

<p>European Network of Election Monitoring Organizations <b>International Observation Mission to Ukraine Local Elections 2015</b></p>	<p>Європейська мережа організацій зі спостереження за виборами <b>Міжнародна місія зі спостереження в Україні Місцеві вибори 2015</b></p>
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## Statement of Preliminary Findings and Conclusions

17 November Kyiv, 2015

*The second round of Ukrainian local elections has met most international standards of free and democratic elections. However, certain legal provisions leave space for concern and discussion especially in relation to unequal access to election funds and media, unequal representation of all election contestants within election commissions, as well as unequal representation of all election districts within elected councils.*

The European Network of Election Monitoring Organizations (ENEMO) is a network of 22 leading election monitoring organizations from 18 countries of Europe and Central Asia, including three European Union countries. This is the tenth Election Observation Mission by ENEMO to Ukraine, which began with the arrival of 8 core team members to Kyiv, on 1 October in order to observe the Local Elections 2015. ENEMO additionally deployed 50 long-term observers (LTOs) countrywide to observe and assess the electoral process in their respective regions for the elections on 25 October, as well as the second round of 15 November.

ENEMO has deployed 90 short-term observers (STOs) to observe the second round of elections throughout Ukraine. Together with mobile LTOs, ENEMO had 67 teams in the field during the Election Day on 15 November, which monitored the opening of 67 PECs, voting in 873 PECs and the closing of 67 PECs.

This preliminary report is based on the ENEMO observers' findings from the field, where they focused on the work of election administration bodies after the first round of elections, election-related complaints and appeals, the conduct of election participants prior to the election day, as well as the overall conduct of elections during the Election Day of 15 November in terms of opening, voting, counting and the transferring of election materials to TECs and election related activities.



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## Preliminary conclusions

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The Election Day on 15 November was mainly organized in line with the law and foreseen procedures by most Precinct Election Commissions (PECs), as well as Territorial Election Commissions (TECs).

ENEMO observers rated the voting process as good and very good in 98,9% of PECs, what is an improvement compared to the first round of elections. The conduct of PEC commissioners was highly commended by ENEMO observers in 99% of cases, whereas reports also state that in a number of cases PEC members did not receive proper training and were not fully aware of the legal procedures.

Representatives of one mayoral candidate predominantly manned commissions at some PECs, whereas in a number of cases, the total number of PEC members present during the observation was lower than legally prescribed. Also, several instances of citizens taking a photo of their vote were reported, as well as voters with strange white sticker on their passports, which have again raised some suspicions of vote buying in several PECs.

ENEMO observers rated the closing and counting procedures as good and very good in 98,5% of monitored PECs, which is a clear improvement compared to the first round of elections (88 %). Nevertheless, protocols coming from PECs continued to be affected by mistakes and as a result TECs ordered corrections of protocols in 52,9% of cases observed by ENEMO. These mistakes were mainly technical and could not disrupt the election process.

Conduct of TECs was generally professional and transparent. This was reflected by the fact that 97,6% of observed TECs received no official complaints on their work.

The previously criticized, highly politicized composition of TECs lead to a number of decisions made in favor of party interests rather than public interest of having democratic elections. Considering the previous evaluation of TECs by its observers, ENEMO would like to stress again the recommendation that an adequate professionalization of the partial and/or full composition of at least higher level TECs is highly necessary for future elections.

Concerns of ENEMO and many other stakeholders raised before elections, regarding the complexity of the new Law and the lack of knowledge of most PEC members have been justified. Mainly due to the lack of training and numerous replacements of PEC members, many TECs in all regions of Ukraine had to return a large number of protocols (even up to 60%) received by respective PECs to be corrected accordingly.

Many mayoral candidates have not managed to provide an adequate number of precinct commissioners from their side, which highly undermined the equal representation rule during

these repeated elections, as the remaining PEC members were again selected by the relevant TEC in a questionable manner.

ENEMO would like to commend the Kiev Administrative Court of Appeals, as well as the High Administrative Court on their decisions to establish legality and legitimacy of elections in the city of Pavlohrad, thus allowing voters to express their free will in the second round of elections, thus using the electoral system previously expected by all election contestants and voters.<sup>1</sup>

Direct and indirect vote buying remained a reported problem for Ukrainian elections during the campaign period prior to the second round of elections as well.

A number of candidates violated provisions of the Law on Local Elections, by starting their electoral campaign earlier in the second round of elections.<sup>2</sup>

Increased transparency of campaign financing and expenditures should remain an important task for Ukrainian lawmakers to be improved for future elections.

