Lithuania was amended in 2002 (by the Law of 20 June 2002). Now the Art. 119 § 2 of the Constitution stipulates:

“The citizens of the Republic of Lithuania and other permanent residents of an administrative unit shall be elected, under law, members of municipal councils for four-year term on the basis of universal, equal and direct suffrage by secret ballot by the citizens of the Republic of Lithuania and other permanent residents of the administrative unit.”

Art. 3 § 1 of the Law on Elections to the European Parliament (adopted on 20 November 2003) provides that citizens of the Republic of Lithuania as well as citizens of other Member States of the European Union, permanently residing in Lithuania, who, on the day of elections, are 18 years of age shall have the right to vote in elections to the European Parliament. Art. 3 § 4 of the Law provides for the right of any citizen of the Member State of EU , permanently residing in Lithuania and being at least 21 years of age on the day of elections, to be elected in Lithuania as a member of the European Parliament.

On 21 January 2005 the draft Law on the amendment of the Law on Political Parties (presented by the member of Seimas) was registered (draft Law No.XP-220). It provides for the right to join political parties not only Lithuanian citizens but also other permanent residents of the administrative unit. It was stated, that the aim of the amendment was to put the Law into line with the Art. 119 of the Constitution (mentioned above) and to grant the possibility for permanent residents of the administrative units to participate in the active political life. This amendment was however revoked shortly after its introduction.

According to the Law on the elections to the municipal councils and the Law on elections to the European Parliament the elections are based on the lists of candidates made by the political parties. There is no information on any practical barriers of exercise of the right to stand in the municipal or the European Parliament elections by non-national EU citizens for the reason mentioned above.

1. Votre Etat membre prévoit-il dans sa législation le droit de tout citoyen de l'Union qui y réside de se faire membre d'un parti politique ou de fonder un nouveau parti politique sans restrictions?

Le Luxembourg ne connaît pas de législation définissant les partis politiques. Ce sont dès lors des groupements de fait. Ils sont, bien entendu, reconnus de fait dans la vie quotidienne comme des acteurs politiques importants de la vie en société. Souvent les partis politiques ont constitué une association sans but lucratif pour pouvoir agir juridiquement dans certaines occasions.

Seule une loi du 7 janvier 1999 sur le remboursement partiel des frais de campagnes électorales aux partis et groupements politiques engagés dans les élections de la Chambre des Députés et au Parlement européen prévoit que

« pour l'application de la présente loi, il y a lieu d'entendre par parti politique ou groupement politique, l'association de personnes physiques, dotée ou non de la personnalité juridique, qui concourt, dans le respect des principes fondamentaux de la démocratie, à l'expression du suffrage universel et de la volonté populaire de la manière définie dans ses statuts ou son programme. »

Dès lors la loi est muette sur les droits des étrangers relatifs à leur participation dans les partis politiques. Le principe d'égalité devant la loi veut que les citoyens européens ont les mêmes droits d'être membres ou de fonder des partis politiques que les Luxembourgeois.

2b. Si non, ce droit est-il malgré tout reconnu en pratique et peut-il être exercé sans rencontrer d'obstacles?

En pratique, il n'y a jamais eu, à ma connaissance, de tentative de mettre en place un parti politique par des étrangers. En revanche, les partis politiques ont des étrangers, citoyens de l'Union, comme membres et certains ont été admis sur les listes de certains partis politiques comme candidats à différentes fonctions, que ce soit au niveau communal ou aux élections européennes.

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

Maltese Law enshrines the right of Maltese residents to participate in municipal (local council) elections with section 5(1) of the Local Councils Act⁵¹ and in the European Parliamentary elections with section 18 of the European Parliament Elections Act⁵². This right extends to the right to contest elections, whether as individuals or as members of a political party.

On the other hand the right of non-Maltese citizens to participate in or found political parties inhabits a murky area. Section 56(2) of the Constitution of Malta puts foreign interference on the same level of corrupt practices:⁵³ *in fact where the prevalence of any foreign interference may reasonably be supposed to have affected the result of an election, in all or in any one or more of the electoral divisions, any person entitled to vote at that election may, not later than three days after the publication of the official result of the election, refer the matter to the Constitutional Court for its decision.*

While the Electoral Commission is duty bound to suspend an election where it has reasonable grounds to believe that the result of the election was influenced by an excessive prevalence of foreign interference, the Constitutional Court will then be able to take the final decision whether to annul the elections or not.⁵⁴

The definition given to ‘foreign interference’ can therefore have important ramifications. It has been defined in the Foreign Interference Act,⁵⁵ which contains two basic prohibitions:

- A) The prohibition of any foreigner from participating in any political activity taking place during the time period starting from nine months prior to the dissolution of parliament to the publication of results of general elections.⁵⁶ At any other time, a foreigner must give written notice, five days in advance, of the intention to organise a political activity to a Monitoring Committee. It is debatable whether the definition of ‘political activity’ is restricted to those activities focusing on national elections, or whether it is wider.⁵⁷
- B) The prohibition, at any moment in time, of the provision of money or equipment as gifts by non-Maltese citizens to political parties or persons.⁵⁸

Breaching any of these two prohibitions amounts to a criminal offence.

