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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT GUIDELINES
FOR AN INTERNATIONALLY RECOGNISED STATUS
OF ELECTION OBSERVERS**

on the basis of comments by
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**This document has been classified restricted on 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.*

Introduction

1. *Following the Report on an internationally recognised status of election observers¹ adopted by the Venice Commission at the request of the Parliamentary Assembly of the Council of Europe, the need for recommendations leading to an internationally recognised status of election observers appeared beneficial.*

2. *For achieving this purpose and in order to get a global vision of election observation within the Council of Europe member states, in addition to an overview of domestic legislation dealing with provisions on election observation, election observation missions' reports of the Parliamentary Assembly of the Council of Europe as well as similar reports from OSCE/ODIHR have been scrutinised in the present document.²*

3. *Before going into substance, a distinction should be made between assessment and observation made by the election observers. By observing, the election observers monitor the electoral process and collect information on the given elements of the electoral process on the spot, upon which assessments regarding the electoral process can be made; such assessment will be made generally in the final exhaustive election observation mission reports.*

4. *On the basis of the Report on an internationally recognised status of election observers³ and of the Summary of recommendations on an internationally recognised status of election observers,⁴ the Venice Commission has elaborated in the present document guidelines for an internationally recognised status of election observers.*

5. *The present Guidelines pay careful attention to the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers.⁵ In order not to duplicate guidelines vis-à-vis the existing Declaration of Principles for International Election Observation, the present Guidelines aim at promoting an internationally recognised status of election observers both for international and domestic election observers, for whose rights and duties should be as similar as possible, whereas the Declaration of Principles covers the rights and duties of international election observers.*

6. *There is no existing international instrument guaranteeing similar rights and duties for domestic election observers, which is inter alia the purpose of the present Guidelines. These Guidelines imply careful implementation in domestic legislation.*

¹ Report on an internationally recognised status of election observers, on the basis of comments by Mr Valeriy Musin (Substitute Member, Russian Federation), Mr Owen Masters (Expert, United Kingdom), Mr Olivier Pohler (Expert, France) and Mr Ángel Sanchez Navarro (Member, Spain), adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009, CDL-AD(2009)020rev, [www.venice.coe.int/docs/2009/CDL-AD\(2009\)020rev-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)020rev-e.asp)).

² For OSCE/ODIHR reports, see www.osce.org/odihr-elections/14207.html. For Council of Europe Parliamentary Assembly reports, see www.assembly.coe.int.

³ See footnote no. 1; CDL-AD(2009)020rev.

⁴ Summary of recommendations on an internationally recognised status of election observers, on the basis of comments by Mr Valeriy Musin (Substitute Member, Russian Federation), Mr Owen Masters (Expert, United Kingdom), Mr Olivier Pohler (Expert, France) and Mr Ángel Sanchez Navarro (Member, Spain), adopted by the Council for Democratic Elections at its 29th meeting and the Venice Commission at its 79th plenary session (Venice, 11-13 June 2009, CDL-AD(2009)026, [www.venice.coe.int/docs/2009/CDL-AD\(2009\)026-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)026-e.asp)).

⁵ Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers and Pledge to accompany the Code of Conduct for International Observers, prepared by the United Nations Electoral Assistance Division (UNEAD), the National Democratic Institute for International Affairs (NDI) and the Carter Center (TCC), endorsed by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005, CDL-AD(2005)036, [www.venice.coe.int/docs/2005/CDL-AD\(2005\)036-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)036-e.asp)).

7. Furthermore, these Guidelines do not deal with the fundamental rights, for example the right to participate in public affairs, the freedom of association, the right to access to information, the freedom of expression, of speech, of movement and any other election-related right as enshrined in the international human rights treaties and other international instruments. However, these fundamental rights do apply to election observation organisations.

8. The present document has been adopted by the Council for Democratic Elections at its ... meeting (Venice, ...) and by the Venice Commission at its ... plenary session..

I. The need for Venice Commission Guidelines for an internationally recognised status of election observers

9. Any attempt to formulate an internationally recognised status of election observers should depart from the fact that a specific status responds to a specific position. The specificity of election observers has to be found in the activity they implement, which is that of observation, excluding all active participation in the process which is reserved to the members of the various political bodies, at local, regional and national levels. Therefore, the fulfilment of their duties as observers justifies the recognition of specific rights, and their status should be based on stated duties and rights.

