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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**  
**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**ARMENIA**

**SECOND JOINT OPINION  
ON THE ELECTORAL CODE**

**(AS AMENDED ON 30 JUNE 2016)**

**Endorsed by the Council of Democratic Elections  
at its 56<sup>th</sup> meeting (Venice, 13 October 2016)**

**and by the Venice Commission  
at its 108<sup>th</sup> Plenary Session (Venice, 14-15 October 2016)**

**on the basis of comments by**

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Cadre de coopération programmatique  
pour l'Arménie, l'Azerbaïdjan, la Géorgie, la République de Moldova, l'Ukraine et le Bélarus

Programmatic Cooperation Framework for  
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus

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## I. Introduction

1. Armenia adopted a new constitution by a referendum held on 6 December 2015, and moved from a semi-presidential to a parliamentary regime. A new electoral system as introduced by Article 89 and Article 210 of the new constitution requires the entry into force of a new Electoral Code by 1 June 2016.

2. In February 2016, the Minister of Justice of the Republic of Armenia, Ms. Arpine Hovhannisyan, requested the Council of Europe's European Commission for Democracy through Law (Venice Commission) and the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to provide an assessment on the draft electoral code. The Minister submitted three subsequent versions of the draft code.

3. A first Joint Opinion was prepared with reference to the latest version of the draft code (as of 18 April 2016). In light of the reduced timeframe, it was sent, in preliminary form, to the Armenian authorities and made public on 10 May 2016 (CDL-PI(2016)004).

4. The National Assembly adopted a new Electoral Code on 25 May 2016 (CDL-REF(2016)042) with 102 votes in favour, 17 against and 3 abstentions. In line with the Constitution, the Code entered into force on 1 June 2016.

5. At its 107<sup>th</sup> Plenary Session, on 10-11 June 2016, the Venice Commission endorsed the Joint Opinion with the OSCE/ODIHR on the draft electoral code of Armenia as of 18 April 2016 (CDL-AD(2016)019). This is referred to hereafter as the "first Joint Opinion".

6. At this Plenary Session, the Minister of Justice informed the Venice Commission and the OSCE/ODIHR that additional amendments, including changes that addressed recommendations made in the first Joint Opinion, could be submitted to parliament at an extraordinary session before the end of June 2016. The Minister therefore invited the rapporteurs to hold a working meeting with the Armenian authorities in order to discuss possible additional improvements to the code. The Minister also requested another joint opinion on the final version of the amended Electoral Code, particularly in light of the extent to which these new amendments addressed the recommendations presented in the first Joint Opinion. The Minister asked that this opinion be again transmitted and made public in preliminary form during the month of July. The Venice Commission and OSCE/ODIHR granted this request. The Minister confirmed this request in a letter sent on 2 July 2016.

7. On 15 June 2016, within the framework of the so-called "4+4+4 format negotiations", the ruling Republican and Dashnaktsutyun parliamentary factions and the opposition Armenian National Congress, Prosperous Armenia and Rule of Law factions reached an agreement "on establishing in the new Electoral Code organisational and technical mechanisms for oversight over the lawfulness of the electoral process". The agreement included: 1) a new system of initial electronic citizen and voter registration; 2) the creation of an official commission to monitor the registration process of citizens for identification cards, carry out awareness raising, and organise the video recording and live streaming on the Internet of voting and vote counting at polling stations; 3) the possibility of access to the stamped lists of voters for cross-checks. The agreement was defined as a package and was conditional upon receiving the necessary funding, including from donors. The government committed itself to initiating an extraordinary session of the National Assembly in order to introduce the agreed amendments to the Electoral Code.

8. On 24 June 2016, the working group of the Council of Europe and of the OSCE/ODIHR - composed of for the Venice Commission: Mr Richard Barrett, rapporteur, Mr Thomas Markert, Ms Simona Granata-Menghini, Mr Pierre Garrone and Ms Amaya Ubeda, and for OSCE/ODIHR: Mr Richard Lappin and Mr Alexey Gromov, met with MPs Mher Shalhgelyan (Rule of Law), Mikael Melkumyan (Prosperous Armenia) and Naira Zohrabyan (Prosperous Armenia) to discuss the on-going process of electoral reform. The group further held a working session with Ms Arpine Hovhannisyan, Minister of Justice, Mr Davit Harutyunyan, Minister - Chief of Staff and Mr Vardan Poghosyan, GIZ Team Leader, during which additional amendments to the Electoral Code were discussed.

