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**Regional Council and District Assembly Elections in Berlin,
Germany (12 February 2023)**

Monitoring Committee

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Summary

Following an invitation by the authorities of Berlin, the Congress deployed an observation mission to assess the regional council and district assemblies repeat elections held in the *Land* of Berlin on 12 February 2023. On the Election Day, six teams involving fourteen Congress observers visited some 80 polling stations to observe the election procedures, from opening to counting. These elections were a re-run of the September 2021 elections, invalidated on 16 November 2022 by the Berlin Constitutional Court.

Overall, the Congress delegation found the 2023 elections in Berlin well-organised. It commended the numerous improvements implemented by a highly decentralised election administration to reduce the possibility of irregularities at all stages of the electoral process. The campaign was competitive, despite being short, and overwhelmingly focused on local issues. The Election Day was peaceful, transparent and efficiently managed from opening to closing and counting.

Despite the generally positive assessment, the Congress observers noted some areas for improvement on, *inter alia*, clarifying the division of competences and responsibilities between local and regional administrations, standardising procedures on Election Day across districts, strengthening the regulatory framework on campaign and party finance, introducing a 40% gender quota, adopting legislation on the status and rights of election observers and improving accessibility of polling stations.

¹ Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

RECOMMENDATION 489 (2023)²

1. The Congress of Local and Regional Authorities refers to:

a. Article 1, paragraph 2 of the Committee of Ministers' Statutory Resolution CM/Res(2020)1 on the Congress of Local and Regional Authorities of the Council of Europe;

b. Chapter XIX of the Rules and Procedures on the practical organisation of election observation missions;

c. the principles laid down in the European Charter of Local Self-Government (ETS No. 122) which was ratified by Germany on 17 May 1988;

d. the invitation by the Election Officer of the *Land* of Berlin dated 7 December 2022, to observe the regional council and district assembly elections scheduled for 12 February 2023 in Berlin.

2. The Congress reiterates the fact that genuinely democratic local and regional elections are part of a process to establish and maintain democratic governance and that observation of grassroots elections is a key element in the Congress' role as guardian of democracy at local and regional levels.

3. The Congress acknowledges the fact that, overall, the legal framework is conducive to holding democratic elections.

4. The Congress notes with satisfaction that:

a. overall, the authorities, contestants and voters welcomed the decision of the Berlin Constitutional Court to repeat the elections of 26 September 2021, underlining the importance of efficient and independent judicial reviews and appeal mechanisms;

b. the preparations for the repeat elections were conducted efficiently by a highly decentralised and more coordinated election administration, despite the short timeframe, and additional measures were adopted to strengthen the capacity of the Electoral Board members and to provide sufficient ballot booths and papers;

c. the campaign was competitive and focused on issues of local and regional relevance and voters were presented with a wide range of programmes;

d. the Election Day was conducted in line with the relevant legal provisions and was calm, orderly, and managed by a highly professional and committed staff. Counting was handled with diligence, rigour and speed;

e. the trust of the voters in the electoral process remained rather unspoiled, as evidenced by the relatively good turnout and the very few domestic or international observers deployed in polling stations.

5. At the same time, the Congress notes with concern the following issues:

a. the unclear division of competences and responsibilities between the *Land* Returning Officer, the District Returning Officers and their administrations;

b. some of the procedures on Election Day not being uniform and standardised across all districts including:

i. ballot boxes not being uniform and locked and/or sealed in a unified and tamper-proof manner;

ii. voter identification being checked sometimes before and other times after filling the ballot and voters not being asked to sign the voters register;

² Adopted by the Congress on 21 March 2023, 1st Sitting (see Document CG(2023)44-14, explanatory memorandum), rapporteur: Vladimir PREBILIC, Slovenia (L, SOC/G/PD).

iii. excessive burden being placed on Election Board Chairpersons to handle the transportation, storage and safety of the voting material on the eve of the Election Day;

iv. the lack of requirement for Election Board Chairpersons and other members, to follow a standardised training, which is only strongly encouraged, or to attest to past experience;

c. the absence of a cap for campaign expenses and of a dedicated and timely campaign finance report, as well as the high amount for disclosure of private donations, which are not conducive to a level playing field between contestants and limit transparency and accountability;

d. the lack of regulation related to gender quotas on lists and for directly elected seats leading to great variations in the number of women elected per party, and excessively low percentage for some;

e. in some polling stations, the limited accessibility for voters with disabilities, with Election Board members having to assist voters to access the premises;

f. the absence of a legal basis for domestic, international or partisan election observation, despite legal provisions guaranteeing public access to polling stations and counting procedures;

g. the repeat elections imposed a heavy financial and organisational burden on political subjects, predominantly affecting the smaller parties.

6. In light of the above, the Congress invites the relevant authorities in particular, to:

a. revise the legal framework to clarify the tasks and responsibilities of *Land* and District Returning Officers and their administrations and to entrust the *Land* Returning Officer with additional coordination and oversight powers to enforce uniform procedures across districts of Berlin;

b. consider the introduction of a standardised training for Election Board Chairpersons and other members and of further consistent safeguards with regard to the Election Day procedures, in particular on the storage and transportation of voting material, on the use of uniform ballot boxes, preferably transparent, and tamper-proof seals, and on the signing of registers by voters;

c. strengthen the regulatory framework ensuring transparency and accountability of campaign and party finances, in particular on the introduction of a spending cap, a campaign report and lower threshold for disclosure of donations;

d. introduce a 40% quota and additional provisions to strengthen the participation of women in local and regional politics, regardless of political parties' internal rules;

e. pursue efforts to make all polling stations accessible to people with disabilities, regardless of other alternatives to in-person voting;

f. adopt legislation on the rights and status of domestic, international or partisan election observers in line with Article 8 of the OSCE Copenhagen Document.

7. The Congress calls on the Committee of Ministers, the Parliamentary Assembly and other relevant institutions of the Council of Europe to take account of this recommendation regarding the 2023 repeat elections in the *Land* of Berlin and of the explanatory memorandum (CG(2023)44-14) in their activities relating to this member State.

EXPLANATORY MEMORANDUM³**1. INTRODUCTION**

1. On 16 November 2023, the Berlin Constitutional Court declared the 2021 elections to the House of Representatives and district assemblies invalid due to the fact that democratic standards were not met and called for these elections to be repeated within 90 days. Subsequently, the date of 12 February 2023 was selected for the repeat elections. Following an invitation by Mr Stephan BRÖCHLER, Returning Officer of the *Land* of Berlin (*Landeswahlleiter für Berlin*), received on 7 December 2022, the Congress of Local and Regional Authorities deployed an election observation mission to observe the repeat elections held on Sunday 12 February 2023 in the *Land* of Berlin. Mr Vladimir PREBILIC (Slovenia, L, SOC/G/PD) led the delegation which involved 14 members from 12 countries. It was the first time a Congress mission was deployed to observe elections in Germany.

2. In Berlin, election observation is allowed, as the election legislation grants public access to all stages of the process including voting, counting and announcement of results, as long as it does not disrupt the process, without special accreditation (Art. 45 of the Berlin Election By-law).⁴ However, the legislation contains no specific provision regarding the status and rights of election observers, which is contrary to Article 8 of the 1990 OSCE Copenhagen Document (see below). There is no tradition of independent election observation and the main political parties do not deploy observers or proxies.⁵ Accordingly, the Congress mission was the only international election observation mission deployed to observe the 2023 repeat elections.⁶

3. The Congress mission was carried out from 11 to 13 February 2023. Prior to the Election Day, the Congress delegation met with various interlocutors remotely on 2 February 2023, namely representatives of the Senate of Berlin, *Land* and district election administrations, members of the delegation of Germany to the Congress, international and domestic NGOs and representatives of the media. Meetings were also held on 11 February 2023 with representatives and candidates from different parties running in the repeat elections. The delegation composition, the mission programme and deployment plan are appended to the present explanatory memorandum.

4. On Election Day, six Congress teams were deployed to all districts of the *Land* of Berlin and followed the electoral procedures in 80 polling stations, including the counting of regular and postal votes in six places.

5. The following report focuses specifically on issues arising out of exchanges during meetings held with Congress interlocutors in the context of the 12 February 2023 repeat elections in the *Land* of Berlin and of observations made on the Election Day. The Congress wishes to thank all of those who met the delegation for their open and constructive dialogue.

2. POLITICAL CONTEXT IN THE AFTERMATH OF THE 2021 ELECTIONS

6. On 26 September 2021, voters in Berlin were called to elect their representatives in the Federal Parliament, the Berlin House of Representatives (*Abgeordnetenhaus*, hereafter HoR) and district assemblies (*Bezirksverordnetenversammlung*), as well as to vote on a local referendum on the

³ Prepared with the contribution of expert Prof. MMag. Dr. Christina Binder, E.MA (Austria), member of the Group of Independent Experts of the Congress.

⁴ See the Berlin Election By-law (*Landeswahlordnung*), available at <https://gesetzte.berlin.de/bsbe/document/jlr-WahlOBE2006rahmen>.

⁵ Although elections are generally considered as genuine by the German population and by election stakeholders, the 2021 elections were claimed by one political party, the AfD, to be susceptible to fraud unless election observers were deployed. The AfD called on voters to observe elections to ensure that fraud was prevented. See the OSCE/ODIHR Election Expert Team Final Report on the Elections to the Federal Parliament 2021, available at <https://www.osce.org/files/f/documents/0/3/514048.pdf>.

⁶ International observers from the OSCE/ODIHR carried out a Needs Assessment Mission (NAM) from 9 to 12 January 2023 to assess whether the organisation wanted to deploy an observation mission to Berlin. Following the NAM, the OSCE published a report, in which it was concluded that there was no need to deploy observers for the repeat elections in February. <https://www.osce.org/files/f/documents/2/a/536410.pdf>.

expropriation of major real-estate companies. The turnout in the 2021 elections for the Berlin HoR was 75.4%,⁷ whereas for the district assemblies it reached 69.7%.⁸

7. As for the 2021 election results, six political parties gained seats in the Berlin HoR: the Social Democratic Party of Germany (*Sozialdemokratische Partei Deutschlands*, SPD) came first with 21.4% of the votes and gained 36 seats, followed by the Greens (*Bündnis 90 / die Grünen*) with 18.9% and 32 seats. The Christian Democratic Union of Germany (*Christlich Demokratische Union Deutschlands*, CDU) became the third largest party gaining 18% and 30 seats. The Left (*Die Linke*) garnered 14.1% and was awarded 24 seats, the Alternative for Germany (*Alternative für Deutschland*, AfD) 8% and 13 seats, and the Free Democratic Party of Germany (*Freie Demokratische Partei Deutschlands*, FDP) had 7.1% and 12 seats. Three parties reached an agreement to form a coalition in the House of Representatives: the SPD, the Greens and the Left. The ruling coalition was led by the head of the list of the SPD, Governing Mayor Franziska GIFFEY.⁹

8. The political landscape at the level of district assemblies reflects the same political allegiances as in the Berlin HoR. In district assembly elections, the SPD gained 21.6% of the votes and 164 seats, the Greens 20.3% and 147 seats, the CDU 18.3% and 136 seats, the Left 14% and 99 seats, the AfD 8% and 58 seats, the FDP 6.7% and 45 seats, and others 11% and 11 seats. The SPD, CDU, the Greens and the Left party gained 546 members of district assemblies out of 660 in total and all 12 current district mayors. The remaining members were elected from the AfD, the FDP, the Animal Protection Party (*Tierschutzpartei*) and The PARTY (*Die PARTEI*).¹⁰

9. However, the 2021 elections were marked by several serious irregularities on the Election Day.¹¹ These included unusually long queues and waiting time for voters, numerous ballot papers to fill (six per voter) and/or incorrect or missing ballot papers in five out of twelve districts leading to high numbers of invalidated ballots.

