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INTERIM REPORT 1

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I. EXECUTIVE SUMMARY

On 31 August, the OSCE/ODIHR Election Observation Mission (EOM) in Ukraine was established to monitor the 31 October presidential election. The OSCE/ODIHR has requested the participating States to send 600 short-term election observers to monitor proceedings on election day and to follow the tabulation of results, making the EOM one of the largest ever deployed.

Should a candidate fail to secure an absolute majority of votes, a second round contest is scheduled to take place on 21 November 2004. Many interlocutors suggest that a second round will be required to determine the result. In this case, the EOM will remain in Ukraine to monitor the process until its completion and will request the OSCE participating States to send observers in similar numbers to the first round.

The international community is taking a very strong interest in the forthcoming election, which is considered of crucial importance for Ukraine's future development. Large numbers of observers from other groups including governmental organisations such as the CIS and international NGOs are also expected to arrive in Ukraine.

The election will be held under new election legislation adopted in March 2004. Although some shortcomings remain, it marks significant improvement over its predecessors and provides for an adequate framework for the conduct of democratic elections. However, the extent to which the new legislation will have a positive effect on the process ultimately will be determined by the spirit in which it is applied, and the degree of political commitment, first and foremost of State institutions, to hold democratic elections and uphold the law. Nevertheless, the failure of the Election Law to provide for election observation by domestic non-partisan organizations is a serious shortcoming.

Currently, 26 candidates are pre-registered to contest the election, offering voters a wide choice of candidates. However, the candidate registration deadlines have yet to expire. Consequently the final candidate list is not yet known. Polls suggest that two front runners lead the field: Viktor Yushchenko representing policies of a clearly defined opposition bloc and Viktor Yanukovich, the current Prime Minister, representing the policies of the current incumbents.

Preliminary media monitoring results show that on the State-funded television *UT1*, Viktor Yanukovich received coverage beyond that which was reasonably proportionate to his role as Prime Minister. The election campaign began on July 3, and is highly visible. The campaign environment is already charged and increasingly polarised.

II. INTRODUCTION

On 31 August 2004, the OSCE/ODIHR was established in Ukraine for the 31 October presidential election, at the invitation of the Government of Ukraine. On 1 September, ODIHR observers received accreditation documents from the Central Election Commission (CEC). The EOM, headed by Ambassador Geert Ahrens (Germany), consists of 55 election experts and long-term observers from 14 OSCE participating States. The main office is in Kyiv, with long-term observers (LTOs) based in 20 cities around the country. On 6 September, the EOM held a press conference to introduce the mission and explain its mandate and the scale, scope and timing of its operations. The press conference was reported widely. LTOs were deployed to the regional centres on 14 September.

The OSCE/ODIHR has requested 600 short-term observers (STOs) to monitor proceedings on election day. The OSCE Parliamentary Assembly (OSCE PA) the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP), and the NATO Parliamentary Assembly have all indicated their intention to send observers.

The ODIHR has been criticised in some quarters for not deploying a larger mission and some members of the Our Ukraine bloc have lobbied for 2,000 observers to be deployed. However, the ODIHR Needs Assessment Mission, which was deployed in June 2004, recommended that 600 short-term observers be deployed, considering this the optimal number to fulfil its election observation methodology, and so as not to overburden participating States. This number will enable the EOM to deploy one team of two observers to every territorial electoral unit and observe the activity of a large number of Territorial Election Commissions (TECs) after the close of polling. Indeed, if this target is reached, the EOM to Ukraine will be one of the largest ever deployed by the ODIHR.

Observers from other organisations are foreseen including those from the Commonwealth of Independent States (CIS). Currently, in addition to the ODIHR, observers from the Russian Federation, the United States of America, the Republic of Poland, Canada, the Ukrainian Congress Committee of America, the World Congress of Ukrainians, USAID, the CIS countries and the CIS-EMO are already registered with the CEC.¹ It is expected that delegations from other organisations will register, including up to 1,300 observers recruited from Central and Eastern Europe and the former Soviet Union, to observe the potential second round of voting.

