

Support to Electoral Reforms in the Western Balkans

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Informal Comments on the Draft Proposal for Amending the Election Law

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Background and Scope

These Informal Comments cover the proposals of amendments to the Election Law of Bosnia and Herzegovina (BiH) (hereinafter the Draft), as submitted by the Central Election Commission of BiH (CEC) to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) for review. Therefore, they do not constitute a full and comprehensive analysis of the entire electoral legal framework of the country, but rather highlight potential changes that would address the previous ODIHR election-related recommendations as well as aspects that remain to be implemented. Consequently, these comments should be read in conjunction with the recommendations made by previous ODIHR Election Observation Missions (EOMs).¹

The Informal Comments are based on an unofficial translation of the Draft and the 2018 consolidated version of the Election Law. It should be noted that any assessment based on translated laws may be affected by issues of interpretation resulting from translation.

Summary and Conclusions

The proposed amendments do not address significant long-standing ODIHR recommendations such as removing ethnicity and residency-based limitations on the right to vote and to stand as a candidate.

The proposed amendments to the Election Law are broad and exhibit important progress in reviewing some of the recommendations formulated by previous ODIHR EOMs. Proposed changes address, *inter alia*, issues related to constituency delimitation, the method of formation of Polling Station Committees (PSC), the abuse of public resources for campaign purposes, the training of the election officials, electoral participation of women, and the timely publication of CEC and courts' decisions on election-related complaints. If adopted, the amendments would reinforce the integrity of the electoral process.

Other proposals refer to the postponement of elections in case of extraordinary circumstances, voter registration, candidate nomination, media regulations, early voting arrangements, and electoral offences.

Numerous other amendments address technical issues, clarifying previous ambiguities, and harmonizing certain provisions with the Constitution of BiH and other laws. All these improvements have been duly noted in these Informal Comments.

The proposed amendments do not address ODIHR recommendations related to auditing campaign finance reports, publishing audit results, and extending the deadline for filing complaints. Furthermore, neither the mechanism of data exchange to enhance the accuracy of voters' register has been revised, nor the possibility of auditing voter lists has been foreseen in the Draft.

It is still possible to implement outstanding recommendations if the proposed amendments are passed into law. Priority should be given to addressing the recommendations related to universal suffrage rights, the accuracy of the voter register, the appointment mechanism of PSCs, training of the PSCs with a focus on counting

¹ See all previous [ODIHR election-related reports on Bosnia and Herzegovina](#).

and results protocols, and the abuse of state resources for campaign purposes.

ODIHR welcomes the readiness of the BiH authorities to follow-up on electoral recommendations and stands ready to assist the authorities of the BiH to further improve the electoral process.

Comments on the Text of the Draft

Chapter 1 - Basic Provisions

The proposed amendments intend to modify numerous provisions of the 2001 Election Law, which was previously assessed by ODIHR EOMs as generally conducive to democratic elections.

In its Article 1.1a, the proposed amendments introduce new definitions and revise the existing ones in order to bring the Election Law in line with other legislation, namely the Law on Protection of Members of National Minorities and the Law on Permanent and Temporary Residence of Citizens of BiH. Among these, the draft new paragraph 1.1a(23) presents a definition of “hate speech” with the aim to implement a 2018 ODIHR EOM Final Report recommendation, suggesting to specify the definition of prohibited speech in the law in order to prevent undue limitation of the freedom of expression and to ensure consistent decisions.

It is important to note that the definitions of hate speech in the Draft and in the CEC Explanatory Memorandum differ to a significant degree. Whereas the Draft defines hate speech as “written and unwritten speech, that is, verbal and non-verbal communication which has the character of a negative emotion of frightening and disturbing expression as it incites intolerance, hostility and which publicly causes or results in hatred towards an individual or group with the aim of propaganda, intolerance towards others, and as such encourages and justifies or incites violence, assault on race, ethnicity, sexual orientation, or discriminates against those individuals or groups”, the explanatory memorandum states that hate speech “shall mean any form of public causing or inciting hatred, discrimination or violence against any person or group based on race, skin colour, nationality, gender or sexual orientation, religion, ethnicity or any other personal trait or orientation.”

