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Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

55th MEETING
OF THE COUNCIL FOR DEMOCRATIC
ELECTIONS

Venice, 9 June 2016 at 10.00 a.m.

MEETING REPORT

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Adoption of the agenda

The Council adopted its agenda as it appears in document [CDL-EL-OJ\(2016\)002ann](#).

1. Armenia – draft electoral code

Mr Barrett introduced the preliminary joint opinion on the draft electoral code of Armenia as of 18 April 2016. During the plenary session of March 2016, the Commission had authorised the preliminary opinion to be sent to the authorities prior to the June session, since the newly adopted Constitution required the Code to enter into force by 1 June 2016. The preliminary opinion had therefore been sent to the Armenian authorities in May 2016.

The opinion stressed that the new electoral system proposed in the draft code was rather complex, mainly with respect to the way in which it addresses the constitutional requirement to guarantee a “stable majority”. It established a number of significant deviations from a purely proportional system, which, in combination with the short time period allocated to carry out the reform, could affect voters’ trust in the electoral system.

The opinion considered that the draft electoral code could provide an adequate basis for the conduct of democratic elections, and had addressed some prior Venice Commission and OSCE/ODIHR recommendations, improving voter identification and enhancing the Central Electoral Commission’s regulatory powers. The opinion was, however, critical on a number of issues. The draft code introduced limitations and deadlines for the formation of coalitions after the first round of elections: the opinion recommended reconsidering the restrictions on the number of participants in a coalition and extending the time period for forming coalitions after the first round. The opinion further recommended, as a confidence-building measure, to allow meaningful consultation of signed voter lists by stakeholders under specific conditions. The introduction of new technologies in respect of voter registration and identification would be a welcome change, but a proper implementation of new technologies had to be ensured.

Since the publication of the first preliminary opinion, several amendments had been introduced to the Electoral Code, which was adopted on 25 May 2016. This could lead to a request for a new follow up opinion by the Armenian authorities.

Mr Kox emphasised the complexities of the Armenian electoral reform and the short timeframe, and stated that the Parliamentary Assembly considered ensuring a balanced controlled access to voter lists and eliminating restrictions on observers of particular importance.

Mr Lappin underlined the constructive approach in the exchanges of views which were held in preparation of the opinion and referred to important additional recommendations, such as removing the restrictions on observers, strengthening women quotas, and introducing clearer rules on financing and campaigning. The introduction of new voting technologies should be approached in a very gradual manner and ensure building further trust and confidence in the process.

Mr Delcamp stressed that the complexity of a text is not necessarily a criticism, as sometimes it is inevitable.

The Council endorsed the preliminary joint opinion by the Venice Commission and the OSCE/ODIHR on the draft electoral code of Armenia as of 18 April 2016 (CDL-AD(2016)019).

3. Republic of Moldova – draft amendments to the Electoral Code

The Moldovan authorities had requested the Venice Commission's opinion on the draft Amendments to the Electoral Code of the Republic of Moldova ([CDL-REF\(2016\)031](#) and [032](#)). The draft opinion by the Venice Commission and the OSCE/ODIHR ([CDL\(2016\)021](#)), drawn up on the basis of comments by Mr Gonzalez Oropeza, Mr Kask and Ms Bogussevich (OSCE/ODIHR expert) was submitted to the Council for adoption.

Mr Kask informed the Council that the Constitutional Court had cancelled the amendments to the Constitution introducing the election of the President of the Republic by Parliament, adopted in 2000. Coming back to the direct election of the President implied adopting a new law very quickly, since the presidential elections had to be held on 30 October 2016. This made it impossible to adopt the amendments within the one-year deadline provided for by the Code of Good Practice in Electoral Matters.

While the draft law was generally in accordance with international obligations and standards, a number of provisions had still to be considered.

In particular, restrictions on the right to stand for elections provided by the Constitution could not be dealt with in present amendments. The requirement of 10 years residence was excessive, while the age requirement of 40 years could be considered high. Proficiency of state language testing had to be reasonable, objective and verifiable.

The requirement of 15,000 support signatures (and 600 from at least half of the second level administrative and territorial divisions of the country) appeared reasonable. However, there were no clear rules for signature verification.

