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## **Committee on Political Affairs and Democracy**

## **Committee on Equality and Non-Discrimination**

### **Joint Hearing**

**on**

### **Setting minimal standards for electoral systems in order to offer the basis for free and fair elections**

**27 April 2017**

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## Electoral Systems: Normative Criteria and Comparative Overview

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In this statement, I will provide a brief overview of the main types of electoral systems and present some considerations about the major criteria for assessing their performance.

Electoral systems are often regarded as “the most fundamental element of representative democracy” (Arend Lijphart), because they affect the structure of the party system, especially the number and size of parties in parliament. At the same time, they can be deliberately designed for shaping the party system in the desired way. Therefore, having the “right” electoral system is of key importance for old and new democracies alike.

Which electoral system is most suitable for democracy? This question has been intensively disputed in both academia and politics. However, there is no electoral system that fits best in any context. Let me briefly explain why this is the case.

Ideally, democratic institutions ought to meet two fundamental criteria. They should be inclusive in the sense that they provide the citizens with differentiated options to participate and to be represented in the political process (“*representativeness*”). At the same time, they should allow for political decisions to be taken and implemented in an efficient way (“*governability*”). However, there is a trade-off between the two criteria: increased representativeness usually goes hand in hand with decreased governability and vice versa. Therefore, democratic constitution-makers have to decide what is more suitable in the given context: more inclusive or more efficient institutional arrangements.

These two fundamental criteria – as well as the trade-off between them – also apply to electoral systems. On the one hand, the electoral system design may be based on the *majority principle* which enhances the concentration of the party system and thus strengthens the *governability* of the democratic system (although it may simultaneously affect the proportionality between votes and seats). On the other hand, electoral systems may be designed according to the *principle of proportionality* which maximizes the *representativeness* of the party system (although this may lead to highly fragmented parliaments and instable governments).

In contemporary Europe, we find electoral systems that correspond to either of these principles: the British-type *plurality system in single-member constituencies* (SMCs) that has usually produced single-party governments (by benefitting the strongest party at the expense of the others), and the *pure PR system* in the Netherlands that has generated highly proportional outcomes (but not facilitated government formation in a considerably fragmented parliament).

In most other European democracies, electoral systems are *in-between* “pure” majority rule and “pure” PR, i.e. they neither produce massive seat bonuses nor perfect proportionality. This is possible because electoral systems include different technical elements that can be combined in almost any way one can think of. These “institutional details” – subnational constituencies, legal thresholds, allocation formulas etc. – affect the proportionality between votes and seats and the concentration of the party system in idiosyncratic ways, both separately and interactively. Therefore, the variety of electoral systems is immense – not only in theory, but also in political practice. Let me just mention three other types of electoral systems in-between the two extremes which are found in European countries.

On the majority side, there is also the French *absolute majority system in SMCs*, where the winning candidate must receive 50%+1 votes in the first round (otherwise a run-off is taking place). This modified decision rule has significant consequences: while small parties in the British system usually have no chances to enter parliament, in the French system they may join electoral alliances before the run-off and thus receive a considerable number of seats.

On the other side of the spectrum, there are *PR systems* where the seats are allocated in several (subnational) *multi-member constituencies (MMCs)*. This is the most common type of electoral systems in Europe, applied in Spain, Poland and many other countries. Depending on the size of the MMCs as well as the existence of legal thresholds, these systems tend to deviate more or less from pure proportionality.

A last type, the so-called *segmented system*, which is applied in Lithuania or Ukraine, combines the two logics in a specific way. For one portion of seats, PR in large MMCs (or in one national MMC) is applied; the other portion is elected in SMCs by plurality or absolute majority. As the two parts are not interconnected in any way, the effect of the entire system tends to be “in the middle” of majority rule and PR.

Of course there are further additional criteria for evaluating electoral systems (such as personalization of the vote and simplicity of institutional design), and there are several other types and subtypes of electoral systems in Europe. Nevertheless, two important “messages” should be clear by now. (1) Electoral systems may balance representativeness and governability to a certain extent, but cannot maximize both criteria at the same time. (2) The concrete choice of electoral systems – i.e., which combination of majority and proportional elements is selected – mainly depends on the national context, i.e. the given political culture, institutional traditions and party system.

