

**Council of Europe meeting to review developments in the field of e-voting
since the adoption of recommendations Rec(2004)11 of the Committee of
Ministers to member states on legal, operational and technical standards for
e-voting**

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Comments by:

**Gerald Mitchell, Head of the Election Department
Organization for Security and Co-operation in Europe (OSCE)
Office for Democratic Institutions and Human Rights (ODIHR)**

I. Introduction

I am pleased to be able to have the opportunity to participate in this discussion on a topic that is very much of interest to the OSCE / ODIHR. The fact that some OSCE participating States have either introduced such technologies, or are beginning to test them and are considering their introduction, has underscored some fundamental changes in the way that elections can be conducted. While these changes can represent opportunities, they can also present new challenges - not only technical challenges, but challenges in introducing new technologies in a manner that safeguards the fundamental principles for democratic elections. In particular, this refers to the need for elections to enjoy broad public confidence. The Council of Europe Recommendations are particularly significant in the process of developing standards for electronic voting, and can also facilitate observation of such technologies.

II. ODIHR Activities Related to New Technologies

The ODIHR developed its current election observation methodology in 1996, and while it has not been fundamentally altered since, it has been adapted to reflect specific developments in the intervening years. Among the developments that observation must address, of course, is the emergence of new technologies. To this end, the ODIHR has initiated a project to develop guidelines on observation of new voting technologies. In July of this year, the ODIHR organized an initial expert planning meeting to set out a framework of issues for focusing this initiative and plans to organize a broader meeting early in 2007. As part of this effort, the ODIHR is working with other organizations to share experiences and best practices, and looks forward to close cooperation with the Council of Europe.

At the same time, the ODIHR has been working on a second, very practical track, by conducting election observation and assessment activities in OSCE participating States that have begun to implement electronic voting. In this context, electronic voting was assessed as part of election observation missions to Kazakhstan in 2004 and 2005. In the United States of America, the ODIHR followed electronic voting issues during the 2004 elections as well as the recent 7 November elections. In

addition, the ODIHR has been following the partial introduction of some new voting technologies in the Russian Federation.

The ODIHR also sent an expert team to Belgium prior to the recent 8 October local elections and deployed an assessment mission to the 22 November parliamentary elections in the Netherlands. Both of these missions looked at these countries respective experience with electronic voting.

III. OSCE Commitments and Election Observation

The 1990 OSCE Copenhagen Document is a landmark document that sets out criteria for democratic elections in the form of commitments that were agreed to by all participating States. Of particular relevance to the use of electronic voting is paragraph 7.4, the commitment to “ensure that votes are cast by secret ballot or equivalent free voting procedure and that they are counted and reported honestly with the official results made public.” The Copenhagen Document also states that the presence of observers, both foreign and domestic, can enhance the integrity of the election process and contains a standing invitation for observation that is the basis for ODIHR election observation activities. Both of these commitments underscore the need for transparency, accountability and broad public confidence for an election process to be a meaningful democratic exercise.

IV. Electronic Voting and Election Observation

The implementation of new technologies should not dilute these commitments or introduce restrictions on the right to vote. Any voting process in an OSCE participating State, whether electronic or traditional, must adhere to these commitments. The Council of Europe Recommendations underscore this fundamental point by stating that “e-voting shall respect all the principles of democratic elections and referendums. E-voting shall be as reliable and secure as democratic elections and referendums which do not involve the use of electronic means.”

Crucially, then, electronic voting technologies must permit meaningful observation of the process.

The ability to observe is the key to ensuring that an election process is accurately delivering the choices made by voters. The ability for observers – whether partisan or non-partisan; domestic or international – to see what is happening at each stage of the election is necessary for ensuring public confidence. In the case of electronic voting, this is of particular importance, as the introduction of new technologies may influence the public perception with regard to the ability of the election process to produce honest, verifiable results.

While electronic voting is in some ways analogous to traditional paper voting, there are important differences. One of the most significant is that each step of the traditional process is in principle observable while at the same time respecting the secrecy of the vote.