9. An extraordinary Session of the National Assembly was held on 27-30 June 2016, at which two laws were adopted: the first law (CDL-REF(2016)043) contains the amendments agreed with the opposition; the entry into force of this Law is conditioned on the adoption of a Central Electoral Commission decision before 1 September 2016 on the availability of relevant financial means for the collection of data for issuing identification cards, obtaining technical equipment and relevant software for registration of electors, technical support for electronic repository of the data, and manufacturing of identification cards (Article 11, transitional provisions). The second law (CDL-REF(2016)044) contains the amendments that address some of the recommendations presented by the Venice Commission and OSCE/ODIHR in its first Joint Opinion. The second law entered into force on 30 July 2016 (law HO-119).

10. On 29 August 2016, the CEC issued a statement saying that the conditions for the first law to enter into force had not been met. According to the CEC statement, although the government had secured the funds, no company was available to provide the necessary technical support in the agreed period of time before the next elections. As a result of this statement, the provisions of the first Law were cancelled. The Venice Commission and the OSCE/ODIHR were informed that the Armenian authorities engaged in further negotiations with the opposition and civil society, which led to the signature of a new political agreement on 13 September 2016 by broad consensus. This reflects tangible efforts made by the authorities to engage in an open and transparent dialogue with all electoral stakeholders to build trust in the electoral process.

11. The present Joint Opinion is based on an English translation of the draft electoral code provided by the Armenian authorities on 31 May 2016 and on 1 July 2016. It should be noted that any legal review based on translated laws may be affected by issues of interpretation resulting from translation.

12. The analysis of the new Electoral Code contained in this Joint Opinion is not exhaustive. It confines itself to examining the amendments adopted after the publication of the first Joint Opinion on 10 May 2016 and to assess the compatibility of the amendments with the recommendations it contained.

13. This Joint Opinion should be read in conjunction primarily with the first Joint Opinion (CDL-AD(2016)019), as well as with the following documents and previous joint opinions:

- Previous joint opinions issued by the Venice Commission and OSCE/ODIHR on the Electoral Code of the Republic of Armenia and its amendments.<sup>1</sup>

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<sup>1</sup> The Venice Commission and OSCE/ODIHR have issued 11 opinions on the electoral legislation of Armenia since 2001: Joint Opinion on the draft electoral code of Armenia as of 18 April 2016 (CDL-AD(2016)019); Joint Final Opinion on the Electoral Code of Armenia, CDL-AD(2011)032; Joint Interim Opinion on the new draft electoral code of Armenia, CDL-AD(2011)021; Joint Opinion on the Electoral Code of the Republic of Armenia as amended through December 2007, CDL-AD (2008)023; Joint Opinion on the 26 February 2007 Amendments to the Electoral Code of the Republic of Armenia, CDL-AD(2007)023; Final Joint Opinion on Amendments to the Electoral Code of the Republic of Armenia, CDL-AD(2007)013; Joint Opinion on Draft Amendments to the Electoral Code of the Republic of Armenia, CDL-AD(2006)026; Final Opinion on the Amendments to the Electoral Code of the Republic of Armenia

- OSCE/ODIHR reports on elections observed in the Republic of Armenia.
- PACE reports on elections observed in the Republic of Armenia.
- The Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002), CDL-AD(2002)023rev.
- The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990) and other relevant OSCE commitments.
- Other international and regional documents that are relevant to the Republic of Armenia, including Article 3 Protocol 1 to the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR).

14. This Joint Opinion is provided with the goal of assisting the Armenian authorities, political parties, and civil society in their continued efforts to develop a sound legal framework for democratic elections.

15. The present Joint Opinion was prepared on the basis of contributions of the rapporteurs and experts; it was sent to the Armenian authorities as a preliminary opinion and made public on 19 July 2016 (CDL-PI(2016)008). It was endorsed by the Council for Democratic Elections at its 56<sup>th</sup> meeting (Venice, 13 October 2016) and by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016).

## **II. Executive summary**

16. A successful electoral reform is built on at least the following three elements: 1) clear and comprehensive legislation that meets international standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all the stakeholders; 3) political commitment to fully implement the electoral legislation in good faith.

