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**on EU Election Assistance and Observation**

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## 1. INTRODUCTION

During the last decade the process of democratisation has manifested itself in many countries by the holding of multiparty elections for the first time. In some parts of the world, however, there have been clear reversals for democracy as well as dramatic and massive violations of human rights. Nevertheless democracy remains a universally valid system of governance, albeit one which needs to be backed up by constitutionally guaranteed rights so as to prevent apparently democratic elections from giving rise to 'illiberal democracy'. As Fareed Zakaria notes: "Democracy without constitutional liberalism is not simply inadequate, but dangerous, bringing with it the erosion of liberty, the abuse of power, ethnic divisions, and even war"<sup>1</sup>.

The promotion of genuine democracy and respect for human rights is therefore not only a moral imperative: it is also the determining factor in building sustainable human development and lasting peace. Actions in support of democratisation and respect for human rights, including the right to participate in the establishment of governments through free and fair elections, can make a major contribution to peace, security and the prevention of conflicts.

The end of the Cold War saw a shift in the attention of the international community from the definition of international human rights norms and standards, to a more active implementation of those standards and democratic principles. Election missions reflect this new approach.

EU support for human rights, democracy and the rule of law is established in the Treaties. Article 6 of the Treaty on European Union (TEU) clearly states that the principles of liberty, democracy, respect for human rights, and the rule of law are fundamental European values. Human rights field missions and election missions are accepted as part of the mandate of the EU whose Treaty considers the protection and promotion of human rights as well as support for democratisation as corner stones of EU foreign policy and EU development co-operation. Regulations 975/99 and 976/99 of 29<sup>th</sup> April 1999<sup>2</sup> provide the legal basis for Community activities intended to further and consolidate democracy, the rule of law and respect for human rights. A complementary legal basis exists in the Lomé Convention.

In recent years, European Union electoral missions have grown in frequency whether under the auspices of the Common Foreign and Security Policy or within the Community context, and in particular its development cooperation, but up to now the experiences gained have not been compiled systematically. An ad hoc approach no longer seems appropriate nor the best use of resources. The aim of this

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<sup>1</sup> ZAKARIA Fareed "The Rise of illiberal Democracy" *Foreign Affairs* Vol. 76 No. 6 p. 42.

<sup>2</sup> Council Regulation (EC) N° 975/1999 of 29 April 1999 laying down the requirements for the implementation of development co-operation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, Official Journal L 120, 8/5/1999, page 1.

Council Regulation (EC) N° 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development co-operation, which, within the framework of Community co-operation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, Official Journal L 120, 8/5/1999, page 8.

Communication is to contribute to the definition of a coherent European policy line through a proper approach involving a strategy and methodology, taking into account lessons learned from previous experiences. It responds to a specific request by the European Parliament to the Commission to assess EU participation in election observation missions in recent years.

## 2. CONCEPTS

Elections do not equate to democracy but they are an essential step in the democratisation process and an important element in the full enjoyment of a wide range of human rights. Elections are human rights events for two reasons. First because they give voice to the political will of the people. Secondly because to be truly free and fair they must be conducted in an atmosphere which is respectful of human rights<sup>3</sup>. The right to take part in government directly or through freely chosen representatives is enshrined in the Universal Declaration of Human Rights (article 21.1) and the International Covenant on Civil and Political Rights (article 25).

The development co-operation policy of the European Community is centred on human beings and is closely linked to the enjoyment of their fundamental rights and freedoms as well as on the recognition and application of democratic principles, the consolidation of the rule of law and good governance. In the case of elections, good governance refers to an appropriate legislative and regulatory framework, as well as to a transparent and accountable election administration - including independent supervision and monitoring - that ensures the respect for the rule of law. An informed people, owning the electoral process, is the key factor in this context.

The basic international criteria for the validation of observed elections are in Article 21 of the Universal Declaration of Human Rights. This requires elections to be free, fair, secret, held periodically and genuine<sup>4</sup>. The OSCE has developed the UN provisions through its election-related commitments, agreed in Copenhagen in 1990<sup>5</sup>.

Election assistance may be defined as the technical or material support given to the electoral process. It may imply professional help to establish a legal framework for the elections. It may take the form of a general input to the National Election Commission, for example providing voting material and equipment, or helping in the registration of political parties and the registration of voters. It may also imply support to NGOs and civil society in areas such as voter and civic education or training of local observers as well as support to the media through media monitoring and training of journalists.

Election observation is the political complement to election assistance. It is defined as “the purposeful gathering of information regarding an electoral process, and the making of informed judgements on the conduct of such a process on the basis of the information collected, by persons who are not inherently authorised to intervene in

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<sup>3</sup> UN Human rights and elections. A handbook on the legal, technical and human rights aspects of the elections. New York and Geneva, 1994.

<sup>4</sup> Ibid, page 6.

<sup>5</sup> The OSCE commitments can be summarized as: universality, equality, fairness, secrecy, freedom, transparency and accountability. OSCE/ODIHR, The ODIHR election observation handbook. 4<sup>th</sup> edition, Warsaw, 1999, p.3.

the process”<sup>6</sup>. In broad terms, election observation is part of election assistance. Technically speaking, they are different activities but essentially they should be considered and programmed in a complementary manner.

International election observation is based on the principles<sup>7</sup> of full coverage, impartiality, transparency and professionalism. Its ultimate objective is to become superfluous by entrenching democracy deep within each nation through development of national capacities. Its main goals are the legitimisation of an electoral process, where appropriate, and the enhancement of public confidence in the electoral process, to deter fraud, to strengthen respect for human rights, and to contribute to the resolution of conflict<sup>8</sup>.

However, it is important to recognise that elections are only one of the institutional prerequisites for democracy and that they are not in themselves sufficient to grant the title of “democratic” to an entire political system. Democracy can be supported but cannot be imposed by foreigners. It is a long-term process that requires the involvement of the whole society ultimately concerned. Present international efforts to support elections tend to emphasise the role of domestic monitors, both independent and party.

### **3. LESSONS LEARNED FROM PREVIOUS EU ELECTION ASSISTANCE AND OBSERVATION**

#### ***The EU needs a coherent strategy***

Although the EU has gained significant experience in election observation and assistance in the last decade<sup>9</sup>, approaches have been diverse and the wheel has sometimes been reinvented. Some progress has been made e.g. on criteria to decide on a EU electoral observation mission and a code of conduct for observers and criteria for recruiting them<sup>10</sup>. But there is still a need for a coherent strategy for handling election observation and assistance.

#### ***Holding elections is not synonymous with democracy***

Sometimes politicians in power may be tempted to organise manipulated elections in order to obtain international legitimacy (Togo 1998, Kazakhstan 1999). Care should be taken if a decision to send an EU observation mission could contribute to legitimising an illegitimate process.

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<sup>6</sup> International IDEA: Code of conduct for the ethical and professional observation of elections - Stockholm 1997 / page 10.

<sup>7</sup> International IDEA Lessons learnt: international election observation, Stockholm 1995, page 7.

<sup>8</sup> UN Electoral Assistance Division, Co-ordination and Support of international observers, draft operational guidelines. New York, 1996. International IDEA Lessons learnt: International election observation. Stockholm 1995 / page 8.

<sup>9</sup> See Annex I “Overview on EU Experience”.

<sup>10</sup> In June 1998 the Council adopted “Guidelines – EU Policy on Electoral Observation” (Annex III), and in June 1999, “EU Guidelines on Common Criteria for the Selection of electoral Observers” (Annex IV).

### ***Electoral times have changed: a renewed approach is needed***

In many countries, first generation elections<sup>11</sup> have given way to more complex scenarios where problems of democratic consolidation and enhancement of the rule of law are significant factors. The development of national organisations and individuals participating in the electoral process has expanded, requiring a re-balancing of the partnership between international observer missions and domestic actors. While consultation and co-operation with domestic observer groups is both convenient and desirable, it is not without problems and requires sensitive handling. However, the more properly constituted domestic observer groups there are, the more likely it is that there will be a balanced spectrum of views. Certainly, in countries where no such groups exist, EU assistance programmes should seek to help their establishment and training.

### ***Regional and local elections may also need assistance and observation***

The EU should not focus only on national elections. To consolidate democracy, free elections are necessary at all levels. At a local level, popular involvement is often stronger. Support to elections at local level is particularly important in certain developing countries where traditional power structures conflict with modern concepts of democracy. Mozambique and China are convincing cases for paying attention to the local level.

### ***Exploratory missions are important***

The EU performance and input to elections has invariably been enhanced where timely and qualified exploratory missions have been undertaken and where a sincere dialogue has been possible with the country in question. To facilitate later co-ordination, these missions should *inter alia* gather information about the intentions of other donors. If possible, they should be jointly organised with relevant international organisations. The exploratory mission should also advise what conditions must be fulfilled by the host government before the EU is prepared to commit funds. Exploratory missions should give the first indication to EU decision makers of what kind and what size of electoral intervention would be most effective.

### ***Elections are not one-day events***

It is necessary to observe all stages of the electoral process in order to have a well-founded and comprehensive assessment. For instance, voter registration, the unfolding of the election campaign or the resolution of disputes after the voting (i.e. FYROM 1999 and Mozambique 1999) may be crucial to assess the election process properly. Sometimes the count may take several weeks due to logistic difficulties. Long-term observers should be on the ground a couple of months before the election, and remain long enough to comment on the final implementation of the election results. Technical assistance is needed as early as possible, and should continue between elections, promoting good governance and democratisation. The longer-term programmes preceding and following an electoral process must be integrated into the EU's normal development agenda.

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<sup>11</sup> The terminology "first generation elections" is widely used to designate the first multi-party elections taking place after a period of autocratic regime or after a civil conflict.

### ***The assessment of elections is a delicate exercise***

The assessment of an election as “free and transparent” has sometimes proved inadequate where an election is taking place in an unstable environment and in a period of political transition (e.g. Nigeria 1999 and Cambodia 1998). The assessment of elections must do justice to the fact that they are part of a slow and gradual development towards democracy.

The EU should seek to co-operate with other international groups to ensure, where possible, common positions and the most effective deployment of resources. But it should avoid formal co-ordination structures where the EU’s integrity and freedom of word and action could be impaired by having to accept the lowest common denominator among a disparate group of international donors (e.g. Cambodia 1998). EU assessments could be more effective if they included recommendations for future actions.

### ***Care needs to be taken with the timing and content of EU statements***

A preliminary statement<sup>12</sup> on trends should be issued as soon as possible by the spokesperson of the mission. Final statements, however, should not be made before all observers are debriefed and all their findings taken into account (Nigeria 1999). To ensure consistency and effectiveness any final EU statement should be made only after the election reports of EU observers have been analysed and after proper consultation with EU stakeholders on the spot. The final position of the EU should only be made when the entire election process is completed (Indonesia 1999). The election campaign, the polling and counting processes have to be seen in their political and long-term context, including the general human rights situation (Cambodia 1998). The final and legal proclamation of the election results also constitutes an integral element in the whole electoral process and should be part of any EU election observation operation.