10. In light of the significant irregularities on the Election Day, Ms Petra MICHAELIS, the then Returning Officer for Berlin, resigned three days after the Election Day and the Berlin Senator for the Interior, Digitalisation and Sport (*Senatsverwaltung für Inneres, Digitalisierung und Sport*) established an expert commission to undertake an appraisal of the irregularities of the Election Day. The commission's work was conducted in parallel to the proceedings before the Berlin Constitutional Court (see below) with the goal to formulate concrete proposals to avoid similar irregularities in future elections. The expert commission was composed of 18 members including election workers, academics and prominent lawyers who met in plenary sessions between December 2021 and June 2022. They ruled out any criminal intent to rig the elections but identified widespread irregularities which raised serious concerns regarding the professionalism of the election administration and the outcome of the vote. The commission published a report in July 2022 providing recommendations for improving the conduct of elections in Berlin in the short, medium and long term.¹²

11. Two separate appeals – one concerning the elections to the Berlin HoR and district assemblies and one on the federal elections - were filed to challenge the conduct and the outcome of the elections. The local referendum which took place alongside the 2021 elections remained uncontested. The appeal concerning the Berlin HoR and district assembly elections was filed with the Berlin Constitutional Court by the Berlin *Land* Election Committee, the Berlin Senator for the Interior, Digitalisation and Sport and two political parties, namely the PARTY, a satirical party, and the AfD, a far-right party. The Berlin Constitutional Court has sole jurisdiction over complaints regarding the validity of local and regional elections. The second appeal on federal elections was filed with the Federal Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure as the body responsible for the resolution of complaints for federal elections. With regard to the Berlin elections alone, the German *Bundestag*

7 Detailed results of the elections to the House of Representatives of 2021 are available at <https://www.wahlen-berlin.de/wahlen/BE2021/AFSPRAES/index.html>.

8 Detailed results of the elections to the District Assemblies of 2021 are available at <https://www.wahlen-berlin.de/wahlen/BE2021/AFSPRAES/bvv/index.html>.

9 The coalition agreement is available at https://www.berlin.de/rbmskzl/regierende-buergermeisterin/senat/koalitionsvertrag/berlin_koavertrag_2021_2026.pdf.

10 See election results for district assemblies are available at <https://www.wahlen-berlin.de/wahlen/BE2021/AFSPRAES/bvv/ergebnisse.html>.

11 https://www.berlin.de/gerichte/sonstige-gerichte/verfassungsgerichtshof/pressemitteilungen/2022/pressemitteilung_1265423.php.

12 The final report of the expert commission is available at https://www.berlin.de/sen/inneres/presse/weitere-informationen/artikel_1223722.php.

received 1 959 objections including an objection of the Federal Returning Officer, Georg THIEL, who appealed against the conduct and the results of the elections in six constituencies.¹³

3. BERLIN CONSTITUTIONAL COURT DECISION

12. On 16 November 2022, the Berlin Constitutional Court ruled in the case *VerfGH 154/21* that the 2021 elections for the Berlin House of Representatives and district assemblies were declared invalid in their entirety and ordered a repeat of the elections within 90 days.¹⁴ The case was put forward on the objections of the Berlin *Land* Election Committee, the Berlin Senator for the Interior, Digitalisation and Sport, the PARTY and the AfD, which had contested the validity of the elections to varying degrees in line with article 40 paragraph 2 of the Berlin Law on the Constitutional Court, which states that “*an objection can be based on the fact that provisions of the Basic Law, the Berlin Constitution, the Berlin Law on Elections and the Berlin Election By-Law were violated in the preparation or conduct of the elections or in the determination of the election results in such a way that the distribution of the seats was thereby influenced*”.¹⁵

13. The Berlin Constitutional Court noted that the preparations did not meet the requirements laid down in the Berlin Election By-law and had a negative impact on the entire election process. The Court regretted in its decision that many eligible voters were unable to cast their vote fully or effectively because of missing, incorrect or copied ballot papers and that an unknown number of eligible voters found it unreasonably difficult to cast their votes due to long waiting times and temporary interruptions of voting.

14. In particular, issues arising on the Election Day that could be traced to errors made in the preparation stage included: 1) underestimating the time required for a voter to vote (an estimated 2.36 minutes per voter instead of a more realistic 5 minutes considering the six ballots to be cast) which meant that with two booths only, as required per COVID-19 distancing measures, only 283 voters would be able to vote during the opening hours when an average of 1 085 voters were registered per polling station;¹⁶ 2) ballot papers being mixed up and while intended for other constituencies, were distributed in the wrong polling stations in five out of twelve districts, making these ballots invalid; 3) some District Election Committees not handing over all necessary ballots on time to Election Boards, leading to considerable delays, temporary closures of polling stations and copies of ballot papers being made on the spot and later considered invalid; 4) the long waiting times and the fact that closing time of polling stations was sometimes postponed after 18:00, so that some polling stations were still open when preliminary forecasts on the election results were made. The Court noted the concomitant organisation of the Berlin marathon and the application of COVID-19 social distancing measures, which both exacerbated the challenges for the organisation of the polls.

15. As a consequence, the Court assumed that “at least 20 000 to 30 000 votes were affected by electoral errors”. The uncertainty as to how these 20 000 to 30 000 votes could have been distributed in a proper election process led to a multitude of possibilities as to how they could have influenced the distribution of seats. The Court also found that in some constituencies, three-digit numbers of votes cast differently were enough to change the distribution of seats at regional and district levels. Accordingly, all second votes, i.e., 69 seats in the House of Representatives, as well as a substantial part of the directly elected mandates, i.e., at least another 19 seats, and thus a total of 88 out of 147 seats (60%) were affected by voting errors relevant to the mandate.

13 This body has ordered a partial re-run of the federal elections to the *Bundestag*, to be held on a separate date in 2023, in only the 431 polling stations where irregularities were identified in 2021. This decision has now been challenged before the Federal Constitutional Court of Germany, which may still order a larger-scale re-run. See website of the Federal Returning Officer: https://www.bundeswahlleiter.de/en/info/presse/mitteilungen/bundestagswahl-2021/02_22_Wahlwiederholung-in-Berlin.html and Decision from the Committee at: <https://www.bundestag.de/dokumente/textarchiv/2022/kw45-de-wahlwiederholung-919784>

14 The decision was taken after a comprehensive evaluation of all 2,256 protocols from all Berlin polling stations, the data provided by the Land Election Committee and an examination of around one hundred briefs by the more than 3,000 participants in the proceedings. See Press release (16/11/2022), Berlin Constitutional Court, available at: <https://www.berlin.de/gerichte/sonstige-gerichte/verfassungsgerichtshof/pressemitteilungen/2022/pressemitteilung.1265423.php> and the full decision of the Berlin Constitutional Court of 16 November 2022 is available at <https://www.berlin.de/gerichte/sonstige-gerichte/assets/21-154-urteil-fuer-homepage.pdf>.

15 The Berlin Law on the Constitutional Court, (*Gesetz über den Verfassungsgerichtshof*) is available at <https://gesetze.berlin.de/bsbe/document/jlr-VerfGHGBErahmen>.

16 For instance, some polling stations in the district of Friedrichshain received ballot papers marked for another district and had to shut while the correct papers were delivered, which was rendered difficult by the organisation of the Berlin marathon on the same day

16. The Court found that the elections had violated the principles of freedom, publicity and equality of elections laid down in the Berlin Constitution and provisions of the Basic Law, the Berlin Law on Elections and the Berlin Election By-Law in a way that affected the allocation of seats. Presiding judge Mr Ludgera SELTING stated that the frequency and gravity of the irregularities were severe enough to affect the outcome of the results. Furthermore, the Court ruled against a solely partial repeat election because it would have given more weight to voters in selected constituencies to reshape the balance of power and thus would have resulted in an undue influence on the overall election. The Court also explained that this decision was in line with the principle of the “least possible intervention”, as no other solution would have been suitable due to the severity of the irregularities. The date of 12 February 2023 – presenting the last day of the 90-day deadline – was later chosen for the repeat of the elections, in line with article 21 of the 1987 Berlin Law on Elections to the House of Representatives and District Assemblies, hereafter the Berlin Law on Elections.¹⁷

17. Despite the established irregularities of the Election Day in September 2021, the decision by the Berlin Constitutional Court to repeat the elections was contested. 43 members of the Berlin House of Representatives and district assemblies lodged several complaints – including urgent motions to postpone the repeat elections of 12 February 2023 - with the Federal Constitutional Court of Germany in Karlsruhe¹⁸. According to the complainants, the Berlin Court should have involved the Federal Constitutional Court before taking the decision to repeat the local and regional elections. On 31 January 2023, after a weighing of consequences, the Federal Constitutional Court decided in a summary procedure that the repeat elections of 12 February will not be postponed or cancelled and would take place as foreseen¹⁹. However, the Court did not rule on the main proceedings at that point. Members of the HoR were invited to make statements until 3 March 2023 and the Court will decide on the case thereafter. While Congress interlocutors considered it most likely that the Federal Court will not depart from its position of 31 January 2023, the pending proceedings to a certain extent overshadowed the 12 February repeat elections. Some interlocutors mentioned that it was even harder to mobilise voters with the opinion pending.

18. With the 2023 repeat elections, it is only the second time in the history of Germany that an election has been annulled in court and it thus ignited a nationwide debate.²⁰ The re-run of the elections was expected to lead to possibly significant changes in the Berlin government and a new Governing Mayor, despite the repeat elections being held only one and a half years after the 2021 elections. The preparations for the 2023 repeat elections were therefore under intense scrutiny from the public and the media. Particular attention was paid to some errors that occurred in the period leading up to the repeat elections (see below paragraph 46). Some Congress interlocutors regretted however that the question of political responsibility for the 2021 irregularities was not directly addressed by the leading coalition and they were surprised that it not became a central campaign topic.

19. The Congress delegation noted with satisfaction that, overall, the authorities, contestants and citizens welcomed the decision of the Berlin Constitutional Court of 16 November 2022 to repeat the elections of 26 September 2021, noting the importance of independent judicial review and appeal mechanisms in a State governed by the Rule of Law.

4. ADMINISTRATIVE STRUCTURE OF LOCAL GOVERNANCE

20. The Federal Republic of Germany is a parliamentary democracy comprised of 16 federal states (*Länder*), each one having its own constitution and a largely autonomous internal political structure. The relationship between the Federation (*Bund*) and the *Länder* is specified by the German Constitution, the so-called Basic Law²¹. At federal level, the legislative power is vested in a bicameral parliament, consisting of the directly elected Federal Parliament (*Bundestag*) and of the Federal Council

¹⁷ Law on the Elections to the House of Representatives and District Assemblies of Berlin (*Landeswahlgesetz Berlin*, 1987) available at <https://gesetze.berlin.de/bsbe/document/jlr-WahlGBErahmen>.

¹⁸ The complainants' main arguments included the fact, that not all districts were affected by the irregularities and that the Berlin judgment deviates from previous case law regarding election checks, where a re-run of elections was only ordered for districts with particularly serious irregularities as opposed to the present re-run of the entire election.

¹⁹ The decision on the urgent motion to postpone the repeat elections of 12 February by the Federal Constitutional Court of Germany is available at <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2023/bvg23-013.html>.

²⁰ The previous occasion concerned the 1991 regional elections in Hamburg.

²¹ The Basic Law of Germany (*Grundgesetz für die Bundesrepublik Deutschland*), is available in English at https://www.gesetze-im-internet.de/englisch_gg/index.html.

(*Bundesrat*), a legislative body representing the 16 states. Each *Land* has its own parliament and government.

21. Each *Land* has its own Constitution, parliament, government and administrative structures, thus holding extensive powers and responsibilities in policymaking at local and regional levels, including in the fields of education and culture, media broadcasting, police and regulatory law. They have the power to legislate unless the Basic Law bestows legislative competencies on the Federation. Municipal law also falls within the jurisdiction of the *Länder*.²²

22. Berlin is the capital²³ and the largest city of Germany with a population of 3 677 472 inhabitants (2021).²⁴ The city of Berlin also constitutes the *Land* of Berlin. It holds a special administrative status, which does not stem from its function as the capital, but rather from its qualification as a *Land*. Berlin has a two-tier administrative system with the *Land* level as well as its 12 districts (Art.4 of the Constitution of Berlin).²⁵

23. The representative body of the *Land* of Berlin is the House of Representatives composed of at least 130 members, who are elected in general, equal, free, secret and direct elections every five years (Art. 38 and 39 of the Constitution of Berlin and Article 7 of the Berlin Law on Elections). The executive body is the Berlin Senate, which consists of the Governing Mayor, being both the city's mayor and the *Land* leader, and a maximum of ten Senators (Art. 55 of the Constitution of Berlin). While the Governing Mayor is elected by an absolute majority of the members of the HoR, the other Senate members are appointed and dismissed by the Governing Mayor. The relationship of the legislative and executive bodies is based on a parliamentary system, meaning that the Governing Mayor depends on the majority support of the HoR.

