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Opinion Nr ELE-POL/374/2020



**OPINION ON THE DRAFT ACT ON SPECIAL RULES FOR THE ORGANISATION  
OF THE GENERAL ELECTION OF THE PRESIDENT OF THE REPUBLIC OF  
POLAND ORDERED IN 2020 WITH THE POSSIBILITY OF POSTAL VOTING  
(SENATE PAPER NO. 118)**

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## I. BACKGROUND AND SCOPE OF THE OPINION

1. On 14 May 2020, the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) received a request from Dr. Adam Bodnar, Commissioner for Human Rights of Poland, to provide a legal opinion (hereinafter “opinion”) on the Draft Act on special rules for the organisation of the general election of the President of the Republic of Poland ordered in 2020 with the possibility of postal voting (hereinafter “Draft Act”) of 12 May 2020. By letter of 15 May 2020, ODIHR confirmed the readiness to provide a legal opinion on the Draft Act.

2. This opinion reviews the Draft Act for compliance with OSCE commitments, other international standards and good practice for democratic elections. It also takes into account the findings of previous election observation activities in Poland.<sup>1</sup>

3. The scope of this opinion covers only the Draft Act submitted for review. To the extent necessary, references are made to the Constitution, the Election Code, and other legislative acts of Poland. Thus limited, the opinion does not constitute a comprehensive review of the entire electoral legal framework of Poland.

4. This Opinion is based on an unofficial English translation of the Draft Act commissioned by ODIHR, which is attached to this document as an Annex. Errors from translation may result. This Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on electoral legislation of Poland in the future.

## II. EXECUTIVE SUMMARY

5. The Draft Act was introduced to the *Sejm* (the lower house of parliament) on 12 May following a political agreement reached between factions within the ruling coalition not to proceed with the conduct of the presidential election scheduled for 10 May 2020.

6. The Draft Act provides that voters in a newly scheduled presidential election would have the option of voting either in person, at polling stations, or by post. Postal voting would also be organised abroad, except in countries where there are no possibilities to organise such voting. Electoral committees created to contest the 10 May 2020 election and their registered candidates would be entitled to contest the newly scheduled election. New electoral committees may be created, which may nominate new candidates. The Draft Act also introduces changes to the composition of the election administration, regulates certain aspects of campaign financing, and changes deadlines for electoral dispute resolution.

7. The Draft Act addresses some of the concerns expressed by ODIHR in relation to prior legislation on postal voting in the 2020 presidential election in Poland.<sup>2</sup> In particular, the Draft Act retains the authority of the NEC to manage the electoral process, allows for in-person voting in a polling station and potentially allows more time for adequate preparations by the election

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<sup>1</sup> See all previous [ODIHR election reports on Poland](#). See also the ODIHR [statement](#) from 7 April 2020 on the importance of genuine campaign and public debate for democratic elections.

<sup>2</sup> See ODIHR Opinion on The Draft Act on Special Rules for Conducting the General Election of the President of the Republic of Poland Ordered in 2020 (April 27, 2020).

administration and for providing the requisite information to voters. At the same time, some concerns and recommendations previously expressed remain, and certain aspects of the Draft Act should be improved in order to ensure the effective exercise of electoral rights in line with international standards for democratic elections. Consequently, ODIHR makes the following key recommendations:

- ensure that amendments to electoral legal framework are adopted through a public and inclusive process that also respects the principles of legality and the rule of law, allows for a meaningful discussion and facilitates consensus of the key stakeholders.
- ensure that any decision to cancel in-person voting is taken by the NEC, sufficiently in advance of election day to enable proper implementation of postal voting and avoid potential disenfranchisement of voters;
- establish an early deadline for issuing public health guidelines applicable to the electoral process to enable appropriate regulation and implementation;
- reconsider provisions allowing the Marshal (speaker) of the *Sejm* to set and change electoral deadlines. To the extent that flexibility in electoral deadlines could be permitted in light of the epidemic situation, the law should explicitly state which deadlines can be changed and the final decision on such changes should be made by the NEC;
- consider retaining the judicial composition of DEC's that is provided for by the Election Code and reconsider respective provisions of the Draft Act, particularly since it remains unclear how they are related to the exigencies posed by the current situation;
- reconsider the proposed reduction of the minimum number of Precinct Election Commission (PEC) members and apply the provisions of the Election Code on PEC composition for the newly scheduled election;
- ensure that electoral committees registered to contest the newly scheduled presidential election are subject to the regular campaign spending limits envisaged by the Election Code;
- ensure that that the new timeline for the 2020 presidential election allows for a comprehensive voter information campaign, including information about the new voting arrangements and the protective measures introduced in polling stations;
- ensure that the deadlines for electoral dispute resolution are not shortened unreasonably.

These and additional recommendations, as highlighted in bold, are included throughout the text of this opinion.

### **III. INTRODUCTION**

8. The Draft Act was introduced to the *Sejm* on 12 May following a political agreement reached between factions within the ruling coalition not to proceed with the conduct of the presidential election scheduled for 10 May 2020. A law providing for the conduct of 10 May 2020 election exclusively by means of postal voting entered into force on 9 May 2020, however, the National Election Commission (NEC) adopted a decision on the scheduled election day stating that it had not been possible for voting to take place.

9. The Draft Act provides that voters in the newly scheduled election would have the option of voting in person at polling stations or by post. Postal voting would also be organised

abroad, except in countries where it would not be organisationally, technically or legally possible. Electoral committees previously created to contest the 10 May 2020 election and their registered candidates would be entitled to contest the newly scheduled election. New electoral committees may also be created, which may nominate new candidates. The Draft Act also introduces changes to the composition of the election administration, regulates certain aspects of campaign financing, and changes deadlines for electoral dispute resolution.