The second definition, included in the Explanatory Memorandum is more in line with definitions used by the UN, the CoE, the European Commission and other international and regional bodies. If a definition of hate speech should be introduced into legislation, it is vital that such definition is in line with international standards, it is clear and consistent and there is a threshold by which adjudicatory bodies can determine whether hate speech has occurred and whether it is legitimately prohibited. Also, the ODIHR EOM did not recommend to introduce legislation on hate speech but rather to protect freedom of expression and to ensure consistent decision making according to clearly established criteria. The Draft remains unclear as to how the introduction of a definition of hate speech would fulfil this recommendation.

Any amendments to legislation regarding hate speech should not be used to discourage citizens from engaging in legitimate democratic debate on matters of public interest. To avoid speech restrictions for illegitimate purposes, such as curbing dissent and criticism, a high threshold for limitations on free expression is recommended. Freedom

of expression, in addition to its conventional understanding, as a right to hold and express different political views, can also relate to speech that “may be regarded as deeply offensive,” and to information or ideas that can “offend, shock or disturb.”²

The failure to secure funds in a timely manner has a significant impact on the electoral operations and severely limits the institutional and operational independence of the CEC. In accordance with a prior ODIHR recommendation, the draft paragraph (7) at Article 1.2a, in case of non-provision of the required funds for conducting elections within the 15-day deadline, empowers the CEC to request the funds from the Council of Ministers of BiH. The latter shall issue a special decision within 8 days ensuring the required funds. A proposed new Article 1.2b states that no amendments of CEC’s annual budget are to be made by the executive once the budget was approved by the Parliamentary Assembly of BiH.

The introduction of this article is of significant importance to ensure institutional and operational independence of the CEC, including through securing sufficient funding for electoral operations and for the CEC’s institutional development and regular running costs.

Further aligning the Election Law with the European electoral heritage, the Draft proposes to add word “regular” to the principles of holding elections to all representative bodies.

The Draft, in addition to the current possibility for the rescheduling of elections by the CEC in case the election day conflicts with a religious holiday, also introduces new Articles 1.1a (28) and 1.14a that empower the CEC to postpone the calling and holding of elections in case of a state of emergency. The derogation clause of Article 4 of the ICCPR provides that Member States may take measures restricting rights “to the extent strictly required by the exigencies of the situation”. Paragraph (3) of the proposed Article 1.14a stipulates that elections should be held “no later than 90 days from the official end of extraordinary circumstances”. However, Paragraph (2) of the same article stipulates that the CEC “shall make a decision on postponing the calling and holding of elections (...) informing all competent bodies (...) and the public at least 150 days before the day when the elections were to be held”. This raises concerns as extraordinary circumstances may not always arise within a specified time limit, and postponing the elections may be also justified by the nature of these circumstances *ipso facto*. The legislator could consider derogation within a more flexible time limit, including after official call of elections, taking into account the nature of extraordinary circumstances.

Chapter 2 - Election Management Bodies

The Draft proposes some significant amendments related to the election administration, two of which incorporate previous ODIHR recommendations, by addressing the misuse of selection of PSC members, and the vulnerabilities associated with insufficiently trained PSCs.

In particular, the appointment process of the PSCs by the Municipal Election

² See [General Comment No 34](#) and European Court of Human Rights judgment [Handyside vs UK](#), no 5493/72.

Commissions (MECs) as based on nominations from political parties and coalitions, is designed to balance political interests within the PSCs. Nevertheless, this appointment process has been misused in the past, including by means of bogus contestants who registered with the aim to get certain number of seats in the PSCs.³ Resulting lack of political balance in the PSCs had a significant negative impact on the level of trust in the election administration.

The Draft proposes two different systems for selecting the PSCs. The first option suggests the appointment of PSCs members via public calls. According to Article 2.19(4) and (6), the CEC would determine the criteria for the candidates' selection, including relevant election experience. Such approach can address the shortcoming identified in prior ODIHR reports. The requirement for prior election experience is a good practice to ensure effectiveness of election administration.⁴ Furthermore, criteria that would establish merit-based recruitment practiced through an open and transparent selection process not only could further enhance the capacity of the election administration but could also guarantee equal opportunities and access for all.