### ***EU actors in the field must co-ordinate and speak with one voice to maximise impact***

Good co-ordination in the field among the Commission Delegation, the Council Presidency, the EU Missions, MEPs and the EU Electoral Unit is necessary to the success of an electoral mission. This co-ordination worked very well in the Russian elections (1993) and in the Indonesian elections (1999). In spite of close consultation and co-ordination, the appointment of a separate head of the EU Electoral Unit and an EU Spokesperson in Cambodia in 1998 probably detracted from, rather than enhanced, the EU’s contribution. The EU Core Team should have one clear leader, who acts both as co-ordinator and spokesman on all electoral questions.

### ***There is no focal point for elections in EU structures***

Unlike the UN or ODIHR, none of the EU institutions, including the Commission, has a unit responsible for EU election involvement in third countries. As a result there has been a dispersion of efforts in the Commission among the different

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<sup>12</sup> There are different kinds of statements according to the moment they are issued: interim statements (early in the election process); preliminary statements (after polling); final statements (after the counting) and final report (after the resolution of disputes).

geographical Directorates General, without enough human resources being allocated to this task. This lack of a structure and staff was criticised by the Court of Auditors in its special report on the EU election observation of the 1996 Palestine elections<sup>13</sup>. At present there is no focal point to receive and deal with requests for EU participation in election observation and assistance, or to engage with organisations involved in this area.

### ***Decision-making needs to be clarified and rationalised***

In general, the decision to send an EU electoral observation mission and the political assessment of the elections has been governed by the inter-governmental rules of CFSP. But the financing decision has been taken in the Community area (although in the past there has also been limited CFSP financing). Working Groups of the Council and the Committees of Member States<sup>14</sup> are both involved in the process. The Parliament may also decide to observe elections, as may Member States on a bilateral basis.

### ***There is a multiplicity of legal frameworks and budgetary lines***

Development co-operation, human rights and CFSP budget lines have all been used in the past to fund electoral involvement. There has been no consistency in the choice of budgetary instrument, despite the fact that the choice has important institutional consequences. While in the first pillar the Commission is in charge, in the second pillar (CFSP), the Council Presidency and the High Representative for CFSP are responsible for implementing CFSP actions (although the Commission retains responsibility for implementing the budget). An opportunity to draw up a coherent and transparent financing policy now exists following the adoption of Regulations 975/99 and 976/99 and the transfer of the CFSP elections budget line to Chapter B7-70 (the European Initiative for Democracy and Human Rights).

Furthermore, despite the importance attached to election assistance in the context of support for human rights and democratisation, not all Country Strategy Papers make reference to it, even where there is a clear need for action in this area using development co-operation funds.

### ***Co-ordination between Council, Commission and Parliament needs strengthening***

A higher level of co-ordination is necessary between the Commission, the European Parliament (EP) and the Council. The role of the different EU institutions needs to be defined and agreed between them. There is a general perception of excessive complexity and lack of transparency in inter-institutional election actions.

The EP has an important role to play because of its special commitment to human rights and democracy and because as elected representatives MEPs have a profound knowledge of all aspects of electoral issues. But participation of EP observers has encountered difficulties through a lack of co-ordination. A special role for MEPs in the EU election set-up needs to be defined.

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<sup>13</sup> Special Report 4/96 p.16.

<sup>14</sup> See 1999/468/EC: Council Decision of 28<sup>th</sup> June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. OJ L 184, 17/07/1999, p. 23.



***Co-ordination with other international actors has evolved into a delegation of responsibilities instead of a real partnership***

Co-ordination with other international actors is necessary: creating synergies improves the level of effectiveness, efficiency and bargaining capacity with recipient countries. Co-ordination with other international actors brings benefits at different levels, for example, a joint exploratory mission to identify needs and agree on the distribution of tasks, the deployment and training of observers, the assessment of the elections and the mutual exchange of information at all stages.

However, co-ordination should mean partnership, not delegation of responsibilities. Due to lack of the management capacity to implement large field operations, the EU has often delegated responsibility to other international actors such as the OSCE and the UN<sup>15</sup>. In the OSCE geographical area, the EU has systematically worked under the umbrella of the OSCE/ODIHR. This has in all cases diminished the EU's identity and rendered the control of Community funds problematic, as the Court of Auditors has pointed out. A real risk exists that the EU, instead of being a policy actor, becomes a bank to finance the policies of others, particularly as long as problems of EU procedures and expertise are not addressed.

There is no standard agreement between the EU and most international organisations involved in electoral assistance and observation. Major problems therefore arise. Among these are respect for EU rules on management of funds, differential treatment of personnel due to differences between EU employment conditions and those of other organisations, lack of EU visibility and discrepancies in assessments of the elections.

***The EU has often not been visible***

Visible EU support for elections demonstrates the EU's commitment to democratisation and sustainable development. Member states and the EP have criticised the EU's lack of visibility in elections where EU funds have been committed. Lack of EU visibility is due to several factors. One is the lack of a clear EU policy and the necessary instruments to implement it. The adoption of a CFSP joint action is no guarantee of an increased visibility (Nigeria 1999). Another factor is the participation of the EU under the umbrella of other international actors. For example, there was serious lack of EU visibility in the Bosnia and Albania elections under the framework of the OSCE. In other cases, like Palestine or Nigeria, the lack of visibility was due to insufficient effort with the media. Unlike the United States, the EU does not appoint retired high level politicians for this kind of job.

***Resources must match political objectives***

The expansion of electoral observation and assistance activities has not been accompanied by an increase in, and training of, human resources either in Brussels or on the ground. It is essential that the EU's policy in this area should be implemented by adequate staff with appropriate experience.

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<sup>15</sup> Joint EC/UNDP operations in support of democratic election processes represent 23 Mio €.

### ***EU procedures hamper timely decisions and implementation***

EU procedures for financial and technical co-operation projects do not lend themselves to the provision of support for elections. Usually, the invitations to observe elections are received very late. Some politically important elections are called at very short notice. EU election observation and assistance often takes place in uncertain situations e.g. post-war (Bosnia), post-dictatorship (Nigeria) or state crisis situation (Albania). This requires a flexibility not allowed for by the present budgetary rules and makes it extremely difficult to prepare and implement an electoral observation programme in due time while respecting the applicable existing procedures. This difficulty was underlined by the Court of Auditors in its report on the 1996 Palestine elections. In the case of Indonesia (1999) only recourse to special procedures under the PVD/ALA Regulation permitted the necessary financing, but the technical assistance team arrived too late to have the expected input. An accelerated formula for decision-making which still respects the need for financial control and responsibility is required.

### ***Methods for recruiting observers are heterogeneous and confusing***

Substantial differences exist between EU observers depending on which Member State selected them, including their contractual and financial conditions. Selection, recruitment and payment may be done by different institutions. In recent operations the Commission has paid observers selected by Member States and recruited by other institutions. Another source of confusion is that in each operation, the recruiting agency may be different, e.g. the European Commission (Togo and Cambodia); the international organisation in charge of co-ordinating the mission, such as the UNDP (EU Core Team in Indonesia); or the UNV (observers in Nigeria and Indonesia).

### ***Better training and field guidance is needed for EU electoral observers***

Trained observers are essential to the quality and credibility of electoral observation missions. In tense or conflict-ridden situations, deficiencies may be exploited by the local actors, either the authorities or the opposition. In addition, observers without proper training or experience may put their own lives, and those of their colleagues or of the local population, at risk.

## **4. A NEW FRAMEWORK FOR EU ELECTORAL ASSISTANCE AND OBSERVATION**

The following pages draw on the lessons learned, and the new legal and budgetary framework for EU election assistance and observation, to set out some recommendations for the future.

### **4.1. Legal Framework**

Until very recently, the legal framework for EU support to elections in third countries was made up of the legal instruments (1<sup>st</sup> or 2<sup>nd</sup> pillar) dealing with the country where elections were taking place or the region to which it belongs. In particular, these instruments were either the international convention - e.g. Lomé Convention with ACP countries or partnership and co-operation agreements with

NIS<sup>16</sup> - or the Regulation governing the relations with the country in which elections were taking place - e.g. PHARE, TACIS or PVD/ALA Regulation. In case of EU election observation under CFSP, the legal basis was the specific CFSP Joint Action dealing with EU election observation in a particular country.

On 29<sup>th</sup> April 1999, the Council adopted two new Regulations (975/99 and 976/99) providing for a specific legal basis for Community operations which “contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms” in third countries. These regulations have the same Committee involved in their implementation and they only differ in their geographical scope and legal basis (Art. 308 (ex-235) TEC for countries benefiting from TACIS, PHARE, MEDA and OBNOVA<sup>17</sup>, and Art 179 (ex-130w) TEC for developing countries<sup>18</sup>). Article 3.2 par. (f) and 2.2 par. (f) respectively, state that the European Community shall provide technical and financial aid for operations aimed at supporting the processes of democratisation, in particular:

*f) support for electoral processes, in particular by supporting independent electoral commissions, granting material, technical and legal assistance in preparing for elections, including electoral censuses, taking measures to promote the participation of specific groups, particularly women, in the electoral process and by training observers”.*<sup>19</sup>

Following the entry into force of these regulations (975/99 and 976/99), future EU election assistance and observation will be undertaken exclusively under the first pillar. The principle source of funding, and in particular the provision of support to governmental actors, will be implemented under the regulations or agreements governing relations with third countries, including funds available under ALA/MED, TACIS, PHARE, OBNOVA and the Lomé Convention. But the new Human Rights regulations and Chapter B7-7 will also be used, in particular in support of non-governmental activity (see point 4.3.1 below).

*Future EU election assistance and observation to be undertaken exclusively under the first pillar, mainly under regulations or agreements governing relations with third countries but also using new human rights regulations*

#### **4.2. The EU Decision-making Process and Institutional Roles**

Until now, the political decision was often taken in the CFSP framework and the financing decision in the Community and/or CFSP context. Following the adoption of the Human Rights Regulations 975/99 and 976/99, the decision both to provide

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<sup>16</sup> Human rights clauses have become a general pattern in agreements with third countries.

<sup>17</sup> Council Regulation (EC) No 976/1999 of 29 April 1999. Official Journal L 120, 8/5/1999, page 8.

<sup>18</sup> Council Regulation (EC) No 975/1999 of 29 April 1999. Official Journal L 120, 8/5/1999, page 1.

<sup>19</sup> Other relevant paragraphs are:

(c) “promotion of pluralism both at political level and at the level of civil society by strengthening the institutions needed to maintain the pluralist nature of that society, including non-governmental organisations (NGOs), and by promoting independent and responsible media and supporting a free press and respect for the rights of freedom of association”

(e) “promoting the participation of the people in the decision-making process at national, regional and local level, in particular by promoting the equal participation of men and women in civil society, in economic life and in politics”.

electoral assistance and to send EU observers must be taken in the first pillar, on the basis of Commission proposals.