Changes of the electoral legal framework have not made a stronger personalization of the electoral system, as voters are still casting their votes for the parties. Nomination districts have not fulfilled their main purpose - to make a stronger link between the electorate and its representatives.

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<sup>1</sup> The system of absolute majority ("TRS" - two rounds system), used for electing Mayors in cities with 90 000 and more voters.

<sup>2</sup>The law stipulates that the electoral campaign starts on the day following the day of the official publication of a decision of a respective TECs on repeated voting (also the second round of elections) and ends on last Friday before E-day, at midnight.

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## PRELIMINARY FINDINGS

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### Background

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The first round of Regular<sup>3</sup> local elections in Ukraine was held on 25 October 2015, under the new Law on Local Elections. It was mainly held in line with the law and international standards in most regions of Ukraine<sup>4</sup>, however lack of professionalism and misconduct of a number of TECs had raised a number of concerns. Election commissions managed to organize elections and tabulate results, but with significant delays during counting in many places.

Elections at Mariupol, Svatove and Krasnoarmiysk (Donetsk and Luhansk regions) were not held mostly due to the lack of professionalism of TEC members and mismanagement of ballot printing. Following the Ukrainian Parliament's law, elections in Krasnoarmiysk and Mariupol are scheduled for 29 November, whereas elections in Svatove are scheduled for 27 December 2015.

Based on the new Law and final results of the first round of elections, the second round of mayoral elections (the law refers to them as repeated elections) was held on 15 November.

Also, elections in a number of regions that were invalidated due to certain mistakes and/or irregularities, lack of candidates, or equal election results will be repeated in December this year, on different dates.

The overall results of first round elections can be found at CEC website on the following link: <http://www.cvk.gov.ua/wvm2015/wm001.html>

### Legal Framework and Electoral System

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Regular local elections in Ukraine are held every four years<sup>5</sup>. Legal framework for local elections consists of the Constitution of Ukraine, Law on Local Elections, Law on Central Election Commission, other relevant laws and resolutions of the CEC.

For mayoral elections two electoral systems are being used - a system of relative ("FPTP" - first past the post) and a system of absolute majority ("TRS" - two rounds system), mainly

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<sup>3</sup>Also the First local elections in a number of newly established territorial communities.

<sup>4</sup> For more details regarding the conduct of elections during the first round, please refer to our previous reports by visiting [www.enemo.eu](http://www.enemo.eu)

<sup>5</sup> Next local elections will possibly be held in two years due to expected legal and Constitutional amendments related to further decentralization of Ukraine.

depending on the number of voters and size of the relevant territory. FPTP is used for election of village, settlement heads and Mayors of cities with fewer than 90,000 voters. The TRS is used for electing Mayors in cities with 90,000 voters, or more.

Besides five cities that have elected their Mayor on 25 October: Kharkiv, Ternopil, Odessa, Slavyansk and Lysychansk, other 29 cities of Ukraine with more than 90,000 voters have had a second round of elections for the Mayor, as no candidate in these cities has managed to win more than 50% of votes in the first round.

At the same time, repeated elections, based on the new Law on local elections need to be held in those single mandate constituencies (mainly villages and settlements), where no candidate managed to win elections by using the FPTP system, as two or more candidates for the city Head/Council had the same number of votes. There are around 75 of these places according to CEC<sup>6</sup>, where elections will be repeated by the end of the year.

Most legal provisions of the new Law are to be applied in the same way as during the first round of elections, though some differences exist in terms of PEC composition, election campaigning and certain deadlines<sup>7</sup>. The new Law does not allow for the boundaries of established election districts in the first round of elections to be changed by TECs.

Between the two rounds of mayoral elections in respective cities ENEMO has analyzed the impact of List PR system used for electing respective Councils (oblast, rayon and cities with more than 90,000 register voters)<sup>8</sup>. In its previous reports, ENEMO has mentioned possible negative impacts and shortcomings of using such a system. After accessing most of election results, it is visible that electoral system in use has not met expectations of the public. Special emphasis was put on widely used term “open list system”. This term is not correct, as for these local elections, a closed non-blocked list system was being used, but without preferential voting.

Changes of the electoral legal framework have not made a stronger personalization of the electoral system, as voters are still casting their votes for the parties. Nomination districts have not fulfilled their main purpose - to make a stronger link between the electorate and its representatives. Analysis showed that a large number of nomination districts have no elected candidate after elections. The actual starting impact of this system is such that a number of nomination districts without an elected councilor is equal to the number of parties that pass the threshold of 5% and thus receive at least one seat, as the leader of the party candidate list is not directly assigned to any nomination district.

