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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

CODE OF GOOD PRACTICE FOR POLITICAL PARTIES
PRELIMINARY NOTE ON THE ELABORATION OF THE CODE

by

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**This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

Mandate

1. On 12 March 2007, the Parliamentary Assembly of the Council of Europe approved a Resolution on The code of good practice on political parties that invited the Venice Commission to elaborate this code following the elements outlined in the Resolution.
2. The explicit *aim of this code*, as stated in the Resolution, is to reinforce parties' internal democracy and increasing their credibility in the eyes of citizens, thus contributing to greater participation in political life (10). Furthermore, the Code should promote concepts and strategies which enhance and strengthens the role, status and relevance of political parties in a democratic system (9).
3. The Parliamentary Assembly considered that *good practices* should promote the principles of equality, dialogue, co-operation, transparency and fight against corruption (10).
4. This note considers to issues: how to proceed in drafting the code and the preliminary list of issues which should be included.

How to draft the Code?

5. **Contents.** Both the Resolution and the Note from the secretariat contain catalogues of issues to be addressed. The approaches are slightly different: whilst the Resolution emphasises good practices (i.e. positive guidelines) the Note identifies a number of problems of particular significance. Both approaches can be combined: whilst the topics listed by the Resolution provide a clear identification of issues, the problems identified by the secretariat signal to problems that deserve special attention and for which good practices may provide remedies.
6. **Sources.** The Resolution of the Parliamentary Assembly refers to the *experience* of political parties in Council of Europe and drawn from *existing good practices*. What are the concrete and precise sources to draw out these? The author of the explanatory memorandum, Mr. Van den Brande, explicitly excluded the legal and administrative framework as the object (subject) of his report arguing that these were "external factors". This was justified because the aim was to identify principles and guidelines which, irrespective of external conditions (i.e. legislation) could be recommended directly to political parties. There are a number of reasons, though, that advice to re-consider this approach when drafting the code. Firstly, the location of practices may vary greatly between countries: some may include principles (say, gender equality) as a law provision whilst in other case may permeate parties' statutes. Secondly, sources and addressees are two different issues: whilst it seems clear that the code of good practices should be directed to political parties, it is unclear why good practices can not be drawn out of legislation. Thus, both reasons do advice to consider legislation along with party statutes. Additional sources are firstly the PA Resolutions (i.e. Recommendation 1438 (2000) and Resolution 1344 (2003) on the threat posed to democracy by extremist parties and movements in Europe; Resolution 1308 (2002) on the restrictions on political parties in the Council of Europe member states', Recommendation 1516 (2001) on the financing of political parties, and Resolution 1264 (2001), Resolution 1320 (2003) and Recommendation 1595 (2003) on a code of good practices in electoral matters) and the guidelines issued by the Venice Commission on the issue (the Guidelines on legislation on political parties (2006), the Guidelines for financing political parties (2000), the Guidelines on prohibition and dissolution of political parties and analogous measures (1999) and a code of good practice in electoral matters (2002), plus other international instruments and declarations. Finally, the Code might draw valuable information from the Reports of certain international organizations and foundations. In particular, International IDEA (International Institute for Democracy and Electoral Assistance) has recently published a report on *Political Parties in Central and Eastern Europe In Search of Consolidation*, 2007 which could provide valuable insights and information. (See, additionally,

its older and more particular report on *Code of Conduct for Political Parties: Campaigning in Democratic Elections*, 1999)

7. **Territorial scope.** The resolution of the Parliamentary Assembly of the Council of Europe refers to practice in states that are members of the Council of Europe. However, the issue of political parties has been more problematic in other contexts such as Latin America. That means that there are studies and recommendations drawn out of these contexts (see for instance, the study *Regulación jurídica de los partidos políticos en América Latina. Lectura regional comparada*), which could be examined for the benefit of a better quality of the Guidelines of the Code.

8. **Model of recommendation.** Practices are anchored in a given national tradition and institutional ensemble. Hence, recommendations should be constructed in a continuum that goes from signalling practices that may be *against international legal standards*, to *permissible practices, common situations* and *best practices*. Within this continuum, a given national legislation and/or practice can be placed and, at the same time, a prospective path is also provided.

9. **Practical difficulties.** A very obvious one is the capability to consider all the empirical evidence required for the study. Even if only two parties for each member of the Council of Europe are selected, this would mean a very large sample. This may exceed the human and material resources currently allocated for drafting the code. This issue should be carefully perused.

10. **Structure of the Code:**¹

1. General principles for practices on political parties
 - a. Respect for basic constitutional principles (rule of law and democracy) sanctioned in international and comparative legal standards
 - b. Democracy
 - c. Equality
 - d. Receptiveness, accountability and responsibility
 - e. Transparency and openness (+ inclusiveness?)
2. Legal regulation
 - a. Levels (state or international), scope, self-regulation
 - b. Registration
 - c. Prohibition
 - d. Funding
3. Internal organization and functioning
 - a. Membership (and its restrictions)
 - b. Gender
 - c. Minorities
 - d. Young people
 - e. Elderly
 - f. Internal democratic mechanism (selection of organs and candidates)
 - g. Internal structure (recommendation of local level and connection with society)
 - h. Disciplinary measures, transfiguration
 - i. Use of public office by party members
4. Political functions
 - a. Elections
 - b. Role as opposition

¹ This tentative table attempts to integrate both the Resolution and the suggestions in the note from the VC Secretariat.

- c. External and institutional accountability to civil society (not saying lies for instance)
 - d. Education function
 - e. Media and information
5. Other issues