Given the Commission's pivotal role in making proposals for Community election assistance and monitoring, and the request from external actors that there should be a central focal point, the Commission is currently studying the opportunity of establishing a permanent Elections Desk within its services with responsibility for horizontal policy on electoral assistance and electoral observation. Such a service would co-ordinate all requests for Community electoral involvement and provide advice based on accumulated experience and links with other experts, while the geographical desks would remain in the lead on planning and implementing election assistance and observation operations in their countries. .

An Elections Desk would ensure the proper coherence of EU actions and facilitate the implementation process. It would co-ordinate with geographical desks in carrying out ex-ante evaluations of proposed actions. It would be the EU institutional memory and hold detailed records of EC electoral operations including Chief Observers reports, Terms of Reference (TOR), Financing Agreements, pro-forma agreements with governments, agreements with the UN, OSCE, etc and any other relevant material. The Elections Desk could develop methodology (e.g. operational guidelines for the organisation of electoral assistance and observation) and establish a framework for training both technical assistants and observers, including the preparation of an EU manual to cover both activities (currently underway). It could also oversee the recruitment and training of observers and maintain a list of electoral experts and observers.

Through the Elections Desk the Commission would ensure proper planning and co-ordination with the other EU institutions through the following procedure:

- At the beginning of each year, the Commission will have an exchange of views with the Council's working groups concerned (COHOM and geographical working groups), the Member States (Human Rights Committee) and the European Parliament on the basis of a yearly calendar of upcoming elections to be drawn up by the Elections Desk in consultation with the CFSP High Representative's Policy Unit (a task currently performed by the Presidency). This will be maintained during the year with input from geographical units and Delegations.
- This forward exchange of views could cover whether or not assistance and/or observation were likely to be advisable, and the nature of any participation, taking into account the EU's overall strategy. This process would also facilitate resource planning by the Commission, the Parliament and the Council.
- The Commission will then decide on a case by case basis whether to propose assistance and/or an observation mission, following discussion with Member States in the appropriate forum, and according to the provisions of the relevant Regulation. Input from Member States may come through an assessment made by the EU Heads of Mission, discussions in the Council's working groups and in the appropriate Committee of the Member States. The European Parliament's Foreign Affairs and Development Committees will also contribute their views and comments.

Subsequent discussion in the Council's working groups and with the European Parliament could cover the evaluation of the results of any exploratory mission and the nature of any possible EU participation. It could also cover participation by MEPs and member States in the observer mission, ensure complementarity of EC and nationally-financed observers and determine arrangements for co-ordination on the ground including the role of any in-country Election Unit.

If there is an EU Election Unit, it should endeavour to involve all participants, whether from the EU or individual member States, in its activities. Co-ordination with Member States on shared facilities and on all aspects of the global EU contribution should be initiated as early as possible in the process.

The European Parliament, as the elected parliamentary body of the EU, should have a key role in electoral observation and should be involved from an early stage in the joint planning of electoral missions. In actual EU election missions, a special role should be defined for MEPs to maximise their electoral and parliamentary experience and their capacity to link with civic groups, political parties etc. A reserved space for MEPs should be established in each EU election observation team. The EP would be responsible for proposing a team of MEPs with the relevant experience.

In order to define their respective roles and responsibilities, the Council, the Commission and the European Parliament, should agree upon appropriate arrangements on electoral observation, starting from some of the above proposals. The establishment of focal points in the three institutions would also facilitate inter-institutional co-operation on elections.

- *The Commission will study the opportunity of establishing an Elections Desk with horizontal co-ordination and planning tasks, including ex-ante evaluation, to assist geographical desks and delegations and liaise with EU institutions and other bodies*
- *Better annual planning*
- *Special role for the European Parliament and MEPs*
- *Appropriate arrangements on electoral observation missions should be agreed upon among by the Council, the Parliament and the Commission.*

### **4.3. Financing**

#### *4.3.1. Sources*

Elections are an expense which should fall to the country concerned as part of ensuring the rule of law. Therefore the financing of elections should, wherever feasible, be funded by the national budget. If this is not sufficient to cover the whole election process, EC support should primarily be made available from the co-operation budget which is intended to support government programmes. This is in line with the approach to development which links political events to sustainable development, and ensures the ownership of the political process by the country concerned. It also corresponds to the EU treaties (art. 11 TEU and art. 177 TEC) and the human rights clauses in agreements with third countries and in EC legislation.

In the past, electoral assistance has consistently been funded by the 1<sup>st</sup> pillar, while electoral observation has been funded from either the 1<sup>st</sup> or 2<sup>nd</sup> pillars, or a

combination of the two, with Member States making additional contributions in some cases. Where CFSP Joint Actions have been used to observe elections, funds have never been sufficient to cover all the expenses of the EU involvement, and they have therefore been combined with complementary Community actions (e.g. Palestine, Bosnia, Nigeria).

Following the entry into force of Regulations 975/99 and 976/99, it has become clear that all future election assistance and observation will be funded under the first pillar. This will be done on the basis of complementarity: funding of action in favour of a specific country should come mainly from co-operation instruments (Lomé Convention, PVDALA, OBNOVA, PHARE, TACIS, etc.). Funding of thematic actions, like training, media, civic and voter education, should come from Chapter B7-70. Despite the inclusion in this chapter of a specific budget line in support for democratic transition and the supervision of electoral processes(B7-709), the funds allocated are not sufficient to cover all electoral assistance and observation commitments the Community is expecting to face in each financial year. The continued use of funds allocated to co-operation instruments is thus an imperative. Furthermore, grants from chapter B7-70 are primarily intended to support NGOs as well as international organisations. Additional funding may of course be provided by Member States<sup>20</sup>.

#### 4.3.2. *Speed*

The Commission is studying several possibilities for accelerating and simplifying decisions to commit funds and implement actions. A distinction can be made between forward planning and reactive measures, which is necessary where elections are called at very short notice, making advance planning difficult.

##### **Forward planning:**

Decision-making and implementation can be facilitated by:

- Better annual planning (see para. 4.2)
- Reference to provision of assistance to promote good governance and support the democratisation process - including elections - in co-operation strategies concerning each third country.
- Earmarking an adequate amount of funds in each geographical budget line to be mobilised in the case of an election being announced during the course of the year.
- Establishing framework agreements with partners with appropriate specialised expertise and experience e.g. advice on drafting of electoral laws, election administration, logistics, media, voter education or in specific geographical areas. Partners would be identified through a transparent selection process. The agreements would be complemented with rapid ad hoc financial contracts as soon as the need for a specific service arose. This would bring flexibility in terms of management it would save time (the administrative workload would be reduced) and it would streamline expertise, since election assistance and

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<sup>20</sup> See Annex II “Complementary Sources of Financing EU Election Assistance and Observation”.

observation entails a wide spectrum of skills which are better covered by specialised bodies.

#### **Reactive Measures:**

- The emergency procedures in Council Regulations 975/99 and 976/99 (art. 14 and 15) for use “in cases of urgent and unforeseeable need” allow the Commission to commit funds quickly after consulting the Member States who have five days to react. Emergency procedures are also foreseen in the rules of procedures of the Committees involved in the implementation of the TACIS, PHARE, OBNOVA and PVDALA programmes.. These procedures do not, however, address the question of downstream delays.
- Consideration should be given to fast track procedures, in particular the setting up of a rapid deployment capability. This would entail that EU electoral experts could be identified and recruited at short notice. For instance, in the OSCE framework, the EC could send one or two experts in each ODIHR election team, who could support and train Short Term Observers (STOs) from EU Member States.

- *Election assistance and observation to be funded under first pillar (mainly co-operation instruments but also Chapter B7-70).*
- *Accelerate and simplify decision-making and implementation.*

#### **4.4. A Strategy for Electoral Assistance and Observation**

The present paragraph deals with EU strategy and objectives concerning electoral assistance and observation while paragraphs 4.4.1 and 4.4.2 deal with criteria to decide whether the EU should or not intervene. So far there is no overall EU strategy for EU electoral involvement. However, the Council recently agreed criteria concerning whether to send an observation mission, as well as criteria for the recruitment and conduct of those observers (Annexes III and IV).

Building on previous experience and existing work, the EU should adopt a strategy which:

- is guided by clear objectives and the principle of partnership between the EU and the country where elections are taking place. The Community should help the host government to create and sustain an independent national capacity for the holding of elections based upon democracy, the rule of law and respect for human rights and fundamental freedoms. This should be reflected in Country Strategy Papers for countries where it is relevant;
- avoids dependency by providing assistance only where it is really needed;
- allows for a case-by-case decision on provision of Community assistance and the sending of observers, using established criteria (see below) and allows EC election involvement to adapt to a changing situation including so that it can stop if necessary conditions are no longer met;
- ensures that where both assistance and observation are required, they should be complementary. In most circumstances, both are likely to be partner elements in advancing the EU’s objectives;

- promotes the development of national capacity and gives support where appropriate to national Election Commissions and to NGO and Civil Society Organisations involved in civic and voter education;
- promotes long-term sustainability after an election. Where appropriate, a technical assistance mission could continue to assist the government to remedy any weakness in the electoral administration and the rule of law;
- promotes pluralism, both at political level and at the level needed to maintain the pluralist nature of society. This should include the promotion of local NGOs and other local actors and strengthening their impact on local capacity building. Equally important will be the promotion of an independent and responsible media, and respect for the rights of freedom of association. In some elections, there may be case for financing local NGOs but not government activities;
- promotes partnership with NGOs and allows for lessons to be learned from their experience. A consistent and coherent effort should be made by the EU to identify and integrate European and local NGOs with appropriate mandates and relevant experience in EU electoral support, using Chapter B7-70. In particular the EU should promote the participation of women and people from national minorities in the election and decision-making process at national, regional and local level, whether as voters or as candidates; a free and pluralist media; and civic and voter education;
- emphasises support to local observers, who can play a key role in the development of democratic institutions. Once democratic institutions are established and functioning well, EU observers should no longer be needed. However, domestic observer organisations receiving EU support must be sufficiently broad-based, well-balanced and neutral;
- pays special attention to proper electoral registration and the fair delimitation of electoral boundaries;
- promotes the mechanisms of self-regulation needed for a properly functioning democracy, including checks on all stages of the electoral process by representatives of all contesting political parties, a free media, and monitoring by “neutral” domestic organisations (typically NGOs or religious organisations).

***EU should adopt a strategy which allows for case-by-case decisions to support and observe elections.***

***EU strategy should be to promote national capacity and sustainability.***

***EU actions should promote pluralism and support local NGOs and local observers.***

#### 4.4.1. *Criteria for Election Observation*

To help establish whether the EU’s objectives are attainable certain criteria are needed. The Commission considers that the Council criteria adopted on the 28 June



1998 (Annex III) offer a valid basis for determining whether to mount an EU electoral observation mission. Besides the relevance of the country for the EU, three considerations are paramount:

- Is EU participation **advisable**? To avoid the EU being drawn into a situation where its presence might give credibility to a flawed election process, full account should be taken of the relevant political and legal factors in situ. Minimally acceptable conditions should normally include:
  - a universal franchise;
  - freedom for individuals and political parties to participate in the elections;
  - freedom of expression to criticise the government;
  - the right to free movement;
  - the right of assembly;
  - reasonable access to the media for all contesting parties and candidates.

