

# **Making Peace Last**

## **The EU's Contribution to Peacebuilding**

**Edited by Steven Blockmans, Jan Wouters and Tom Ruys**  
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## Part IV. *Rule of law, democracy and human rights*

### Chapter 13 - The European Union and Electoral Support

Patrick Dupont, Francesco Torcoli and Fabio Bargiacchi<sup>1</sup>

Elections play a vital role in democratic and democratisation processes. Elections represent a crucial opportunity for political participation and representation and also for holding elected officials to account. Moreover, elections provide important entry points for the enjoyment of a wide range of human rights, such as freedom of expression, assembly and association. Elections aim to bring about legitimate governments, able to protect and respond to the needs of citizens, including sustainable peace and development.

Confirming the EU's external policy objectives in the area of democracy and human rights, notably since the early 1990s, the EU has evolved into an active player in the promotion of sustainable, transparent and genuinely democratic elections. This article will illustrate the increased activity, both quantitatively and qualitatively, of the EU in election support in particular over the past ten years, often within a broader governance enhancement strategy and complementing other, civil society support and institution building actions.

#### **Election Assistance and Election Observation**

EU electoral support mainly includes two activities: election observation and electoral assistance. Election observation is generally defined as *the purposeful gathering of information regarding an electoral process, and the making of informed judgements on the conduct of such a process on the basis of the information collected, by persons who are not inherently authorised to intervene in the process.*<sup>2</sup> A further distinction can be made between short-term observation (focusing mainly on election day observation) and long-term observation (including pre-and post-electoral aspects). The EU is involved in the latter type of election observation.

Electoral assistance, on the contrary, is defined as *the technical or material support given to the electoral process.* It may comprise a broad range of activities with advice and support provided to the national election authorities, including for the actual organisation of the

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<sup>2</sup> International IDEA: *Code of conduct for the ethical and professional observation of elections* - Stockholm 1997 / page 10. See for more extensive description, "Declaration of Principles for International Election Observation and Code of Conduct for International Observers"; [http://ec.europa.eu/external\\_relations/human\\_rights/election\\_observation/docs/code\\_conduct\\_en.pdf](http://ec.europa.eu/external_relations/human_rights/election_observation/docs/code_conduct_en.pdf)

elections being the most common. Election assistance can be provided in the short term, directed at the specific election event taking place. This action can for instance take the form of material or logistical support.

While short-term assistance is crucial in many cases, there is a clear tendency today among donors such as the EU to develop governance reform-oriented, longer-term support programmes. This has occurred in parallel with the development of an “electoral cycle approach”, which looks at the electoral process over time and aims to engage different stakeholders and entry points throughout the three main periods of an electoral cycle, i.e. the pre-electoral, electoral and the post-electoral period (cf infra).

Longer-term assistance activities may include: support to the establishment of a legal framework for the elections; capacity building of electoral management bodies; targeted assistance to the national electoral body in accomplishing its mandate, for instance with respect to the establishment of voter and candidate lists; the development of an operational plan for election day or the tabulation and transmission of election results; support to civil society in areas such as voter and civic education or training of domestic observers; support to media monitoring and training of journalists; advice to political parties with respect to campaign regulations or complaints mechanisms.

While electoral observation focuses on the process surrounding the electoral event<sup>3</sup>, electoral assistance may thus be provided throughout the electoral cycle.<sup>4</sup> Also, while election observation is based on the principle of independent and impartial assessment of an election process, in respect for the laws of the country, electoral assistance directly supports national authorities and other stakeholders but will not publically comment on the quality of the electoral process.

Both activities, when embedded in a broader institution building and democracy support strategy, have a political finality. Obviously, election observation with the presence of tens of observers deployed throughout a country around election day, is the most visible action. However, its longer-term impact will depend on accompanying programmes such as assistance to electoral processes.

## **EU Election Observation and Assistance**

Support to elections by the EU combines election observation and assistance. Reflecting the complementary, mutually reinforcing objectives of both activities, these are funded through separate financial instruments: the centrally managed European Instrument for Democracy and Human Rights (EIDHR) programme for the funding of observation missions<sup>5</sup> and, in most cases, geographical funds<sup>6</sup> for electoral assistance. As a consequence, the decision-making process in the actual financing decision also differs, with national authorities often involved to an important extent in decision making on and implementation of electoral assistance.

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<sup>3</sup> For instance, so-called long-term observers, despite their denomination, are typically in country for a period of maximum two to three months around election day.

<sup>4</sup> Binder, Christina (2009), “Two Decades of International Electoral Support: Challenges and Added Value”, Max Planck Yearbook of United Nations Law, volume 13, 2009, p. 213-246

<sup>5</sup> Under the EIDHR budget for 2007-13, on average, about €M32 can be allocated to EU Election Observation Missions on a yearly basis

<sup>6</sup> Funding can occur under three geographic financing instruments 1) the European Neighbourhoods and Partnership Instrument; 2) European Development Fund (EDF); 3) Development Co-operation Instrument (DCI); but also under non-geographic instruments such as: 4) European Instrument for Democracy & Human Rights (EIDHR); 5) the Instrument for Stability (IfS).

For instance, the EU Delegation and the national authorities in a given country are responsible for the identification, formulation and implementation of assistance programmes and projects.

While EU Election Observation Missions (EOMs) are conducted with the consent of the national authorities concerned, they operate and report independently from them. Their funding under the EIDHR symbolises this independence as well. Given the political implications as well as the high level of visibility attached to the European Union Electoral Observation Missions, this aspect of the EU support to elections generally attracts most of the attention. In financial terms however, it drains a lesser part of the budget. For instance in the period 2007-2009, election assistance absorbed almost three times as many funds as compared to election observation.<sup>7</sup>

This article will address both sectors, drawing the broad picture of EU support for elections while replacing it into its historical and conceptual perspective.

### **EU Electoral Assistance**

Larger-scale EU electoral assistance projects kicked off in 1994, with technical and financial support to the legislative and presidential elections in Mozambique and, two years later, with the support to the elections in the Occupied Palestinian Territory<sup>8</sup>. Since, EU electoral assistance has grown considerably in number and scope. To date, more than 100 electoral assistance projects have been formulated and implemented, contributing to electoral processes in over 60 countries worldwide.

The EU's position as a key international donor in the field of electoral assistance has strengthened over the past five years. In particular, the complexity of electoral assistance to post-conflict contexts such as DRC and Haiti, both in light of the elections which eventually took place in 2006 but which were prepared long in advance, triggered further investments, in coordination with partner organisations, as well as the development of capacity building tools. In this context, an election assistance focal point for quality operations support was established within the European Commission<sup>9</sup>.

Since then, the EU has seen a steep increase in the volume of funding and number of electoral assistance operations and also been increasingly involved in the development of knowledge products and training tools for partner country institutions and development agency officials, in association with other electoral assistance providers.

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<sup>7</sup> In his 2006 paper on the EU experience of election observation, Michael Meyer-Resende gives the example of the EU financial support to the electoral process in the Democratic Republic of Congo which represented on its own, the equivalent of 10 years of the election observation budget. M. Meyer-Resende : « Exporting Legitimacy : The Record of EU Election Observation in the Context of EU Democracy Support ». Center of European Policy Studies (CEPS) Working Document n°241. March 2006.

<sup>8</sup> For these elections, EU Election Observation Missions were deployed as well.

<sup>9</sup> Directorate General EuropeAid

## EC-UNDP Partnership in Election Assistance

EU Electoral Assistance has mostly, but not exclusively, been provided through and with the UN Development Programme (UNDP). Over the past ten years, the EU and the United Nations have been increasingly working together in the conceptualisation and implementation of electoral assistance<sup>10</sup>. To facilitate programmatic cooperation, a Financial and Administrative Framework Agreement (FAFA) was established in 2003 providing for a single shared legal, financial and administrative framework for all programmatic cooperation between the EU and the UN. Since its entry into force, the FAFA has made cooperation more efficient, ensuring faster start-up of activities and ensuring administrative consistency across operations.