Considering the situation when the Act was drafted, it was mainly intended to prohibit foreign interference during national elections; it is drafted in wide terms. Furthermore section 56(8)(b) of the Maltese Constitution states that in order to modify the circumstances considered to amount to a foreign interference requires the approval of at least two-thirds of the members of the House of Representatives.

⁵¹ Chap 363 of the Laws of Malta

⁵² Chap 467 of the Laws of Malta

⁵³ s56(2) ‘The election of members of the House of Representatives shall be free of illegal or corrupt practices and foreign interference’

⁵⁴ s56 ss(3),(4), (5), (6).

⁵⁵ Chap 300 of the Laws of Malta

⁵⁶ Section 3(2)(a)

⁵⁷ ‘Political’ has been defined as ‘is restricted in meaning to matters connected with the elections in Malta, or which may be reasonably deemed to influence such elections, and matters connected with the internal or foreign affairs of Malta’

⁵⁸

A strict interpretation of the Foreign Interference Act would therefore mean that the right of Non-Maltese residents to participate in political life is greatly restricted, since it can potentially hinder the participation of non-Maltese in municipal or European Parliament elections should these be scheduled to take place during the run-up of a general election, a difficulty that could be avoided with careful planning.⁵⁹ Secondly the Act would seem to require all non-Maltese citizens participating in the main electoral parties to be compartmentalised so as to avoid infringing the Act; non-Maltese citizens would not be able to participate fully in Maltese Political Parties, and would only be able to establish a new political party with difficulty.

2. The practical exercise of the right of residing non-national Union citizens to participate in political parties.

It should be pointed out that the Foreign Interference Act has rarely been resorted to and never during the last few years. Interpretation, judicial, is therefore scarce and uncertain. It might therefore be possible to read the Act in such a manner as to restrict it solely to the carrying out of political activities connected with a general election leaving non-Maltese residents with the legal freedom to act within existing political parties.

The issue is divided:

With regards to participation in established political parties the current political parties do not seem to have any major problems with resident non-Maltese Nationals.

On the other hand it is doubtful whether they would appreciate the establishment of new political parties that could rock the current status quo. This attitude arises from Malta's environment which creates a number of hurdles on non-Maltese residents to establish political parties: Malta is an island where great importance is given to personal connections and which leaves foreigners at some disadvantage as outsiders. Furthermore, and probably crucially, the major political parties own Television and Radio Stations and Newspapers. The third political party also has a number of substantial links with Mass media organisations. Independents are greatly disadvantaged, as can be verified from electoral results.

The creation of a new political party will thus necessarily involve a national element, with the result that the Foreign Interference Act, preventing the provision of foreign funds to a political party, will probably effectively hinder the establishment of a new party.

⁵⁹ However it should be noted that the Government is only allowed to reschedule local council elections if these occur within four months from a general election (s 8(5) of the Local Councils Act).

THE NETHERLANDS

Preliminary notes

I have some difficulty with the way in which questions 1 and 2(b) are phrased. As will be seen, Dutch legislation does not provide for any rules on who may or may not join (or establish) political parties – anyone can do so. Should this be seen as a ‘guarantee’ of the right of ‘non-national EU citizens’ to take part in political life? For sure there is no *express* guarantee. At the same time it is abundantly clear from other rules – for instance the right to be elected in municipal and European elections – that ‘non-national EU citizens’ (and, in the case of municipal elections *any* alien residing in The Netherlands) can take part in the political life. Likewise Question 2(b) seems to start from the presumption that any failure of the law to expressly guarantee the political rights of Union citizens amounts to discrimination on grounds of nationality. That would appear to be wrong: it is difficult to see how a law that does not contain any limitations at all on the exercise of political rights is discriminatory in any respect.

Secondly, it may be noted that the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) of 1992 was signed by The Netherlands in 1994 and ratified in 1997. It entered into force on 1 May 1997. Foreign nationals who have been legally resident in the Netherlands for five years are entitled to vote and to stand for election at local level. Council Directive 94/80/EC of 19 December 1994 was implemented in 1996.

Legal position of political parties

Under Dutch law, political parties do not have a special status; nor are they subjected to any special rules in terms of membership requirements. Articles G1 to G3 of the Electoral Law [*Kieswet*] simply state that every “political grouping that is an association with full legal personality” [*“politieke groepering die een vereniging is met volledige rechtsbevoegdheid”*] can apply for registration for elections.

The legal position of associations is defined in Book 2 of the Civil Code [*Burgerlijk Wetboek*]. It does not contain any specific rules as regards political groupings, nor does it say anything about the nationality of the members (or founders) of an association. There is only requirement that is indirectly related to nationality: if an association decides that its statutes are to be enshrined in an official act of a notary public [*notariële acte*] then this act should be in Dutch.⁶⁰ It is highly unlikely, however, that this language requirement would be seen as discriminatory.

