



Strasbourg, 20 February 2009

CDL (2009) 016

Opinion No. 522/2009

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT LAW OF UKRAINE
AMENDING THE LAW ON ELECTION
OF PEOPLE'S DEPUTIES OF UKRAINE**

**Draft Initiated by
People's Deputies of Ukraine
A. Portnov and O. V. Lavrynovych**

(Unofficial translation)

Draft initiated by People's Deputies of Ukraine A. Portnov and O.V. Lavrynovych

**Law of Ukraine amending the Law of Ukraine
on election of people's deputies of Ukraine (improving select provisions)**

The Verkhovna Rada of Ukraine hereby r e s o l v e s :

I. To make the following amendments to the Law of Ukraine *On election of people's deputies of Ukraine* (the *Vidomosti Verkhovnoi Rady Ukrainy*, 2005, Nos 38-39, p. 449; 2006, Nos. 5-6, p. 75; Nos. 10-11, p. 97, p. 98; No. 33, p. 284):

1. As respects Article 1:

1) to revise paragraph 4 as follows:

"4. The deputies shall be elected in two rounds. The first round of elections to the Verkhovna Rada of Ukraine shall be held on a population basis. The seats shall be distributed among the political parties (blocs) whose tickets have gained as the result of voting in the election of deputies not less than three percent of votes of the voters who have taken part in the poll. The final returns of election to the Verkhovna Rada of Ukraine shall be determined in the second round in which the two parties (blocs) which have gained the maximum number of votes in the first round shall take part."

2) to supplement article 5 with paragraphs 5 and 6 reading as follows:

"5. The political party (bloc) which has won in the second round shall have two hundred and twenty six seats i.e. the majority of the constitutional composition of the Verkhovna Rada of Ukraine. The remainder of the seats shall be divided between the party (bloc) which has taken the second place in the second round of elections and other parties (blocs) elected, in proportion to the results of the first round of elections to the Verkhovna Rada of Ukraine.

6. The second round of elections shall not be held if one of the parties (blocs) has gained as a result of the first round sufficient number of votes for it to get two hundred and twenty six or more mandates of People's Deputies of Ukraine. In such event the seats shall be distributed in proportion to the number votes gained by the parties (blocs) in the first round of elections."

2. As respects article 11:

1) to add paragraphs 5 and 6 reading as follows:

"5. Where a second round is held the process of election shall also include the following stages:

1) voting in the second rounds of elections;

2) counting of votes and establishing the ballot in the second round and returns of election of deputies and their official announcement.

6. The stages provided under paragraph 5 of this article shall take place only where provided for by this Law."

In view of the above, paragraphs 5 and 6 of this article are to be regarded as paragraphs 7 and 8.

2) to replace the word 'fifteen' in paragraph 7 with the word 'seven'.

3. to replace the word '16-day' in paragraph 3 of article 16 with the word '35-day'.
4. To supplement article 57 with paragraphs 10–11 reading as follows:

“10. A higher body of a political party (bloc) shall have the right to exclude candidates for People's Deputies of Ukraine from the ticket of such political party (bloc) at any time before the Central Election Committee decides to recognise such candidates for People's Deputies of Ukraine elected People's Deputies of Ukraine.

11. A decision of a higher body of political party (bloc) to exclude candidates for People's Deputies of Ukraine from the ticket of such political party (bloc) shall be brought to notice of the Central Election Committee. Such decision is the grounds for the Central Election Committee's taking a decision to exclude candidates for People's Deputies of Ukraine from the ticket and is binding.”

5. As respects article 64:

1) to revise paragraph 1 as follows:

“1. Before establishing official returns of election of deputies the Central Election Committee shall decide to annul the registration of any individual candidate for a deputy who was included in the ticket of a party (bloc) and strike him off the ticket in the event that:”

2) to revise subparagraph 2.2 as follows:

“2) a request of a party (bloc) to cancel the decision concerning the registration of a candidate for a deputy pursuant to the decision taken in accordance with the procedure under such party's constitution (agreement on establishment of the bloc);”