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<sup>6</sup> <http://www.cvk.gov.ua/wvm2015/pvm036pt001f01=100.html>

<sup>7</sup> As described within Article 87 of the Law on Local Elections.

<sup>8</sup> List Proportional Representation (List PR) system. To be able to participate in the process of allocation of seats, a party needs to pass a five percent legal threshold. Allocation of seats to parties is made by using election quota (modified Hare quota). Ukrainian List PR system for these local elections uses closed non-blocked list, but modified, without preferential voting. Seats within the candidate list are allocated to candidates who gain better result, in percentage, in their nomination unit. Multi-member constituencies are divided into nomination districts, whose number coincides to the number of seats of the respective council. The new law introduces the non-obligatory 30 per cent gender quota.

The number of districts without an elected candidate is dominantly even higher, due to the influence of used system of re-ordering candidate party list based on the percent of received party votes (votes for a candidate/s in respective nomination district). For the Oblast council elections, the range of districts without any elected councilors varies from 20% in Odessa up to 33% in Chernivtsy, Poltava and Zhitomir.

On the contrary, some nomination districts were overrepresented. The percent of districts with two elected councilors varies in some Oblasts from 11% up to 24%. Some Oblasts even have districts with three elected councilors. There are 14 districts with three elected councilors at the Oblast Council level (in 9 Oblasts) in the entire territory of Ukraine. Similar findings were registered for city council elections, whereas on the Rayon level, the situation is similar only with nomination districts without elected councilors. There are only a few cases in whole of Ukraine where there were three Rayon councilors elected in the same district.

In its Final report, ENEMO will conduct further analysis and prepare concrete recommendations for improvement of the entire electoral system.

## Election Administration

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The new Law has foreseen further decentralization of election management bodies, giving the most responsibilities to Territorial Election Commissions (TECs), a body responsible for organization and conduct of local elections in its respective terms of reference and area of responsibility. The number of TEC members may range between 9 and 18 persons, who are chosen by the relevant election commission, based on nominations from local branches of political parties declared at the first session of the current convocation of Verkhovna Rada of Ukraine (Ukrainian national Parliament) and local branches of a political parties registered in respective administrative territorial unit. Majority of members of each TEC belonged to local branches of political parties from the Parliament, as they had the right to nominate two candidates each, as opposed to local branches of political parties, whose members fill in the rest of TEC's composition based on results of drawing lots, with just one nominee per such a political party.

For the second round of Mayoral local elections on 15 November, each city had a TEC at the city level that was in charge of collecting results from district TECs or PECs and tabulating final results of elections for the Mayor.

In the period between the two rounds of elections, most TECs managed to organize their duties accordingly, tabulate and announce final election results. However, a number of TECs

in many regions of Ukraine had difficulties in implementing all their legal duties as planned and within the legal terms prescribed by the Law. The conduct of a number of TECs has been reported as disorganized, unprofessional, at times even politically influenced and/or biased by ENEMO observers and a number of interlocutors and election participants.

Numerous complaints from election participants, as well as concerns of our observers were raised towards a number of TECs in Sumy, Odessa, Chernivtsy, Mykolaiv, Kherson, Kharkiv, Dnepropetrovsk, Zaporizhia and Cherkassy mainly regarding the politicized and unprofessional conduct of TEC members during tabulating and announcing of election results. Most severe example is the Oblast TEC in Cherkassy region, where TEC members allegedly altered the final results of elections in favor of Solidarnost and the Opposition Block. After a strong reaction from the other election contestants and the Police, these results were cancelled and new results of elections were announced, based on initial protocols. Similar incidents have also been reported in Babuhsynsky rayon (Dnepropetrovsk), as well as in Prydniprovsky rayon (Cherkassy) and at the Regional TEC in Vinnytsa. Most of these cases are being further investigated by relevant authorities.

Interlocutors of ENEMO expressed their concerns regarding TEC conduct and election results in some regions, whereas a number of complaints and even criminal charges towards certain TEC members have been filed. More significant, alleged violations in relation to elections happened in Odessa and Cherkassy, while a number of complaints was noted in Sumy, Kiev, Dnepropetrovsk, Kharkiv, Kherson, Vinnytsa and other regions.

On 2 November, the CEC has disbanded (terminated powers earlier) members of the two TECs in Mariupol and Krasnoarmiysk cities, due to the fact that they failed to conduct the first round of regular elections on 25 October<sup>9</sup>. New TEC compositions were formed several days later, based on nominations from the same political parties that have nominated the previous composition of the named TECs and upon the Parliament's newly adopted law that requires elections to be held in these two cities on 29 November. The same law appoints the CEC as the authority in charge of producing ballot papers and their transfer to PECs. Even though this change of the TECs' composition was justified, the fact that CEC did not react sooner remains a concern, as the law allows the CEC to take own initiatives in securing equal application of legal provisions and respect of electoral rights of all election participants. Moreover, according to several interlocutors and media reports, the CEC was aware of different problems in Mariupol and Krasnoarmiysk TECs even before the Election Day on 25 October.