Back to the Electoral Law. The procedure for registration is very simple (which may be one of the explanations why there are so many political parties in Dutch politics): the political grouping must submit a proof of registration at the Chamber of Commerce [*Handelsregister*], pay an amount ranging from 112.50 euro (municipal elections) to 450 euro (national elections) and indicate a person who will act as representative. That is all.

Participation of ‘non-national EU citizens’ in the political life

The presumption that ‘non-national EU citizens’ are entitled to take part in the political life is confirmed by the fact that they are eligible for election in the municipal council [*gemeenteraad*] and in the European Parliament.

Thus Article 130 of the Constitution [*Grondwet*] provides for the enactment of legislation allowing foreigners to be elected in the municipal council. This has materialised in Article 10 of the Municipal Law [*Gemeentewet*], which determines that anybody may be elected in the municipal council if three conditions are met: he/she must reside in the municipality, be over 18 years old, and be entitled to vote. According to Article B3 of the Electoral Law every person who resides in the municipality and is over 18 years old, is entitled to vote in elections for the municipal council. Nationality is immaterial.

⁶⁰ If the act is passed in the province of *Friesland*, the language used may be Frisian.

As to the elections for European Parliament, Article Y4 of the Electoral Law expressly provides that ‘non-national EU citizens’ are eligible for election, provided that they are over 18 years’ old, resident in The Netherlands and not stripped of their right to vote.⁶¹

Conclusions

This brief review shows that the Netherlands does *not* “guarantee” in its legislation the right of every non-national Union citizen to become a member of (or establish) a political party. The issue is simply not addressed. But at the same time Dutch law *does* guarantee their right to participate in municipal and European elections. Since it is hardly conceivable that one could effectively run for a seat in the municipal council or the EP independently, i.e. without being member of a political party, it is clear that the legislator has assumed that anybody, irrespective of nationality, can establish or join a political party.

A quick scan of practice

In an attempt to assess the political participation of ‘non-national EU citizens’ in practice, we have asked the six largest⁶² political parties – CDA, VVD, PvdA, D66, Groen Links and SP – how many members of foreign nationality they had. It turned out that none of these parties registers the nationality of their members. It was estimated that there were two or three ‘non-national EU candidates’ for the last elections, but nobody was sure.

It is also unknown how many ‘non-national EU citizens’ actually voted in the last elections for European Parliament. The Central Statistics Agency [*Centraal Bureau voor de Statistiek (CBS)*] stopped the registration of these data several years ago. The Ministry for Home Affairs has apparently destroyed all data relating to the nationality of voters in the EP elections, out of considerations of data protection.

⁶¹ Article 28 of the Criminal Code provides that, in imposing a sentence, the criminal courts may strip person temporarily of his right to vote and his right to be elected, provided that certain conditions are met. In practice this power is only rarely used. Clearly this issue is immaterial for the Network’s present evaluation – unless it were established that in a particular country this measure is indirectly discriminatory because of its exclusive or disproportionate adverse effect on foreigners. There are no indications that this is the case in The Netherlands.

⁶² Measured in terms of the representation in Parliament, not in terms of membership. Still it is submitted that this is a representative survey.

POLAND

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

Polish legislation does not guarantee in its legislation the right of non-national Union citizens to be a member of an existing political party and to found a new political party. The Polish Constitution⁶³, in Article 11, regulates that political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means. According to Article 2 of the Act on Political Parties⁶⁴ only Polish citizens, at the age of 18, can be members of political parties.

b) If not, is this right recognised practically and could be exercised by residing non-national Union citizens without any obstacles?

This right is not recognised practically. Non-national Union citizens cannot be members of political parties in practice (according to the above-mentioned article of the Constitution).

3. Is there any legislation envisaged to mend this discrimination on grounds of nationality?

There is no legislation envisaged to allow this group to be members of political parties.

⁶³ The Constitution of the Republic of Poland of 2 April 1997 (The Official Journal of 1997, No. 78, item 483)

⁶⁴ The Act of 27 January 1997 (The Official Journal of 1997, No. 98, item 604)

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

In Portugal, political parties have constitutional status, as well as the participation of aliens in political life. The Constitution does not guarantee explicitly the right of non-national EU citizens with residence in Portugal to participate in the creation or the activity of political parties. However, an interpretation of the relevant provisions of the Constitution regarding political rights of aliens leads to the conclusion that there is no legal obstacle to their affiliation to, and participation in, the Portuguese political parties.