#### IV. ANALYSIS AND RECOMMENDATIONS

##### A. LEGISLATIVE PROCESS

10. The Draft Act went through three readings in the *Sejm* on 12 May 2020 and was submitted to the *Senat* on 13 May 2020. The accelerated adoption process did not give stakeholders and the principal implementing institutions, an opportunity to express their views on the draft legislation. It also precluded any public debate on this matter of vital national interest. ODIHR reiterates its long-standing position that electoral legislation should be adopted through a public and inclusive process facilitating consensus of the key stakeholders.<sup>3</sup> Additional benefits of greater public engagement in the present context would include the ability, to take stock of experiences of other countries which have held elections during the COVID-19 pandemic, to properly assess the Draft Act's financial implications, and to discuss the potential suitability of other voting options, such as early voting or extending voting time.<sup>4</sup>

**It is recommended that amendments to the electoral legal framework are adopted through a public and inclusive process that respects the principles of legality and the rule of law, allows for a meaningful discussion and facilitates consensus of the key stakeholders.**

##### B. STABILITY OF ELECTORAL LAW AND LEGAL CERTAINTY

11. Stability of electoral law is crucial to the credibility of the electoral process.<sup>5</sup> Even exceptional reform of electoral legislation such as the Draft Act, which is intended to be applicable only to one election, should nevertheless be enacted so as to provide adequate time for it to be really applicable to the election.<sup>6</sup> Stability of electoral law also facilitates legal certainty, which is an essential corollary of the rule of law. These principles have other important implications for the present context. Firstly, legislation adopted to counter the challenges posed by the COVID-19 virus to the electoral process should only introduce changes

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<sup>3</sup> Paragraph 5.8 of the 1990 OSCE Copenhagen Document provides that “legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability.” UN Human Rights Committee, General Comment No. 25 (1996) provides that “[c]itizens also take part in the conduct of public affairs by exerting influence through public debate” (paragraph 8); See also, among many others, ODIHR Opinion on The Draft Act on Special Rules for Conducting the General Election of the President of the Republic of Poland Ordered in 2020, para. 12 (April 27, 2020), Joint Opinions of the ODIHR and Venice Commission on the draft electoral law of the Kyrgyz Republic ([CDL-AD\(2014\)019](#)) and on the draft law amending the electoral legislation of Moldova ([CDL-AD\(2014\)003](#)).

<sup>4</sup> The explanatory note accompanying the Draft Act states that the Draft Act does not have financial implications for the state budget and does not estimate the costs of postal voting, personal protection equipment of postal workers and at polling stations, and other electoral expenses.

<sup>5</sup> See the Venice Commission's [Code of Good Practice in Electoral Matters](#), Explanatory Report, paragraph 63.

<sup>6</sup> See the Venice Commission's [Interpretative Declaration on the Stability of the Electoral Law](#), paragraphs 4 and 5.

which are necessary and proportionate to meet these challenges.<sup>7</sup> Secondly, the legislative changes should enable effective responses to the existing health risks, based on the guidance of public health authorities. These considerations are further commented upon in the relevant sections below.

12. In accordance with international good practice, the Draft Act retains the regular option of voting in person at polling stations.<sup>8</sup> The Draft Act also extends the option to vote by post to voters in Poland and abroad, with some exceptions (Article 2 of the Draft Act). The Minister of Health (after consulting the NEC) may, depending on their assessment of the pandemic, revoke the option to vote at the polling station. In such an event, the decision would be taken to hold the vote exclusively by post in specific municipalities or areas, not later than 7 days before the election day (Article 15.5 of the Draft Act). A decision to cancel in-person voting up to 7 days prior to election day may place an unreasonable strain on the election administration and the postal service, and result in disenfranchisement of voters who planned to vote in polling stations, especially since the deadline for applying for postal voting is set at 12 days before the election day (Article 3.1.(1) of the Draft Act). The Draft Act does not specify how postal voting will be carried out by affected voters, including the deadline applicable for mailing ballots to them. Moreover, the authority to make such decisions should be vested with the election management body, possibly in consultation with the health authorities, rather than a government minister.

**It is recommended that any decision to cancel in-person voting is taken by the National Election Commission, sufficiently in advance of election day. The Draft Act should specify how postal voting will be carried out in such cases to avoid potential disenfranchisement of voters.**

13. The Draft Act charges the Minister of Health to determine the necessary personal protection equipment for members of Precinct Election Commissions (PECs) as well as detailed sanitary rules applicable to polling stations, taking into account the need to protect the health of persons present at polling stations (Article 16 of the Draft Act). Public health guidelines will be of paramount importance for planning postal-voting and election-day procedures. The guidelines are not, however, envisaged to include all people present at polling stations (voters, candidates' proxies, citizen and international observers) and the handling of postal ballots, especially in relation to persons in quarantine and isolation. The content of these guidelines may be essential for other regulations of the electoral process and for determining procurement needs for the election, including personal protection equipment and adequately large premises. Thus, such guidelines should be issued as early as possible in the process.

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<sup>7</sup> See Paragraph 2 of the 2001 UN Human Rights Committee General Comment No. 29 which states that “Measures derogating from the provisions of the Covenant [the International Covenant on Civil and Political Rights] must be of an exceptional and temporary nature.” The 1990 Copenhagen Document states in Paragraph 25.3 that “measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation”, and in Paragraph 25.1 that “measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments.” The European Court of Human Rights (ECtHR) in the cases *Mehmet Hasan Altan v. Turkey* (Paragraphs 94 and 210) and *Şahin Alpay v. Turkey* (Paragraphs 78 and 180) evaluated “whether the measures taken...were strictly required by the exigencies of the situation and consistent with the other obligations under international law”.

<sup>8</sup> See the Code of Good Practice paragraph I.3.2.ii.

