



Office for Democratic Institutions and Human Rights

UKRAINE

PRE-TERM PARLIAMENTARY ELECTIONS

30 September 2007

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

11-13 July 2007



Warsaw
20 July 2007

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Ukrainian authorities to observe the pre-term parliamentary elections scheduled for the 30 September 2007, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Ukraine between 11 and 13 July 2007. The NAM included Mr. Gerald Mitchell, Head of the OSCE/ODIHR Election Department, Mr. Vadim Zhdanovich, Senior Election Adviser, Mr. Gilles Saphy, Election Adviser, and Mr. Andreas Baker, Press & Programme Officer, OSCE Parliamentary Assembly.

The purpose of the OSCE/ODIHR NAM was to assess the conditions and level of preparation for the conduct of pre-term Parliamentary elections scheduled for 30 September 2007, in line with OSCE commitments, and to advise on modalities for the establishment of a possible Election Observation Mission (EOM).

The NAM held meetings in Kyiv with representatives of the national authorities, election administration, political parties and civil society (see Annex).

The OSCE/ODIHR is grateful to the Ministry of Foreign Affairs of Ukraine and the OSCE Project Co-ordinator in Ukraine for the support provided to the NAM.

II. EXECUTIVE SUMMARY

On 30 September 2007, Ukrainian voters are to go to the polls in a pre-term parliamentary election to elect 450 members of the Parliament (Verkhovna Rada). The election system provides for proportional representation of national party lists, with a three percent threshold for eligibility in the seat allocation.

The outgoing Parliament was elected in March 2006. In its Final Report, the OSCE/ODIHR concluded that these elections had been conducted largely in line with the OSCE commitments and other international standards for democratic elections. However, the final report did contain a series of substantive recommendations for improvement of the process.

The forthcoming elections follow a political crisis which developed in spring 2007 between the President and the ruling coalition. In response to an increasing number of defections of MPs from the opposition towards the ruling coalition, which was perceived by the opposition as an attempt to modify the results of the March 2006 parliamentary elections, the President of Ukraine issued on 2 April 2007 a decree to dissolve the Parliament and call for pre-term parliamentary elections, initially scheduled for 27 May.

It also followed a series of conflicts of prerogatives between the President and the Prime Minister, due to a large extent to an unclear distribution of competencies in the Constitution, after amendments adopted in December 2004, which came into force in 2006. The coalition factions in the Parliament appealed the presidential decree calling for a pre-term election in the Constitutional Court.

The political crisis which followed the President's decision ended when a settlement was brokered on 27 May, whereby the President, the Prime Minister and the Speaker of Parliament agreed to hold parliamentary elections on 30 September. The agreement also included the adoption of amendments to the Law on the Election of People's Deputies (hereafter "the parliamentary elections law or PEL"), the appointment of new members of the Central Election Commission (CEC), and pledges to not interfere with the Judiciary or branches of the security forces.

While a political agreement has thus been reached to hold pre-term elections, the legal grounds for the dissolution of the Parliament are being questioned by some parties, with the potential that questions of legality could surface throughout the election process.

The forthcoming parliamentary elections will be held within a modified legal framework. In implementation of the 27 May agreement, amendments to the PEL were adopted on 1st June 2007. While the amendments seem to address some of the shortcomings existing in the provisions on extraordinary elections, some new provisions raise considerable concerns, including:

- provisions permitting voters to vote at home without presenting documented justification, while similar procedures are known to have been a major source of electoral fraud in the second round of the 2004 Presidential election;
- provisions that attempt to organise the removal from the lists of citizens "who have crossed the borders of Ukraine" and gone abroad;
- provisions which organise a challenging framework for voter registration;
- provisions which establish a 50 percent turnout requirement for the elections to be valid.

While some interlocutors of the NAM have expressed doubts that the forthcoming electoral process could constitute significant progress, most of the concerns listed above can still to a large extent be addressed by the Central Election Commission. In this regard, particular attention should be paid to the way the election administration addresses these issues, both at central and regional level.