Removing the turnout requirement in the first round would be suitable to avoid endless rounds of failed elections.

Candidates could start campaigning only after they have been registered; this could put those who register later at a disadvantage.

The opening of polling stations abroad was quite an important practical issue, since about one quarter of potential voters resided abroad. Polling stations were not equally available in all countries. The draft opinion suggested a broad consensus on this issue.

The recall of the President was provided for by the Constitution. The request for recall had to be made by one-third of parliament, adopted by a two-thirds majority and by a referendum. It was clearly a political procedure. The election code had to provide for clearer rules; the procedure had to be submitted to legal conditions, to be addressed by the Constitutional Court.

The campaign finance and reporting remained an outstanding concern.

The Council decided to amend para. 35 in order to harmonise it with para. 10: the restriction on candidacy based on the length of residence should be reconsidered or reduced.

Mr Gonzalez Oropeza informed the Council that the judgment of the Constitutional Court had been made on the basis of a complaint by 18 MPs, based on Article 141.2 of the Constitution, according to which every constitutional amendment had to be submitted to the Constitutional Court. The point was that the amendment adopted in 2000 had been changed after having

been submitted to the Constitutional Court. He suggested that the rules on recall be complemented by an organic law including deadlines and a legal definition of the serious offences infringing upon constitutional provisions.

The Council adopted the draft joint opinion of the draft law on changes to the election code of Moldova (CDL-AD(2016)021).

4. Ukraine – draft amendments to the electoral legislation

The Monitoring Committee of the Parliamentary Assembly requested the Venice Commission's opinion on the Amendments to the Law of Ukraine on election of people's deputies regarding the exclusion of candidates from party lists ([CDL-REF\(2016\)024](#) and [040](#)). The draft opinion ([CDL\(2016\)024](#)), drawn up on the basis of comments by Mr Frenco, Mr Vilanova Trias and Mr Paczolay, was submitted to the Council for adoption.

Mr Frenco introduced the opinion. Article 81 of the Constitution allowed for the disqualification of an elected member who, having been elected as part of one political formation, then moves to another within the period of the same legislature for which he or she would have been elected. The Venice Commission had criticised this provision (CDL-AD(2005)015, para. 10 ff), which made the MPs dependent on political parties. The draft submitted to the Commission went still further and empowered political parties from stifling political opinion or dissent within their own ranks by allowing them, at their absolute discretion, without any limitation, to remove from the party list a candidate with the potential to be legitimately elected by the voters, after election day and prior to such a candidate being so confirmed as elected by the Central Electoral Commission. The lapse of time between the election day and the declaration of a candidate as elected might be several years for candidates who were not elected immediately but were next on the list.

Since the empowerment of political parties *ex post facto* to deny the electorate its choice and choose who to place on its party list in a position to be elected goes against international standards, the Council for Democratic Elections decided to make the text stronger by saying that it should not only be reconsidered, but removed (para. 39).

The Council adopted the draft joint opinion on the Amendments to the Law of Ukraine on election of people's deputies regarding the exclusion of candidates from party lists (CDL-AD(2016)018).

5. Publication of lists of voters having participated in elections

The Council for Democratic Elections was invited to follow-up on the debate concerning the question of the possible publication of lists of voters having participated in elections, in light of the second memorandum prepared by the Secretariat on this issue (CDL-EL(2016)005). The Code of Good Practice in Electoral Matters is not in favour of this practice, but the question is still discussed, for example in Armenia, following allegations of fraud in particular due to identity theft of voters *de facto* abroad.

Mr Kox expressed that the Parliamentary Assembly would support an interpretation of the Code of Good Practice in order to allow meaningful consultation of signed or stamped voter lists, but not the publication of such lists. A balance between data protection and secrecy of the vote on the one hand and stakeholders' interest in consulting the signed (or stamped) voter lists on the other hand had to be found.

Mr Delcamp, Mr Vermeulen and Mr Lappin also stressed the need to protect the voter's data.

The Council decided to invite the secretariat to prepare an interpretative declaration to the Code of Good Practice in Electoral Matters on this issue.

