

Inter-Party Dialogue under the auspices of the Speaker of the National Assembly

## **Analysis of the Agreement on Improving the Conditions for Holding Elections**

[The Agreement on Improving the Conditions for Conducting Elections](#) (the Agreement) and the accompanying conclusion, resulting from an inter-party dialogue conducted under the auspices of the Speaker of the National Assembly (without the mediation of the European Parliament), provide for significant changes in the electoral process just three months before the start of the election campaign for the scheduled regular Presidential and City of Belgrade elections and the early Parliamentary elections in 2022.

Neither this Agreement nor the [proposed measures created in the inter-party dialogue mediated by the European Parliament](#) recognize or adequately address the key issues with the election process that have been pointed out by international and domestic observers. Namely, the pressure on voters, officials campaigning, and equal representation of election participants in the media.

The Agreement does provide measures that can generally be assessed as positive and in line with certain ODIHR recommendations - such as improving the transparency of the election process, submitting financial reports before Election Day, and familiarizing voters with the Unified Voters Register procedure. However, CRTA assesses that the overall improvement of the quality of elections in Serbia that would result from these measures is limited.

The most worrying fact is that the implementation of the Agreement would repeat the bad practice that marked the 2020 elections. Contrary to international standards, just before the next elections were announced, the Agreement proposed changes in the rules of the electoral system, as well as radical changes in the electoral process that we have been accustomed to for the past 30 years. The Agreement primarily addresses the establishment of a "middle level" in the election administration, which the ODIHR does cite in its recommendations, but not as a priority. The announced changes affect the way elections are organized and conducted, which requires significant time for the preparation, implementation, and education of voters and participants in the elections. There was no time for this before the elections were called. The key problem that would arise from the hasty introduction of further complexity into the election administration and the establishment of its new powers, is the uncertainty of the course and outcome of the election process. The time needed to announce the final election results could also be significantly extended. The protection of the right to vote would become more inaccessible for voters by applying this Agreement than it was before, and by applying measures related to the Unified Voters' List, space would be opened for the misuse of personal data of citizens.

Given all this, the Agreement does not contribute to the protection of the public interest or the rights of citizens and all participants in the election process. The potential improvements in electoral conditions that it could lead to are very limited in scope. The complexity of the envisaged intervention in the entire electoral process could, due to the absence of time, cause confusion among election participants.

The implementation of the proposed solutions implies changes in important election laws. This is justified for certain measures, but legal changes aimed at temporary measures – i.e., only for the forthcoming elections - can lead to problems of legal uncertainty and unpredictability for future election cycles. Finally,

the Agreement is a political document that only indicates the path that the signatories want to follow, and the lack of precision in the agreed measures leaves room for different interpretations. As such, the full effects of the measures cannot be entirely predicted before they are implemented.

## **Summary of key findings**

CRTA's assessment is that the implementation of the Agreement would significantly change the character and functions of the institutions responsible for organizing and conducting elections and protecting the rights of voters. The scope of the proposed interventions is troubling because it could lead to legal and procedural uncertainty during the election process. The primary concerns stem from the extremely short deadlines for the introduction of local election commissions, which are a new extra level of election administration, for national elections, immediately before the elections. This is even more challenging given that Serbia's capabilities in election administration are well-documented as being weak and insufficient. Time is needed to define clear competencies, provide facilities, and harmonize all levels within the electoral administration system, as well as for all participants in the elections to adjust to the new rules. Under the Agreement this necessary period of adjustment, which is crucial to ensuring a fair election process, would be denied.

There is a clear lack of attention to detail to these systemic changes, this will have a negative impact on the protection of voters' rights. If local election commissions are given the role of deciding on complaints and are also able to view sensitive electoral documents, the process of protecting the electoral rights of citizens could be made more complicated. Given that this is the first major change in election administration since the introduction of the multi-party system, the fear that there will be no time for voters to be informed about it is perfectly justified. Citizens' ability to file complaints with the competent authorities will be reduced and the certainty of concluding the election process will be jeopardized, i.e., the announcement of the final election results could be delayed.

The proposal that a selected circle of political actors will have access to a large amount of personal data from the voter list is also extremely concerning. This, in addition to discriminating against election participants, also creates space for the misuse of personal data that will be available to members of the envisaged working group. It also jeopardizes public confidence as an impartial and independent check on the accuracy of the single voter list will be denied.

Although the text of the Agreement notes that it is not a matter of changing the electoral system, but of "improving the existing one", it still envisages changes in the way in which votes are converted into mandates. It is proposed that for electoral lists that pass the electoral threshold (at least 3% of all votes cast), the electoral list with the highest quotient that does not have any mandate, is assigned a mandate to the detriment of the electoral list with the lowest quotient that has two or more mandates. In addition, several proposed changes substantially change the process and conditions for running as a candidate in elections.

In the area of campaign finance, some of the proposed measures require a change in the legal framework and some do not, but most of them will not significantly affect the equality of campaign participants. The proposed measures will only meet some of the individual ODIHR recommendations. Some of the measures can be found among the measures to improve the implementation of the election process proposed by the co-facilitators during the process of the Inter-Party Dialogue with the mediation of the European Parliament.

As for the ban on the misuse of public resources in the election campaign, an additional restriction is envisaged for the media during the election campaign. Namely, a ban on broadcasting the opening of infrastructure facilities in which public officials participate up to 10 days before the election. It is problematic that the application of this measure is proposed through an amendment to the Law on Prevention of Corruption. The correct way to implement this would be to change laws governing the media. In addition, limiting this provision to the last 10 days of the campaign, while representing a positive shift, would not substantially prevent the misuse of public resources, nor sufficiently reduce the inequality of electoral participants.

Concerning the role of the media in the election campaign, the Agreement largely reflects the Measures to Improve the Electoral Process proposed by co-facilitators during the European Parliament-mediated Inter-Party Dialogue process. CRTA assessed that these measures were [insufficient to ensure fair and free elections](#).

Finally, the proposal to implement the new election measures through legal changes is controversial, especially as officials have announced that these are temporary changes. The officials have thereby introduced legal uncertainty and doubt regarding future election cycles. To understand the planned changes, as well as their harmonization with the existing constitutional and legal framework, it is essential to hold public hearings within a reasonable timeframe. Holding public hearings is additionally important in these circumstances because it would inform the general public, i.e., voters, on what the election process will look like.

An additional cause for concern is that the solutions are not precisely defined, which leaves room for different interpretations. As a result, it is not possible to accurately assess what their impact will be before the announced legal changes are adopted and their implementation begins. In addition, the Agreement does not contain deadlines for the adoption and implementation of measures, nor clear mechanisms for their execution. Finally, the legal nature of the Agreement is still unclear, so it remains to be seen what its eventual implementation will look like in practice.

The measures envisaged by the Agreement relate to 10 of the 27 recommendations sent to Serbia by the OSCE / ODIHR EOM after the 2020 parliamentary elections. However, the relevant international standards, as well as the recommendations sent by the ODIHR to Serbia, clearly state that fundamental aspects of the election process should not be changed less than at least a year before elections are held. This is because such changes bring uncertainty to the election process, leaving consequences for all election actors, voters, and the public.

## Analysis of the Agreement on Improving the Conditions for Holding Elections following the Inter-Party Dialogue without Foreign Mediation

\*Recommendations by ODIHR observers' mission after 2020 parliamentary elections **(ODIHR)**

Measures proposed by co-facilitators of Inter-Party dialogue with mediation by European Parliament **(EP IPD)**

Measures from the Opinion on Measures to Improve Election Process by Government of Serbia Working Group for Cooperation with OSCE/ODIHR **(WG ODIHR)**

Conclusion	Compliance with existing proposals and recommendations*	CRTA's comments
<b>2. GENERAL RULES FOR ELECTION PROCEDURES AND CANDIDACY PROCEDURES</b>		

<p><b>A. - Elections held concurrently</b></p> <p>Article 3</p> <p>(1) Regularly scheduled elections for the President of the Republic, regularly scheduled elections for the City of Belgrade Assembly members and early elections for Members of Parliament will be held on the same date, and namely on 3 April 2022.</p> <p>(2) The elections for the President of the Republic will be announced by National Assembly Speaker on 2 March 2022.</p> <p>(3) The elections for Members of Parliament will be announced by the President of the Republic on 15 February 2022.</p> <p>(4) The elections for City of Belgrade Assembly members will be announced by National Assembly Speaker on 15 February 2022.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>While the Presidential and City of Belgrade's elections are regularly scheduled, elections for the National Assembly are extraordinary or early elections, without clear reasoning for it. Considering the lack of political pluralism in the current Parliament convocation, caused by the boycott of 2020 elections by one part of the opposition, there are certain political reasons to hold these elections. However, the elections should be held at regular intervals (Venice Commission Code of Good Practice in Elections, I, 6), while holding early elections continues the established negative pattern. In the last ten years, these would be the fourth elections for Members of Parliament (2014, 2016, 2020, 2022) out of which only the 2020 ones were regularly scheduled, which in itself is bad election practice because it enables the ruling majority to achieve particular political goals with permanent uncertainty of election cycles' timing.</p>
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<p><b>B. - Voting on the territory of Kosovo and Metohija Autonomous Region</b></p> <p>Article 4  (1) Citizens of the Republic of Serbia who live on the territory of Kosovo and Metohija Autonomous Region must be enabled to realize their constitutionally guaranteed voting rights and vote in elections on the territory of Kosovo and Metohija Autonomous Region.  (2) Considering that voting on the territory of Kosovo and Metohija Autonomous Region could not be implemented in the same manner as in the other parts of Rep. of Serbia because of the specific security and political situation, the Law on the Election of Members of Parliament must envision the legal basis for the elections on the territory of Kosovo and Metohija Autonomous Region to be held under special procedures, with OSCE cooperation.  (3) The Law on the Election of Members of Parliament should envision the legal basis for at least one member of every election board on the territory of Kosovo and Metohija Autonomous Region to be elected from proposed opposition list of candidates, i.e., from a list of candidates submitted by a party not present in the (current) Parliament, or rather a list of candidates submitted by a party present in the Parliament which is not part of the ruling coalition.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>This measure does not state the legal basis to hold elections in Kosovo and Metohija, nor does it in any way offer solutions different than previously offered which were deemed unconstitutional by Constitutional Court (determining the election results outside of the election sites), but emphasizes the intentions to settle this question.</p>
<p><b>V. – Institutions to implement elections</b></p>		