In implementation of the 27 May Agreement, the composition of the Central Election Commission has been modified. While eight of the 15 members have been nominated from the majority coalition side, and seven from the opposition, the leadership of the CEC has been given to a member elected from the opposition quota. While collegiality had been overall prevailing within the CEC since the end of 2004, there have been recent indications that the CEC may be turning into a forum in which entrenched party interests are becoming more predominant. This could affect the CEC's abilities to effectively discharge its responsibilities. The Election Observation Mission will follow the progress of the CEC and its ability to navigate its role free from political interference.

Voter lists will be compiled under an amended legal framework, which indicates an intention to move to the establishment of a permanent voter register, in place of the *ad hoc* voter lists which existed previously. However, the new legal framework leaves a number of questions unresolved, and the practical implementation of the numerous steps necessary to compile the lists seems challenging, in particular as regards the short timeframe available. A particular effort to raise public awareness and call voters to check their data on the lists would appear to be a necessity.

There is a wide range of electronic and print media in Ukraine, and media pluralism is in evidence. The OSCE/ODIHR NAM did not hear reports of centralised pressure or intimidation on media outlets. Yet, several interlocutors indicated concerns in regard to what they perceive as a lack of transparency in the ownership of media outlets.

All interlocutors of the NAM underlined the need for a significant long-term observation presence, with substantial numbers of short-term observers deployed throughout the country on election day. Taking into consideration the specific circumstances under which these elections have been called, and the concerns expressed by a broad range of interlocutors regarding the upcoming elections, the OSCE/ODIHR recommends the deployment of an Election Observation Mission (EOM) to observe the 30 September pre-term parliamentary elections in Ukraine. The OSCE/ODIHR thereby requests, in line with the scale of the OSCE/ODIHR election observation mission to the March 2006 parliamentary elections, that the OSCE participating States send 60 long-term observers to follow the election process country-wide from mid August until the election is completed, and 600 short term observers to observe election day procedures, including voting, counting of votes and tabulation of results at all levels of the election administration.

III. FINDINGS

A. POLITICAL CONTEXT

The outgoing Parliament was elected in March 2006. In its Final Report on the March 2006 parliamentary elections published in June 2006, the OSCE/ODIHR concluded that these elections had been conducted largely in line with the OSCE Commitments and other international standards for democratic elections, and that they represented a further consolidation of progress made during the 26 December 2004 repeat second round of the presidential election.

The results of the 2006 parliamentary elections¹ had given a small advantage to the political forces which supported President Yushchenko's election in December 2004. However, difficulties in putting together a workable government coalition, in particular filling the posts of Prime Minister and Parliament Speaker, led to a political crisis which soon revealed the existence of shortcomings and uncertainties in the Constitution as amended in December 2004. In particular, the following ambiguities in the Constitutional framework arose:

¹ The Party of Regions obtained 32.14% of the votes and 186 seats, the Yulia Tymoshenko Bloc 22.29% and 129 seats, the Our Ukraine Bloc 13.95% and 81 seats, the Socialist Party of Ukraine 5.69% and 33 seats, the Communist Party of Ukraine 3.66% and 21 seats.

- The conditions of exercise of the President's prerogative to dissolve the Parliament and call for new parliamentary elections;
- The legal status of coalition agreements and their possible termination;
- The voting procedure for the election of the Parliament's Speaker and Prime Minister;
- The margin of discretion of the President to submit to Parliament a candidate for Prime Minister, different from the name submitted to him by a newly constituted coalition;
- The legal situation resulting from a possible failure or refusal from the President to submit to the Parliament the name of a candidate for PM within the deadline foreseen in the Constitution.

These constitutional provisions had been adopted hurriedly on 8 December 2004 as a part of the solution to the crisis that followed the flawed second round of the 2004 Presidential election. They had never been tested, and the only body vested with the authority to interpret the Constitution, the Constitutional Court, could not carry out its duties from late October 2005 until August 2006 because of lack of a quorum. The crisis ended on 2nd August 2006 when Mr. Yanukovich was voted as Prime Minister after President Yushchenko had agreed to submit his name to the Parliament. This followed the signature by most parliamentary factions of a "Declaration of National Unity", which provided a framework for both domestic and foreign policy.