10. As general framework, the main terms of the election observation mission should be established in a memorandum of understanding or a similar reference document agreed between governmental and electoral authorities. This document should provide guidance for an internationally recognised status for election observers and subsequently state the main objectives and means devoted to election observation missions; and, in particular, the rights and duties of the election observers. Such an international document should make it easier a unified status for election observers to be accepted by those countries participating in the Convention for the Protection of Human Rights and Fundamental Freedoms and hopefully also beyond Europe.

11. Both rights and duties of election observers, as well as relevant commitments of hosting countries, should be established in order to guarantee that election observation missions perform their activities.

12. Both international and domestic election observers should have common principles, rights as well as duties, in spite of specific norms in domestic electoral legislation (i.e. specific provisions such as official invitations, accreditation, etc.) and of the fact that international election observers are foreigners towards the hosting country; from their side, domestic election observers should enjoy the rights of citizens to participate in public affairs.

13. In recalling the existing international texts and standards dealing with rights and duties of election observers as well as in giving an overview of domestic electoral legislation stipulating or not provisions related to rights and duties of election observers, the Report on an internationally recognised status of election observers⁶ underlines disparities in international and domestic legislations and soft-law. The Report therefore expresses a need for an internationally recognised status of election observers. The Venice Commission therefore

⁶ See the Report on an internationally recognised status of election observers (footnote no. 1, CDL-AD(2009)020rev), part I., summarising the international texts and standards related to the rights and duties of the election observers. These include:

- The Declaration of Principles for International Election Observation as established by the United Nations on 27 October 2005 (This refers only to international observation) (CDL-AD(2005)036);
- the Copenhagen Document, 1990, OSCE;
- the Convention of Standards of Democratic Elections, Electoral Rights and Freedoms in the member states of the Commonwealth of Independent States, 7 October 2002 (CDL-EL(2006)031);
- the Code of Good Practice in Electoral Matters, Venice Commission (CDL-AD(2002)023rev).

recommends drawing guidelines on such an internationally recognised status. For this purpose, it suggests the following directions, hereinafter.

14. As far as possible, domestic election observers should be granted the same freedoms and rights as those proposed for international election observers.

15. A status for an internationally recognised status of election observers would be more effective if all countries participating in the Convention for the Protection of Human Rights and Fundamental Freedoms, were to adopt an internationally agreed status, and include such status in domestic legislation.

16. The key guidelines resulting from international and national law and practice, as well as from reports and opinions such as those quoted in the first part of the present document, could be used for the drafting of general guidelines on the status of election observers. A first set of possible guidelines is developed below.

17. The following point will include non-exhaustive guidelines on election observation, covering the areas of election observation assessment (**A.**) and the rights and duties (**B.**) of both international and domestic election observers.

II. Guidelines on election observation

18. Election observers should be given the widest possible opportunity to participate in an election observation process. Furthermore, international election observation missions should be given the opportunity to identify and cooperate as appropriate with credible national non-partisan election observation organisations. An important aspect of international election observation should be to evaluate and report on whether national election observation organisations are able to conduct their activities, without undue interference or restrictions.

19. Observation of an election is not just about what happens on polling day but should ascertain whether any irregularities occurred before and after election day. Observation of the whole electoral process is the only way to ensure that the election has been conducted in accordance with the law and that the election has been organised in a democratic and transparent manner. Election observers must be in a position to note if laws, actions of the state and/or electoral officials unduly obstruct the exercise of election-related rights, which are guaranteed by law, the constitution or applicable international human rights instruments. Therefore, the quality of the legislative framework is crucial and has to be assessed as well as, if needed, relevance for amendments and new regulations.

20. The role of the election observers should not be limited to the election day nor to the electoral process *stricto sensu*. On the contrary, an election observation mission, including experts and long and short-term observers, should be able to cover areas of assessment corresponding to the whole electoral process.⁷ Election observation can be then divided into three phases: the pre-election phase, the election-day phase and the post-election phase.