**Consideration should be given to establishing an early deadline for issuing public health guidelines applicable to the electoral process to enable appropriate regulation and implementation.**

### **C. ELECTION ADMINISTRATION**

14. The Draft Act retains the authority of the NEC to manage the electoral process, in contrast to the previously adopted legislation.<sup>9</sup> At the same time, the Draft Act authorizes the Marshal of the *Sejm* to set deadlines for carrying out electoral actions envisaged by the Election Code and the Draft Act, in view of the new election date, after consulting the NEC (Article 15.1 of the Draft Act). The Marshal would also have the authority to change these deadlines, after consulting the NEC and the Ministry of Health, considering the epidemic situation in the country or in particular areas (Article 15.4 of the Draft Act). These provisions introduce a margin of flexibility into electoral deadlines in the face of a potentially dynamic epidemic situation. While such flexibility may be warranted, these powers ought to be more precisely circumscribed, as they affect legal certainty and the exercise of electoral rights and obligations. Furthermore, placing the final authority to change electoral deadlines in the hands of the parliament's speaker, a political figure, risks undermining the independence and impartiality of the election administration.<sup>10</sup> To the extent that any flexibility in electoral deadlines should be permitted in the face of exceptional epidemic circumstances, this determination should be made by the election management body, i.e. the NEC.

**It is recommended that provisions allowing the Marshal of the *Sejm* to set and change electoral deadlines be reconsidered. To the extent that flexibility in electoral deadlines could be permitted in light of the epidemic situation, the law should explicitly state which deadlines can be changed and the final decision on such changes should be made by the NEC.**

15. The Draft Act introduces changes to the composition and appointment of district election commissions (DECs). The Election Code provides that DECs are composed from 4 to 10 judges nominated by the Minister of Justice and appointed by the NEC (Article 170.1-3 of the Election Code). Under the Draft Act, the DECs would be composed of 4-10 people who have higher legal education and “guarantee the proper performance of their functions”, nominated by respective election commissioners (Article 18.1-2 of the Draft Act). It is not evident how this change of the principle underlying the composition of the DECs is necessitated by the COVID-19 pandemic. The NEC had already appointed DECs for the 10 May presidential election. Notwithstanding the rationale, these legislative changes are not likely to improve confidence in the independence and impartiality of the election administration, which is of particular importance for exercising DECs’ supervisory functions over PECs (Article 172.1(1) of the Election Code). By virtue of their status, judges are commonly perceived as more independent and impartial than other people with higher legal education.

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<sup>9</sup> See ODIHR Opinion on The Draft Act on Special Rules for Conducting the General Election of the President of the Republic of Poland Ordered in 2020, paragraphs 19-21, (April 27, 2020).

<sup>10</sup> General Comment No. 25 of the UN Human Rights Committee provides that “[a]n independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant” (paragraph 20). The Venice Commission’s Code of Good Practice advises that “[a]n impartial body must be in charge of applying electoral law” (Guidelines, paragraph II.3.1.a).

**It is recommended that the judicial composition of DEC's that is provided for by the Election Code is retained and the respective provisions of the Draft Act are reconsidered, particularly since it remains unclear how they are related to the exigencies posed by the current situation.**

16. The Draft Act sets the minimum membership of a precinct election commission (PEC) at 3 members (Article 19.1 of the Draft Act), compared to the minimum of 5 members envisaged in the Election Code (Article 182.8a of the Election Code). The reduction in the minimum membership would appear inconsistent with the imperatives of the COVID-19 epidemic which will necessarily impose a greater workload for the PECs in relation to social distancing and postal voting. Additionally, it may also be difficult to preserve the political balance envisaged by the existing method of commission formation in PECs consisting of only 3 members.

**It is recommended that the reduction of the minimum number of PEC members be reconsidered and the provisions of the Election Code on PEC composition apply for the newly scheduled election.**

17. The Draft Act provides that training of PEC members, provided for by Article 191e.1(2) of the Election Code, shall take place using electronic means which enable remote communication (Article 20 of the Draft Act). This may disproportionately affect the participation of some PEC members who may not have access to remote communication methods, among these the elderly and the disabled. Furthermore, while the health and safety of PEC members and election officers is of paramount importance, the imposition of only one method of training would deprive the election administration of operational flexibility to carry out their tasks in line with the latest public health guidelines. It would be preferable to allow the NEC and the National Elections Office to determine how to proceed with such tasks, depending on the epidemic situation in specific regions.

**It is recommended that decisions pertaining to the means of training of PEC members are made by the NEC based on the recommendations of public health authorities.**

#### **D. POSTAL VOTING PROCEDURES**

18. The Draft Act provides for a substantially similar postal voting procedure as the Act of 6 April 2020, with a number of modifications. Therefore, some of the comments previously made by ODIHR in relation to the delivery and retrieval of ballots, review of ballots for validity, and observation of elections by candidate proxies and citizen observers remain relevant also for the Draft Act.<sup>11</sup> Several recommendations made previously are also reiterated below.

##### *Delivery of ballots to voters*

19. Article 3.1(1) of the Draft Act requires voters to notify election commissioners through the municipal office of their intention to vote by post no later than 12 days before the election day. In case of voters who became subject to mandatory quarantine, isolation or home isolation after this deadline, the deadline for notification is the 2<sup>nd</sup> day before the election day. The latter deadline appears to be unfeasible as it may not provide adequate time to prepare and send electoral packets, particularly as the deadline for returning postal ballots by voters also falls on the same day (Article 8.2(1) of the Draft Act). Thus formulated, the draft act may effectively

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<sup>11</sup> See ODIHR's Opinion Nr ELE-POL/373/2020 of 27 April 2020, paragraphs 25-40.

disenfranchise voters under mandatory quarantine within the 12 day deadline for registration as it is unlikely that a shift in technical deadlines for sending postal ballots to such voters would be feasible.

#### *Receipt of ballots from voters*

20. Voters may return their ballots by post no later than the 2<sup>nd</sup> day before the election day (Article 8.2(1) of the Draft Act), or deliver them personally or through another person to the municipal office up to the 2<sup>nd</sup> day before the election day (Article 8.5(1) of the Draft Act) or to the precinct election commission (PEC) during voting hours (Article 8.8 of the Draft Act). The deadline for posting ballots up to the 2<sup>nd</sup> day before the election day is rather short and its feasibility should be verified by the postal operator.

**Timely delivery of ballots posted by voters within the legal deadline should be guaranteed.**

21. Voters are requested to write the address of the respective PEC on the return envelope (Article 8.2 of the Draft Act). This address should therefore be clearly indicated in the voting instructions sent in the electoral packet.

