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CDL-EL-PV(2017)003
Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**60th MEETING
OF THE COUNCIL FOR DEMOCRATIC
ELECTIONS**

Venice, 7 December 2017 at 10.00 a.m.

MEETING REPORT

1. Adoption of the agenda

The Council adopted the agenda as it appears in document CDL-EL-OJ(2017)003ann.

Following the discussion at the previous meeting on the difficulties of some members in accessing the documents of the Council for Democratic Elections, Lord Balfe welcomed the way in which the secretariat had in the meantime settled this matter.

2. Report on constituency delineation and seat allocation

During its 57th meeting (December 2016), the Council decided to launch a study on the allocation of seats to constituencies and equal voting power in general with a focus on the issue of gerrymandering.

A draft report ([CDL\(2017\)033](#)) on constituency delineation and seat allocation had been drawn up on the basis of comments by Mr Barrett, Ms Cleveland, Ms Karakamisheva-Jovanovska, Mr Kask as well as Lord Richard Balfe and Ms Leontine Loeber (experts). It was submitted to the Council with a view to its adoption.

Ms Karakamisheva introduced the report, which was focused on national elections and did not include guidelines. The report insisted on the importance of proper constituency delineation and seat allocation for equal suffrage. Equal voting power (one person – one vote) might be ensured by allocating seats on the basis of the population, the number of resident nationals, the number of registered voters and the number of people actually voting. The report addressed the issue of malapportionment, which meant constituency delineation and/or seat allocation going against the principle of equality, through active or passive electoral geometry as well as through gerrymandering. Ensuring equal voting power implied substantial guarantees (representativeness, representation of minorities, equality of opportunity) as well as procedural ones (transparency, delineation by an independent and impartial boundary authority). The report also addressed the types of constituencies: nationwide, possibly combined with smaller ones (including one-member constituencies); multi-member constituencies generally corresponding to sub-national entities or administrative units; one-member constituencies; specific constituencies, e.g. for minorities or citizens abroad, for example. After enumerating the main international sources in the field, it dealt with possible exceptions and restrictions to equal voting power: exceptions referred to elections to which the principle of equal voting power did not apply, typically those of upper chambers; restrictions could result from the mathematical impossibility to ensure perfect proportionality, but also from the allocation of a minimal number of seats to each constituency, or from electoral geometry, in which case they were excessive. National legislation defined the possible departure from the norm, which should in principle not exceed 10% according to the Code of Good Practice in Electoral Matters (the Code). Gerrymandering – partisan or bi-partisan -, in its turn, went against equality of opportunity. Reallocation or redrawing were necessary to avoid (passive) electoral geometry. While most countries provided for reallocation and it was encouraged by the Code, redrawing was the only solution if single-member constituencies were used. The competent body for reallocation or redrawing could be for example a Central Electoral Commission or another electoral management body, Parliament, the Head of State, but, further to the intervention of an independent and impartial boundary commission in case of redrawing, an appeal to a judicial body should be possible in all cases. The report underlined that electoral geometry (including gerrymandering) was a challenge to equal suffrage and therefore to democracy.

Ms Loeber drew attention to a number of points, in particular the fact that there were no common standards on procedure, that practice varied between States and that there was a close link between the delimitation of constituencies and the electoral system.

Several amendments were proposed and accepted on specific points, in particular regarding citizens voting abroad.

The Council adopted the report on Constituency Delineation and Seat Allocation ([CDL-AD\(2017\)034](#)).

3. Guidelines on political party regulation

The Council discussed the first draft of the revised guidelines ([CDL-EL\(2017\)003](#)). As with the first edition ([CDL-AD\(2010\)024](#)), this second version was prepared by the OSCE/ODIHR Core Group of Experts on Political Parties, in consultation with the Venice Commission, notably with Mr Alivizatos, Mr Eşanu, Mr Vermeulen, as well as Mr Pieter van Dijk (Venice Commission expert), and with GRECO.

Mr Walecki pointed out that the guidelines, in the first version of 2011, proved to be an important reference document and a real guide for other publications on this subject. That said, the guidelines have been conceived as a document that needs to evolve constantly, and new developments, as well as references to new international standards and the recent case law of the European Court of Human Rights, needed to be incorporated. This work was currently underway, the draft submitted to the Council already presents many new elements, and it was planned to finalise this process in the coming months.

