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Or. Fr.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**MEASURES TO IMPROVE  
THE DEMOCRATIC CHARACTER OF ELECTIONS  
IN COUNCIL OF EUROPE MEMBER STATES**

**MEMORANDUM**

**drawn up by the Secretariat**

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

## I. Introduction

1. This document is a follow-up to the report on “measures to improve the democratic nature of elections in Council of Europe member states” (CDL-AD(2012)005), adopted by the Council for Democratic Elections at its 40<sup>th</sup> meeting and the Venice Commission at its 90<sup>th</sup> session (March 2012). Its aim is to identify more precisely, on the basis of the conclusions of that report, the type of general activities which the Commission could carry out in the electoral field in the future.

2. The reference document for the Venice Commission, and indeed the Council of Europe, for defining the “European Electoral Heritage” is the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev). In addition, the Commission has looked in greater detail at a number of election-related topics. It will be noted that studies and reports have been undertaken on the following major issues: the election process, electoral systems, voting rights, gender issues, national minorities, referendums, political parties and election observation and evaluation.

3. The report cited above (CDL-AD(2012)005) identified the following topics which are currently being addressed or which could be further developed (paragraph 18 et seq):

- the use of administrative resources;
- the limitation of parliamentary terms of office (limiting the duration of terms of office and concurrent offices);
- state neutrality and administration in the electoral process;
- the independence of electoral commissions, the logical follow-on from the previous point;
- the question of the rules applying to the media, both public and private, in ordinary times and particularly during election campaigns;
- the question of election campaign funding, and especially the rules applying to funding from legal entities (limitation, publication, prohibition);
- the effectiveness of appeals in electoral matters and the guarantees they offer;
- the methods adopted by political parties in the selection process of candidates presented for election on a particular party's ticket;
- representation of women in parliaments;
- representation of minorities in parliaments.

4. It should, however, be noted that work has already been or is currently being carried out on these topics. Nevertheless, there are a number of avenues to explore for taking this work further. These will be discussed below, and accordingly, we shall be revisiting the various topics identified in the report referred to above.

5. It should also be noted that a conference will be held in Tirana on 2 and 3 July 2012, under the Albanian Chairmanship of the Committee of Ministers of the Council of Europe, on “The European electoral heritage: ten years of the Code of Good Practice in Electoral Matters”. This will afford the opportunity to look in greater depth at some of the issues identified in document CDL-AD(2012)005.

## II. Election-relation themes which will or could be addressed by the Venice Commission in the future

6. The issues of the use of administrative resources and limitation of parliamentary terms of office, which are the subject of studies currently in progress, are mentioned here simply for the record. In addition, the Congress of Local and Regional Authorities has asked for a study to be carried out on eligibility criteria for local and regional elections. The study

will begin once we have received the documents on national legislation produced by the Congress.

7. As a general document, the consolidated document on “Electoral law and electoral administration in Europe” (CDL-AD(2006)018) covered the Commission’s opinions and studies up to 2006. However, as it is now a little old, it would be useful to have a revised version, given that numerous opinions and studies have been adopted since then, and a number of observation reports have also been written. Accordingly, a report on this topic will be presented to the Tirana conference.

8. There have been no Venice Commission studies or reports on the independence of electoral commissions. However, in November 2004, it organised a seminar on “the organisation of elections by an impartial body” which led to a publication in the *Science and Technique of Democracy* series (No. 41). In addition to looking at national examples, this seminar addressed the issues of transparency and impartiality in connection with the role of the electoral administration bodies during pre-election periods, and electoral disputes. Since then, practice in various member states has repeatedly shown that there are problems regarding the impartiality and independence of the bodies responsible for organising elections. It would therefore be worthwhile for the Commission to look once again at this question in the future, perhaps by focusing on the composition and internal decision-making system of these bodies. A report on this question will be presented at the Tirana conference. Furthermore, and as mentioned in the report cited above (CDL-AD(2012)005), it could be useful to look at the question of state neutrality and the neutrality of the administrative authorities in the electoral process; this refers to the bodies and ministries – other than the electoral commissions themselves – which are generally also involved in the electoral process through the assistance they provide to the electoral administration bodies (logistics, security, budget, etc.).

9. With regard to the question of the rules applying to the media, both public and private, in ordinary times and particularly during election campaigns, in 2009, the Commission produced a report on “media analysis during election observation measures” and, subsequently, guidelines (CDL-AD(2009)031), which focused on three aspects: consistency of the legal framework with international standards in the field of freedom of expression; media regulations during election campaigns; and supervisory bodies. While there are codes of good practice drawn up by other international election observation organisations, good practice applies above all to the public media. It would be interesting to carry out a similar study in relation to private media, looking at ownership of such media by senior political figures and leaders of political groups. Similarly, as mentioned in the report cited above, it would also be interesting to look in greater detail at the audiovisual media, in view of their impact, and to focus thought on the Internet, covering websites, blogs and social networks which now play a part in election campaigns, with or without national legal provisions which regulate them, insofar as the Internet can be regulated. Clearly, freedom of expression must lie at the heart of this reflection, but it is also necessary to look at how to avoid having national regulations excessively limit such freedom by providing for equal opportunities. However, work on the media is multidimensional and must be carried out in co-operation with the departments dealing with this sector.