24. As to the second tier of Berlin self-government, the district assemblies bear the legislative and decision-making responsibilities at the local level (Section VI of the Constitution of Berlin). Each of the district assemblies is composed of 55 members, who are elected at the same time as the HoR in a general, equal, secret, and direct election every five years. The executive functions are performed by the district mayor and six deputy district mayors, constituting the district council, nominated by political groups represented in the district assemblies according to the D'Hondt formula²⁶ (Art. 74 of the Constitution of Berlin) and elected by the district assembly for the duration of the legislative period (Art. 35 of the Berlin District Administration Law).²⁷ The districts of Berlin have their own functions and tasks. However, the Senate of the *Land* of Berlin may issue guidelines and general administrative provisions relating to their activities. Hence, contrarily to other *Länder* of Germany, in Berlin, the Senate keeps most powers and supervision over the districts, which are not considered legal entities. This leads to a situation where the district mayors and district councils are viewed and act as so-called "temporary civil servants" rather than entities with actual executive functions at district level.

25. Several Congress interlocutors called for an extensive administrative reform and regretted that the districts in Berlin, following the adoption in 2001 of a law to reduce their numbers from 23 to 12, have certain powers on election preparations, roads, etc which sometimes overlap with the *Land* level. One interlocutor also criticised the appointment procedure of district mayors and deputy-mayors, leading to members of the district government acting in a siloed manner, according to their own party's priorities, without clear collective leadership.

²² Article 70 of the Basic Law stipulates that "the *Länder* have the right to legislate, unless this Basic Law confers legislative powers on the Federation".

²³ In 2006, a constitutional amendment introduced a new provision into the Basic Law naming Berlin as the capital city of the Federal Republic of Germany and stating that its status shall be regulated by federal law. See https://www.buzer.de/22_GG.htm.

²⁴ See the population level on the website of the Statistics Office for Berlin-Brandenburg available at <https://www.statistik-berlin-brandenburg.de/bevoelkerung/demografie/bevoelkerungsstand>.

²⁵ The Constitution of Berlin is available at: <https://www.berlin.de/rbmskzl/en/the-governing-mayor/the-constitution-of-berlin/>.

²⁶ The D'Hondt method entails that the votes obtained by each list are divided by a sequence of whole numbers: 1, 2, 3, 4, 5... The seats are allocated to the lists obtaining the highest quotas. See Venice Commission, Report on electoral systems - Overview of available solutions and selection criteria (2003), p 20.

²⁷ The Berlin District Administration Law is available at <https://gesetze.berlin.de/bsbe/document/1lr-BezVwGBE2011pP12>.

26. The Congress delegation did not express concern with regard to local self-governance in Berlin and referred to the Congress Recommendation 469 (2022) on the Monitoring of the application of the European Charter of Local Self-Government in Germany and its explanatory memorandum, for a more in-depth analysis.²⁸

5. INTERNAL AND INTERNATIONAL FRAMEWORK

5.1 Domestic legal framework and electoral system

27. The Basic Law of Germany, is binding on all *Länder* and establishes fundamental rights and freedoms. As a result, *Länder* regulations must be in compliance with the basic pillars of democracy such as universal suffrage and the secrecy of the vote, as stipulated in the Basic Law. Other relevant federal laws include the 1994 Political Parties Act²⁹, the 1999 Law on Election Statistics³⁰, the 2002 Civil Code³¹ and the 1998 Criminal Code³² and apply to the conduct of regional council and district assembly elections. There is no common legal framework for local and regional elections in Germany since this is left to regulation by the *Länder*. However, the systems of the *Länder* are broadly similar and based on a combination of proportional representation and directly elected mandates.

28. Elections to the Berlin HoR and district assemblies are further regulated by the 1987 Berlin Law on Elections, and the 2006 Berlin Election By-Law. Only the latter was amended since the September 2021 elections.³³

29. In Berlin, members of the HoR are elected for a period of five years by a mixed electoral system combining majoritarian and proportional representation systems. The HoR consists of at least 130 members, who are elected by relative majority in 78 electoral districts with the remainder of seats distributed proportionally according to closed party lists (Art. 7 of the Berlin Law on Elections). In practice, each voter has two votes in the elections for the HoR.³⁴ With the first vote (*Erststimme*), the voter directly selects one candidate from one of Berlin's 78 constituencies to be elected to the HoR. If a candidate receives a relative majority of votes, they win a direct mandate following the first-pass-the-post system. Voters cast their second vote (*Zweitstimme*) to choose a party list. The more second votes a party acquires, the more seats it wins in the House of Representatives. A 5% threshold, taking into account all ballots cast, must be passed by parties in order to be allocated seats in the HoR (Art. 18 of the Berlin Law on Elections). An exception to this 5% threshold applies for parties which are able to secure at least one directly elected seat in the HoR or district assemblies. In this case a party receives the directly elected seats as well as the proportion of seats attributed to its party list, irrespectively of the 5% threshold (Art. 19 of the Berlin Law on Elections).³⁵

30. To ensure that the HoR reflects the overall proportion of the vote given to various parties, additional seats are granted to party lists to balance any over-proportional attribution of directly elected seats (Art. 19 of the Berlin Law on Elections). For this reason, the final composition of the House of Representatives may include more than the minimum number of 130 representatives. Consequently, following the 2021 elections, 147 representatives were elected to the House of Representatives, of which 35.4% were women (35 women and 95 men). This places Berlin 4th among all German *Länder* with regard to gender balance in regional parliaments.³⁶

31. District assembly elections are based only on proportional representation through closed lists for parties or voters' associations with a 3% threshold for the allocation of seats (Art. 22 of the Berlin Law on Elections). Each district assembly consists of 55 members elected by the district's electorate

28 Recommendation (2022)469 and Report CG(2022)42-16 on the Monitoring of the European Charter of Local Self-Government in Germany, available at: https://search.coe.int/congress/pages/result_details.aspx?objectid=0900001680a5b17c.

29 The 1994 Political Parties Act (*Parteiengesetz*) is available at <https://www.gesetze-im-internet.de/partg/index.html>.

30 The 1999 Law on Election Statistics (*Wahlstatistikgesetz*) is available at <https://www.gesetze-im-internet.de/wstatg/index.html>.

31 The 2002 Civil Code (*Bürgerliches Gesetzbuch*) in English is available at https://www.gesetze-im-internet.de/englisch_bgb/index.html.

32 The Criminal Code (*Strafgesetzbuch*) in English is available at https://www.gesetze-im-internet.de/englisch_stgb/index.html.

33 The changes only concerned increases in the number of staff in polling stations and of stipends for election workers (see below).

34 For more details on the mixed electoral system see <https://www.parlament-berlin.de/Lexikon/gemischt-wahlsystem>.

35 For more explanation, see: <https://www.parlament-berlin.de/Lexikon/ausgleichsmandat>.

36 See Helga LUKOSCHAT and Lisa HEMPE "Women MAKE Berlin! Political Participation of Women in Berlin" Friedrich Ebert Foundation, 2022, available at <https://www.fes.de/landesbuero-berlin/frauen-macht-berlin-politische-teilhabe-von-frauen-in-berlin>.

according to the principles of proportional representation and seats are distributed according to the D'Hondt method. Each voter can only cast one vote. It is not possible to vote for an individual, as only parties or voters' associations can be voted for (Art. 22 of the Berlin Law on Elections). Following the 2021 elections, there were 283 women (42.9%) and 377 men elected to district assemblies.³⁷

5.2 Relevant international standards

32. The rights of citizens to vote – and to stand in elections – at periodic, genuine democratic elections are internationally recognised human rights, as stated in Article 21 of the Universal Declaration of Human Rights, which provides that: *“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives [...]. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”*.³⁸

33. Article 25 of the United Nations Covenant on Civil and Political Rights (ICCPR) also provides for the right to vote and stand in elections: *“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”*.³⁹

34. At European level, the right of all citizens to free elections is guaranteed by Article 3 of the Additional Protocol⁴⁰ to the European Convention on Human Rights (ECHR): *“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”*.

35. With respect to local and regional elections, Article 3.2 of the European Charter of Local Self-Government⁴¹ sets out that local self-government shall be: *“exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them”*. The citizens' rights to exercise their democratic choice is the foundation of political participation at local and regional level. This principle is also enshrined in the preamble to the Additional Protocol to the European Charter of Local Self-government on the right to participate in the affairs of a local authority, which has not yet been ratified by Germany.⁴²

36. In addition to the above-mentioned international treaties, soft law instruments also guide Congress observation missions including Congress Resolutions 306 (2010) on the Observation of Local and Regional Elections⁴³ and 274 (2008) on the Congress Policy in observing local and regional elections⁴⁴ as well as the Venice Commission's Code of Good Practice in Electoral Matters, which specifies guidelines on the five principles underlying Europe's electoral heritage, namely *“universal, equal, free, secret and direct suffrage”*.⁴⁵

37. Specifically on election observation, the Congress also refers to Article 8 of 1990 the Copenhagen document provides that: *“The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election*

37 Berlin is well above the current nationwide average at 27% of women in local councils. In Berlin, the system is different than in other federal States as it is a purely proportional representation system with fixed lists. See Helga LUKOSCHAT and Lisa HEMPE, 2022, *Op.cit.*

38 <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

39 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

40 The Additional Protocol to the European Convention on Human Rights (CETS No 009) is available at <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=009>.

41 The European Charter of Local Self-Government (CETS No 122) is available at <https://rm.coe.int/168007a088>.

42 The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No 207) is available at <https://rm.coe.int/168008482a>.

43 Observation of local and regional elections – strategy and rules of the Congress – [Resolution 306 \(2010\)](#)

44 Congress policy in observing local and regional elections – [Resolution 274 \(2008\)](#)

45 [Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report](#)

proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level".⁴⁶

38. Genuine elections to establish democratic governance cannot be achieved without rule of law and unless a wide range of other human rights and fundamental freedoms are guaranteed without discrimination. Consequently, the conclusions of observation reports are also informed by issue-specific resolutions, recommendations, and opinions adopted by the Congress and the Venice Commission which each address different aspects of the electoral process. The Congress specifically addressed the following subjects through the adoption of transversal reports on: electoral lists and voters residing abroad, criteria for standing in elections, the use of administrative resources, local voting rights, elections during crisis situations, and the situation of independent and opposition candidates.⁴⁷ The Congress also incorporates the thematic work of the Venice Commission into its reports, notably their standards concerning inter alia the use of technology, campaigns, dispute resolution, gender representation, persons with disabilities, national minorities, electoral systems, and the media.⁴⁸

39. The Congress delegation noted with satisfaction that fundamental freedoms are respected in Germany and that the overall legal environment was conducive to holding regular and genuine democratic elections. However, the delegation regrets that Germany has not yet ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

6. ELECTION ADMINISTRATION

40. The organisation of elections to the Berlin House of Representatives and district assemblies is regulated by regional legislation. Berlin has a three-tier system composed of the *Land* Election Committee, or LEC (*Landeswahlausschuss*), 12 District Election Committees or DEC (*Kreiswahlausschüsse*) and 2 257 Election Boards or EBs (*Wahlausschüsse*).

41. The *Land* Election Committee is a non-permanent body established specifically for each election and chaired by the *Land* Returning Officer, LRO (*Landeswahlleiter:in*), who is nominated by the Senate of Berlin.⁴⁹ The position is currently held by Mr Stephan BRÖCHLER, who came into office on 1 October 2022. The LEC is composed of six commissioners nominated by taking into account the composition of the HoR and two judges of the Berlin Higher Administrative Court. In addition, the LEC staff is almost entirely recruited on a temporary basis ahead of elections, although a skeleton staff remains in the interim to deal with specific matters during the interim period such as party registrations, requests for information, etc.⁵⁰ The office of the LRO previously employed four permanent staff. Following the 2021 irregularities, this number was increased to twelve.⁵¹ The LRO is responsible for the proper preparation and conduct of elections and for collecting and determining of the official election results.⁵²

42. At the district level, District Election Committees (DEC) are chaired by District Returning Officers, DRO (*Bezirkswahlleiter:innen*) who are generally members of district administrative staff. The appointment of DEC follows the same model as for the LEC by analogy, with the DRO being confirmed by the relevant district assembly (Art. 4 of the Berlin Election By-law). Parties represented in the relevant district council are also represented in the DEC. The District Returning Officers are responsible for organising the elections to the Berlin HoR and for the district assemblies in their districts. The DROs are responsible for the correct application of the electoral regulations and for the smooth conduct of the elections in their area (Art.7 of the Berlin Election By-law). They are appointed indefinitely. In addition to the DRO, DEC consist of six members (Art. 4 of the Berlin Election By-law). The district

46 The 1990 Copenhagen document is available at: <https://www.osce.org/odihr/elections/14304>.

47 All Congress transversal reports, resolutions and recommendations in the field of elections are available at : <https://www.coe.int/en/web/congress/transversal-reports-local-and-regional-elections>

48 All Venice Commission standards are available at: https://www.venice.coe.int/WebForms/pages/?p=01_01_Coe_electoral_standards

49 See article 3 of the Berlin Election By-law. The most recent appointments are available at <https://www.berlin.de/rbmskzl/aktuelles/pressemittelungen/2022/pressemittlung.1242450.php>.