<p>a) Temporary changes to Republic Electoral Commission standing composition</p> <p>Article 5  (1) The Law on the Election of Members of Parliament should envision that the first coming elections for the President of the Republic and elections for Members of Parliament are to be overseen by the Republic Electoral Commission in its altered standing composition, which would number 23 members and 23 replacement members.  (2) Seventeen members and replacement members of the Republic Electoral Commission are selected in accordance with the current regulations, while the remaining six members and replacement members are selected by National Assembly nominated by the National Assembly' Speaker, who announces those nominations after consultations with opposition parties which participate in Inter-Party Dialogue, and namely three members and three replacement members who are selected as nominated by the political parties participating in Inter-Party Dialogue under the auspices of European Parliament representatives, while remaining three members and three replacement members are selected as nominated by the political parties participating in Inter-Party Dialogue under the auspices of the National Assembly' Speaker.</p>	<p><b>ODIHR: Partially addressed recommendation 12:</b></p> <p>Consideration should be given to establishing all levels of the election administration by law, and clearly define their role and responsibilities.</p> <p>Modifications, which envision changes to corresponding legal documents, are <b>in accordance with ODIHR recommendation 2 from 2020:</b></p> <p>To ensure legal certainty, substantial regulations should be included primarily in laws, adopted by parliament, while only technical matters and details should be regulated by secondary legislation, including instructions of the Republic Electoral Commission (REC).</p> <p><b>EP IPD: In accordance with measure 9</b></p> <p>Temporary change of the standing REC composition by adding 6 additional members and 6 substitutes to its composition from the rank of the overall opposition in the country (3+3 format).</p> <p>The REC should operate on the principles of collegiality and it should strive for making decisions with the widest possible consensus.</p> <p><b>WG ODIHR: /</b></p>	<p>This measure is a result of political agreement and its effect could only be measured upon implementation.</p> <p>The formula in Article 5, Paragraph 2, points to the possibility that all current members of the Republic Electoral Commission would be selected again, therefore the intentions of those who signed the agreement are not clear in that respect.</p> <p>Still, CRTA is of the opinion that this measure needs to be viewed as temporary, while in the long run it is necessary to strengthen the size, independence and professional abilities of the Republic Electoral Commission. Namely, the changes to the Republic Electoral Commission's standing composition, in the manner proposed, could bring short term change in the dynamics and quality of performance of this body, but it still does not remove the key problems in the REC's performance: lack of professional, specialized staff, manner in which the commission is selected, and the authority given to the Republic Electoral Commission in the electoral process. Whether this short term change will lead to better or worse performance of the Republic Electoral Commission depends in large measure from its members themselves, both old and new, and their attitude towards the task.</p> <p>Additional problem is the fact that the Agreement does not specify the date by which the changes to the Law should be adopted, nor is it defined when additional members would start their work with the REC. Also, there is no strict term limit for these new members. The text of the Agreement envisions that the REC's altered composition would oversee "the first coming elections for the President of the Republic, and the Elections for Members of Parliament". This definition could be interpreted as such that the REC's "altered composition" members' engagement stops upon elections being completed, as it would be for the members of the commission's expanded composition.</p>
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<p>b) Local election commissions</p> <p>Article 6</p> <p>(1) The Law on the Election of Members of Parliament should envision that city and county electoral commissions (hereinafter: local electoral commissions) are the third institution to implement the elections for Members of Parliament and the elections for the President of the Republic (hereinafter: National elections), besides Republic Electoral Commission and polling station' boards.</p> <p>(2) Local electoral commissions should have permanent and extended composition.</p> <p>(3) When local electoral commission is implementing national elections, its expanded composition is consisting of representatives of all submitted electoral lists for National elections.</p> <p>(4) Local electoral commission should have concrete responsibilities in election process, like handling election materials, training of polling boards, and making decisions in the first instance, on the basis of legal guidelines, on all irregularities in polling boards' activities.</p>	<p><b>ODIHR: Partially addressed recommendation 12:</b></p> <p>Consideration should be given to establishing all levels of the election administration by law, and clearly define their role and responsibilities.</p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: in accordance with Article 3:</b></p> <p>New Law on the Election of Members of Parliament should envision that the county or city electoral commissions are also institutions that implement national elections.</p>	<p>Although good reasoning was applied in further supporting the Republic Electoral Commission, with expanding its authority through local electoral commissions, what is questionable is their capacity to perform good work in accordance with this new oversight, as well as its application in a timely manner. It is essential to conduct the training of local electoral commissions' members, and being that there is only 5 months left until next elections and that electoral commission's compositions under this model are not yet known, positive effects of such changes are dubious.</p> <p>The solution, formulated like this, has two additional flaws:</p> <ul style="list-style-type: none"> <li>- Potential problems with the decision making quorum at local electoral commission conferences. (The Agreement's text implies that expanded composition of local electoral commissions, which would be implementing national elections, would also include representatives of all the electoral lists submitted and that this would be automatic. The question is whether all the electoral lists would have enough people to staff all local electoral commissions all over Serbia. If this Article of the Agreement is to be applied, and legal provision similarly defined, the quorum for decision making conferences in local electoral commissions would be expanded. On the other hand, if all the electoral lists are not able to provide sufficient number of members for expanded compositions of every local electoral commission, it could happen that local electoral commissions would not be able to make decisions due to lack of quorum.)</li> <li>- This rule does not apply in Presidential elections, for those submitting proposals for candidates for the President of the Republic, which gives participants in the presidential elections unequal treatment. (Item 3 establishes the right of those submitting electoral lists to have representatives in expanded compositions in local electoral commissions, but that right is not also established for those submitting proposals for candidates for the President of the Republic. It is not clear whether this is just an omission, or those submitting proposals for candidates for the President of the Republic are being discriminated against compared to those submitting electoral lists in Parliamentary elections.)</li> </ul>
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<p>v) Temporary solution for local electoral commission's standing composition</p> <p>Article 7</p> <p>(1) The Law on the Election of Members of Parliament should envision that the first coming elections for the President of the Republic and the Elections of Members of Parliament should be implemented by local electoral commissions which would have altered standing composition.</p> <p>(2) Besides members and replacement members of local electoral commission who are nominated in accordance with the existing regulations, for local electoral commission's standing composition would be nominated one member and one replacement member as proposed by the National Assembly' Speaker who nominated them after consulting with opposition parties participating in Inter-Party Dialogue, and other opposition parties expressing interest in this matter.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>This solution is contrary to Article 14 of the Law on Local Elections, and the question is whether this Law would also be changed.</p> <p><i>Article 14: Election Commission in its standing composition is consisting of the President and at least six members nominated by the Assembly of local self-governing unit, as proposed by assembly members' groups from in the same Assembly of local self-governing unit, and proportional to the number of assembly members in its expanded composition - and one authorized representative for each electoral list submitted who proposed at least two thirds of the candidates of the total number of assembly members being elected. [?]</i></p> <p>From the text of the Agreement it can't be concluded in what way would the non-parliamentary parties be able to nominate members to electoral commissions at local level and by what criteria would their members be selected, which could present an additional problem for realization of this measure in such short time organizing the elections. The definition isn't clear either in terms of time limits, or rather whether these changes would stay in effect even after 2022 elections.</p> <p>When the number of members and replacement members in standing composition is added to the number of members and replacement members in expanded composition of local electoral commission, one get a very large number of potential commission members, which most likely only a very small number of opposition parties would be able to fulfill.</p>
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<p>g) Changes in criteria to select permanent members to institutions implementing elections</p> <p>Article 8  (1) Criteria to select members in standing composition of institutions implementing elections should be changed, being that, according to the current criteria, electoral lists which did not win enough seats to form assembly members group, or rather council members group, and those lists could not nominate members to standing composition of institutions implementing elections.  (2) The Law on the Election of Members of Parliament should envision that in lieu of nominations for members in standing composition of the Republic Electoral Commission, or rather for members in standing composition of polling boards, as a Parliamentary group would be considered an individual assembly member or a group of assembly members which is consisting of less than five assembly members if the following conditions are met: 1) that all of those assembly members were elected from the same electoral list; 2) that the electoral list from which they were elected did not win at least the minimum number of seats that are necessary to form the assembly members group; 3) that none of the members joined some other assembly members group; and, 4) that all of the assembly members signed the proposal that a certain number of members and replacement members be selected to the standing composition of the Republic Electoral Commission, or rather the polling boards.  (3) The Law on Local Elections should envision that in lieu of nominating the</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>Introduction of such measure points to the intention to enable a larger number Parliamentary groups to nominate members to polling boards (BO) in its standing composition. However, <b>this solution completely changes the meaning of the term "Parliamentary group"</b> which is defined in Article 22, Paragraph 2, of Republic of Serbia Parliament's Rules of Procedures, and is replaced with specific interpretation of the term for use in election process. A solution like this initially brings pluralism to standing composition of polling boards (BO) and to a certain extent lessens the domination in numbers of members in standing composition of polling boards being from the Parliamentary group which has the most members. However, the question remains how this measure would be implemented and what effects it would have in the short period left for its realization.</p>
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<p>members to standing composition of the local electoral commissions, or rather nominating the members in standing composition of the polling stations boards, as a council members group would be considered an individual council member or a group of council members which is consisting of less than a number of members necessary to form a council members group if the following conditions are met: 1) that all of those council members were elected from the same electoral list; 2) that the electoral list from which they were elected did not win at least the minimum number of seats that are necessary to form the council members group; 3) that none of the members joined some other council members group; and, 4) that all of the council members signed the proposal that a certain number of members and replacement members be selected to the standing composition of the local electoral commission, or the rather polling boards.</p>		
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<p>d) Temporary changes to standing compositions of polling boards</p> <p>Article 9  (1) The Law on the Election on Members of Parliament should envision that the first coming elections for the President of the Republic and The Elections of Members of Parliament are implemented by the altered standing composition of polling boards which would consist of four members and four replacement members.  (2) Three members and three replacement members are selected in accordance with the current regulations, while one member and one replacement member are selected by the Republic Electoral Commission as proposed by the National Assembly' Speaker who makes that proposal after consulting with opposition parties participating in this Dialogue, and other opposition parties expressing interest in this matter.  (3) The same rule would be applied on referendums and on the first coming local elections.  5) Increase the compensation for work in polling boards.</p> <p>Article 10  The Republic Electoral Commission regulations should envision that the compensation for work in polling boards should be increased from 1.500 dinars to 2.000 dinars.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>It is unknown by what criteria or which formula would opposition parties gain the right to select a certain number of additional members in voting boards (within the limits for the fourth member), which raises the question whether this measure could be implemented. The effects of the measure could be judged in light of the larger diversity of members in the standing composition of polling boards, but does not necessarily lead to higher quality of their performance.</p> <p>Additionally, in item 1 of the text, it is not clear who makes up the composition of polling boards. There's talk of four members, without a mention of a polling board's president. The existing law is using a definition as the board's president and at least two members (all of them have replacements). It is not clear whether the Agreement text, when referring to four members with four replacements, speaks of the president and three members or four members besides the president.</p> <p>Item 3 of this Article envisions that the same rule would be applied in the first coming local elections. This rule is contrary to the Law on Local Elections which, in Article 16, Item 2, establishes that standing composition of polling boards consist of the president and at least four members.</p>
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<p>e) Increasing the transparency of activities by institutions implementing elections</p> <p>Article 11 The Law on the Election of Members of Parliament should envision the following obligations for institutions implementing elections which would increase the transparency of their performance: 1) The Republic Electoral Commission's conferences are to be transmitted live on its web site; 2) The records of Republic Electoral Commission's conferences are to be published on its web site; 3) Election results data entry from polling stations are to be transmitted from the beginning to the end on the Republic Electoral Commission's web site; 4) All records of polling stations' activities are to be scanned and in the shortest possible time published on the Republic Electoral Commission's web site, and if corrections were made to mistakes in polling board records, the document on those corrections of records is to be published also; 5) Every voter has the right to request the information from institutions charged with keeping election records about whether the same voter is marked in the Voter Register as having cast a vote.</p>	<p><b>ODIHR: In accordance with recommendation 11:</b></p> <p>To enhance transparency, the law should provide for the prompt publication of all scanned Polling Board (PBs) results protocols and of election results by polling station, including those corrected later in the process or determined by repeat elections.</p> <p><b>EP IPD: In accordance with measure 14:</b></p> <p>Improve procedures including vote count, control of results, completion of the result protocols and election results by polling station and their prompt publication.</p> <p><b>WG ODIHR: /</b></p>	<p>The proposed measures contribute to the increased transparency in the Republic Electoral Commission's performance, while making a note that measures 1 and 5 have already been achieved during 2020 election cycle.</p> <p>It is necessary to define the deadlines for these actions since the term "the shortest possible time" does not denote timely requirement for any institution, and in this case it does not denote it for the Republic Electoral Commission.</p>
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<p>Ž) Appointing the polling boards in repeat elections</p> <p>Article 12 The Republic Electoral Commission's regulations should clearly envision that in case of repeat voting at certain polling stations, each of the election lists has the right to change its representatives on polling board, and if on that particular polling station they did not nominate its representatives to the polling board, they could nominate representatives to facilitate repeat elections.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>It is not clear what is the purpose and what is the way this measure would be realized, being that in the case of repeat elections the polling board is certainly disbanded and the new one is being appointed, following previously already established rules, or rather the Republic Electoral Commission's regulations.</p>
<p><b>G. – Announcing a candidacy in the elections</b></p>		