The second proposal uses the same procedure for the selection of the PSCs Presidents and their deputies via public calls, but suggests the appointment of other PSC members and deputy members via the proposals of political entities that previously obtained seats in the Parliamentary Assembly of BiH, the Parliament of the Federation of BiH, the National Assembly of the Republika Srpska and representative bodies at the level of cantons in the Federation of BiH.

Both proposals aim to address the 2018 ODIHR priority recommendation on ensuring the impartiality of election administration by limiting eligibility to nominate their members only to political parties represented in the state and entity parliaments, or to initiate open calls for their appointment. However, none of the proposals offers enhanced transparency guarantees for the compilation of the lists of candidates to the membership of the PSCs in line with international standards.⁵ At the same time, an obligation to develop relevant mechanism for ensuring such a transparency as well as defining criteria for the candidates' selection could be vested with the CEC.

Furthermore, paragraph 7(2) of Article 7.3 introduces the prohibition of the abuse of the right to participate in the work of the PSC by fictitiously representing a political entity, with a monetary fine introduced in Article 19.9(1)(n). Other amendments envisage display at the polling stations of the list of members of the PSC with the names of nominating entities, in line with a long-standing ODIHR recommendation. It remains to be seen what effect, if any, these amendments will have in future elections.

Addressing the 2018 ODIHR recommendation on strengthening training for election commissioners,⁶ the Draft introduces two new paragraphs in Article 2.2, stipulating that the CEC "must establish a Training Centre for the purpose of training members of election management bodies". If this provision is adopted and training activities for

³ See the 2018 ODIHR EOM Final Report on BiH, p. 9.

⁴ The [2006 ODIHR Explanatory Note on Possible Additional Commitments for Democratic Elections](#) states that "elections should be administered by persons who represent various interests of the society, are capable of acting in a professional and an impartial manner, and are knowledgeable in election administration".

⁵ [UN Convention Against Corruption](#), Article 7.

⁶ See recommendations no. 12 and 13 of the 2018 ODIHR EOM Final Report on BiH.

election commission members are organized on a regular basis, it will contribute to election commissioners' understanding and discharge of their duties and the overall efficiency of administering elections.

In addition to the regulatory power already given to the CEC by Article 2.9 of the Election Law, the Draft proposes a new sub-paragraph vesting the CEC with a consultative mandate to “give opinions regarding the implementation” of the Election Law, when requested. This could contribute to the inclusive discussion of potential electoral reforms and uniform implementation of election related legislation.

The current Election Law already stipulated that election commissions “shall strive to ensure gender representation” in their composition in accordance with the Law on Gender Equality of BiH. While this could be ensured through enforcement measures already provided for in current paragraph (2) of Article 2.14, a new proposal removes the word “strive” thus rendering this requirement more pronounced.

Chapter 3 – Voters' Register

In its 2018 report, ODIHR found room for improvement regarding the transmission of data on deceased voters between the concerned families, the municipalities and the respective police office, as the non-electronic transmission of the records and the manual transcription of the data may lead to clerical errors, as well as potential manipulation. Furthermore, it identified the limited public trust in the voter register, maintained by the CEC, as one of the issues that would benefit from reforms.⁷

Although the Draft does not directly address the 2018 ODIHR EOM recommendations, it introduces certain improvements. Article 3.1(2) proposes display of temporary excerpts of the Central Voter Register (CVR) on the CEC website, in accordance with the Law on Persona Data Protection. Article 3.1 allows for direct inspection by a voter of their personal data recorded in the CVR on the CEC website. These amendments could address concerns noted during previous elections, related to potential impersonation of voters residing abroad and of deceased voters.

Article 3.2 of the current law provides for the regular update of the CVR, not sufficiently detailing the conditions and the rules for that. This shortcoming is addressed by the Draft in its article 3.2(2), which specifies that preliminary voter lists (excerpts) will be published twice per year outside the election year, for the purpose of updating. It also adds that records of passports issued by diplomatic and consular missions of BiH will be used for the regular update.

Other proposal envisages the modification of the system for submitting applications for registration of voters residing abroad electronically, which can facilitate exercise of suffrage rights of this category of voters, in line with international standards.⁸

Chapter 4 - Candidate Registration⁹

⁷ See pages 10-11 of the 2018 ODIHR EOM Final Report on BiH.

⁸ [CCPR General Comment 25](#), paragraph 11.