50 Descriptions of responsibilities are available at <https://www.berlin.de/wahlen/organisation/landeswahlleitung/artikel.749726.php#berlin>.

51 This increase was one of the recommendations contained in the report of the expert commission.

52 For more information on the Office of the Land Returning Officer see <https://www.berlin.de/wahlen/organisation/>.

administration covers most of the operational activities such as appointment of polling station staff, distribution of ballot papers to polling stations, tabulation and archiving of materials.

43. At polling station level, voting and counting procedures are handled by Election Boards. Ordinarily, each Election Board is composed of five to nine EB members, including the Chairperson, his/her deputy, the secretary and his/her deputy. For these elections, the LEC and DEC's have permitted an increase of up to 12 EB members per polling station. The Chairperson distributes the tasks to other members, supervises opening, voting and closing procedures and announces the results (Art. 43 of the Berlin Election By-law). The EB members are appointed from among volunteer registered voters, including administration officials and citizens, who apply to act as members. In total, 43 000 poll workers had been recruited for these elections, compared to 38 000 in the previous elections.⁵³ The stipends for these roles had been increased from 60 to 240 EUR to attract more polling staff.⁵⁴ Congress interlocutors expressed satisfaction with the revised number of EB members and highlighted the high number of volunteers that had applied to fill all EB positions. They also welcomed the increase training offer for volunteers.⁵⁵ Training sessions for polling station Chairpersons, and their alternates, took place in person in January 2023, with all other staff having the option to follow in-presence or online trainings.⁵⁶

44. In addition, special EBs were set up for postal voting (Art.58 of the Berlin Election By-law). In this specific case, special EB members do not run the vote, as postal ballots are collected from the voters directly by district administrations, but they act similarly to regular EBs regarding the counting of votes (Art.68 of the Berlin Election By-law).

45. The decision to repeat the 2021 elections was overwhelmingly linked to errors at the preparatory stage of the elections. Congress interlocutors particularly criticised the lack of unified procedures across districts and poor coordination between the LEC and DEC's but also between EB members and their supervisors at district levels, the latter not providing enough support on the Election Day. Other interlocutors noted the lack of training and professionalism of some EB members.

46. The preparations for the 2023 repeat elections had to be conducted in a short timeframe of 90 days, which put the election administration at all levels under significant pressure and scrutiny. However, Congress interlocutors noted with satisfaction that the election administration bodies intensified their efforts and focused on not making the same errors. The election administration focused on providing sufficient amounts of ballot papers, making sure that these were factually correct and sorted according to relevant constituencies ahead of the Election Day, and increasing the number of voting booths per polling stations (up to six in some polling stations). Despite these efforts, some technical errors occurred in the course of the election preparations, such as the wrong date of the Election Day being indicated in the English translation of the invitation letter for postal voting and the name of one FDP candidate being misspelt on ballot papers. In the Treptow-Köpenick district, postal voting ballots were sent twice in 49 cases⁵⁷. Errors were corrected swiftly.⁵⁸

47. The costs of this re-run of elections amounted to around 39 million euros, which makes these repeat elections the most expensive elections ever organised in Berlin. These costs were mainly borne by the Senate and district administrations.

53 The NGO "Bertelsmann-Stiftung" created a platform for interested citizens aged 18 to 25 which contains information about working in polling stations. Additionally, the platform offers the opportunity to register for working in a polling station during the repeat election and/or the climate referendum (March 26), The website is available at www.erstwahlprofis.berlin.

54 See article 5a of the Berlin Election By-law.

55 The authorities had to stop registrations for electoral assistance for the repeat election mid-December due to the high number of applications. More than 50 000 people had already registered by 12 December, although only 43,000 were needed.

56 According to the Handbook for Election Staff, the Chairpersons of Election Boards as well as their deputies have to be familiar with the regulations concerning the conduct of elections but no mention of compulsory training is made in the Berlin Law on Elections or Berlin Election By-law. All other members of the EB are encouraged to attend training, for which an incentive of 25 to 40 EUR is given. For more information see the Handbook for Election staff at page 9, available at <https://www.berlin.de/wahlen/organisation/wahlhelfende/>.

57 See for example: *Berliner Morgenpost*, Berlin election 2023: postal voting documents sent twice, available at <https://www.morgenpost.de/berlin/article237442967/Wahlwiederholung-Briefwahlunterlagen-doppelt-verschickt.html>.

58 One additional factor, which posed some difficulties in the run-up of the repeat elections were several strikes of the Post office in the week leading up to the Election Day. In light of these circumstances, the LRO allowed for votes to be cast until 16:00 on Saturday 11 February, and a special emptying of mailboxes by the Post. See for example: *Der Tagesspiegel*, Postal strike jeopardizes postal voting: Berlin's state returning officer plans with emergency logistics, available at: <https://www.tagesspiegel.de/berlin/wegen-warnstreiks-briefwähler-in-berlin-sollten-sich-beeilen--post-hat-notfallplan-9298154.html>.

48. While the Congress delegation was concerned with the extent of the irregularities that marred the 2021 elections, it welcomed the numerous improvements taken by the election administration and additional effort to improve coordination and professionalism at all levels of election administration. The preparations for the repeat elections were conducted efficiently by a highly decentralised election administration, despite the short 90-day timeframe to reorganise the elections. Additional significant measures included the provision of sufficient polling booths and voting materials, increased incentives for polling station volunteers and offers for slightly updated training online and in-person. At the same time, the Congress delegation noted with concern the still unclear division of competences and responsibilities between the main actors of local and regional elections in Berlin, especially with regard to the tasks of the *Land* Returning Officer, the District Returning Officers and their administrations. In addition, while EB members seemed well-informed of the procedures, the delegation noted the absence in legislation and practice of a standardised training for EB Chairpersons/members, which is not in line with the Venice Commission Code of good practice on electoral matters (see II.3.g).

7. VOTER REGISTRATION

49. Every German citizen holding permanent residency in Berlin for at least three months prior to the election day is eligible to vote in the elections unless their suffrage rights have been revoked by an individualised Court decision (Art.1 of the Berlin Law on Elections). In the elections for the HoR, voters must be over 18 years of age, whereas in the elections to district assemblies, voters must be over 16 on the Election Day (Art.1). German citizens residing abroad are not eligible to vote. Citizens of EU and of non-EU member States are eligible to vote only in the elections to district assemblies unless their suffrage rights have been revoked by an individualised Court decision (Art. 22a of the Berlin Law on Elections). Foreigners are not allowed to vote in the elections to the Berlin HoR despite them accounting for a large share of Berlin's population.⁵⁹

50. Voter registration is passive in Germany and voter lists are based on data extracted from the district civil registers, based on voters' permanent residence. Under the Federal Registration Act, citizens and non-citizen residents of Germany are required to register their main place of residence or a change of residence with municipal authorities.⁶⁰

51. For the 2023 repeat elections, voter registers needed to be updated since the elections were held more than six months after the 2021 elections. Cut-off-date was 1 January 2023. In 2021, 2 447 600 voters were registered to vote in the elections for the Berlin House of Representatives, whereas 2 442 049 eligible voters appear on the list for the repeat elections. The number of eligible voters for the elections to district assemblies was slightly higher with 2 738 586 potential voters for the 2023 re-run elections, compared to 2 737 562 eligible voters in 2021. Voters had between the 20th and 16th day before the Election Day to check their registration status or and request corrections in cases of mistakes or incomplete information.⁶¹ Corrections were no longer possible after this date except by court decision.

52. Invitations to vote were delivered to voters' registered residences three weeks ahead of the elections. An invitation to vote is not a precondition for voting but provides information to the voters on their polling station (Art. 15 of the Berlin Law on Elections).

59 See for example: *Der Tagesspiegel*, "We're Muted": 23 percent of adult Berliners are not allowed to vote on Sunday, available at <https://www.tagesspiegel.de/berlin/wir-sind-stummgeschaltet-23-prozent-der-volljaehrigen-berliner-duerfen-am-sonntag-nicht-waehlen-9328991.html>.

60 See Article 17 of the Federal Registration Act (*Bundsmeldegesetz*) available at <https://www.gesetze-im-internet.de/bmg/BJNR108410013.html#BJNR108410013JNG000301116>; homeless people were also eligible to vote in the February elections if they had been in Berlin in the three months ahead of election day. They could be added to the voters' register until 20 January. Those wishing to do so had to go to the electoral office of the district in which they spent the night from 7 to 8 January. There they could fill out a written application upon showing their photo ID. For further information see RBB 24, Homeless people can apply for entry in the Berlin electoral register (11/01/2023) available at <https://www.rbb24.de/politik/wahl/abgeordnetenhaus/agh-2023/beitraege/berlin-wiederholungswahl-obdachlose-wohnungslose-stimmzettel-waehlerverzeichnis.html>.

61 Voters are entitled to verify their information in the voters register, as provided by article 16 of the Berlin Election By-law. If a voter is not registered, he or she may file a complaint until the 16th day before the election with the relevant DEC (article 17 of the Berlin Election By-law).

53. In addition, all eligible voters are entitled to cast a postal ballot if they request to do so by post, electronically or at the respective municipality. Requests for postal ballots are automatically reflected in the voter register and indicated on the voter lists (Art. 24, paragraph 4, of the Berlin Election By-law). Voters who received a postal ballot (including ballot papers, two envelopes and a numbered cover letter to sign) are not able to cast their ballot in-person unless the ballot papers are brought to the polling station and torn apart in front of the EB members and the cover letter is handed over to them and entered in the protocol (Art. 52 of the Berlin Election By-law). Postal votes can be sent by post or cast in person at the offices of district administrations, where these are kept in sealed ballot boxes until counting on Election Day. Postal voting is used by a significant number of voters in Berlin and throughout Germany, and generally enjoys the trust and confidence of political parties and civil society, with most parties usually encouraging their voters to use this method of voting.⁶² Postal votes could be lodged as of 2 January 2023 up until 11 February 2023.⁶³

54. The criteria for eligibility to vote, based on age and citizenship, have become a matter of public debate in Berlin. The lowering of voting age to 16 in the elections to the HoR as is the case in the elections to district assemblies, requires a change of the Berlin Constitution, which has to be supported by two-thirds of the members of the HoR.⁶⁴ However, the vote on this measure was delayed due to the re-run of the elections and while a two-third majority was secured in the current composition of the Berlin HoR, it is possible that a new coalition could reject this measure. Another point of debate is the disenfranchisement of EU or non-EU citizens residents, who constitute an estimated 20% of Berlin's population,⁶⁵ for elections to the House of Representatives. It prevents them from having an influence on Berlin politics, as the most important decisions for the city, and thus the *Land*, are taken at the level of the HoR.

55. The Congress delegation noted with satisfaction that the voters registration process was completed in a timely manner. The Congress delegation refers to Congress Resolution 387 (2015) on Voting at 16 and Congress Resolution 431 (2018) on Local voting rights for the integration of migrants and IDPs to support the discussions on lowering the voting age to 16 and to extend voting rights to foreign residents of Berlin.

8. CANDIDATE REGISTRATION

56. All German citizens of at least 18 years of age are eligible to stand in the elections for the House of Representatives and Berlin district assemblies, except those deprived of their candidacy rights by an individualised court decision (Art. 1 of the Berlin Law on Elections) or occupying certain jobs deemed incompatible with public office (Art. 26 of the Berlin Law on Elections). All candidates must be resident in Berlin in the three months preceding the Election Day. EU citizens residing in Berlin may stand for seats in district assemblies but cannot run for seats in the HoR (Art. 22 of the Berlin Law on Elections).

57. Candidates can run on the list of political parties, or with the support of groups of voters, for all elections, or can run for directly elected seats to the Berlin HoR. Party lists can be submitted for the *Land* or district by district. Lists must be submitted to the LRO and need to be supported by signatures of 1 per 1 000 eligible voters in the *Land*, but not more than 2 000 signatures. At district level, lists need to be supported by 185 signatures (Art. 23 of the Berlin Law on Elections). However, in light of the COVID-19 pandemic, the requirements were reduced to 550 signatures for *Land* lists and 46 for district

62 See for example information provided to voters on the website of the Green party available at <https://gruene.berlin/briefwahl/>; In contrast, during the 2021 federal elections, the AfD criticised postal voting as undemocratic and unconstitutional and the party called into question the integrity of this manner of casting a ballot, see ODIHR 2021, Germany, p. 7. And Julian JAURSCH (5/10/2021): <https://www.institutmontaigne.org/en/analysis/disinformation-2021-german-federal-elections-what-did-and-did-not-occur>.

