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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 considering the existing disparities in rights and duties of election observers in international and domestic legislation as well as in soft-law.*

2. *In order to achieve this purpose and to obtain a global vision of election observations within the Council of Europe member states, in addition to an overview of domestic legislation that deals 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 the substance, a distinction should be drawn between assessments and observations made by election observers. During observations, 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 assessments will be made by the election observation missions as a whole in the 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 Venice Commission recommends careful implementation of the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers.⁵ In order not to duplicate guidelines with respect to 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*

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 (Substitute 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)).

The Report recalls the existing international texts and standards dealing with rights and duties of election observers (it also provides an overview of domestic electoral legislation). 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 on 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).

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 (Substitute 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)).

election observers, whose rights and duties should be as similar as possible, whereas the Declaration of Principles covers the rights and duties of international election observers, combining for this purpose existing standards or best practice.

6. *Moreover, there is no existing international instrument guaranteeing similar rights and duties for domestic election observers. These Guidelines require careful implementation into domestic legislation.*⁶

7. *Furthermore, these Guidelines do not deal with fundamental rights such as the right to participate in public affairs, freedom of association, the right to access to information, 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 and to the observers composing their missions.*

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

I. General remarks

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 and assessment. Apart specific mention, the expression “domestic observers” shall include both party and non-partisan observers.

10. Both international and domestic election observers should be granted the same freedoms and rights. They should have common principles, rights as well as duties, since such rights and duties are not always sufficiently ensured in existing domestic electoral legislation.⁷

11. 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 co-operate as appropriate with credible national non-partisan election observation organisations. Duty of international election observation should be *inter alia* to evaluate and report on whether national election observation organisations are able to conduct their activities, without undue interference or restrictions. Assessment *vis-à-vis* domestic legislation as well as international standards and best practices should be core criteria in the assessment of the conduct of an electoral process.

12. Observation of an election should ascertain whether any irregularities occurred before and after election day as well as on election day itself. This is the only way to ensure that the election has been conducted in accordance with domestic legislation and international rules and standards for democratic elections and has been organised in a democratic and transparent manner. Election observers must be in a position to note if laws or actions of the state and/or electoral officials unduly obstruct the exercise of election-related rights⁸ which are guaranteed by law, the constitution or applicable international human rights instruments. The quality of the legislative framework is therefore crucial and has to be assessed as required for amendments and new regulations.

⁶ Additionally, domestic legislation should not avoid the principles concerning specifically the international observers as developed by the Declaration of Principles for International Election Observation (for more details concerning the Declaration, see the previous footnote).

⁷ I.e. specific provisions on official invitations, accreditation, etc.

⁸ In this regard, see para. 7 of the present document.

13. It is therefore important that 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.⁹ Election observation can then be divided into three phases: (1) the pre-election phase, (2) the election-day phase and (3) the post-election phase.

14. In order to guarantee the rights of observers and to avoid ambiguity in this respect, specific reference to international and domestic observers should be introduced in domestic electoral legislation.

II. Election observation: areas of assessment

1. Pre-election phase

15. Observers should be allowed to assess the process of drafting/amending the electoral law. This can be done through consultation, and not necessarily through in-person observation.

16. Pre-election day observation should also be undertaken in many other areas of the election process, ensuring that there is an equality of opportunity¹⁰ for all parties and candidates, and such right to observation should be guaranteed by law.¹¹

17. 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 political parties and candidates;
- vi) funding of electoral campaigns;
- vii) electoral campaign activities;
- viii) adjudication of pre-election complaints
- ix) both state and private media monitoring;
- x) freedom of expression and more widely all fundamental freedoms necessary to hold democratic elections;
- xi) human rights (including participation of women and minorities);
- xii) role of civil society.

2. Election phase

18. The election day observation is the highpoint of the electoral process.

19. The election phase covers the voting process, including the opening and the closing processes.

The election phase should cover as well voting of any special groups (military, prisons, institutions as well as people with disabilities). The election phase should cover as well special means such as electronic, postal, proxy, mobile, early voting.

⁹ 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.

¹⁰ See the Code of Good Practice in Electoral Matters of the Venice Commission (CDL-AD(2002)023rev), I. 2.3.

¹¹ For more substantial elements regarding *inter alia* the election day phase, see the OSCE/ODIHR Handbook for Long-Term Election Observers ("LTOs"). For more information: www.osce.org/odihr/item_11_24088.html.

3. Post-election phase

20. 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 implemented, as guaranteed by law.

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

- i) counting process;
- ii) tabulation process;
- iii) transmission and publication of the preliminary results;
- iv) complaints and appeals procedures;¹²
- v) publication of the final results;
- vi) taking up office of elected officials.

III. Guidelines for international and domestic election observers

The states are invited to carefully implement the following Guidelines into their domestic legislation.

1. Rights of international and domestic election observers

1.1 International and domestic election observers should enjoy all the fundamental rights considered as basic conditions for the holding of democratic elections.

1.2 Invitation

International election observation organisations should be invited far enough in advance of election day to ensure timely preparations and allow for long-term observation of the various election phases.