⁹ The unofficial translation of the text “BiH CEC Initiative - Law Amending BiH Election Law.pdf” that was submitted for these comments is missing the articles 3.6 until 5.14. ODIHR was able to provide the current comments using the accompanying Explanatory Memorandum instead.

Regrettably, proposed amendments do not address significant long-standing ODIHR recommendations as well as ECtHR rulings on removing ethnicity and residency-based limitations on the right to stand as a candidate. The main change to the system of candidate registration is the introduction of electronic application for certification of candidates and their supporting signatures. This is aiming to facilitate the submission and verification of supporting signatures in line with international good practices.¹⁰

Furthermore, the Article 4.4 of the Draft suggests to increase the required number of supporting signatures in order to dissuade frivolous applications by political entities. International good practice establishes that the number of signatures to be collected in support of candidacy should not exceed 1 per cent of the number of registered voters in the respective constituency. Consideration should be given that the increase does not surpass this limit.

Chapter 5 - Conduct of Elections

The Draft (Article 5.1) introduces the possibility of early voting for people in specific circumstances, and entitles the CEC to regulate necessary details. Elaboration of procedures and other technicalities through a bylaw is in line with good practice. At the same time, essential details of early voting, such as period of early voting, main criteria of voters entitled to vote in this way and guarantees to prevent misuse and ensure the secrecy of the vote, should be included in the law.¹¹

An additional amendment in paragraph (2) of Article 5.1 instructing the lower election commissions to ensure, when selecting polling stations, that the locations are accessible for people with disabilities complies with international standards and is in line with the 2018 ODIHR EOM recommendation for barrier-free access to polling stations.

Chapter 6 - Protection of the Electoral Right

The Draft (Article 6.3(1)) introduces the possibility to file a complaint electronically. This facilitates access of parties to election dispute process, particularly when the deadline for filing complaints remains excessively short, contrary to 2018 ODIHR EOM recommendations.¹² The second novelty (Article 6.6) extends the general 48-hour deadline afforded to the CEC to decide on complaints, to three to five days in specific complex cases. On a positive note, the new obligation of the CEC to conduct a hearing in the presence of parties and witnesses to these cases, if adopted, would bring the law closer in line with international standards.¹³

Proposed amendments to Articles 6.6(7) and 6.9(4) aim to address an ODIHR 2018 EOM recommendation, prescribing the CEC and the courts to announce information on filed complaints, appeals and decisions in a timely manner. This measure, if implemented in line with international standards,¹⁴ would positively contribute to the

¹⁰ Venice Commission [Code of Good Practice in Electoral Matters](#), CDL-AD(2002)023rev, I.1.3 ii.

¹¹ [Report on the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe](#), CDL-AD(2004)012, paragraphs 23-24 and 47.

¹² See recommendation no. 20 of the 2018 ODIHR EOM Final Report on BiH.

¹³ [CCPR General Comment 32](#), para 28: “All trials [...] related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.”

¹⁴ As provided for by Article 14(1) of the ICCPR and General Comment 32, any institution dealing with the adjudication and resolution of election disputes, whether administrative or judicial, must

overall transparency of the election dispute resolution process.

Chapter 7 – Rules of Conduct in the Election Period

Several changes to this chapter extend its scope beyond the official campaign period throughout the election period. Consequently, the Draft proposes to accordingly amend the title of this chapter in order to reflect these amendments.

In its Final Report on the 2018 general elections, the ODIHR EOM recommended, *inter alia*, to consider a gender quota for parity of men and women on candidate lists and for political parties to facilitate women's political advancement, to increase the visibility of women candidates during the campaign and to integrate gender issues in their platforms.¹⁵ While the first part of this recommendation on quota is not addressed by the Draft, a new article (7.1c) envisages that political entities during the campaign “shall ensure equal promotion of candidates of both sexes in media appearances, public meetings and other forms of election campaign”. The Draft (Article 16.14(4), also envisages protection of candidates against gender-related stereotypes or offensive content in the media, with corresponding monetary fines also foreseen.

According to another amendment on this issue (Article 16.17b), during the election campaign women candidates shall be entitled to 30 minutes free airtime on the Public Broadcasting Service to present their programme. Furthermore, private electronic media should facilitate women's presentations as well. The Communications Regulatory Agency is responsible to oversee the respect of this requirement. However, it remains unclear how the implementation of these provisions could be monitored and ensured, including by means of special incentives or sanctions.