**It would be advisable for the return envelope to already be pre-filled with the correct PEC address.**

22. The postal operator is required to set up enough postal collection boxes in each municipality, approximately one box per 750 voters who intend to vote by post (Article 8.3 of the Draft Act). However, as the number of voters who intend to vote by post will only be known 12 days before the election day (Article 3.1(1) of the Draft Act), the time required to set up additional postal boxes as well as to communicate their location to voters will be notably limited. Consideration could be given to setting up properly secured ballot drop boxes at municipal offices and informing voters about such drop boxes in postal voting instructions sent in electoral packets.<sup>12</sup>

**Consideration could be given to setting up ballot drop boxes at municipal offices to facilitate the return of postal ballots.**

23. With respect to ballots delivered by voters to PECs during voting hours, it is important that the procedures for handling such ballots are developed by the NEC and known to the PEC. As there is no limit on the number of voted ballots a person could return, the practice is open to agents collecting completed ballots on behalf of a candidate or facilitating schemes to influence voters' choices, including family voting, or intentional spoiling of voters' ballots.<sup>13</sup>

**ODIHR recalls its previously made recommendation to introduce reasonable limitations on the return of ballots through another person.**

24. Municipal offices are charged with receiving voters' applications for postal voting (Article 3.1(1) of the Draft Act), preparing and sending electoral packets (Article 5.2 of the Draft Act), keeping track of packets sent or picked up by voters (Article 5.10 of the Draft Act), and receiving return envelopes delivered in person (Article 8.5(1) of the Draft Act). Packets

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<sup>12</sup> See examples of practices with ballot drop boxes in the United States [here](#).

<sup>13</sup> See ODIHR Opinion Nr ELE-POL/373/2020 of 27 April 2020, paragraph 29.

which could not be delivered to voters are returned to PECs or the director of the National Election Office (NEO) branch before the end of voting (Article 5.8 of the Draft Act). Information about such undelivered packets should be promptly communicated to the municipal office.

**Voters who requested postal ballots should be notified if their packets could not be delivered and be given an opportunity to pick them up at municipal offices or have the option to vote in person instead.**

25. Postal ballots are to be delivered to PECs by the postal operator during voting hours (Article 8.7 of the Draft Act). Until election day, return envelopes will therefore be in custody of the postal operator, which must ensure their security and integrity. With deliveries of all return envelopes being made on the same day to all PECs there is a chance that some ballots may be delivered to wrong PECs and there will be little time to correct delivery errors. The PECs should be trained on the procedures for receipt of return envelopes from the post and their chain of custody.

**It is recommended that a mechanism be developed to re-direct incorrectly delivered ballots to the correct PECs on election day.**

#### *Review of ballots*

26. Ballots delivered to the PEC are to be placed in the ballot box in their envelopes (Article 8.9 of the Draft Act). The Draft Act does not introduce rules for the determination of validity of postal ballots, except for ballots which do not bear the necessary marks of authenticity (Article 11 of the Draft Act). Instructions for PECs on determining the validity of postal ballots will presumably be issued by the NEC. Considerations presented in the previous ODIHR opinion on this subject matter remain relevant for such future instructions.<sup>14</sup>

#### **E. VOTER EDUCATION**

27. The Draft Act directs the NEC to carry out information campaigns in the media about the option of postal voting and how it can be exercised (Article 3.11 of the Draft Act). This provision echoes the concern expressed by ODIHR in its opinion of 27 April 2020 in relation to the previous act on postal voting, which left very little time for voter education campaigns. It is noteworthy that the Draft Act does not repeal a previous legislative amendment, which removed the obligation that election commissioners mail information to voters about the date, time and method of voting no later than 21 days before the election.<sup>15</sup> It will be important for the new timeline for the 2020 presidential election to take into account the need to inform all voters about the new voting arrangements and the protective measures introduced in polling stations. Such an information campaign would enable voters to exercise their rights and strengthen their confidence in the electoral process.<sup>16</sup>

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<sup>14</sup> See ODIHR Opinion Nr ELE-POL/373/2020 of 27 April 2020, paragraphs 34-36.

<sup>15</sup> Article 37d.1 of the Election Code, which provides for this obligation of election commissioners, would not apply to the 2020 presidential election by virtue of Article 102(3) of the Act of 16 April 2020, which remains in force.

<sup>16</sup> See General Comment No. 25 of the UN Human Rights Committee: “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. [...] Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community” (paragraph 11).

**It is recommended that the new timeline for the presidential election allows for a comprehensive voter information campaign, including about the new voting arrangements and the protective measures introduced in polling stations.**

#### **F. CAMPAIGN FINANCE**

28. The Draft Act clarifies that the limits of donations to electoral committees by individuals and by candidates, as well as the limit of bank loan guarantees set by the Election Code would apply cumulatively to the 10 May election and the newly scheduled election (Articles 14.13 and 14.14 of the Draft Act).

29. Electoral committees which registered for the 10 May election may also take part in the newly scheduled election (Article 14.1 of the Draft Act). Their campaign spending limit is increased by 50 per cent (Article 14.10 of the Draft Act). For new electoral committees, created to contest the newly scheduled election, the campaign spending limit is capped at 50 per cent of the regular spending limits envisaged by the Election Code (Articles 14.11 and 14.12 of the Draft Act). Such cap would skew the equal playing field, giving the opportunity to candidates who also campaigned in the 10 May election to spend considerably more funds for their presidential campaign.<sup>17</sup>

**It is recommended that new electoral committees, registered to contest the newly scheduled presidential election, be subject to the regular campaign spending limits envisaged by the Election Code.**

#### **G. COMPLAINTS AND APPEALS**

30. Article 15.2 of the Draft Act reduces the deadline for lodging complaints against the presidential election to the Supreme Court to 3 days, compared to 14 days currently envisioned in the Election Code (Article 321.1 of the Election Code). At the same time, the deadline for the Supreme Court ruling on the validity of the presidential election is reduced to 21 days (Article 15.3 of the Draft Act), compared to 30 days currently envisaged in the Election Code (Article 324.2 of the Election Code). These changes do not have an evident link to the COVID-19 epidemic.