III. BACKGROUND

The 31 October presidential elections will be the fourth since Ukraine gained independence in 1991. The OSCE/ODIHR concluded that the conduct of the last presidential elections, which took place in 1999, “failed to meet a significant number of OSCE election related commitments”. In 2002 the OSCE/ODIHR returned to Ukraine to observe the parliamentary elections. It concluded that: “The ... elections indicated progress over the 1998 parliamentary polls. Despite shortcomings, these elections brought Ukraine closer to meeting international commitments and standards for democratic elections. ... While Ukraine met in full or in part a number of commitments ... it failed to guarantee a level playing field, an indispensable condition to ensure the freeness of the process”.

¹ Source: CEC website www.cvk.gov.ua

The upcoming election is regarded as particularly important as it will bring President Leonid Kuchma's ten years in office to a close. Polls suggest that it will be keenly contested between two front runners, Viktor Yushchenko representing policies of a clearly defined opposition bloc and Viktor Yanukovich, the current Prime Minister, representing the policies of the current political incumbents. Other opposition, independent, and pro-incumbent candidates are also registered.

Events that may indirectly affect the election include the proposal to amend the Constitution to reduce presidential powers prior to the election and the decision by at least 47 MPs to suspend their participation in the parliamentary majority bloc. The international community has taken a very strong interest in the upcoming elections. Some commentators have gone so far as to suggest that the outcome of the elections will determine Ukraine's future orientation in domestic and foreign policy.

IV. POLITICAL PARTIES AND CANDIDATES

All major political forces are contesting the elections either directly or through their support of one of the 26 candidates.² Prime Minister Viktor Yanukovich has been nominated by the Donetsk-based Party of Regions and enjoys the political support of President Kuchma. His main rivals include Viktor Yushchenko, the former Prime Minister and leader of the Our Ukraine bloc who, according to official results, received the largest number of votes in the 2002 parliamentary elections (23.57%). His candidacy is supported by Yulia Tymoshenko, whose political bloc secured 7.26% of the vote in the 2002 parliamentary election. Other Presidential candidates who lead blocs that overcame the 4% representation in 2002 include Communist Party leader Petro Symonenko (19.98%), and Socialist Party leader Oleksander Moroz (6.87%). The Social Democratic Party of Ukraine (united) (6.27%), led by Viktor Medvechuk, Head of the Presidential administration, nominated Volodymyr Nechyporuk as its candidate. Other candidates include former Prime Minister Anatoly Kinakh, Kyiv Mayor Oleksandr Omelchenko, and Progressive Socialist Party leader Nataliya Vitrenko.

The main candidates draw their support from different regions in Ukraine. Based on the 2002 election results, Our Ukraine derives much of its support in the west of Ukraine while the political base of Viktor Yanukovich is thought to be in the east of the country, where the pro-government bloc For United Ukraine polled best in 2002.

Opposition parties, including the Our Ukraine bloc and the Socialists, have asserted publicly that government resources, including state media, are being used to back the Yanukovich campaign. Other concerns raised and allegations made by interlocutors or in the media include *inter alia*: the distribution of Chairperson, Deputy Chairperson and Secretary positions on the TECs, allegedly inaccurate voter lists, provisions for out of country voting, the use of exit polls, the manner in which signatures to support candidate nominations have been collected, political pressure on State employees and elected officials, and restrictions on the media and harassment of local media.

² Bazyliuk, Oleksandr Filimonovych; Boiko, Bohdan Fedorovych; Brodskiy, Mykhailo Yuriiovych; Chernysh, Hryhorii Semenovych; Chernovetskyi, Leonid Mykhailovych; Chornovil, Andriy Viacheslavovych; Dushin, Ihor Leonidovych; Hrabar, Mykola Fedorovych; Kinakh, Anatolii Kyrulovych; Kozak, Roman Mykolaiovych; Komisarenko, Sergiy Vasyliovych; Kononov, Vitalii Mykolaiovych; Korchynskyi, Dmytro Oleksandrovych; Kryvobokov, Vladislav Anatoliiovych; Moroz Oleksandr Oleksandrovych; Nechyporuk, Volodymyr Pavlovych; Omelshenko, Oleksander Oleksandrovych; Rzhavskyi, Oleksandr Mykolaiovych; Rohozhynskyi, Mykola Volodymyrovych; Symonenko, Petro Mykolaiovych; Vitrenko, Nataliya Mykhailivna; Volha, Vasyl Oleksandrovych; Yushchenko, Viktor Andrievych; Yakovenko, Oleksandr Mykolaiovych; Yanukovich, Viktor Fedorovych; Zbitniev, Yurii Ivanovych.