Other important factors should also be weighed up carefully and form a part of the EU's judgement and decision e.g. Is the election the first following a period of conflict or oppression? Do the elections accompany a peace process or the possible return of refugees?

- Is EU participation **viable**? Even where a situation exists for free and fair elections the EU should still seek to establish certain conditions for its participation:
  - a request to observe the election by the government of the host country. A formal request from the government should be sought but in some circumstances, a clear indication of the government's willingness to have EU observers, even when not formally expressed, may be acceptable;
  - a host government responsive to EU requests for specific amendments or improvements to the electoral preparations;
  - the support by all the main contesting political parties or candidates for the involvement of EU observers;
  - the existence of previous EU monitoring of political developments in the host country;
  - a time-scale which permits the leaders of any EU monitoring team to be in place sufficiently in advance.
- Is EU participation **useful**? An observation exercise normally provides some degree of legitimisation, contributes something to confidence-building and always acts as a deterrent to fraud. However observation is a costly business. Priorities need to be established, and usefulness must partially be defined in terms of cost/benefit ratio. An electoral mission could be advisable and viable

but only marginally useful (e.g. Guatemala 1999). This concept of “usefulness” is largely technical and must be balanced by an EU assessment of whether its global relations with the country concerned and EU general objectives make an EU electoral presence “politically useful”.

Normally all EU electoral missions should have written Terms of Reference (TOR) agreed with the government and the electoral authorities of the country being observed. The TOR should include the objectives and the requirements of the observation activity such as a guarantee for observers of freedom of movement and freedom of access to all political parties, candidates and election officials as well as to all polling and counting stations. In addition observers should be entitled to receive all necessary information about the electoral process. The safety of the observers should also be guaranteed.

***A decision to send observers should be based on consideration of advisability, viability and usefulness. The 1998 Council criteria on whether to send an EU observation mission remain a good basis to decide this.***

***EU electoral missions should have Terms of Reference agreed with the host government.***

#### 4.4.2. *Criteria for Election Assistance*

Given that the EC cannot and should not participate financially in each and every election, what kind of election should be assisted or observed? The EU has normally been involved in the first or second general elections of a country going through a transition. However, an assessment of the desirability of supporting an election process whether national or local - should be made on a case by case basis, taking into account the EU’s overall strategy, the political importance and potential for democracy of the election itself; the relevance of the country for the EU as well as its budgetary constraints.

The Council has not agreed criteria for provision of election assistance, and they are likely to be less clear-cut than those for observation. But they could include:

- a request from the host government for Community election assistance;
- the general agreement of the main political parties and the other potential partners (e.g. NGOs, Civil Society Organisations, women’s groups, journalists associations etc) to a programme of EC election assistance;
- the existence of previous EU political monitoring or of EU development programmes in the host country;
- an adequate time-frame for preparation;
- a guarantee of freedom of movement and freedom of access to relevant government ministries and other non-governmental partners for members of the EU Election Assistance Team;
- a guarantee of access to all information relevant to the EU Election Assistance Team’s activities; and

- a guarantee on the safety of the EU Election Assistance Team members, as far as possible.

These last three elements are best established in a formal written agreement with the host country which might also contain the Terms of Reference for the mission with clearly stated objectives.

***Criteria for deciding on whether to provide election assistance could include: a request from the host government, a general agreement of main political parties, previous EU political monitoring or development programs, adequate time-scale, freedom of movement, access to information and safety of the technical assistance team.***

#### **4.5. Election Observers and Experts**

Agreed criteria exist for the selection of observers (Annex IV). In June 1998, the Council adopted a code of conduct for EU observers (Annex III) applying to nationals of any country participating in EU observation missions. If Community funds are to be used, the Commission's responsibility for implementing the budget suggests that EU electoral observers and experts should be recruited by the Commission. But this will be unrealistic unless a proper structure and enough human resources are allocated to this task.

Member States should continue to propose STOs for any EU funded component. In the first instance, a percentage of the EU Observer Teams should be reserved for 'European' representatives. The observers included in this percentage would be Members of the European Parliament (until an EP mechanism is established); Commission and other EU Institutions civil servants; European NGOs; specialised EU institutes; previous participants in EU Observation Missions; participants in EU Human Rights and Elections training programmes and EU election specialists. All observers should be either experienced or adequately trained.

Parallel conditions for per diem payment and support to observers should be established whatever their source of recruitment. Every effort should be made to maintain the spirit of volunteerism, which has up to now added much to the commitment and performance of EU STOs.

A list of EU election experts involved in election assistance and long term observation could be established by the Commission Elections Desk. This could partly be based on participation in EU actions and training programmes. The Commission should also promote the networking of nationally maintained databases. A common EU database is not feasible or necessary.

***Where Community funds are used, the Commission will oversee recruitment of EU observers including nominees from member states. A proportion should be 'European' participants nominated by the Commission.***

***Spirit of volunteerism of STOs should be maintained.***

***Commission to establish a list of EU election experts and promote networking with national lists.***

#### 4.6. Practical Guidelines for Success

Experience has shown that the following are important to the success of both election assistance and observation missions:

- All EU electoral missions should have a clear mandate from the EU institutions. This should also deal with the liaison of the mission with EU representatives like the Commission Delegation and the Presidency.
- An exploratory mission should be the general rule. It should be composed of experienced and strategically minded European Commission staff. The exploratory mission mandate should include establishing the attitude of the host country towards EU involvement; the preparation of proposals on the extent and nature of any EU electoral participation and identification of what improvements to the electoral process should be requested by the EU before a final decision would be taken on participation.
- Establish an EU Electoral Unit with a Core Team to co-ordinate the whole range of electoral activities. This could consist of :
  - 1 Executive Co-ordinator / EU Chief Observer<sup>21</sup> and Personal Assistant
  - 1 Head of Finance and Administration
  - 1 Media Officer
  - 1 or 2 Logisticians
  - 1 Expert Trainer / Co-ordinator of Reporting / Statistical Analyst.
- All components such as the Technical Assistance Team should be directly responsible to the Head of the EU Election Unit.
- Any EU Technical Assistance Team should be in place early enough to make a clear contribution to the training of local participants. This enhances the quality of the operation of the local participants and also permits collection of valuable information which can assist the EU Election Unit. An effective Technical Assistance Team might include:
  - 1 team co-ordinator
  - 1 expert in election campaign financing;
  - 1 specialist in civic education;
  - several specialists in training women’s groups, youth and student groups and minorities;
  - experts in capacity building to work with NGOs and Civil Society Organisations;
  - 1 specialist in media training;
  - several trainers for domestic observation and
  - several specialists in the training for poll-workers
- Regular mission reports should be produced at each stage.

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<sup>21</sup> The EU should consider the merits of designating its representative as “Chief Observer”. All other international groups have this designation and the term is normally used, in any case, by the press. In this particular instance, clear visibility should prevail over internal EU niceties.

- All observers should be trained. A comprehensive and detailed training programme should be implemented for both Long Term Observers (LTOs) and Short Term Observers (STOs) upon their arrival in the host country. Common training programmes will enhance the quality and cohesion of EU observer teams. Efforts should focus on ensuring a common framework for training and field guidance, including through training of trainers, and a manual for EU electoral observers which has been drafted by the Commission. Training for specific missions in Member States could benefit from new models of online communication and education via the internet. Training initiatives in partnership with the UN or other international or regional organisations should be supported
- LTOs should be deployed ideally two months before election day and remain after the election results to observe the resolution of electoral disputes. LTOs should be the subject of a careful examination for professional and attitudinal competence for these key posts. The performance of the LTOs, whether monitoring, training or reporting can make or break the whole EU electoral mission. LTOs should be deployed to cover as much of the electoral terrain as possible but in accordance with the strategic plan of the EU mission. LTOs should establish links and consult with the different levels of the election administration as well as with local political parties and local community groups. They should observe voter registration, and early preparations for the elections, and assess the unfolding of the electoral campaign, in particular questions of equal access to the media and the use of public resources by all candidates. They should help build up the capacity of domestic observers. They should report to the EU Chief Observer on a regular basis concerning all aspects of the electoral process in their particular area of responsibility. They should also prepare the deployment of the STOs in the most effective way possible.
- The Short Term Observers (STOs) should arrive shortly before election day and be deployed to observe polling day and the early counting of the ballots. STOs will be fully briefed by the EU Election Unit and by the LTOs before their deployment.
- All observers should abide by the June 1998 Council Code of Conduct.

- ***Clear mandate for election observation missions.***
- ***Exploratory mission***
- ***EU Electoral Unit with a core team.***
- ***All EU components directly responsible to the Head of the EU Election Unit.***
- ***EU Technical Assistance Team to be in place early***
- ***Regular mission reports.***
- ***All EU observers should be trained to a common framework.***
- ***Co-ordinated training initiatives with other organisations***
- ***LTOs to be deployed two months before election day.***
- ***All EU observers should abide by the Council Code of Conduct.***

#### **4.7. Assessment of the Election Outcome**

The assessment of an election, together with the decision on whether or not to send an observation mission, are politically sensitive issues. Both the political interests

and the credibility of the EU are at stake. The Commission endorses the Council Decision of 28 June 1998 (Annex III) which enumerates the factors to be considered when assessing the validity of an election:

- The degree of impartiality shown by the election management body;
- The degree of freedom of political parties, alliances and candidates to organise, move, assemble and express their views publicly;
- The fairness of access for political parties, alliances and candidates to the media;
- The registration of voters without discrimination on the basis of gender, racial or ethnic origin;
- Any other issue concerning the essential freedom and fairness of the election;
- The conduct of polling and counting of votes as described in the electoral law.

However, criteria should be applied with flexibility when assessing different kinds of elections: conflict resolution elections and first time elections need a softer approach.

All parts of the EU Election team contribute to the final EU assessment of the elections. Close and regular consultation between the EU Chief Observer, the EU Presidency on the spot, the European Parliament and the European Commission delegation, prior to publishing the EU assessment, is essential to ensure consistency. A useful distinction can be made between the overall political assessment, and the technical assessment, which analyses the different stages of the electoral process in more detail. This distinction was successfully made in the assessment of the Indonesian elections: the political assessment was made by the Council Presidency, and the technical assessment by the Head of the European Electoral Unit.

In addition to assessing the outcome of the election itself, the Commission will monitor and assess each EU electoral support financed by the Community budget, notably concerning pertinence, efficiency, effectiveness, impact and sustainability<sup>22</sup>. External evaluations will be carried out periodically. Local stakeholders (government, NGOs, media) should be invited to comment. The views of independent electoral experts could also be sought.

- ***Use the 1998 Council decision to assess elections: but post-conflict and first-time elections need a softer approach.***
- ***Assessment should follow consultation and agreement with all EU stakeholders present.***
- ***Evaluation of Community elections support will be carried out periodically.***

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Pertinence stems from the relation between the problems to be solved and the objectives of the programme. Efficiency concerns the relation between activities undertaken and results. Effectiveness depends on the relation between results and specific objectives, while impact refers to the relation between specific and overall objectives.

