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IMPLEMENTATION OF RECOMMENDATIONS OF THE OSCE/ODIHR 2007 ELECTION ASSESSMENT MISSION REPORT

Status, July 2011

1. GENERAL REMARKS

In response to an invitation from the president of the Swiss Confederation, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) for the 21 October 2007 elections to the National Council (Nationalrat/Conseil National) and to the Council of States (Ständerat/Conseil des Etats), the two chambers of the Swiss Federal Assembly. The OSCE/ODIHR EAM report of 3 April 2008 comprises 15 recommendations.

In a letter dated July 25, 2008, the Minister of Foreign Affairs, Ms. Micheline Calmy-Rey, informed the ODIHR Director, Mr. Janez Lenarcic, on the position of the Swiss Government with respect to the recommendations and the foreseen work to implement most of them. Implementation efforts have since been deployed at federal as well as at cantonal level. This document presents an overview (point II) of results obtained since 2008 as well as of ongoing work. Some general conclusions are to be found under point III.

It may be worth stressing that, subsidiarity being the main regulator of relations between Confederation and cantons, federal legislation is meant to fix minimal conditions, leaving cantons free to decide on the introduction of more detailed and developed regulations. Legislation on political rights is no exception to this principle.

2. IMPLEMENTATION OF THE 15 OSCE/ODIHR RECOMMENDATIONS

2.1 Recommendation 1 (p.5, IV C 1)

Federal legislation could provide more detailed rules on how to publicize list combinations to ensure that all voters are aware of such combinations and their implications.

- Federal (minimum) requirements include: list combinations and sub-combinations must be indicated on pre-printed ballot papers¹; a complete set of all ballot papers must be delivered to each person eligible to vote at the latest ten days prior to the polling day²; furthermore electoral lists as well as references to any list combinations or sub-combinations shall be published by the canton in the official cantonal gazette³. These requirements are fully implemented;

¹ See art. 31§2 and art. 33§1 in combination with art. 30 of the Federal Act on Political Rights, SR 161.1. An English translation of the Federal Act on Political Rights (for information purposes only) can be found at the address: http://www.admin.ch/ch/e/rs/c161_1.html

² See art. 33 §2 of the Federal Act on Political Rights

³ See art. 32 §1 of the Federal Act on Political Rights

- The place where the combination is indicated on the ballot, the size of characters and other similar issues are regulated at cantonal level. Cantons point of view is that it is important to make sure that publication of list combinations is consistent through different types of (political) elections in the same canton. In canton Bern for example, the way combinations and sub-combinations are indicated on the ballot is the same for federal and cantonal (parliamentary) elections. Of great importance is also the easy readability of such information;
- There is currently no mandate to do more at federal level;
- Some cantons have introduced (or are considering introducing) a new method for calculation of seats for cantonal elections⁴ : the double Pukelsheim method (*doppelter Pukelsheim*). With more cantons to introduce the double Pukelsheim, greater are the chances that there could be political consensus to also replace, at the federal level, the present method of calculation for federal elections (Hagenbach-Bischoff) with the double Pukelsheim's method (in cantons where the election of the National Council is proportional). The development of Political Rights at federal level has historically been the result of such bottom-up influences. As a direct consequence of the introduction of the double Pukelsheim's the combination and sub-combination of lists will be eliminated;
- At cantonal level, the different (sub-) lists combinations have become a political issue and are largely being discussed by the media⁵.

2.2 Recommendation 2 (p.7, IV D)

In order to increase the transparency of the electoral process, it should be considered to introduce an obligation for disclosure of parties' and political associations' financial income, sources and expenditures.

Compared to 2007, there is no new legal regulation at the federal level of the issue of party and election financing. The fact that transparency should also extend to referendum/initiative campaigns and respective committees (such campaigns take place an average four times a year at federal level and even more often at the cantonal/local level) further complicates regulation efforts. Several attempts to introduce regulation on party financing have been undertaken so far but none of them could obtain the necessary majority in the federal parliament⁶. On the other side, at the cantonal level, the cantons of Geneva and Ticino have pioneered by introducing rules on transparency of party financing⁷.

The following developments are worth mentioning:

- GRECO (Council of Europe) is currently evaluating the issue of party and campaign financing. A hearing took place last May. Results (evaluation and recommendations) are expected in October/November 2011;

⁴ In addition to canton ZH, AG and SH have already introduced the « doppelter Pukelsheim »; others such as NW and BS are envisaging to do so.

⁵ Interesting statistical information on combinations can be found in a document "Wahlen in der Schweiz / Les élections en Suisse" at <http://www.portal-stat.admin.ch/nrw/>, chapter "Nationalratswahlen/Conseil national".