A. Election observation: areas of assessment

Pre-election phase

21. The process of election observation should begin with the drafting of the electoral law. This can be undertaken through consultation, and not necessarily through in-person observation.

⁷ These areas are developed *inter alia* on the basis of the Handbook for European Union Election Observation (page 24); available at: http://ec.europa.eu/geninfo/query/search_en.html.

22. Pre-election day observation should also be undertaken in many other areas of the election process, ensuring that there is an equality of opportunity for all parties and candidates, and should be guaranteed by law.⁸

23. The pre-election phase covers the following areas of assessment:

- i) political context;
- ii) legal framework (including electoral system and delimitation of constituencies);
- iii) election administration;
- iv) registration of the voters and the maintenance of the voters list;
- v) registration of the political parties and candidates;
- vi) funding of electoral campaigns;
- vii) electoral campaign activities;
- viii) conduct of the media both state and private;
- ix) freedom of expression for all candidates and parties;
- x) human rights (including participation of women and minorities);
- xi) role of civil society.

Election phase

24. Election day observation is the highpoint of the electoral process.

25. The election phase covers therefore the voting process, including special means of voting (electronic, postal, proxy, mobile voting...).

Post-election phase

26. After election day, there are a number of processes which take place to verify and endorse candidates and political parties/entities/coalitions who have been elected. These processes should be guaranteed by law and implemented into practice.

27. The post-election phase covers the following areas of assessment:

- i) counting process;
- ii) tabulation process;
- iii) transmission and publication of results;
- iv) complaints and appeals procedures;
- v) instalment in office of elected officials.

28. Regarding the complaints and appeals procedures, it is not unusual following an election to observe the process of complaints, or disputes, and appeals. It is necessary in all countries, for there to be an effective system of appeal, if it is felt there was a failure to comply with the electoral law. Therefore, opportunity should be given by states, for international and domestic election observation organisations to observe this part of the electoral process and this should be guaranteed by law.

B. Guidelines for international and domestic election observers

1. The rights of international and domestic election observers

29. As a rule, international and domestic election observers should enjoy all the fundamental rights considered as basic conditions for the holding of democratic elections:

⁸ For more substantial elements regarding *inter alia* the election day phase, see the OSCE Handbook for Long-Term Election Observers ("LTOs"). For more information: www.osce.org/odihr/item_11_24088.html.

i) The widest possible opportunity should be given for both national and international election observers to participate in an election observation mission.

ii) Invitations for international and domestic election observation organisations should be issued far enough in advance of election day to allow for full observation to take place.

iii) Election observers must have to be extensively accredited, i.e. with wide geographical (observation areas, premises) and chronological (covering all the phases of the electoral process) criteria. In particular, their official accreditation should require freedom of access to all official and electoral premises, including those open to the public (in particular, polling stations), to being able to observe the election throughout a country, as well as to all documents upon request, to implement their guaranteed functions. Moreover, such accreditation should prevent them from any pressure, disturbance, threat or reprisal caused by official authorities, who should be responsible for any arbitrary measure taken against any of the accredited election observers. Therefore, guarantees should be given that no governmental, security, or electoral authority will interfere in the selection of members of the international as well as national election observation mission, or attempt to limit their numbers. Moreover, guarantees should be given to prevent national authorities from refusing accreditation based on the nationality of observers. Additionally, accreditations should be delivered in a short time-limit and in any case before election day; in case of refusal of accreditation, right to an effective system of appeal should be given to domestic observers.

iv) Access should be facilitated for observation of elections below the national level.

v) There should be freedom of movement throughout a country for all observers.

vi) Reasons should be provided for areas within a country not available for election observation (e.g. security situation) and more widely restrictions on the abilities of election observers to do their work should be provided by law in an objective and reasonable manner.

vii) Election observers should be guaranteed access and observation to all stages of the electoral process and to attend any public activity as part of their observation mission. Consequently, election observation should not be confined only to election day itself but may include the various stages of the electoral process, such as: registration of voters, registration of candidates, campaign and media coverage, election day and the voting process, counting process and appeals and complaints process. Such observation should include as well certification, audits and tests for electronic voting, postal voting and other technologies used in the election.

viii) Observation of the whole electoral process⁹ should be possible when it takes place out of the election premises. According to the Code of good practice in electoral matters, "the places where observers are not entitled to be present should be clearly specified by law"¹⁰ in conformity with the principle of proportionality.