The EOM hopes to meet with as many candidates as possible during the duration of its operations to ascertain their views on the electoral and campaign processes, and has already made contact with the campaign teams of some candidates.

V. ELECTORAL SYSTEM

The presidential election system provides that to be elected in the first round, a candidate requires a number of votes that is more than 50% of the “votes of voters who participated in the voting”. If no candidate passes this threshold, then a second round (repeat voting) is held between the top two candidates 21 days later. According to Article 85 of the Election Law, in the second round, “the candidate, who ... received more votes of voters, who participated in the vote, than the other candidate, shall be declared the elected President of Ukraine.” It appears that, unlike the first round, ballots marked “against all” are not taken into consideration in determining whether there is a winner. However, should only one candidate be included on the second round ballot he or she requires over 50% of the votes of participants in the election.

VI. LEGAL FRAMEWORK

The election will be conducted according to a new Presidential Election Law (hereafter the Election Law), which came into force in April 2004, and the Constitution of Ukraine, which was last amended in June 1996.

Importantly, a number of OSCE/ODIHR recommendations have been addressed in the legislation while others remain outstanding. Nevertheless, the Election Law does mark a significant improvement over its predecessors and it provides an adequate framework for the conduct of democratic elections, if implemented correctly and impartially. The extent to which the new law will have a positive effect on the process ultimately will be determined by the spirit in which it is applied, and the degree of political commitment, first and foremost of State institutions, to hold democratic elections and uphold the law. The impartial application of legal provisions and the effective handling of election disputes will be of utmost importance.

The EOM has sought clarification from the CEC of legal provisions relating to the rights of international election observers. Similarly, questions remain regarding the circumstances in which the police may be present in polling stations as well as their role in the transport of electoral material including ballots and results sheets (protocols) between polling stations and TECs, after the counting of votes has taken place. A detailed analysis of the legislation will be issued after the end of the election process, and legislative shortcomings should be corrected at the appropriate time.

The failure of the Election Law to provide for election observation by domestic non-partisan organizations, as provided for in Article 8 of the Copenhagen document, is a serious shortcoming. The Election Law restricts election domestic observation to “partisan” observation carried out by representatives of the candidates. International observation is also provided for. Members of the media are able to enter polling stations. In previous elections, very large numbers of journalists have been present in polling stations, fulfilling some of the tasks usually fulfilled by domestic observers, thereby improving the transparency of the process. Currently, two bills are pending in Parliament which could, if passed, establish a legal basis for non-partisan domestic election observation.

On 6 September, the CEC adopted Resolution No. 477, which proposes thirty separate amendments to the Election Law. However, as the CEC does not have the right of legislative initiative, a Parliamentary sponsor would be necessary before these amendments could be considered. Despite the possibility that amendments to the Election Law will be adopted during the course of the electoral process, the current legislation should continue to provide the legal basis for decisions made by the CEC.

VII. ELECTION ADMINISTRATION

A three-tiered administration will organise the presidential election. The Central Election Commission (CEC), appointed by the President on 17 February 2004, is charged with upholding the law, ruling on election complaints, adopting resolutions and decisions, directing the work of subordinate commissions, organizing the administration of elections, and tabulating and announcing final election results. Its composition, activity, and competences are set out in the Election Law and further detailed by the Law on the Central Election Commission.