⁶ Parliamentary Initiative 11.463 (A. Tschümperlin), Offenlegungspflicht für Ratsmitglieder, 17.06.2011: http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20110463

Parliamentary Initiative 09.442 (A. Hodgers), Transparence des comptes des partis politiques/Transparenz in der Parteienfinanzierung, 05.06.2009 : http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20090442

Parliamentary Initiative 09.415 (Sozialdemokratische Fraktion), Endlich Transparenz in der Schweizer Politik/Créer enfin la transparence dans la politique suisse, 20.03.2009 : http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20090415

Parliamentary Initiative 09.416 (A. Gross), Weniger Chancenungleichheit bei den Nationalratswahlen 2011/Réduire l'inégalité des chances lors de l'élection du Conseil national en 2011, 20.03.2009 : http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20090416

⁷ Ex.: article 29A de la *Loi cantonale sur l'exercice des droits politiques* (LEDP), <http://www.ge.ch/legislation/>. Nouvelle teneur depuis le 29.03.2011.

- Several parliamentary interventions have been launched and in part dealt with recently⁸;
- Taking into account ODIHR Guidelines in this area⁹, the launching of a tool to be used by parties on a voluntary basis for financing transparency purposes is being considered.

2.3 Recommendation 3 (p.7, IV E)

While the accreditation and co-operation received by the OSCE/ODIHR EAM was most welcome, in order to fully comply with paragraph 8 of the 1990 OSCE Copenhagen Document, the electoral legislation should be amended to specifically allow for international and domestic non-partisan observers.

As stated by the Minister of foreign affairs, Ms. Calmy-Rey, in her above-mentioned letter to Director Lenarcic, the overall situation of international and domestic non-partisan observers is satisfactory and it is considered to be no need for further regulation.

Domestic non-partisan observers can apply with the competent authority to be allowed to observe the vote/election. Such possibility is current practice. It is even specifically foreseen in some cantonal legislation (f.ex. in Basel-Stadt and Aargau).

As for international observers, instruments such as the 1990 OSCE Copenhagen Document are directly applicable and binding for Swiss authorities.

2.4 Recommendation 4 (p.9, VI)

Different rules in different municipalities could have generated unequal opportunities for parties and candidates, and such rules could be harmonized to ensure more equitable conditions.

No new rules have been adopted at the federal level since 2007. Complaints are always possible and could challenge current practice. Cantons are free to adopt detailed regulation. As usual, the Confederation has a self-restrained position: it's up to cantons to come up with concrete proposals. If the current practice is perceived to be problematic from citizens and parties, initiatives to regulate this issue will certainly be launched at the federal Parliament as well.

2.5 Recommendation 5 (p.13, VII B)

A higher and more effective level of coordination between the subjects involved in the complaints mechanism – the Ombudsmen, the ICA and the OFCOM – would contribute to the harmonization of jurisprudence regarding dispute resolution in the broadcasting sector. Further, a more precise definition of the subject matter regarding the ban on “political advertising” might be useful to avoid complaints and investigations in future elections. Furthermore, it is advisable to review article 17 of the Ordinance on Radio and TV so as to specify in detail when such issue-oriented advertisement may be banned during the election campaign for Parliamentary elections

Since the entry into force of the revision of the Law on Radio and Television (SR 784.40) on April 1, 2007, the Federal Office of Communications (OFCOM) has the competence of dispute-resolution on

⁸ Motion 11.3467 – Motion CIP/SPK, Transparences des sources de financement des campagnes pour les votations fédérales / Offenlegung der Finanzierungsquellen von Abstimmungskampagnen, http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20113467

Motion 11.3116 (M. Chopard-Acklin), Mehr Transparenz in der Parteienfinanzierung / Financement des partis. Plus de transparence, 16.03.2011: http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20113116

Interpellation 10.3900 (Sozialdemokratische Fraktion), Finanzierung von Abstimmungskämpfen / Financement des campagnes de votation, 01.12.2010: http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20103900

Question Kiener Nellen Margret 09.5074, Hour of questions. National Council - 09.03.09-13h00: Transparenz bei der Parteienfinanzierung/Transparence en matière de financement des partis politiques
Question : http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20095074
Reply : http://www.parlament.ch/ab/frameset/f/n/4807/291413/f_n_4807_291413_291510.htm

⁹ Guidelines on political party regulation by OSCE/ODIHR and Venice Commission (2010), chapter XII “Funding of political parties”

questions of political publicity. Based on the elaborated principles for editorial coverage, the Independent Complaints Authority (ICA) and the Ombudsmen (who had to be consulted previously), now deal only with editorial broadcasts. The new repartition of competences in the area of political advertising has contributed to greater clarity: no differences between the two supervision authorities have been noted since.