6. To supplement the Law with article 95-1 reading as follows:

“Article 95-1. Establishing the results of the first round of voting

1. On the grounds of the reports of district election committees on the results of voting in the corresponding territorial election districts, including such labelled 'Adjusted' and the report of the Central Election Committee on the results of voting in the overseas election district, the Central Election Committee shall at its session, not later than on the tenth day after the election date, establish the results of voting in the first round and make a report thereof. A report of the results of voting in the first round the following data is entered in words and figures:

- 1) number of ballots made to order of the Central Election Committee;
- 2) number of unused ballots cancelled by the Central Election Committee;
- 3) number of ballots received by the district election committees;
- 4) number of unused ballots cancelled by the district election committees;
- 5) number of ballots received by the local election committees;
- 6) number of ballots made by local election committees;
- 7) number of unused ballots cancelled by the local election committees;
- 8) total number of unused ballots;
- 9) total number of the mutilated ballots;
- 10) number of voters entered in the electoral rolls at polling stations;
- 11) number of voters entered in extracts from the electoral roll at the polling districts;
- 12) number of the voters entered in electoral rolls for voting on absentee certificates;
- 13) number of voters who received ballots inside the voting premises;
- 14) number of voters who received ballots at their place of stay;
- 15) number of voters who received ballots on the basis of absentee certificates;
- 16) total number of voters who received ballots;

- 17) number of voters who voted inside the voting premises;
- 18) number of voters who voted at their place of stay;
- 19) number of ballots not subject to account, found at the polling districts;
- 20) total number of voters who took part in voting;
- 21) number of ballots recognised void;
- 22) per cent of ballots recognised void in relation to the number of voters who took part in voting;
- 23) number of votes cast for the candidates for deputies included in the ticket of each party (bloc);
- 24) per cent of votes cast for the candidates for deputies included in the ticket of each party (bloc) in relation to the number of voters who took part in voting;
- 25) number of voters who have not supported any candidate for deputy from a party (bloc) included in the tickets of the parties (blocs);
- 26) per cent of voters who supported no candidates for deputies included in the tickets of parties (blocs) in relation to the number of voters who took part in voting.

2. Information on the results of voting shall be recorded, in figures and in words, in the report of the Central Election Committee on the results of the first round of voting. The data specified in subparagraphs 1.3– 1.26 of this article shall be entered in figures in regard of every territorial election district (inclusive of the overseas election district), as well as the sum total, in figures and in words, in regard of the nationwide election district.

3. A report of the Central Election Committee on results of the first round of voting shall be made in duplicate. Such report shall be signed by the Chairperson, Vice Chairpersons, the secretary and other members of the Central Election Committee present at meeting of the Central Election Committee, and authenticated by the seal of the Central Election Committee. A report shall indicate the date and time (in hours and minutes) of its being signed by the members of the Central Election Committee. Each member of the Central Election Committee who is present at the meeting shall be required to sign the report on the results of the first round of voting. In the event that a member of the Central Election Committee disagrees with the established returns of the first round of voting recorded in the report of the Central Election Committee, he shall sign such report with the note 'Dissenting opinion'. A written statement of the dissenting opinion shall be attached to the report on the results of the first round of voting. Where the signature of a member of the Central Election Committee is missing in the report, a note shall be made therein, opposite his surname, indicating the reason for which such member of the Central Election Committee is absent at its meeting. Candidates for deputies, representatives of parties (blocs) in the Central Election Committee, authorised persons of the parties (blocs) for the nationwide election district who were present at the establishing of the poll in the first round of voting shall have the right to sign the first copy of the report. The contents of the report shall be promptly posted at the official web site of the Central Election Committee.

4. The right to participate in the sharing of deputy seats shall be given to the candidates for deputies included in the tickets of those parties (blocs) that have received three or more percent of vote of the voters who have taken part in voting in the nationwide election district.

5. The candidates for deputies included in the tickets of a party (bloc) that has received less than three percent of vote of the voters who have taken part in voting, shall have no right to participate in the sharing of deputy seats.

6. The deputy seats shall be shared between the tickets of the parties (blocs) in proportion to the popular vote received by the candidates to deputies included in the tickets of such parties (blocs) as are specified in paragraph 3 of this article, following the order defined in paragraphs 7–10 of this article.

7. On the basis of the data specified in subparagraph 1.23 of this article, the Central Election Committee shall establish the total number of votes cast for the candidates to deputies included in the tickets of those parties (blocs) that have received three or more percent of popular vote.