<p>a) Lowering the required number of voter signatures</p> <p>Article 13</p> <p>(1) The Law on the Election of Members of Parliament should reduce the number of voter signatures required to submit the electoral list of minority nationals in elections for National Assembly to 5.000.</p> <p>(2) The Law on Local Elections should envision the principle by which the number of signatures required to submit the electoral list does not depend on the number of assembly members in local self-governing unit, but instead on the number of voters at the time of the elections being announced, so that the electoral list could be submitted if it contains signatures of at least:</p> <ul style="list-style-type: none"> <li>- 200 voters in local self-government units which have up to 20.000 voters,</li> <li>- 300 voters in local self-government units which have up to 30.000 voters,</li> <li>- 500 voters in local self-government units which have up to 50.000 voters,</li> <li>- 600 voters in local self-government units which have up to 70.000 voters,</li> <li>- 800 voters in local self-government units which have up to 100.000 voters,</li> <li>- 1.000 voters in local self-government units which have up to 500.000 voters,</li> <li>- 3.000 voters in local self-government units which have more than 500.000 voters.</li> </ul> <p>(3) The decision by the Assembly of Vojvodina Autonomous Region on assembly members' elections should lower the number of voter signatures required to submit electoral list in Autonomous region's elections from 6.000 to 4.000, while the number of voter signatures required to submit the electoral list of national minority parties in autonomous region's elections should be lowered from 3.000 to 2.000.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: In accordance with measure 16:</b></p> <p>Reduce a number of signatures required to nominate a list of minority nationals in elections for assembly members to 5000 signatures. Prevent avoiding these laws.</p> <p><b>WG ODIHR: In accordance with measure 6:</b></p> <p>The number of signatures in support of electoral lists is not in conjunction with the number of members in the Parliament, but to the number of voters at the time of the decision announcing the elections.</p>	<p>There is a danger that those submitting the electoral lists that contain more than one third of the candidates for assembly members would be put in a position to collect a full number of supporting voter signatures, as is the case when submitting the complete list.</p> <p>Additionally, this measure could contribute to the possibility that the voters, with their signature, would be able to support the candidacy of some other list, if their signature is not already counted in legally required number of valid signatures for accepted candidacy. From voters point of view, it is unclear what is the advantage to voters themselves, being that there is no mechanism for the voters to know whether their vote is not "counted" within valid signatures, and that they could then sign their support for some other list. The impression is that this measure is the result of coordination of interests between political parties, with no consideration for the voters and the public.</p> <p>In this regard, CRTA's proposes Recommendation for Free and Fair Elections number 1, which points out to the necessity of introducing the requirement that the electoral list leader also be a candidate in the elections, reverting to the practice of registering the voters' statements of support with public notaries and courts, and splitting the processes of submitting the electoral lists and the official start of election campaign.</p>
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(4) The Law on Local Elections should envision that all the valid voter signatures which were submitted by the electoral lists above the number required to submit the lists are not counted as signatures submitted, and that those signatures will not be rejected if they are repeated while submitting some other electoral lists.



<p>b) Competent institutions to verify the signatures</p> <p>Article 14</p> <p>(1) The changes to the Law on the Election of Members of Parliament, brought before (2020) state of emergency was discontinued, and which envisioned that voters' signatures supporting the electoral lists on the whole territory of the Republic of Serbia could be registered not only with public notaries but also with city's or county's clerks, are still in effect.</p> <p>(2) While the process announcing the candidacies is in progress, one of the city or county clerks will be on duty on the premises of community boards, and also those submitting the electoral lists would be given a possibility to set up a computer with printer and prepare voters statements to be verified on the premises of the same community boards.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>CRTA, in its Recommendations for Free and Fair Elections, proposes that the filing of voters' statements of support be returned to the domain of public notaries and courts, which is contrary to the proposed measure that suggests the voters signatures could also be verified by the city and country clerks.</p> <p><b>CRTA's Recommendation 1b:</b></p> <p>In order to prevent the possible misuse while verifying voter statements of support by local self-government units, it is necessary to change the corresponding provisions of the Law on the Election of Members of Parliament and Law on Local Elections, which require the verification of signatures in support of electoral lists, in such a way where those provisions would be coordinated with the existing regulations on public notaries. That would mean that the voters could support only one proposed electoral list with their signature and each signature has to be registered with public notary, while in cities and counties in which there are no designated public notaries, signatures could be registered with basic court, at court's branch offices or court clerk's offices. The Law on the Election of Members of Parliament should eliminate the possibility that signatures be registered with the city or county administration.</p>
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<p>v) Names of electoral lists</p> <p>Article 15 In regards to possibilities of setting up names for their electoral lists, the political parties should be equal to party coalitions or citizen' groups.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>The Law on the Election of Members of Parliament envisions that if the party is submitting the list, the name of the list is designated with that party's name, or rather the name of the party has to be in the list's name. When it is a coalition or a citizen's group in question, the members of coalition could reach a deal on what will be the list's name. The proposed change means that political parties list' names now don't necessarily have to have the name of the party as a list's name. A solution like this could contribute to additional confusion among voters, in light of not clearly reflecting which political actors are behind certain lists' names.</p>
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<p><b>D. – The position of national minority parties in election procedures</b></p> <p>Article 16  (1) Electoral lists submitted by national minority' political parties should have the privileged status when submitting candidates and Parliament seat assignments.  (2) The Law on the Election of Members of Parliament should specifically envision the prevention of law avoidance, and should give the Republic Electoral Commission authorization not to recognize the national minority' political party status to those submitting electoral lists, if it establishes that it actually is a majority party trying to trick the law.</p>	<p><b>ODIHR: In accordance with recommendation 24:</b></p> <p>Consideration should be given to establishing clear criteria in the law which would allow for the determination of national minority status of candidate lists thus ensuring that special provisions for national minority lists are not abused.</p> <p><b>EP IPD: In connection with measure 16:</b></p> <p>Reduce the number of signatures necessary for electoral lists of national minority parties for the parliamentary elections to 5000 signatures and ensure prevention of the abuse of the law.</p> <p><b>WG ODIHR: In accordance with measure 2.3:</b></p> <p>Establishing clear criteria to determine which political parties are considered national minority parties, which would prevent avoiding the law.</p>	<p>The proposed measure is in accordance with the recommendation that ODIHR observing mission directed at Serbia on several occasions, and which is addressing the prevention of misuse and law avoidance in establishing the status of national minorities in electoral process. The application of this measure, which defines the criteria on basis of what is the status of national minorities awarded, would contribute to the transparency of electoral process.</p>
<p><b>Đ. – Voter registers</b></p>		