17. The electoral reform under consideration stemmed from the adoption, in December 2015, of a new constitution shifting the political regime of Armenia from a semi-presidential to a largely parliamentary one. Pursuant to the constitution, the new Electoral Code had to be adopted within a short time period (six months). While the electoral system is totally new, the reform addressed issues, such as the accuracy of voter lists, which had been the object of longstanding OSCE/ODIHR and Venice Commission recommendations. Importantly, the adoption of the new Electoral Code on 25 May 2016 was achieved with a significant majority and was followed by a broad political agreement between the governing and opposition parties on additional measures to enhance the preconditions for democratic elections (local elections will be held in the autumn of 2016 and parliamentary elections in the spring of 2017). Civil society organizations were also constructively involved in the negotiations, although they eventually did not sign the final agreement. The agreement formed the basis for additional amendments to the Electoral Code adopted by the Parliament on 30 June 2016, bringing about, in particular, the use of new technologies for the oversight of the electoral process, on condition that adequate funding is secured. Many of these additional amendments may be seen as measures to increase public confidence in the new electoral system and procedures. This situation shows a welcome constructive attitude on the part of both the majority and the opposition, which may be conducive to the good faith implementation of the new Electoral Code. The Venice Commission and OSCE/ODIHR underscore their support for this spirit of

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(Venice, 21-22 October 2005), CDL-AD(2005)027; Joint Opinion on the Draft Amendments to the Electoral Code of Armenia by the Venice Commission and OSCE/ODIHR, CDL-AD(2004)049; Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia, CDL-AD(2003)021; Joint Assessment of the Amendments to the Electoral Code of the Republic of Armenia, CDL-AD(2002)029.

compromise and their wish for it to continue to prevail as regards the implementation of the Electoral Code and the election of a new Central Electoral Commission in the autumn of 2016.

18. In the first Joint Opinion on the draft electoral code, the Venice Commission and OSCE/ODIHR made three key and several other recommendations. The new Electoral Code as amended on 30 June takes into account a significant number of these recommendations, notably:

- The time-period for the formation of political coalitions after the first round of elections has been doubled, from three to six days from the announcement of the official results in order to avoid a second round, and from two to five days from the decision to hold a second round in order to form a coalition to participate in it;
- Access to the so-called “signed” (in the new Code, “stamped” rather than signed) voter lists has been made possible, in two new ways. First, by using technical equipment to print a statement of the individual voter identification number of those who voted immediately after the end of voting. Proxies, observers and media representatives receive a copy of this statement and may check the individual voter identification numbers against the original signed voter list for a period of thirty minutes (extended from twenty minutes by the amendments of 30 June 2016). If the equipment has not been introduced, proxies may apply to the District Electoral Commission after the elections in order to consult the lists. While the two possibilities are currently alternative, their cumulative application could serve as another welcome confidence-building measure;
- The mandatory test for citizen observers has been removed. The requirement for specific provisions in the charter of the citizen observer organisations to have been in force for at least three years preceding the elections has been reduced to one year, but regrettably not totally removed;
- The requirement for the President to appoint the acting chairperson or a member of the CEC “in consultation with parliamentary factions” has been added, as a means to build consensus on the appointment of election officials;
- The independence of election administration officials has been strengthened by adding an exhaustive list of grounds for the early termination of their mandate;
- Women’s representation has been enhanced by increasing the minimum quotas for each gender on candidate lists from 25 to 30 per cent, and extending quotas for the first part of the list to each integer group of 3 instead of 4. These new quotas will, however, only apply from 2021 onwards;
- The CEC is now obliged to develop and publish training materials for the members of all electoral commissions, specialists, candidates, proxies, observers, and voters;
- The Code also clarified important regulations, in particular, addressing recommendations related to campaign and campaign finance, candidate de-registration processes, and complaints and appeals procedures.

19. The Venice Commission and OSCE/ODIHR had recommended in the first Joint Opinion that a gradual approach to the introduction of new technologies be adopted through pilots over the course of several elections, starting from the upcoming local elections. This would serve as an important measure to enhance confidence in the system and provide opportunities to address technical issues and ensure effective implementation. The Electoral Code now provides for the possibility of pilot tests to be undertaken during the upcoming local elections (Article 144.3). The introduction of new technologies will depend on whether or not adequate

funding including by external donors will be available. If implemented, and as recommended in the first Joint Opinion, it remains important to further address a number of other issues, including harmonising new provisions with data protection laws and standards, ensuring public testing and certification of the equipment, guaranteeing contingency planning, providing sufficient training for electoral staff, and ensuring effective awareness-raising among voters and political parties.

20. The Venice Commission and OSCE/ODIHR had recommended in the first Joint Opinion to reconsider the restrictions on the number of participants in coalitions. The Armenian authorities have stated that they consider that such restrictions are essential in order to comply with the constitutional requirement of “stability”, and have maintained them.