The misuse of state resources by the governing parties raised concerns during the 2018 election campaign, and ODIHR EOM Final Report made a priority recommendation to eliminate the existing shortcomings in the legal framework and to prevent the abuse of public resources for campaign purposes.¹⁶ The Draft (Article 7.2(4) aims to address this recommendation and explicitly prohibits elected members of the government or public officials “to use public resources for the purposes of any form of election campaign, own promotion, or promotion of a political entity”, with corresponding monetary sanctions envisaged in Article 19.9.

While the aim of the proposal is clear, the legal framework should not prohibit the use of public resources entirely, but rather provide for equitable access to such resources for all contestants during electoral processes, including to public funding of political parties and campaigns, buildings and facilities used for campaigning, to publicly-owned media.¹⁷

The absence of any other legal provisions, enforcing the prohibition of misuse of state resources (for example, no campaigning by public officials within a certain time period or while on official travel), can be potentially exploited to the advantage of a certain candidate or party.

operate with a high degree of transparency, independence and accountability.

¹⁵ See recommendation no. 16 of the 2018 ODIHR EOM Final Report on BiH.

¹⁶ *Ibid.*, recommendation no.2.

¹⁷ See 2016 [Joint Guidelines](#) of ODIHR and Venice Commission for preventing and responding to the misuse of administrative resources during electoral processes (para 6.2).

In an attempt to address the 2018 EOM ODIHR recommendation on making a more precise definition of prohibited speech in the Election Law to prevent undue limitation of the freedom of expression and ensure consistent decisions by the CEC, the draft Article 7.3(7) includes hate speech among the prohibited actions during the election period. It is important to bear in mind that the international law does not define hate speech and rather than prohibiting hate speech as such, international law proscribes incitement to discrimination, hostility and violence.¹⁸ Hate speech that does not reach the threshold of incitement is not something that states are required to prohibit.

Chapter 9 – House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina. Chapter 10 – Parliament of the Federation of BiH. Chapter 11 – National Assembly of the Republika Srpska

The recommendation of the 2018 ODIHR EOM Final Report suggesting to the state and entity parliaments to periodically review the boundaries of the constituencies and the number of mandates to ensure the principle of equality of the vote, and to introduce legal provisions empowering the CEC to take action if the parliaments fail to discharge their duties,¹⁹ is reflected in the Draft. Article 9.11 envisages it obligatory for the Parliamentary Assembly of BiH to conduct these duties, and introduces a new paragraph authorizing the CEC to reassign the mandates by a special decision, if the Parliamentary Assembly fails to do so within the deadlines.

Chapter 14 – Repeated, Postponed and Early Elections

The Draft (Article 14.1) establishes the possibility of extending the period of 15 days for calling repeated elections. According to the explanatory memorandum, a departure from the 15-day timeline is justified in exceptional circumstances, while the proposal also foresees the possibility to delay the postponed elections if prescribed by the Election Law. This amendment can help to address extraordinary circumstances related to holding repeated elections in due course. At the same time, the proposal lacks clear terms for postponing elections in this situation, which can undermine legal certainty and challenge principle of holding elections on regular basis.

Chapter 15 – Financing of Political Entities

The Draft proposes several amendments to the campaign and political finance. The ceiling of “one hundred (100) convertible marks” above which all monetary donations and in-kind contributions should be reported to the CEC, including information about the donors, as stipulated in Article 15.1a (3) of the law, has been removed.²⁰ Thus, political parties and independent candidates standing for elections at all levels, are supposed to report any donations without limits. This can lead to a greater transparency in campaign finance, as recommended by the ODIHR 2018 EOM Final Report.²¹ At the same time, careful considerations should be given whether lifting the threshold

¹⁸ See for example the [ICCPR](#), which requires States to prohibit “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” and “any propaganda for war.”

¹⁹ See recommendation no. 8 of the 2018 ODIHR EOM Final Report on BiH.

²⁰ An error should be noted here, as the draft Article 15.1a (3) on page 94 of the Draft still includes the 100 convertible marks limit, although on page 93 it is written that it shall be deleted.