On 28 June 2004, UNDP and the European Commission entered into a Strategic Partnership Agreement (SPA), with the agreement on a Memorandum of Understanding (MoU) setting out and defining the relational focus between both organisations. The aim of the SPA was to facilitate policy dialogue and specific cooperation at global, regional and country level, notably in the area of governance (including support to electoral processes), conflict prevention and post conflict reconstruction.

While the European Commission and UNDP have been working together in the field of electoral assistance since 1995, their partnership has intensified with and since the implementation of the action in support of the electoral processes in the Democratic Republic of Congo which culminated in a constitutional referendum in December 2005 and presidential, parliamentary and provincial elections in July and October 2006. Further to lessons learned from this partnership, "Operational Guidelines for the Implementation of Electoral Assistance Programmes and Projects" were agreed upon, reviewed and updated in December 2008.

The EC-UNDP partnership in electoral assistance has relied on solid cooperation between services at headquarter level for quality support. Activities have included, through a dedicated Joint Task Force<sup>11</sup>: formulation and monitoring missions, advice on the selection of experts and procurement of election material, joint training, development of guidelines, gathering of lessons learned and participation to specialised electoral networks.

With their partnership, the Commission and UNDP have sought to facilitate cooperation with and among the different actors involved in electoral assistance programmes, such as: the respective Commission and UNDP services, Electoral Management Bodies, other multilateral and bilateral development agencies, partner country governments, civil society organisations, political parties, media, service providers.

The Council Conclusions of 17 November 2009 on Democracy Support in the EU's External Relations<sup>12</sup> highlight the value of cooperation with regional and international organisations, mentioning specifically the United Nations. In the area of electoral assistance, over the

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<sup>10</sup> As expressed in the Commission's communication of 2001 on "Building an effective partnership with the UN", reinforced in 2003 by a further Communication entitled "EU-UN relations: The choice of multilateralism", the EU has established itself as a major partner of the UN.

<sup>11</sup> A Joint EC-UNDP Task Force (JTF) on Electoral Assistance was established to further coordination at Headquarter level. The role and mandate of the JTF is to support all EC-UNDP electoral assistance projects in the field of identification, formulation, and implementation upon request by EU Delegations and UNDP Country offices. It has also an important task in encouraging inter-service cooperation, consolidating operational experience into best practices and developing training and supporting material.

<sup>12</sup> 2947<sup>th</sup> External Relations Council Meeting, Brussels, 17 November 2009

three-year period from 2007 to 2009, the EU has channelled a total amount of €M178 - through UNDP-managed basket funds (see Annex 1).

While UNDP remains the main partner of the EU in the field of electoral assistance, the Commission has also been working with other partners<sup>13</sup>. The Council Conclusions of 17 November 2009 also call for further strengthening the relationship between the EU and regional and sub-regional organizations. In the field of electoral assistance the EU is currently developing partnerships with the Southern African Development Community's (SADC) Electoral Commission Forum, the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS) and the African Union (AU)<sup>14</sup> with a view to facilitating peer-to-peer networking and capacity building adapted to regional contexts and strategies. In addition, relationships have been built with electoral management bodies in key regional countries such as South Africa and Brazil.

### **EU Election Observation**

With 78 EU Election Observation Missions deployed over the past ten years in 44 countries<sup>15</sup>, the EU has made ample use of the observation instrument. In terms of missions, its engagement doubled over the past last five years as compared to the first half of this decade (see annex 2). Different from other organisations involved in election observation<sup>16</sup>, the European Union has been exclusively observing elections in non-member states. This results from a de facto division of labour with the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR) which historically was at the origin of comprehensive election observation and election assessment, in OSCE participating states, including EU countries. Hence, given that the OSCE/ODIHR and EU observation missions are based on a similar observation methodology, the EU has not been observing in countries such as Moldova, Ukraine and Georgia, belonging to its so-called eastern Neighbourhood<sup>17</sup>. The EU has however made ample use of the OSCE/ODIHR reports in its political dialogue with these countries and in formulating assistance programmes.

The EU can deploy EU EOMs when invited by the political and electoral authorities of the country concerned. Since 2000, when the Commission issued a Communication on Election Observation and Assistance<sup>18</sup>, EU EOMs have been consistently focusing on politically independent, comprehensive and impartial observation. In that context, every EU EOM deployment is preceded by the conclusion of a formal agreement with the partner country (usually a Memorandum of Understanding, MoU). These MoUs typically confirm the freedom of movement of the observers throughout the country and freedom of access to all relevant sources of information on the electoral process. The guarantees given by the authorities to the work of the observers in the MoU is linked to the observers' obligation to

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<sup>13</sup> See, for instance, the West Bank/Gaza case study in: EC Methodological Guide on Electoral Assistance, page 179-185: [http://ec.europa.eu/europeaid/what/human-rights/election\\_observation\\_missions/documents/election-assistance-methodological-guide\\_en.pdf](http://ec.europa.eu/europeaid/what/human-rights/election_observation_missions/documents/election-assistance-methodological-guide_en.pdf)

<sup>14</sup> Also in the area of election observation, in October 2008, cooperation has been agreed between the European Union and African Union Commissions. This has led in the meantime to: EU financial support to AU Election Observation capacity development, through the Instrument for Stability; increased cooperation between EU and AU Election Observation Missions; a training/observation activity for election experts from AU countries in Brussels in June 2009, against the background of the European Parliament elections.

<sup>15</sup> Source: European Commission

<sup>16</sup> For instance, Organisation of American States, OAS; Organisation for Security and Cooperation in Europe, OSCE; African Union, AU; Commonwealth)

<sup>17</sup> [http://ec.europa.eu/world/enp/index\\_en.htm](http://ec.europa.eu/world/enp/index_en.htm)

<sup>18</sup> COM 2000(191) of 11 April 2000.



strictly abide by a code of conduct including the principles of impartiality and full respect of the laws of the country.

EU EOMs have consisted of 60 to 300 observers on election day, the size depending on the complexity of the electoral process, geographical and demographical characteristics of the country concerned as well as budgetary, logistics and security constraints. For instance, over 250 observers were deployed for the elections in Indonesia in 2004 and DR Congo in 2006, in contrast to 60 to Burundi in 2005 and El Salvador in 2009. Noteworthy were the over 200 observers deployed for the parliamentary elections of 2006 in the Occupied Palestinian Territory, including one of the largest EP Observation delegations ever sent in the context of election observation.

EU EOMs have been increasingly deployed to unstable countries or countries in a conflict or post-conflict situation (e.g. DR Congo, Yemen and Haiti 2006, Nigeria and Timor Leste 2002 and 2007, Bangladesh and Pakistan 2008, Afghanistan 2009). While such missions are deployed for the same reasons as other missions (enhance transparency of and public confidence in the election process, deter fraud and manipulation, contribute to preventing election-related conflicts), in addition to the security and logistics constraints<sup>19</sup>, these missions have posed methodological challenges. With the difficulty or impossibility to have observers deployed throughout the country (Afghanistan, Pakistan), the at times proportionally lower number of active observers on election day (Afghanistan) as well as for the post-election process (Haiti, Kenya 2007) and the high political nature of conflict or post-conflict elections, with the international community often heavily involved, these missions have been working under more difficult circumstances.

While EU EOMs for reasons of mandate, visibility and methodology have continued to operate as independent missions, experience from missions to these and other elections have highlighted the benefit of an increasing pattern of cooperation among other longer-term, domestic and international observation organisations<sup>20</sup>.

### **Composition of EU Election Observation Missions**

EU EOMs are usually in country for a period of two to three months around election day. They consist of a long-term (core team and long term observers) and short-term component (short-term observers frequently including observers from the European Parliament) and are led by a Chief Observer, nominated by the Commissioner for External Relations<sup>21</sup>, who in almost all cases has been a Member of the European Parliament.

This leadership has proven largely advantageous to the political visibility of the EU EOM in the country concerned and the integration of short-term European Parliament observers into the longer-term EU Election Observation Missions. Over the past years, in over half of the countries where EU EOMs were deployed, the European Parliament had a short-term Observation Delegation present around election day, closely associated to the EU EOMs. Chief Observers have been instrumental in making the EU observers speaking in one voice

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<sup>19</sup> For instance, observer deployment in the DR Congo in 2006 would not have been possible without the logistic and transport support of the UN peace support mission, *MONUC*, due to the lacking road and communication infrastructure in significant parts of the country

<sup>20</sup> Reference is made to a network established among international observer organisations, signatories of the 2005 Declaration of Principles for International Election Observation (see *infra*)

<sup>21</sup> Pre-Treaty of Lisbon

and in supporting the missions' independence in judging and reporting on an election process. They are the sole spokesperson of an EU EOM<sup>22</sup>.