8. The number of votes which is required for winning one deputy seat (hereinafter, 'the quota') shall be calculated by division of the sum total of popular vote, as established under paragraph 7 of this article by the number of deputy seats which shall be equal to the numerical composition of the Verkhovna Rada of Ukraine defined by the Constitution of Ukraine (hereinafter, 'the total of deputy seats').

9. The number of votes cast for the candidates to deputies included in the tickets of such party (bloc) shall be divided by the quota. The integer part of the number returned shall represent the number of deputy seats which have been received by the candidates to deputies from such party (bloc). The fractional part shall be taken into account in the sharing of the rest of deputy seats under paragraph 9 of this article.

10. The parties (blocs) whose tickets which have, upon division under paragraph 9 of this article, the largest fractional part compared to others shall receive one additional deputy seat, starting from the ticket of the party (bloc) having the largest fractional part. Should the tickets of two or more parties (blocs) have the same fractional part, the first to receive an additional deputy seat is the ticket of a party (bloc) whose candidates to deputies have received the greater number of votes. The allotment of additional deputy seats shall be complete after the total of deputy seats has been exhausted.

11. Proceeding from the results of the first round of voting, the Central Election Committee, at its meeting, shall establish the returns of the election of deputies or make a decision of record to carry out the second round of elections of deputies. The Central Election Committee shall establish the returns of the election of deputies where one of the parties (blocs) has received, based on the results of voting, a number of votes which under the provisions of paragraphs 6–10 of this article is sufficient for such party (bloc) to gain 226 or more deputy seats. Where no party (bloc) has received enough vote to gain 226 deputy seats there shall be held the second round of elections of deputies in compliance with the procedure and the features established by this law.”

7. To supplement the Law with article 95-2 reading as follows:

“Article 95-2. Special features of a second round of elections of deputies

1. The second round of elections shall be held on the second Sunday after the results of the first round have been established in compliance with the requirements of this Law. A notice of the date of repeated voting shall be published in the Holos Ukrainy or the Uriadovy Kurier and made public through other mass media.

2. The ballot for voting in the second round of elections shall include the two parties (blocs) which on the voting day in the first round of elections received the greatest number of votes.

3. The voting, the counting of votes and the establishment of the result of voting where the second round of elections is held shall respect the procedure established under articles 75–95 of this Law.

4. Based on the reports of the territorial election committees on the results of repeated voting within the respective election districts, the Central Election Committee shall at its session, not later than on the tenth day from the date of the second round of elections, establish

the results of the second round of elections of People's Deputies of Ukraine and make a record thereof, including in it such data as are provided by the first paragraph of article 95-1 of this Law.

5. If as a result of voting in the second round of elections both running parties (blocs) gain the same number of votes, 226 seats shall be had by the party (bloc) which gained more votes as a result of the first round of elections.

6. The result of the second round of elections shall be the identification of a party (bloc) which shall have the majority from the constitutional structure of the Verkhovna Rada of Ukraine, two hundred and twenty six deputy seats. The remainder of deputy seats shall be distributed proportionally between the party (bloc) which has come the second in the second round of elections and other elected parties (blocs), proceeding from the results of the first round of elections to the Verkhovna Rada of Ukraine.

7. When distributing the deputy seats between the party (bloc) which has come second place in the second round of elections and other parties (blocs), the Central Election Committee shall apply the principles of distribution of deputy seats specified in paragraphs 6–10 of article 95-1 of this Law, however, the party (bloc) which as a result of the second round of elections has gained more votes and received 226 seats shall not take part in such distribution. The quota shall be calculated by dividing the total of the popular vote established under paragraph 7 of article 95-1 of this Law (however, the popular vote given to the party (the bloc) which as a result of the second round of voting has gained 226 deputy seats shall be disregarded for the purposes of calculating such quota) by the number of deputy seats shall be 224 (the difference between the constitutional structure of the Verkhovna Rada of Ukraine and number of the seats received by party (the bloc) which has won in the second round of voting)."

8. To revise article 96 as follows:

"Article 96. Establishment returns of election of deputies

1. The result of the election of deputies is the identifying, in the order of precedence, those persons in the tickets of parties (blocs) who have been elected deputies from such parties (blocs), in accordance with the number of deputy seats gained by the tickets of parties (blocs).