The CEC is composed of 15 members proposed by parliamentary political groups. The law also allows for the presence, although not for the vote, of appointed candidates representatives. At the intermediate level 225 Territorial Election Committees (TECs) have been formed in election districts. These were appointed by the CEC at the proposal of registered candidates. Each candidate may nominate two members. Hence each TEC is composed of up to 52 persons, a very large number in comparison to most other OSCE participating States. After the close of polls TECs are tasked with a first-level aggregation of polling station results. The EOM will report on the composition and functioning of the TECs in due course.

Currently, TECs are in the process of appointing Polling Station Committees (PSCs), which will conduct voting operations. The Law provides for a balanced multi-candidate representation, giving candidates the right to be represented and to have observers at all levels of the administration. Each candidate may nominate up to two PSC members and two observers. Hence over 100 persons may be present in polling stations on election day, a high number unlikely to be conducive to orderly polling.

Since the beginning of the electoral process, on 3 July, the CEC has met regularly and by 14 September had already passed 384 resolutions. The EOM has held meetings with Chairman Serhyi Kivalov and Deputy Chairman Yaroslav Davydovych and intends to continue to hold regular meetings with the CEC at senior and working levels. The EOM is attending the sessions of the CEC.

No central register of electors exists and the EOM has already received an allegation that voter lists have not been updated for 10 years and that they contain a large numbers of entries of deceased persons as well as of those who have migrated internally and externally. The CEC has been encouraged to broadcast public service announcements urging citizens to check their entries in the voter list before election day. The EOM will seek information from the CEC and the Ministry of Foreign Affairs on the voting procedures for “out of country” voters, their estimated numbers, the numbers registered to vote, and the number of ballots sent to polling centres.

VIII. CANDIDATE REGISTRATION

On August 6, the preliminary deadline for the registration of candidates with the Central Election Commission (CEC) expired. Each was required to pay a registration fee of 500,000

UAH (approximately € 80,000), refundable if the candidate secures over 7% of the vote or withdraws no later than 30 days before election day. Currently, 26 candidates are registered. In addition, prospective candidates must deposit at least 500,000 signatures supporting their nomination, before 20 September. The deadline for scrutinising these signature sheets falls on 30 September. In a welcome move, the Election Law extended the period given to the CEC to verify the signatures. However, the EOM is not aware of any formal CEC Resolution or document describing how this process should be carried out. The candidate nomination process has been controversial, with media reports airing some candidates' allegations that irregularities in the process took place, including that signatures were not given freely by citizens.

The Supreme Court ruled that the written campaign programs of two candidates contravened the law due to the use of language that could incite ethnic or religious hatred. However, these candidates were able to register with the CEC after amending the offending passages. Eighteen candidates were denied registration, mostly on procedural grounds, having failed to submit registration documents according to the legal provisions.

Some of the EOM's interlocutors have asserted that some candidates are running for technical rather than political reasons and do not have any realistic prospects of winning the election. As noted previously in this report, candidates have a right to nominate members to TECs and PECs. Hence their entry into the contest influences the political balance of these commissions.

IX. MEDIA

Domestic interlocutors including, journalists, civil society groups and some political parties have expressed concern over the independence of the media in Ukraine. They have highlighted as particularly problematic, the control over the political content of news coverage on the main TV channels through the issuing of "guidelines" (so-called *Temnyky*). It is alleged that these instruct editors to cover only certain points of view on political themes, events and issues while omitting others. The EOM will follow this issue closely and assess the effect on the availability of information to the electorate during the pre-election campaign.

On 3 September, the EOM commenced the monitoring of six national TV channels, one Kyiv-based and one Donetsk-based TV channel, and nine daily and weekly newspapers.³ In addition, the EOM will analyze the main news broadcasts of several regional TV channels. Preliminary media monitoring results show that on the State-funded television *UTI*, the incumbent Prime Minister Viktor Yanukovich received coverage beyond that which was reasonably proportionate to his role as Prime Minister. Over a two-week period during the official campaign in the media, *UTI* provided him with almost 60 % of its political and election prime time news coverage. All the stations' coverage was of an overwhelmingly positive or neutral tone. Conversely, during the same period, the candidate who received the next most extensive coverage, Viktor Yushchenko, received only 12 % of such airtime, which was mostly negative in its tone.