In terms of reporting, EU EOMs issue interim reports on a 7 to 10 day basis which are EU internal as well as two public reports<sup>23</sup>: the politically most watched preliminary statement of findings issued within 48 hours after election day and a final report issued within two months after election day. The final report contains a detailed assessment of the election process including a list of recommendations for further electoral reform and development.

The Chief Observer with the other members of the so-called core team of analysts and experts<sup>24</sup> is based in the country's capital and is typically deployed to the country six to eight weeks before election day; they are joined by a larger group of long-term observers covering in country the campaign period, election day events as well as post-electoral aspects. Short-term observers, mandated to assess polling and counting over election day, are usually in country for a period of seven to ten days around election day.

All observers, i.e. core team members or long- and short-term observers are selected by the European Commission. Given the independent nature of EU EOMs, EU EOM observers cannot be staff of EU Institutions.

Core team members, with the exception of the Chief Observer, are recruited following an open call for experts, published for every mission on the Europa website<sup>25</sup>. They are independent experts, contracted in the same manner as other consultants recruited by the European Commission. As regards the Long- and Short- Term Observers, they are selected by the Commission services involved in election observation following a proposal by the EU Member States<sup>26</sup> <sup>27</sup> further to a call by the Commission services concerned. The European Commission strives to achieve a fair nationality and gender balance among the observers and respect the ranking order proposed for the candidates by the EU Member States, provided the requirements as regards experience, language, training<sup>28</sup> and mission-specific skills and aptitudes<sup>29</sup> are being met.

While for long-term observers experience in previous observation missions is required, the Commission in every mission aims to include a number of short-term observers with no previous observation experience. This gives a possibility to "newcomers" to participate in the system. Finally, the selection process has been harmonized by reference to a uniform cv

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<sup>22</sup> unless tasks delegated to the Deputy Chief Observer in the Chief Observer's absence in the country.

<sup>23</sup> EU EOM reports can be retrieved under: [http://ec.europa.eu/external\\_relations/human\\_rights/eu\\_election\\_ass\\_observ/index.htm](http://ec.europa.eu/external_relations/human_rights/eu_election_ass_observ/index.htm)

<sup>24</sup> Besides the Chief Observer, core teams typically include a Deputy Chief Observer, an electoral analyst, a legal analyst, a media expert, a press and public outreach officer, an observer coordinator and at times also a political and/or human rights expert. Core teams are further assisted by security and operational experts.

<sup>25</sup> [http://ec.europa.eu/europeaid/what/human-rights/election\\_observation\\_missions/index\\_en.htm](http://ec.europa.eu/europeaid/what/human-rights/election_observation_missions/index_en.htm)

<sup>26</sup> through so-called election focal points, based in the respective Ministries of Foreign Affairs: [http://ec.europa.eu/europeaid/applications/eom/index.cfm?fuseaction=c.show\\_focal\\_point\\_list](http://ec.europa.eu/europeaid/applications/eom/index.cfm?fuseaction=c.show_focal_point_list)

<sup>27</sup> Norway and Switzerland are also invited to propose names for LTO and STO positions, for elections of interest to them.

<sup>28</sup> For instance in the context of training programmes conducted in Member States or the EU funded *NEEDS* project: *Network for Enhanced Electoral and Democratic Support*: <http://www.needsproject.eu/>

<sup>29</sup> Including working in difficult, physical (e.g. Bolivia, Mauritania) and conflict environments (e.g. Afghanistan, Pakistan, Yemen, Timor Leste, DR Congo, Nigeria)

system, the so-called observer roster introduced in 2004<sup>30</sup>. Only candidates registered in this easily accessible roster can be considered for participation in EU EOMs.

The roster has also been effective as communication tool between the Commission services involved in election observation, the Member State election focal points as well as the EU EOMs on the ground. For instance, the evaluations of observers by missions and of participants in the *NEEDS* training programme are included as reference in this roster. Also, Member States can only propose candidates for EU EOMs that are registered in the roster; they are also informed on line of the outcome of selection processes for EU EOMs.

### **Towards an integrated strategy**

The longer-term presence of EU EOMs in a given country has enabled the missions to assess in detail the strengths and weaknesses of an election process, and to some extent the state of democracy. The EU, through its observation missions, is one of the few international observer organisations, with the OSCE/ODIHR, that evaluates the legal framework for elections, the degree of plurality of the media covering the election process as well as post-electoral complaints and appeals issues. Such assessments have proven very useful for formulating recommendations for electoral reform which can be included in follow-on electoral assistance programmes, media and civil society support projects as well as in political dialogue with the authorities concerned.

As a result of an integrated strategy set up in 2000, EU EOMs and electoral assistance projects are increasingly synchronised. For instance in all but three countries having benefited from electoral assistance from 2007 until 2009, the EU had been engaged or was planning to involve itself in election observation<sup>31</sup>. While further efforts may be required to enhance synergy and complementarity of actions, this indicates the potential for a comprehensive election support strategy within a context of good governance and peacebuilding.

### **Historical perspective – learning by doing**

Electoral support is a relatively new field of external assistance. Leaving apart experiences prior to the 1980's<sup>32</sup>, electoral support really started to be on the international community agenda in a structured way in the late 1980's/early 1990's<sup>33</sup>, supported by the wave of optimism which followed the fall of the Soviet Union. Subsequently the OSCE, through ODIHR, its specialized branch, was instrumental in developing the methodological tools underlying international election observation. Further to this, EU EOM methodology was developed and updated, notably by establishing an analytical approach based on

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<sup>30</sup> The observer roster can be retrieved under: [http://ec.europa.eu/europeaid/what/human-rights/election\\_observation\\_missions/index\\_en.htm](http://ec.europa.eu/europeaid/what/human-rights/election_observation_missions/index_en.htm)

<sup>31</sup> Moreover, two of these three countries are Georgia and Moldova, countries where the EU has been politically supportive of election observation conducted by OSCE/ODIHR.

<sup>32</sup> Capacity building support granted to political party organisations by US agencies and European political foundations in the 60s/70s in Southern Europe and Latin America can be seen as the first form of electoral support. The UN engaged in election observation in the 1960s with the observation or supervision of some 30 post-colonial plebiscites, referenda or elections in various regions of the world, whereas the UNDP started to engage in technical assistance projects, including setting up the infrastructure required for conducting elections.

<sup>33</sup> At the end of the 1980s, beginning of the 1990s, the UN started to be engaged in major electoral operations in the framework of conflict resolution and peace building processes (e.g. Namibia 1989, Cambodia 1993 or El Salvador 1994). The General Assembly Resolution 46/137 on "Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections" of 1991, was adopted in this context of massive UN direct involvement.

international standards deriving from universal<sup>34</sup> and regional instruments<sup>35</sup> and best practices in the electoral field. In parallel, the UN Development Programme (UNDP) and other international agencies played an important role in raising fundamental strategic issues in the field of electoral assistance.

In the beginning of the 1990's, Eastern European countries and the former Soviet Union absorbed most of the efforts<sup>36</sup>. While the fall of the Soviet Union represented a powerful stimulus for the development of the sector, similar needs also emerged in other parts of the world, in Africa and in Asia, in contexts where political transition processes and post-conflict stabilisation were increasingly attracting EU political attention, also in the domain of electoral support.

Whereas the first EU election observation experience was in Russia, in 1993, in 1994 European observers were deployed to South Africa and Mozambique. From 1993 to 1999, the EU carried out thirteen election observation missions<sup>37</sup>, in most cases in relation with some electoral assistance. While these were valuable experiences, these missions took place outside a structured methodological, institutional, managerial and financial framework, following a case to case approach.