31. The 3 day-day window for lodging complaints may be too short to prepare well-founded appeals. Consideration could be given to introduce the same deadline as for elections to the *Sejm*. The reduction of the already short time for the Supreme Court's ruling, on the other hand, appears unjustified and may prevent the Supreme Court from proper consideration of all electoral appeals.

**It is recommended that the proposed deadline to lodge electoral appeals be reconsidered. The current deadline for the Supreme Court's ruling on the validity of the election should be preserved or extended.**

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<sup>17</sup> Paragraph 7.6 of the OSCE Copenhagen Document commits OSCE participating States to provide political parties and organizations "with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities". The Venice Commission's Code of Good Practice in Electoral Matters advises that "equality of opportunity must be guaranteed for parties and candidates alike", in particular with regard to the election campaign (Guidelines, paragraph I.2.3.a).

**ANNEX: DRAFT ACT ON SPECIAL RULES FOR THE ORGANISATION OF GENERAL ELECTIONS OF THE PRESIDENT OF THE REPUBLIC OF POLAND ORDERED IN 2020 WITH THE POSSIBILITY OF POSTAL VOTING<sup>18</sup>**

**Article 1.**

1. This Act establishes the rules and procedure for the organisation of elections of the President of the Republic of Poland ordered in 2020 in connection with the state of epidemic announced in the territory of the Republic of Poland.

2. The Act of 5 January 2011 – Electoral Code (Journal of Laws [Dz. U.] of 2019 items 684 and 1504 and of 2020 item 568) shall apply mutatis mutandis to matters not governed by this Act.

**Article 2.**

1. Voters can vote by mail.

2. Postal voting shall be excluded in the case of voting in separate voting precincts established at health care establishments, care homes, student dormitories or student dormitory complexes, penitentiaries and detention centres as well as at external branches of such penitentiaries and detention centres, and also in voting precincts established on Polish sea-going vessels, and in the case of a disabled voter who has granted to another person a power of attorney to vote.

**Article 3.**

1. The intention to vote by mail shall be notified by the voter:

1) in the territory of the Republic of Poland: to the election commissioner through the municipal office by the 12th day before the election day at the latest, and in the case of a voter who is subject to mandatory quarantine, isolation or home isolation on the polling day – by the 5th day before the election day at the latest;

2) abroad: to the competent consul by the 12th day before the election day at the latest.

2. The notification referred to in para. 1 above may be made verbally, in writing or in electronic form using a dedicated service made available by the Minister in charge of computerisation.

3. The notification referred to in para. 1 above shall contain the voter's surname and first name(s), father's first name, date of birth, PESEL personal identification number and the

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<sup>18)</sup> This Act amends the Act of 16 April 2020 on Special Support Instruments in Connection with the Spread of the SARS-CoV-2 Virus.

indication of the address to which the electoral package is to be sent or a declaration that the voter intends to collect the electoral package in person.

4. In the case of a voter voting abroad, the notification referred to in para. 1 above shall additionally contain the place where the voter resides abroad, the number of a valid Polish passport, and – in the case of a Polish citizen temporarily residing abroad – the indication of the place where the voter is entered in the electoral register.

5. In the notification referred to in para. 1 above, a disabled voter voting in the territory of the Republic of Poland may request that a Braille overlay for the ballot be included in the electoral package.

6. The intention to vote by mail shall also apply to voting in the run-off.

7. Where the voter has notified his or her intention to vote by mail, a certificate of the right to vote at the place of residence on the election day shall not be issued after the electoral package has been sent to the voter.

#### **Article 4.**

1. If the notification referred to in Article 3(1) does not meet the requirements referred to in Article 3(2) to (4), the electoral officer or consul shall request that the voter complete the notification within one day of the receipt of the request.

2. A notification which has been submitted after the deadline referred to in Article 3(1), which does not meet the requirements referred to in Article 3(2) to (4) or which has not been completed within the time limit referred to in para. 1 above as well as a notification submitted by a voter who has requested that a power of attorney to vote be drawn up or has received a certificate of the right to vote at his or her place of residence on the election day shall not be considered and the voter shall be informed of this fact.

#### **Article 5.**

1. A voter who has notified his or her intention to vote by mail in the territory of the Republic of Poland shall receive an electoral package from the municipal office no later than 5 days before the election day.

2. The municipal office shall send an electoral package to the voter using the designated service provider within the meaning of the Act of 23 November 2012 – Postal Law (Journal of Laws [Dz. U.] item 1529). Within the scope not regulated herein, provisions of the Act of 23

November 2012 – Postal Law concerning a certified postal item shall apply to sending the electoral package, subject to the provisions of paras. 3 and 4 below.

3. The electoral package may be delivered to the voter by an authorised municipal office employee.

4. The voter may collect the electoral package in person at the municipal office if he or she has requested this in the notification of his or her intention to vote by mail.

5. An electoral package sent using the designated service provider shall be delivered by a team consisting of at least two employees of the designated service provider directly to the voter's mailbox. After the package has been delivered to the mailbox, the mailbox owner shall be responsible for the package.

6. Electoral packages not delivered or not collected in accordance with the procedure described above shall be handed over to the precinct electoral commission before the end of the vote. If it is not possible to hand over the electoral packages to the precinct electoral commission before the end of the vote, such packages shall be handed over to the competent director of a National Electoral Office branch.

7. Information that the electoral package has been sent or collected shall be indicated in the "remarks" column of the electoral roll next to the name of the voter who has expressed his or her intention to vote by mail.

8. The municipal office shall maintain a list of electoral packages, in which the preparation and sending or collection of the electoral package in question shall be recorded.

9. The Minister in charge of public administration, after consulting the National Electoral Commission, shall determine, by way of regulation, the specimen and manner of maintaining and updating the list of electoral packages so that the efficiency and integrity of the procedure is ensured.

#### **Article 6.**

1. As soon as he or she receives the ballots from the relevant electoral commission, but no later than 6 days before the election day, the consul shall send electoral packages to voters entered in the electoral roll who have expressed their intention to vote by mail abroad, subject to para. 2 below.