<p>a) Forming the working group to control voter registers</p> <p style="text-align: center;"><b>Article 17</b></p> <p>(1) The Government of the Republic of Serbia will form the Working Group for external control of the Unified Voter Register which would be composed of representatives of the: Serbian Progressive Party, Socialist Party of Serbia, Enough is Enough, Serbian Movement Dveri, Democratic Party of Serbia, Movement for the Restoration of the Kingdom of Serbia, Serbian Radical Party, Healthy Serbia, Serbian Party Oath keepers, political parties, as well as the Government, the Ministry of State Administration and Local Self-government, the Republic Electoral Commission, and three representatives of other opposition parties which express interest in participating.</p> <p>(2) Each member of the Working Group would have the right to request a verification of information accuracy on certain voters in the Unified Voter Register from the Ministry of Public Administration and Local Self-government, also including voters from the territory of Kosovo and Metohija Autonomous Region.</p> <p>(3) The Ministry of Public Administration and Local Self-government is obliged to submit every month to the Working Group statistical report on number totals and changes during the previous month in the Unified Voter Register for each individual local self-government unit: the number of new entries of those who gained voting privileges for any reason; the number of deletions caused by death or any other reason voting privilege was revoked; the number of new entries based on address change, and number of deletions based on address change.</p> <p>(4) The Ministry of Interior is obliged to submit every month to the Working Group</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: Contrary to measure 13 -</b> Continue the voter lists' revision process in accordance with international standards supported by independent supervision.</p> <p><b>WG ODIHR: /</b></p>	<p>Forming the working group to control the voter register comprised of political actors, as well as the control of the register which this working group would have, could not be called independent, nor is it line with international methodologies for independent revisions of voter rolls. Having in mind that there is no scheduled independent control of this process, various kinds of misuse of citizens' personal information, that's going to be made available to political actors, would be possible to an uncertain extent.</p> <p>Item (2) The solution like this is vague and as such could be contrary to the Law on Personal Information Protection in the part relating to handling of personal information, particularly Articles 6 and 7 of the said Law. It is not clear what are the legal grounds on which basis The Ministry of Public Administration and Local Self-Government would answer to requests like this, nor on what grounds would representatives of political parties use citizens'/voters' personal information.</p> <p>Item (7) Legal grounds for this action by Republic Electoral Commission are questionable. Namely, this solution is outside of the framework envisioned by Article 34 of the Law on the Election of Members of Parliament, which enumerates the authorization given to Republic Electoral Commission and which, above everything else, refer to executing the elections and technical preparations for the same. Being that there's no indication that the authorization given to Republic Electoral Commission will be changed within the law, there is a justified concern that these actions would be illegal. Additionally, there is a question of capabilities of specialized staff of National Assembly of Serbia, or rather Republic Electoral Commission, to implement these actions in a timely manner. The document does not make a mention of strengthening the abilities of this specialized staff.</p>
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the information on number of valid personal ID cards and passports for all adults, in each local self-governing unit for the previous month, as well as the number of individuals who maintained residency abroad for more than three months. (5) The Ministry of Public Administration and Local Self-government shall submit on the 10th of each month to the Working Group for each local self-government unit, and based on the information received from the Ministry of Interior: the number of voters in the Voter Register who do not have a valid personal ID card; the number of individuals who have a valid personal ID card but are not enrolled in the Voter Register; the number of individuals who, in their valid personal ID cards, have stated address in one local self-governing unit and are enrolled in the Voter Register kept for another local self-government unit; the number of voters in the Voter Register who do not have a valid passport; the number of individuals who have a valid passport but are not enrolled in the Voter Register; the number of voters in the Voter Register who have registered a temporary address abroad, or are away for more than three months according to the records.

(6) The Ministry of Public Administration and Local Self-government shall submit on the 10th of each month to the Working Group the list of voters' first and last names for each local self-government unit in electronic form.

(7) The Republic Electoral Commission shall organize the scanning of voter rolls from all polling stations and its automatic electronic comparison with the contents of the Unified Voter Register, the Death Registry, data base of valid personal ID cards and passports, and the information of individuals' presence in the country at the time of the elections, and to initiate, in accordance with its authorization, the appropriate procedures

if it establishes that certain people appear to have cast their votes, but were not entered in voter rolls, did not have a valid personal ID card and/or were not in the country according to the records.

(8) If it's established that certain individuals are on the record as casting their votes and they actually did not vote, the Republic Electoral Commission has the obligation to file criminal complaints with competent prosecutor's office.

(9) The Working Group is allowed to request from the Ministry of Public Administration and Local Self-government other data and reports with the aim to verify the validity of voter rolls (for example, the number of voters at certain address enrolled in voter rolls).

(10) The Working Group is formed for a time period required to fulfill the task from this finding.

<p>b) Informing the citizens on maintaining the voter register and data verification in the voter register</p> <p>Article 18 State institutions in charge (the Government, the Ministry of Public Administration and Local Self-Government, the Republic Electoral Commission) should execute a public campaign with the aim of informing the citizens on ways to verify whether they are included in voter register and how to use their rights in connection to changing their status in the voter register.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>A solution like this could contribute to the accuracy of voter register, and inform the citizens on possibilities of verification and data changes in the voter register.</p>
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**3. - ELECTION DAY, VOTING AT POLLING STATIONS, DETERMINING THE ELECTORAL RESULTS AND PROTECTION OF VOTING RIGHTS**

<p><b>A. – Performance of the polling board</b></p>		
<p>a) Preventing the misuse when votes are cast outside of the polling stations</p> <p>Article 19 The Law on the Election of Members of Parliament will envision that when the voter casts a vote outside of the polling station, at least one of the three commissioners of the polling board which would visit that voter has to be a representative of the opposition electoral list, or rather of the electoral list submitted by a non-parliament party, or the electoral list submitted by a parliamentary party which is not a member of a ruling coalition.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>The proposed solution requires a change to Article 72a of the Law on the Election of Members of Parliament which envisions that every member - commissioner of polling board - is a member who is representing an individual electoral list. This proposal insists on the fact that one member would be a member of the polling board representing a list that is not a part of the ruling coalition. This solution could contribute to greater pluralism and possible control of votes cast outside of the polling stations, but not necessarily to the quality of the procedure itself.</p>



<p>b) Domestic and foreign observers at polling stations</p> <p>Article 20  (1) The Law on the Election of Members of Parliament will envision the rights of domestic and foreign observers to follow the performance of polling boards at all times, from the moment of receipt of election materials up to the moment of delivery upon voting completion.</p> <p>(2) The Law on the Election of Members of Parliament and the rules of the Republic Electoral Commission shall especially stress the right of domestic and foreign observers to be present at the time of opening the ballot boxes, counting of the ballots and determining the election results at the polling station.</p>	<p><b>ODIHR: In accordance with recommendation 26:</b></p> <p>The principle of providing access for international and citizen observers to all stages of the electoral process should be enshrined in the law, in line with OSCE commitments.</p> <p><b>EP IPD: In accordance with measure 15:</b></p> <p>Amend the law on Election of Members of the Parliament in order to recognize the status of the observers, followed by further regulation by the Republic Electoral Commission.</p> <p><b>WG ODIHR: /</b></p>	<p>Regulating the rights of domestic and international observers is in accordance with the international standards for free and fair elections. However, it is a missed opportunity to regulate the right of observers in a wider sense, which would primarily mean the right to make objections to the records of performance of polling boards.</p>
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<p>v) The position of representatives of the opposition electoral lists at the polling stations</p> <p>Article 21</p> <p>(1) The Law on the Election of Members of Parliament and the rules of the Republic Electoral Commission shall especially stress the rights of the members and replacement members in the polling boards who were nominated at the suggestion of opposition electoral lists to follow the performance of polling boards at the polling station, and especially counting of the ballots and keeping the records of polling board's performance.</p> <p>(2) The Law on the Election of Members of Parliament and the rules of the Republic Electoral Commission should especially stress the obligation of the polling board's president to encourage the representatives of opposition parties in polling boards to verify certain election activities, among others whether valid and non-valid ballots are sorted out, that votes received by certain electoral lists are counted correctly, etc.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>Being that all members of polling boards have the same rights, it is not clear what would be the achievement of this solution, nor could the Law prescribe the obligation of "stressing the obligation".</p>
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**g) Special emphasis on prevention of certain irregularities in polling boards' activities**

**Article 22**

The Law on the Election of Members of Parliament and the rules of the Republic Electoral Commission should especially stress that it is forbidden to keep parallel voter rolls on the polling station, the use of mobile phones on the polling station, and also that on the polling station premises are only allowed members of polling board, accredited domestic and foreign observers, and voters who came in to cast a vote.

**ODIHR: /**

**EP IPD: /**

**WG ODIHR: /**

Being that the cited behavior is already prohibited by the Law on the Election of Members of Parliament, it is not clear what the achievement of this measure would entail, as well as the additional "especially stressing it" within the Law. CRTA is of the opinion that the additional specific ban on keeping parallel records / rolls at polling stations is far more productive solution, which is included in CRTA's recommendations for free and fair elections, Recommendation 9a: Explicitly prohibit within the Law keeping of parallel records at the polling stations which compromise the secrecy of votes cast.

It is necessary to complement Article 55 of the Law on the Election of Members of Parliament with the provision that, outside of the official records of voter rolls, on the polling station premises it is forbidden to keep lists of voters who had cast a vote (by recording the names or numbers from voter rolls of those voters who did or did not cast their votes), and in punitive provisions of the same Law envision the monetary fines from 10 to 30 thousand dinars for those individuals who commit the offense against this provision.