Let us see the relevant provisions of the Portuguese Constitution:

Article 15 – Aliens, stateless persons, European citizens

- 1. Aliens and stateless persons temporarily or habitually resident in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens.**
- 2. Paragraph 1 does not apply to political rights**, to the performance of public functions that are not predominantly technical or to rights and duties that, under this Constitution or the law, are restricted to Portuguese citizens.
- 3. Citizens of Portuguese-speaking countries** may, by international convention and provided that there is reciprocity, be granted rights not otherwise conferred on aliens, except the right to become members of the organs with supreme authority or of self-government of the autonomous regions, to service in the armed forces or to appointment to the diplomatic service.
- 4. Provided that there is reciprocity, the law may confer upon aliens who reside in the national territory the right to vote for, and to stand for election as, members of the organs of local authorities.**
- 5. Provided that there is reciprocity, the law may also confer upon citizens of the Member States of the European Union, who reside in Portugal, the right to vote for, and to stand for election as, Members of the European Parliament.**

Article 46 – Freedom of association

1. Citizens have the right to form associations freely and without prior authorisation, provided that the associations are not intended to promote violence and that their objectives are not contrary to the criminal law.
(...)
4. Armed, quasi-military, militarised or paramilitary associations, other than those of the State or the Armed Forces, and racist organisations or those that adopt fascist ideology are not permitted.

Article 51 – Political associations and parties

1. Freedom of association includes the right to establish and join political associations and parties, and, through them, to work jointly and democratically to give expression to the will of the people and to organise political power.
(...)
5. Political parties must be governed by the principles of transparency, democratic organisation and management and the participation of all of its members.
(...)

Now, let us see the **Law on Political Parties**:

Article 7 – Principle of citizenship

Political parties are composed by citizens enjoying political rights.



From these provisions of the Constitution and the Law on Political Parties, we can draw the following arguments:

1 – The Constitution acknowledges explicitly the **electoral rights of non-national EU citizens** regarding local elections and the elections to the European Parliament (the same occurs to the political rights of the citizens of the Portuguese-speaking countries residing in Portugal). To this extent, they become “citizens” under the Portuguese Constitution.

2 – The Constitution recognizes also to every citizen the right to create associations and participate in them (right of association) and to **create and participate in political parties** (Art. 46 and Art. 51), which must be read as comprising those non-nationals residing in Portugal who are entitled to some form of political citizenship, namely electoral rights.

3 – The Law on Political Parties states that *«parties are formed by citizens enjoying political rights»* (art. 7); again this formulation should be interpreted as including non-national EU citizens (and the other non-nationals who enjoy electoral rights according to the Constitution). In fact, if they can vote and be candidates to election, they should also enjoy the means to do so, including the right to become active in political parties, the more so that in Portugal *only political parties can present candidates to some types of elections, including the elections to the European parliament*. It would be a contradiction to give electoral rights to non-nationals and afterwards not allowing them to have the necessary instruments to make this right effective.

4 – The Law on Political Parties clarifies the issue establishing in § 4 of art. 20 (on “freedom of membership”) that *«aliens and stateless persons that are legally resident in Portugal and who become members of a political party enjoy the rights of participation that are compatible with the political rights they are entitled to»*. It is evident that, according to this provision, aliens who enjoy political rights in Portugal (and that include nationals of EU member-states) can become members of political parties. Portuguese nationality is not a requirement for the creation and membership of political parties.

5 - At least one of the Portuguese political parties has an **explicit reference to the membership of non-nationals**. Art. 1 § 3 of the Constitution of the Socialist Party states that *«besides Portuguese citizens, the membership of the Party is open also to citizens of the Member States of the European union and of the Community of Portuguese Speaking Countries (CPLP), legally residing in Portugal»*.

The Socialist Party constitution having been submitted to the Constitutional Court for registration (which is a requirement of the Law on Political Parties for every party), this clause was not challenged by the Court as to its conformity with the Constitution or the Law.

6 – It is generally known that other parties have also non-nationals among their members, including EU citizens.

7 – In conclusion, the answer to the question regarding the participation of non-national EU citizens in political parties in Portugal is the following:

Portugal guarantees in its legislation without any limitations the right of non-national Union citizens residing in the country to become a member of an existing political party or to found a new political party.

2 a. If yes, are there any practical barriers of exercise of this right by residing non-national Union citizens?

1 - Apparently, there are very few non-nationals as members of political parties in Portugal, although there are very strong immigrant communities both from EU member states and from third States (mainly Portuguese speaking countries). The practical barriers that may prevent non-nationals from joining political parties may result from various reasons, including the fact that they have only limited political rights (the exception being Brazilians who enjoy the special status of equal rights) and the fact that they do not participate fully in the public life of the land.

The number of non-nationals being active members of political parties must be very low. There is no knowledge of any non-national EU citizen belonging to the governing bodies of political parties in Portugal or having any remarkable role in them.

2 - Although there is no restriction to the right of non-nationals to become members of political parties, or to participate in the creation of them, **they are not entitled to equal membership rights.**

In fact the already mentioned § 4 of art. 20 of the Law on Political Parties establishes that «aliens and stateless persons that are legally resident in Portugal and who become members of a political party *enjoy the rights of participation that are compatible with the political rights they are entitled to*». This means apparently that they do not enjoy full participation rights in the political parties they belong to.