21. Finally, recommendations of lesser importance contained in the first Joint Opinion were not or only partly followed. This includes recommendations related to a general prohibition of the misuse of administrative resources; the transparency of the tabulation process; electoral thresholds applied for political parties and alliances at different levels of elections, as well as those applied for returning electoral deposits; formation of candidate lists for minority representatives; nomination of candidate lists by groups of citizens; the deadlines for submitting the documents for registration of candidate lists in case of early elections; reasonable deadlines for accreditation of observers and media representatives; the scope and timeframe of the Oversight and Audit Service’s activities.

22. The Armenian authorities have explained that for some of these issues, the reason for not complying is to be found in the agreements with the opposition. This is the case in particular for the quotas for national minority representatives. The Venice Commission and OSCE/ODIHR encourage the authorities to revert to these matters in future electoral reforms.

### **III. General comments**

23. It is an established principle that legislation regulating fundamental rights should be adopted openly, following public debate.<sup>2</sup> Any electoral reform process should therefore be subject to open debate at the national level, as public discussion “will enrich the comparative perspective and the analysis of other experiences”,<sup>3</sup> this will also enhance the transparency of the process of developing electoral legislation as well as ensure confidence in the adopted electoral legislation. In the past, the Venice Commission and OSCE/ODIHR have repeatedly underscored the need for public discussion and broad consultations with all electoral stakeholders in respect of electoral reform. The new Electoral Code was adopted by the National Assembly on 25 May 2016 by a significant majority. Subsequently, the governing and opposition parties continued negotiations on additional amendments to the Code and reached an agreement, which led to the adoption of amendments by the National Assembly on 30 June 2016. In addition, the Armenian authorities discussed further proposals to improve the Electoral Code with the Venice Commission and OSCE/ODIHR, which resulted in additional amendments being adopted, also on 30 June 2016.

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<sup>2</sup> Paragraph 5.8 of the 1990 OSCE Copenhagen Document provides that “legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone.” See also, paragraph 18.1 of the 1991 OSCE Moscow Document, as well as, among many others, Joint Opinions of the Venice Commission and OSCE/ODIHR on the draft electoral law of the Kyrgyz Republic, CDL-AD(2014)019; on the draft law amending the electoral legislation of Moldova, CDL-AD(2014)003; on the draft amendments to the laws on election of people’s deputies and on the Central Election Commission and on the draft law on repeat elections of Ukraine, CDL-AD(2013)016.

<sup>3</sup> CDL-AD(2014)003, *Joint Opinion on the draft law amending the electoral legislation of the Republic of Moldova*, para. 12.

24. These developments demonstrate a constructive attitude both on the part of the government and on the part of the opposition, which the Venice Commission and OSCE/ODIHR welcome and encourage. A genuine spirit of co-operation between the political forces in the country is a positive development for the holding of democratic elections and this process of adopting amendments to the Electoral Code is an encouraging step in this regard. The collaborative attitude demonstrated until now by the governing and opposition parties should also prevail as regards the implementation of the Electoral Code and in the future appointment of members to the Central Electoral Commission (CEC), which will take place in autumn 2016.

#### **IV. Analysis and recommendations**

25. The first Joint Opinion on the draft electoral code (CDL-AD(2016)019) contained a number of recommendations. This second Joint Opinion assesses the compatibility of the revised Electoral Code, as adopted on 25 May 2016 (CDL-REF(2016)042) and as amended on 30 June 2016 (CDL-REF(2016)043 and CDL-REF(2016)044), with these recommendations.

##### **A. Formation of coalitions after the first round**

26. In the first Joint Opinion, it had been recommended that the time period for formation of political coalitions after the first round of voting should be extended before a decision on a second round of voting is taken (paras. 30 and 32).

27. The deadline for forming a coalition in order to avoid a second round has been doubled: Article 97.1 of the new Code now provides for a period of six days from the announcement of the official results to form coalitions.

28. Article 98.2 relating to the deadline to form a coalition for the second round has also been amended. It now provides that by 18:00 on the fifth day (and not on the second day as in the draft electoral code) following the adoption of the corresponding CEC decision on holding a second round of elections, any political party (or alliance) which passed the electoral threshold, may form a new coalition with other political parties (or alliances) that passed the threshold, provided that they come to an agreement on their candidate for the Prime Minister.

29. The key recommendation to extend the time period for the formation of coalitions after the first round has therefore been followed, even though the deadline remains rather short to allow for sufficient political negotiations to align divergent political views.

##### **B. Preserving seats won in the preliminary distribution of seats**

30. Paragraph 33 of the first Joint Opinion recommended clarifying Article 95.3(2) of the draft Code, which established that parties not awarded additional seats will preserve their seats from the preliminary distribution. Article 95.3(2) now clearly states that parties not awarded additional mandates and not participating in the second round preserve their seats from the preliminary distribution. This recommendation has therefore been followed.