2. The voter may collect the electoral package in person at the consulate if he or she has requested this in the notification of his or her intention to vote by mail, subject to para. 3 below.

3. If it is not possible to collect the electoral package in person in the host country or such possibility is significantly restricted, the consul shall make the relevant announcement in such a way that all voters within the consular district in question are able to read the announcement.

3. Provisions of Article 5(7) and (8) shall apply *mutatis mutandis*.

4. Electoral packages not delivered to the voter's address or not collected by the voter shall remain in the consul's custody until the Supreme Court has determined the validity of the election.

5. The Minister in charge of foreign affairs, after consulting the National Electoral Commission, shall determine by way of regulation the specimen and manner of maintaining and updating the list of electoral packages so that the efficiency and integrity of the procedure is ensured.

#### **Article 7.**

1. The electoral package shall include:

- 1) a return envelope;
- 2) a ballot;
- 3) an envelope for the ballot;
- 4) postal voting instructions;
- 5) a statement that the voter voted in person and that secrecy was maintained.

2. If the voter has requested a Braille overlay for the ballot, this shall be included in the electoral package.

3. The ballot shall bear a mark ensuring that the ballot is authentic. Article 40(4) of the Electoral Code shall not apply.

4. In the event of voting in the territory of the Republic of Poland, the envelope containing the electoral package and the return envelope shall be marked "przesyłka wyborcza" ["electoral postal item"].

5. The envelope for the ballot shall be marked "koperta na kartę do głosowania" ["envelope for the ballot"].

6. The National Electoral Commission shall determine by way of resolution the specimen ballot, including the manner of determining its authenticity, the design and size of the envelope for the electoral package, the return envelope, the envelope for the ballot, the statement referred to in

para. 1, point 5 above and postal voting instructions, taking into account the need to ensure the secrecy of the voting process and the conciseness and comprehensibility of the instructions.

#### **Article 8.**

1. A voter who votes by mail shall sign the statement referred to in Article 7(1)(5) and shall enter his or her first name, surname and the PESEL personal identification number in the space provided for this purpose.

2. After completing the ballot, a voter who votes by mail shall place it in the envelope for the ballot, which envelope for the ballot the voter shall seal and subsequently place it in the return envelope together with the signed statement referred to in Article 7(1)(5). On the return envelope, the voter shall write the address of the competent precinct electoral commission, and subsequently:

1) in the case of voting in the territory of the Republic of Poland – not later than on the 2nd day before the election day, the voter shall place the return envelope in the postal collection box of the designated service provider within the meaning of the Act of 23 November 2012 – Postal Law within the municipality in which the precinct electoral commission is situated;

2) in the case of voting abroad – the voter shall send the return envelope to the competent consul at his or her own expense.

2. Before the election day, the voter may deliver the return envelope in person or through another person:

1) in the case of voting in the territory of the Republic of Poland – to the competent municipal office;

2) in the case of voting abroad – to the competent consul.

3. Return envelopes shall be delivered to the competent precinct electoral commissions during voting hours. In the case of voting abroad, the consul shall hand over to the competent precinct electoral commission the return envelopes which he or she received until the end of the vote.

4. During voting hours, the voter may deliver the return envelope in person or through another person to the precinct electoral commission in the electoral precinct where he or she is entered in the electoral roll.

5. Envelopes for ballots removed from the return envelopes delivered to a precinct electoral commission shall be placed in a ballot box.

## **Article 9.**

1. In the case of voting in the territory of the Republic of Poland, return envelopes not delivered to the precinct electoral commission before the end of the vote shall be handed over to the competent director of a National Electoral Office branch.

2. In the case of voting abroad, return envelopes not delivered to the precinct electoral commission before the end of the vote shall remain in the consul's custody until the Supreme Court has determined the validity of the election.

## **Article 10.**

1. With respect to voting in the territory of the Republic of Poland, the Minister in charge of communications, after consulting the Minister in charge of public administration and the National Electoral Commission, shall determine by way of regulation:

1) the procedure for the delivery of return envelopes to precinct electoral commissions;

2) the procedure for collecting return envelopes from voters who are subject to mandatory quarantine, isolation or home isolation as referred to in the Act of 5 December 2008 on the Prevention and Control of Infections and Infectious Diseases in Humans (Journal of Laws [Dz. U.] of 2019 items 1239 and 1495 and of 2020 items 284, 374 and 567);

3) the procedure for handing over electoral packages to the competent director of the National Electoral Office branch in the situation referred to in the second sentence of Article 6(8);

4) the procedure for handing over return envelopes to the competent director of the National Electoral Office branch in the situation referred to in the second sentence of Article 9(1);

– with a view to ensuring that rules for conducting the elections are observed and the security of the postal items in question is guaranteed.

2. The Minister in charge of public administration, after consulting the National Electoral Commission, shall determine, by way of regulation, the procedure for collecting and storing the return envelopes delivered by voters to municipal offices before the election day with a view to ensuring that rules for conducting the elections are observed and taking into account the need to secure return envelopes and ballots.

3. With respect to voting in the territory of the Republic of Poland, the National Electoral Commission shall determine by way of resolution:

- 1) the manner of handling return envelopes delivered to the precinct electoral commission before the end of the vote;
- 2) the manner of handling return envelopes delivered to the precinct electoral commission after the end of the vote;
- 3) the manner of handling return envelopes containing unsealed envelopes for ballots;
- 4) the manner of handling return envelopes which do not contain a correctly completed statement referred to in Article 7(1)(5);
- 5) the manner of handling electoral packages which have not been collected by voters – with a view to ensuring that rules for conducting the elections are observed and taking into account the need to secure electoral packages, in particular return envelopes and ballots.