1.3 Elections to be covered

Observation of elections should be possible at any level (i.e. at national, regional and local levels) both for international and national election observers.

1.4 Accreditation

- i. 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 missions, or attempt to limit the scope and duration of election observation missions as well as the number of observers.
- ii. Moreover, guarantees should be given that would prevent national authorities from refusing accreditation based on discriminatory criteria (in particular political opinion of the observer or refusal based on the nationality of international observers).
- iii. Additionally, the accreditation procedures should be simple and free of charge for observers.
- iv. Accreditations should be delivered to both international and national election observers in a timely manner and within a short time-limit after application and in any case before election day

¹² 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 (as recommended by the Code of Good Practice in Electoral Matters, II. 3.3), 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.

- v. In case of refusal of accreditation, the right to an effective system of appeal should be provided to domestic observers.
- vi. Election observers must be fully accredited, with wide criteria covering geographical, and chronological aspects as well as electoral material:
 - i) wide geographical accreditation: freedom of movement throughout the country (except in areas where security does not permit) and freedom of access to all official premises connected with the electoral process, including those open to the public (in particular, polling stations), to observe the election throughout a country without the need for prior notice to the authorities;¹³
 - ii) wide chronological accreditation, covering all the phases of the electoral process, including the possibility to visit any polling stations at any time;¹⁴
 - iii) regarding material, access to necessary documents upon request.

1.5 Phases of the electoral process to be observed

- i. Election Observation of the whole electoral process should be made possible, i.e. the pre-election, election and post-elections phases.¹⁵
- ii. 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”¹⁶ in conformity with the principle of proportionality.
- iii. Election observation should even be made possible when it takes place in other places than the election premises, such as courts, district or regional election commissions or the Central Election Commission.
- iv. Election observers should be able to attend any public activity as part of their observation mission.

1.6 Relationships with the domestic electoral stakeholders

- i. Election observers should have unimpeded access to all persons concerned with the electoral process, and to all parties and candidates, including any candidates or parties that have been disqualified or have withdrawn from the election.
- ii. Election observers should be free to contact political parties, coalitions, candidates, voters, citizens, representatives of the media, any individual as well as the officials and members composing the electoral bodies.
- iii. They should be able to contact and interview any person in the electoral premises (*inter alia* members of polling commissions), provided they are willing to participate in such contact.¹⁷

¹³ Reasons should be provided for areas within a country not available for election observation (e.g. security situation) and more wide restrictions on the abilities of election observers to do their work should be provided by law in an objective and reasonable manner.

¹⁴ As developed in Part II. of the present document.

¹⁵ As developed in Part II. of the present Guidelines. Such observation should also include certification, audits and tests for electronic voting, postal voting and other technologies used in the election as well as an appropriate access to the results of complaints and claims regarding breaches of the law during the election.

¹⁶ CDL-AD(2002)023rev, II., 3.2, c.

¹⁷ Nevertheless, the polling staff should be obliged to cooperate with the observers (provided that the observers do not disturb the process), as ensured in the Code of Conduct for International Observers, part of the Declaration of Principles (for more details on the Declaration, see footnote no. 5).

1.7 Reporting

- i. 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.
- ii. Election observation missions should also have the right to hold press conferences on their work as well as to make public the findings and the assessment of a particular election.
- iii. Election observers should have the right to express freely to the Mission Head – through forms, notes and other technical means – their 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.
- iv. Election observation missions should have the right to make suggestions or comments to the authorities in charge of the electoral process, in case they observe any irregularity, which should be rectified.
- v. Election observers should have the right to make and obtain copies of electoral documents.¹⁸
- vi. Guarantees should be provided that no governmental authority will pressure, threaten action, or take any reprisal against any national or foreign citizen who works for, or provides information to an international or national election observation mission.

2. Duties of international and domestic election observers

- 2.1 Election observers should always carry their identification and accreditation documents with them.
- 2.2 Election observers should comply with all national laws and regulations of the country where they observe.
- 2.3 Election observers should never obstruct the conduct of the election process, in any of its elements; they must not interfere in the electoral process and must be politically impartial.
- 2.4 International election observers should never exhibit any personal bias or preference related to issues which may have political or electoral implications and should abstain from doing any political, partisan activity. They should be free from any conflicts of interest and should uphold the principles of strict impartiality at all times in not expressing preference for any participant or party.¹⁹
- 2.5 Election observers as individuals must avoid any comments in mass-media and should decline requests for interviews.
- 2.6 Election observers must present a respectful attitude towards electoral officials, other national authorities and all other participants in the process.
- 2.7 Election observers should behave at all times, including in their leisure time, in a professional and irreproachable manner.

¹⁸ Such as protocols on voting results.

¹⁹ Nevertheless, 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.

2.8 The status of election observer implies a strict respect for the legal framework of the country holding the elections, and the principle of impartiality and non-interference.

2.9 Election observers must base their reports and conclusions on factual and verifiable evidence, with professional accuracy and strict respect to impartiality.

22. Therefore, if an election observer does not respect these principles (even when he or she is acting anonymously, in his or her leisure time), he or she could be deprived of his or her accreditation. Nevertheless, the principle of proportionality must be respected when such a decision is taken.