It is not easy to grasp the exact meaning of this provision as regards the restrictions to the participation of non-nationals in political parties. Does that mean for example that they can only participate in the party proceedings dealing with the elections in which they can be voters and stand as candidates, i. e., local elections and EP elections? Does that mean that they cannot be elected to the governing bodies of the parties? The answer to these questions is not easy and the issue can give rise to serious difficulties.

3 - Consequently, what are the exact restrictions to the participation of non-nationals in the political parties they belong to is open to debate. Should a controversy arise in relation to those restrictions, the issue can eventually be dealt with by the Constitutional Court, which is the jurisdiction with competence over political parties, including the appeals of their members regarding any illegal decision taken by the party governing bodies or any illegal election procedure.

4 -. Therefore, the answer given to the question on the political participation of non-nationals in political parties in Portugal should read like this:

They have the right to join political parties but apparently they are not entitled to equal and full participation rights in the party life.

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

The legislation of the Slovak Republic does not guarantee the right of non-national Union citizens residing on the territory of the Slovak Republic either to become a member of an existing political party or to found a new political party.

According to the law of the Slovak Republic, only citizens of the Slovak Republic are entitled to become a member of existing political party or to found a new political party.

Pursuant to the Article 29 paragraph 2 of the Slovak Constitution, (only) citizens may establish political parties and political movements and associate therein.

Following the constitutional provision, the right of citizens to associate in political parties is regulated in detail in the Act no. 424/1991 Coll. on association in political parties and political movements, as amended [*zákon č. 424/1991 Zb. o združovaní v politických stranách a v politických hnutiach v znení neskorších predpisov*].

On 4 February 2005 the National Council of the Slovak Republic (the Parliament) approved a new law on political parties and political movements⁶⁵, which will enter into force on 1 June 2005. This new law, that abrogated the Act no. 424/1991 Coll. on association in political parties and political movements, regulates conditions of foundation of political party and political movement (hereinafter referred to as a “party”), registration of parties, conditions of dissolution of parties, rights and obligations of parties, administration and financing of parties.

The new law, as the previous one, does not contain any provision that would allow non-national EU citizens residing on the territory of the Slovak Republic to become a member of an existing political party or to found a new political party. Such a change would, of course, require the amendment of the cited Article 29 paragraph 2 of the Slovak Constitution at first, and probably some other provisions of the Slovak Constitution as well.⁶⁶

2 b. If not, is this right recognized practically and could be exercised by residing non-national Union citizens without any obstacles?

The right of non-national EU citizens residing in the Slovak Republic to become a member of an existing political party or to found a new political party is not recognised even practically.

Pursuant to Article 30 paragraph 1 of the Slovak Constitution, citizens have the right to participate in the administration of public affairs directly or through freely elected representatives. Foreigners with permanent residence on the territory of the Slovak Republic have the right to vote and to be elected to self-administration bodies of municipalities and to self-administration bodies of higher territorial units.

⁶⁵ The Act no. 85/2005 Coll. on political parties and political movements [*zákon č. 85/2005 Z. z. o politických stranách a politických hnutiach*].

⁶⁶ One of the main principles of the Slovak Constitution is the principle of sovereignty of people (i.e. citizens of the Slovak Republic). According to the Article 2 paragraph 1 of the Slovak Constitution, the state power derives from the citizens, who exercise it through their elected representatives or directly. Pursuant to the Article 30 paragraph 1 of the Slovak Constitution, citizens have the right to participate in the administration of public affairs directly or through freely elected representatives. Foreigners with permanent residence on the territory of the Slovak Republic have the right to vote and to be elected to self-administration bodies of municipalities and to self-administration bodies of higher territorial units. Paragraph 4 of this provision states that (only) citizens have access to the elected and public offices under equal conditions.

Membership in a political party is not required for exercise of this right. The nomination papers for the elections - both elections to the municipal self-government bodies as well as elections to the bodies of self-government regions - may be filed by political parties as well as by independent candidates.

Non-national EU citizens residing in the Slovak Republic may be nominated and put on nomination paper of any political party as independent candidates provided that a political party would agree and approve his or her nomination, or, they may file nomination papers as independent candidates under the same conditions as citizens of the Slovak Republic.

However, an independent candidate, both Slovak citizen as well as non-national EU citizen residing in the Slovak Republic, unlike a political party which takes part in municipal and regional elections, in order to become eligible as candidate, he or she must submit a petition signed by a number of voters of the constituency in which he or she stands as a candidate, together with his or her nomination paper.