6. Electoral Glossary

The Council was invited to examine the draft revised electoral glossary ([CDL-EL\(2016\)004](#)), with a view to its adoption. This glossary is the result of a major update. It was previously updated in 2011 (CDL-EL(2011)001rev). This update saw the entry of many new expressions including those related to electoral systems, new voting technologies and issues concerning parity between men and women. Expressions which are no longer used have been removed from the Glossary. An amended version was submitted to the Council which incorporates proposals by the Council of Europe Terminology Office, by the OSCE/ODIHR and the Venice Commission Secretariat. As a reminder, this Glossary is aimed at helping translators of electoral opinions from one official language to the other, but it is also very useful for the Venice Commission Secretariat as well as for members and experts.

The Glossary is a living document and members are invited to make proposals for amendment at any time.

The Council adopted the Electoral Glossary ([CDL-EL\(2016\)004](#)). It instructed the Secretariat to distribute the English-French version.

7. Request for Observer status

The International Foundation for Electoral Systems (IFES) has requested observer status to the Council for Democratic Elections.

The Council decided to invite the International Foundation for Electoral Systems (IFES) as observer.

8. Joint guidelines for preventing and responding to the misuse of administrative resources- follow-up

Ms Zikmund, from the Congress, informed the Council that the Joint guidelines for preventing and responding to the misuse of administrative resources have served as a basis for further resolutions adopted by the Congress, based on their reports of observation of local elections. The Guidelines will be brought before the Congress for endorsement in December.

9. Information on current and future activities

Since the Council's March 2016 meeting the following activities, organised by the Venice Commission or in which the Venice Commission participated, have taken place in the field of elections and political parties:

- "1st electoral expert debates" (Bucharest, 12-13 April 2016) on "electoral law and new technologies". The reports prepared for this Conference will be published in the review "Electoral expert" edited by the Permanent Electoral Authority of Romania.

These “electoral expert debates” should take place every two years ; see the synopsis, [CDL-EL\(2016\)002syn](#);

- The 13th Conference of European Electoral Management Bodies (Bucharest, 14-15 April 2016) on the theme “new technologies in elections: public trust and challenges for electoral management bodies”; see the synopsis, [CDL-EL\(2016\)001syn](#);
- Conference on Media and Elections in Ukraine; challenges and possible solutions (Kyiv, 5 April 2016);
- International Workshop on women’s participation in elections (Jordan, Dead Sea, 19-21 April 2016);
- First meeting of the “Political finance community of practice” (Prague, 22 April 2016);
- Legal assistance to the Parliamentary Assembly delegation observing the early parliamentary elections in Serbia (24 April 2016);
- Meeting on electronic voting (Valletta, Malta, 4 May 2016);
- Forum on “Financing of political parties and electoral campaigns” (Mexico City, 5 May 2016); the Mexican election management body, the INE, has created quite a successful model for reporting on financing for political parties, which is electronic through a secured nationwide system. After this meeting, three initiatives were proposed: to invite INE to the next meeting of the Sub-Commission on Latin America; to use their expertise for capacity building activities in other regions and to invite if necessary INE in December to the Plenary;
- Round Table on “Electoral Standards and improvement of the Electoral Process in Belarus” (Minsk, 18 May 2016);
- International Conference on electoral reform in Ukraine (Kyiv, 26-27 May 2016);
- International Conference on the role of courts and the protection of political rights (Mexico City, 26-27 May 2016);
- International Conference co-organised by the Parliamentary Assembly, on political parties and the parliament (Amman, 30 May 2016).

The following activities are already planned from the 55th meeting of the Council for Democratic Elections to the next meeting:

- Meeting of the group on electoral reform in Ukraine (Strasbourg, 20-21 June 2016)
- Conference on “Media and Elections” with the Parliamentary Assembly of the Council of Europe (Berlin, 4 July 2016) ;
- Workshop on political funding (Kyiv, 6 July 2016) ;
- 25th ACEEEEO Conference (Tirana, 21-23 September 2016) ;
- Legal assistance to the Parliamentary Assembly delegation observing the parliamentary elections in Bulgaria (3 October 2016);
- Legal assistance to the Parliamentary Assembly delegation observing the parliamentary elections in Georgia (8 October 2016).