The discussion revealed the need to further develop certain parts of the document, including those dealing with the misuse of administrative resources and the dissolution of political parties. Mr Vermeulen also mentioned his proposals to present the different models of democracy, the liberal model and the so-called egalitarian model (both having the same legitimacy), and the impact that different approaches can have on the legislation of the different States. These proposals had already been incorporated into the introduction of the guidelines, but they still need to be reflected more clearly in the body of the document. Also, the distinction between binding international standards (hard law), soft law and mere guidelines needs to be clarified.

It is planned to prepare an amended version of the draft by next March and to submit the revised draft to the Council and Plenary for adoption, in principle at the June 2018 session. Council members are invited to submit further comments on the current draft until 17 January 2018.

4. Study on Referendums – questionnaire

Following the decision taken by the Scientific Council to launch a study on the dangers of referendum abuse, the Council discussed the first draft questionnaire prepared by Mr Alivizatos during its last meeting ([CDL\(2017\)022](#)).

A working group met in the margins of the October session and, on the basis of its work, Mr Alivizatos prepared a revised draft questionnaire, which was submitted to the Council for adoption ([CDL\(2017\)022rev](#)).

Mr Kask suggested adopting the questionnaire during the December 2017 session so that it could be sent out before the end of the year. He recalled that the purpose of the questionnaire was to focus on the practice and not to ask questions about the legal framework of a referendum.

Several members made proposals for amendments, including the binding or advisory nature of the referendum and the role of the authorities in the formulation of the question.

Mr Chahbazian informed the Council that the Parliamentary Assembly is also working on the question of referendum and it would co-operate with the Venice Commission. In particular, they would like to invite Mr Alivizatos to speak at the next meeting of the Committee on Political Affairs and Democracy.

Mrs Zikmund indicated that the Congress is working on the issue of the recall referendum of mayors and asked for a Venice Commission report on the matter.

The Council adopted the Questionnaire on Referendums ([CDL\(2017\)022rev2](#)).

5. Armenia – draft law on referendums

Following a request from Mr Davit Harutyunyan, Minister of Justice, Armenia, the Council was invited to examine, with a view to its adoption, the joint draft opinion of the Venice Commission and the OSCE/ODIHR ([CDL\(2017\)034](#)) on the draft constitutional law on referendums in Armenia ([CDL-REF\(2017\)049](#)), drawn up on the basis of comments by Mr Endziņš, Ms Khabrieva, Mr Maiani and Mr Vilanova Trias as well as Mr Vashchanka, OSCE/ODIHR expert.

Mr Lappin introduced the draft joint opinion by the Venice Commission and OSCE/ODIHR on the draft constitutional law of Armenia on referendums. The draft law intended to give effect to provisions of the revised Constitution on referendums through a constitutional law needing the approval of 3/5 of parliamentarians. The Constitution provided for various cases of referendums: mandatory constitutional, optional constitutional, optional on draft laws proposed by people's initiatives and mandatory on belonging to supranational organisations. The opinion very much welcomed steps taken by the authorities to adopt a law in conformity with the Constitution and international standards, which addressed issues specific to referendums such as collection of signatures, as well as non-specific ones such as voting, counting and summarisation of results. However, the process of drafting the law so far did not involve inclusive discussions and meaningful engagement with all stakeholders, which were a key to a successful reform, and a number of key recommendations had still to be addressed. They related to the need to clearly address the unity of content of the referendum proposal and the requirement for the question put to referendum to be clear and not misleading; to clarify and further develop the provisions on complaints and appeals; that authorities provide objective information about the proposals put to referendum; to provide for the submission of a draft popular initiative for the Constitutional Court's review prior to the collection of additional signatures; to entitle the Constitutional Court to provide a nuanced ruling on the constitutionality of each proposed amendment, and to allow for the valid provisions of a popular initiative to be submitted to the people's vote without a new collection of signatures; to clearly regulate the collection of a referendum initiative support signatures and their verification. Further recommendations included expressly providing for the duty of neutrality of administrative authorities, in order to prevent the misuse of administrative resources; addressing recommendations made on the electoral code in previous opinions; adopting legislation on local referendums. In short, the draft was a welcome step to regulate this issue, and the co-operation with the Armenian authorities had been excellent.

The Council adopted the Joint Opinion of the Venice Commission and OSCE/ODIHR on the draft constitutional law of Armenia on referendums ([CDL-AD\(2017\)029](#)).