#### 4.8. Improving EU Visibility

The EU's involvement in, and support for, elections should be visible in order to underline the EU's commitment to promoting democratisation in its external policies. Increased EU visibility should flow from improved and more transparent policy-making and implementation mechanisms. In particular, the Elections Desk would ensure that information about EU support to elections is placed on the internet. However, visibility is not an aim in itself and the EU should be careful not to overshadow the role of national institutions and players.

The EU's best guarantee of proper identity and visibility is to run an effective operation. It is also helpful to have as a senior member of the EU Electoral Unit a media officer who is an EU citizen with professional qualifications and the knowledge of the policies and the institutions of the European Union. Wherever possible, the Head of the EU Election Observation Unit should also be articulate and experienced in dealing with the media. In certain cases the choice of a prominent European personality should be considered. Use should also be made of the EU logo, including on clothing. Where the EU is working under the umbrella of an international organisation, EU visibility should be a part of the formal agreement.

- *Publicise specific and general EU activity in support of elections on the internet.*
- *The Head of the EU Election Unit should be media friendly and should be supported by a media officer.*
- *Use EU logo and publicity material*
- *Ensure visibility is covered in agreements with other partners*

#### 4.9. Co-ordination with other Organisations

There are a number of international organisations and NGOs active in the field of election assistance and observation. The EU has worked with many of them in the past. This co-operation, however, has often involved simply delegating responsibility to other organisations. The EU has been regarded primarily as a banker for an operation controlled by another organisation whose membership and interests are not necessarily synonymous with those of the EU. Policy input and visibility have been lost.

Given the large number of elections world-wide and the EU's limited resources and expertise, it will be necessary on occasion to work through other organisations. In any case, the EU will always have to work with others in the field. Improved co-ordination is therefore essential. Regular contacts should be established. Framework agreements with the main international governmental and non-governmental organisations e.g. the UN (UNDP, UN Electoral Assistance Department, UNV), OSCE/ODIHR, OAS and International IDEA could be considered if they were thought to add real value. These agreements should be based on real partnership in policy design and implementation rather than just concentrating on funding and visibility issues. Their aim would be to facilitate and speed up the co-operation with international organisations in specific electoral operations. The Commission will explore these possibilities.

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| <ul style="list-style-type: none"><li>- <i>Regular contacts with relevant international organisations</i></li><li>- <i>Explore possibilities of framework agreements</i></li></ul> |
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## 5. CONCLUSIONS

The recommendations contained in this Communication (summarised in Annex V) aim to improve the quality and effectiveness of the European Union's involvement in promoting free and fair elections and a transition to sustainable democracy by building on the varied experience of EU involvement so far, and the expertise of others.

Although few people doubt that democracy is the best system of governance available, when it comes to ensuring genuine freedom and a democratic society, elections are only one piece of a bigger picture. Reflecting this, the assistance which the EU provides to elections is only one aspect of the EU's overall contribution to democratisation and sustainable development in third countries.

The Council and the European Parliament are invited to work with the Commission to take forward the ideas in this Communication.



## ANNEX I

### OVERVIEW OF EU EXPERIENCE

#### 1. Description of main Operations

The European Union observed the first multi-party parliamentary elections in **Russia**, which took place on 11<sup>th</sup> and 12<sup>th</sup> December 1993. These were the elections for the State Duma and the Council of the Federal State Assembly. They followed a period of violent confrontation between the executive and the legislative branches in Russia and they coincided with a constitutional referendum. The EU Council adopted a CFSP Joint Action on the dispatch of a team of EU observers on 9<sup>th</sup> November 1993<sup>23</sup>. A EU Observer Unit was created by the Joint Action, but it was financed by the TACIS democracy programme (346.000 Ecus). Its tasks were: to assist and co-ordinate the EU observers, to provide on-the-spot-co-ordination with other international organisations and NGOs, to link with the Russian authorities and to ensure a balanced deployment of the observers throughout the country. The EU deployed 116 MPs, both from the European Parliament and national parliaments, and 91 experts (including 5 LTOs). Despite several failings in Russian procedures, there was no systematic abuse, and the elections were considered free and fair. In addition to the election observation, the EU also monitored the media coverage of these elections through the European Institute for the Media (EIM) with a grant of 200.000 Ecus. EIM set up a Media Monitoring Unit, which worked closely with the EU Observer Unit. Its tasks were to assess the legal framework within which the media were reporting the election process and evaluate the independence and fairness of the actual election coverage.

The second set of Russian parliamentary elections since the constitutional reform of December 1993 took place on 17<sup>th</sup> December 1995. The response to a request from the Russian Central Electoral Commission for EU support in monitoring the elections was the creation of a European Union Election Unit (EUEU) to provide logistical support for the election observers sent from EU institutions and Member States. The support included the provision of seven advisers. Office facilities, interpreters, transport and secretaries were also provided, along with short-term technical assistance to the Russian Central Electoral Commission.

Russia's first free presidential elections were held in June and July 1996, and the EU, the OSCE and other organisations were invited by Russia's Central Electoral Commission to observe them. The EU allocated 294.000 Ecus<sup>24</sup> for this purpose. Another European Union Election Unit (EUEU) was created, providing facilities for the 244 election observers from EU countries. Two people were seconded to the OSCE/ODIHR Election Unit in Moscow to deal with observer deployment and regional co-ordination. Activities of the EUEU included the provision of information and briefings to observers and analysis of the conduct and results of the election. Whilst considerable progress had been made in election law since the previous elections in 1991, the observer mission made a number of recommendations for further improvements.

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<sup>23</sup> Decision 93/604/CFSP. Official Journal L 286, 20/11/1993 p.3.

<sup>24</sup> Tacis Democracy Programme.

The EU was involved in the **Chechnya** elections in 1997, after a devastating civil war. To establish the legitimacy of the provisional government, and to allow the peace process to continue, both parliamentary and presidential elections were called at short notice for 27<sup>th</sup> January 1997. With 100.000 Ecus<sup>25</sup>, the EU assisted the OSCE, which had been instrumental in brokering the peace agreement of August 1996, to supply basic necessities such as ballot papers, ballot boxes and indelible ink, as well as covering transport, office equipment and telecommunications costs. The elections were declared “exemplary and free”.

The EU observed the first democratic and multiracial elections in **South Africa**: e.g. the national and provincial elections, which took place in April 1994. These were a historic event since they transformed South Africa from a society based on apartheid to a non-racial democracy. On 6<sup>th</sup> December 1993 the Council adopted a CFSP joint action concerning support for South Africa’s elections<sup>26</sup>. In total 18,5 million Ecus<sup>27</sup> were allocated. Under the overall co-ordination of the United Nations, the EU deployed 325 observers (including 14 Members of the European Parliament) and provided 112 police officers, electoral experts and advisers to South Africa’s Independent Electoral Commission and the Independent Media Commission. Furthermore, the EU was strongly involved in voter education and provided financial support to top-up the State Electoral Fund. The voter education programme was a success (only 1% of ballots were spoiled) and was partly implemented by a consortium of South African NGOs under the leadership of the South African catholic Bishops Conference. A European Union Election Unit was established to co-ordinate the EU election observation and to provide, where requested, advice and assistance to the Independent Electoral Commission of South Africa. Overall the election was considered a remarkable achievement: millions of ordinary citizens, formerly excluded from the political process, were allowed to become active agents of political change. Elections were considered free although not completely fair to all individual voters due to the shortcomings of the voting and counting procedures. However, given the general acceptance of the results, they were considered as an expression of the political will of the South African people.

**Mozambique** is among the countries which received the highest support from the EU. Three consecutive electoral processes were assisted with both financial and technical assistance inputs. In 1994 the EC provided the National Electoral Commission with more than 50% of the funds needed for the organisation of the first democratic elections (Presidential and Legislative) after the civil war. EU electoral observers contributed to the 2.000-strong observation mission organised by UNOMOZ. The elections were declared free and fair and considered an example for countries in transition. In 1998 the EU provided 9.5 M€, equivalent to 60% of the electoral budget, for supporting the first municipal elections which took place in 33 Municipalities. Due to divergences concerning the process of voters’ registration, Renamo and a number of other minor parties decided not to run, thus casting some doubts on the legitimacy of the process. In 1999 Mozambique underwent the classical test of each country in transition, by organising its second Presidential and Parliamentary elections. The EC contributed to the electoral budget with 21 M€, equivalent to 58% of the overall electoral budget. An EU electoral observation

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<sup>25</sup> Tacis Democracy Program.

<sup>26</sup> Decision 93/678/CFSP. Official Journal L 316, 17/12/1993 p.45.

<sup>27</sup> Budget line B7-5070

mission of 64 observers was organised, subsequently joined by 4 Norwegian observers. All electoral observation missions agreed on the fact that the voting process could be defined as free and fair. However, delays and minor irregularities characterised the counting process and Renamo declared it would not accept the results. In spite of that, its elected MPs attended the opening of the Parliamentary session presided by President Chissano.

The EU played a major role in the preparation and observation of the elections in **Palestine** of 1996. After redeployment by Israel from the West Bank, Palestinians held their first-ever presidential and parliamentary elections in the West Bank and the Gaza Strip on 20<sup>th</sup> January 1996. The Palestinian-Israeli Interim Agreement of 28<sup>th</sup> September 1995 designated the European Union as the co-ordinator of the international observation of these elections. The EU provided 7.5 million Ecus to assist the Palestinians with the preparation of the elections<sup>28</sup>. These funds were mainly used for drafting the electoral law, drawing the electoral districts' boundaries, setting up the election administrative machinery, training election officers, conducting a civic education campaign and providing equipment. The EU committed 10 additional million Ecus for the observation of the elections, of which only 7.5 million Ecus were actually spent due to the exigencies of the electoral calendar. Several CFSP decisions were taken by the Council concerning the Palestinian elections: the joint action of 19<sup>th</sup> April 1994 on support of the Middle East peace process<sup>29</sup>, which announced the EU intention to give assistance and to observe the elections in the Occupied Territories; the Council Decision of 1<sup>st</sup> June 1995<sup>30</sup>, committing 10 million Ecus for this purpose, and the Council Decision of 25<sup>th</sup> September 1995, establishing a European Union Electoral Unit and defining the financial and administrative procedures for the observation of elections<sup>31</sup>.

The European Union Electoral Unit had to organise the European observation mission (which consisted of 285 observers: 60 LTOs; 130 MTOs and 95 STOs) and to co-ordinate 390 other international observers from third countries, international organisations and NGOs. The European Union Electoral Unit certified the democratic character of the electoral process despite some incidents. Reported incidents included restrictions to Palestinian press and intimidation of some candidates, police obstacles to voting in East Jerusalem and intimidation of voters in Hebron during polling day.