In the absence of a uniform legal basis, these missions were conducted following an *ad hoc* use of various legal instruments<sup>38</sup>. A turning point was the adoption on 29 April 1999 of Council Regulations (EC) n° 975/1999 and n° 976/1999<sup>39</sup> placing electoral support under Community competence<sup>40</sup>, followed by the 2000 Commission's Communication on EU electoral assistance and observation<sup>41</sup>. These documents marked a significant step towards the conceptualisation of electoral assistance and observation as complementary activities and towards the harmonisation of electoral support interventions. While further efforts may be required to enhance synergy and complementarity of actions, this indicates the potential

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<sup>34</sup> Starting with Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights which are establishing the right to take part in government directly or through freely chosen representatives.

<sup>35</sup> For instance, the OSCE developed in 1990 specific commitments, known as the Copenhagen Declaration.

<sup>36</sup> This was mainly linked to the crisis in the Balkans, leading to massive and direct involvement of the international community in directly organising and/or supervising elections, through the OSCE.

<sup>37</sup> See annexed table.

<sup>38</sup> Either First or Second Pillar instruments dealing with the country where elections were taking place or the region to which it belongs: e.g. the Lomé Convention, partnership and co-operation agreements with the "New Independent States", regional programmes such as PHARE or TACIS or specific CFSP Joint Actions deciding an EU election observation in a particular country.

<sup>39</sup> Council Regulations (EC) n° 975/1999 laying down the requirements for the implementation of development co-operation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms; and n° 976/1999 laying down the requirements for the implementation of Community operations, other than those of development co-operation, which, within the framework of Community co-operation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms were providing the legal basis. A complementary legal basis was the Lomé Convention. European Union electoral missions were fielded under the auspices of the Common Foreign and Security Policy or within the European Community's development cooperation.

<sup>40</sup> The two regulations only differed in their geographical scope and legal basis: Article 308 TEC for countries benefiting from TACIS, PHARE, MEDA and OBNOVA17, and Article 179 TEC for developing countries, the goal being to "contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms" in third countries. More specifically it was stated that the European Community shall provide technical and financial aid for operations aimed at supporting the processes of democratisation, in particular: "by supporting independent electoral commissions, granting material, technical and legal assistance in preparing for elections, including electoral censuses, taking measures to promote the participation of specific groups, particularly women, in the electoral process and by training observers".

<sup>41</sup> Communication on EU Election Assistance and Observation, COM(2000) 191 of 11 April 2000,

for a comprehensive election support strategy within a context of good governance and peacebuilding. Basing itself on an analysis of the experience since the early 1990's and integrating the elements of previously adopted Council decisions,<sup>42</sup> the 2000 Communication proposed a consistent and global approach for EU electoral support. In addition to methodological and political aspects, it also addressed several practical points such as the need to: set up a clear framework for the decision making process; build specific European capacity and establish specific structures at EU level; establish a clear budgetary framework and clarify the legal basis for EU action.

It was further complemented by a staff working paper, adopted by the Commission in 2003, on the implementation of the Communication on Election Assistance and Observation<sup>43</sup>, reviewing the procedures and practice of EU EOM deployment and developing a strategy for Election Assistance and Observation. Based on the experience acquired since 2000, this document basically confirmed the practice of inter-institutional consultation prior to the Commission decision on the election observation calendar for a given year; programming criteria; the analytical independence of EU EOMs; the cooperation with other international observers which has been consolidated with and since the endorsement by the Commission of the Declaration of Principles for International Election Observation, in October 2005 with the other first signatories.<sup>44</sup> By endorsing the Declaration from its initial stage, including with the European Parliament endorsement in 2008 and the Council in 2009, the EU has associated itself to the larger community of international election observer organisations.

Additionally, guidelines and handbooks have been developed and updated as part of a continuous learning process such as the EU Handbook for EU Election Observation Missions (2<sup>nd</sup> edition in 2008)<sup>45</sup> the EC Methodological Guide on Electoral Assistance (2006)<sup>46</sup> and the Compendium of International Standards for Elections (2008)<sup>47</sup>. This has enabled the EU to refine the scope of EU election observation and assistance. With respect to observation, the guidelines and handbook have assisted the clarification of the definition and the mandate of EU EOMs. In that context, a number of expert meetings as well as two Commission-European Parliament seminars on EU election observation, in 2007 and 2009 have been a useful reflection forum as well. Finally, with the funding under the EIDHR since 2001 of training programmes for candidates for core team positions and long-term observers, and with briefings and debriefings for EU EOMs, the Commission has seen to the integration of updated methodologies and lessons learned into mission practice.

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<sup>42</sup> Council Decision n° 9262/98/PESC 157/COHOM 6: Guidelines – EU Policy on Electoral Observation, and Council Decision n° 8728/99/PESC 165/COHOM 4: EU Guidelines on Common Criteria for the Selection of Electoral Observers.

<sup>43</sup> SEC(2003) 1472 of 19 December 2003.

<sup>44</sup> This Declaration has served as a benchmark for impartial, consistent and credible international election observation; its normative significance has been confirmed with adoption on 23 November 2009 by the UN General Assembly (third committee) of a Resolution on Genuine Elections.

<sup>45</sup> EU Handbook for EU Election Observation Missions (2<sup>nd</sup> edition in 2008), Methodological Guide on Electoral Assistance (2006), Compendium of International Standards for Elections (2008); see: [http://ec.europa.eu/external\\_relations/human\\_rights/election\\_observation/docs/index\\_en.htm](http://ec.europa.eu/external_relations/human_rights/election_observation/docs/index_en.htm)

<sup>46</sup> [http://ec.europa.eu/europeaid/multimedia/publications/publications/thematic/evaluation-methodology-external-assistance\\_en.htm](http://ec.europa.eu/europeaid/multimedia/publications/publications/thematic/evaluation-methodology-external-assistance_en.htm)

<sup>47</sup> [http://ec.europa.eu/external\\_relations/human\\_rights/election\\_observation/docs/compendium\\_en.pdf](http://ec.europa.eu/external_relations/human_rights/election_observation/docs/compendium_en.pdf)

## International and legal framework: standards and good practices

Initially, EU initiatives in electoral support were taking place in the absence of a consistent, methodological framework. The various documents adopted within the Council and the Commission in 1999 and 2000 acknowledged the need for a structured and well-grounded approach. Still, while these documents represented a turning point, they were also in many ways just a starting point.<sup>48</sup> For instance, election observation reports produced prior to 2006 vary widely in format, structure and content. EU EOM methodology gradually developed, inspired initially by the OSCE/ODIHR's experience and subsequently by the EU's own experience.

A similar learning path was followed in the case of electoral assistance, largely benefiting from the UN and UNDP experience, in order to build a systematic methodological approach of technical assistance which was translated in 2006 into a « *European Commission Methodological Guidebook on Electoral Assistance* ».

The development of EU EOM methodology implied the definition and application of specific benchmarks, i.e. international standards for democratic elections, going beyond arbitrary indicators such as 'free and fair' elections. International standards refer to International Treaty standards, international political commitments<sup>49</sup> and best practices<sup>50</sup>. The first category includes legally binding standards agreed upon in the UN framework, such as the 1948 Universal Declaration of Human Rights (UDHR) which, while as General Assembly Resolution in principle not legally binding, is generally held to codify customary international law, or the widely ratified 1966 International Covenant on Civil and Political Rights (ICCPR)<sup>51</sup>. Of central importance to the work of election observers are article 21 of the UDHR and article 25 of the ICCPR:

### Article 21 Universal Declaration of Human Rights

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

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<sup>48</sup> Chambers, Richard : « *The European Experience : EU Election Observation Missions, Strengths, Weaknesses and Opportunities* ». *Perspective on EU Election Observation : Successes and Challenges since 2004*. Brussels, European Commission-European Parliament Seminar, 17 March 2009.

<sup>49</sup> For a systematic review of these sources, see the European Commission's « *Compendium of International Standards for Elections* » (2<sup>nd</sup> edition, 2008): [http://ec.europa.eu/external\\_relations/human\\_rights/election\\_observation/docs/compendium\\_en.pdf](http://ec.europa.eu/external_relations/human_rights/election_observation/docs/compendium_en.pdf) . This Compendium outlines the obligations and commitments each state has made by signing international and regional instruments with reference to human rights related to election processes.

