



Strasbourg, 17 November 2020

**CDL-EL-PV(2020)002**  
Or. Engl./Fr.

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

**69<sup>th</sup> MEETING**  
**OF THE COUNCIL FOR DEMOCRATIC**  
**ELECTIONS**  
**On-line meeting**  
**7 October 2020 at 2 p.m.**

**MEETING REPORT**

## 1. Adoption of the agenda

The Council adopted its agenda as it appears in the present document CDL-EL-OJ(2020)002ann-rev.

## 2. Revised guidelines on the holding of referendums

Mr Kask informed the Council that a revision of the Code of Good Practice on Referendums had been initiated in 2016, in particular to take into account problematic developments related both to the procedure for launching a referendum and to the substance of the proposed changes. The Venice Commission worked in close co-operation with the Parliamentary Assembly, which adopted a recommendation on [Updating guidelines to ensure fair referendums in Council of Europe member States](#); it also co-operated with the Congress and ODIHR.

The Guidelines were not intended at assessing the suitability of referendums, nor their frequency or subject-matter. Referendums tended to complement representative democracy. The most important changes vis-à-vis the 2007 Code of Good Practice on Referendums concerned *inter alia* the role of an impartial body in the referendum process, including the scrutiny of the clarity of the question; the balanced provision of information and the organisation of the referendum; the role of political parties in the process; the need to adopt legislation with broad consensus after extensive public consultations with all the stakeholders; the possibility for a non-judicial body to decide as a final instance if it ensures sufficient guarantees of independence and impartiality. An approval quorum or a specific majority requirement were acceptable for referendums on matters of fundamental constitutional significance and new guidelines had been developed on the effects of referendums.

A draft explanatory report would be submitted to the Council at one of its next meetings.

Dame Cheryl Gillan, Chairperson of the Committee on Political Affairs and Democracy of the Parliamentary Assembly, Rapporteur on Resolution 2251(2019) [Updating guidelines to ensure fair referendums in Council of Europe member States](#), stated that the revised guidelines were the result of a long-term co-operation between the Venice Commission and the Parliamentary Assembly, specifically the Committee on Political Affairs and Democracy she chaired. She recalled the concerns about the referendum processes and their fairness. The essential elements appearing in the Assembly's resolution were retained by the report: the referendums should be embedded in the process of representative democracy; the principles of clarity of the question and fairness of the campaign, as well as the need for the intervention of an impartial body throughout the process, were taken into account. She also praised the content of the Guidelines on transparency and quotas. She invited the Venice Commission to address the role of citizens' assemblies and other similar mechanisms in its future work. Following the adoption of the revised Code of Good Practice on Referendums, she would initiate a new report for the Assembly to endorse these Guidelines.

Mr Dickson informed the Council that the Congress is preparing a report on local referendums which should go to the monitoring committee in February 2021. This report was intended at adapting recommendations on referendums to the local level. Referendums added opportunities for political decision-making and were complementary to representative democracy. He would share information about the Congress' work with the Council.

**The Council approved the Revised guidelines on the holding of referendums ([CDL-AD\(2020\)031](#)).**

### 3. Revised guidelines on political party regulation

Mr Eşanu explained that the draft guidelines were the result of long and fruitful debates among the rapporteurs and the OSCE group of experts on political parties. They examined the two main different models concerning political party regulations: the *liberal or free market model* which, in general, gives primacy to a large associational freedom of political parties in their internal and external functioning, and the *egalitarian-democratic* model, which is primarily based on principles of internal equality and democracy, and fair competition. The Guidelines did not favour one model over the other, nor were they meant to provide uniform solutions for states. They were intended at identifying key existing international law standards for political party legislation applicable in both models, as well as at providing examples of good practices for states.

The Guidelines were primarily intended at *legislators* tasked with drafting laws that regulate political parties. However, they might also serve other public authorities, such as the judiciary, legal practitioners, human rights defenders etc. concerned with political party regulation. They should not be construed as a justification for undue restrictions on political parties and they do not discourage laws, customs or agreements offering more favourable conditions to political parties.