The legal provisions prescribe for election results to be tabulated within five days after the day of Elections in single mandate constituencies and 10 days for multi-mandate constituencies, whereas all election results must be publicly announced within five days after

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<sup>9</sup>mainly due to lack of professionalism and issues with printing and dissemination of ballot papers as explained in ENEMO's previous reports.

the final tabulation of votes. Most TECs have managed to respect the given legal deadlines, yet the vote counting, tabulation and announcing of election results was delayed in many places, all over Ukraine and in some instances election results were not final and public even after two weeks from the first round's Election Day.<sup>10</sup>

Even though most TECs conducted their work in a relatively proper and timely manner, the politicized and unprofessional conduct of a number of TECs was rather concerning. Having in mind the previous evaluation of TECs by its observers, ENEMO would like to stress again the recommendation that an adequate professionalization of the partial and/or full composition of at least higher level TECs is highly necessary for future elections. Besides, a number of interlocutors claimed that certain TEC members were offered bribes and/or were pressured by other means, by certain election participants and other persons.

ENEMO and many other stakeholders raised concerns before elections regarding the complexity of the new Law and the lack of knowledge of relevant PEC members. These concerns turned out to be justified. Mostly due to the lack of training and many replacements of PEC members, TECs in all regions of Ukraine returned a large number of protocols from PECs to be corrected accordingly. In some regions, the percent of returned PEC protocols for correction of mistakes at certain TECs was even close to 50% (Summy, Volyn, Ivano-Frankivsk, etc.), or even more than 60% (Zhytomir, Zaporizhia), whereas some TECs in Lviv and Kharkov had to return around 20% of protocols. TECs had to conduct re-counting of votes received from numerous PECs in order to establish final results of voting, mostly in Volyn, Vinnytsa, Odessa, Dnepropetrovsk, etc.

Based on Article 87 of the new Law on Local Elections, repeated voting for elections of deputies of village and settlement councils, as well as village, settlement and city with less than 90,000 voters mayors shall be held by the same PECs, whereas City TEC in cities with 90,000 or more voters shall form new PECs, based on proposals of candidates running for the city mayor in the second round of elections, not later than five days before the day of repeated voting. The Law prescribes quite a big number of members per each PEC (16 persons for large, 14 persons for medium and 12 members of small PECs), equally nominated and represented by both candidates running for Mayor.

However, as it was the case in the first round, a number of mayoral candidates have not managed to provide an adequate number of precinct commissioners from their side, which highly undermined the equal representation rule during these repeated elections, as the remaining PEC members were again selected by the relevant TEC. Most interlocutors claim that the lack of funds for PEC members is the main reason why they did not have a larger interest of citizens to take part in precinct commissions, claiming that those candidates supported by larger political parties and/or those having more funds for elections, paid their

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<sup>10</sup> The Kiev Administrative Court of Appeals (Case No. 362/7311/15-a) ordered vote re-count at Salyvonkivska TEC which was delayed.



PEC representatives in addition to the fees covered by the state budget. Again, the procedure of selecting such PEC members by TECs was questionable and is not adequately described within the new Law.

A large number (around 4000) of new PEC members have been additionally trained by the CEC and civil society, with the support of IFES regarding new legal provisions before the repeated elections on 15 November.

Many interlocutors and ENEMO observers have once again expressed concerns that some PECs lacked adequate resources and space for proper and efficient conduct of voting.

Inadequate legal provisions, numerous mistakes and improper conduct of certain TECs with regards to ballot printing have caused serious problems and concerns in a number of places in Ukraine in these elections, sometimes even leading to repeating of the first round's elections. Besides the previously mentioned issues in Mariupol and Krasnoarmiysk, elections are to be repeated in Svatove, Dovzhok, Kamentz-Podilski (Khmelnitsky oblast) and other places, mainly because of problems regarding the printing, storing and dissemination of ballot papers. Concerns were also raised about the exact number of printed and/or distributed ballots in a number of places, whereas additional ballots were found improperly stored in several TECs and printing companies during the first round of elections.