<sup>50</sup> Such as: transparency of the election process; impartiality in the conduct of the election administration and in the use of State resources; equitable access to, and balanced coverage by, any public media.

<sup>51</sup> Further standards are established in the 1965 International Convention on the Elimination of Racial Discrimination (ICERD), the 1979 Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the 1952 International Convention on the Protection of the Rights of Women (CPRW) and the 2006 Convention on the Rights of Persons with Disabilities. The relevant standards have been concretised by the respective human rights monitoring organs: see e.g. the 1996 General Comment No 25 which was adopted by the Human Rights Committee (for details see below); or the 1997 General Recommendation No 23 on Political and Public Life, which was adopted by the CEDAW Committee. Further relevant (non binding) standards are contained in the Declaration on the Elimination of all forms of Intolerance and of Discrimination Based on Religion or Belief (1981), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the General Assembly Resolution (2001) A/RES/55/96 - Promoting and Consolidating Democracy, the General Assembly Resolution A/RES/56/154 (2002) - Respect for the Principles of National Sovereignty and Non Interference in the Internal Affairs of States in Electoral Processes as an Important Element for the Promotion and Protection of Human Rights, etc.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### **Article 25 International Covenant for Civil and Political Rights**

Every citizen shall have the right and the opportunity, without any of the distinctions [mentioned in article 2] and without unreasonable restrictions:

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) to have access, on general terms of equality, to public service in his country.

Additionally, also in the context of regional organisations, the basis has been laid for norms and standards in the electoral field<sup>52</sup>.

The second category of international standards include political commitments, such as the 1990 OSCE (at that time: CSCE) Copenhagen Meeting document<sup>53</sup>.

Furthermore, the basic features of elections have been detailed by the Human Rights Committee in its General Comment on article 25 of the ICCPR<sup>54</sup>. While the General Comment is not legally binding on the States having ratified the ICCPR, it serves as a powerful guideline for the realisation of the right to political participation, and a useful tool for election observers. It explicits fundamental issues related to the periodicity of elections, the oversight of election processes by an independent authority, a person's right to vote and stand for elections (with the obligation for state authorities to enact necessary measures in that respect, e.g. an inclusive and accurate voter register), the importance of the freedom of expression, assembly and association as essential preconditions for the effective exercise of the right to vote as well as the importance of the secrecy of the vote, non interference of state authorities in the election process and the exercise of the right to vote free from intimidation or fear.

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<sup>52</sup> See e.g. Art 24 of the 1969 American Convention on Human Rights, Art 3 of the first Protocol to the European Convention on Human Rights (ECHR); and Art 13 of the 1981 African Charter on Human and Peoples' Rights (ACHPR) as well as the 2003 Protocol on the Rights of Women in Africa; as well as the 2007 African Charter on Democracy, Elections and Governance (not in force yet). Non-binding regional instruments include furthermore the 2002 Declaration on the Principles Governing Democratic Elections in Africa, the 1994 Arab Charter on Human Right, the 1990 Cairo Declaration on Human Rights in Islam, the inter-Parliamentary Union (IPU) 1994 Declaration on Criteria for Free and Fair Elections, etc.

<sup>53</sup> [http://www.osce.org/documents/odihr/1990/06/13992\\_en.pdf](http://www.osce.org/documents/odihr/1990/06/13992_en.pdf)

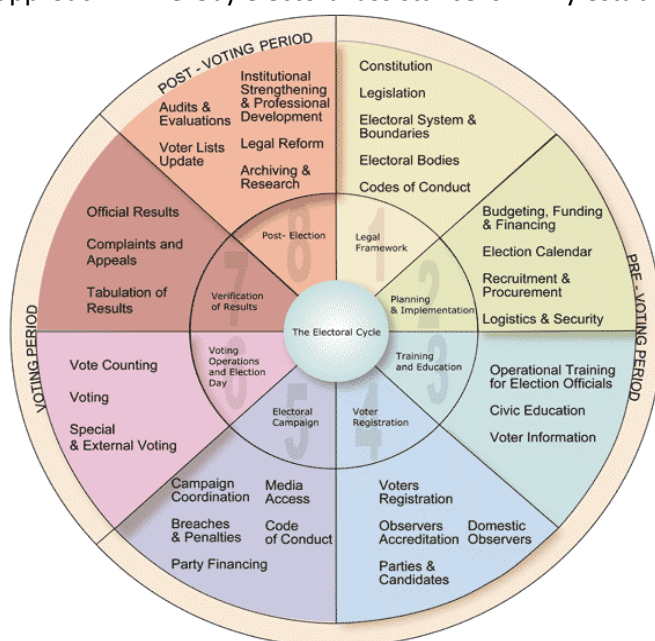
<sup>54</sup> Human Rights Committee, General Comment No. 25/57, 12 July 1996, UN Doc CCPR/C/21/Rev.1/Add.7



Finally, guidelines issued by expert bodies such as the Council of Europe “Venice Commission”<sup>55</sup> have provided additional appropriate benchmarks.

### The conceptual framework : a cyclical approach towards elections

The above sources represent a rich corpus of texts establishing a yardstick for participation in public affairs. They have enabled EU Election Observation Missions to systematically assess a variety of aspects of an election process<sup>56</sup> and to formulate recommendations for electoral reform which subsequently can be of use for electoral assistance programmes. The following EU EOM can then assess the extent of the follow-up given to the preceding EU EOM. As mentioned earlier, increasing attention has been paid to an electoral cycle approach<sup>57</sup> whereby electoral assistance is firmly established as an entry point for promoting



democracy, rule of law and good governance. The electoral cycle approach is based on the idea that elections are made of a sum of interacting elements where a wide range of legal, technical and organisational aspects have to be considered simultaneously and addressed within a rolling methodological framework, as shown in the figure beside the text. The electoral cycle identifies eight interrelated segments:

1. Legal framework: constitution; legislation; electoral systems and boundaries; electoral bodies; codes of conduct;
2. Planning and implementation: budgeting, funding and financing; procurement and recruitment; logistics and security;
3. Training and education: operational training for election officials; civic education; voter information;

<sup>55</sup> Official name: European Commission for Democracy through Law; e.g. its Code of Good Practices in Electoral Matters 2002

<sup>56</sup> for instance, the legal framework, election administration, voter and candidate registration, campaign environment, plurality of the media, secrecy and transparency of the vote, transparency of the counting and tabulation of the results, appeal provisions. EU EOM reporting guidelines can be found under: [http://ec.europa.eu/external\\_relations/human\\_rights/election\\_observation/docs/2007\\_eu\\_eom\\_reporting\\_guidelines\\_en.pdf](http://ec.europa.eu/external_relations/human_rights/election_observation/docs/2007_eu_eom_reporting_guidelines_en.pdf)

<sup>57</sup> Source: European Commission and International IDEA; see: *EC Methodological Guide on Electoral Assistance (2006)*, p.84 [http://ec.europa.eu/europeaid/multimedia/publications/documents/thematic/ec\\_methodological\\_guide\\_on\\_electoral\\_assistance\\_en.pdf](http://ec.europa.eu/europeaid/multimedia/publications/documents/thematic/ec_methodological_guide_on_electoral_assistance_en.pdf)



4. Voter registration: registration of voters, registration of parties and candidates; accreditation of domestic and international observers;
5. Electoral campaign: media access, rules and regulations; campaign coordination; party financing; breeches and penalties; codes of conduct;
6. Voting operations and election day activities: voting; counting; special and out-of-country voting;
7. Verification and results: tabulation of results; compilation and announcement of official results; complaints and appeals;
8. Post-electoral period: update of voters' lists; audits and evaluation; archiving and research; legal reform; voter lists update; institutional strengthening and professional development.

Each segment allows for specific interventions in support of an election, either integrated within a comprehensive programme or limited to more targeted projects<sup>58</sup>. Each segment also allows for interaction with a wide scope of governmental and civil society actors, for instance electoral management bodies, other national administrations or agencies, civil society organisations, political parties, etc.

In a long-term holistic perspective, the electoral cycle aims to achieve, apart from technical improvement, the *sustainability* of electoral assistance efforts by building capacity that will last until and beyond the next election event and consolidate technical assistance within a broader democratic governance and development support framework, i.e.: increased participation in the democratic process, development of democratic values, enhancement of accountable and responsive institutions, the promotion of sound electoral practices, the efficient use of public resources.