Over the past months, the functioning of Ukrainian institutions has been affected by a series of conflicts over the respective prerogatives of the President and the Prime Minister. To some degree, much of the current situation derives from an unclear distribution of constitutional powers. The dispute became evident with the adoption by the Parliament in January 2007 of the Law on the Cabinet of Ministers, which restricts the President's competences substantially.

Starting in March 2007, there seemed to be a movement of defections among the ranks of the opposition parliament groups towards the Party of Regions' majority. This movement was perceived by the opposition as potentially leading to the majority holding more than 2/3 of the seats in Parliament, and hence being able to bypass any possible presidential veto on legislation, amend the Constitution unilaterally or impeach the President.

In response, President Yushchenko dissolved the Parliament on 2 April and called for new elections, originally scheduled for 27 May 2007. This initiated a confrontation with the Parliament majority and Cabinet. The legality of President Yushchenko's decree was challenged in the Constitutional Court, which in turn became the centre of attention of the crisis, with the coalition and opposition exchanging mutual accusations of putting pressure on judges. While the 2 April Decree was under scrutiny in the Constitutional Court, President Yushchenko issued a second decree on 26 April, annulling the first and calling for elections to be held on 24 June. The practical implementation of the first decree had been affected by the refusal of the Cabinet of Ministers to fund the process and a lack of a quorum at the CEC.

At the end of May, the crisis threatened to develop into a confrontation between various branches of the security forces loyal to the President and the Government. On 27 May, a tripartite agreement was signed by President Yushchenko, Prime Minister Yanukovich and Speaker Moroz to end the crisis, hold elections on 30 September 2007, amend the

election legislation to allow for the conduct of pre-term elections, and appoint a new Central Election Commission.

While a political agreement has been reached to hold pre-term elections, the legal grounds for the dissolution of the Parliament are still being questioned by some parties. It would have been the role of the Constitutional Court to decide on the conformity of the President's decision with the Constitution; however it has not been able to deliver a decision on this issue. This could have the potential to lead to possible challenges from some contestants of the legality of the electoral process, potentially even after its completion.

Although the President's Decree signed on 5 June called for new elections on the grounds that the Parliament had become "incompetent", some members of Parliament continued to meet until 27 June, challenging the legality of the Decree. The question was whether the Parliament had indeed, as was presented in support of the Decree, become "incompetent" following the resignation of more than 1/3 of its members.² President Yushchenko has since then refused to consider any piece of legislation sent by the Parliament to the Presidential Secretariat.

Political parties are now preparing for the 30 September elections. Ten forces which support President Yushchenko³ have pledged in a 'Declaration of the Joint Democratic Forces' issued on 5 July, to run as a single electoral subject with the ultimate aim to create a united political party after the elections. It is anticipated that former Interior Minister Yuriy Lutsenko would lead the list.

In addition to the above, it is expected the Yulija Tymoshenko Bloc, the Party of Regions, the Communist Party of Ukraine and the Socialist Party of Ukraine would also be among the leading contenders in the forthcoming parliamentary elections.

Some interlocutors of the OSCE/ODIHR NAM expressed concerns that government and administration officials would be active in the campaign while retaining their institutional

² According to Article 82.2 of the Constitution "the Verkhovna Rada of Ukraine is competent on the condition that no less than two-thirds of its constitutional membership has been elected." In its ruling N.17RP dated 17 October 2002, the Constitutional Court had specified that in order for Parliament to be "competent", the two thirds membership rule would apply during the whole convocation. The Parliament lost its 2/3 composition through the implantation of the mechanism known as "imperative mandate" (Article 81 of the Constitution), whereby MPs declaring that they left their faction were deprived of their mandate by the political party from which they were elected. Yet, there was still a possibility that the Parliament would regain its 2/3 composition if unelected candidates on BYuT and Our Ukraine lists took the mandates of the MPs who left the Parliament. The PEL (Article 101.1), as amended on 1st June provides that "In case of pre-term termination of the powers of the deputy on the grounds and pursuant to the procedure foreseen by the Constitution of Ukraine, [...] the next candidate for the deputy on the electoral list of the corresponding party (bloc) shall be considered elected by the decision of the Central Electoral Commission. [...]". In an attempt to prevent next candidates on their lists from taking the seats of the resigning ones, both the Yulija Tymoshenko Bloc and Our Ukraine decided to "nullify" their entire lists. Cases were brought before Courts. The Kyiv Court of Appeal decided that the nullification of the BYuT list was legal. The nullification of the Our Ukraine list was also eventually declared legal.