4. With respect to voting abroad, the Minister in charge of foreign affairs, after consulting the National Electoral Commission, shall determine by way of regulation:

- 1) the procedure for delivering electoral packages to voters;
- 2) the procedure for collecting the return envelopes delivered by voters to the consul before the election day;
- 3) the procedure for storing the return envelopes received by the consul before the end of the vote;
- 4) the procedure for handing over return envelopes to precinct electoral commissions; – with a view to ensuring that rules for conducting the elections are observed and taking into account the need to protect electoral packages, in particular return envelopes and ballots.

5. With respect to voting abroad, the National Electoral Commission, after consulting the Minister in charge of foreign affairs, shall determine by way of resolution:

- 1) the manner of handling return envelopes delivered to the precinct electoral commission before the end of the vote;
- 2) the manner of handling return envelopes containing unsealed envelopes for ballots;

3) the manner of handling return envelopes which do not contain a correctly completed statement referred to in Article 7(1)(5);

4) the manner of handling the electoral packages referred to in Article 6(4), and the return envelopes referred to in Article 9(2)

– with a view to ensuring that rules for conducting the elections are observed and taking into account the need to protect electoral packages, in particular return envelopes and ballots.

#### **Article 11.**

1. In the case of postal voting in the territory of the Republic of Poland, the tasks consisting in the clearance, transport and delivery of electoral packages and return envelopes shall be performed, subject to Article 5(3) and (4) and Article 8(2)(1) and 8(4), by the designated service provider within the meaning of the Act of 23 November 2012 – Postal Law.

2. The postal items referred to in para. 1 above shall be considered letter mail within the meaning of the Act of 23 November 2012 – Postal Law.

3. The postal items referred to in para. 1 above shall be exempt from postal charges. The notice about the exemption from postal charges shall be placed on the envelope containing the electoral package and on the return envelope.

#### **Article 12.**

A notification of the intention to vote by mail shall remain in effect in the run-off vote for the President of the Republic of Poland.

#### **Article 13.**

1. An election committee in the elections of the President of the Republic of Poland ordered on 10 May 2020 whose establishment notification was accepted by the National Electoral Commission within the time limit for submitting a notification of the establishment of an election committee may submit to the National Electoral Commission a notification of its participation in the elections of the President of the Republic of Poland ordered by the Marshal of the Sejm on a later date in 2020.

2. The notification referred to in para. 1 above shall state:

1) the name of the committee and the address of its seat;

2) the first name(s), surname, address and PESEL personal identification number of the election agent and financial agent.

3. The notification referred to in para. 1 above shall include:

1) the statement on the committee's participation in the election and statements of the election agent and of the financial agent concerning their acceptance of the power of attorney granted to them, and in the case of the financial agent, also concerning his or her fulfilment of the requirements referred to in Article 127(2) and (3) of the Electoral Code;

2) the candidate's written consent to his or her committee's participation in elections as referred to in Article 297(2)(1) of the Electoral Code and the consent to the establishment of his or her committee as referred to in Article 297(2)(2) of the Electoral Code;

3) the candidate's written statement on his or her right to be elected as referred to in Article 297(2)(3) of the Electoral Code;

4) the provisions on the notification of the establishment of an election committee shall apply *mutatis mutandis* to the notification referred to in para. 1 above.

4. In the case of a candidate registered by the National Electoral Commission in the elections ordered for 10 May 2020 who is nominated again as a candidate for the President of the Republic of Poland by the competent election agent of an election committee which notified its participation in the elections pursuant to para. 1 above, the candidate in question shall be deemed a registered candidate for the President of the Republic of Poland in the elections of the President of the Republic of Poland ordered by the Marshal of the Sejm on a later date in 2020.

5. The notification referred to in para. 4 above shall contain:

1) the first name(s), surname, age and place of residence (city/town) of the nominated candidate for the President of the Republic of Poland together with an indication of his or her political party affiliation;

2) the name of the election committee and the first name(s), surname and mailing address of the election agent and financial agent.

6. The provisions of paras. 1–5 above do not preclude the establishment of an election committee and the registration of candidates for the President of the Republic of Poland in

accordance with the provisions of the Electoral Code in connection with the Marshal of the Sejm ordering the elections of the President of the Republic of Poland on a later date.

7. The provisions of the Electoral Code concerning the establishment of an election committee shall apply *mutatis mutandis* to the organisation of elections in the elections of the President of the Republic of Poland ordered in 2020, including without limitation Articles 301 and 302 of the Electoral Code.

8. An election committee which has submitted a notification of its participation in elections under para. 1 above may spend during the election campaign the funds accumulated for the purposes of the election campaign in the elections in which no voting took place or the Supreme Court adopted a resolution declaring the election of the President of the Republic of Poland invalid.

9. An election committee which has submitted a notification of its participation in elections under para. 1 above may raise funds from the date on which the National Electoral Commission accepts its notification.

10. An election committee which has submitted a notification of its participation in elections under para. 1 above may spend in total on its election campaign in the elections in which no voting took place or the Supreme Court adopted a resolution declaring the election of the President of the Republic of Poland invalid and in the elections of the President of the Republic of Poland in 2020 ordered by the Marshal of the Sejm on a later date an amount not greater than 100% of the limit referred to in Article 327(1) of the Act of 5 January 2011 – Electoral Code set for the elections in which no voting took place or the Supreme Court adopted a resolution declaring the election of the President of the Republic of Poland invalid and 50% of the limit referred to in Article 327(1) of the Act of 5 January 2011 – Electoral Code set for the elections of the President of the Republic of Poland in 2020 ordered by the Marshal of the Sejm on a later date.

11. An election committee which has submitted a notification of its establishment in connection with the elections of the President of the Republic of Poland in 2020 ordered by the Marshal of the Sejm on a later date may spend on its election campaign in these elections an amount not greater than 50% of the limit referred to in Article 327(1) of the Act of 5 January 2011 – Electoral Code.

12. The provisions of paras. 10 and 11 above shall apply *mutatis mutandis* to the limit referred to in Article 136 of the Act of 5 January 2011 – Electoral Code.

13. The sum of payments made by a Polish citizen to an election committee which submitted a notification of its participation in elections under para. 1 above may not exceed in total the sum of the payment limits referred to in Article 134(2) or (3) of the Act of 5 January 2011 – Electoral Code.