<p>d) Establishing the legal procedures to eliminate errors in keeping records on polling station activities</p> <p>Article 23  (1) The Law on the Election of Members of Parliament should prescribe the procedure by which the logistical-mathematical control of records on polling board's activities would be performed upon receipt of electoral materials, and in the presence of polling board representatives and members of local electoral commission, with the possibility of correcting the obvious omissions in it.  (2) The Law on the Election of Members of Parliament should prescribe that the gross irregularities in keeping the records on polling board's activities could lead to repeat ballot casting at particular polling station.</p>	<p><b>ODIHR: Partially in accordance with recommendation 9:</b></p> <p>In line with good practice and in order to ensure the integrity of the electoral process, the REC could be assigned with rectifying or overturning decisions taken by lower-level election commissions, and with annulling elections entirely or in one or more polling stations if it determines that irregularities affected the outcome.</p> <p><b>EP IPD: Partially in accordance with measure 14:</b></p> <p>Improve procedures including vote count, control of results, completion of the result protocols and election results by polling station and their prompt publication.  <b>WG ODIHR: /</b></p>	<p>1) The problem of remaking the records /signing the corrected omissions was noted by CRTA's observing mission in all election cycles since 2016. Being that the Law on the Election of Members of Parliament states that only polling board is charged to determine the election results at particular polling station (Article 74), the solution which includes corrections to obvious omissions in the presence of the representatives of polling board and local electoral commission could positively affect the integrity of electoral process by removing the doubts of unauthorized remaking of the records on polling board's activities.</p> <p>2) The Republic Electoral Commission's conclusion from 2 December 2019, envisioned the Measure, which was also found in the Directions on Holding the Elections of 2020, with which the Republic Electoral Commission is authorized to annul and repeat the elections on particular polling stations if: the Republic Electoral Commission does not receive a record of polling station activities; or logistical-mathematical disparities are such that the election results at particular polling station could not be determined (excess ballots in a box). Having in mind that cases like this are already accounted for in regulation documents, and that actions have been previously taken following those regulations, it is necessary to, within the Law, strictly define what are those additional "gross irregularities in keeping the records" so that this measure would make sense, or rather for the effects of this measure to be noticeable.</p>
<p><b>B. - Determining the electoral results and the protection of voting rights</b></p>		

a) Authority to make decisions on the objections

Article 24

The Law on the Election of Members of Parliament should envision three levels of voting rights protections when they are compromised by irregular polling boards' actions, in such a way where the request to annul the results at certain polling station is decided in the first instance by the local electoral commission, that the decision by the local electoral commission could be appealed to the Republic Electoral Commission, and that the decision by the Republic Electoral Commission could be appealed to the Administrative Court.

**ODIHR: /**

**EP IPD: /**

**WG ODIHR: In accordance with measure 4:**

Use of legal remedies in the election procedure: submission of complaints to local electoral commissions, decision-making of the REC on a possible appeal, and of the Administrative Court in the appeal procedure. The question of the right to submit complaints and of the introduction of an advance.

The proposed measures could lead to narrowing down of the circle of voters allowed to file an objection, and increasing the difficulties in procedures to file objections with introduction of new procedures, or rather introducing a new electoral institution to review objections. In practice this means that if the objection is filed with the Republic Election Commission, it would be rejected as not allowed, and it would not even be reviewed since the objection in the first instance was supposed to be filed with local electoral commission.

The ability of the Administrative Court to establish the facts is taken away, while given the ability to reject the Republic Electoral Commission's decisions on objections in the second instance, and only if there is a significant violation of procedural rules or wrongful application of procedural law (formal mistakes). The Law on Administrative Disputes gives the Administrative Court the ability to establish the facts of the case and also to make a decision on its merits.

Additionally, a solution like this prescribes that the objection could be filed with the Republic Electoral Commission exclusively against the decision by the local electoral commission. **The proposed text as such eliminates the rights of those submitting the electoral lists and voters to request for protection of their voting rights in the process of submitting electoral lists.** In other words, the Agreement does not recognize the protection of voting rights in the process of announcing candidacies, and the Republic Electoral Commission has a complete freedom to apply or not apply the law when making decisions on electoral lists submitted, since there is no legal protection against the Commission's decisions that were made on objections not in connection with decisions by the local electoral commission.

Better solution would be to extend the deadline to file the objections to two days from the day the decision was made, or from the time the objectionable action was performed and that those filing the objection did find irregular, or rather from the day the omission was made.

This area is covered in CRTA's Recommendations for Free and Fair Elections number 13 which deals with efficacy of voting rights protections and proposes the solutions relating to legal deadlines.

b) Annulling the voting process at the polling station when acting in official capacity

Article 25

(1) The Law on the Election of Members of Parliament should envision the possibility for the institutions implementing elections to be able, in its official capacity, to annul the elections at particular polling station if it establishes: 1) that the number of ballots in ballot box is larger than the number of voters who cast their vote; 2) that the polling board allowed the individual who is not entered in the Voter Register to cast a vote; 3) that the ballot box does not contain a control sheet, or rather that the control sheet is not filled, or was not signed by the first voter casting a ballot and at least one member of polling board; and 4) that the total number of used and unused ballots placed in the bag with election materials is larger than the number of ballots cast.

(2) The Law on the Election of Members of Parliament should envision the possibility that the institutions implementing elections, in its official capacity, could make a decision establishing that at the certain polling station election results could not be determined if: 1) voting at that polling station was not held or it was stopped and not completed; 2) the record of polling board activities was not sent; 3) the sent record was not signed by any of the members of polling board, or 4) there are gross, irredeemable logistical-mathematical omissions in keeping the records of polling board's activities.

**ODIHR: /**

**EP IPD: /**

**WG ODIHR: /**

This solution expands the number of potential cases in which the Republic Electoral Commission annuls the electoral results at the polling station, as well as in the cases in which the total number of used and unused ballots placed in the bags is larger than the number of ballots cast. The effect of this measure could be positive for the integrity of the electoral process, if applied consistently.

<p>v) Publishing the objections</p> <p>Article 26 The Law on the Election of Members of Parliament should envision that the Republic Electoral Commission has the obligation to publish on its website all of the legal remedies requested in the electoral process, and its decisions on those legal remedies.</p>	<p><b>ODIHR: Partially in accordance with recommendation 25:</b></p> <p>To further enhance the transparency of the dispute resolution process, the REC could consider publishing its complaints register on its website in a timely manner.</p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>This measure does not answer a question of what actually are the legal remedies the Republic Electoral Commission is publishing on its website, whether those objections were filed with the other local electoral commissions, or are those just objections to be decided in the second instance (on the basis of voter complaints filed with the Republic Electoral Commission). Being that in the 2020 election cycle the Republic Electoral Commission on its Internet page published all of the objections addressed to the Commission, the concern is that the public would be denied the right to learn about the objections filed with the local electoral commissions. One possibility is that the Republic Electoral Commission does not have the information that there was a legal procedure in the first instance at all, and there is no provision where the local electoral commissions are obliged to inform the Republic Electoral Commission of them.</p>
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<p>g) Special rights of the Republic Electoral Commission's members in connection with the control of irregularities in electoral process</p> <p>Article 27</p> <p>(1) The Law on the Election of Members of Parliament and the Republic Electoral Commission's regulations need to especially stress that each member of the Republic Electoral Commission and the local electoral commissions has the right to review all of the election materials, to count all of the election materials from every polling station and to verify whether a particular voter, who provides his address and citizen's unique registration number, had cast a ballot.</p> <p>(2) For the polling station for which there is an established discrepancy between records of polling board' activities and the content of the election materials, a decision should be made on revisions in records of polling board' activities.</p> <p>(3) The record of polling board' activities and the decision on records' revision is published on the Republic Electoral Commission's website.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>1) On the basis of a measure formulated like this, it is not clear in what way would members of the local electoral commissions and the Republic Electoral Commission get in touch with voters to obtain the address and citizen's registration number (in what way would the voters contact the local electoral commissions and the Republic Electoral Commission, through what type of procedure and within what timeframe). Timeframes in this respect have an especially important role, being that according to the Article 78 of the Law on the Election of Members of Parliament, the Republic Electoral Commission has to announce the electoral results within 96 hours from the polls closing. The application of this measure, in an unclear and unorganized manner, could postpone determining the electoral results for a significantly long period.</p> <p>3) Publishing the polling boards' records, as well as the decision on records' revision, could represent a good step in the direction of bringing back the trust of citizens in the electoral process, or rather the trust in the institutions implementing the elections and the electoral result themselves. In order for this measure to have purpose and effect, it is necessary for the Republic Electoral Commission to publish the said documents in a timely manner, right after closing of the polling stations, which was not the case during the 2020 elections.</p>
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d) Control of the accuracy in records of polling board's activities based on a random sample

Article 28

(1) At the request of those submitting the opposition party' electoral list which won more than 2% of ballots, filed within 24 hours of the polls closing, the Republic Electoral Commission orders the control of accuracy in records of polling boards' activities from a maximum of 5% of polling stations on the territory of each designated town, county and city's county.

(2) If the requests for the control of accuracy in records of polling boards' activities based on a random sample covers more than 5% of polling stations, the control of accuracy in records of polling boards 'activities is performed on those polling stations whose voter rolls have the most voters.

(3) If the control of accuracy in records of polling boards 'activities finds the discrepancy between the content of electoral materials and the records of polling boards 'activities is larger than 10% at the level of all controlled polling stations on the territory of each designated town, county and city's county, the control of accuracy in records of polling boards 'activities will be performed on additional 5% of polling stations.

(4) If, after additional control, it is established that there is the discrepancy between the content of electoral materials and the records of polling boards 'activities that is larger than 10% at the level of all controlled polling stations on the territory of designated town, county and city's county, the control of accuracy in records of polling boards 'activities will be performed on all polling stations on the territory of designated town, county and city's county.

(5) For the polling station for which it is established that there is the discrepancy between the content of electoral materials and the records of polling boards ' activities, the decision to correct the records of polling boards 'activities is made.