³ These include "Our Ukraine", the Christian-Democratic Union, "Vpered, Ukraino!", the European Party of Ukraine, the People's Movement of Ukraine, GP "Pora", the Ukrainian People's Party, the Congress of Ukrainian Nationalists, the Ukrainian Republican Party "Sobor", and the Party of Motherland Defenders

functions. The question was raised in particular concerning members of the Cabinet of Ministers, regional Governors, and the Head of the President's Secretariat. While this practice does not appear to raise questions of legality, there is the perception that this could facilitate abuse of administrative resources.

B. LEGAL FRAMEWORK

The main piece of legislation governing the forthcoming parliamentary elections is the Law on Elections of People's Deputies of Ukraine (the PEL), adopted on 25 March 2004 and amended on 7 July 2005, and on 1 June 2007.

The law organises an electoral system of pure proportional representation in a single nationwide constituency with a three percent threshold for eligibility in the seat allocation. The new election system replaced the previous mixed system, whereby half of the 450 MPs were elected in single mandate constituencies and the other half were elected through proportional representation. The July 2005 amendments had brought about some positive changes, including rules for organizing the election campaign, restrictions on the use of mobile ballot boxes and of absentee voting certificates, as well as accreditation of domestic non-partisan observers.

In accordance with the Constitution (Article 77), pre-term elections should be held "within 60 days from the day of the publication of the decision on the pre-term termination of authority of the Verkhovna Rada of Ukraine". The provisions on 'extraordinary elections' (Article 102 of the PEL) were known to need amendments or additional regulation, in particular concerning staffing of election commissions, the publication of ballot papers and other election-related documents, and the compilation of voter lists.

In implementation of the 27 May 2007 agreement, amendments to the PEL were adopted on 1 June 2007. These amendments result from political negotiations between parliamentary factions. While they seem to address a number of the legal vacuums of Article 102, some of the new provisions raise considerable concerns, in particular regarding modalities for voting at home, for removing from voter lists voters who have gone abroad, or the procedure for compiling voter lists.

As regards voting at home with mobile ballot boxes, the amendments made to Article 84 of the PEL have removed the need for the voter to provide "documents evidencing their physical state". The requirement to provide these documents had been included in the law by the July 2005 amendments in an attempt to enhance the control and accountability of this voting modality. It also followed recommendations from the OSCE/ODIHR, as it was assessed that an uncontrolled procedure for voting at home had been one of the main sources of fraud during the second round of the 2004 presidential election.

Article 84.3.2 as amended in June 2007 vests the CEC with the responsibility to determine an application to fill by homebound voters, as well as its requirements. This could constitute an opportunity to limit the potential problems brought by the amendments. The EOM will have to pay particular attention to this issue.

The amendments brought new provisions that attempt to organise the removal from the lists of citizens “who have crossed the borders of Ukraine” and gone abroad.⁴ These provisions raise a number of concerns as regards to its conformity to the principle of legality, in particular as it amounts to vesting with the responsibility of depriving citizens of the right to vote to an institution, the State Committee on Borders, which has no such jurisdiction.⁵ Interlocutors of the OSCE/ODIHR NAM also argued that it might also be infringing upon principles of personal data protection, as established in the relevant international instruments.

Its implementation also seems particularly challenging as timing, resources, responsible institutions and procedures are not fully specified, and technical capacity is lacking. Indeed, many border posts have no system of automatic recording of persons crossing the borders. In addition, border crossing follows different regimes and requirements depending on the neighbouring country. Finally, creating a possibility to reopen voter lists at a late stage after they have been sent to polling station commissions in order to remove voters could create additional challenges and, if not accompanied by transparency and monitoring mechanisms, be open to abuse. The EOM will pay particular attention to this issue.