### **C. Testing of Armenian language for candidates**

31. Para. 49 of the first Joint Opinion recommended that the Code provide that the testing of Armenian language for candidates should be reasonable, objective, verifiable, and subject to effective review.

32. Article 80.3 of the Electoral Code provides that the Ministry of Education and Science must provide for reasonable and objective criteria for testing the command of the Armenian language. The results of the testing may be appealed in court within three days. This recommendation has thus been followed.

### **D. Election administration**

#### **1. Appointment of CEC members**

33. The first Joint Opinion recommended, in paragraph 52, that the President's power be properly weighted and that the President should hold consultations with all parliamentary parties before appointing CEC members. It further recommended that the process to elect CEC members in parliament be inclusive, so that all parties may have trust in the CEC.

34. Article 42 of the new Electoral Code provides that the CEC is composed of seven members, elected by the Parliament with at least three fifths of votes of the total number of deputies, for a term of six years. In its version of 25 May, Article 42.6 stated that, if the chairperson or a member of the CEC is not elected by the Parliament within the prescribed time limit, the President shall appoint the acting chairperson or a member of the CEC, which shall hold the office until the proper election by the Parliament. Article 42.6 has now been amended and reads that the President should appoint the acting chairperson "in consultation with parliamentary factions". The recommendation to hold consultations with all parliamentary parties has therefore been followed.

35. The recommendation concerning the inclusiveness of the process to appoint CEC members still needs to be addressed. The Venice Commission and OSCE/ODIHR encourage both government and opposition to maintain their constructive approach and the spirit of co-operation reached in the discussions on the Electoral Code when appointing new CEC members.

#### **2. Early termination of powers of election commission members**

36. The first Joint Opinion recommended addressing the ambiguity and lack of clarity in the language of Article 45 of the draft Electoral Code, concerning the procedure for early termination of powers of election commission members.

37. The final wording of Article 45 now contains an exhaustive list of grounds for early termination of powers of election commission members and this is a positive step. However, one of the grounds for early termination of powers is a "gross violation of this Code", and further guidance may be advisable to define this term and avoid abuse of this provision. The recommendation has thus been partially followed. It is recommended to further clarify the meaning of a "gross violation" of the Electoral Code.

#### **3. Training of election commission members**

38. The first Joint Opinion recommended that the law specify that the CEC elaborate and publish training materials for all categories of electoral stakeholders, in particular for DEC



members and for voters. In a positive step, the final Code now provides the obligation for the CEC to develop training materials for all electoral stakeholders. Article 51.2(14) of the final Electoral Code mandates the CEC to develop and publish training materials for the members of electoral commissions, specialists, candidates, proxies, observers, and voters. The recommendation has been followed.

#### **E. Access to stamped (signed) voter lists**

39. Concerns regarding the accuracy of voter lists and potential impersonation of voters *de facto* residing abroad have underlain longstanding opposition and civil society calls to publish signed – or stamped – voter lists after election day. Considering the importance of ensuring a balance between data protection and the secrecy of the vote on the one hand and stakeholders' interest in consulting the signed voter lists on the other, the Venice Commission and OSCE/ODIHR recommended in the first Joint Opinion, as a confidence building measure, to allow meaningful consultation of signed (or stamped) voter lists by “candidate proxies and observers under controlled conditions and with a reasonable timeframe. It is also recommended that other measures be adopted, such as initiating independent reviews of the signed lists under confidentiality obligation”. Finally, the Joint Opinion further recommended that “The code should also clearly spell out the right to make complaints about any irregularities discovered during review of signed voter lists and ensure their timely consideration”.

40. Article 68.2(3) of the Electoral Code introduces a procedure for consulting the list of those who voted in the elections. According to this procedure, a statement of information has to be printed immediately after the end of voting, which includes the individual voter identification number of those who voted by means of technical equipment. Proxies who were present at the vote count in the Precinct Electoral Commission (PEC) can receive, upon request, one copy of this statement of information. Moreover, Article 68.2(3) gave 20 minutes in total to proxies to compare data of the statement of information with the list of electors that voted. If the technical equipment cannot print a statement of information with the record number of voters who voted, upon their application to the District Electoral Commission submitted within the prescribed hours, proxies can consult the lists. The stamped lists of voters can be consulted for two hours and may not be photocopied, photographed or video-recorded.