The EU has supported the OSCE in the organisation and supervision of several elections in **Bosnia-Herzegovina** in 1996, 1997 and 1998. Once the war was over in Bosnia, the international community undertook to organise elections as part of the reconstruction of a country destroyed by ethnic cleansing. The 1995 Dayton Peace Agreements charged the OSCE with the organisation of the first elections in Bosnia-Herzegovina and in December 1997 the "Peace Implementation Council" asked again the OSCE to organise the general elections of 1998. In total the EU provided 16 million Ecus (combining first and second pillar funds) in support of elections in Bosnia through OSCE, although EU visibility was disappointingly low. In 1996 the EU allocated 5,6 million Ecus, in 1997 5,5 million Ecus, and in 1998 5 million Ecus

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<sup>28</sup> Financed from budget-line B-7-420 (former B7-7110).

<sup>29</sup> Decision 94/276/CFSP. Official Journal L 119, 7/5/1994, p.1

<sup>30</sup> Decision 95/205/CFSP. Official Journal L 130, 14/6/1995 p.1.

<sup>31</sup> Decision 95/403/CFSP. Official Journal L 238, 6/10/1995 p.4.

On 10<sup>th</sup> June 1996 the Council adopted a CFSP Joint Action<sup>32</sup> supporting the OSCE activities in respect of elections in Bosnia-Herzegovina with a contribution of 3 million Ecus. The support took the form of the provision of a contingent of European Union supervisors under the aegis of the OSCE. The elections supervised took place on 14<sup>th</sup> September 1996 and concerned the following institutions: the parliament of Bosnia-Herzegovina, the collective presidency of Bosnia Herzegovina, the parliaments of the two entities which constitute Bosnia-Herzegovina: the Muslim-Croat Federation and the Serb Republic; the presidency of the Serb Republic and the cantonal administrations. Although initially foreseen for the same date, municipal elections had to be postponed to 1997 due to problems of vote registration. For the 1996 elections, the EU also provided support to the OSCE worth 2,64 million Ecus for voter education, election equipment (ballot boxes and booths) and observation of elections<sup>33</sup>.

In 1997 two elections were held: the municipal elections in the Federation of Bosnia Herzegovina and the assembly elections of the Serb Republic. For the municipal elections in the Federation of Bosnia Herzegovina of 13<sup>th</sup> - 14<sup>th</sup> September 1997, the Council adopted a CFSP Joint Action dated 24<sup>th</sup> March 1997<sup>34</sup>. This Joint Action allowed the carry over of the funds, which remained available after the 1996 elections (1.1 million Ecus). In addition, the Council adopted another CFSP Joint Action on 24<sup>th</sup> March 1997<sup>35</sup> allocating a further 5,5 million Ecus for the supervision of the municipal elections in Bosnia Herzegovina, including the supervision of the registration of voters, the polling and the counting operations. On 20<sup>th</sup> October 1997, the Council decided on another CFSP Joint Action<sup>36</sup> to further support the OSCE for the supervision of the assembly elections of the Serb Republic to be held in November 1997. This CFSP Joint Action stated that the support would also be financed from the 5,5 million Ecus mentioned in the March 1997 CFSP Joint Action.

In 1998 again, elections for all the major institutions in Bosnia were organised by the OSCE. The EU renewed its support for the OSCE with a contribution of 5 million Ecus, aimed at providing a team of EU supervisors under the aegis of OSCE and at establishing an OSCE/EU media centre. This centre distributed information relative to the elections at a national and international level.

Following a request by the Togolese government, the EU observed the presidential elections in **Togo**, which took place on 21<sup>st</sup> June 1998. The holding of free and fair elections was one of the major conditions of the international community for aid resumption to Togo. The EU provided broad electoral assistance, worth 2 million Ecus. In particular the EU gave technical and financial assistance to the National Electoral Commission, media monitoring, training of people involved in the electoral process (préfets, members of local electoral commissions, members of polling stations, political parties representatives), civic education, and training of national observers. The EU took part in the international observation of the elections, earmarking 600.000 Ecus for this purpose (which were not used fully). Electoral Reform International Services (ERIS), a UK NGO was in charge of the management of the electoral observation mission. A small co-ordination unit was put in place. The

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<sup>32</sup> Decision 96/406/CFSP. Official Journal L 168, 6/7/1996, p.1.

<sup>33</sup> Budget-line B7-7001.

<sup>34</sup> Decision 97/153/CFSP. Official Journal L 63, 4/3/1997, p.1.

<sup>35</sup> Decision 97/224/CFSP. Official Journal L 90, 4/4/1997, p.1.

<sup>36</sup> Decision 97/689/CFSP. Official Journal L 293, 27/10/1997, p.2.

EU deployed 5 medium term regional observers and 35 STOs. In contrast to certain other international observers, the EU observer mission considered that the elections were not free, transparent and fair and that the announced results did not reflect the will of the Togolese people. The EU decided not to resume full development co-operation with Togo, but projects in favour of the poorest continued.

The EU provided its support to the second general elections in **Nicaragua**, which were held on 20<sup>th</sup> October 1996. These were presidential, parliamentary and local elections. They also concerned the members of the Central American Parliament. The EU contributed 2,4 million Ecus<sup>37</sup> to the electoral process, assisting the Nicaraguan Electoral Commission in the training of election officials and providing a co-ordination team for the EU observers. 400.000 additional Ecus<sup>38</sup> were allocated for civic education in the second round of elections, which took place in December 1996. The EU gave its support to the Organisation of American States (OAS) to observe the general elections in **Paraguay** held on 10<sup>th</sup> May 1998. The EU supported this operation with 250.000 Ecus<sup>39</sup>.

The EU gave its support to the organisation and observation of elections in **Yemen** in 1997. With € 681.000, the Community made a major contribution to increasing women's participation in elections, organising local elections monitoring and providing assistance to the organisation of the elections. In addition, the EU dispatched some 150 EU long- and short-term observers including several Members of the European Parliament and Commission officials during the election campaign. EU observers found the elections globally free and fair.

The EU gave its support to the **Cambodia** general elections which took place on 26<sup>th</sup> July 1998, allocating 10,45 million Ecus<sup>40</sup> for this purpose. The holding of these elections was a way for Cambodia to restore democracy and to regain international legitimacy and international aid lost after the coup of 1997. The EU was deeply involved in the electoral process, especially in the drafting of the electoral legislative framework, support to the National Electoral Commission, voter registration and in polling observation by dispatching some 200 election observers. The EU appointed a Special Representative: (Mrs Kinnock, Member of the European Parliament) and a Chief Election Observer (Ambassador Sven Linder) who made two assessments which had some nuanced differences. Co-ordination of the European Observer Unit with the UN and other observer groups took place under the umbrella of a Joint International Observer Group. The statement of the Joint International Observer Group (chaired by Ambassador Linder) considered that the vote had been sufficiently free and fair to reflect the will of the people. The statement of Mrs. Kinnock was more critical because of human rights violations during the election campaign and registration process, the deaths of ten people on election day, disputes on the counting process and numerous claims of alleged irregularities.

The EU supported the legislative elections (20<sup>th</sup> February 1999) and presidential elections (27<sup>th</sup> February 1999) in **Nigeria**. These elections provided the opportunity to install a democratically elected civilian government after fifteen years of military rule. EU support to the Nigerian elections consisted of the following elements:

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<sup>37</sup> Budget line B7-310.  
<sup>38</sup> Budget line B-7-310.  
<sup>39</sup> Budget line B7-310.  
<sup>40</sup> Budget line B7-3000.

support for the Independent National Election Commission (900.000 Euros for civic education, computing and vehicles); support for the UN in its co-ordinating role (850.000 Euros); the provision of a technical assistant for UN and EU co-ordination (80.000 Euros<sup>41</sup>); assistance to local election monitoring through a Nigerian umbrella NGO (Transition Monitoring Group) (600.000 Euros<sup>42</sup>); and a CFSP Joint Action (810.000 Euros) to deploy an EU contingent of 100 election observers<sup>43</sup>. These were all short-term observers and they were recruited by the United Nations Volunteers Programme (UNV) on behalf of the EU and on the basis of a list of names provided by the EU. As foreseen in the joint action, the Presidency appointed an EU Spokesperson (Ambassador Sulimma) responsible for joint EU-UN declarations and press and public relations. The elections raised some controversy: there were cases of vote-rigging and ballot stuffing and the number of votes cast vastly exceeded credible numbers in some areas. Nevertheless, the EU considered that voting procedures were held on the basis of a multi-party system and universal suffrage and were based on democratic principles. Therefore, the EU declared that the results generally reflected the wish of the Nigerian people.

The EU provided support for the **Indonesian** parliamentary elections, which were held on 7<sup>th</sup> June 1999. These elections followed a serious economic and political crisis after decades of oppression and they represented a milestone on the road of Indonesia to democracy. The Indonesian government, whilst stressing the importance of international assistance and welcoming international observers, made clear that it would not officially invite international observers and that external electoral assistance would have to be channelled through UNDP. The EU allocated 7 million Euros<sup>44</sup> for a programme co-ordinated with the UNDP. Most of this assistance was directed towards Indonesian NGOs and Election Monitoring Organisations. These groups worked on voter education, media, domestic monitoring of the elections, civic education, and institutional management. For this task 17 EU Technical Experts were recruited. A second aspect of the EU contribution was the international observation of the elections and the establishment of a European Union Election Observation Unit. A former EC Official, Mr John Gwyn Morgan, was appointed as Head of the EU Election Observation Unit with the title of EU Executive Co-ordinator. The EU provided the largest number of international observers made up of 30 LTOs and 85 STOs (21 of whom were bilateral observers recruited and financed directly by EU Member States but who were co-ordinated by the EU Observation Unit). In addition the EU Core Group had 7 members and the Technical Assistance Team numbered 17. In all there were on the ground 139 personnel under the EU aegis. Despite some incidents, the election was considered free and transparent and a basis for the establishment of a government in accordance with the democratically expressed will of the people. However, at the time of making the statement, vote counting was still at a very early stage since it was extremely slow. The final declaration of the poll in July 1999 confirmed the EU position.

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<sup>41</sup> All three elements funded from the National Indicative Programme.

<sup>42</sup> Budget line B7-7020. This allowed the TMG to monitor the transition to civil rule mainly through the placing of 10.000 Nigerian electoral monitors for each of the three principal elections in 1999: not only on 20 February (National Assembly) and 27 February (Presidential) but also on 9 January (State Assembly).

<sup>43</sup> Decision 98/735/CFSP. Official Journal L 354, 30/12/1998, p.1.

<sup>44</sup> Budget line B7-3000.

The EU also supported the UN-organised consultation in **East Timor** in August 1999 by contributing 5 million Euros to the UN Trust Fund. Some EU Member States also made bilateral contributions of resources or personnel. In this exercise EU visibility was noticeably absent.

## **2. Diversity of past EU Election Missions**

Until recently, while electoral assistance has always been pursued under the first pillar (EC), electoral observation has been a border line case, falling either under the first or second pillar (CFSP).

Some examples of EU electoral observation which were undertaken as CFSP activities include Russia (1993), South Africa (1994), Palestine (1996), Bosnia-Herzegovina (June 1996, 1997, 1998) and Nigeria (1999). All these were the subject of CFSP joint actions but in the first years of CFSP did not always imply the use of CFSP funds (e.g. Russia and South Africa, where the funding came from first pillar). At that time, the EC budget did not have a specific CFSP chapter. Recent examples of both electoral observation and assistance pursued exclusively under the first pillar include Albania (1997), Cambodia (1998), Togo (1998) and Indonesia (1999).