The provisions for compiling voter lists also raise questions, in particular the new Article 102-3.1: “Compilation of the voters lists for the irregular elections of the deputies shall be carried out by means of the main mechanisms and procedures determined by the Law of Ukraine on the State Register of Voters [...]”

Indeed, a new Law on the State Register of Voters of Ukraine was adopted on 22 February 2007 with the aim to establish an entirely new system whereby voters’ data would be recorded in a permanent ‘voter register’.⁶ It must be noted that in the Ukrainian context, a clear difference exists between the concept of ‘voter list’ (‘spysok vybortsiv’) and the concept of ‘voter register’ (‘reestr vybortsiv’). Traditionally, voters’ data were recorded on ‘voter lists’ created on an *ad hoc* basis for each election.

It was foreseen that the Law on the State Register of Voters would come into force on 1st October 2007, with a view to complete the establishment of a permanent, centralised, computerised voter register before 2010. The concrete feasibility of completing the establishment of the central register of voters in the short timeframe available before the forthcoming pre-term parliamentary elections is raising questions (see below, Voter Registration).

The 1 July amendments have removed the possibility to use Absentee Voting Certificates for voters who would be away from their polling district on election day. While these certificates had also been a major source for manipulation during the first and second round of the 2004 presidential election, their use during the 2006 parliamentary elections

⁴ Article 102-3.9: “The State Border Guard authorities within three days before the election day shall submit to the district election commission information about individuals registered in corresponding administrative and territorial unit, who have crossed the Ukrainian state border and as of the moment of the information submission there is no data on their return to the territory of Ukraine.”

⁵ In particular, see Constitution of Ukraine, Article 6, and article 19.2

⁶ The OSCE/ODIHR and the Venice Commission have issued a Joint Opinion on the Law on the State Register of Voters of Ukraine, CDL-AD(2007)026. It can be found at: <http://www.osce.org/odihr-elections/13451.html>

had not raised questions, as an enhanced system of control and accountability had been established by the July 2005 amendments to the PEL. The removal of the possibility to vote with absentee voting certificates has the potential to deprive the right to vote from a significant number of voters who might not be present within their polling district on election day.

Regrettably, the law maintains the possibility for voters to vote “against all”. This option creates uncertainty, since if votes “against all” are counted as invalid they could only affect the turnout, while if counted as valid they would have an unclear status as they do not express concrete choices.

Finally, the amendments have established a 50 percent turnout requirement for elections to be considered valid, which did not exist previously. While voter turnout has tended to be high in Ukraine during past electoral processes, it must be noted that turnout requirements have the potential to create cycles of failed elections, to allow any political force with significant support to derail the electoral process through a boycott, and to undermine voters’ confidence in the worth of voting.

C. ELECTION ADMINISTRATION

Election commissions operate at three levels: the Central Election Commission (CEC), a total of 225 District Election Commissions (DECs) and some 34,000 polling station election commissions (PSCs).

The provisions on the formation of the CEC and most of its responsibilities are set out in a separate law. The CEC comprises 15 members appointed by the Parliament for a seven year term. All decisions of the CEC must be adopted by absolute majority (8/15) but a quorum of 2/3 (ten members) is needed for a session to be valid.

Following the 27 May Agreement, a new CEC was elected by the parliament on 1 June 2007. Since the last reshuffle of the CEC in December 2004, the Party of Regions had voiced criticism at the composition of the CEC and complained that they were not properly represented. The newly appointed CEC comprises eight members affiliated with the ruling coalition and seven affiliated with the opposition. While the coalition controls the majority of the seats in the CEC, the positions of head and deputy head have been given to the opposition. Following the formation of the CEC, Mr. Volodymyr Shapoval, former representative of President Yushchenko in the Constitutional Council, was elected as new CEC Chairperson.