**ODIHR: /**

**EP IPD: /**

**WG ODIHR: /**

Such control of accuracy in the records of polling boards' activities introduces a new degree of control of the records of polling boards' activities, at the initiative / request of opposition party' electoral lists. Beside the fact that giving certain rights to some, butt not all, of the electoral lists is deviating from the declared principle of all participants in the election procedures being treated equal, there is a question of the ability of specialized staff at the Republic Electoral Commission and the local electoral commissions to perform these verifications in such a short timeframe, with potential danger that electoral results would be declared after the legal deadline of 96 hours (Article 78 of the Law on the Election of Members of Parliament). Application of this measure, without the time to seriously prepare the staff on such a short notice, could lead to confusion and additional problems in electoral process after the election date.

With this measure, two more additional potential problems appear:

- 1) Within the first 24 hours, it would not possible to know which electoral list won 2% of the ballots, so the question is, on the basis of what estimate or document the requests filed by opposition parties' electoral lists would be allowed.
- 2) The interpretation of the term "opposition party electoral list" is not clear, or rather the question is whether the term refers to those submitting the electoral lists who are parties to this agreement, or to all of the parties submitting the electoral lists who are not part of the current ruling coalition.

(6) The records of polling boards 'activities and the decision to correct it are published on the Republic Electoral Commission's website.

(7) If there is a reasonable suspicion that the large discrepancy between the content of electoral materials and the records of polling boards 'activities is a consequence of conscious and deliberate actions which are directed at creating false election results, the Republic Electoral Commission is obliged to file criminal complaints with the competent public prosecutor's office.

**V. - Election census**

Article 29

(1) The change to the Law on the Election of Members of Parliament which envisions the 3% election threshold is still in effect.

(2) The electoral list which passes the threshold, and based on the largest quotient principle did not win any seats, has to be assigned a seat on account of electoral list which received the lowest quotient, which is not a national minority electoral list, and which also won at least two seats.

**ODIHR: /**

**EP IPD: /**

**WG ODIHR: /**

Lowering the electoral threshold to 3%, on its own, would be a positive change in electoral system since it enables for the larger number of electoral lists to participate in seats allocation, which is especially important for larger electoral units. This applies in the case of National Assembly elections, and also for the City of Belgrade Assembly elections. However, the decision to lower the electoral threshold in 2020 was rushed, without adjustments to other elements of electoral system, so at that time, and directly because of that decision, the quotient for national minorities was increased since it was assumed that a larger number of lists participating in seats allocation would lower the number of national minority representatives in assemblies, although the electoral threshold does not apply to the minorities.

The modifications of Article 29, Paragraph 2, represent another change in electoral system which is a consequence of lowering the electoral threshold to 3%. In local assemblies to which a smaller number of representatives is elected, with this low electoral threshold often a situations would arise in which the electoral lists passes the electoral threshold and is participating in allocation of seats, but the application of the current system of the largest quotient does not yield them a seat. In order for the system to adapt, and respond to this problem, this solution once again changes the way the ballots are transferred into seats, in such a manner where the principle of proportionality, on which the system is based, is subverted for the principle of representation. This change dictates that the electoral list which finds itself in such described situation will get one seat, although that infringes on proportionality, while some other list loses a seat belonging to it according to the current rules, all in order for that first list to be represented in the parliament.

Instead of these *post-hoc* interventions in electoral system, the solutions to the problems caused by previous reckless interventions, any changes to electoral system should be the result of wider consensus and thorough expert discussion, and not occurring every year, a few months ahead of the announced elections.



#### 4. – FINANCING THE ELECTION CAMPAIGNS AND PREVENTION OF THE ABUSE OF PUBLIC RESOURCES IN ELECTION CAMPAIGNS

##### A. – Distribution of funds from public sources to finance political campaigns

Article 30

(1) The Law on Financing of Political Activities should change the criteria for distribution of public source funds dedicated to financing the election campaigns, in such a way where 30% of the funds are distributed in equal amounts to all the electoral lists submitted which, when filing their electoral lists, made a statement that for the expenses of their election campaigns they would use public source funds, while 70% of the funds are distributed to the electoral lists which won seats in parliament, proportional to the number of seats won.

(2) The Law on Financing Political Activities should envision that those submitting the electoral lists who, when filing their electoral lists, made a statement that for the expenses of their election campaigns they would use public source funds, and who did not provide election guarantees, could receive appropriated parts of the funds upon elections being completed, if they achieve the legally prescribed election results.

**ODIHR: /**

**EP IPD: In accordance with measure 10:**

Change the financing of election campaign costs, so that 30% of the funds are equally distributed to all submitters of electoral lists who stated that they want to cover election campaign costs from public funds, and that 70% of the funds need to be distributed only to the electoral lists that have won seats in the Parliament, proportionally to the number of seats won.

**WG ODIHR: /**

(1) The proposed measure changes the way election campaign expenses are financed from public resources in such a manner where the amount of funds to be equally distributed before the elections to those submitting electoral lists, and who made a statement that they want to finance their election campaign expenses from public resources, is increased from 20% to 30% of all the funds dedicated to finance election campaigns.

The application of this measure could make positions of various election participants less unequal. This measure could be possible to adopt and implement in short time period from the announcement of the elections to them being held in 2022.

(2) The second measure envisions modifications to the Law on Financing of Political Activities to enable those submitting electoral lists who, when submitting their electoral list, made a statement that for the expenses of their election campaigns they would use funds from public sources, and who did not provide election guarantees, so they could receive appropriated parts of the funds upon elections being completed, if they achieved the legally prescribed election results.

This measure makes the function of election guarantees meaningless. It could be useful for smaller political actors who do not have funds for election guarantees, if they achieved the legally prescribed election results. However, this measure is not sufficiently explained and it's not possible to analyze it in detail before the legal provisions are defined, and upon its eventual application.

**B. – Publishing the preliminary report on the election campaign spending**

Article 31

The changes to the Law on Financing Political Activities should envision that those submitting the electoral lists, and participating in the election campaign, deliver to the Anti-Corruption Agency the preliminary report on election campaign spending five days prior to the designated election date.

**ODIHR: In accordance with recommendation 5:**

To enhance transparency, the law could be amended to require reporting and disclosure of campaign income and expenditure prior to election day. Consideration could be given to making the ACA conclusions mandatory and to publish them at a later stage.

**EP IPD: /**

**WG ODIHR comments on ODIHR recommendation in item10:**

If the proposal that the political actors have the obligation to deliver to the Anti-Corruption Agency the preliminary report on election campaign spending prior to the elections being held is accepted, the Agency would have a document to publish on its website, but the document would not state all of the election campaign's revenue and expenses accrued after the date of the preliminary report. Such a report would be incomplete and its audit would not be possible, which in the final instance does not contribute to transparency.

Further, imposing this obligation on political actors would needlessly burden the already limited staff with smaller political actors, especially citizen's groups and national minorities' political parties, but also those employees with the Agency, who would be used in this phase only to verify those reports, publishing of the same report and filing criminal complaints in case the reports would be missing. Therefore, introducing this obligation would only support incomplete transparency.

The changes to the Law on Financing Political Activities which would envision introducing obligatory filing of preliminary reports on the election campaign spending could, to a certain extent, contribute to increased transparency in financing the election campaigns. This measure is in accordance with ODIHR i CRTA recommendations. The fact that the Law would be changed less than a year before the elections should not be a problem if those participating in the elections are informed of the newly introduced legal obligations in a timely manner. What could definitely be a problem with the implementation is, on one hand, the limited Anti-Corruption Agency's staff capacity, and on the other, the expertise and staff abilities of smaller political actors participating in the election campaign. The practice has shown that these actors to a large extent were not even submitting their final reports on election campaign spending, so it's unrealistic to expect that in the case of preliminary reports the situation would be better.

In accordance with CRTA's recommendation, it is necessary to specify which data the preliminary reports would contain, and to make it obligatory to publish the preliminary reports on the Agency's website. CRTA also proposes that the deadline for submitting the preliminary reports be 10 days prior to the elections being held.

The problems stated in ODIHR Working Group' Opinion are real. Their opinion is essentially based on the Anti-Corruption Agency's position on this subject. The Working Group's conclusion is that introducing this obligation only supports incomplete transparency.

<p><b>V. – Special restrictions for the public office holders in election campaigns</b></p> <p>Article 32  The changes to the Law on Prevention of Corruption should envision that ten days prior to the designated election day the media cannot report on the official public gatherings such are dedications of infrastructural or any other projects (roads, bridges, schools, hospitals, factories, etc.), or marking the beginning of construction of any such object, if on those gatherings the public office holders are present and who may be the candidates for the President of the Republic, Parliament Members, county assemblies and city council members.</p>	<p><b>ODIHR: Partially responds to recommendation 23:</b></p> <p>To level the playing field, regulation of the media coverage of officials who are also candidates could be considered.</p> <p><b>EP IPD: Relates to the same area as measure 8:</b></p> <p>Improve the system of fighting against the abuse of public office and public resources.</p> <p><b>WG ODIHR: Partially in accordance with measure 8.2:</b></p> <p>In order to make the conditions for all participants even, it is necessary to improve the rules on media reporting on the activities of public office holders who are at the same time also participating in the elections.</p>	<p>It is unclear how this measure is categorized, and the question is whether this is a measure in the area of political activities' finance or the role of media in electoral process. Although the measure imposes special restrictions for the public office holders in election campaigns, the text of this Article suggests a provision by which "the media cannot report on the official public gatherings". Therefore, it is not a restriction on the public office holders, but on the media, and without any real ban and any foreseeable consequences.</p> <p>CRTA deems that it is not appropriate to regulate how media operates with the Law on Prevention of Corruption, and that the legal intervention as such is of questionable feasibility.</p>
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<p><b>G. - Equal access to the premises of community boards</b></p> <p>Article 33  Ministry of Public Administration and Local Self-government shall send a letter to local self-government units in which the Ministry will demand that they enable all of the participants in this Dialogue, as well as all registered political parties including those who have no elected members of parliament or assemblies, the free use of the premises in community boards for their political activities, and the right to free use of the premises in community boards during the election campaign would also have citizen' groups who submitted electoral lists, or those supporting nominated candidates for office.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: /</b></p> <p><b>WG ODIHR: /</b></p>	<p>Adoption of this measure could help smaller political actors who have less funds to finance campaigns.</p> <p>The provision in Article 6 of the Law on Financing Political Activities gives legal grounds to implement this measure, with the measure proposing that the Ministry of Public Administration and Local Self-government sends a letter incentivizing the local self-government units to enable the political actors the free use of community board's premises.</p>
<p><b>D. – Special actions to prevent criminal acts against the voting rights</b></p> <p>Article 34  Ministry of Justice will send the proposal to the Republic Public Prosecutor's Office that, on the basis of Article 148, Paragraph 2, of the Regulations of Administration in Public Prosecutor's Offices, this Office keeps the special register and records of criminal acts against voting rights during the election cycle.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: Refers to the same area as measure 11:</b></p> <p>Ensure that authorities have sufficient procedures in place to prevent and investigate undue pressure on voters, including employees of state or state-affiliated institutions and enterprises.</p> <p><b>WG ODIHR: /</b></p>	<p>Adoption of this measure would only make the collection of data on criminal acts against voting rights easier, but would not have a substantial effect on the electoral process. Adoption of this measure does not require changes to the existing legal framework.</p> <p>For this area, CRTA proposes providing a more active role of public prosecutor's offices in electoral process, and namely: introducing the practice of issuing the binding general instructions from the Republic Public Prosecutor's Office in regards to the elections and improved coordination between competent institutions charged with oversight of the elections.</p>