41. According to the latest changes, adopted on 30 June 2016, further amendments have been included to increase the trust in the procedure described above. The copy of the statement of information containing the record of voters that voted, which is given to proxies and observers, as well as media representatives, is signed by the chairperson of the PEC and sealed with the rest of the electoral documents. Moreover, the right to check the stamped voter lists with the statement of information containing the record of voters that voted is extended to 30 minutes and it is given not only to proxies but also to observers and media representatives.

42. These amendments are a welcome improvement, which should satisfy both requirements of meaningful access to the list of those who voted and of data protection. The master copy of the stamped voter list, sealed with the rest of the electoral materials, preserves the right to data protection of voters; at the same time, it is an official document that can be consulted with the rest of the electoral materials in case an irregularity is identified. The extension of the time for consulting the original lists is also a positive step. The key recommendation related to meaningful access to stamped voter lists has therefore been followed.

43. The conditional amendments adopted on 30 June 2016 as a result of the agreement between the governing and opposition parties, which will enter into force only if the relevant financial means are secured before 1 September 2016, introduce in Article 50 the possibility for candidates and their proxies to obtain information from the District Election Commissions on the voters registered by technical equipment, by submitting an application. This additional measure

of verification is a welcome development and may serve to increase confidence in the integrity of the process. As a transitional confidence measure to improve trust in the electoral process, *it is recommended to include this measure in the Code even if the funding is not secured. As a further measure, it is also recommended to ensure the possibility to consult stamped voter lists at a later stage even if it is possible to print the statement of information with the voters' records.*

## **F. Voter identification and registration**

### **1. General remarks**

44. The concerns regarding the accuracy of voter lists, potential impersonation and multiple voting have been recurrent in Armenia. The first Joint Opinion recommended introducing effective and consistent safeguards against multiple voting and impersonation on election day, which should be applied to all voters independently of the document used for voter identification purposes.<sup>4</sup>

45. The amendments of 30 June 2016, which will enter into force only if funding for new technologies is secured before 1 September 2016, introduce important changes to the system of voter registration. According to the amended version of Article 9.1 of the Electoral Code, citizens without an identification card or not registered to receive an identification card, shall not be included in the voter lists, except for the specific cases defined in the Electoral Code. This change has the potential to address long-standing concerns about impersonating voters *de facto* abroad. Should this provision enter into force, care must be taken to avoid disenfranchisement of eligible voters residing in Armenia who have not applied for identification cards.

46. The Electoral Code removes additional safeguards against potential multiple voting such as the stamping of the identification documents of voters and signing the voter lists by voters. As an additional confidence and contingency measure, at least for a transitional period, it is recommended to reintroduce additional safeguards against potential multiple voting, particularly the signing the voter lists by voters.

### **2. Collection of voters' fingerprints**

47. The first Joint Opinion recommended a gradual approach to the introduction of new technologies through pilots over the course of several elections, starting from the upcoming local elections. This would serve as an important measure to enhance confidence in the system and provide opportunities to address technical issues and ensure effective implementation.

48. Article 73.4 of the revised Electoral Code provides that the CEC will obtain information containing voters' fingerprints, by means of special software. The proper implementation of new technologies has to be ensured, including through careful timing and the use of pilots. The authorities assured the rapporteurs that further pilots in subsequent elections would be undertaken. It appears that some steps have been taken to address this key recommendation.

49. If new technologies are introduced, it remains important to further address a number of other issues, including harmonising new provisions with data protection laws and standards,

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<sup>4</sup> According to the Venice Commission Summary Report on voters residing *de facto* abroad, the following measures help avoiding fraud: "identity controls at the polling station, which should not undermine the secrecy of the vote, are made more efficient through the issuance of specific voters' ID documents; the use of biometric measures to identify duplication in records; the adoption of anti-counterfeiting measures for identity documents; the on-line verification of the identity of voters; controlled destruction of identification documents which remain unclaimed by citizens. The use of indelible ink is a good complement to such controls", CDL-AD(2015)040, para. 39; Recommendation 5, OSCE/ODIHR Referendum Expert Team Final Report (2016).

ensuring public testing and certification of the equipment, guaranteeing contingency planning, providing sufficient training for electoral staff, and ensuring effective awareness-raising among voters and political parties, as recommended in the first Joint Opinion,

### **G. De-registration of candidates**

50. The first Joint Opinion drew attention to Article 88.2 of the draft code, which allowed for candidate de-registration for minor campaign finance violations. Article 88.1(5) of the draft code allowed for revocation of the full candidate list by the CEC if the number of candidates in at least one district list fell below three. The first Joint Opinion recommended that de-registration be allowed only as an exceptional measure for the most serious violations of the law.