6. Republic of Moldova – Legal framework governing the funding of political parties

Following a request from Mr Cesar Dorin Preda, Chair of the Monitoring Committee of the Parliamentary Assembly, the Council was invited to examine, with a view to its adoption, the draft joint opinion by the Venice Commission and the OSCE/ODIHR ([CDL\(2017\)032](#)) on the legal framework of the Republic of Moldova governing the financing of political parties and electoral campaigns ([CDL-REF\(2017\)044](#) and [045](#); see also [CDL-REF\(2017\)020](#)), drawn up on the basis of comments by Mr Dimitrov, Mr Frenco as well as Mr Pieter van Dijk (Venice Commission expert), Mr Fernando Casal Bertóia and Mr Richard Katz (members of the OSCE/ODIHR Core Group of Experts on Political Parties), Ms Tatyana Hilscher-Bogushevich and Ms Alice Thomas (OSCE/ODIHR experts) and Mr Alvis Vilks (GRECO expert).

Mr Dimitrov introduced the opinion which had been requested by the Monitoring Committee of PACE. The opinion had been prepared jointly with the OSCE/ODIHR and with the involvement of a GRECO expert. Mr Dimitrov explained that the opinion followed up on the 2013 joint opinion on draft legislation of the Republic of Moldova pertaining to the financing of political parties and electoral campaigns and – as far as recent amendments to the campaign finance provisions are concerned – on the 2017 joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament).

Mr Dimitrov stressed that a number of amendments introduced to the Law on Political Parties, the Electoral Code and other relevant laws during 2015-2017 had clearly improved the legal framework. That said, while some previous recommendations of the Venice Commission and the OSCE/ODIHR had been taken into account, there remained several unaddressed recommendations and several concerns had been raised following the above-mentioned reforms. Overall, the lack of comprehensive monitoring and insufficient enforcement of the rules seemed to be the main concerns, which were addressed by two key recommendations. Moreover, the regulations on donations needed to be amended, in particular so as to further reduce donation ceilings and to permit private contributions by citizens of Moldova from their revenues obtained outside of the country. Mr Dimitrov pointed out that the current absolute prohibition of such contributions restricted the rights of the large number of Moldovan citizens working and/or living abroad.

The Council adopted the Joint opinion on the Legal framework of the Republic of Moldova governing the funding of political parties and electoral campaigns ([CDL-AD\(2017\)027](#)).

7. Communication by the Secretariat

The following activities took place between the 59th and 60th meetings of the Council for Democratic Elections:

- participation in an expert meeting on two new draft election-related publications: “Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities” and “Guidelines on the Role of Public Security Providers in Elections” (OSCE/ODIHR, Warsaw, 19-20 June 2017);
- legal assistance to the Parliamentary Assembly delegation observing the parliamentary elections in Albania (25 June 2017);
- participation in the 2017 Annual Conference of the International Public Law Society (ICON-S) - “Courts, Power, Public Law” (Copenhagen, 6 July 2017), with an intervention on “New Trends in Electoral Matters: The Role of Courts and the Venice Commission”;
- assistance to the Kyrgyz Republic in the electoral field including in particular:

- An activity on political parties and more precisely on electoral campaigns and electoral dispute resolution (Bishkek, 27-30 June 2017);
- Two training sessions in view of the Presidential Elections on 15 October – (1) for journalists, on media monitoring; (2) for Judges of the Supreme Court and the Bishkek Inter-District Court on electoral disputes resolution (Issyk-Kul, 30 July-5 August 2017);
- participation in a Conference on “support to Elections in the Western Balkans” (Warsaw, 8 September 2017);
- training workshop on electoral disputes in Georgia (Batumi, 22-24 September 2017);
- training workshop on electoral disputes in the Republic of Moldova (Chişinău, 19-20 October 2017);
- participation in the 2nd International Joint Conference on electronic voting - Conference E-VOTE-ID (Bregenz, 26-27 October 2017); Mr Lappin indicated that this conference was part of a project, mainly financed by the European Union and for the moment was at the technical expertise stage but should then lead to joint Venice Commission and OSCE/ODIHR opinions in all countries concerned; Ms Zikmund noted the Congress’ interest in participating in this project, especially in Bosnia and Herzegovina;
- participation in a post-electoral Conference entitled "The 2017 elections in Albania - Lessons learned and steps ahead: Legislation, Administration, Education" (Tirana, 2 November 2017);
- participation in the annual meeting of the OSCE/ODIHR Core Group of Experts on Political Parties (Warsaw, 2-3 November 2017);
- participation in the 26th annual ACEEEO Conference “Conscious voters in the digital age” (Sofia, 9-10 November 2017);
- organisation, in co-operation with the Parliamentary Assembly, of a Regional Conference on “Misuse of Administrative Resources during Electoral Processes: a major challenge for Democratic Elections” aimed in particular at EU Eastern Partnership States (London, 9-10 November 2017); Mr Chahbazian said that the event, organised with the British Parliament had brought together experts from the Venice Commission, the OSCE/ODIHR and members of the Parliamentary Assembly of the Council of Europe; the general conclusions will be prepared and the Committee on Legal Affairs and Human Rights will consider the possibility of adopting a recommendation;
- seminar on electoral disputes in Ukraine (Kyiv, 28-29 November 2017);
- Seminar on “politics and money: democracy v. corruption”, organised by the National Electoral Institute of Mexico (Mexico City, 5-6 December 2017).