²¹ See priority recommendation no. 7 of the 2018 ODIHR EOM Final Report on BiH.

would lead to unduly burdensome reporting requirements placed on contestants, especially if crowd-funding is used, as well as considerable increase on the CEC for administering these provisions.

Acknowledging that a large part of election campaigns has been moved from the traditional media to the online ones, the requirement for electoral contestants to report electoral expenses incurred with regards to campaigning online is introduced in the Draft. This also would lead to a greater transparency of campaign and political finance.

The Draft further addresses one of ODIHR's 2018 EOM recommendations by introducing Article 15.1b, which requires political parties and independent candidates contesting elections to open a special account for financing the campaign. All expenses and contributions must be channelled through this special account, while unspent funds should be returned to donors. The Draft envisages that the CEC may not certify the contestants to stand for election unless they open such a special account. This is an appropriate sanction for failure to open and use the special account.

Another new requirement is drafted by Article 15.1d for electoral contestants to electronically submit to the CEC a campaign finance report three days before the elections. Such a report should include, *inter alia*, information on all monetary and in-kind donations and identity of donors as well as campaign expenditure.

In line with international standards for transparency and access to information,²² Article 15.5 of the Draft specifies that through the official CEC website all citizens will have easy access to information contained in all reports. It is a good practice to have reports providing the public with preliminary information on campaign incomes and expenses of parties and candidates published several days before election day. In addition, within 30 days of the official publication of the election results, another report including all financial information from the whole election period has to be submitted.

It should be considered though that, with the proposed amendment of Article 15.1a requiring that all donations, irrespective of how small the amount might be, are reported, there is a risk that this level of transparency will discourage citizens from any involvement in the political system. Due considerations should be given to issues related to privacy of political supporters.²³

Adopting these provisions is a positive step towards strengthening the transparency and accountability of campaign finance and effective financial oversight by the CEC. Importantly, while Article 15.2 of the current Election Law stipulates that the CEC shall issue regulations in order to implement financial regulations, the Draft is silent on the corresponding sanctions in case the electoral contestants do not respect the aforementioned obligations. Sanctions as such should not be regulated by administrative acts, such as CEC regulations.

²² UN Convention Against Corruption, Article 7, para.3.

²³ See Paragraph 263 of the ODIHR and Venice Commission's 2020 [Joint Guidelines](#) on Political Party Regulation, which notes: "While the publication of financial reports is crucial to establishing public confidence in the functions of a party, reporting requirements must also strike a balance between necessary disclosure and exceptionally pressing privacy concerns of individual donors in cases of a reasonable probability of threats, harassment or reprisals, or where disclosure could result in serious political repercussions".

Despite the requirements for publication of the campaign finance reports before and after election day, the Draft fails to introduce any provisions on auditing of the reports by the CEC, on facilitating its cooperation and information sharing with other public institutions and private entities for carrying out the audit, as well as any deadlines about publishing the audit results contrary to ODIHR EOM recommendations.²⁴

Article 15.10 of the Draft lowers almost all ceilings for campaign expenditure except those for the municipal elections; the justification offered by the Explanatory Memorandum is that the existing limits are high. While not contrary to international standards, further evaluation is necessary on whether the new campaign spending limits might be too low and thus make compliance practically impossible.²⁵ In addition, the Draft does not offer dissuasive sanctions for surpassing the limits, contrary to long-standing ODIHR EOM recommendations.²⁶

Chapter 16 – Media

Previous ODIHR EOM recommendations noted the need for improving the legal framework regulating the conduct of media. Particular focus was placed on the need for the law to deter excessive concentration of media and to provide for full transparency of media ownership, as well as the requirement for public broadcasters to provide impartial and balanced coverage to all parties and candidates.²⁷

Partially addressing relevant recommendation, a new provision (Article 16.1) stipulates that the media shall make the information about their ownership available to the public. However, the Draft offers no specifications about deadlines for publishing this information and sanctions in case of non-compliance.

Article 16.2(1) of the Draft introduces the obligation of respect, by the electronic media while covering campaign activities, the principles of equal access and equal time, in addition to the principles of balance, fairness and impartiality that are already foreseen in the current law. While such an amendment can lead to ensuring more objective information presented by the media to voters, considerations should be given to amending the Draft with a view to ensure principle of equitable rather than equal access and time for political contestants.