According to OFCOM, recent experience shows that there is no need for more precise rules on political advertising. Article 17 of the Law on Radio and Television has considerably contributed to clarify definitions (definition of the notion of a political party and of the moment starting from which advertising banning starts).

2.6 Recommendation 6 (p.14, VIII)

Political parties and civil society should be encouraged to consider further measures to develop programs that may increase the number of women candidates. In addition, the Swiss government may further consider the development of mechanisms that enhance women's political participation.

Several concrete measures have been taken to promote women candidates. Among others:

- The circular of the federal Government to the attention of cantons on the organization of federal elections 2011, published in October 2010¹⁰, deals with this issue (see chapter 2);
- The guidelines of the federal Chancellery for groups of candidates wishing to participate in federal elections¹¹ contain a specific chapter on how to foster female candidates (see chapter W - Möglichkeiten gezielter Förderung von Frauen/ Comment promouvoir les candidatures féminines?)¹²;
- The federal Chancellery has organized several events aiming at enhancing women's political participation, such as the national jubilee "40 years of women voting rights" on June 6, 2011 (Jubiläumsveranstaltung, 40 Jahre Frauenstimmrecht)¹³, meetings with women MPs, etc.;
- "Frauen bauen Zukunft"¹⁴ - a grouping of women's associations - has been created under the patronage of the federal Government and federal Chancellery with the aim of increasing the number of women that will get elected at the upcoming federal elections of 23 October 2011;
- The federal office for gender equality¹⁵ has coordinates work to implement the UN Convention on the elimination of all forms of discrimination against women - CEDAW;
- Since 2007, 3 women Chancellors have been elected in the cantons of Basel-Stadt, Geneva and Neuchâtel which constitutes substantial progress of women key players in election administration.

2.7 Recommendation 7 (p.15, IX)

Consideration could be given to increase election information and education for first time voters in order to enhance youth participation.

Several concrete measures have been taken to improve election information and education for first time voters:

- The election brochure 2011 „In der Kürze liegt die Würze“ has been distributed first of all to young people in professional formation and at schools;
- A project named "Schulen nach Bern"¹⁶ has been launched since 2009: its objective is to increase youth interest in political life and direct democracy tools;

¹⁰ http://www.admin.ch/ch/f/pore/nrw11/krbr/index_full.html

¹¹ « Election du Conseil national 2011 - Guide à l'usage des groupes voulant lancer des candidatures » :

http://www.admin.ch/ch/f/pore/nrw11/lfp/index_P1.html

« Nationalratswahlen 2011 - Leitfaden für kandidierende Gruppierungen » :

http://www.admin.ch/ch/d/pore/nrw11/lfp/index_P1.html

¹² http://www.admin.ch/ch/f/pore/nrw11/lfp/index_full.html

¹³ <http://www.news.admin.ch/message/index.html?lang=fr&msg-id=39509>

¹⁴ <http://www.frauenbauenzukunft.ch/>

¹⁵ <http://www.ebg.admin.ch/index.html?lang=en>

¹⁶ <http://www.bk.admin.ch/themen/pore/06365/index.html?lang=de> and <http://www.schulen-nach-bern.ch/home.html>

- An exposition (Bundesplatz 3 / Place federale 3) on federal elections will be organized at Käfigturm - the political Forum of the Confederation in August 2011¹⁷. An interactive tool "Easy Vote"¹⁸ has been developed to promote participation of young people at federal elections.
- Parliamentary Spring¹⁹, an event organized on 25.06.2011, discussed strategies to promote election of young representatives at the new parliament to come out after this fall's elections;
- The introduction of interactive tools explaining political process is envisaged (ch.ch)

2.8 Recommendation 8 (p.17, X A)

The dates by which the cantons and communes send the voting materials to the voters are inconsistent throughout the Federation; as such, different voters may have from ten to 30 days or more to consider their voting options. This also implies that, in case of voter errors, some of the Swiss citizens are offered the opportunity to correct this, while others are not. This should be addressed in order to provide equal opportunities for all Swiss citizens who vote in the federal elections.