The draft guidelines underlined three fundamental functions of the political parties: facilitating the co-operation and co-ordination of individuals in the exercise of their fundamental rights of association and expression; furthering the co-operation and co-ordination amongst the holders of public office, both within parliaments and across levels and institutions of government; providing a means to connect the organisations of citizens to the officeholders through the formulation of political programmes between which voters can choose and the nomination and support of candidates in elections.

The draft guidelines developed eleven principles concerning political party regulation: freedom of association of political parties, presumption of lawfulness; duty to respect, protect and facilitate; freedom of expression and opinion; political pluralism; legality and legitimacy of restrictions; necessity and proportionality; effective remedy; equal treatment of political parties; equal treatment by political parties, special measures, internal democracy; good administration; and accountability.

Mr Marcin Walecki, Head of the Democratization Department of ODIHR, recalled that the first version of the guidelines on political party regulation had been published in 2011 and the new edition was dealing with new issues in a complementary manner. The second edition of the guidelines expanded on important issues such as the funding of political parties, in particular by third parties, and participation of women in political party processes.

**The Council approved the revised guidelines on political party regulation ([CDL\(2020\)025](#)).**

### 4. Report on electoral law and electoral administration in Europe

In the absence of objections from members of the Council and the Venice Commission, Mr Kask said that the Council took note of the Report on electoral law and electoral administration in Europe. Minor technical amendments proposed by Mr Carozza, in agreement with the Rapporteurs, would be incorporated in the final version.

**The Council took note of the Report on electoral law and electoral administration in Europe – Synthesis study on recurrent challenges and problematic issues ([CDL-AD\(2020\)023](#)).**

## 5. Principles on the use of digital technologies and elections

Mr Barrett informed the Council that, after the adoption of the [Report on digital technologies and elections](#), it was decided to draft principles addressed to law-makers and major actors in this field, such as powerful internet companies. The broad context was the challenge to democracy. A first draft had been submitted to the Council in June, while the final version should be submitted for approval by the Council and adoption by the Commission in December 2020; this would enable presenting it to the meeting of the Ad Hoc Committee on Artificial Intelligence (CAHAI) on 15-17 December 2020.

Mr Barrett underlined that the main input originated from Mr Vargas; he referred to the document entitled “Cybersecurity for elections – A Commonwealth Guide of Good Practice” and the work developed by the Carter Center. The main amendments to be found in the revised version ([CDL-EL\(2020\)002rev](#)) concerned the scope of the document, removal of third-party content from the internet (the text was harmonised with other Council of Europe documents) as well as the open internet and net neutrality. The final version would also take into account suggestions from IFES relating, in particular, to campaign funding.

Mr Vargas stressed the main focus of the report on campaign issues. Digital technologies had both a positive and a negative impact on democracy. The report was intended to develop a set of principles and addressed, for example, the responsibility of internet providers and the way judges should address the issue in conformity with human rights including freedom of expression. He also stressed the relevance of international co-operation.

## 6. Communication by the Secretariat

The following activities took place between the 68<sup>th</sup> and 69<sup>th</sup> meetings of the Council for Democratic Elections:

- . participation in an online Seminar: “The future of internet voting” (16 June 2020);
- . participation in the Parliamentary Assembly’s online Hearing: “Membership obligations and the conduct of democratic elections in the context of the pandemic COVID-19” (22 June 2020);
- . legal assistance to the Parliamentary Assembly delegation observing the first round of presidential elections in Poland, 28 June 2020;
- . participation in an online Hearing: “Modalities of elections during a pandemic” (Georgian Parliament, 3 July 2020);
- . legal assistance to the Parliamentary Assembly delegation observing the second round of presidential elections in Poland, 12 July 2020;
- . participation in a Videoconference: “Strengthening the electoral legal framework” (Tunisia, 16 July 2020);
- . participation in an online Workshop “Reflections on the recommendations of the report of the European Union Election - Observation Mission for the 2019 presidential and legislative elections” (Tunisia, 16 July 2020);
- . participation in the Conference on e-voting (Romania, 21 July 2020);
- . participation in a Webinar: “Holding elections during a pandemic” (Montenegro, 25 August 2020);