A new provision (Article 16.2(2) specifies that jurisdiction for enforcement of these principles is primarily accorded to the Communications Regulatory Agency of BiH, while “the election authorities shall be authorized to submit the matter” to the Agency. The Draft is unclear though and therefore could benefit from additional elaboration, if violations of these principles can be reported (filed) by electoral contestants or the voters to the Agency, including in case of inaction of the election authorities.

Article 16.3(2) of the Election law states that all public officials who are also electoral

²⁴ See recommendation no.17 of the 2018 ODIHR EOM Final Report as well as relevant recommendations of the 2014 and 2010 ODIHR EOM Final Reports.

²⁵ The UN Human Rights Committee has recognized that setting reasonable limits on campaign expenditure may be justified in order to prevent disproportionate expenditure by individual parties and candidates - CCPR General Comment 25, Article 19.

²⁶ ODIHR EOMs Final Reports of 2018, 2014 and 2010.

²⁷ *Ibid.*, recommendations no.18 and no.19.

contestants shall not enjoy a privileged position in broadcasts of the electronic media, however without any corresponding sanctions. This shortcoming is addressed by the Draft, which introduces a monetary fine for such violation in Article 19.9(1)(z).

The current Election Law already stipulates that electronic media should make no reference during their regular information programmes covering activities of government officials to their candidacy or party membership. The Draft (Article 16.3), authorizes the election authorities to “submit the matter to the Communications Regulatory Agency for its further action” and empowers the CEC to “determine the responsibility of candidates for violations” upon Article 16.3(2). While further procedural details could be regulated by the CEC, the right to appeal appropriate decision at the court and the course of action in the event of contradictory decisions of the Agency and the CEC on a given violation could merit further elaboration.

Positively, the Draft clarifies the existing provisions of Article 16.13, according to which the electronic media shall have the right to refuse to broadcast a political advertisement when it violates the Constitution or the laws. The details offered by the Draft include, *inter alia*, when the advertisement contains discrimination or prejudice on grounds enumerated in the Draft, or if the content has as purpose or effect of violating rights and freedoms of any person, or when it incites hate or violence against any person or group on any grounds whatsoever, or when the advertisement involves the abuse of children for political purposes or contravenes other regulations.

In these cases, the Draft provides that the electronic media or the political entity concerned may notify the Agency, which should issue a binding opinion within 48 hours and submit it to the CEC for information.

The Draft (Article 16.16) defines the CEC’s jurisdiction over misuse of the media freedom by political entities. Acknowledging that the Internet is a primary avenue for misinformation and divisive messages, draft Article 16.17a authorizes the CEC to “conduct the procedure” and apply monetary fines as prescribed in Article 19.9 (1)(z)(cc). Regrettably, no further details are provided on how this procedure should be conducted, or what decisions can be made by the CEC.

Chapter 17 – Election Observers

Although the restriction of one observer at a time at an election commission meeting, voter registration centre and polling station remains, a new paragraph draft Article 17.2 (3) allows for observer organizations to deploy more than one observer at the counting centre, and in fact, to have one observer at each counting table. A higher number of observers at counting centres will minimize opportunities for malpractice and could enhance the transparency and the credibility of the process.

Chapter 19A – Penalty Provisions

The Draft increases or sets the fines for offences (Article 19.8(1) largely related to failure to implement voter registration and election day procedures, committed by election administration officials. The fines are also increased in draft Article 19.9 for specified violations committed by political entities or their supporters. In addition, corresponding sanctions are envisaged for non-compliance with incompatibility provisions for public officials, the misuse of public resources as well as access to the

media for campaign purposes, the failure to remove campaign materials within legal deadlines, the misuse of a right by political entity to be represented in the PSCs, placing stereotype or offensive gender-related content in the media, and spreading false information through the media and the Internet.

While this is not clear from the Draft whether the newly introduced and amended sanctions are dissuasive, gradual and proportional, this remains to be seen how effective are the sanctions during implementation period.

Chapter 20 – Transitional and Final Provisions

In a new provision, the Draft authorizes the legislature to prepare a consolidated version of the Election Law, which is an important safeguard to ensure clarity of the electoral legislation and easy access to the consolidated version.