As regards the elections to the European Parliament, only a political party, not an independent candidate, may file the nomination paper for the elections. However, the Act no. 331/2003 Coll. on elections to the European Parliament as amended [*zákon č. 331/2003 Z. z. o voľbách do Európskeho parlamentu v znení neskorších predpisov*] expressly stipulates that a political party may put on its nomination paper a candidate who is not a member of any political party. It means that an independent candidate, either Slovak citizen or non-national EU citizen and third-country national residing in the Slovak Republic, who is willing to exercise his or her right to stand as a candidate at elections to the European Parliament, may do so only through political party provided, that the political party puts him or her on its nomination paper.

It means, firstly, that even though non-national EU citizens residing in the Slovak Republic do not have the right to become members of existing political party or to found a new political party, the law still allows them to vote and stand as a candidate at municipal and regional elections as well as at elections to the European Parliament.

Secondly, however, it is obvious that since non-national EU citizens residing in the Slovak Republic may not become members of existing political parties or found a new political party, they are not able to take part fully in the political life, and their chances to be elected in municipal or regional elections or in elections to the European Parliament are therefore considerably limited in comparison with the citizens of the Slovak Republic.

3. Is there any legislation envisaged to amend this discrimination on grounds of nationality?

We are not aware of any legislative proposals, which would be aimed to recognise the right of non-national Union citizens residing on the territory of the Slovak Republic either to become a member of an existing political party or to found a new political party. As already mentioned, such recognition would require prior amendment of several provisions of the Slovak Constitution.

Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations ? If yes, are there any practical barriers of exercise of this right by residing non-national Union citizens? If not, is this right recognised practically and could be exercised by residing non-national Union citizens without any obstacles ?

In Slovenia the relevant legislation regarding political parties, their membership and financing is the Political Parties Act (Official Journal, nos. 62/94, 13/98 – Constitutional Court ruling, 1/99, 70/2000, 51/2002 and 94/02 – Constitutional Court ruling) which determines the conditions a party is to fulfil in order to be allowed to function in the Republic of Slovenia (Article 3 of the Political Parties Act) and also the conditions for founding a political party or becoming a member of such party.

Article 4 of the Political Parties Act determines that a party may be founded by no less than 200 adult citizens of the Republic of Slovenia who sign a declaration on the founding of a party. This provision therefore excludes the non-national Union citizens residing in Slovenia from the circle of persons being able to found a party. The Constitutional Court is not aware of this right being recognized to the non-national EU citizens in practice and so far there haven't been any steps taken to amend this legislation.

The non-national EU citizens may, however, become party members. Article 7, paragraph 2 of the Political Parties Act determines an exemption from the general rule (art. 7, par 2), according to which a foreigner may not become a member of a party, but may become an honorary member of a party where this is provided for in the party's statute.

The second paragraph states:

"Irrespective of the provision of the preceding paragraph and on the day of the full membership of the Republic of Slovenia in the European Union, a national of a European Union member state who has been given statutory suffrage in the Republic of Slovenia may become a member of a party provided that they fulfil the conditions set out in the previous article."

The Constitutional Court has not as yet perceived any practical barriers regarding the exercise of this right, the only barrier, of course, concerns the elections to the National Assembly and elections of the President. The main political goal of each political party is to get opportunity to execute their political programme and that may be achieved through participating in elections where they strive for parliamentary majority. According to Slovenia's legislation, only Slovenian citizens have the right to vote for and be elected as members of the National Assembly (same legislation applies for the elections of the President), however, foreigners have, under certain conditions, the rights to vote in elections to the National Council (second house of the Parliament in a broad sense) and in the local elections.

1. Votre Etat membre prévoit-il dans sa législation le droit de tout citoyen de l'Union qui y réside de se faire membre d'un parti politique ou de fonder un nouveau parti politique sans restrictions?

La législation espagnole ne prévoit pas spécifiquement le droit des citoyens de l'Union de se faire membre d'un parti politique ou de fonder un parti politique. De l'ensemble des normes applicables à ce domaine on peut déduire que les citoyens de l'Union non Espagnols ne peuvent pas créer des partis politiques en Espagne et que, par contre, ils peuvent y adhérer.

La législation applicable est celle qui suit :

- Loi organique 6/2002, de 27 de juin, des partis politiques.

Cette loi dispose, dans l'art. 1 que « Les Espagnols pourront créer librement des partis politiques conforme à ce que dispose la Constitution et cette loi organique ». Cette loi octroie le droit de fonder des partis uniquement aux espagnols.

En outre, l'art. 8 de cette loi dispose que « les membres des partis politiques doivent être des personnes physiques, avec la majorité et n'avoir pas la capacité d'agir limitée ni restreinte. Tous auront les mêmes droits et devoirs ». De cet article on déduit qu'il ne faut pas être espagnol, car cette condition n'est pas exigée pour être membre d'un parti comme elle l'est pour créer les partis.

- Loi organique 4/2000, de l'11 janvier, des droits et libertés des étrangers en Espagne

L'art. 6, concernant la participation politique, règle seulement la participation des étrangers dans les élections municipales, sans rien dire des partis politiques.