63 See LRO Press Release (30/12/2022) available at: <https://www.berlin.de/wahlen/pressemitteilungen/2022/pressemitteilung.1279505.php> and also *Der Tagesspiegel*, Postal strike jeopardizes postal voting: Berlin's state returning officer plans with emergency logistics, *Op.cit.*

64 Civil society organisations launched many campaigns to advocate in favour of lowering the voting age and extending voting rights to non-German residents. See in particular the popular initiative "Democracy for all!" at: <https://bb.mehr-demokratie.de/news/einzelansicht/erfolgreicher-abschluss-in-rekordzeit-volksinitiative-demokratie-fuer-alle-uebergibt-ueber-25000-unterschriften-ans-berliner-abgeordnetenhaus>.

65 See statistics for the Land of Berlin at <https://www.statistik-berlin-brandenburg.de/bevoelkerung/demografie/einbuengerungen-auslaender>.

lists.⁶⁶ Decisions on the registration of candidates and party lists are taken by the DEC and LECs, respectively.

58. As the 2023 elections were repeat elections, all the candidates and candidate lists had to remain the same as those for the 2021 elections, as provided by Article 21 of the Berlin Law on Elections.⁶⁷ Exceptions to this rule were candidates who died, moved away from Berlin or withdrew their candidacy since September 2021. Accordingly, for the 2023 elections, information on 41 candidates for direct mandates, 41 candidates on proportional lists and 110 for district assembly elections was modified to reflect a change of address, of name, a resignation or death.⁶⁸ Where candidates had to be removed from the proportional lists, they were replaced by the next candidate on the list. Candidates for majoritarian seats were replaced by the first-placed candidate on the proportional list. The updated list was promulgated on 2 December 2022.⁶⁹ Some Congress interlocutors raised the issue that repeating the electoral process without giving an opportunity for a change in political contestants and subjects, was not the most conducive to democratic change.

59. In total, 33 political entities participated in the 2023 elections through *Land* or district lists for the proportional vote.⁷⁰ Only 11 of these political entities were previously represented in the Berlin HoR or district assemblies and another 11 parties, that participated for the first time in 2021, ran again. For the direct mandates, 801 candidates from 49 political subjects including 37 parties and 12 independents, participated in the repeat elections. 30 political subjects ran in the district assembly elections.⁷¹

60. The Congress delegation was satisfied with the transparency of the candidate registration process and commended the timely updating of the lists.

9. ELECTION CAMPAIGN

61. Election campaigns in Germany are regulated by federal, *Länder* and municipal laws and regulations. At the federal level, the freedoms of expression, association and peaceful assembly are guaranteed by the Basic Law (Art. 1 to 19). Of relevance are also the 1978 Law on Assemblies and Parades⁷² regarding the organisation of public events, and Article 5 of the Political Party Act that requires authorities to treat political parties equitably.

62. Electoral law does not provide for an official start or end date of the campaign and parties can campaign freely at any time. There is no official electoral silence before and on Election Day. However, relevant laws and regulations specify the display of materials, conduct of meetings with voters, as well as advertising in the media up to two months before the Election Day. The active phase of the campaign is generally understood to start seven weeks prior to the Election Day, in accordance with the Berlin Road Law⁷³ which regulates, among other things, public display of campaign materials.⁷⁴ Generally, outdoor advertising is carried out by displaying small cardboard posters on lampposts or space provided free-of-charge by the district administrations. However, district regulations can differ significantly, even within a single *Land*. For instance, local authorities can establish when and where election related

66 Signatures were not reviewed in the context of the repeat elections. See also amendments to article 10 of the Berlin Law on Elections adopted on 04/05/2021, Berlin official gazette 2021, p. 414 available at https://www.berlin.de/sen/justiz/service/gesetze-und-verordnungen/2021/ausgabe_nr_35_vom_12.5.2021_s_413-440.pdf.

67 In the 2021 elections, The Berlin LRO approved a total of 34 parties for the proportional vote, 11 of which participated for the first time in elections for the House of Representatives. For direct mandates, 812 candidates applied, which was 160 people more than in the last election in 2016. 788 candidates run on the 34 *Land* and district lists (120 more than in 2016). 2 603 candidates ran for elections to the district assemblies. See relevant LRO Press releases at <https://www.berlin.de/wahlen/pressemitteilungen/2021/pressemitteilung.1120236.php> and

68 After the decision taken to update the lists on 2 December 2022, candidates could still request modifications but these changes were not reflected on ballot papers. See fully updated lists (as of 1 February) at: <https://www.berlin.de/wahlen/wahlen/wahlen-2023/wahlvorschlaege/artikel.1287842.php>.

69 See LRO Press Release (2/12/2022) <https://www.berlin.de/wahlen/pressemitteilungen/2022/pressemitteilung.1271378.php>.

70 It is one list less than for the 2021 elections as all three candidates of the "Action Party for Animal Welfare - Animal Welfare Here!" *Land* list announced their resignations. In addition to the 33 parties listed, the Feminist Party (*Die Frauen*), Liberal Democrats and Democratic Left had registered candidates for direct mandates in individual districts. See <https://www.berlin.de/wahlen/wahlen/wahlen-2023/stimmzettel/artikel.1288714.php>.

71 See LRO Preliminary Results Report, available at: <https://www.berlin.de/wahlen/wahlen/wahlen-2023/ergebnisse/artikel.1293464.php>

72 The Law on Assemblies and Parades is (*Gesetz über Versammlungen und Aufzüge*) available at <https://www.gesetze-im-internet.de/versammlg/BJNR006840953.html>.

73 The Berlin Road Law (*Berliner Straßengesetz*) is available at <https://gesetze.berlin.de/bsbe/document/jlr-StrGBErahmen>.

74 Posters must be removed seven days after the Election Day. See also: See for example: taz, Silent night, posterless night, available at <https://taz.de/Wahlkampf-in-Berlin/!5890483/>.

advertisements may be placed within their jurisdiction.⁷⁵ Door to door campaigning is also very common among political parties and candidates.

63. In the run up to the 2023 repeat elections, considering the Christmas and New Year period, the active campaign period was reduced by one week, allowing for outdoor advertising to be displayed from 2 January onwards.⁷⁶ Some Congress interlocutors stated that they felt disadvantaged due to the shortened timeframe and to related budgetary and organisational difficulties. All parties were also financially limited, having spent considerable money for the elections in 2021 and having had less time to raise funds for the 2023 campaign. Some parties, such as the Left Party, planned to spend only 50% of what they were able to spend in 2021 for the same races.⁷⁷ However, fundraising difficulties, as noted by Congress interlocutors, predominantly affected lists and parties which could not rely on a major national party and due to the limited timeframe did not have the regular five-year gap between elections to fundraise for themselves. One interlocutor from a smaller party mentioned that this campaign was particularly difficult because they had to use funds that they had set aside for upcoming European elections.

64. The 2023 campaign was competitive and pluralistic with 33 political subjects registered for elections to the HoR, providing a large spectrum of political alternatives and programmes to voters. Most parties campaigned on topics including urban development, housing, climate protection, transportation and the current administration of Berlin.⁷⁸ Some smaller parties campaigned on “niche” topics such as health research, anti-racism, the elderly, mountains, animal welfare, tenant’s rights, digitalisation, but received less media attention. In the first days of the campaign, the debate also revolved around security and the incidents during New Year’s Eve celebrations and alleged failure of authorities to prevent said incidents.⁷⁹ The Federal Agency for Civic Education developed a tool, the “Wahl-o-mat”, to help voters compare political programmes. It was used 509 000 times for the 2023 repeat elections.⁸⁰

65. The campaign was also lively online with key candidates for Governing Mayor very active on social networks, such as Facebook, Instagram or Twitter. In the past, the high recourse to online and social media for election campaigns have led to an increase in hate speech and disinformation, in particular for women candidates.⁸¹ Except for guarantees regarding free speech or regulations in connection with hate speech, online campaigning is largely unregulated and online advertising is allowed without major restrictions for candidates and lists.⁸² According to a survey published by RBB in 2019, 94% of Berlin politicians have been threatened or insulted, mostly via email, Facebook and Twitter.⁸³ One Congress interlocutor specifically mentioned one of their younger female members being harassed online following the publication of a campaign video posted on a social media channel.

75 In the past, conflicting restrictions on political advertisement by municipalities has been a source of misunderstandings. In the 2021 elections, some OSCE/ODIHR interlocutors expressed concerns about an increased number of municipalities restricting the display of campaign materials in terms of both time and location and applicable rules was not always easily accessible. ODIHR 2021, Germany, p. 8.

76 See for more details, RBB 24, Berlin election campaign – systematic vandalism?, available at <https://www.rbb24.de/politik/wahl/abgeordnetenhaus/agh-2023/beitraege/wahlplakate-berlin-verschwunden-beschaedigt-anzeigen-polizei-parteien.html>.

77 For more information on the challenges faced by smaller parties: <https://www.rbb24.de/politik/wahl/abgeordnetenhaus/agh-2023/beitraege/berlin-kleinparteien-finanzierung-wahlkampf-volt-tierschutzpartei-humanisten.html>.

78 In the 2021 elections, the campaign was competitive and revolved around the usual topics of education, security, economy, and the environment. The most debated issues of the campaign were the rising rent prices as well as the transport policy in Berlin. The COVID-19 pandemic and its social and economic consequences also featured in public debates ahead of the 2021 elections and the concomitantly held federal elections also greatly influenced the campaign

79 See for example: *Die Tagesschau*, Where did the violence come from?, available at <https://www.tagesschau.de/inland/innenpolitik/silvester-debatte-101.html>.

80 See more details at <https://www.bpb.de/themen/wahl-o-mat/berlin-2023/>.

81 Since 2017, Germany has tried to curb online hate speech and has stepped up efforts to prosecute internet users in such cases. See on this matter, Adam Satariano and Christopher F. Schuetze, “Where online hate speech can bring police to your door”, New York Times, September 2022. <https://www.nytimes.com/2022/09/23/technology/germany-internet-speech-arrest.html> and Julian JAURSCH (2021), *Op.cit.*

82 See (in French), *Observatoire européen de l’audiovisuel, Conseil de l’Europe, La couverture médiatique des élections : le cadre légal en Europe* (2017), available at <https://rm.coe.int/la-couverture-mediatique-des-elections-le-cadre-legal-en-europe/1680789459>.

83 Results of the 2019 survey conducted by RBB 24 are available at <https://www.rbb24.de/politik/beitrag/2019/12/bedrohte-beschimpfte-politiker-berlin.html>.

66. The Congress delegation commended the competitiveness of the campaign and the fact that it revolved mostly around issues of local and regional relevance. Voters were presented with a wide range of programmes. The delegation noted with concern that the repeat elections imposed a heavy financial and organisational burden on political parties, predominantly affecting the smaller parties.

10. CAMPAIGN AND PARTY FINANCE

67. Campaign and party finance is regulated at the federal level, by the Basic Law which contains a general provision stipulating that political parties must account publicly for their assets, the origin of their income, as well as their use (Art.21) and by the Political Parties Act which requires equal treatment of all parties by public authorities (Art.5) and provides for political finance oversight, reporting and sanctions (Art.23 and following). The Act further sets out rules for public financing and private contributions to political parties (Art. 18 and 25). Party financing is not regulated at the *Land* level except for the sections of the Berlin Law on Elections elaborating on public funding of political parties and individual candidates at the *Land* level (Art. 32 and following).

68. Overall, political parties in Germany are mostly financed through membership fees, private contributions and public funding. Public funding cannot be higher than the funds a party collects from private sources, assets and other sources of income, as stipulated in article 18, paragraph 5 of the Political Parties Act.

69. To qualify for federal public funding, political parties must pass a threshold of 0.5% of the votes in the latest national and European elections or 1% in *Land* elections (Art. 18 paragraph 4 of the Political Parties Act). While there is no maximum amount for donations, the public matching funds are capped at 3 300 EUR per donor and at 50% of the party's income (Art. 18 paragraph 3 of the Political Parties Act). Parties receive reimbursement amounting to 0.83 EUR per vote received in the latest national, European and *Land* elections (or 1 EUR for up to four million votes). Only duly registered political parties can receive federal-level public funding. Still, independent candidates who have obtained at least 10% of the valid direct votes cast in a constituency can receive 2.56 EUR per valid vote upon request to the HoR (Art.32 for political parties and 32a for individual candidates of the Berlin Law on Elections). For the 2021 elections, eleven parties reached the 1% threshold, and it dropped to only eight parties after the repeat elections.⁸⁴

70. Donations or membership fees can be collected from citizens and legal entities from Germany or other EU member States. Donations are not capped for German citizens but must be published in annual reports if exceeding 10 000 EUR per year. Foreigners can donate up to 1 000 EUR yearly and anonymous donations are banned if exceeding 500 EUR (Art. 25 of the Political Parties Act).