What does this mean for the topic of this session? Setting uniform standards for electoral systems beyond very general guidelines (as outlined in the Code of Good Practice in Electoral Matters and other documents prepared by the Venice Commission) is extremely difficult, if possible at all.

Of course, electoral systems must not violate basic principles of universal suffrage; they should be kept stable as far as possible; and if they are to be reformed, this should be done in a way in which the interests of all relevant parties are taken into consideration. Even a seemingly minor reform, as for example the increase of a legal threshold from 4% to 5%, can have tremendous consequences in a country where party system fragmentation is high. Therefore, electoral reforms which are implemented unilaterally (i.e. by governments alone) seem to be critical because they may affect the long-term stability of the electoral system and thus undermine its legitimacy.

To conclude, it might make more sense to think about *procedural standards* of electoral system reform than defining institutional features which a democratic electoral system must or must not have.

## **Women Political Representation: the Case of Italy**

Ms Marilisa D'Amico  
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I'm very honoured to be here to give my contribution on "Electoral Systems and Women Representation".

I would like to start by thanking the President of the Committee on Equality and Non-Discrimination, Ms Elena Centemero, for her invitation to participate to the joint hearing with the Committee on Political Affairs and Democracy.

I am Professor of Constitutional Law at the University of Milan where my team of research and I focus our researches on the issue which is in discussion today.

The purpose of today's presentation is to give you a general overview on this topic and to focus on the Italian situation.

To begin with, I would like to stress that in every electoral system there is the possibility of introducing new rules to increase female representation and I strongly believe that no electoral system is better than another when it comes to introducing new rules for female representation.

It is thought that in the majoritarian systems it is more difficult to introduce new legislation but Tony Blair's example shows that even in this system it is possible to guarantee women presence with the all-women shortlists.

As many studies have shown, the presence of women in the public sphere is very important for three main reasons.

1. It is matter of justice,
2. It is a matter of gender balance,
3. It is also an economic matter.

Likewise, as highlighted in the Report "Assessing the impact of measures to improve women's political representation" submitted by Rapporteur Ms. Elena Centemero, women's political representation appears to be a complex and, at the same time, crucial issue, requiring actions capable to impact both on the electoral systems level and on the cultural and social background. The report notes in fact that "women's participation in public life is determined by a variety of factors, be they political (...), social (...), economic (...) or cultural".

The first point I would like to make concerns justice. Women can't be discriminated against and it is necessary to guarantee them the same possibility to be nominated and elected than men have. In order to assure women presence in politics, the quota system has proved to be a necessary mean. Generally, this strong system is justified by the principle of justice.

In other situations, gender balance and economic matter are important justifications for the quota system too.

It is a fact that in cases of gender balance in political representation assemblies have proved to work better. The presence of women can assure a different view on society, environment, crime, peace, war and education. In order to meet the needs of society, we need both viewpoints to make more informed decisions.

It is also an economic matter because many studies have proven that leaving half of society at home constitutes a loss of potential and that when women are represented in key decisional roles the economic system of a State increases as it happened in Spain after the introduction of important legislation for women.

At this moment, I would like to focus on the Italian situation. A case study that clearly exemplifies the need behind the introduction of a quota system aimed at fostering women's participation in the political framework.

In fact, in recent years important legislation has been introduced regarding women presence in politics.

When in 1993 anti-discriminatory legislation was introduced, after the first application in 1994, the Constitutional Court rejected it as unconstitutional in the famous case of Judgement no. 422 of 1995. The opinion of the Court, which was by the way composed only by men, was that quotas cannot be introduced in electoral systems because political representation must be “neutral” and the selection of candidates must not be interfered with by questions of gender. What the Court seemed to be arguing was that there could have been the risk of other minorities demanding political representation. In my opinion, however, this argument is baseless because women are not a minority but half of the population.