While collegiality had prevailed within the CEC since the end of 2004, there have been recent indications that the CEC may be turning into a forum, in which entrenched party interests are becoming more predominant. This could affect the CEC’s abilities to effectively discharge its responsibilities. Although established following a political agreement, the current CEC appears to have encountered difficulties in the performance of its mandate. Indeed, while it was formed on 1 June, it was not able to convene in a proper session until 22 June. Even on that day, four members from the nomination quota of the opposition walked out of the session, in protest against a draft resolution aimed at determining which region of Ukraine each member of the CEC would have to supervise.

After a second attempt on 25 June, the resolution distributing the regions among members was adopted with a majority of eight. Two members from the opposition quota attended the session and voted against. The others were absent in protest. It is usual practice that each CEC member is nominated as a “curator” for one or two regions of Ukraine. This procedure does not theoretically allow CEC members acting as curators to direct the work of DEC, but rather to ensure good coordination between levels of the election administration and proper implementation of the law.

For the past electoral processes, the distribution of regions was done by a decision of the Chair. According to the distribution established by the new CEC, the CEC members nominated from the quota of the coalition have been assigned to Crimea, Donetsk, Kharkiv, Odessa, Mykolaiv, Luhansk, Sevastopol, Kherson, Transcarpathia, Dnipropetrovsk, Kirovohrad, Zaporizhzhya, Chernihiv, Kyiv Oblast and Cherkasy. The members nominated from the opposition has been assigned Khmelnytsky, Rivne, Sumy, Poltava, Lviv, Chernivtsi, Ivano-Frankivsk, Ternopil, Vinnytsya, Volyn, Kyiv city, Zhytomyr. This repartition tends to correspond to the electoral strongholds of the political forces which the CEC members are affiliated to.

Since the end of 2004, the Central Election Commission of Ukraine had been regularly praised for its professional and independent performance. This was particularly the case in the conduct of the repeat second round of the 2004 Presidential election and of the 2006 parliamentary election. In view of the first weeks of functioning of the CEC in its current composition, some interlocutors of the OSCE/ODIHR NAM have expressed concerns regarding the capacity of the newly appointed CEC to carry out its duties free from political influence.

For the 2006 Parliamentary elections, each faction in the outgoing Parliament was entitled to nominate a representative to each DEC, the remaining seats being distributed by drawing lots among other parties and blocs running in the election. The 1 June amendments have restricted the right to nominate for DEC and PSC membership to parliamentary factions (Article 102-2.1). The new provisions foresee that coalition and opposition would have an equal number of members on DEC, and that on each side of the political spectrum each faction would have the same number of members (Article 102-2.2). Given the current structure of the Parliament, such a combination can only work with DEC comprising 12 members.

There has been speculation concerning the concrete possibilities for parliamentary opposition factions that have collectively revoked their mandate, to exercise their right of nomination for DEC membership. The June 2007 amendments have added an Article 102-2.1, which provides that “...Candidacies for the composition of the district election commissions are nominated by the factions of deputies which were established at the current convocation of Verkhovna Rada [...]. Submissions as to the candidacies from the factions shall be signed by the head of the faction, whose signature is to be certified by the apparatus of the Verkhovna Rada of Ukraine or by the notary, and shall be directed to the Central Electoral Commission ...”

Considering the complexity of the question of the legal status of the opposition factions in Parliament, some interlocutors of the OSCE/ODIHR NAM have argued that the requirement that submissions for DEC membership should be signed by the head of faction could raise questions of practical implementation. Considering the importance of

the duties carried out by DEC's in the process, an absence of some parliamentary factions from DEC's could seriously affect the transparency of the process.

The election law sets the number of voters per one polling station from 20 to 2,500. Although this was already the case for the 2006 Parliamentary elections, the OSCE/ODIHR EOM noted at that time that there were some 1,400 polling stations where the number of voters exceeded the ceiling of 2,500, which is already high. The amendments to the PEL foresee that "Regular polling districts established for the last elections of the deputies are used for the conduct of irregular elections of the deputies" (Article 102-1.4). This does not however prevent the CEC from forming new regular polling stations, if justified by the number of voters.