51. Article 88.2 was amended in the final code and refers to the most serious campaign finance violations included in Articles 19.8, 26.1 and 27.5. Article 88.1(5) was also adjusted and allows for revocation of registration by the CEC if the number of candidates in each of at least five district candidate lists of a party falls below two. This recommendation has therefore been followed.

### **H. Election campaign and campaign finance**

#### **1. Campaign rules**

52. The first Joint Opinion recommended in para. 72 clearer rules on the election campaign established by the Code and the legal acts based on it. The language of Article 19.7 of the final Code was made clearer and Article 21.2 has been adjusted to include a restriction on placement of printed campaign materials on state- and community-owned buildings and general education schools. This recommendation has therefore been addressed.

53. The first Joint Opinion recommended in para. 75 clarifying campaign rules on election day. These provisions are clear in the final Electoral Code. However, the Joint Opinion also specified that campaign finance regulations should cover all campaign-related activities. Article 27.1 of the final Electoral Code still specifies that the Code applies only to specific campaign expenses. The relevant recommendation has therefore still to be followed.

#### **2. Campaign finance rules**

54. The first Joint Opinion further recommended in para. 76 more explicit regulation of anonymous and in-kind donations. Articles 26 and 27 of the final Electoral Code have been changed accordingly and this recommendation has been followed.

55. Concerning the chapter on sanctions, the first Joint Opinion recommended a range of clear and proportionate sanctions for campaign-related offences. The Electoral Code provides for a warning and eventual de-registration, which does not amount to such a range. The formula contained in Article 27.5 on sanctions remains unduly complex, while the amount of excessive campaign spending that triggers revocation of registration has been increased. Therefore, these recommendations have been only partially addressed.

56. The first Joint Opinion recommended in paras. 77 and 78 clarifying the status of the Oversight and Audit Service (OAS). The final Electoral Code states that the OAS shall act independently and not be accountable to electoral commissions. This does not clarify the institutional status of the OAS, so the recommendation may be regarded as partially followed.

57. The first Joint Opinion recommended extending the timeframe for the OAS audits. Article 29.5 of the final Electoral Code provides for seven days instead of two to complete the OAS inspection of declarations (but this should take place no later than one day before the summarisation of election results) and requires the immediate publication of OAS conclusions on the CEC website. Although the timeframe has been extended considerably, it may still be difficult to carry out a meaningful audit within this period. This recommendation has therefore been partially met.

58. The Joint Opinion recommended that the OAS be authorised to receive all information relevant to its audits. This recommendation may be regarded as followed.

59. Finally, the first Joint Opinion recommended greater clarity with regard to language in Article 8 of the draft code, related to the period for which the declaration of income is to be submitted. This recommendation has been followed in the final Code.

## **I. Mass media**

60. The recommendation to delete the provision that prohibits the abuse of freedom of mass media during the conduct of the election campaign has been followed, as this provision does not appear in the final Electoral Code.

## **J. Observers**

### **1. Testing and certification requirements**

61. The first Joint Opinion recommended removing the mandatory testing and certification requirements for citizen observers, included in Article 32.1 of the draft electoral code.

62. The 30 June amendments to the Electoral Code have removed the requirements concerning the training and testing for citizen observers. Instead, the obligation for citizen observer organisations to adopt a code of conduct for their observers and to hold trainings on electoral legislation and on the code of conduct has been introduced in Article 31.2. This is a welcome change and this recommendation has been followed.

### **2. Other restrictions on observers**

63. The draft electoral code contained a provision (Article 51.2(21)) allowing the CEC to revoke the qualification certificate of an observer for violating the requirements of the Electoral Code. This provision was criticised in the first Joint Opinion, as it could open the door to revoking observer accreditation for minor violations of the Code. This provision has been deleted in the final version of the Code (by the amendments adopted on 30 June). The recommendation has therefore been addressed.

64. The first Joint opinion recommended reconsidering a new requirement contained in Article 30.1.2 of the draft code, which required that citizen observer organisations included explicit aims related to democracy and protection of human rights in their charter for at least three years preceding the call of elections. The new Code decreased this requirement from three years to one year. This change is welcome, but it still appears to over-regulate a function of civil society. This provision still prevents new organisations from observing elections. Therefore, the recommendation has not been fully addressed.