In order to overcome this judgement, it was necessary to challenge Article 51 of the Constitution and in other occasions the Constitutional Court reconsidered its position and admitted strong means to guarantee equal starting point for every candidate (judgement no. 49 of 2003; no. 4 of 2010). However, this is not enough. The Constitutional Court’s judgement in fact left open the question as to whether or not quotas system can be constitutionally admitted.

At the same time, in recent years we experienced important decisions held by Administrative Judges justifying rules that guarantee equal presence of men and women in local government (e.g. regions, municipalities). In fact, in cases where politicians did not respect the rules imposing equal presence of men and women, Administrative Judges ordered them to introduce women instead of men in order to maintain the proportion. From this perspective, I would like to underline that in these judgments the arguments were based on the necessary presence of women as a matter of gender balance and also as an economic factor.

Recently, the legislator has started to think of the importance of gender balance at different levels and in different ways.

The first important law concerned the economic sphere: it is Law no. 120 of 2011 that guarantees quotas on boards of publicly listed and state-owned companies. This Law had a strong impact on society and was appreciated also in Europe and this is one of the reasons why the Parliament started to introduce rules also in the political sphere. Law no. 120 of 2011 is actually the best example of how positive measures can have a strong impact even in a typical solo-male environment.

With Law no. 215 of 2012, the Legislator decided to intervene in local electoral systems to introduce the so-called “double gender preference” (in Italian, “doppia preferenza di genere”).

I will now try to explain how it actually works. Voters can choose one or two candidates. If the voter decides to give a second vote, it must be given to a candidate of the opposite gender of the first one.

In this Law, we also find rules regarding the presence of women in mass media during electoral campaigns and also financial resources for women in politics.

Law no. 64 of 2014, which concerns the European Union election, saw the introduction of a mechanism which consisted of “three electoral preferences” and of the obligation to compose electoral lists 50 and 50. The first election after this Law determined a significant result: today, in the European Union Parliament Italian female politicians have doubled their presence, reaching the 39,7%, for the first time beyond the average women presence in the European Union Parliament (37%).

Law no. 56 of 2014, which concerns Metropolitan Councils elections, introduced a rule according to which the proportion between the two genders must not be over 60% in the lists. On the other hand, Law no. 20/2016, concerning regional elections, established that every Region must choose a measure to increase the presence of women regardless of the electoral system they adopt.

In Law no. 52 of 2015, which concerns national election, we find different measures that can be applied at the same time. Just to mention some of them, the Law provides that: within the total top candidates per district, there can be no more than 60% of candidates belonging to same gender; within the total candidacies of each list per district, neither gender can be represented for more than 50%; within each electoral list per district, candidates are listed according to a succession based on gender. Moreover, the Law for the election of the Chamber of Deputies introduces the mechanism of the so-called “double gender preference”.

A very strong solution adopted by the Legislator with a little mistake: these measures are valid now just for the Chamber of Deputies, because after the rejection of the Constitutional Referendum of December 2016 and after the judgement of the Constitutional Court no. 35 of 2017, there are different electoral systems and the Law of the Senate doesn’t establish any measure to increase women representation.

To conclude, I would like to underline that in Italy, even though the presence of women in politics has progressively increased, the content of politics hasn't changed yet: we have to ask women in important positions to make more for other women, especially for the most disadvantaged and underrepresented.

The European community must promote the introduction of new legislation for every country to follow and of new cultural projects, not only to increase women presence in politics, but also to give voice to a largely underrepresented part of society.

The path traced in Resolution 2111 of 2016 to the Parliamentary Assembly, "Assessing the impact of measure to improve women's political representation", must be the horizon to situate upcoming measures aimed at favouring a substantial presence of women in politics. From this view point, quotas and their implementation in election law continue to prove their key role as "means of achieving significant rapid progress" together with a constitutional framework that requires the safeguard of the fundamental principle of equality between men and women.

I therefore endorse the approach set out in the Resolution with its suggested combination of quotas and positive measures, on one side, accompanying measures – targeted to reconcile women's role in their public and private life – and actions towards civil society, on the other.