En outre, l'art. 8, sur la liberté d'association dispose que « tous les étrangers auront le droit d'association, conforme aux lois applicables aux espagnols et qu'ils pourront l'exercer s'ils ont une autorisation de séjour ou résidence en Espagne ». De cette façon, en général, on peut considérer que, étant donné que les partis politiques constituent une variable des associations, ce que la loi des partis (loi spécifique) ne prévoit spécifiquement pour les Espagnols peut être appliqué aux étrangers dès la perspective de la Loi 4/2000, qui octroie (loi générale) le droit d'association. La possibilité d'être membre des partis politiques est ainsi renforcé, mais non celle de pouvoir les fonder.

Cette loi a été modifiée par la Loi organique 8/2000, du 22 décembre, sans que rien soit changé concernant le sujet de cette question.

- Loi organique 14/2003, du 20 novembre, de réforme, entre autres, de la loi sur les étrangers

L'article premier de cette loi dispose que « Les nationaux des États membres de l'Union Européenne et ceux à qui soit applicable le régime communautaire seront réglés par la législation de l'Union Européenne, et cette loi leur sera appliquée en ce qui leur soit plus favorable ». En l'absence de législation européenne, on appliquera la législation espagnole quand elle octroie aux étrangers communautaires le droit d'adhérer à un parti politique.

2 a. Si oui, les citoyens de l'Union qui ne sont pas des nationaux de l'Etat membre rencontrent-ils des obstacles pratiques à l'exercice de ce droit?

Rien à dire sur ce sujet concernant la création des partis politiques.

Concernant l'adhésion des étrangers on n'a pas des données qui permettent affirmer s'ils rencontrent ou non des obstacles pratiques.

2 b. Si non, ce droit est-il malgré tout reconnu en pratique et peut-il être exercé sans rencontrer d'obstacles?

Je n'ai pas trouvé des informations, ni dans la presse ni dans des revues spécialisées, où on spécifie une pratique d'adhésion des étrangers communautaires dans les partis politiques.

3. Et existe-t-il des projets, et lesquels, visant à mettre un terme à cette forme de discrimination fondée sur la nationalité entre ressortissants des Etats membres?

Dans l'agenda parlementaire n'existe aucun projet à ce sujet. La presse ne raconte non plus des projets y concernant.

Il faut dire aussi qu'il n'existe non plus en Espagne un débat politique ou scientifique sur la création de partis politiques par des étrangers communautaires ni sur l'adhésion de ceux-ci aux partis politiques espagnols.

SWEDEN

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

The protection of fundamental freedoms and human rights irrespective of age, sex or ethnic origin is primarily embodied in the first two chapters of the Swedish Instrument of Government (Constitution) (*Regeringsformen*, SFS 1974:152).⁶⁷

For the most part, non-citizens have the same status as Swedish citizens, but may be subjected to special legislation, as may be seen in the second chapter of the Instrument of Government. Chapter 2, § 1 (5) upholds, *e.g.*, the right of citizens in Sweden the freedom to associate with others for public or private purpose, *i.e.* to form political parties.

The freedom of association may be restricted only in respect of organized groups whose activities are of a military or quasi-military nature, or constitute persecution of a population group of a particular race, skin color or ethnic origin (*Regeringsformen*, Chapter 2, § 14).⁶⁸

Taking note of the fact that Sweden continues to uphold its stand-point that criminal acts committed by members or supporters of racist organization may be prohibited and penalized by law⁶⁹, but not the existence of, and participation in, racist organizations, in 2004 CERD recommended the Government to reconsider this position.⁷⁰ This illustrates the very relaxed way to consider the issue of regulating the foundation of political parties in Sweden.

In addition, there are no formal conditions related to citizenship to be fulfilled by the person who applies for membership in a political party. Yet, in Sweden only 8 percent of the population belongs to a political party. Only the parties may nominate candidates to the list among which voters choose in municipal, regional and parliamentary elections. For that purpose political parties register their name (designation) and the election candidates with a special authority- the Election authority (*Valmyndigheten*).⁷¹ The application for registration must be supported by at least 1 500 persons from all over the country and who are entitled to vote in general elections. The required numbers are respectively 100 persons entitled to vote in county council elections and 50 persons in municipal election (Chapter 5, § 6, the Election Act, *Vallagen*, SFS 1997:147). Of significance to be mentioned here is the fact that there are no provisions in Swedish law requiring the registration of political parties, *i.e.* this occurs merely on voluntary basis.