This cyclical approach was conceived by the European Commission and the International Institute for Democracy and Electoral Assistance (International IDEA), initially for training purposes. It was further developed and formalised in publications such as the *EC Methodological Guide on Electoral Assistance (2006)*<sup>59</sup>, the *International IDEA Handbook on Electoral Management Design (2006)*<sup>60</sup> and the *UNDP Electoral Assistance Implementation Guide (2007)*.<sup>61</sup>

The cyclical approach to elections was further recognized in the Council Conclusions of 17 November 2009 on Democracy Support in the EU's External Relations which highlighted that "The EU support should take into account the full electoral cycle and not focus on ad hoc electoral support only." The EU has recognised, with the electoral cycle approach, the opportunity for a continuous process of review, analysis, codification of lessons learned and strategic planning and the importance of a longer-term approach<sup>62</sup>.

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<sup>58</sup> for instance, support to the development of the technical, managerial and administrative capacities of the electoral management body; technical and financial assistance to the civil society with particular reference to the development of public awareness campaigns; assistance to domestic observers groups; financial and logistical support as well as training to the media sector; training of candidates with particular reference to female candidate as part of a strategy of promoting gender in political processes; training of police and other security agencies etc. Notably, cross-cutting issues such as gender, youth and disabled persons are mainstreamed throughout the project with the overall objective of increased participation of marginalized groups in political processes.

<sup>59</sup> [http://ec.europa.eu/europeaid/multimedia/publications/publications/thematic/evaluation-methodology-external-assistance\\_en.htm](http://ec.europa.eu/europeaid/multimedia/publications/publications/thematic/evaluation-methodology-external-assistance_en.htm)

<sup>60</sup> <http://www.idea.int/publications/emd/ar.cfm>

<sup>61</sup> <http://www.undp.org/governance/docs/Elections-Pub-EAGuide.pdf>

<sup>62</sup> Electoral assistance projects designed under this framework were conducted for instance in the Democratic Republic of Congo, East Timor, Sierra Leone or Togo. The case of the Democratic Republic of Congo where in the

## Election Observation and Assistance – Complementary Activities

As mentioned, the EU views election observation and assistance to electoral processes as complementary activities. This view was established in the Commission Staff Working Paper “Implementation of the Communication on Election Assistance and Observation” of 2003 which states that:

*“Observation, while contributing potentially to better elections, involves the assessment of the strengths and weaknesses of an electoral process and the presentation of recommendations. This provides an important basis for deciding on further assistance after elections. Assistance on the other hand, can improve an electoral process before elections. Assistance is best programmed with sufficient time before the next elections are held. Assistance efforts can inform the political process vis-à-vis a country, as election reform issues often have a political component.”*

With different internal and external stakeholders involved in EU election support, the Commission has sought to maximise the synergy between EU Election Observation and Assistance through different modalities:

- Enhanced inter-service cooperation within the Commission with a view to improving consistency and coherence in the EU approach to elections;
- The recommendations provided by the EU EOMs are increasingly drafted in such a way as to becoming effectively fed into specific follow-up assistance activities;
- The use of the electoral cycle approach for the formulation and implementation of new projects opens the opportunity to take on board EU EOM recommendations beyond the technical organisation of the electoral process;
- The production of capacity building tools, including knowledge products<sup>63</sup> The efforts undertaken to maximise the synergy between EU observation and assistance fit in a broader rule of law and democratic governance strategy.

In the following paragraphs, the strategic framework for EU Electoral Support is further addressed.

### The strategic framework (1): whether to engage?

In its 2000 Communication, the European Commission proposed to seek, through electoral support to third countries, to achieve the following goals:

- partnership with state institutions<sup>64</sup> and civil society organizations (with specific attention paid to domestic observation);
- strategic use of resources (assistance only where it is really needed);

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context of the 2006 elections, the EU (including Member States) provided for 80% of the electoral assistance budget was particularly relevant, as it contributed to trigger an institutional learning curve towards more in-depth, integrated cooperation between the European Commission and UNDP in the field of electoral assistance (cf. supra).

<sup>63</sup> e.g. “EC Methodological Guide on Electoral Assistance” and “Handbook for EU Election Observation” as well as training programmes (e.g. EC-UNDP-IDEA Joint Training on Effective Electoral Assistance and observer training through the so-called *NEEDS* project, cf. supra)

<sup>64</sup> “The Community should help the host government to create and sustain an independent national capacity for the holding of elections based upon democracy, the rule of law and respect for human rights and fundamental freedoms”

- flexibility (case-by-case decision on the basis of established criteria and adaptation to changing situations);
- complementarity between assistance and observation;
- sustainability (development of national capacity of national Election Commissions and Civil Society and long-term commitment to technical assistance);
- promotion of political and societal pluralism;
- promotion of self-regulation mechanisms.

These principles implicitly contain some guidance for defining where and when to engage. As regards election observation, further orientation is provided by the three assessment benchmarks included in the Commission Communication of 2000 which continue to provide the evaluation criteria of the exploratory missions sent in advance of a political decision on whether or not to deploy an EU EOM.

**The 3 considerations for sending EU observation missions  
(Extract of the 2000 Communication on Electoral Assistance and Observation)**

**1) Is EU participation advisable?**

*To avoid the EU being drawn into a situation where its presence might give credibility to a flawed election process, full account should be taken of the relevant political and legal factors in situ. Minimally acceptable conditions should normally include:*

- a universal franchise;
- freedom for individuals and political parties to participate in the elections;
- freedom of expression to criticise the government;
- the right to free movement;
- the right of assembly;
- reasonable access to the media for all contesting parties and candidates.

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

**2) Is EU participation viable?**

*Even where a situation exists for free and fair elections the EU should still seek to establish certain conditions for its participation:*

- a request to observe the election by the government of the host country. A formal request from the government should be sought but in some circumstances, a clear indication of the government's willingness to have EU observers, even when not formally expressed, may be acceptable;
- a host government responsive to EU requests for specific amendments or improvements to the electoral preparations;
- the support by all the main contesting political parties or candidates for the involvement of EU observers;
- the existence of previous EU monitoring of political developments in the host country;
- a time-scale which permits any EU monitoring team to be in place sufficiently in advance.

### **3) Is EU participation useful?**

*An observation exercise normally provides some degree of legitimisation, contributes sometimes to confidence-building and always acts as a deterrent to fraud. However observation is a costly business. Priorities need to be established, and usefulness must partially be defined in terms of cost/benefit ratio. This concept of “usefulness” is largely technical and must be balanced by an EU assessment of whether its global relations with the country concerned and EU general objectives make an EU electoral presence “politically useful”.*

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

Source: COM 2000(191) of 11 April 2000

The ‘viability’ criterion has been enlarged in the meantime to include ‘feasibility’ considerations related to the operational and security conditions for deploying EU Election Observers, in light of upholding a credible EU EOM. As for the ‘usefulness’ of deploying a mission, increasing attention has been focused on the extent to which recommendations for electoral reform formulated by previous EU EOMs have been followed-up by the host country, as well on the possibility to integrate election observation into a broader electoral and political support approach to a given country.

Given the context in which EU Election Observation takes place, political priorities, in addition to budgetary and operational constraints, have been guiding final decisions on observer deployment. These have included the EU’s overall strategy towards a given country and the added value expected of an EU EOM and other support activities. Increasingly, EU EOMs have been sent to countries in a fragile, post-conflict context with the presence of ESDP and/or UN peace support missions. Examples include: Timor Leste (2002), DR Congo (2006), Aceh/Indonesia (2006-07), Afghanistan (2009). Given the political, security and logistical context in some of the countries observed, the challenge has been at times the reconciliation of the political importance of the presence of election observers within a broader political strategy with the requirement to uphold EU EOM methodology.

With regards to electoral assistance, the criteria have been less clear-cut in the 2000 Communication:<sup>65</sup>

- A request from the host government for Community election assistance;
- The general agreement of the main political parties and the other potential partners (e.g. NGOs, Civil Society Organisations, women’s groups, journalists associations etc) to a programme of EC election assistance;
- The existence of previous EU political monitoring or of EU development programmes in the host country;
- An adequate time-frame for preparation;

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<sup>65</sup> 2000 Communication on EU Election Observation and Assistance, pages 18-19.