My hope is a full realisation of the principle of parity between men and women, capable of projecting itself beyond positive measures and of reflecting a society where men and women are entitled with equal rights and opportunities.

I strongly believe that we need women in politics because they can play a key role in these times of crisis. A balanced political representation between men and women shall, in fact, be regarded as one of the main resources to build a future not only for my country but for the relaunch of Europe as a united and integrated community.

## **Findings and trends that affect women's participation in the electoral process in the OSCE participating States, identified by ODIHR in the framework of its election observation activities**

Ms Ana Rusu  
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ODIHR gathers information on women's participation in electoral process from two major activities: **(1)** gender monitoring in the framework of election observation missions (EOM) and **(2)** review of the election related legislation.

Before I go into the details of each of these two activities, I would like to briefly place ODIHR's observation of women's electoral participation within the specific context of the OSCE.

At ODIHR, the foundation of our work rests in the recognition by all OSCE participating States that equality between men and women is a fundamental aspect of a just and democratic society. This approach is rooted in legally binding international treaties such as Article 3 of the International Covenant on Civil and Political Rights (ICCPR), which provides for equal enjoyment of civil and political rights by all. The second key legal instrument that is used in our gender observation work is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which calls for temporary special measures to accelerate de facto equality between men and women. CEDAW makes clear that such measures should not be considered as discriminatory and later CEDAW General Recommendations elaborate upon this and provide further guidance as to what type of measures may be applied.

All OSCE participating States have explicitly committed themselves to promote equal opportunities for the full participation of women in political and public life, and this is reflected in a rich body of OSCE commitments such as the ones enshrined in 1991 Moscow Document and 1999 Charter for European Security drafted in Istanbul.

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Coming back to the gender monitoring, ODIHR started to systematically address women's electoral participation as early as 2000 when for the first time a dedicated gender expert joined our EOM of parliamentary elections in Romania. This was for the first time when we developed a methodology and specifically commented on women's participation in our preliminary statement and final report.

The practice was further institutionalised in 2004 when a dedicated Handbook for Monitoring Women's Participation in Elections was published. The monitoring and reporting methodology places the question of equal participation of women and men in political and public spheres in the broader context in which elections take place including political, constitutional and legal framework, type of electoral system, existence or absence of quotas and/or affirmative actions, functioning of enforcement mechanisms, media structures and how they affect women candidates. Election observation activities gather information from different sources such as available legislation, statistical data and input from meetings with officials, political parties and civil society which provide insights regarding women's rights, barriers to their equal participation in public life and reforms that might help overcome discrimination where it exist. This is reported throughout the electoral cycle and is included in needs assessment mission reports prior to deploying an EOM, in interim reports once a mission is on the ground, in the post-election day preliminary statement and in the comprehensive final report that follows the conclusions of a mission.

The methodology for monitoring women's participation in elections is a living instrument and is constantly refined in order to reflect new needs and challenges. While in the past a dedicated Gender Analyst was deployed to each EOM, the current practice is premised on a needs-based approach, namely the deployment of such an analyst only when women's participation in elections may be an issue that merits special attention in a given country. In most of the cases, however, gender is mainstreamed in all fields of ODIHR election related reports.

With regard to electoral systems no international standards exist and the choice of an electoral system is a matter of sovereign decision of each state. Within the OSCE region, all electoral systems are acceptable as long as they comply with the OSCE commitments.

In a democratic society the choice of an electoral system should be the result of an open, inclusive and transparent process that involves a multitude of electoral stakeholders, particularly political parties, but also civil society representatives, including election experts and groups representing the interests of women as well as other underrepresented groups such as minorities. Consensus on the electoral system is important because it contributes to the acceptance, legitimacy and stability of the chosen system thus minimising accusations of bias. Undoubtedly such an inclusive process provides a good opportunity for debating different options to ensure meaningful representation of women and other underrepresented groups such as minorities in elected posts. Ultimately democratic states should strive to adopt an electoral system that is aimed at resulting in the most representative government as possible which is especially important for underrepresented groups such as women or minorities who might otherwise not have adequate representation and influence.