Mr Markert informed the Council of the European Court Human Rights judgment *Pilav and others v. Bosnia-Herzegovina*. In this judgment, the Court considered the Convention violated because a Bosniak residing in Republika Srpska could not stand for the presidential elections. This judgment follows up on the *Sejdic and Finci* case, which has failed to be implemented because of the impossibility to change the Constitution. It remains as an outstanding issue in the country.

10. Co-operation with the OSCE/ODHIR

An exchange of views took place with Mr Shlyk, representative of the OSCE/ODIHR, on the co-operation with this institution. Mr Shlyk informed the Council of current and future activities in the electoral field. He underlined the excellent co-operation with the Venice Commission, the

Parliamentary Assembly and the Congress during recent activities. This successful co-operation took place in the context of election observation activities, legal opinions, expert visits and various roundtables.

Mr Shlyk indicated that the OSCE/ODIHR will co-operate closely with the Parliamentary Assembly and/or the Venice Commission on the occasion of the forthcoming election observation missions to Belarus (11 September), Georgia (October), Montenegro (16 October), Bulgaria (October) and Moldova (30th October). The observation of the elections in Russia and the co-operation with PACE in this field was yet to be confirmed.

Mr Lappin also informed the Council about forthcoming publications by the OSCE/ODIHR, more specifically the imminent publication of the Handbook on Follow-up of Electoral Recommendations and the upcoming publication of the Guidelines on Political Party Regulation, jointly prepared with the Venice Commission. The handbook can be found in their website:

<http://www.osce.org/odihr/elections/244941?download=true>

11. Date of the next meeting

The Council fixed its next meeting for Thursday 13 October 2016 at 10.00 a.m.

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

VENICE COMMISSION / COMMISSION DE VENISE

Members of the Council for Democratic Elections (CDE) / Membres du Conseil des élections démocratiques (CED)

Ms Maria del Carmen ALANIS FIGUEROA (excusée/apologised)
Mr Srdjan DARMANOVIC
Mr Aivars ENDZINS
Mr Oliver KASK (**Vice-Chair/Vice-Président**)

Substitute Members of the CDE / Membres suppléants du CED

Mr Richard BARRETT (excusé/apologised)
Ms Paloma BIGLINO CAMPOS (excusée/apologised)
Mr Paul CRAIG
Mr Ben VERMEULEN

Other members of the Venice Commission / Autres membres de la Commission de Venise

Mr Manuel GONZALEZ OROPEZA

Secretariat / Secrétariat

Mr Thomas MARKERT
Ms Simona GRANATA-MENGHINI
Mr Serguei KOUZNETSOV
Mr Pierre GARRONE
Ms Amaya UBEDA DE TORRES

Expert

Ms Marjolein VAN ROOSMALEN

PARLIAMENTARY ASSEMBLY / ASSEMBLÉE PARLEMENTAIRE

Members / Membres

Lord Richard BALFE, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme (excusé/apologised)
Ms Josette DURRIEU, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie (excusé/apologised)
Mr Tiny KOX, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe/Commission pour le respect des obligations et engagements des Etats membres du Conseil de l'Europe

Secretariat / Secrétariat

Mr Chemavon CHAHBAZIAN (excusé/apologised)
Mr Bas KLEIN

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES (CLRAE) / CONGRÈS DES POUVOIRS LOCAUX ET RÉGIONAUX (CPLRE)

Members / Membres

Mr Stewart DICKSON, Chamber of Regions/Chambre des régions (excusé/apologised)
Mr Jos WIENEN, Chamber of Local Authorities/Chambre des pouvoirs locaux (**Chair**)

Secretariat / Secrétariat

Ms Renate ZIKMUND

Expert

Mr Alain DELCAMP

OBSERVERS / OBSERVATEURS

ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)

Office for Democratic Institutions and Human Rights (ODIHR) / Bureau des institutions démocratiques et des droits de l'Homme (BIDDH)

Mr Alexander SHLYK
Mr Richard LAPPIN

EUROPEAN UNION / UNION EUROPEENNE

European External Action Service (EEAS) / Service européen pour l'action extérieure (SEAE)

Mr Emanuele GIAUFRET (excusé/apologised)

European Parliament / Parlement européen

Mr Pietro DUCCI, Democracy and Elections Unit (excusé/apologised)

INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (INTERNATIONAL IDEA)

Excusé/apologised