2. The Central Election Committee shall, at its meeting, establish the returns of election of deputies immediately upon having established the results of the second round of elections of deputies. If, based on results of the first round of elections, one of the parties (blocs) has gained a sufficient number of votes to receive 226 or more deputy seats and there is no need in the second round of voting, the Central Election Committee shall establish the returns of election of deputies without delay.

3. When making a decision on establishing the returns of election of deputies, the Central Election Committee shall, at its meeting, establish the number of deputy seats gained by the parties (block) running in the elections and determine in accordance with the requirements of paragraph 11 of this article the persons elected as deputies. The Central Election Committee shall execute a record of the results of election of deputies in which, in addition to the data provided under subparagraphs 1.1–1.26 of article 95-1 of this Law, it shall indicate:

1) the total of votes cast for the candidates to deputies included in the tickets of parties (blocs) which have gained three or more percent of the popular vote;

2) the quota by which the deputy seats have been distributed (depending on the round of voting);

3) number of deputy seats gained by each party (bloc) running in the elections;

4) full name, year of birth, occupation, position (employment), place of employment, place of residence, and party affiliation of every elected deputy.

Where a second round of elections is held, the report on the returns of election of deputies shall also include the data of the report on the second round of elections.

4. A report of the Central Election Committee on the returns of election of deputies shall be made in duplicate. A report shall be signed by the Chairperson, vice-chairpersons, the secretary and other members of the Central Election Committee who are present at the meeting of the Central Election Committee, and certified by the seal of the Central Election Committee. The report shall bear the date and time (in hours and minutes) of its being signed by the members of the Central Election Committee. Every member of the Central Election Committee who is present at the meeting shall be required to sign the report on the returns of election of deputies. In the event that a member of the Central Election Committee disagrees with the established returns of elections recorded in the report of the Central Election Committee, he shall sign such report with the note 'Dissenting opinion'. A written statement of such dissenting opinion shall be attached to the report on the returns of election of deputies. Where the signature of a member of the Central Election Committee is missing in the report, a note shall be made therein, opposite his surname, indicating the reason for which such member of the Central Election Committee is absent at its meeting. Candidates for deputies, representatives of parties (blocs) in the Central Election Committee, authorised persons of the parties (blocs) for the nationwide election district who were present at the establishment of returns of elections of People's Deputies of Ukraine shall have the right to sign the first copy of the report. The contents of such shall be promptly published at the official web site of the Central Election Committee.

5. The Central Election Committee must establish the returns of an election of deputies irrespective of the number of polling districts in which the vote has been nullified."

9. To revise article 102-4 as follows:

"Article 102-4. Special features of nomination and registration of candidates to deputies in off-year elections of deputies

1. Nomination of candidates to deputies shall begin on the next day after publication of a Decree of the President of Ukraine on early termination of powers of the Verkhovna Rada of Ukraine and end thirty days before the day of elections.

2. The Central Election Committee shall be notified of an electoral bloc having been formed not later than one day before the day of the inter-party congress (meeting, conference) for nomination of candidates to deputies.

3. Any documents for registration of candidates to deputies shall be delivered to the Central Election Committee for not later than twenty-seven days before the day of elections. The Central Election Committee shall make a decision as respects registration of candidates not later than on the second day from the date of receiving the application for registration of candidates to deputies, the documents being attached thereto. In case of refusal to register any candidate to a deputy in view of improper execution of documents presented for registration a repeated delivery of corrected documents under paragraph 3 of article 62 of this Law shall be made not later than twenty-four days before the day of elections.

4. Registration of candidates to deputies shall end twenty days before the day of elections.

5. The dimensions and number of photographs of persons included in the ticket of a party (bloc) shall be determined by the Central Election Committee not later than on the third day

after publication of the Decree of the President of Ukraine on early termination of powers of the Verkhovna Rada of Ukraine.

6. In the event of an off-year election of deputies the declaration on property and incomes of candidates for the purposes of their registration shall not be subject to delivery to the Central Election Committee.”

10. In paragraph 11 of article 102-6, to replace the words ‘twenty-five’ with the word ‘eighteen’.

II. This Law shall come into effect on the date of its publication.

Signed: Chairperson of the Verkhovna Rada of Ukraine