14. The commitment by a guarantor referred to in Article 132(6) of the Act of 5 January 2011 – Electoral Code related to securing a loan granted to an election committee which submitted a notification of its participation in elections under para. 1 above may not exceed in total the sum of the payments referred to in para. 13 above.

15. The financial report referred to in Article 142 of the Act of 5 January 2011 – Electoral Code, which concerns financing participation in the elections in which no voting took place or the Supreme Court adopted a resolution declaring the election of the President of the Republic of Poland invalid, and in the elections of the President of the Republic of Poland in 2020 ordered by the Marshal of the Sejm on a later date, shall be submitted within three months of the date of the elections held pursuant to this Act. An election committee which has submitted a notification of its participation in elections under para. 1 above shall submit a single combined financial report.

#### **Article 14.**

1. In his or her decision to order elections, the Marshal of the Sejm, having consulted the National Electoral Commission, shall set the dates on which the deadlines for carrying out the electoral actions provided for in the Electoral Code and in the Act expire, taking into account the election date stipulated in the decision. The deadlines for carrying out the electoral actions indicated in the Act of 5 January 2011 – Electoral Code shall not apply.

2. A protest against the election of the President of the Republic of Poland shall be lodged in writing with the Supreme Court within at most 3 days of the date on which election results are announced by the National Electoral Commission.

3. The resolution on the matter referred to in Article 324(1) of the Act of 5 January 2011 – Electoral Code shall be adopted by the Supreme Court within 14 days from the date of publication of the election result by the National Electoral Commission.

4. Upon the request of the Minister of Health, the Marshal of the Sejm may, after consulting the National Electoral Commission, change the deadlines for carrying out the electoral actions stipulated in the decision referred to in para. 1 above, taking into account the epidemic situation in the entire country or part thereof.

**Article 15.**

1. Where the head of the municipality or mayor does not designate the premises referred to in Article 186(1) of the Act of 5 January 2011 – Electoral Code, the election commissioner shall designate the premises indicated by the competent province governor as the seat of the precinct electoral commission.
2. The head of the municipality, the mayor, or, in the case referred to in para. 1 above, the provincial governor, shall equip the premises of the precinct electoral commission with sufficient personal protective equipment related to fighting the COVID-19 epidemic for all members of the precinct electoral commission.
3. The Minister in charge of health shall determine by way of regulation the list of personal protective equipment related to fighting the COVID-19 epidemic for members of precinct electoral commissions, taking into account the need to protect the health of members of precinct electoral commissions.

**Article 16.**

In particularly justified cases, at the request of the head of the municipality, a province governor may provide personal or organisational support to a municipal office in the performance of tasks related to the organisation of the elections of the President of the Republic of Poland in 2020 ordered by the Marshal of the Sejm on a later date.

**Article 17.**

1. The head of the municipality or the mayor shall equip the premises of the precinct electoral commission with sufficient personal protective equipment related to fighting the COVID-19 epidemic for all members of the precinct electoral commission.

**Article 18.**

1. A district electoral commission shall be composed of 4 to 10 members appointed from among persons who have a degree in law and who guarantee the proper performance of their functions.
2. A member of a district electoral commission may not:
  - 1) be a member of a political party or engage in public activities incompatible with his or her function;
  - 2) be a person finally convicted of an indictable intentional offence or of an intentional fiscal offence;

3) be a candidate in the elections, an electoral agent, a financial agent, a proxy or an electoral officer.

**Article 19.**

1. A precinct electoral commission shall consist of at least 3 members.

2. Nominations of candidates for members of precinct electoral commissions in the elections in which no voting took place or the Supreme Court adopted a resolution declaring the election of the President of the Republic of Poland invalid, where these were made by an election committee which submitted a notification under Article 13(1) of participation in the election of the President of the Republic of Poland in 2020 ordered by the Marshal of the Sejm on a later date, shall remain valid and do not have to be repeated.

3. If two or more precinct electoral commissions are located in the same premises or building, the election commissioner may combine the polling precincts for which these commissions have been established and establish a joint precinct electoral commission for these precincts. Article 12(3) of the Act of 5 January 2011 – Electoral Code shall not apply.

**Article 20.**

1. The components of the electoral package referred to in Article 3(3) of the Act amended in Article 1 that were printed before the entry into force of this Act pursuant to the Act of 2 March 2020 on Special Measures Related to the Prevention, Counteracting and Control of COVID-19, Other Infectious Diseases and the Related Crises (Journal of Laws [Dz. U.] items 374, 567, 568 and 695), may be used in the elections held on the basis of the Act amended in Article 1, subject to para. 2 below.

2. In the event that it is not possible to use certain components of the electoral package referred to in para. 1 above, including without limitation due to the registration of candidates who were not registered in the elections ordered on 10 May 2020, the National Electoral Commission shall decide by way of resolution on the use of selected components of the electoral package referred to in para. 1 above.

**Article 21.**

The Minister in charge of internal affairs, in consultation with the Minister in charge of computerisation, shall determine, after consulting the National Electoral Commission, by way of regulation, the duties of the bodies which maintain population registers to ensure that the National Electoral Commission is able to perform its tasks relating to the supervision of the

maintenance and updating of the electoral register and the compilation of electoral rolls, including the procedure for making documents available and providing information on the number of residents included in the population register and the number of voters entered in the electoral register and in electoral rolls as well as the principles and forms of cooperation between government authorities and the National Electoral Office in this respect, bearing in mind the need to ensure the security of personal data processing, transfer and receipt.

**Article 22.**

The Act of 6 April 2020 on Special Rules for Conducting the General Elections of the President of the Republic of Poland Ordered in 2020 (Journal of Laws [Dz. U.] item 827) is hereby repealed.

**Article 23.**

Article 102(1)–(2) and Article 102(5)–(6) of the Act of 16 April 2020 on Special Support Instruments in Connection with the Spread of the SARS-CoV-2 Virus (Journal of Laws [Dz. U.] item 695) are hereby deleted.

**Article 24.**

This Act shall come into force on the day following the date of its promulgation.