8. Future activities

The Venice Commission will participate in:

- 12th Implementation Meeting of the Declaration of Principles for International Election Observation, organised by the Organization of American States (Washington DC, 13-15 December 2017);
- Conference on financing of political parties in Moldova: lessons learned in the Eastern Partnership (Chişinău, 14-15 December 2017);
- International Conference on the Role of Administrative Courts in Settling Electoral Disputes, organised by the Arab Union of Administrative Judiciary (Cairo, 8-9 January 2018).

At the request of the Congress of Local and Regional Authorities of the Council of Europe, the Venice Commission will prepare an opinion on recall referendum of Mayors.

Ms Otalora said that there would be extremely complex elections in Mexico next year. Various activities are planned; a meeting of the sub-committee on Latin America could be held and a study on elections and social networks could be launched.

9. Co-operation with the OSCE/ODIHR

An exchange of views took place with the representatives of the OSCE/ODIHR on the possibilities of future co-operation. Mr Lappin welcomed the excellent co-operation with the Venice Commission, which was continuing to intensify, and he informed the Council about on-going and future electoral activities of the OSCE/ODIHR. He mentioned the new, large-scale project supported by European Union funds aimed at supporting the Western Balkans in electoral matters, as well as two new handbooks on Observing and Promoting the Electoral Participation of Persons with Disabilities and the Guidelines on the Role of Public Security Providers in Elections and finally the co-operation in 2018 on a number of election observation missions and joint legal opinions. Ms Gebhard thanked the Venice Commission for the work done on the guidelines on the regulation of political parties.

10. Date of the next meeting

The Council fixed the date of its next meeting for Thursday 15 March 2018 at 10.00 am.

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)*

Mr Srdjan DARMANOVIC (apologised/excused)
Mr Aivars ENDZINS
Mr Oliver KASK (Chair/Président)
Ms Janine OTÁLORA MALASSIS

Substitute Members of the CDE / Membres suppléants du CED

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

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

Mr Philip DIMITROV
Ms Tanja KARAKAMISHEVA-JOVANOVSKA

Secretariat / Secrétariat

Mr Thomas MARKERT
Ms Simona GRANATA-MENGHINI
Mr Pierre GARRONE
Mr Michael JANSSEN

Experts

Mr Pieter van DIJK
Mr Alberto GUEVARA CASTRO
Ms Leontine LOEBER

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
Ms Josette DURRIEU, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie (apologised/excused)
Mr Jordi XUCLÀ, 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 (apologised/excused)

Substitute members / Membres suppléants

Ms Eka BESELIA, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme (apologised/excused)
Mr Corneliu Mugurel COZMANZIUC, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie
Mr Tiny KOX, Monitoring Commission/ Commission de suivi (apologised/excused)

Secretariat / Secrétariat

Mr Chemavon CHAHBAZIAN

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

Members / Membres

Mr Jos WIENEN, Chamber of Local Authorities/*Chambre des pouvoirs locaux*

Mr Stewart DICKSON, Chamber of Regions/*Chambre des régions*

Substitute members / Membres suppléants

Ms Dusica DAVIDOVIC, Chamber of Local Authorities/*Chambre des pouvoirs locaux*
(apologised/excused)

Secretariat / Secrétariat

Ms Renate ZIKMUND

**DIRECTORATE GENERAL OF DEMOCRACY / DIRECTION GENERALE DE LA
DEMOCRATIE (DGII)**

(apologised/excused)

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 (BDDH)

Ms Julia GEBHARD, Legal Officer

Mr Richard LAPPIN, Election advisor

Mr Marcin WALECKI, Head of the Democratization Department

EUROPEAN UNION / UNION EUROPEENNE

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

(apologised/excused)

European Parliament / Parlement européen

(apologised/excused)

**INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE
(INTERNATIONAL IDEA)**

(apologised/excused)

INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)

Ms Beata MARTIN-ROZUMILOWICZ, Director for Europe and Eurasia (apologised/excused)