Finally, the Law provides for possibilities for out-of-country voting. Polling station commissions would be formed in diplomatic missions abroad. The new provisions of the law added by the June 2007 amendments foresee that the "foreign constituencies created for the last elections of deputies shall be used during the conduct of irregular elections of deputies" (article 102-1.1). For the 2006 elections, the CEC formed 116 polling stations located in 78 countries abroad. Of a total of 422,115 voters who had registered to vote out-of-country for the 2006 elections, only 34,115 cast their votes.

D. VOTER REGISTRATION

Traditionally, voter lists were drawn up on an *ad hoc* basis for each election according to a particular timeframe and methodology. As mentioned above, the amendments adopted on 1st June have modified the legal framework by referring to the main provisions of the new Law on the State Register of Voters of Ukraine, and elaborating a detailed procedure for voter registration. As mentioned above, the new legal framework for the compilation of voter lists might raise questions of practical implementation.

The amendments foresee the constitution of working groups at Rayon (District) level within 5 days of the commencement of the Process. The process requires working groups to update the lists used for the last elections using data from local authorities and local branches of State administrations including the Ministry of Interior, the Ministry of Justice, the local military units, health care authorities, tax authorities, Border Guards, etc. These administrations should provide the working groups with such data in paper and in electronic format no later than 30 days before election day. Working groups are expected to produce updated lists no later than 20 days before election day. Lists co-signed by heads of district working groups and of the heads of the relevant local authorities must be handed in paper and electronic format to DEC's no later than 17 days before election day.

This voter registration process requires strong support from the various branches of the state administration at local level. While the legal framework does not allow the election administration to commence election preparations earlier than 60 days before election day, the State administration bodies listed above have the possibility to start earlier with preparing the data they will have to send to the working groups, once the latter are established. A Presidential Decree has been issued to this effect; however the OSCE/ODIHR NAM was informed that the level of preparation varies from region to region; some interlocutors have expressed concerns about the possibilities to complete the process on time in a satisfactory manner.

Past experience with voter registration processes in Ukraine suggests that beyond the cooperation of the above mentioned State administration bodies, additional challenges remain, specifically the availability and accuracy of the data kept by these administrations, the various and sometimes incompatible formats in which these data are kept, as well as the sensitive question of the transliteration of names from the Russian into the Ukrainian form of the Cyrillic alphabet.

Upon receipt, DEC's are expected to hand the lists to PSC's no later than 12 days before election day. Information on 'voters who have crossed the borders of Ukraine' should be sent by the border guard authority to DEC's up to three days before election day (Article 102-3.9), and DEC's should communicate these data to PSC's on the next day after receiving them from the border guard authority, in order for PSC's to remove these voters from the lists (Article 102-3.18). Such removal can happen up to two days before election day. This timeframe deprives voters who have been crossed out of the lists as a result of this procedure, of any legal means to request their inclusion.

The finalisation of voter lists might have to be carried out according to compressed deadlines. Provided PSC's receive the lists on time and remove from the lists within the foreseen timeframe those voters who have crossed the country's borders, voters might have little to no time to check their information on the lists, and request possible corrections. Indeed, Article 43.5 provides that: "A claim [concerning the accuracy of voter lists] may be filed with a respective polling station commission no later than five days before Election Day." In this challenging context, a substantial public information campaign calling voters to check their data on the lists seems essential.

Supervisory Groups, aimed at enhancing the transparency of the process, are to be established at central and regional level by the CEC based on names submitted by the Parliament's factions and signed by the heads of factions (this latter aspect might raise the same question as discussed above on DEC formation).

E. MEDIA

The media sector has undergone significant changes since the 2004 presidential election. No centralized pressure was reported to the NAM, and the so-called 'Temnyky' (editorial media guidelines) which were commented upon in the OSCE/ODIHR final report on the 2004 presidential election, seem to have disappeared.