65. Overcrowding in polling stations had been raised as a problem. The draft code introduced the possibility for the PEC to limit the number of observers and mass media representatives

allowed to be present in the voting room at the same time. The first Joint Opinion recommended that any measures to address overcrowding in polling stations be proportionate and to safeguard the transparency of the electoral process. According to the final version of the Code, a limitation on the total number of citizen observers and media representatives can be introduced only by taking into account the principle of proportionality. The Code therefore partially addresses the above-mentioned concerns and it remains to be seen how the relevant provision will be applied in practice.

66. The right of observers to be present during the vote count, even if not expressly listed among the observers' rights (Article 32.1), appears in Articles 68.2 and 32.1.4 of the final Electoral Code. Furthermore, observers are mentioned in Article 67.14, which allows them to request that violations of voting procedures be recorded in the PEC registration book. However, observation of the tabulation is not expressly envisaged in the final Code. The recommendation concerning the rights of observers is therefore partially followed.

67. The first Joint Opinion recommended modifying Article 31.5 to avoid arbitrary decisions regarding the accreditation of observers. In the final Electoral Code, this provision allows removing observers from the sitting of election commission or the polling station if the observers support election contestants and violate requirements of the Code in a way that hinders the smooth operation of the election commission or the voting process. This recommendation has been followed.

#### **K. Voting procedures and tabulation of results**

68. This section has been improved and most of the provisions, mainly Articles 68-72 of the draft code, have been modified. The term "unnecessary entries" is substituted with the term "additional writing" in the final Code. Article 75.1 of the final Electoral Code is also clearer on which data should be published by the CEC, in line with the first Joint Opinion. Recommendations on this issue have therefore been met.

#### **L. Complaints and appeals**

69. Provisions on complaints and appeals in the final Electoral Code have been substantially revised, compared to the draft code (Article 48).

70. The first Joint Opinion recommended to spell out clearly the right to make complaints about any irregularities discovered during the review of stamped voter lists and to ensure their timely consideration. In the working meeting, the Armenian authorities explained that any proxy or observer having identified an irregularity in the stamped voter lists may bring a complaint and ask to assess the regularity of the relevant voting procedure. In this case, the court can access the original stamped voter lists, as well as the signed copy of the statement of information containing the record number of voters having voted in the elections, which was sealed with the other election materials.

71. An important number of recommendations regarding complaints and appeals included in the first Joint Opinion have been met, including:

- lifting the limitation that enables candidates to challenge voting results only if they were present at the electoral precinct;
- providing additional time to submit complaints against PEC decisions on voting day to DEC's on the second day after the voting (the time was prolonged by the amendments of 30 June 2016 from 9 to 9:30 to 9 to 11);
- adding provisions aimed to prevent conflicts of jurisdiction between electoral commissions and the administrative court;

- adding provisions aimed to reduce formalistic rejection of complaints.

72. Some of the recommendations contained in the first Joint Opinion have not been followed, mainly concerning the issue of granting broader standing to bring challenges and reconsidering the time limitation on recounts.

### **M. Women's representation**

73. The Code has made the rules on gender quotas stricter. The Code now provides for minimum quotas of 30 per cent instead of 25 per cent (Article 83.4 and 10), within the defined brackets in the national list and for the lists as a whole in district lists. Quotas for the first part of the national list apply to each integer group of 3 (instead of 4 in the draft code), which is a considerable improvement. These new quotas will, however, not apply to the next elections, but will be applicable only from 2021 (Article 144.14-16 of the final version of the Code).

### **N. Other recommendations**

74. Certain features of the Electoral Code, which were analysed and recommended upon in the first Joint Opinion, were not changed in the later amendments. These features, where recommendations have not been followed, have not been analysed again in this Joint Opinion, as they were covered by the first Joint Opinion. They are the following recommendations:

- to reconsider the different threshold for political parties and for alliances;
- to consider having minority representatives on ordinary candidate lists, to avoid the possibility of the minority vote to change the political composition of parliament;
- to allow nomination of candidate lists also by groups of citizens;
- to include grounds that may lead to removal of the deputy chair and secretary of the CEC and chair, deputy chair and secretary of a DEC in Article 45 of the Code;
- to reconsider the deadlines for submitting the documents for registration of candidate lists in case of early elections;
- to provide for general prohibition of the misuse of administrative resources;
- to set reasonable deadlines for accreditation of observers and media representatives, including for the second round of elections;
- to include additional measures to enhance the transparency of the tabulation process;
- to lower the electoral thresholds for elections of the Council of Elders of Yerevan, Gyumri and Vanadzor and for returning electoral deposits after the elections;
- to reconsider the additional seats awarded to the winner of the elections of Council to Elders of Yerevan, Gyumri and Vanadzor.