- A guarantee of freedom of movement and freedom of access to relevant government ministries and other non-governmental partners for members of the EU Election Assistance Team;
- A guarantee of access to all information relevant to the EU Election Assistance Team's activities; and
- A guarantee on the safety of the EU Election Assistance Team members, as far as possible.

In line with the 2003 Commission Staff Working Paper, additional criteria have been applied. Taking into account that the organization of an election is a state obligation, EC assistance is only provided as complementary to the host country's investments. When it comes to conflict-affected environments where authorities are not always fully functional, this criterion has not been applied to the same extent. Another criterion is the potential impact of electoral assistance on reducing or preventing election-related conflict. "Electoral assistance can play a role in preventing violent conflicts since genuine elections create legitimacy, strengthen inclusion and help for tensions and conflicts to be managed in democratic ways".<sup>66</sup> Finally, two other criteria have affected EU involvement. Assistance efforts need to be result-oriented and politically advisable, i.e. minimum democratic space and political will must exist to allow for the organisation of genuine elections

### **The strategic framework (2): where to engage?**

Over the past years, the EU has been increasingly involved in electoral support. Where from 2000 to 2004, 28 EU Election Observation Missions were deployed, the number almost doubled to 50 from 2005 to 2009<sup>67</sup>, across Latin America, Asia and Sub Saharan Africa. EU funding on electoral assistance tripled in 2005-2009 as compared to 2000-2004.

Elections in the EU's Eastern Neighbourhood<sup>68</sup>, Russia and Central Asia have been systematically monitored by OSCE/ODIHR missions. Their conclusions and recommendations have been used in EU strategies and programmes towards those countries. In contrast, it has to be noted that elections have not been followed (mostly for lack of invitation) in a similar comprehensive manner in the EU's so-called Southern Neighbourhood<sup>69 70</sup>, where in principle the EU could in future play a pioneering role. Instead, alternative, lower-profile election support activities have been developed<sup>71</sup>.

EU EOMs have been increasingly deployed in a post-conflict context including countries with a particular international peacebuilding agenda, which also illustrates the political importance attached to EU Election Observation. However, by the nature of the environment in which observation missions have to operate, the consistent application of a comprehensive observation methodology has proven to be challenging. The mission deployed in Afghanistan, in the second half of 2009, for instance faced very difficult security, logistic and political challenges.

<sup>66</sup> 2003 Commission Staff Working Paper, page 13.

<sup>67</sup> Overview of EU EOMs for 2005-2009 can be found under: [http://ec.europa.eu/external\\_relations/human\\_rights/election\\_observation/index\\_en.htm](http://ec.europa.eu/external_relations/human_rights/election_observation/index_en.htm)

<sup>68</sup> Referring to the EU Eastern Neighbourhood Policy ([http://ec.europa.eu/world/enp/index\\_en.htm](http://ec.europa.eu/world/enp/index_en.htm)), these countries are: Ukraine, Belarus, Moldova, Georgia, Armenia, Azerbaijan

<sup>69</sup> These countries fall outside the OSCE area; they are twelve in total: Morocco, Tunisia, Algeria, Lybia, Egypt, Lebanon, Israel, Occupied Palestinian Territory, Jordan, Syria

<sup>70</sup> Except for Lebanon 2005, 2009 and the Occupied Palestinian Territory 1996, 2005, 2006.

<sup>71</sup> For instance support to domestic observers in Morocco 2007, capacity building seminar for Arab League Secretariat staff, 2009

Not every election provides the framework for an EU EOM. The appropriateness of an EU EOM is assessed on a case by case basis, taking into consideration, not only the methodological aspects, but also longer-term political strategies, budgetary constraints and some geographical considerations<sup>72</sup>. Further to the yearly definition, for planning and programming purposes, of a list of EU EOM priority countries for a given year<sup>73</sup>, the political decision<sup>74</sup> on mission deployment, is taken on a country by country basis. Prior to the political decision, exploratory missions are deployed to the country concerned, in order to assess the advisability, usefulness and feasibility of EU EOM deployment (cf supra).

The added value an EU Election Observation Mission can bring to transparency and public confidence in an election process has been among the reasons for deciding where to observe. Observation missions can operate most effectively when and where their observers can move freely around the country and where they have full access to all appropriate aspects and actors of an electoral process and are unhindered in their work<sup>75</sup>. Such conditions are subject to a formal agreement with the authorities of the country to be observed; this agreement which often takes the shape of a Memorandum of Understanding also details the obligations of the observers, which includes abidance by the law of the countries and impartiality during observation.

The added value criterion also relates to the potential long-term impact of an observation mission, both in terms of political partnership between the EU and the country observed and the potential for electoral and governance reform in that country. More specifically, to what extent can EU EOM recommendations be conducive to reform, for instance through electoral assistance? The answer to this question will also determine the scope of possible follow-on electoral support in a given country.

### **The strategic framework (3): how to engage?**

As far as election observation is concerned, EU EOMs, as conceived, offer an appropriate tool for a comprehensive, systematic and human rights-related assessment of an election process, provided there is scope and political willingness in the country to engage into electoral reform further to the recommendations of the observers.

EU EOMs are deployed in the context of a positive partnership between the EU and the country, with a view to strengthening the democratic process in the country concerned. Hence, in a number of situations an EU EOM might not be advisable, given the undesired credibility or legitimacy an EU EOM might be seen given to a flawed election process. Also, this implies that EU EOMs are not the appropriate tool in situations where the minimum

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<sup>72</sup> In the pre-Treaty of Lisbon era, this analysis has been conducted by the Commission, in regular consultation with Member States in Council and with the European Parliament Election Coordination Group. This consultation has taken place, both in the context of the yearly definition of EU EOM priority countries for a given year, as well as when considering mission deployment in the context of a specific mission.

<sup>73</sup> These lists have been adapted during the year, taking into account volatile election calendars, budgetary possibilities, elections which were not foreseen during the yearly planning, lack of invitation for an EU EOM

<sup>74</sup> Until the entry into force of the Lisbon Treaty on 1 December 2009, these decisions were taken by the Commissioner for External Relations.

<sup>75</sup> These agreements seem to have provided in general a basis for a good working relation between the EU(EOMs) and the authorities, except in a few cases such as: Zimbabwe 2002 (cancellation of the mission after refusal by the authorities to allow the Chief Observer entrance to the country); Rwanda 2003 (criticism by the authorities over the EOM report, which, could explain amongst others the difficult working modalities for the EU EOM deployed in 2008, together with the restrained relations between Rwanda and some EU Member States at that time); Ethiopia 2005 (refusal by the authorities to accept the EOM final report).

conditions for genuine, democratic elections do not exist and where an EU EOM might end up with only negative reporting.

In light of a sustainable partnership between the EU and the country concerned, including the EU's efforts to promote of the rule of law, human rights and democratic values and norms, alternative and less visible tools would have a more prominent role to play<sup>76</sup>.

EU EOMs have not always been applicable, even if desirable, for instance in situations where elections were called at short notice (example Zambia in 2008 following the death of the President), for security (Iraq 2009) or logistical constraints (Maldives 2008 and 2009), or in situations where an EU EOM was not politically appropriate (Honduras 2009).

For such scenarios, where the EU political interest existed to have some analytical information on the election process, small-scale, low-visibility and technical election expert teams have been deployed. These missions cannot be assimilated to EU EOMs, notably for the lack of an observation aspect during the polling, counting and tabulation process, and for their focus on normative aspects of an election. Still, they have been providing useful election-specific input into political reporting.

Useful work has also been done by an independent expert team assessing the crucial and politically sensitive pre-election voter identification process in Côte d'Ivoire since 2008. This important aspect of an election process easily takes place six months or more before the election, hence does not fit in most observation mission's agendas. The same applies to post-electoral judicial disputes over an election process, which can go beyond the time span of an observation mission and for which, in terms of reporting, diplomatic correspondence is the main information instrument.