From an election observation perspective, although it is not the objective of an EOM to promote any type of electoral system, the EOM needs to be aware of the specific implications for the successful participation of women in different types of election systems as well as if a specific system enhances or creates barriers for women or disadvantages them. Let me highlight here some standard aspects of election systems that may have a significant impact on women's electoral prospects and that are assessed by an EOM. These are: the possible impact of thresholds, district magnitude and types of lists, quotas and affirmative actions.

**Thresholds** are important for a party to be able to participate in the distribution of seats. An EOM will assess the level of thresholds and how they affect women candidates. Although there is no international standard regulating threshold levels, in most OSCE countries thresholds do not exceed 5%. Thresholds at higher levels will be carefully assessed by an EOM as they may result in an inordinate number of "wasted" votes or votes for parties that do not make it to the parliament. They may affect the inclusion of women on party candidate lists in particular when it comes to small parties with less chance for success in which case they will be more prone to place its leading male candidate in the top position of the list, removing women from the competition. On the other hand, since threshold has the potential to eliminate some smaller parties, outcomes could result in the distribution of seats to candidates further down on the lists of larger parties providing opportunity for those seats to go for women.

**District magnitude** is another important element of an election system which relates to the number of candidates elected from a single electoral district or jurisdiction. In general, in proportional systems, the greater the district magnitude or the more representatives elected from a single district the more likely that women will be named as candidates and will be elected. The pressure associated with single-mandate winner-take-all race is removed, giving the political parties greater incentives to nominate a diversity of candidates, including women. In contrast, in majority/plurality systems, smaller district magnitude means that more seats are available, opening more opportunities for women candidates.

The **type of list** "closed" or "open" has an influence on the likelihood of women to be elected. A closed list system has candidates listed in a fixed order not subject to modification by voters. This system seems to advantage women candidates provided they are placed sufficiently high on such lists. Open list systems allow voters to rank or express preference for candidates. In countries with such system - voters including women voters - have a tendency to favour male candidates with the result that many women candidates end up in lower positions on the candidate lists which would have not been the case for closed lists. However, open lists can benefit women candidates providing that support groups mobilise effectively behind specific women or if voters in general mobilise to support women candidates.

With regard to quotas, ODIHR does not promote nor discourage the adoption of legal quotas as a temporary measure to promote the representation of specific groups. The majority of OSCE participating States have neither mandatory nor voluntary quotas as part of their electoral systems. There is evidence that women have increased chances to get elected when the law specifies minimum level of representation of both women and men on each party list in combination or not with the adoption of internal party policies to promote women candidates. In either case legislative quotas have the largest impact on the election of women if they are supported by solid enforcement mechanisms as well as ranking requirements on the lists. In some countries political parties went beyond legislative quotas and adopted voluntary affirmative-action measures, other states opted for "reserved seats". Even though such systems have been created with the aim to guarantee minimum level of representation of women in parliaments, opponents of reserved seats argue that in practice such concept resulted in setting a psychological upper limit for women's participation.

Despite international obligations and commitments as well as efforts by ODIHR, Council of Europe and others to monitor and promote women's participation - advancing equal participation of women and men in political life is still very much a work in progress. Election observation activities between 2011 and 2016 ended-up with more than **72** recommendations across the **51** elections observed explicitly related to women's political participation of which **15** were priority recommendations. A quick overview of these recommendations illustrates the issues that still need to be addressed in the OSCE region.

The first category of recommendations – more than **35%** – advise for the introduction (or review in some cases) of gender quotas separately or accompanied by supplementary measures (such as introduction of ranking requirement on candidate lists), minimum number of candidates from each gender and other special temporary measures.

The second category of recommendations – nearly **15%** – are related to effective enforcement of gender quotas and gender related legislation as well as introduction of sanctions for non-compliance.