## 5. - THE ROLE OF THE MEDIA IN THE ELECTION PROCESS

5. - THE ROLE OF THE MEDIA IN THE ELECTION PROCESS		
A. – General rules for all of the media		
<p>a) Defining the methodology of tracking the media reporting</p> <p>Article 35            (1)Regulatory Authority for Electronic Media shall, via transparent process, determine the methodology of monitoring the media reporting during the election campaign which would ensure the trust and transparency of media monitoring, as based on quantitative and qualitative parameters and which would reflect the tone and nature of reporting on certain broadcasters.            (2) Methodology of monitoring the media reporting during the election campaign is prepared in consultations with the Temporary Supervisory Body, and in accordance with the best European practices.</p>	<p><b>ODIHR: Partially responds to recommendation 7:</b></p> <p>The independence of the Regulatory Authority for Electronic Media (REM) should be strengthened, and its responsibilities during the campaign period should be explicitly defined by law and extended to all aspects of media coverage of elections. The REM should act upon its own initiative, including through timely actions based on systematic monitoring of election coverage and compliance with established regulations.</p> <p><b>EP IPD: In accordance with measure 5:</b></p> <p>Defining methodology of media monitoring during the election campaign that will ensure trust and transparency of the monitoring and will be based on quantitative and qualitative parameters, which will reflect the tonality of the reporting and the nature of the broadcasters.</p> <p>The methodology shall be determined in a transparent process by the competent body following consultations with the relevant institutions, authorities, bodies and organizations.</p> <p><b>WG ODIHR: /</b></p>	<p>This measure is mirroring the measure envisioned in the Measures proposed by co-facilitators during the Inter-party Dialogue with European Parliament Mediation. Fine tuning was applied in the part regarding the institution which would provide appropriate consultations, or rather it was envisioned that this would be the Temporary Supervisory Body.</p> <p>As with the Measures outlined in the Inter-Party Dialogue with European Parliament Mediation, this Agreement's measure is not enough, in light of defining the key elements of methodology, so that it:</p> <ul style="list-style-type: none"> <li>- Includes Public Service Broadcasters and all electronic media with national coverage;</li> <li>- Implies 24/7 analysis of their programs during the election campaign;</li> <li>- Covers programs in the extended prime time, from 17:30 to 00:00, for several months prior to announcing the elections;</li> <li>- Publishes the raw data on the Regulatory Authority for Electronic Media's website, in regular intervals and with no delays, parallel to media monitoring.</li> </ul>

<p>b) Publishing the price list for political advertising</p> <p>Article 36  (1) Public Service Broadcasters and other media which provide information programs, distributed terrestrially as well as by cable, shall have the legal obligation to publish the price list for political advertising.  (2) Criteria by which the prices for political advertising would be set must be the same for all candidates in the election, all submitted electoral lists and all those supporting declared candidates.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: In accordance with measure 3:</b></p> <p>All media shall be required to publish their political advertising rates before the election campaign starts.</p> <p><b>WG ODIHR: /</b></p>	<p>This measure mirrors the measures adopted by Inter-party Dialogue with European Parliament's Mediation and <b>is already in use with modifications to the Law on Electronic Media, while public hearings are still in progress.</b> At this point, it is important to again stress that the proposed measure represents useful, albeit not sufficient, stimulant to improve the transparency of conditions for advertising during the election campaign.</p>
<p><b>B. – Public Service Broadcasters</b></p> <p>Article 37  (1) Public Service Broadcasters are obliged to, in their regularly scheduled informative programs, as well as in special programs dedicated to the election campaign, act according to the principals of unbiased, fair and balanced presentations of political actors, or rather electoral lists and candidates in elections.  (2) Public Service Broadcasters are especially encouraged to organize, aiming to inform the public of the candidate's or the electoral lists' election activities, the radio i TV duels or discussions where in the form of debates certain current affairs would be examined.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: Partially in accordance with measure 7:</b></p> <p>Adopt self-regulation to ensure adequate airtime to express positions and views of the opposition on news related programs on the National Public Broadcaster.</p> <p>National Public Broadcaster to adopt a self-regulation in full respect of the existing framework ensuring that all political actors get adequate space in the prime time/RTS 1.</p> <p><b>WG ODIHR: /</b></p>	<p>The measure from Paragraph (1) emphasizes the obligation that the Public Service Broadcasters have, as based on the Law on Public Service Broadcasters and the Law on Electronic Media, but what was omitted is defining the way these obligations would be met. The way to meet these obligations could be prescribed with the Rule Book whose adoption was envisioned with Article 39 of the Conclusions. In regards to measure from Paragraph (2), enabling various confronting views, including political ones, is one of the basic principles in which the Public Service Broadcasters are acting in the public interest (Article 7, Paragraph 1, Item 7 of the Law on Public Service Broadcasters). Therefore, this measure is also not proposing any innovation to the already existing normative framework.</p>