Sometimes there has been complementarity between both pillars involving elections in the same country. In Nigeria (1999), EU support for elections was organised both under the first pillar (support to the National Election Commission; provision of an EU technical assistant and also assistance to local election monitoring through a Nigerian NGO) and second pillar (joint action to deploy an EU contingent of 100 election monitors). This dual competence, which it can prove complementary, has nevertheless contributed to important delays in decision-making and a lack of clarity.

EU activities in the electoral field have been widely diverse. They have covered a large range of electoral and consultation processes, referenda, parliamentary elections, local elections and presidential elections.

The actual electoral context has also varied widely, including elections in post-conflict situations, e.g. Bosnia; elections following the elimination of racial discrimination, e.g. South Africa; and situations where a long period of military rule led to civil unrest and ultimately elections, e.g. Nigeria and Indonesia.

EU electoral support has also involved a broad range of activities such as voter registration, civic education, assistance to national electoral commissions, drafting of electoral laws, training of election officers and national observers, media support and monitoring and support for the participation of minorities.

The degree of EU involvement has also been quite variable. In elections to which the EU attached high political importance, the EU fielded a substantial contingent of observers, for example South Africa (1994), Palestine (1996), Cambodia (1998) and Indonesia (1999). On occasion, however, the EU observer contingent has been quite small. In the Azerbaijan presidential elections of October 1998, there were just three EU observers from the Commission. For the Pakistan parliamentary elections in 1997 and the Bangladesh parliamentary elections in 1996, EU participation was minimal and merely involved some co-ordination of bilateral election missions sent by Member States.

EU electoral observation and assistance has also been undertaken with a variety of partners and differing degrees of involvement. Only in the case of Palestine (1996) has the EU assumed the role of co-ordinator of the international observation teams. In Cambodia in 1998, the EU chaired the Joint International Observer Group. In some cases the EU provided a facilitating capacity for observers under the formal co-ordination of another international organisation, as with the OSCE in Russia (1995-1996). In other cases the EU sent observers under the framework of an international organisation like the UN (Nigeria 1999, Indonesia 1999), the OSCE (Bosnia 1996, 1997 and 1998, Albania 1997, Azerbaijan 1999, Armenia 1999) or the OAS (Paraguay 1998).

In other cases, EU involvement in elections has been executed through European NGOs. In the elections in Togo in 1998, for example, Electoral Reform International Services was in charge of the management of the electoral observation mission. Other European NGOs which have operated on behalf of the EU include The European Institute for the Media (EIM) which has monitored media coverage of elections in most countries of Eastern Europe and the former Soviet Union and, among others, Solace International, Friedrich-Ebert-Stiftung and Reporteurs sans Frontières.

The structure of the EU participation has also varied with the particular context. Larger operations have seen the establishment of EU Electoral Units but these have not always worked under the same rules. For example, the European Electoral Unit for the Palestine elections of 1996 was established by Council Decision 95/403/CFSP which defined its objectives, composition and operation. According to this Decision, the European Electoral Unit had to report back to the Presidency. In the 1999 Indonesian elections, however, the establishment of an EU Election Unit was done in the Community context. Details of its function and composition were contained in the Terms of Reference (TOR) of the Financing Agreement between the EU and the UNDP. The Head of the European Electoral Unit reported directly to the European Commission through the EC Representation in Jakarta. In Cambodia in 1998, an EU Spokesperson was appointed, in addition to the Head of the EU Electoral Unit. This led to difficulty in clearly differentiating their respective roles.

Recruitment of observers is also an area where substantial diversity has existed. In the Palestine elections of 1996, the Member States and the Commission put forward lists of candidates to participate in the European Electoral Unit as observers and experts. The Presidency, in association with the Commission, and with the assistance of an advisory group (composed of representatives of Member States), made the final selection. In the 1999 Indonesian elections, the Core Team (e.g. the members of the EU Electoral Unit) were recruited directly by UNDP in accordance with its own procedures, following the approval of the candidates by the European Commission. The European observers were recruited by the United Nations Volunteers Organisation (UNV) in accordance with its own procedures after approval of the candidates by the European Commission. Long-Term Observers were proposed by the UNV and Short-Term Observers by EU Member States. On the other hand in OSCE electoral missions, the OSCE recruited on the basis of EU Member States' proposals with the financing of the EU budget.

Another factor which has created some difficulties in recruitment procedures has been the existence in one and the same electoral exercise of EU observers financed directly by Community funds and further bilateral observers nominated directly and



financed by EU Member States. A workable and satisfactory solution was found in the case of Cambodia in 1998 by permitting Member States to make a per capita payment for each bilateral observer to the EC co-ordinating team who provided the same services and facilities to the bilateral observers as were provided for those observers funded directly by Community funds. In the case of Indonesia it was not possible to use the central funding mechanism and although a solution was found through the co-operation and goodwill of Member States this involved a much greater burden on the EU Electoral Unit in Jakarta.

Assessments of elections have proved to be the most politically sensitive issue in grey situations (e.g. Nigeria 1999). However, given that the decision to observe elections in a specific country was taken on the assumption that free and fair election would occur, most assessments have been positive. There have been some exceptions like the assessment of the Togo elections in 1998 or the Azerbaijan presidential elections in 1998 (under an OSCE umbrella).

In most cases where democratic institutions function, regularly held elections do not need observers. Observers are therefore more likely to be requested in crisis situations or in a return to democracy. Examples where elections were generally expected to be free and fair were Benin (1999) and South Africa (1999). No observers were sent by the EU. In other cases, no observers were sent, because the minimum standards formally agreed by the EU as preconditions for observation were not met and the EU did not want to be seen to be giving legitimacy to a flawed process. The Kazakhstan 1999 presidential elections or Togo 1999 parliamentary elections were such cases. Sometimes, the request to have EU observers was sent too late and did not allow time to set up a proper EU observation mission. This was the case, for example, for the Malawi 1999 elections.

## ANNEX II

### COMPLEMENTARY SOURCES OF FINANCING FOR EU ELECTION ASSISTANCE AND OBSERVATION

#### **1. EC Funding**

Since the entry into force of Council Regulations 975/99 and 976/99, EU election assistance and observation are to be funded under the first pillar (co-operation instruments and/or Chapter B7-70). There are different sources of financing Community actions in the field of electoral assistance and observation:

- Co-operation Instruments: Lomé Convention (European Development Fund) and the relevant parts of sub-section B7 of the EU Budget dealing with relations with different regions or countries like ALA, MEDA, PHARE, TACIS, OBNOVA. These should be used to finance large scale (e.g. Mozambique 1999) and medium-size operations in favour of a specific country.
- European Initiative for Democracy and Human Rights (Chapter B7-70): These budget lines **are** used to finance thematic action complementary to the mainstream operations funded under the co-operation instruments. The two Human Rights EC Regulations (975/99 and 976/99) provide Chapter B7-7 with a formal legal basis.
- Specific budget line for support for democratic transition and the supervision of electoral Processes (B7-709): 4.59 million € earmarked for 2000. The objective of this budget line is to develop a professional approach to electoral observation and assistance. This could be achieved by different means, e.g. setting up of training structures, creation of a roster of experts, monitoring of access to the media during the electoral campaign, evaluation of the EU participation in international observation operations and follow-up of the post-election period. It may also be used to enhance the EU visibility. Given its limited amount, this budgetary budget line cannot be used to finance actions of a specific geographical scope but is intended to support measures of a thematic nature to the benefit of all countries. If need be, this line may be used to fund observation missions.

#### **2. National Contributions**

In some cases Member States have made additional contributions. For example in the Palestinian elections, Member States paid the costs of the journeys and the insurance costs of their respective EU observers. Sometimes Member States have given direct support to NGOs, civil society organisations or other specialised groups whose programmes had already been supported by the Member State concerned. In other cases, the Member States' additional support has taken the form of attaching experts to the different aspects of the electoral process (e.g. lawyers, human rights experts or technical experts). This could continue in future.

**ANNEX III**  
**Council Decision 9262/98 – PESC 157 – COHOM 6**  
**GUIDELINES - EU POLICY ON ELECTORAL OBSERVATION**

**PRECONDITIONS FOR OBSERVATION**

**Minimum Standards**

1. The observation of elections is an important component of the EU's policy in promoting human rights and democratisation throughout the world. The EU undertakes such activities on the basis of partnership and with the objective of developing national capacity.
2. A number of legal and political factors must be taken into account in reaching a decision whether to send observers to a particular electoral process. The EU will wish to ascertain that its involvement in monitoring is likely to promote further democratisation in the country concerned. Such judgement may prove difficult but can be assisted *inter alia* by seeking legal and political assessments by EU HOMs.
3. The general standards for minimum conditions will include the following factors:
  - franchise is genuinely universal;
  - political parties and individual candidates are able to enjoy their legitimate right to take part in the election;
  - there is freedom of expression allowing possible criticism of the incumbent government and the right to free movement and assembly;
  - all contesting parties and candidates have reasonable access to the media.
4. If the EU judges there to be no possibility of elections being held under such minimum conditions a decision may be taken that no electoral observers should be sent, in order to avoid giving credibility to flawed electoral processes. However, the EU's judgement will also include factors such as whether this is the first election following a period of conflict or oppression and whether the elections accompany a peace process and possibly return of refugees.

**Preparation for Mission**

5. After a decision in principle has been made to offer to observe, and an invitation has been received, the concrete needs, scope and degree of involvement of the EU's observation shall be assessed if necessary by sending a needs assessment mission. This must be accompanied by an early dialogue with the national authorities. Specific terms of reference for the

observation mission will then be drawn up by the EU and agreed with the country concerned.

### **Preconditions for the Work of Observers**

6. Even when it is possible that free and fair elections may take place, the EU will only send election observers to a country when:
  - it has been formally requested to monitor the election by the recognised government of the host country;
  - the involvement of EU observers is supported by all the main contesting political parties or candidates;
  - the EU has previously been monitoring political developments in the host country for a period of time and has the political capacity to assess developments through EU HOMs;
  - there is enough lead time for the leaders of any EU monitoring team to be in place sufficiently in advance, in order to monitor the political and judicial environment and take part as appropriate in preparatory work ahead of the election campaign itself.
  
7. Before observers can be sent the EU must be satisfied that they will have:
  - clearly stated objectives, written and agreed with the host country well in advance;
  - freedom of access to all political parties, candidates and election officials;
  - freedom of access to all polls and counting centres at all times;
  - freedom of movement throughout the country, without prior permission or notification, except where genuine security concerns prohibit this;
  - all necessary information about the electoral process;
  - no doubts as to their own safety.

### **Code of Conduct**

The following guidelines will apply to nationals of any country participating in EU observation missions decided by the EU unless specifically agreed otherwise. The guidelines will not apply to EU nationals participating in e.g. OSCE or UN missions, in which case those organisation's own codes will apply.