71. There is no requirement for parties to publish standalone campaign reports. Submission of financial reports, including the names of donors exceeding the yearly threshold of 10 000 EUR, is done solely on an annual basis and is not linked to the election calendar. Reports are submitted yearly to the administration of *the Bundestag* and are published by the Speaker. However, individual donations amounting to 50 000 EUR and above must be notified to the Speaker of *Bundestag* and are published online immediately. The administration of the *Bundestag* is responsible for auditing the annual reports and is supported by external auditing firms (Art.23 of the Political Parties Act). By law, failure to submit a financial report or an inaccurate report may result in financial or criminal sanctions or loss of a legal status for a party for up to six years. Dissuasive criminal penalties, such as large fines or loss of public funding, apply for campaign finance violations. These above-mentioned party finance rules also apply to the campaigns of independent candidates or lists.

72. During the campaign, there are no spending caps. Vote-buying and misuse of public funds for the purpose of an election campaign are banned. Some Congress interlocutors noted that the absence of spending caps is de facto creating imbalances between national parties and locally organised ones, or parties that are funded by high private donations.

73. Significant concerns are regularly voiced by civil society and anti-corruption organisations regarding oversight and transparency of party finance. Furthermore, Congress interlocutors regretted that identity of donors or amounts received often only become public long after the elections.

⁸⁴ See on the 1% threshold, RBB 24, In the anonymity of the grey bar (15/02/2023), available at <https://www.rbb24.de/politik/wahl/abgeordnetenhaus/agh-2023/beitraege/kleine-parteien-nach-der-wahl-wenig-stimmen.html>.

74. In addition, GRECO (Group of States against Corruption of the Council of Europe) report⁸⁵ noted “a clear lack of political will to enhance the system and, as a consequence, this system falls short of European standards”. It highlighted that the transparency of party and campaign funding could benefit from a lowering of the 50 000 EUR threshold for immediate disclosure of donations, requiring at least some degree of financial reporting during campaign periods, and publication of separate campaign finance reports immediately after elections.⁸⁶

75. The Congress delegation noted with concern the lack of campaign expenditures cap, which can create an imbalance between the contestants, as well as the high threshold for public disclosure of donations and the absence of a specific and timely campaign finance report, which is not conducive to full transparency for voters and is not in line with GRECO recommendations on this matter.

11. MEDIA

76. Article 5 of the Basic Law enshrines freedom of the press and freedom of expression. Germany is ranked 16th out of 180 countries in the Reporters without Borders Index (ranked 13 in 2021).⁸⁷

77. There are no general media-related regulations at the federal level and the activities of broadcast media are regulated by *Land* laws. The Treaty on Broadcasting and Telemedia of the *Länder* of Germany⁸⁸ provides an overall framework stipulating requirements of plurality of opinion, balanced coverage for all important political, ideological and social forces, and requires those parties with a list in at least one *Land* be granted an ‘appropriate amount’ of broadcasting time (Art.59).

78. In public media, election broadcasts are provided free-of-charge, while in private media electoral contestants can purchase broadcasting time on equal conditions. Oversight of media conduct in public broadcasting corporations is ensured by their respective independent Broadcasting Council⁸⁹ and private broadcasters are scrutinised by supervisory bodies at the *Land* level. Private broadcasters are also encouraged to respect pluralism and fairness in their reporting on the elections. There are no particular legal obligations regarding printed press during the campaign. However, the press is self-regulated by the Press Council of Germany, in particular on matters regarding ethics, deontology and fairness.⁹⁰

79. The media landscape, including at local and regional levels, is dynamic, diverse and includes a wide range of public and private broadcasters and printed press. Television remains a key source of information in Germany,⁹¹ but online and social media have become increasingly important too. Germany is characterised by a strong tradition of public service broadcasting and a vibrant print media market. In general, the media have a long tradition of integrity and pluralism and are trusted by the public. However, due to their worsening economic situation, private and public media alike have been under growing pressure and constraints. Furthermore, a certain rise in threats against journalists and media workers as well as online hate speech has been observed over the last years, specifically in relation to women.⁹²

80. Public broadcasting in Germany is highly decentralised. The regions of Berlin and Brandenburg share an independent regional public broadcaster known as *Radio Berlin Brandenburg* (RBB). The RBB is bound to respect the principles of fairness, equity, objectivity and truthfulness in its editorial policy and can grant free-of-charge broadcasting time for political advertisement to all candidates. RBB

85 In the 2019 GRECO Compliance Report, the rapporteurs noted that, “This means that Germany is still to a large degree not in compliance with GRECO’s Theme II recommendations.” A list of detailed recommendation is available at: <https://rm.coe.int/third-evaluation-round-second-addendum-to-the-second-compliance-report/168094c73a>

86 See also on this matter: OSCE/ODIHR Report, <https://www.osce.org/files/f/documents/2/a/536410.pdf>, p. 7.

87 The ranking by Reporters Without Borders is available at <https://rsf.org/en/index?year=2021>.

88 The Treaty on Broadcasting and Telemedia of the *Länder* of Germany (*Medienstaatsvertrag*) is available at <http://www.luewu.de/docs/gvbl/docs/2377.pdf>.

89 For an overview over the different Broadcasting Councils see <https://mediendiversitaet.de/vielfalt-in-rundfunkraeten/die-einzelnen-rundfunkraete-im-ueberblick>.

90 See for example the “Ethical standards for journalism” by the Press Council of Germany available at <https://www.presserat.de/pressekodex.html>.

91 The Federal Agency for Political Education conducted an analysis of the question “Leading medium television?” available at <https://www.bpb.de/themen/medien-journalismus/medienpolitik/172063/leitmedium-fernsehen/>.

92 See European Centre for Press and Media Freedom, Threats to journalists: The ‘new normal’ in Germany (2020), available at: <https://www.ecpmf.eu/threats-to-journalists-the-new-normal-in-germany/>.

provided a wide range of voter information related to the 2023 elections in Berlin both online, via a dedicated website,⁹³ and through their broadcasting programmes. The few national public broadcasters *Zweites Deutsches Fernsehen* (ZDF), *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (ARD), a conglomerate of regional public broadcasters including RBB, and *Deutschlandfunk*, while more dedicated to covering national politics, also published news related to the re-run elections in Berlin, due to their relevance in national politics.

81. Overall, the media coverage of the 2023 repeat elections was pluralistic and extensive. Many candidates participated in TV, radio or live debates and gave interviews on their programmes all throughout the campaign period. The main local newspapers in Berlin, namely the *Berliner Zeitung*, *Tagesspiegel* and *Berliner Morgenpost*, provided extensive coverage of the 2023 re-run elections in print and online. Preparations of the elections were under intense scrutiny from both national and local media. One Congress interlocutor also highlighted the importance of local media as quasi “election observers”, as they reported on the irregularities in 2021 thoroughly and in real time and were also deployed throughout Berlin on the 12 February 2023.

82. Social and online media were widely used by candidates during the campaign to reach out to their electorate, due to the short duration of the campaign and the winter season. The online campaign was hampered by minor incidents of hate speech and threats. Defamation remains a criminal offense and criminal defamation laws continue to be applied with some regularity in Germany, including against the media.⁹⁴

83. The Congress delegation noted with satisfaction that the campaign, including the different challenges faced by political subjects in the context of the repeat elections, was covered extensively in public and private media. In addition, the coverage of the Congress mission and its preliminary findings was broad and thorough. The Head of delegation commended the lively and professional media landscape in Berlin.

12. WOMEN’S POLITICAL PARTICIPATION

84. In Berlin, women participate actively in elections. In 2021, and resultingly in 2023, out of six major political parties competing for seats in the Berlin House of Representatives, three parties had women as lead candidates, namely the SPD, the Greens and AfD. 36% of candidates to direct mandates were women versus 46% of candidates on regional lists and 41% on district lists. There are currently 35.4% women elected in the Berlin House of Representatives⁹⁵ (see 2023 results below). The standing incumbent mayor of Berlin is a woman, Ms Franziska GIFFEY. Six out of ten Senators in Berlin are women. In addition, following the 2021 elections, 42.9% of members of district assemblies are women, which is well above the national average of women elected to local councils which stands at 27%. Women are visible in the media and generally during the election campaign.

85. There are no quotas or reserved seats for women or young candidates in the Berlin HoR and in district assemblies. There is generally no legal quota for the representation of women at sub-national levels in Germany,⁹⁶ but there are voluntary quotas adopted by the political parties ranging from a 1/3 quorum for the CDU, to 40% for the SPD and 50% for the Greens. The Left Party applies a modified “zipper”-system where on their nomination lists the first two and then every other place is reserved for women.⁹⁷ These quotas do not apply to the directly elected candidates but rather to the second vote for party lists. Congress interlocutors observed that especially in the direct election of candidates, women

93 The RBB 24 website on the Berlin elections 2023 is available at <https://www.rbb24.de/politik/wahl/abgeordnetenhaus/agh-2023/>. For coverage of the elections by other media channels see for example the website by ZDF available at <https://www.zdf.de/nachrichten/thema/wahl-in-berlin-100.html>.

94 According to Paragraph 47 of the 2011 CCPR General Comment No. 34 to the ICCPR “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty”. The courts have generally allowed a wider margin of appreciation during election campaigns and effectively left more leeway to hate speech.

95 See Helga LUKOSCHAT and Lisa HEMPE, 2022, *Op.cit.*

96 However, it is important to note that a gender parity law was declared unconstitutional in the neighbouring Land of Brandenburg in 2020 by the Constitutional Court of Brandenburg. The Press Release by the Constitutional Court of Brandenburg is available at <https://verfassungsgericht.brandenburg.de/verfgbbg/de/presse-statistik/pressemitteilungen/detail/~23-10-2020-paritaetsgesetz-verfassungswidrig>.

97 A gender quota database for Germany is available on the website of IDEA International available at <https://www.idea.int/data-tools/data/gender-quotas/country-view/92/35>.

remained disadvantaged. In practice, the number of women elected to the HoR varies greatly between parties.⁹⁸ Even though women are increasingly picked as heads of list they remain generally underrepresented on the rest of the ballot for some parties without voluntary quotas.⁹⁹

86. The Congress delegation regrets the lack of regulation related to gender quotas on lists and directly elected seats leading to great variations and excessively low percentages in certain cases. The Congress delegation recommends the introduction of a 40% quota and additional provisions, in line with Recommendation (2003) 3 of the Committee of Ministers on the Balanced participation of women and men in political and public decision-making,¹⁰⁰ to promote and strengthen the participation of women, in particular in the case of elections to the HoR, to support equal representation, regardless of political parties' internal rules, in local and regional politics.

13. COMPLAINTS AND APPEALS

87. The procedure and deadlines for complaints and appeals are set out in Article 40 of the Berlin Law on the Constitutional Court. Appeals may be filed with regard to registration, election results and procedures as well as in connection with seat distribution. An appeal may be filed by parties, associations, groups of voters and individual candidates affected by a decision, as well as the Berlin Senator for the Interior, the *Land* Returning Officer, District Returning Officers and speakers of the HoR or district assemblies. An appeal may also be filed by individual voters with regard to voters list and registration for postal voting.

88. Decisions by the DEC's may be appealed to the LEC. All other complaints may be directly referred to the Berlin Constitutional Court which has sole jurisdiction over complaints regarding the validity of regional council and district assembly elections.¹⁰¹ The Berlin Constitutional Court has no specific measures in place for the expedited hearing of election-related cases. One Congress interlocutor praised the fact that an independent judicial mechanism was in place and functional for local and regional elections in Berlin, which is not the case at *Bundestag* level, where a parliamentary committee reviews the complaints on elections.

89. In most cases, complaints must be filed within one month after the official publication of the election results in the administrative journal. A shorter deadline of four days applies to decisions where the LEC decides that a party is not eligible to register a candidate. The delegation was informed that only two official complaints had been submitted in the context of the repeat elections and both were rejected by the LEC.¹⁰²

90. The Congress delegation welcomed that legal safeguards and appeal mechanisms are efficient and ensure that the right of all citizens to vote in conditions in line with democratic standards is vigilantly protected. In that regard, while the numerous irregularities that occurred during the 2021 elections may have eroded trust in democratic processes, the Congress delegation believed that the 2023 repeat elections constituted an important step to secure citizens' confidence in the act of voting in Berlin.