- Federal legislation fixes a minimum deadline of 10 days before Election Day for cantons to send election material (art. 33 § 2 of federal Act on political rights) to voters. This (relatively short deadline) is due to the complexity of the preparation and print of the ballot lists and has so far been considered to be sufficient, except for Swiss abroad (see points 2.8 and 2.13 below)²⁰;
- Cantons can adopt longer deadlines;
- A package of "post" measures has been adopted and will be introduced by cantons to improve situation for Swiss abroad. This package has been discussed and adopted at the Conference of Chancellors, an established platform regrouping federal and cantonal Chancellors. The package of "post" measures is a project directed and coordinated by canton Aargau (contact person: Mr. Urs Meier);
- "Vote électronique"/e-voting facilitates in-time participation of Swiss abroad by allowing them to vote/elect via Internet. Around 22'000 of them will, for the first time, be offered e-voting at federal elections in October 2011²¹. The great majority should have access to the e-voting channel at the 2015 federal elections. Cantons (ex. BS) envisage a prolongation of deadlines for sending e-voting material to Swiss abroad at this occasion. Independent from such prolongation, by suppressing deadlines for returning the ballot, e-voting clearly improves the chances of Swiss abroad to participate in future federal elections;
- The part of the recommendation dealing with "opportunity to correct voting options" is based on a misunderstanding. Such correction opportunity does not exist in Switzerland (at all).

2.9 Recommendation 9 (p. 17, X A)

The system could be vulnerable to manipulation when no checks are undertaken. Given the current level of checking, the use of 'default' postal voting, where all electors are sent a ballot packets, does make electoral malfeasance possible by anyone willing to intercept and use otherwise genuine ballot packets.

Postal voting is based on mutual trust and functions well. Furthermore penal law dealing with cases of electoral malfeasance is considered to be sufficient. Due to the absence of major cases of manipulation and, consequently, of appeals, nothing has been undertaken so far to modify political rights legislation at federal level.

Things could change, at least at cantonal level, where MPs are asking for a stricter control of postal voting (ex. Interpellation Astier, of 01.12. 2010 in canton Bern²²).

¹⁷ <http://www.parlamentswahlen-2011.ch/home-fr.html>

¹⁸ <http://www.easyvote.ch/fr/>

¹⁹ <http://www.sajv.ch/blog/archive/2011/06/14/plus-de-jeunes-au-palais-federal.html>

²⁰ For more details, see the list with deadlines for presentation of candidates and rectification of deficiencies in the attached documentation

²¹ Already half of all Swiss abroad registered to vote has access to Internet voting during federal votes (max. 4 times/year)

²² See <http://www.gr.be.ch/gr/de/index/geschaefte/geschaefte/suche/geschaefte.gid-d41f8e5d3dd04062bce88024e1387e7c.html>

Increasing awareness of risks inherent to distant voting is being observed recently at federal level, in particular in relation to internet voting²³. At the same time, in a country whose voters are solicited an average 4 times a year to accomplish their civic duties, postal voting is vital for the well-functioning of direct democracy: in certain cantons (ex. GE) it clearly increased voter participation; in others, it helped to stop the decreasing trend. In Geneva today more than 90% of voters use postal voting. This trend can also be observed in other cantons. It is therefore important that politicians reflect globally on the issue of distant voting and consider all its aspects: for example what would be the implications of the future development of the enterprise "Swiss Post" on postal voting?

2.10 Recommendation 10 (p.18, X B)

Provisions that allow for tracking the issuing of provisional registration cards, possible ID checking of voters and consistent crossing off the voters from the voters list could be introduced to limit the risk of multiple voting.

The issuing of provisional registration cards is regulated by cantons. Where necessary, the Conference of cantonal and federal Chancellors undertakes coordination work. See also explanations under point 2.9.

2.11 Recommendation 11 (p.19, X B)

Whilst the voters receive education materials with their postal vote, a more sustained voter information campaign should be implemented, especially on election day procedures (use of postal vs. secrecy envelopes; secrecy of the ballots when presenting them to be stamped on the reverse) and the use of sub-lists; in addition, voter information materials should be posted at the polling stations' locations and polling booths should be available in all polling stations. Consideration should be given, at federal, cantonal, and community levels, to further electoral education efforts.

- There exist a number of documents at federal level (see points 2.6 and 2.7);
- Furthermore cantons actively inform on possibilities such as "panachage" and "cumul";
- Media also organize a great number of dedicated information platforms within "election" broadcasting programs;
- Vote électronique publishes information on voting options such as "panachage" and "cumul" directly on the election page. There also exists a hotline per each system that (Swiss abroad) voters can call in case of doubt. Furthermore, e-voting does not accept invalid ballots.

2.12 Recommendation 12 (p.20, X B)

Consideration could be given to introduce a handover document for the transport of elections materials from the polling station to the counting center.