The election law establishes that the campaign in the media shall be conducted in compliance with the principle of "equal opportunities". It contains fairly detailed rules to promote equal access to printed and electronic mass media during the election campaign. Contestants are also allowed to seek paid advertisements. Media outlets are required to offer possibilities to all contestants to broadcast paid advertisements "on equal terms". Some interlocutors have complained that a few national TV channels have classified a Presidential pre-election spot as "social advertisement", while it appeared to convey a clear campaign content. While State institutions have the possibility to broadcast "social advertisements" free of charge, it has been argued that this pre-election spot amounted to an abuse of administrative resources.

Parliament has not yet taken up the repeated recommendation of OSCE/ODIHR and the Venice Commission of establishing an independent media commission, whose membership should be diverse including medial professionals, civil society, judicial bodies, government and political parties.

Despite positive developments, several interlocutors of the OSCE/ODIHR NAM raised the issue of the lack of transparency of media ownership.

F. DOMESTIC OBSERVERS

Domestic non-partisan observers will be able to observe the forthcoming electoral process. The domestic observation NGO "Committee of Voters of Ukraine" (CVU) is about to commence a long term observation effort.

G. INTERNATIONAL OBSERVERS

All interlocutors welcomed the presence of an OSCE/ODIHR election observation mission for the forthcoming parliamentary elections. It is also anticipated that the OSCE Chairman-in-Office will designate a Special Coordinator to lead the short-term OSCE observer mission. The OSCE/ODIHR will also closely coordinate its efforts with any observation activities undertaken by Parliamentary Assembly of the Council of Europe and by the European Parliament, as has been the practice in the past.

The OSCE/ODIHR NAM was informed that the network of observer organisations ENEMO (European Network of Election Monitoring Organisations) intends to field over 400 observers to follow the forthcoming parliamentary elections. This initiative is supported by the National Democratic Institute for International Affairs (NDI).

As noted in the OSCE/ODIHR Final Report on the 2006 parliamentary elections, in some of the DEC's, observers were not allowed access to the DEC computer room where results were tabulated. Access was later granted to some of them after CEC intervention. Despite several earlier requests from the OSCE/ODIHR during the 2006 process, the CEC declined to issue any written decision on these aspects of the observers' rights. For the sake of transparency, this issue should be addressed before election day.

IV. CONCLUSIONS AND RECOMMENDATIONS

All interlocutors have underlined the need for a significant long-term observation presence, with substantial numbers of short-term observers deployed across all regions of Ukraine on election day. Taking into consideration the specific circumstances under which these elections have been called, and following the observation modalities of the March 2006 parliamentary elections, the OSCE/ODIHR recommends that an Election Observation Mission (EOM) be established, some eight weeks before election day, to observe the 30 September 2007 pre-term parliamentary elections in Ukraine. In addition to a core team of experts, the mission should also include 60 long-term observers (30 teams of two observers each to be deployed throughout the regions of Ukraine by mid-August). The secondment of 600 short-term observers is requested to follow voting, counting and tabulation of election results throughout the country.

ANNEX: LIST OF MEETINGS

State Institutions

Central Election Commission	Andriy Mahera, Deputy Head Yuriy Danilevski, Member
Ministry of Justice	Valeriya Lutkovska, Deputy Minister
Ministry of Foreign Affairs	Yuriy Kostenko, Deputy Minister
Secretariat of the President	Maryna Stavniychuk, Deputy Head

Political Forces⁷

Block of Yulya Tymoshenko 'Nasha Ukrayina-Narodna Samooborona'	Yosyp Vinsky, Deputy Head Roman Zvarych, Member of the Party Council
Socialist Party of Ukraine	Myhajlo Melnychuk, First Secretary of the Political Council of the Party
Party of Regions	Borys Kolesnykov, Head of Party Headquarters Oleksandr Peklushenko, MP Ivan Popesku, MP

Civil Society Organisations

Strengthening of Electoral Administration in Ukraine	Yarema Bachynskyy, Head of the Project
Committee of Voters of Ukraine	Ihor Popov, Chairman
Anticorruption Committee	Anna Yarova, Acting Coordinator
National Democratic Institute (NDI)	Sam Sager, Acting Director
Institute of Mass Information	Viktoriya Syumar

⁷ The NAM requested a meeting with the Communist Party of Ukraine, which was eventually not possible to schedule.