Around **13%** of recommendations were addressed to political parties encouraging them to introduce more voluntary actions (such as promotion of women candidates during election campaigns, inclusion of gender issues on political parties' platforms, promotion of women to be nominated as candidates, including from national minorities) as well as more gender policies, more transparent and democratic methods for candidate selection.

An important number of recommendations – **10%** – were addressed to public broadcasters inviting them to provide women candidates with greater news coverage including additional airtime and to media regulators suggesting a gender analysis in the media monitoring of elections.

Lastly, less than **27%** of our recommendations combined, advised for the introduction of legislative measures to facilitate more balanced participation of women and men in political and public life, more clarity of the gender related legislation and more homogeneous implementation, use of gender sensitive language in legislation, accompanying measures such as awareness-raising of inequalities that still exist in the society, compilation by the participating States of gender-related statistics. It is noteworthy that for the first time a recommendation was made to introduce effective mechanisms to deter instances of intolerant rhetoric such as sexist language and gender stereotyping of women candidates.

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Let me now briefly describe the second major activity of ODIHR that completes the picture with regard to women's participation in electoral process – the review of the electoral legislation. Legal reviews are part of the follow-up activities by ODIHR. They are done upon request by the participating States and aim at providing a consolidated experts opinion on the compliance of draft and final legislation with OSCE commitments and other international obligations and standards. In this framework, ODIHR partners with the Council of Europe Venice Commission in providing joint opinions.

Such reviews are particularly valuable as they offer an opportunity for additional impartial external advice to be considered before proposed legislation is submitted to parliament as well as it includes the revision of other pieces of legislation that are integral to establishing the conditions necessary to the conduct of genuine elections (such as legislation on political parties and their financing).

As a matter of example, in 2016 ODIHR and Venice Commission jointly issued **5** opinions in **4** countries. From these opinions, two in particular touched upon issues that affect women's participation in electoral processes.

**OSCE/ODIHR/Venice Commission Joint Opinion of October 2016 on amendments to the Electoral Code of “The former Yugoslav Republic of Macedonia”** of 9 November 2015 found that the new requirement in the Electoral Code of at least 40% of candidates reserved on the list for the less represented gender - for legislative and municipal elections– are effective mechanisms for promoting women's participation in political and public life, in line with OSCE commitments and international standards.

While commenting on **April 2016 amendments to the Electoral Code of Armenia, ODIHR and Venice Commission** noted as a positive development the increase in the quota from 20 to 25% starting with bracket 1 – 4 of the national closed electoral list for the Parliament. For district lists, the requirement is not more than 75% of the total number of candidates of the same gender; however, it fails to introduce a requirement concerning the placement on the list and the lists are open. With this formula it is likely that every party passing the threshold will have at least one woman elected from the national list, but such guarantee does not exist concerning district lists. In a positive step, the amendments propose, when filling vacancies in the first part of the national list, that the underrepresented gender gets the seat if the gender in that party would otherwise be less than 20%. However, the opinion also pointed out to the fact that if legislative quotas are imposed, they “should provide for at least 30% of women on party lists, while 40 or 50% would be preferable”.

While the opinion praises the improvement of gender quota from 20 to 25% it also points out to the limited impact that it might have due to the use of the quota within certain brackets. It further recommends for the provision of more effective quota for women’s representation, for example by placing women among every two or three candidates as well as for effectiveness of the quota not only for the registration of the candidate list, but also for distributing the mandates.

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In closing, I would like to underline that addressing women’s political underrepresentation is a complex issue involving many factors and stakeholders. Indeed, certain electoral systems seem to advantage more than others election of women. In particular larger numbers of women tend to be elected under systems that are entirely or partially based on proportional representation than plurality/majority systems based entirely on single-member constituencies. This is one of the conclusions of Ms Centemero’s recent report which is also an observation of our work.

Further efforts are needed in countries where underrepresentation remains a concern in order to reach a representative number of women in electoral processes as well as in other countries where numbers are representative but need to be maintained. I think that the hearing today is a good opportunity to take stock of recent trends and developments from each of our different perspectives and to see what can be done further in order to ensure free and fair elections from a gender perspective.

I thank you for your attention.