This is an issue of cantonal / communal competence. In canton Bern f.ex. the cantonal requirement is that at least two persons should transport election material. Whether a handover document is used or not, it's up to communes. No request/necessity to do more at national level has been perceived so far.

2.13 Recommendation 13 (p.20, X C)

The ten day deadline has the potential to disfranchise the Swiss voters living abroad, as they depend on the respective postal system in their country of residence to receive the ballots in time. A longer period could be beneficial and possibly increase the turnout of this category of Swiss citizens. A solution could be to consider other methods and voting channels which may include the Swiss consulates to be involved in a swift delivery of ballots back to Switzerland.

See reply under point 2.8 (package "post").

²³ 10.3251 – Interpellation, "Risques démocratiques inhérents au vote électronique", 19.03.2010: http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20103251

As stated in the above-mentioned letter of Minister Calmy-Rey to Director Lenarcic, voting at the consulates has been examined and judged unfit mainly because it actually delays delivery of ballots back to Switzerland. Another reason is that voting rights are linked to a commune/canton and several types of ballots (local, cantonal, federal) could take place the same day. Depending on the the commune/canton where Swiss abroad exercise their political rights, the consulate will have to deliver ballots back to potentially 2'700 communes and 27 cantons which is impossible.

Instead, e-voting (=internet voting) has been introduced to facilitate ballot returning for Swiss abroad. The federal Council recently authorized four cantons to offer internet voting to some 22'000 Swiss abroad at the October 2011 federal elections²⁴. Its aim is to offer internet voting to almost all registered Swiss abroad at the October 2015 elections. Internet voting is offered since 2004 during federal votes (max. 4 / year); since June 2008 Swiss abroad can benefit from Internet voting. The number of cantons which offer Internet voting to Swiss abroad has increased, going from 3 (the pioneers of GE, NE and ZH) to 13 (half of cantons). Almost half of all registered Swiss abroad could benefit from Internet voting at the last federal vote (February 2011).

2.14 Recommendation 14 (p.22, XI)

Some of the computers used to enter the counting results are connected to internet, thus raising the possibility for e-fraud. Computers storing the databases should be disconnected from the internet throughout the process.

Hardware, software and procedures used to establish and transmit results within one canton (between communes and the canton) are regulated by cantonal legislation. Ultimately they have to respect federal minimum conditions: it's a cantonal competence and responsibility to make sure this is the case. Experience gained in the e-voting area could lead to new developments also here.

2.15 Recommendation 15 (p.22, XI)

A more systematic approach to counting could lead to more linear and consistent procedures, through the sharing of best practices, between the communes of the same canton, as well as between the cantons. In addition, consideration should be given to the setting of standards for the use of election software, and perhaps ethical rules for private companies who are actively involved in the writing of programs and counting of votes from such software.

The necessity of standardization is widely recognized. In the field of electoral registers for Swiss abroad²⁵ cantons have recently undertaken harmonisation (within the canton) work.

A few elements of the information used in votes/elections have already been standardized by the standards-setting association eCH. Work will resume in November 2011 under the lead of the federal Chancellery to develop standards for all (remaining) elements which are used for voting and elections, at least at the federal level. Nevertheless the aim of the standards-developing community (the ad-hoc working group / Fachgruppe eCH) is that such standards should be exhaustive and cover all types of cantonal/local political elections. Although not mandatory, such standards will be an excellent step in the right direction.

The issue of ethical rules for private companies involved in the writing of programs and counting of votes has so far not been investigated. Inspiration could be drawn by rules developed in the internet voting context.

3. GENERAL CONCLUSIONS

Following *Zeitgeist* can be observed in recent developments in the area of political rights in Switzerland: regulation of distant voting and transparency. Both issues were also underlined by the OSCE/ODIHR 2007 EAM Report.

²⁴ <http://www.bk.admin.ch/aktuell/media/03238/index.html?lang=de&msg-id=39761>

²⁵ See article 5b of the fed. Act on political rights of Swiss abroad: http://www.admin.ch/ch/f/rs/161_5/index.html

Based on existing competences and political mandate several improvements have been undertaken so far by federal authorities. In particular, gender and youth related recommendations have been followed up and a number of concrete and efficient measures have been taken.

Other recommendations are being/have already been implemented at cantonal/local level, respectively are under cantonal responsibility. Thanks to the bottom-up tradition of political rights development, improvements introduced at cantonal level may spread nationwide.

The federal Chancellery has a leading role in the development of internet voting - THE voting facilitation measure according to Swiss abroad.