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Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COM MISSION)

**DRAFT OPINION ON PARLIAMENTARY ASSEMBLY
RECOMMENDATION 1898(2010)
“THRESHOLDS AND OTHER FEATURES OF ELECTORAL SYSTEMS
WHICH HAVE AN IMPACT ON REPRESENTATIVITY OF
PARLIAMENTS IN COUNCIL OF EUROPE MEMBER STATES”**

Prepared by the Secretariat

**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 laid down in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

Introduction

1. This document is a response by the Venice Commission to the request made by the Committee of Ministers at its 1077th meeting (24 February 2010), regarding Parliamentary Assembly [Recommendation 1898\(2010\)](#), entitled “Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states”.

2. *This opinion was adopted by the Council for Democratic Elections at its ... meeting (Venice, ...) and by the Commission at its ... plenary session (Venice, ...).*

3. The Venice Commission cannot but support the aim of ensuring that the Council of Europe area becomes the world’s largest “free and fair election zone”, in compliance with democratic standards (paragraph 3 of the Recommendation). These standards are set out in the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), which will be further referred to below.

On thresholds

4. The Venice Commission has already considered the question of thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states in two documents:

- The comparative report on thresholds and other features of electoral systems which bar parties from access to parliament, adopted by the Council for Democratic Elections at its 26th meeting (Venice, 18 October 2008) and by the Venice Commission at its 77th plenary session (Venice, 12-13 December 2008) (CDL-AD(2008)037).
- *The draft report on restrictions on access to parliament and thresholds, adopted by the Council for Democratic Elections at its ... meeting (Venice, ...) and by the Venice Commission at its ... plenary session (Venice, ..., ...) (CDL-EL(2010)001).*

5. Both these documents were forwarded to the Parliamentary Assembly of the Council of Europe prior to the debate on document 12107, which resulted in the adoption of Recommendation 1898 (2010).

6. In a third stage, the Commission could draw up European standards in this field.

On electoral questions in general

7. The Venice Commission has drawn up key standards in the electoral field.

8. The Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), adopted by the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities, was the subject of a solemn declaration by the Committee of Ministers on 13 May 2004. In that declaration, the Committee of Ministers acknowledged:

“the importance of the Code of Good Practice in Electoral Matters, which reflects the principles of Europe’s electoral heritage, as a reference document for the Council of Europe in this area, and as a basis for possible further development of the legal framework of democratic elections in European countries”;

and called on:

“governments, parliaments and other relevant authorities in the member states to take account of the Code of Good Practice in Electoral Matters, to have regard to it, within their democratic national traditions, when drawing up and implementing electoral legislation and to make sustained efforts to disseminate it more widely in the relevant circles.”

9. The Code of Good Practice in Electoral Matters may be regarded as the Council of Europe reference document in this field and is regularly cited by the European Court of Human Rights. It is the most complete European text in the field of electoral standards.

10. The Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev) contains a consolidated version of the principles governing the electoral process (see paragraph 4.2 of the Recommendation). In particular, it deals with electoral commissions (CDL-AD(2002)023rev, II.3.1, see paragraph 4.1.1 of the Recommendation); voting procedures (see CDL-AD(2002)023rev, I.3.2, and paragraph 4.1.6); election observation (CDL-AD(2002)023rev, II.3.2, see paragraph 4.1.7 of the Recommendation). The question of electoral thresholds and comparable measures (paragraph 4.1.2 of the Recommendation) has already been mentioned above.

11. The Venice Commission addressed the question of the international status of election observers in the Guidelines on an internationally recognised status of election observers adopted by the Council for Democratic Elections at its 31st meeting (Venice, 10 December 2009) and by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009) (CDL-AD(2009)059). The Parliamentary Assembly, the Congress of Local and Regional Authorities and the Venice Commission have endorsed the Declaration of principles for international election observation and the Code of conduct for international election observers drawn up by the United Nations Electoral Assistance Division (UNEAD), the National Democratic Institute for International Affairs (NDI), and the Carter Centre (TCC) (CDL-AD(2005)036).

12. Furthermore, the Venice Commission has studied the question of the impact of electoral systems on women's representation in politics (CDL-AD(2009)029).

13. The Commission has also adopted guidelines on the financing of political parties (CDL-INF(2001)008; cf. paragraph 4.1.5 of the Recommendation).

14. Accordingly, it appears to the Commission that the majority of the issues referred to in the Recommendation have already been covered by guidelines which it has drawn up or endorsed, in co-operation, where appropriate, with other organisations. The representatives of the Parliamentary Assembly have been closely involved in the drafting of all the texts submitted to the Council for Democratic Elections.

15. The Venice Commission is at the disposal of the Committee of Ministers should it request the drafting of other standards in this field.