However, some aspects of electronic voting systems are not directly observable, and observers and administrators must therefore rely on evidence that demonstrates that a system is operating as it purports to operate. The system must be designed so as to produce evidence that effectively and clearly proves that votes are counted and tabulated as cast, with no violation of secrecy of the vote. The system should allow for meaningful recounts in the case of disputes.

In this context, when electronic voting is conducted in polling stations, systems that provide a voter verifiable, auditable paper trail of ballots cast could provide the minimum basis for safeguards that adequately protect the rights of voters, and which can develop and maintain the confidence of voters, political parties and civil society.

When voting is conducted remotely in an uncontrolled environment, careful implementation is needed to ensure that risks to the integrity of the election process are minimized. There should be a clear reflection of the fundamental principles enshrined in the OSCE commitments in conducting remote voting, whether by post or electronically via internet or other means. This is an issue that needs further consideration.

In this context, the ODIHR looks forward to receiving an invitation from the Republic of Estonia to observe the March 2007 parliamentary elections. This will be the first time that voting by internet will be available on a countrywide basis for a parliamentary election in the OSCE region.

V. Some Areas of Focus for Observers

While some aspects of electronic voting are not directly observable, it is not the case that electronic voting as such is “unobservable.” Like an election process, electronic voting is not a one-day event, and there are a number of important elements of an electronic voting process in which observers can provide assessments, given appropriate access to documentation and to the relevant election officials and technicians.

Some areas of focus for observers may be preliminarily identified as follows:

1. **Certification and Testing.** Observers should identify the extent to which there are independent, transparent and comprehensive certification procedures, and the extent to which there is permission for competent individuals, political parties, academic institutions or civil society groups to test the equipment and have access to the certification process. It is important to note that international observers should not be involved in certifying or testing any systems or devices.
2. **Secrecy of the ballot.** In particular, observers should check that the system does not allow the voter to take away any evidence as to how he or she voted, as well as that it provides for anonymity of the voter.
3. **Security.** Observers should identify that appropriate safeguards are in place to prevent or detect illegitimate interventions in the system. Observers should also check who has official access to the system.

4. Accessibility. Observers should consider to what extent an electronic voting system facilitates voting by the elderly, the disabled and by speakers of minority languages. Observers should also consider whether candidates or political parties are presented equally on an electronic ballot.
5. Voter Education and Training of Polling Station Commissions. This includes the ability of election commissioners to deal with any unexpected problems with the system.
6. Manual Audit Capacities. Observers should assess whether there are facilities that produce a permanent paper record of votes cast with a manual audit capacity and under what circumstances audits of the results must be conducted. This paper record should be meaningful, so serious consideration should be given to ensuring that such records are voter verified.
7. Accountability. Observers should assess whether there is a clear division of responsibilities between vendors, certification agencies and election administrators to fully ensure accountability and an effective response in the case of failure of electronic voting equipment.
8. Legal Framework. Observers should assess the extent to which the legal framework takes full account of the implications of new technologies. This includes issues such as whether paper or electronic records have primacy in the event of a recount and how election disputes can be resolved.

In addition, an important prerequisite for meaningful observation of electronic voting is access to documentation regarding the system, including results of certification and testing. Observers should not be subject to confidentiality agreements.

I would like to underscore that these points represent a starting point for further discussion and consideration, and we look forward to working with other partners, including the Council of Europe, as we develop guidelines to observation of new voting technologies. In closing, I would also like to emphasise that the ODIHR, regularly in conjunction with parliamentary observers from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe and the European Parliament, is frequently having to report that some OSCE participating States are not meeting their OSCE election commitments. It is essential that consideration of introducing new voting technologies facilitates meeting election commitments rather than becoming an additional obstacle to meeting commitments. It is only through the introduction of appropriate measures and safeguards, that can assure the conduct of elections in line with commitments and standards, that new voting technologies can earn long-term public confidence.