- . participation in an online meeting: "Technical webinar: preparation for elections security" (Georgia, 4 September 2020);
- . participation in the online: "29th ACEEEO Annual Conference, Elections and Communications - The role of Electoral Management Bodies in conducting and facilitating effective communication" (8 September 2020);
- . participation in the 1<sup>st</sup> meeting of the CAHAI (Ad Hoc Committee on Artificial Intelligence) Policy Development Group (PDG) (21-22 September 2020);
- . participation in the 1<sup>st</sup> meeting of the Committee of Experts: Media Environment and Reform (Strasbourg, 23-24 September 2020);
- . participation in the 4th IFES Webinar: "Administering elections in Europe during a pandemic" (24 September 2020).

### **Future activities**

- . co-organisation and participation in a Webinar: "Holding elections during a pandemic" organised in co-operation with the Central Election Commission of the Republic of Moldova, (online, 15 October 2020) ;
- . participation in the 2<sup>nd</sup> meeting of the CAHAI (Ad Hoc Committee on Artificial Intelligence) Policy Development Group (PDG) (15-16 October 2020);
- . co-organisation and participation in a Webinar: "Holding elections during a pandemic" organised in co-operation with the Central Election Commission of Georgia, (online, 20 October 2020) ;
- . Legal assistance to the Parliamentary Assembly delegation observing the parliamentary elections in Georgia, 31 October 2020 (TBC);
- . 17<sup>th</sup> EMB conference, on "Electoral law and electoral administration in Europe – Recurrent challenges and best practices" (online from Strasbourg, 12 and 13 November 2020).

This conference will focus on the following points:

- "Recurrent challenges and problems of electoral law and electoral administration";
- the impact of emergencies on electoral processes, with a particular focus on the COVID-19 crisis.

## **7. Congress of Local and Regional Authorities of the Council of Europe: Local and regional elections in major crisis situations**

Mr Dickson, who presented a report published by the Congress on 28 September 2020 on "Local and regional elections in major crises", recalled that in many countries' elections had been postponed because of the pandemic. The holding of free and fair elections that take place periodically is an essential expression of the political community, however, a temporary postponement may in certain circumstances be a responsible decision. The report builds on the different approaches adopted in Europe and beyond, recently and in past crises, and makes clear that there is a minimum core of fundamental principles of democratic elections that must be respected.

Mr Dickson underlined the tension between the requirement to protect the health and safety of people and the principle of holding regular elections in accordance with international standards,

including those relating to election campaigns and especially public meetings. He recalled the balance that needed to be struck between the authorities' obligation to protect and fundamental freedoms. The report indicates that different voting modalities are possible, such as postal voting, which requires a highly reliable postal service and public confidence in the security of the ballot. Any far-reaching measures to overcome the difficulties must be carefully planned and sufficient funding is needed. A temporary postponement may therefore, in certain circumstances, be the most responsible decision.

Mr Dickson also informed the Council that, due to the health crisis, the election observation mission to Serbia this spring had been cancelled. With this in mind, the report proposed alternative strategies, including the holding of remote meetings with stakeholders and in co-operation with national NGOs and international partners, which could allow for a certain level of observation.

Finally, Mr Dickson stressed the importance of gathering experience and identifying best practices in the face of such a crisis, in particular, through continued co-operation with the Venice Commission.