By law, all registered candidates should receive an allocation of free and paid broadcast time and print space on equal conditions to present their campaigns. Using a lottery system, on 10 August, the CEC allocated free airtime on the State-funded radio and TV to all 26 candidates.

³ Television: State-funded *UTI*, Private *Inter*, *1+1*, *ICTV*, *STB*, *Novy Kanal*, *TRK Ukraina* and *5th Channel*. Newspapers: *State Uriadovy Kurier*, *Golos Ukrainy*, Private *Facty i Komentarii*, *Segodnia*, *Den*, *Silski Visty*, *Ukraina Moloda*, *Zerkalo Tyzhdna*, and *Vechirni Visti*.

The State-funded television *UTI* and State-funded radio channel with a nationwide outreach have each allocated thirty and forty-five minutes respectively of free time for regular campaign spots among political contestants. The CEC is yet to determine the allocation of free time devoted for the televised debates among candidates to be aired on state television.

X. RESOLUTION OF ELECTORAL COMPLAINTS

The Presidential Election Law provides that a broad variety of interested parties may file electoral complaints against a wide range of electoral subjects with either an election commission or a court. Complaints can seek relief for a violation of the law due to a decision, action, or inactivity of the subject of the complaint. A decision on a complaint can be appealed to a superior election commission or court.

A relatively large number of complaints were filed with the CEC and courts prior to the establishment of the EOM. The majority of these allege illegitimate campaign activities by candidates and State structures or officials, mainly relating to campaign materials and the State media. Indeed, by 6 September, over 100 complaints of this nature have been filed with the CEC since the start of the campaign period. The large majority were filed by the Yushchenko campaign, claiming irregularities in campaign activities by persons supporting the Viktor Yanukovych campaign. The CEC has rejected most of the complaints although some petitions are still pending. Seventy-four of these complaints were rejected in a single decision on 13 August.

The CEC has decided five complaints, filed by the proxy of Oleksandr Bazyliuk against the Yushchenko campaign, which alleged illegal campaign activities. While the CEC rejected all of these, it referred two to law enforcement bodies for additional consideration. The CEC's exercise of jurisdiction in cases involving media complaints requires clarification. In eight cases involving complaints against national media, the Supreme Court ordered the CEC to exercise its jurisdiction. In one case involving a newspaper, the CEC exercised jurisdiction after the case had already been dismissed by a local court. The EOM will closely follow the nature, handling and resolution of election related complaints.

XI. CAMPAIGN ENVIRONMENT

The election campaign began on July 3, and is highly visible. Many interlocutors expect a keenly fought contest, with two candidates leading the field in the first round, but each with insufficient support to secure over 50% of the vote. The campaign environment is already charged and increasingly polarised. Events regarding the pre-electoral environment include:

- The continuing controversy over the murder of the journalist Georgiy Gongadze in 2000, and the lack of arrests and prosecutions of perpetrators in the four years since;
- Claims of the misuse of State owned resources and public employees to support the Yanukovych campaign;
- An explosion in a Kyiv market in late August, which caused serious injuries and one fatality. Subsequently, the police detained persons who were allegedly members of the Ukrainian National Party (part of the Our Ukraine bloc), in connection with the incident. Viktor Yushchenko's campaign strenuously denied the allegation;
- Comments reported in the media by Yuliya Tymoshenko that if serious election irregularities occur, the opposition will mount a campaign of civil disobedience;

President Kuchma addressed Ministry of Interior special forces, informing them that creation of social tensions that threatened public order would not be tolerated.

XII. INTERNATIONAL COMMUNITY

On 15 September, the EOM held its inaugural weekly meeting with representatives from the diplomatic Missions of OSCE participating states and International Organizations. The EOM is grateful for the excellent support received from the OSCE Project Coordinator in Ukraine. The EOM is attending ad hoc working group meetings and Heads of Mission meetings organised among the resident diplomatic community, with the status of observers rather than participants.