98 Following the 2021 elections, "the Berlin CDU improved only slightly to 13.3 percent, but in percentage terms it was even behind the AfD (15.4 percent) for the first time. No real progress can be seen in the FDP either: their share is stagnating at 16.7 percent. Die Linke leads in the proportion of women with 54.2 percent, closely followed by Bündnis 90/Die Grünen with 53.1 percent. With 38.9 percent, the SPD again failed to achieve parity". See Helga LUKOSCHAT and Lisa HEMPE, 2022, *Op.cit.*

99 See TAZ, "Giffey alone is not enough" by Anna Klöpffer, 21 March 2022, <https://taz.de/Frauenquote-in-der-Berliner-Politik/15839990/>.

100 Recommendation Rec (2003) 3 of the Committee of Ministers on the Balanced participation of women and men in political and public decision-making, is available at: <https://rm.coe.int/1680519084>.

101 For more information on the procedure that led to the annulment of the 2021 elections, please refer to section II of this report.
102 See LRO Press Release (11/01/2023), available at: <https://www.berlin.de/wahlen/pressemitteilungen/2023/pressemitteilung.1282655.php>

14. ELECTION DAY¹⁰³

91. On Election Day, six Congress teams including 14 members visited some 80 polling stations across all 12 districts of Berlin where they observed polling procedures from opening to closing, as well as counting of regular and postal ballots in six polling stations. Congress teams witnessed a calm, peaceful and orderly Election Day without incidents or anomalies. The teams assessed the conduct of voting and closing procedures in polling stations visited as overwhelmingly “very good”, especially the counting procedures which were handled with diligence, rigour and speed.

92. In all polling stations observed, voting opened on time. Election materials were available in sufficient numbers¹⁰⁴ and additional polling booths were set up. However, the delegation was informed that the transportation and safe storage of ballot papers and election materials was left to EB Chairpersons, placing a significant burden and great responsibility on them.

93. Congress teams welcomed the smooth conduct of the overall voting procedures. They observed a quiet and orderly Election Day, without long waiting times, thanks to a steady flow of voters and additional arrangements to accommodate them inside the polling stations. EB members had received updated training and seemed well-informed of the procedures, including newly imposed reporting duties. Some Congress teams noted that a few Chairpersons had no previous experience in election administration, which could potentially lead to procedural errors.

94. Despite this overall positive assessment, the Congress teams pointed out certain technical issues and areas for improvement. Congress observers noticed diverging practices between different districts with regard to ballot boxes, in particular their sealing was inconsistent (sometimes just a sticker) or missing altogether, and cannisters serving as ballot boxes were of various shapes and materials. Some Congress teams further regretted that ballot boxes were not transparent and resembled garbage bins in few instances, which may have been perceived as a lack of respect for democratic values.

95. Furthermore, the teams observed that the procedure of voter identification was not handled in a unified manner across districts, with IDs being checked sometimes before and other times after filling the ballot. In addition, in all polling stations visited, voters were not asked to sign the register or any other document attesting the casting of their ballot papers.

96. Finally, in some of the polling stations visited, accessibility for voters with disabilities was not granted, due to missing ramps and polling stations located in upper floors, and Election Board members had to assist voters to access the premises. The delegation regretted that, even though alternative methods of voting were available, not all polling stations were adapted for voters using wheelchairs to still vote in person.

97. Congress teams particularly commended the high professionalism and commitment of the Chairpersons of polling stations and their staff. The Congress delegation noted with satisfaction that the regrettable situation leading to the irregularities in the 2021 elections did not seem to affect the confidence of Berlin voters in election process who came to the polls in relatively high numbers.

98. As a consequence, the Congress teams did not encounter any party, domestic or international observers. Although the principle of public access generally guarantees transparency of the process, independent election observation is an indispensable asset for democratic processes. To explicitly provide a legal basis for election observation would clarify the status and rights of election observers and facilitate interactions with EB members and citizens on the Election Day.

99. To conclude, the Congress delegation would like to stress the need to clarify the division of tasks and responsibilities between the *Land* Returning Officer, the District Returning Officers and their administrations and the competences of the LEC should be increased.

¹⁰³ Congress delegation members assess the conduct of elections based on a standardised election day questionnaire, which is filled out for every observation by Congress teams. The questionnaire covers all areas and aspects of the election day from the conduct of opening, voting, counting and closing procedures and include questions on the persons present in the polling station, the atmosphere outside and inside the polling station, election material, transparency, potential irregularities, official complaints and a general assessment.

¹⁰⁴ As the repeat elections were only for the regional and district assembly elections, voters only received three ballots, instead of six in 2021.

15. TURN-OUT AND RESULTS

100. Preliminary election results were announced by Districts Election Committees in the early morning of 13 February as ballots were counted and protocols submitted by the EBs throughout the night following Election Day.¹⁰⁵ The final results were published by the LRO on Monday 27 February.¹⁰⁶ For the elections to the Berlin HoR, a total of 1 529 558 voters came to the polls, amounting to 62.9% of registered voters. For the elections to the district assemblies the turnout reached 58.4% or 1 584 916 voters. Postal voting amounted to 44.5% of voters for the elections to the HoR and 43.9% for the district assemblies.¹⁰⁷ In comparison, in the elections in 2021, which also included elections to the federal level, the turnout for the elections to the HoR was 75.4%. and 69.7% of registered voters participated in the elections for the district assemblies.¹⁰⁸

101. The final results showed a clear success of the CDU for the elections to the HoR.¹⁰⁹ Including the compensatory mandates, the elected HoR consists of 159 members and only five parties gained mandates. The CDU, previously in the opposition, won the repeat elections with 29.7% of first votes for direct mandates and 28.2% in the second vote for party lists, winning a total of 52 seats (plus 22 seats). The SPD, member of the ruling coalition, came in second with 19.93% of first and 18.4% of second votes, representing 34 mandates (minus two). This outcome presents the lowest result for the SPD in Berlin in decades. Tied with the SPD, the Greens, also a coalition partner, garnered 19.2% of first and 18.4% of second votes, thus acquiring with the same number of seats as the SPD, namely 34 (plus two).

102. Behind the three frontrunners, the Left, junior coalition partner, acquired 12.3% of first and 12.2% of second votes, thus winning 22 mandates (minus two). The AfD scored 9.0% of first and 9.1% of second votes and acquired a total of 17 seats (plus four). With only 3.9% of first and 4.6% of second votes, the FDP lost all 12 seats previously held in the Berlin HoR and ended up without representation at *Land* level. Only eight parties passed the 1% threshold.

103. The percentage of women elected to the HoR increased from 35.4% to 38.9% after the repeat elections. Three parties, namely the Greens (58.8%), the Left (50%) and the SPD (47%) have achieved gender balance. On the other hand, women are less represented among the HoR members from the CDU (25%) and the AfD (11.8%).¹¹⁰

104. Also in the district assembly elections, the CDU emerged as the clear winner, acquiring 27.7% of the votes and 204 seats (plus 68 seats). With 19.5% of votes and 135 seats (minus 12), the Greens came in second and the SPD third, with 18.7% of votes and 136 seats (minus 28). The Left acquired 12.6% of votes, gaining 89 seats (minus 10), and the AfD 9% of votes and 64 seats (plus 6). Also on the district level, the FDP won 22 seats (minus 23) and gathered 4.2% of votes.¹¹¹ With regard to the district executive level, the district mayors are not expected to be renewed with the repeat elections. They were elected by the district assemblies at the beginning of the legislature in 2021 and remain in office as “temporary civil servants” until the end of the legislature period in June 2026 (Art. 35 of the

105 The preliminary announcement of results was thereafter overshadowed by certain issues, which came to light in the days following the elections. In the district of Lichtenberg, a box of 466 uncounted postal votes was discovered after the elections and led to a public recount, following a request by the Left, in the constituency three of Lichtenberg on 15 February. Furthermore, in the district of Friedrichshain-Kreuzberg, a mistake in the entry of votes led to 150 votes for the Greens being wrongly awarded to the Left. Both errors were corrected. For more information, see for example the *Newsblog* by the *Berliner Morgenpost* informing on the latest developments in connection with the 2023 elections, available at <https://www.morgenpost.de/berlin/article237616679/berlin-wahl-2023-news-sondierung-cdu-gruene-spd-panne.html>.

106 See LRO Press Release (27/02/2023) available at: <https://www.berlin.de/wahlen/pressemitteilungen/2023/pressemitteilung.1298935.php> and for fully detailed results, see LRO final report available at: <https://www.berlin.de/wahlen/wahlen/wahlen-2023/ergebnisse/artikel.1293464.php>

107 See LRO Preliminary Results Report, *Op.cit.*

108 See election results for the 2021 elections at <https://www.wahlen-berlin.de/wahlen/BE2021/AFSPRAES/bvv/index.html>.

109 See the overview of the election results for the HoR elections 2023, available at <https://wahlen-berlin.de/wahlen/Be2023/AFSPRAES/agh/ergebnisse.html>.

110 Data extracted from the list of elected representatives to the HoR, *Ibid.* No gender-disaggregated data was available on district assemblies.

111 See the overview of the election results for the district assembly elections 2023 available at <https://wahlen-berlin.de/wahlen/Be2023/AFSPRAES/bvv/index.html>.

Berlin District Administration Law). For a change in these positions, a two-third majority in the district assemblies is required, which is generally considered to be hard to acquire.¹¹²

105. Overall, the repeat elections presented a special challenge for the 27 smaller parties, which taken altogether scored 6% of the first votes, 9% of the second votes for the HoR and 8.3% of the votes to district assemblies. Smaller parties did not win any seat to the HoR and only the Animal Protection Party, with eight seats (minus one), and the PARTY, with two (unchanged), are represented in district assemblies. While they generally have a more difficult stand in elections compared to their bigger counterparts, they faced even greater difficulties in 2023 due to their limited financial means. Almost all small parties have lost votes in comparison to the 2021 elections, with three parties – VOLT, Team Todenhöfer and the Basis - even falling below the 1% threshold to qualify for public reimbursement, thus losing crucial funds for upcoming elections. On the other hand, the Animal Protection Party stood out as the exception in the 2023 elections, acquiring more votes than in 2021 with a total of 2.4%.¹¹³

106. The results of the repeat elections show a major reshuffle of the political landscape in Berlin, both on the level of the Berlin HoR as well as of district assemblies. After governing Berlin for 22 years, the SPD lost significant support among the electorate in the repeat elections, but the incumbent coalition still retained a majority in the HoR. Coalition talks and negotiations were initiated in the aftermath of the Election Day, to determine to which party should the Governing Mayor and Senator positions be awarded.¹¹⁴

16. CONCLUSIONS

107. Overall, the Congress delegation observed efficiently managed and transparent regional council and district assembly elections in Berlin. It welcomed the broad acceptance of the Berlin Constitutional Court decision to repeat the 2021 elections and commended the seemingly limited effect of the Court decision on the level of trust in the electoral process of voters and contestants. The Congress observers praised the various improvements implemented by the highly decentralised election administration to guarantee the integrity of the electoral process, including the provision of additional voting materials, increased incentives for EB members and updated training offers. However, more clarity is needed on the division of tasks and responsibilities between the *Land* and district election administrations to ensure homogenised procedures.

108. Despite the 2023 elections presenting a re-run of the regular elections in 2021, the campaign was lively, competitive and focused on issues relevant at *Land* and district levels. Extensive coverage was provided by public and private media in Berlin. However, the Congress observers noted that additional efforts could be made to strengthen the regulatory framework on campaign and party finance, to ensure transparency and a level playing field through timely publication of campaign reports and disclosure of private donations. In addition, measures should be implemented to increase the number of women running for office, in particular for the House of Representatives, such as the introduction of a 40% quota on party lists.

109. Besides, higher presence of professional and independent domestic or international observers could further strengthen the trust of the public and the transparency in the country. It would be therefore beneficial to introduce regulations on the status and rights of observers in order to clarify the modalities of their missions.

112 *Ibid*. This could lead to a situation, where district mayors and councillors remain in office while they do not have a majority in the district assembly or even lose their political support all together. Should a district mayor decide to resign due to the new political environment, then the person would also lose the financial benefits connected with the post.

113 For an analysis of the 2023 repeat elections from the view of smaller parties see RBB 24, In the anonymity of the grey bar (15/02/2023), *Op.cit*.