10. With regard to the question of election campaign funding, in 2001, the Commission wrote a report and guidelines on this issue (CDL-INF(2001)008). In 2006, the Commission published a report on the “prohibition of financial contributions to political parties from foreign sources” (CDL-AD(2006)014). Lastly, and with the aim of assessing the need for such a document, in 2011 the Commission adopted an “Opinion on the need for a code of good practice in the field of funding of electoral campaigns” (CDL-AD(2011)020), concluding that “the adoption of a Code of good practice in the field of funding of electoral campaigns would not add much, compared with existing documents”. Moreover, as already stated, the Commission is currently preparing a comparative study on the use and misuse of administrative resources during election campaigns. However, this does not mean that it would not be worthwhile for the

Commission to look at certain topics relating to this issue, such as the question of capping the funding of campaigns and parties, the transparency of such funding, whether public or private, or the prohibition of funding, for example from legal entities. The report cited above also raises the seldom addressed question of the ratio applied between parties and candidates.

11. The Commission has not issued any reports or undertaken any studies on the effectiveness of appeals in electoral matters and the guarantees they offer, although this issue has been addressed at numerous conferences and seminars. However, certain specific questions could be looked into. Reports by international election observation missions regularly raise the following problems: the criteria for the admissibility of appeals before, during and after elections; the way such appeals are dealt with; and lastly, the implementation of decisions taken on such appeals.

12. The Code of Good Practice in the field of Political Parties already addresses the issue of the methods adopted by political parties in the selection process of candidates presented for election on a particular party's ticket (CDL-AD(2009)021, point II.B.3). Consideration could be given to updating how the principles of Europe's electoral heritage in this field are applied by parties, particularly as regards gender parity and the representation of national minorities (on these two issues, see the following two paragraphs).

13. With regard to the representation of women in parliaments, the Commission produced an interpretation of the Code of Good Practice in Electoral Matters in 2006 ("Women's participation in elections" (CDL-AD(2006)020)) and a report in 2010 ("Impact of Electoral Systems on Women's Representation in Politics" (CDL-AD(2009)029)). Although today, few European countries have legislation which is intrinsically unfavourable to women, they remain nevertheless considerably and unjustifiably under-represented. There is no doubt a need to give thought to new methods and solutions, perhaps by combining mechanisms relating to both electoral systems and the internal functioning of political parties. The fact remains that electors may be reluctant to choose women from among a large number of candidates in a given constituency. There too some thought needs to be given so as to come up with guidelines for member states to raise awareness of this problem among not only the electorate but also the leaders of political parties. Such guidelines should take into account external factors of a socio-economic, cultural and political nature. The question will be addressed at the Tirana conference, under the title "Representation of women in elected bodies".

14. Between 2000 and 2008, the Commission produced three reports relating to the question of the representation of minorities in parliaments ("Electoral law and national minorities" (CDL-INF(2000)004); "Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries" (CDL-AD(2005)009) and "Dual Voting for Persons belonging to National Minorities" (CDL-AD(2008)013)). While there is no absolute rule in this area, an electoral system can encourage the participation of national minorities in politics, as studied by the Commission in 2000. However, this may not be a sufficient criterion, especially if the system is a proportional one in a country in which the minorities are dispersed. Accordingly, thought needs to be given to other additional measures which will help boost the participation of national minorities in public and political life. Affirmative action, as underlined by the Commission in the 2005 report referred to above, also has limited scope. As stated in its 2008 report, the Commission could give further thought to the representation of minorities in view of their situation in Europe. It might be appropriate to adopt legal and practical measures to foster the representation of minorities in view not only of their position in each country, but also of their presence and distribution in Europe. This question will be dealt with at the Tirana conference, under the title "Electoral law and representation of minorities".

### **III. Conclusion**

15. Some of the topics identified in the report adopted in March 2012 by the Council for Democratic Elections and the Venice Commission on “measures to improve the democratic nature of elections in Council of Europe member states” (CDL-AD(2012)005) are currently being studied or will be further developed at the conference to be held in Tirana on 2 and 3 July 2012 on “The European electoral heritage: Ten years of the Code of Good Practice in Electoral Matters”.

16. Other topics, even though they have already been addressed, could be further explored. However, not all the ideas set out above can be taken up, at least at the same time. Priorities will have to be assessed as matters progress, bearing in mind the Commission’s human and financial resources, and the readiness of its members and those of the Council to participate.

17. In addition, more specific guidelines could be drawn up on the basis of the report currently being drafted by the Parliamentary Assembly on “measures to improve the democratic nature of elections in Council of Europe member states”.