### **Further orientations**

Over the past ten years, the EU has significantly increased its activities in the domain of election support. This symbolizes the increased attention the EU has given to democratic governance and human rights promotion in its external assistance programmes as well as in its political dialogue with partner countries. Along with this quantitative expansion, continuous efforts have been made to improve the quality and the complementarity of the actions undertaken. Today, the EU is considered one of the most credible actors in international election observation and electoral assistance. Election support has become one of the success elements of the EU's 'soft power' in international relations, largely because efforts were done in promoting consistent methodological approaches and coordinating various sectors of intervention.

While progress has been made with the development of an election cycle approach, yet more can be done to increase the impact of EU Election Observation Missions, notably in terms of support to governmental, parliamentary and civil society stakeholders involved in electoral and governance reform, through electoral and other assistance, as highlighted in the European Parliament resolution on EU election observation missions as well<sup>77</sup>. The

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<sup>76</sup> support to domestic observers and electoral assistance such as: capacity building programmes for independent election commissions and the judiciary as well as training initiatives enhancing pluralistic, professional media

<sup>77</sup> European Parliament Resolution of 8 May 2008 on EU Election Observation Missions : objectives, practices and future challenges (2007/2217(INI) ; P6\_TA(2008)0194. The European Parliament also advised, amongst other, to set aside, within the budgetary framework, funds for preparatory activities in anticipation of upcoming elections for the longer-term sustainability of free and fair elections.

Council Conclusions on Democracy Support in EU External Relations of 17 November 2009 underline the same need for a comprehensive approach<sup>78</sup>

Election observation and assistance, while expert activities as such, have a political finality, i.e. to enhance transparent and genuine elections in light of consolidating the rule of law and sustainable democracy. This underlines the relevance of embedding election support into a broader democracy support approach, and to prioritise a programmatic over a project approach.

The European Union has got the soft power political and developments tools to develop such an approach. With the coming about of an External Action Service under the Treaty of Lisbon, there is scope for further increasing the consistency, coherence and complementarity of EU action, also in the area of election support, with a further focus on long-term investment.

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<sup>78</sup> Council Conclusions on Democracy Support in EU External Relations of 17 November 2009 ([http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/gena/111250.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/111250.pdf)) including an EU Agenda for Action on Democracy Support in EU External Relations in all regions. 'The Agenda for Actions aims to enhance the overall effectiveness of EU action in support of democracy without introducing new conditionality for EU development aid' ([http://www.se2009.eu/polopoly\\_fs/1.24070.1258489534!menu/standard/file/111287.pdf](http://www.se2009.eu/polopoly_fs/1.24070.1258489534!menu/standard/file/111287.pdf)). Article 8 of the Council conclusions is noteworthy: The Council invites the responsible EU institutions, in cooperation with Member States, to implement the (...) EU Agenda for Action on Democracy Support in EU External Relations in all regions, and to report back to the Council in 2010 on the progress achieved in its implementation. It also invites the responsible EU institutions to include in their progress report a proposed list of pilot countries for more specific follow-up. Once such a list and the proposed follow-up are agreed, a course of action and a timetable for implementation should be drawn up in partnership with the countries concerned."



**Annex 1: EC contributions to UNDP managed basket funds in the field of electoral assistance, 2007-2009**

<b>Year</b>	<b>Country</b>	<b>Project Title</b>
2009	Afghanistan	Enhanced Legal and Electoral Capacity for Tomorrow
2009	Benin	Projet d'Appui pour la Liste Electorale Permanente et Informatisée (LEPI) au Bénin
2009	Comoros	n/a
2009	Global	Global Training Platform 2009
2009	Haiti	Appui au Processus Électoral en Haïti - Élections Sénatoriales 2009'
2009	Moldova	Electoral Support to Moldova Project
2009	Nigeria	EC-UNDP Partnership with Nigeria for support to the Electoral Cycle Phase II, 2009-2011
2009	Guinea-Bissau	Project d'Appui aux Elections Legislatives en Republique de Guinee Bissau 2008 (PACE) - Addendum 3
2009	Guinea Conakry	Appui aux Elections Legislatives 2007, phase 1 - Addendum 3
2009	Sudan	Suppor to elections and Democratic Processes
2009	Zambia	Support to the 2009-2012 Zambian Electoral Cycle
2008	Global	Preparation and Delivery of Training Programmes on Effective Electoral Assistance
2008	Zambia	Support to the 2008 Presidential By Election in Zambia
2008	Côte d'Ivoire	Programme d'Appui au Processus Electoral en Cote d'Ivoire
2008	Côte d'Ivoire	Programme d'Appui au Processus Electoral en Cote d'Ivoire
2008	DRC	Appui a la CENI dans le Cadre du PACE – Projet d'Appui au Cycle Electoral
2008	Georgia	Developing Capacities of Democratic Institutions for Fair Electoral Processes and Active Civil Participation
2008	Guinea Bissau	Projet d'Appui aux Elections Legislatives en Republique de Guinee Bissau 2008 - PACE Phase 1
2008	Malawi	Support to Electoral Reform and Elections in Malawi
2008	Sierra Leone	Support to Electoral Management Bodies in Sierra Leone - Phase II
2008	Tanzania	Deepening Democracy in Tanzania
2008	Yemen	EC-UNDP Joint Electoral Assistance Project in Yemen
2007	Bangladesh	Preparation of Electoral Roll with Photographs
2007	Comoros	Appui au Processus Electoral aux Comores (APEC-II)

<b>2007</b>	<b>Fiji Islands</b>	National Initiative for Civic Education (NICE)
<b>2007</b>	<b>Guinea Conakry</b>	Appui aux Elections Legislatives 2007, phase 1
<b>2007</b>	<b>Iraq</b>	Support to the Electoral Process
<b>2007</b>	<b>Kenya</b>	2007 Election Assistance Programme / Domestic Observation / Kenyan Domestic Observation Forum
<b>2007</b>	<b>Timor Leste</b>	Support to the Timorese Electoral Cycle
<b>2007</b>	<b>Togo</b>	Appui aux Processus Electoraux Togolais 2007-2008
<b>2007</b>	<b>Zambia</b>	Preparatory Assistance To The Electoral Cycle 2007-2011 in Zambia
<b>2007</b>	<b>Zimbabwe</b>	Three Year Rolling Multi-Donor Parliamentary Support Programme

Source: European Commission

**ANNEX : EU EOMs 2000-2009**

	Europe	Middle East	Africa	Asia	Central and South America	
Pre- 2000 missions	1993	Russia				
	1994	Ukraine		Mozambique South Africa		
	1996	Russia	Occupied Palestinian Terr.		Nicaragua	
	1997		Yemen			
	1998			Togo	Cambodia	
	1999			Nigeria Mozambique	Indonesia	
	2000			Côte d'Ivoire Zimbabwe	Cambodia Sri Lanka	
	2001			Zambia	Bangladesh Timor Sri Lanka	Guyana Leste Nicaragua Peru
	2002			Rep. of Congo Kenya Madagascar Sierra Leone	Cambodia Timor Pakistan	Leste Ecuador
	2003			Mozambique Nigeria Rwanda	Cambodia	Guatemala
Post- 2000 Communication missions	2004		Malawi Mozambique	Indonesia Lanka	Sri	
	2005		Lebanon Occup. Palestinian Terr.	Burundi DR Congo referendum Ethiopia Guinea Bissau Liberia	Afghanistan Sri Lanka	Venezuela
	2006		Occup. Palestinian Terr. Yemen	DR Congo Mauritania Uganda Zambia	Province of Aceh (Indonesia) Fiji	Bolivia Haiti Mexico Nicaragua Venezuela
	2007			Kenya Mauritania Nigeria Sierra Leone Togo	Timor Leste	Ecuador Guatemala
	2008			Angola Ghana Guinea Bissau Rwanda	Bangladesh Bhutan Cambodia Nepal Pakistan	Ecuador referendum

	2009		Lebanon	Malawi Guinea Bissau Mozambique	Afghanistan	Bolivia referendum El Salvador Ecuador Bolivia elections
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Source: European Commission, see: COM(2000)191 and [http://ec.europa.eu/external\\_relations/human\\_rights/election\\_observation/index\\_en.htm](http://ec.europa.eu/external_relations/human_rights/election_observation/index_en.htm)