114 Although, overall, the parties of the incumbent coalition retained a reduced majority in the HoR, the CDU, as clear winner of the overall repeat elections, made the demand to provide the new mayor for Berlin. Furthermore, members of the Greens and of the Left voiced their hopes to proceed with the incumbent coalition. However, on 1 March, the Governing Mayor, Franziska GIFFEY affirmed the intention of the SPD to form a new coalition with the CDU, the SPD becoming a junior partner. At the time of writing, negotiations on the new CDU-SPD coalition in Berlin have started and the coalition agreement is expected to be submitted to the SPD members in April. If the coalition is successful, Kai WAGNER, Head of list for the CDU, is likely to become Governing Mayor of Berlin. See <https://www.rbb24.de/politik/wahl/abgeordnetenhaus/agh-2023/beitraege/berlin-abgeordnetenhaus-wiederholungswahl-sondierungen-spd-franziska-giffey-cdu-kai-wagner-koalitionsverhandlungen.html>.

110. The delegation observed a peaceful, calm and well-organised Election Day, from opening to counting. The high professionalism and commitment of the Chairpersons of polling stations and their staff was also highlighted by the Congress teams, in particular during the counting procedures which were handled with diligence, rigour and speed.

111. Despite the generally positive assessment of the 2023 elections, the conduct of elections could be improved by introducing more uniform standards and instructions across all districts, such as on the temper-proof sealing of ballot boxes as well as their design, the handover of election materials and the process for identifying voters and obtaining their signatures. Furthermore, accessibility of polling stations must be ensured for all voters.

APPENDIX I

CONGRESS ELECTION OBSERVATION MISSION
Regional Council and District Assembly Repeat Elections in Berlin – 12 February 2023
FINAL PROGRAMME
(11-13 February 2023)
Meetings in remote format on 2 February
On-site observation on Election Day

Thursday 2 February 2023

- 09:00 – 09:30 Briefing for the Delegation with **Ms Stéphanie POIREL**, Head of the Division of Statutory Activities
- 09:30 – 10:45 Meeting with **Mr Sören SCHUMACHER**, Head of delegation of Germany to the Congress, **Ms Melanie KUHNEMANN-GRUNOW**, member of the delegation and of the Berlin House of Representatives, and **Mr Heiner KLEMP**, member of the delegation and of the Regional parliament of Brandenburg
- 11:00 – 11:45 Meeting with representatives from domestic NGOs
- **Ms Nicola SCHMIDT**, Executive Director, Democracy Reporting International
 - **Ms Kira MÖSSINGER**, Project Manager and **Mr Andrei BUZIN**, Election Expert, European Exchange (Secretariat of the European Platform for Democratic Elections)
 - **Mr David SPITZL**, Press and Public Relations Officer, Landesjugendring Berlin e.V. – Union of Berlin Youth Associations
 - **Mr Christian KÖNIG**, Board Member for Berlin-Brandenburg, Mehr Demokratie e.V. – More Democracy
 - **Mr Carlo GRESS**, Project Manager, Democracy and Cohesion, Bertelsmann Stiftung
- 11:45 – 12:30 Meeting with **Mr Stephan BRÖCHLER**, *Land* Returning Officer for Berlin (*Landeswahlleiter*) and representatives of the Regional Election Commission and District Election Committees (*Bezirkswahlämter*)
- **Mr Roland BRUMBERG**, Deputy *Land* Returning Officer
 - **Mr Guido KLEINERT**, Head of Office, *Land* Election Commission
 - **Mr Timon RICHTER**, *Land* Election Commission
 - **Ms Heike SCHÜTTE**, Head of District Election Committee of Steglitz-Zehlendorf
 - **Mr Joachim STÜRZBECHER**, District Returning Officer for Steglitz-Zehlendorf
 - **Ms Ute HEINRICH**, Head of District Election Committee of Treptow-Köpenick
 - **Ms Katja HANNEBAUER**, District Returning Officer for Marzahn-Hellersdorf
- 12:30 – 14:45 *Lunch break*
- 14:45 – 15:15 Meeting with **Mr Reinhard FISCHER** (Events and Cooperation) and **Mr Ilja KOSCHEMBAR** (Communication and Public Relations) of the Office for political education of the State of Berlin (*Berliner Landeszentrale für politische Bildung*)
- 15:15 – 15:55 Meeting with representatives from the media
- **Mr Jan CASPER**, *Die Welt* correspondent;
 - **Mr Sebastian ENGELBRECHT**, *Deutschlandfunk* correspondent in Berlin;
 - **Mr André ZANTOW**, *Deutschlandfunk Kultur* correspondent;
 - **Mr Stephan MERSEBURGER**, Head of *ZDF Landesstudio* Berlin.

16:00 – 16:30 Meeting with **Ms Iris SPRANGER**, Senator, **Mr Christian OESTMANN**, Head of the State and Administrative Law Unit, Berlin Senate Administration for the Interior, Digitalisation and Sport (*Senatsverwaltung für Inneres, Digitalisierung und Sport*) and **Mr Tobias KIRCHNER**, Special Assistant to the *Land* Returning Officer for Berlin

Friday 10 February 2022

Various times Arrival of the Congress delegation in Berlin

Saturday 11 February 2022

09:45 – 10:45 Congress internal briefing by the Secretariat
Venue: Abba Berlin Hotel, Pamplona Room, Lietzenburger Straße 89, Berlin

11:15 – 12:00 Briefing with **Mr Werner GRAF**, Chairman in the Berlin House of Representatives for the Group Alliance 90 / The Greens (*Bündnis 90 / Die Grünen*), party of the ruling coalition

12:00 – 14:00 *Lunch Break*

14:00 – 14:45 Briefing with **Ms Hildegard BENTELE**, member of the European Parliament and of the Christian Democratic Union (*Christlich Demokratische Union Deutschlands, CDU*), opposition party

14:50 – 15:35 Briefing with **Ms Viviana FISCHER**, Secretary General of the party the Basis (*dieBasis*), **Mr Sören JAGLA**, party spokesperson, **Mr Dietmar LUCAS**, candidate, **Ms Annette BECKER**, candidate, **Ms Heike Franziska BARTSCH**, candidate and **Mr Robert WIEDERHOEFT**, election organising team

16:40 – 17:25 Briefing with representatives and candidates of other political parties running in the elections and who reached the 1% threshold in the 2021 elections
Venue: Abba Berlin Hotel, Pamplona Room, Lietzenburger Straße 89, Berlin
- **Ms Vux GEISLER**, state party co-chair, The PARTY (*Die PARTEI*);
- **Ms Cara SEEBERG**, co-chair, and **Mr Steffen MEYER**, leading candidate, Volt.

17:30 – 18:15 Congress technical briefing with delegation members

18:15 – 18:45 Congress technical briefing with drivers and interpreters

Sunday 12 February 2022 – Election Day

07:15 – 18:00 Deployment of six Congress teams to the polling stations (cf. "Deployment plan")

13:30 – 14:30 *Lunch Break at the Hotel (incl. short de-briefing of morning)*

14:30 – end Deployment of six Congress teams to the polling stations incl. counting (cf. "Deployment plan")

22:00 Late night de-briefing

Monday 13 February 2022

Various times Departure of some members of the Congress Delegation

11:00 – 12:00 Media briefing with journalists to present preliminary conclusions of the Congress Observation Mission with **Mr Vladimir PREBILIC**, Head of Delegation

DELEGATION**Congress members**

Mr Vladimir PREBILIC (L, SOC/G/PD), Slovenia, Head of Delegation

Ms Kirsten Morid Vincent ANDERSEN (R, SOC/G/PD), Denmark

Mr Jean-Paul BASTIN (L, EPP/CCE), Belgium

Mr Stewart DICKSON (R, ILDG), United Kingdom

Mr David ERAY (R, EPP/CCE), Switzerland

Ms Jana FISCHEROVA (L, ECR), Czech Republic

Ms Cecilia FRIDERICS (L, ECR), Hungary

Mr Matija KOVAC (R, EPP/CCE), Serbia

Ms Natia SHELEGIA (R, EPP/CCE), Georgia

Expert

Ms Christina BINDER, Member of the Group of Independent Experts of the Congress (Austria)

Congress Secretariat

Ms Stephanie POIREL, Head of Statutory Activities Division

Ms Mathilde GIRARDI, Election Observation Officer

Ms Marie THOMET, Election Observation Officer

Ms Martine ROUDOLFF, Assistant, Local and Regional Election Observation

Congress Contact Person

Mr Robert NEUMEIER, Election Observation Officer

APPENDIX II

CONGRESS ELECTION OBSERVATION MISSION
Regional Council and District Assembly Repeat Elections in Berlin – 12 February 2023
DEPLOYMENT PLAN

Congress teams	Composition of the Congress teams	Interpreters	Drivers	Area of Deployment
Team 1	Mr Vladimir PREBILIC Ms Christina BINDER Ms Stéphanie POIREL	Morning: Vivi BENTIN Afternoon: Annette ABBAS	Adnan BALDAS B-JE 9999 Mercedes-Benz V-Class	Mitte (district 1) Reinickendorf (district 12)
Team 2	Mr Stewart DICKSON Ms Kirsten ANDERSEN	Morning: Catherine JOHNSON Afternoon: Susanna BARTILLA	Osman KURU B-KI 9999 Mercedes-Benz V-Class	Steglitz- Zehlendorf (district 6) Tempelhof – Schöneberg (district 7)
Team 3	Ms Natia SHELEGIA Ms Mathilde GIRARDI Ms Marie THOMET	Morning: Sabrina BEILFUSS Afternoon: Ingrid BEHRMANN	Ahmet METIN B-TQ 9999 Mercedes-Benz V-Class	Pankow (district 3) Lichtenberg (district 11)
Team 4	Mr Jean-Paul BASTIN Mr David ERAY	Morning: Matthias JANSEN Afternoon: Barbara CHISHOLM	Mazlum AKDOGAN B-CZ 9999 Mercedes-Benz V-Class	Friedrichshain- Kreuzberg (district 2) Neukölln (district 8)
Team 5	Ms Jana FISCHEROVA Ms Martine ROUDOFF	Morning: Jan KLINGHAMMER Afternoon: Veronika GRUBER	Berkhan COSKUN B-ND 9999 Mercedes-Benz V-Class	Charlottenburg – Wilmersdorf (district 4) Spandau (district 5)
Team 6	Ms Cecilia FRIDERICS Mr Matija KOVAC	Morning: Jana ZWEYROHN Afternoon: Sylvia SCHREIBER	Serhat GÜRDAL B-DG 9990 Mercedes-Benz E-Class	Treptow Köpenick (district 9) Marzahn- Hellersdorf (district 10)

APPENDIX III

NEWS 2023

Repeat elections in Berlin: The Congress delegation welcomes an orderly Election Day, but calls for clarification of the distribution of responsibilities between the main actors in local and regional elections

ELECTIONS BERLIN, GERMANY 13 FEBRUARY 2023

A delegation from the Congress of the Council of Europe observed local and regional elections to the Berlin House of Representatives as well as Berlin District Councils in Germany on 12 February 2023. These elections represented a re-run of the elections of 26 September 2021, which were declared invalid by the Berlin Constitutional Court on 16 November 2022. On Election Day, six Congress teams including 14 participants from 12 countries were deployed to all twelve districts of Berlin and visited over 80 polling stations, observing the electoral procedures from the opening to the closing, including the counting of regular and postal votes in 6 polling stations.

“Yesterday’s repeat elections constituted an important step contributing to secure citizens’ trust in the act of voting in Berlin,” stated the Head of delegation Vladimir Prebilic (Slovenia, SOC/G/PD) at a press briefing today in Berlin. Overall, the delegation observed a calm and orderly Election Day, without major incidents or anomalies. “The situation that led to a number of irregularities in the September 2021 elections does not seem to have affected the confidence of the people of Berlin, as evidenced by the good turnout,” underlined the Head of delegation highlighting the significant efforts made to conduct these elections.

However, the preliminary conclusions call for clarification of the distribution of responsibilities between the main actors in local and regional elections in Berlin. In addition, improvements could be made in particular concerning the ballot boxes so that they are sealed in a unified way to secure the votes, and by using transparent ballot boxes. The conditions for sending voting material to polling station presidents could be improved, as the current system imposes an excessive burden and may pose a risk to the integrity of electoral material. The Congress delegation also recommends uniform and standardized procedures in all constituencies concerning the organisation of the administration of the vote, as well as strengthening the competences of the regional level, in order to improve quality and efficiency. Finally, additional guarantees could be provided during the pre-electoral period, in particular concerning the financing of campaigns and parties, and it would be wise to introduce regulations for observers in order to clarify the modalities of their mission on election day.

The observation mission was carried out following an invitation by the Election Officer for the Land Berlin, Mr Stephan Bröchler. Prior to Election Day, the Congress delegation held online briefings on 2 February 2023, with representatives of regional and district election administration bodies, domestic and international NGOs and the media, as well as with members of the Delegation of Germany to the Congress. Further, on 11 February, the delegation conducted exchanges with representatives of political parties in person in Berlin.