<p>a) Establishing the Temporary Supervisory Body</p> <p>Article 38</p> <p>(1) The Temporary Supervisory Body will be established, with following duties: 1) tracking media coverage; 2) consultations; 3) compiling and filing the reports on applications of Rule Book for Public Service Broadcasters; 4) issuing opinions on the activities of independent institutions and their decisions; 5) informing the public of its assessments and actions; 6) tracking the implementation of recommendations for commercial broadcasters with national coverage; 7) organizing regular press conferences, and performing other tasks in accordance with this conclusion.</p> <p>(2) The composition of the Temporary Supervisory Body should secure political pluralism and professional expertise.</p> <p>(3) The Temporary Supervisory Body has 12 members.</p> <p>(4) Six members are nominated by the Regulatory Authority for Electronic Media, while remaining six members are nominated by the National Assembly' Speaker after consultations with opposition parties who participate in Inter-Party Dialogues, in such a way where three representatives are chosen at the suggestion of parties who participate in Inter-Party Dialogue under the auspices of European Parliament, while remaining three representatives are chosen at the suggestion of parties who participate in Inter-Party Dialogue under the auspices of the National Assembly' Speaker.</p> <p>(5) The Temporary Supervisory Body is established by the Government as its "ad hoc" body, and which secures the funds and logistics for its operation.</p> <p>(6) The members in the Temporary Supervisory Body are named by the Minister of Culture and Information.</p> <p>(7) Nobody who is a candidate in the elections could be a member of this body.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: In accordance with measure 1:</b></p> <p>Establishment of a Temporary Supervisory Body.</p> <p>Composition: Its composition should ensure political pluralism and professional expertise.</p> <p>Format: 6+6.</p> <p>Six members are proposed by the Regulatory Authority for Electronic Media (REM), and the remaining six members (3+3 format) are proposed by the Speaker of the National Assembly after consultation with IPD co-facilitators.</p> <p>Competences: media monitoring, consultation, report on RTS and RTV rulebook implementation and on recommendations for private broadcasters issue opinions of the work of the independent institutions and their decisions.</p> <p>Inform public on its assessment and work, monitor the use of the recommendation for private national broadcasters.</p> <p>Organize regular press conferences.</p> <p><b>WG ODIHR: /</b></p>	<p>Identical measure is included in the Measures to Improve the Conditions for Conducting the Elections which were proposed by co-facilitators during the process of Inter-Party Dialogue under the auspices of European Parliament. Moreover, the Temporary Supervisory Body was already established with the Government Decision, in effect since 16 October 2021.</p> <p>The way in which this body was formed, its duties and composition reflect in total the Measures from Inter-Party Dialogue under the auspices of European Parliament and the Government Decision, but are outside of the existing legal framework.</p> <p>CRTA already pointed out the vaguely defined duties of this body in its Analysis of Measures to Improve the Conditions for Conducting the Elections which were proposed by co-facilitators during the process of Inter-Party Dialogue with mediation by European Parliament.</p> <p>The domestic legal framework recognizes the Regulatory Authority for Electronic Media (REM) as the institution charged with independent oversight of program content by media service providers during the election campaign, and for that reason CRTA deems that strengthening REM's independence and quality of its performance is the only plausible long term solution to improve media environment during election campaign.</p>
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<p>b) Adopting a binding rule book for the Public Service Broadcasters</p> <p>Article 39 To better regulate the election campaign coverage, the Regulatory Authority for Electronic Media in consultations with members of the Temporary Supervisory Body shall adopt a binding rule book for Public Service Broadcasters (RTS and RTV), in accordance with ODIHR recommendations and current regulations.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: In accordance with measure 2:</b></p> <p>Adoption of a binding rulebook for the National Public Broadcaster (RTS and RTV) to better regulate the election campaign coverage.</p> <p>In line with the ODIHR recommendations and the legal framework, the adoption of the rulebook for the RTS should be followed by public consultation and the draft to be consulted with the Temporary Supervisory Body.</p> <p><b>WG ODIHR: Partially responds to measure 5.1, but does not include commercial media:</b></p> <p>The behavior of all media service providers in the area of electronic media, public as well as commercial and cable, domestic and foreign, is to be guided by the special regulations (the Rule Book) adopted by REM. The rule book on behavior of media service providers during the election campaign should regulate in detail the rules of presenting information, for the public services as well as for all the other media service providers, by which rules they would report during the election campaign.</p>	<p>As the main deficiency of this measure stands out the fact that, contrary to the provision in the Law on Electronic Media, the Rule Book at its core does not contain any binding regulations for the commercial media service providers who are also reporting on the election campaign, the fact that CRTA warned about previously on several occasions.</p>
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<p>v) Establishing the distribution key for the Public Service Broadcasters</p> <p>Article 40</p> <p>(1) After the elections are announced, the Public Service Broadcasters are obliged to organize the broadcast of special programs dedicated to the elections, without monetary or any other compensation, and whose aim is to present to the public, in an unbiased, fair and balanced manner, the policy proposals and ideas of all the candidates or electoral lists.</p> <p>(2) Pre-election programs must be distinct from the rest of the programs, with introductory and closing credits, and has to be clearly labeled with written designation throughout the program.</p> <p>(3) The Public Service Broadcasters (RTS and RTV) are obliged to adopt a document, within five days from the date of the election announcement, with which they will establish corresponding distribution key for political advertising on the Public Service Broadcasters.</p> <p>(4) When adopting a document from Paragraph 3 of this Article, the Public Service Broadcaster - RTS 1 channel shall fully adhere to the Article 7, Paragraph 1, Item 8 of the Law on Public Service Broadcasters which ensures that all of the election participants receive equal space in prime time programs on RTS 1 channel.</p> <p>(5) The Public Service Broadcaster - RTS 1 channel shall adopt self-regulation and within the existing framework will secure that all of the political actors receive adequate space in prime time on RTS 1 channel.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: In accordance with measure 6:</b></p> <p>Establishment of a suitable distribution key regarding political advertisement at the National Public Broadcaster (RTS and RTV).</p> <p><b>Relates to the same area as measure 7:</b></p> <p>Adopt self-regulation to ensure adequate airtime to express positions and views of the opposition on news related programs on the Public Service Broadcaster.</p> <p><b>WG ODIHR: /</b></p>	<p>The majority of provisions stems from the existing normative framework (the Law on the Election of Members of Parliament, the Law on Electronic Media, Rule Book on ways to meet obligations of the Public Service Broadcasters during the campaign)</p> <p>Paragraph 5 which relates to the adoption of self-regulations is defined differently than in the Measures from Inter-Party Dialog under the auspices of European Parliament. Namely, the Measures from Inter-Party Dialog under the auspices of European Parliament envision that it is necessary to <i>Adopt self-regulation to ensure adequate airtime to express positions and views of the opposition on news related programs on the Public Service</i>, while the Conclusion envisions that the self-regulation is adopted in order to secure that all of the political actors receive adequate space in prime time on RTS 1 channels.</p> <p>The Conclusion did not explicitly state that self-regulatory measures shall secure adequate space in informative programs.</p>
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<p><b>V. - Commercial broadcasters with national coverage</b></p> <p>Article 41</p> <p>(1) Regulatory Authority for Electronic Media, in consultations with members of the Temporary Supervisory Body, shall adopt the recommendations for commercial broadcasters with national coverage, terrestrial and cable, which would refer to programs presenting candidates and electoral lists during election campaign.</p> <p>(2) The National Assembly' Speaker, as the mediator of Inter-Party Dialogue, will address the commercial broadcasters with national coverage, terrestrial as well as cable, with the request to submit to the Working Group, within 15 days from the date the Agreement on Improving the Conditions for Conducting Elections is signed, a reporting schedule for the period before elections are announced as well as for the period during the election campaign, which should be made in accordance with the principles of unbiased, fair, balanced and legitimate presentation of political actors, or rather electoral lists and candidates in the elections, while respecting the powers of political actors and broadcasters' own editorial policy.</p>	<p><b>ODIHR: /</b></p> <p><b>EP IPD: In accordance with measure 4:</b></p> <p>Adoption of recommendations for private national broad-casters, both terrestrial and via cable. These recommendations refer to presentation of electoral lists' and candidates' programs during the election campaign.</p> <p><b>WG ODIHR:</b></p> <p>The ODIHR Working Group recommended adopting the Rule Book relating to all of the Media Service Providers, Public Service Broadcasters as well as Commercial Media, therefore this measure is contrary to the Working Group' Opinion in item 8, as well as with all the relevant recommendations and the legal framework:</p> <p>Regulate the activities of all media service providers in electronic media domain, whether public service or commercial and cable broadcasters, domestic and foreign, with the specific bylaw document (the Rule Book) adopted by REM.</p>	<p>Article 41, Paragraph (1) of the Conclusions envisions that REM will adopt <b>the recommendations for commercial broadcasters with national coverage, terrestrial as well as cable</b>, relating to the <b>presentations of policy positions</b> of all the candidates and electoral lists during election campaign.</p> <p>Above all, at this point it is essential to once again stress the fact that adopting the recommendations on ways for commercial media service providers to meet their obligations, instead of adopting the obligatory rules, is contrary to provisions in the Law on Electronic Media. Commercial media service providers have the obligation towards the participants in the elections to secure representation without discrimination in their programs (Article 47, Paragraph 1, Item 5 of the Law on Electronic Media), while REM has the obligation to regulate, with its bylaws, the ways the providers would meet these obligations (Article 60 of the Law on Electronic Media). The situation in which there are no clear rules on how to meet these obligations opens up the possibility for both media service providers and REM to interpret these obligations at their own discretion.</p> <p>Further, the way the circle of media service providers whom REM would recommend certain behavior is defined (<b>"commercial broadcasters with national coverage, terrestrial and cable"</b>) is not adequate for multiple reasons:</p> <ol style="list-style-type: none"> <li>1. Making a distinction between means of broadcasting (terrestrial or "cable") is quite irrelevant from obligations point of view, which the Law on electronic media prescribes as an obligation for all of the media service providers. The provisions in Article 47, Paragraph 1, Item 5 of the Law on electronic media states that all of the media service providers, i.e., all of the media service providers under the Republic of Serbia's jurisdiction, have the obligation towards the participants in the elections to secure representation without discrimination. In all of that, it is of no importance whether REM is issuing permits to them (for example, REM is not issuing permits to the Public Service Broadcasters) or, if it is issuing permits, whether the permit was secured on tender (terrestrial broadcast on the territory of the Republic, Autonomous Region or any smaller region) or it is the permit to broadcast via cable, satellite or Internet. What is important is whether or not the particular media service provider is under the Republic of Serbia's jurisdiction (consequently also under REM's jurisdiction).</li> <li>2. The existing normative framework does not recognize the category of cable broadcaster with national coverage. Namely, the media service provider with "national coverage" is colloquial term for those media service providers to whom REM issued, on the basis of tender, a permit to provide television broadcasting as well as radio broadcasting, via terrestrial transmission, on the territory of the whole Republic of Serbia. On 31 October 2021, the permits for television broadcast on the territory of the whole</li> </ol>
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		<p>Republic of Serbia were issued to four commercial media service providers ("Pink", "Happy", "Prva" and "B92").</p> <p>Other than for broadcasting via terrestrial transmission, REM also issues permits for broadcasting via cable, satellite or Internet. However, for cable operators "national coverage" is an undefined category. None of the cable operators individually nor all of the operators jointly cover all of the households in the country.</p> <p>Article 41, Paragraph (2) of the Conclusion envisions that the National Assembly' Speaker will address the commercial broadcasters with the request to submit to the Working Group a reporting schedule for the period before the election announcement as well as for the period during the election campaign, which should be made in accordance with the principles of unbiased, fair, balanced and legitimate presentation of political actors, or rather electoral lists and candidates in elections, while respecting the power of political actors and broadcasters own editorial policy.</p> <p>a. The purpose of commercial media submitting a reporting schedule to an external body is quite unclear. Media operates on the principle of current happenings, and if they are truly playing their role and report on the events of public interest, the reporting schedule is prone to hour by hour changes. Additionally, the question is whether the body to which the schedule is submitted has to "evaluate" that schedule? And if the schedule is evaluated as negative, whether that sends a signal to the editors how to adjust their reporting schedule to meet certain expectation that the Working Group has of them?</p> <p>It is exactly this provision that reflects all the flaws of the system which is being developed as a result of both of those Dialogues.</p> <p>There is a very clear and definite mechanism which is also envisioned in the current legal framework that assumes the media service providers' responsibility for programs content. In order for such responsibility to exist, it has to be based on media service providers' previously prescribed obligations. That is exactly why the Law on Electronic Media, in Articles 47 through 53, is prescribing obligations for all the media service providers, while Article 60 of the same Law authorizes REM to regulate ways to meet these obligations with general bylaw documents. If the media service provider is not abiding by those rules, REM has the authority to issue a penalty. System structured like this prevents external powers to meddle in the editorial policies while, on the other hand, guarantees that the media would respect the rights of all citizens to be informed fully, truthfully and in timely manner of the issues of public interest.</p>
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		<p>a. The Conclusion envisions that the media reporting will be based around the principle of unbiased, fair, balanced and legitimate presentations of political actors, or rather the electoral lists and candidates in elections, while respecting the powers of political actors and broadcasters' own editorial policy.</p> <p>The terms used in Paragraph 2 - "unbiased", "fair", "balanced" and "legitimate", "respecting the powers of political actors" - are not contributing to clearly defining "representation without discrimination" from Article 47, Paragraph 1, Item 5 of the Law on Electronic Media. Reversely, these terms make media service providers' obligations loose and, under now already certain scenario in which commercial media obligations will not be regulated with any binding rules, such defined expectations from the media service providers will make it harder for institutions in charge to determine the responsibility for possible violations.</p>
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