This rule should find a logical limit related to the meetings of high bodies (such as Central Electoral Commissions, Courts or, even, the Constitutional Courts), whose decisions on electoral claims must be publicly founded on legal grounds, and usually are subject to appeal.

⁹ As referred under point No. iii.

¹⁰ CDL-AD(2002)023rev, II., 3.2, c.

ix) Election observers should have unimpeded access to all persons concerned with the electoral process, and to all parties and candidates, including any disqualified candidates or parties that have withdrawn from the election. Similarly, election observers should therefore be free to contact political parties, coalitions, candidates, voters, citizens, any individual as well as the officials and members composing the electoral bodies. More widely, they should be able to get in touch and interview any person in electoral premises (*inter alia* members of polling commissions and voters), provided they are willing to participate in such contact.

x) Election observers should have access, as appropriate, to the results of complaints and claims regarding breaches of the law during the election.

xi) An international or national observation mission should be guaranteed the freedom to issue without interference, public statements and reports, in respect of its findings and recommendations, concerning election-related processes and developments. Election observers should have the right to express freely to the Mission Head – through forms, notes and other technical means – their professionally accurate and politically impartial opinion about the development of the electoral process. This has to be done with full respect to the voters' rights and particularly to the principle of secrecy of the vote.

xii) Election observation missions should have the right to (carefully, respectfully and privately) make suggestions or comments to the authorities in charge of the electoral operations, in case they observe any irregularity which should be rectified.

xiii) Election observers should have the right to make and obtain copies of electoral documents (for instance, protocols on voting results).

xiv) Guarantees should be provided that no governmental authority will pressure, threaten action against, or take any reprisal against any national or foreign citizen who works for, or provides information to an international or national election observation mission.

30. All these rights should be exercised with the maximum discretion, without causing any disruption or disturbance in the electoral operations. Some other rights which are sometimes considered (such as the right to familiarise with electoral documents) are inherent to the electoral process, and should possibly not be considered only as "rights" of whatever election observers but also as "duties" of the organisations (partisan or not, national or international) which intend to form an election observation team. This duty may, of course, count on the authorities' aid in the terms fixed by the laws.

2. The duties of international and domestic election observers

31. Election observers must respect the laws of the (host) country and the authority of those in charge of the electoral process. The status of election observer implies a strict respect of the legal framework of the country holding elections, and of the principle of impartiality and non-interference. This respect qualifies an election observer as such: he/she (independently of being a national citizen or a foreigner) is not an active participant in the process who may interfere in it, but just someone who observes it (as it really is, as it really works) in order to give a (technically or politically) qualified opinion about its features and its respect of different (technical or political) standards. Therefore, the election observers as well as the teams of observers as a whole:

i) should always carry their identification documents;

ii) should never obstruct the developing of the election process, in any of its elements; they must not interfere in the electoral process;

iii) should make their reports (and, if it is the case, their suggestions), and draw their conclusions with entire freedom, most professional accuracy and strict respect to impartiality (this requirement is more devoted to the election observation mission as a whole);

iv) should behave at any moment, even in their leisure time, in a sound and blameless manner, helping to enhance the mission of the whole team;

v) must maintain a respectful attitude towards electoral officials, and other national authorities. Election observers should follow any lawful instruction from the host country's security and electoral authorities;

vi) must base conclusions on factual and verifiable evidence, and not draw conclusions prematurely;

vii) should be free from any conflicts of interest.

ix) Finally, international and domestic non-partisan election observers should never exhibit any personal bias or preference related to issues which may have political or electoral implications. Similarly, international election observers should abstain from doing any political, partisan activity. Domestic observers should not necessarily be constrained by the same requirements of non-partisanship, since party agents have an accepted role to play in the electoral process.

32. Therefore, if an election observer does not respect these principles (even when he or she is acting anonymously, in his/her leisure time), he/she may lose his/her accreditation, and could be deprived of his/her capacity. Nevertheless, the principle of proportionality has to be respected and such a sanction should not be abused by the authorities.