All official EU observers should adhere to the following guidelines:

- Respect the laws of the land. Observers enjoy no special immunities as an international observer, unless the host country so provides;

- Observers will participate in all pre-election briefings with their supervising officers;
- Observers will be subject to the direction and management of the observer team leadership, carrying out their written terms of reference and covering the geographical schedules specified by team leaders;
- Observers should be aware of the presence of other electoral monitoring teams, and liaise with them under the direction of the leader of the EU observer team;
- Observers will carry prescribed identification issued by the host government or election commission, and will identify themselves to any interested authority upon request;
- Observers shall maintain strict impartiality in the conduct of their duties, and shall at no time express any bias or preference in relation to national authorities, parties, candidates, or with reference to any issues in contention in the election process;
- Observers will not display or wear any partisan symbols, colours or banners;
- Observers will undertake their duties in an unobtrusive manner, and will not disrupt or interfere with the election process, polling day procedures, or the vote count,
- Observers may bring irregularities to the attention of the election officials, but will not give instructions or countermand decisions of the election officials;
- Observers will base all conclusions on well documented, factual, and verifiable evidence, and will keep a record of the polling stations and other relevant places that they visit;
- Observers will refrain from making any personal or premature comments about their observations to the media or any other interested persons, but should provide, through a designated liaison officer or spokesperson, general information about the nature of their activities as observers;
- Observers will participate in post election debriefings with their supervising officers and will contribute fully towards appropriate EU reports on the elections monitored;
- Observers must comply with all national laws and regulations. Where these limit freedom of assembly or movement about the country, they must note where such rules prevent them from carrying out their duties;
- At all times during the mission, including during private time away from work, each election observer should behave blamelessly, exercise sound judgement, and observe the highest level of personal discretion.

## **General Guidelines for Observers when visiting Polling Stations**

The following general guidelines should also be noted by EU election observers for their conduct on polling days:

- Introduce yourself to the Chairperson of the polling station when you arrive. Establishing a working relationship with the electoral commission will assist your observation, and is particularly important for the count;
- Comply with the instructions of officials at the polling stations. If you are dissatisfied with the official instruction record the circumstances on the appropriate observation report;
- If an official prevents you from doing something which you believe you are entitled to do, point this out. Refer if possible to the relevant provisions of the law;
- Avoid confrontation with security personnel;
- Be prepared to present your passport and accreditation to any officials who request them. Keep these documents with you at all times;
- Maintain complete impartiality at all times;
- Treat all information received in confidence;
- Avoid disrupting the voting and counting process;
- Under no circumstances should you handle official election documents in the polling station or physically assist the voting or counting process;
- Do not use or carry photography, video or recording equipment when undertaking your duties as an observer;
- Be prepared to note your conversations and comments made to you. Ask questions and in particular ask for concrete examples when general statements are made;
- Do not attempt to take an active role in resolving any disputes or complaints, even if asked to. Your role is to observe and record events at the polling stations;
- Record any complaints made to you on the appropriate observation form, including details of the complainant: name, organisations (where relevant), and address;
- Exercise restraint if offered food and drink at polling stations;
- Be conscious that your conduct is likely to be closely observed. Try not to be enthusiastic or overtly friendly if you meet a candidate's proxy or representative whom you already know,

- Try not to give the impression of rushing from one polling station to another.

### **Entitlements of Election Observation**

As an accredited EU election observer you are entitled to:

- Visit any polling station under the direction of the supervising officers of the mission to observe voting and counting;
- Meet with members of election commissions, MPs, candidates or their proxies, voters and representatives of civil society in order to gather information;
- Ask questions about the voting and counting process to members of electoral commissions and to superior electoral commissions, but you do not have the right to countermand the decisions of elections officials.

### **Elements to be assessed by the Observer Mission**

When assessing the validity of an election the EU observer must consider all the relevant factors that affect the electoral process. The following factors should be considered:

- The degree of impartiality shown by the election management body;
- The degree of freedom of political parties, alliances and candidates to organise, move, assemble and express their views publicly;
- The fairness of access to state resources made available for the election,
- The fairness of access for political parties, alliances and candidates to the media, in particular the state media;
- The registration of voters without discrimination on the basis of gender, racial or ethnic origin,
- Any other issue that concerns the essential freedom and fairness of the election;
- The conduct of polling and counting of votes as described in the electoral law.

### **Media Statements and Election Observers**

- Make no comment whatsoever about the electoral process and do not be drawn into general contact with members of the media. In all cases journalists who seek comment on the electoral process should be referred to the authorised spokesperson of the mission;
- Do not make general statements about the conduct of the election as you may prejudice any final statement made on behalf of all EU observers;

- The EU observers mission will make a statement to the media on behalf of the EU observers after everyone has had a chance to report their observations.



**ANNEX IV**  
**Council Decision 8728/99 – PESC 165 – COHOM 4**

**EU GUIDELINES ON COMMON CRITERIA FOR THE SELECTION**  
**OF ELECTORAL OBSERVERS**

**EU Election Observers**

1. The observation of elections continues to be an important component of the EU's policy of promoting human rights and democratisation throughout the world. The adoption of EU guidelines on preconditions for EU observation missions and a code of conduct for EU electoral observers represented an important step towards enhanced co-ordination within the EU. Further co-ordination within the EU could be achieved through the implementation of the following EU guidelines on common criteria for selection of electoral observers.
2. Selection of candidates for participation on EU electoral observation missions should, as a rule, be made according to a set of common criteria in order to ensure a high professional standard of EU observers. The following criteria are intended as guidelines for the selection of observers for EU electoral observation missions. They are not necessarily intended as guidelines for the selection of observers for missions of other international organisations (e.g. UN, OSCE). They are not intended to apply to members of Parliament.

**EU Guidelines on common Criteria for Selection of electoral Observers**

- 3 a) All candidates for participation in EU electoral observation missions (short term observers as well as long term observers) should ideally fulfil the following minimum standards:
  - previous experience of election monitoring and/or other relevant experience or know-how and specific training, national and/or international – good experience of the mission's working languages;
  - interpersonal skills (e.g. capacity of balanced judgement, ability to work in teams, ability to cope with difficult situations, respect for local attitudes, good communication skills, readiness to work in a multi-cultural environment);
  - ability to maintain professional independence and strict impartiality in the conduct of duties in the host country;
  - demonstrated commitment to democracy and human rights;
  - EU Member State citizenship.
- 3 b) The following additional criteria should be taken into account when selecting long term observers:

- familiarity and experience with electoral laws and procedures (including inter alia electoral rolls, national electoral committees), not limited to a single electoral tradition;
  - special knowledge of human rights and democratisation issues;
  - basic knowledge of institutional aspects of the EU;
  - analytical and drafting skills.
- 3 c) Mission leaders and/or long term observers acting as team co-ordinators should ideally have furthermore:
- experience at training and instructing people;
  - ability to plan and co-ordinate teams.
4. Specific mission-related requirements may include:
- knowledge of the host country or region and of the situation in the host country;
  - knowledge of relevant languages, e.g. the official language of the host country;
  - independence from the host country’s authorities and groups or parties participating in the elections, lack of bias or preference to parties and candidates or to any other body involved in the election process;
  - appropriate physical condition.

Specific mission-related requirements should be established following a pre-mission analysis of the type of election anticipated.

## ANNEX V

### RECOMMENDATIONS FOR ACTION

- Future EU election assistance and observation to be undertaken exclusively under the first pillar, mainly under regulations or agreements governing relations with third countries but also using new human rights regulations
- Better annual planning
- Special role for the European Parliament and MEPs
- Explore possibility of appropriate arrangements with other EU Institutions concerning respective responsibilities on electoral observation missions.
- Election assistance and observation to be funded under first pillar (mainly co-operation instruments but also Chapter B7-70).
- EU should adopt a strategy which allows for case-by-case decisions to support and observe elections
- EU strategy should be to promote national capacity and sustainability.
- EU actions should promote pluralism and support local NGOs and local observers
- A decision to send observers should be based on consideration of advisability, viability and usefulness. The 1998 Council criteria on whether to send an EU observation mission remain a good basis to decide this.
- EU electoral missions should have Terms of Reference agreed with the host government
- Criteria for deciding on whether to provide election assistance could include: a request from the host government, a general agreement of main political parties, previous EU political monitoring or development programs, adequate time-scale, freedom of movement, access to information and safety of the technical assistance team.
- Where Community funds are used, the Commission will oversee recruitment of EU observers including nominees from member states. A proportion should be experienced or trained 'European' participants nominated by the Commission.
- Spirit of volunteerism of STOs should be maintained.
- Commission to establish a list of EU election experts and promote networking with national lists.
- Clear mandate for election observation missions

- Exploratory mission
- EU Electoral Unit with a core team.
- All EU components directly responsible to the Head of the EU Election Unit.
- EU Technical Assistance Team to be in place early
- Regular mission reports.
- All EU observers should be trained to a common framework.
- Co-ordinated training initiatives with other organisations
- LTOs to be deployed two months before election day.
- All EU observers should abide by the Council Code of Conduct.
- Use the 1998 Council decision to assess elections: but post-conflict and first-time elections need a softer approach.
- Assessment should follow consultation and agreement with all EU stakeholders present.
- Evaluation of Community election support will be carried out periodically
- Publicise specific and general EU activity in support of elections on the internet.
- The Head of the EU Election Unit should be media friendly and should be supported by a media officer.
- Use EU logo and publicity material
- Ensure visibility is covered in agreements with other partners
- Regular contacts with relevant international organisations
- Explore possibilities of framework agreements

#### **ADDITIONAL ACTIONS UNDER CONSIDERATION BY THE COMMISSION**

- Establish an Elections Desk within the Commission with horizontal co-ordination and planning tasks, including ex-ante evaluation, to assist geographical desks and delegations and liaise with EU institutions and other bodies
- Accelerate and simplify decision-making and implementation (annual planning, funds earmarked for elections in geographical budget lines, framework contracts)
- Use emergency procedures in cases of unforeseen need

- Consider fast track procedures, including the setting up of a rapid deployment capability

## **ANNEX VI**

### **LIST OF ABBREVIATIONS**

ACP Countries	African, Caribbean, Pacific Countries
ALA	Asia and Latin America
CFSP	Common Foreign and Security Policy
COHOM	Council Working Group on Human Rights
EC	European Community
EDF	European Development Fund
EU	European Union
EU HOMs	EU Heads of Missions
FYROM	Former Yugoslav Republic of Macedonia
International IDEA	International Institute for Democracy and Electoral Assistance
LTO	Long-term Observer
MEDA	Mediterranean Countries
MEP	Member of the European Parliament
MOU	Memorandum of Understanding
NGO	Non Governmental Organisation
NIS	New Independent States
OBNOVA	Aid to the Countries of former Yugoslavia (meaning Reconstruction in Serbo-Croatian)
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
PHARE	Action plan for co-ordinated aid to Poland and Hungary
PVD	Developing Countries
OAS	Organisation of American States
STO	Short-term Observer
TACIS	Technical Assistance to the Commonwealth of Independent States
TEC	Treaty on the European Community
TEU	Treaty on the European Union
TOR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNV	United Nations Volunteers