## **8. Co-operation with OSCE/ODIHR**

The OSCE/ODIHR informed the Council on its current and future activities in the electoral field. Due to the COVID-19 crisis, the format of election observation activities was limited, but such activities took place in Serbia, Poland, Croatia and North Macedonia. They are also planned in Kyrgyzstan, Tajikistan, Ukraine, Georgia, the Republic of Moldova and the United States. The ODIHR Electoral Recommendations Database is now available at <https://paragraph25.odihr.pl>. Amongst the new publications, attention is drawn to the ODIHR report Human Dimension Commitments and State Responses to Covid-19 pandemic with a chapter dedicated to election and election observation.

## **9. Date of the next meeting**

The Council fixed the date of its next meeting for Thursday, 10 December 2020 at 10.00 am (tbc depending on the holding or not of sub-commissions). This meeting will be held online.

**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/excusé)  
Mr Ben VERMEULEN  
Mr Oliver KASK  
Ms Janine OTÁLORA MALASSIS

*Substitute Members of the CDE / Membres suppléants du CED*

Mr Richard BARRETT  
Mr Eirik HOLMØYVIK (apologised/excusé)  
Ms Katherina PABEL  
Mr Pere VILANOVA TRIAS

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

Mr Nicos ALIVIZATOS  
Mr Josep Maria CASTELLA ANDREU  
Mr Nicolae ESANU  
Mr Alberto GUEVARA CASTRO  
Ms Herdis KJERULF THORGEIRSDOTTIR  
Ms Regina KIENER  
Mr Francesco MANIANI  
Mr José Luis VARGAS VALDEZ

*Secretariat / Secrétariat*

Ms Simona GRANATA-MENGHINI  
Mr Schuntz DURR  
Mr Pierre GARRONE  
Ms Tanja GERWIEN  
Mr Serguei KOUZNETSOV  
Mr Gaël MARTIN-MICALLEF  
Mr Ziya TANYAR

*Experts*

**PARLIAMENTARY ASSEMBLY / ASSEMBLEE PARLEMENTAIRE**

*Members / Membres*

Mr Antonio GUTIÉRREZ, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme  
Mr Piero FASSINO, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie  
Mr Tiny KOX, Committee on the Honouring of Obligations and Commitments by member States of the Council of Europe (Monitoring Committee)/ Commission pour le respect des obligations et engagements des Etats membres du Conseil de l'Europe (Commission de suivi)  
(apologised/excusé)

Substitute members / Membres suppléants

Sir Christopher CHOPE, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme (apologised/excusé)

Mr Corneliu Mugurel COZMANZIUC, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie(apologised/excusé)

Mr Aleksander POCIEJ, Committee on the Honouring of Obligations and Commitments by member States of the Council of Europe (Monitoring Committee)/ Commission pour le respect des obligations et engagements des Etats membres du Conseil de l'Europe (Commission de suivi)

Secretariat / Secrétariat

Mr Chemavon CHAHBAZIAN

Expert

Dame Cheryl GILLAN, Chairperson of the Committee on Political Affairs and Democracy

**CONGRESS OF LOCAL AND REGIONAL AUTHORITIES (CLRAE) / CONGRES DES POUVOIRS LOCAUX ET REGIONAUX (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

Mr Vladimir PREBILIC, Chamber of Local Authorities/Chambre des pouvoirs locaux (apologised/excusé)

Ms Rosaleen O'GRADY, Chamber of Regions/Chambre des régions (apologised/excusée)

Secretariat / Secrétariat

Ms Renate ZIKMUND

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

Ms Ana RUSU, Senior Election Adviser

Mr Marcin WALECKI, Head of the Democratization Department

**EUROPEAN UNION / UNION EUROPEENNE**European External Action Service (EEAS) / Service européen pour l'action extérieure (SEAE)

Mr Gianfranco BOCHICCHIO, Policy Officer

European Parliament / Parlement européen**INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (INTERNATIONAL IDEA)**



**INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)**

Ms Beata MARTIN-ROZUMIŁOWICZ, Director for Europe and Eurasia