The issues of eligibility for elections and the right to vote are of relevance for the question at hand. According to Chapter 3, § 2 of the Instrument of Government general elections for the Parliament are open to all Swedish citizens who are or have been officially domiciled in Sweden and are 18 years old on or before election day. (See also the Election Act, *Vallag*, SFS 2003:1058, Chapter 1, § 2)

⁶⁷ See www.riksdagen.se/index_en.asp and www.regeringen.se

⁶⁸ Under Chapter 18, Section 4 of the Penal Code (*Brottsbalken*), a person who founds or participates in an association which is considered to constitute or, in view of its character and the purpose for which it has been organised, is easily capable of developing into, an instrument of force such as a military troop or a police force, and which does not with due authority reinforce the national defence or the police, or who on behalf of such association deals in arms, ammunition or other like equipment, makes available a building or land for its activity or supports it with money or in other ways, shall be sentenced for unlawful military activity. The above provision is aimed at preventing the formation of organizations, which are beyond the reach of democratic control.

⁶⁹ Chapter 16, Section 8 of the Penal Code (*Brottsbalken*) prohibits public dissemination of racist statements or other expressions of racist attitudes or beliefs. In 1996, the Supreme Court ruled that wearing Nazi symbols in public could be regarded as agitation against a national or ethnic group and was thereby punishable under the above mentioned provision.

⁷⁰ UN Doc. CERD/C/64/CO/9, 10 May 2004, § 10.

⁷¹ See the Election Act, *Vallag*, SFS 1997:157, www.val.se

Not all existing political parties in Sweden are represented in the Parliament. Today there are seven political parties represented in Sweden's Parliament. To qualify a party must receive at least 4 percent of all national votes in the general elections. Only these parties receive governmental/public funding. (The Act on public funding of a political party, *Lag om statlig partistöd*, SFS 1987:876)

Citizens of one of the other EU Member States or of Iceland or Norway enjoy the same voting rights as Swedes in the municipal and county council elections which take place every fourth year (*Vallagen*, SFS 2003:1058, Chapter 1, § 3, *Komunallagen*, SFS 1991:900, Chapter 4, §§ 2-4).

Other non-Swedish citizens are entitled to vote in the municipal and county elections if they have been officially domiciled in Sweden for at least three consecutive years before the election. Anyone who fulfills the requirements to vote is also eligible to become a regular or deputy member of a municipal or county council.

Many small local parties won council seats during the elections in 2002. They receive a yearly financial support from the municipality in question.

The Instrument of Government also provides protection to all Swedish citizens against coercion to divulge an opinion of a political nature or to belong to any political association. Nevertheless, according to Chapter 2, § 22 (1) a foreign national within the realm of Sweden is equated with Swedish citizens in respect of protection against coercion to belong to a religious community or other association (including political party).

3. Is there any legislation envisaged to mend this discrimination on grounds of nationality?

Currently, there is no legislation envisaged to mend the above mentioned limitations on the right to vote and to be elected in general elections for non-Swedish citizens. However, the issue was discussed in a recent report presented by a commission of inquiry which was appointed by the Government (SOU 2004:49, *Engagemang, mångfald och integration*, pp. 23-49, Stockholm 2004).

UNITED KINGDOM

1. Does your Member State guarantee in its legislation the right of every non-national Union citizen residing in that State to become a member of an existing political party or to found a new political party without any limitations?

There is no legislation or other law that specifically governs the formation or membership of political parties and there are no formal restriction on non-nationals (whether from Union countries or elsewhere) founding or becoming members of the type of legal entities (associations or corporate bodies) on which political parties are (or could be) based. They thus have the same freedom to found or join political parties that is enjoyed by British citizens. In principle the issue of membership will always be a matter for the political party concerned but the exclusion of non-nationals from any association of more than twenty-five persons by reason of their nationality would be contrary to the Race Relations Act 1976, s 25. This provision is likely to cover most, if not all, political parties but it was not adopted with them particularly in mind. It is unlikely that the duty imposed by the Human Rights Act 1998, s 6(1) on public authorities to act compatibly with the right to freedom of association and the prohibition on discrimination in Articles 11 and 14 of the European Convention on Human Rights would add anything in this regard since political parties would not be regarded as public authorities for this purpose and, given the terms of Article 16, it is far from clear that the exclusion of non-nationals would be seen as contrary to the requirements of the Convention.

2 a. If yes, are there any practical barriers of exercise of this right by residing non-national Union citizens?

Notwithstanding that the United Kingdom has signed but not ratified the Council of Europe's Convention on the Participation of Foreigners in Public Life at Local Level, non-national Union citizens can be candidates and vote in European, local, Northern Ireland Assembly, Scottish Parliament and Welsh Assembly elections. However, only those who are citizens of the Republic of Ireland are eligible to vote or to stand in parliamentary elections (although non-national Union citizens could be appointed as members of the House of Lords). For some this denial of any possibility of participating in the latter elections might lead to them considering that membership of, or involvement in, a political party would not be worth their while. Apart from this, the short-term residence in the United Kingdom of many non-national Union citizens and the possible absence of the connections on which political life is based, there do not appear to be any significant practical barriers to non-national Union citizens either forming or joining political parties

3. Is there any legislation envisaged to mend this discrimination on grounds of nationality?

There are no proposals to change the current restrictions on eligibility to vote or stand as a candidate in parliamentary elections.