## Women Participation

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Representation of women candidate's at all council levels of 22 Oblasts was 29.8%, out of which some 15.2% of women were elected. The highest level of women deputies were elected in Sumy, Khmelnsky and Kharkov and stand at 21.9%, 21, 4% and 19, 2% respectively. The regions with the lowest elected women candidates are Zakarpatie with 10.3% and Odessa with 9.5% respectively.<sup>11</sup>The number of elected women candidates at Kiev city and other regions is around 18 % as opposed to 82 % of elected male deputies. The high percentage of women representation is noted in Chernihiv with 33% and Lviv at 25%, whereas Kirovograd and Uzgorod have the lowest women deputies with 9.5% and 8.3%. As reported previously by ENEMO, women candidates running for Mayors and Head of Councils was less than 13%, where only two women candidates took part for the second round of mayoral elections.

ENEMO had previously highlighted the lack of women representation in party leadership at the local and national level and disproportionate representation of women among the party leaders.

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<sup>11</sup> Data prepared by the Committee of Voters of Ukraine (CVU) on 13 November 2015. Data is not final and is subjected to change.

## Registration of Voters

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ENEMO has not received major complaints regarding the accuracy of voters' list. Nevertheless, the situation in Pavlohrad (Dnepropetrovsk oblast) had raised some concerns whether the Voters' list is entirely accurate and/or was being regularly updated. Namely, during the counting of votes, the city TEC has calculated that the total number of voters in this city is less than 90 000 and that election results for the Mayor are to be announced after the first round of elections, by using the First-pass-the-post system of elections. According to their decision, the candidate that won the largest number of votes in the first round of elections should have been directly elected and appointed as a new Mayor.

On 27 October 2015 the CEC had adopted a similarly dubious Decision No. 515, which stated that no second round for mayoral elections may be held if a TEC, when preparing the protocol on final results of elections finds that the total number of voters included in voters' lists is less than 90 000. This CEC decision was later overturned by the Kiev Administrative Court of Appeals<sup>12</sup>, after CEC decision was challenged by the Pavlohrad candidate for the Mayor, who was previously negatively affected by such decisions of election commissions. The Court observed that the number of voters in the city of Pavlohrad, as of 1 August 2015 was 90295 voters, based on the information that was published in the 'Voice of Ukraine' on 1 September 2015. The CEC website also provided that approximate number of voters in Pavlohrad is 90 208. The Kiev Administrative Court of Appeals argued that the law provides for a clear procedure and criteria for determining when and how each election system should be used and therefore had cancelled the above mentioned CEC decision.<sup>13</sup>

The new Law on Local Elections is not very demanding in terms of special conditions for a voter to change his/her votes address, what lead to several cases of abuse of such legal provisions. A high number of voters registered at the same address has been discovered in some places. Besides the Zatoka case, where 296 students have been found registered for voting at the same address, as mentioned in ENEMO's previous reports, another case in Zatoka was later reported and investigated by the authorities. Namely, another 323 persons were illegally registered to vote, but the Odessa Administrative Court of Appeals ordered the PEC to remove them all from the Voters list. As a result such "phantom" voters were deleted from the respective voters lists in both cases.

In addition to this, the Odessa District Administrative Court prohibited the Bilhorod-Dnistrovskiy regional Department of the Chief Administration of State Migration Services of

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<sup>12</sup> The Kiev Administrative Court of Appeals. (Case No. 875/59/15).

<sup>13</sup> This decision was later upheld by the High Administrative Court of Ukraine on 2 November 2015.

Ukraine in Odessa region to register more than five people (except for under-aged persons) at one place of residence, until 25 October 2015, i.e. the election day of the first round of local elections<sup>14</sup>

According to Article 87 of the new Law on local elections the Voters' lists should be prepared by the State Voters Register maintenance body and submitted to the relevant PECs, no later than two days before the Day of the repeated voting. Voters' lists were mainly received on time by PECs in most cities.

Internally displaced persons (IDPs) were not able to vote in these Local elections in their current place of refuge. Also, citizens that were not in their registered place of residence on the day of voting were not allowed to vote elsewhere, yet the overall voter turnout (more than 46%) in the first round of elections was similar to previous elections. The voter turnout in the second round of elections was significantly lower (around 34%).

## Electoral campaign

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Campaign before the second round of elections was reported as less intense and engaging than before the first round. Candidates met with voters, displayed their messages on billboards, leaflets and during rallies, as well as debated each other in TV shows. The overall intensity of the campaign was significantly weaker in all oblasts.

Financial resources were also an important factor for a less intensive campaigning. Most candidates already spent most of their resources during the first round of elections in order to offer a serious challenge. Certain candidates even expressed their views that there is no need for them to campaign further and spend additional resources, as they believe that the electoral race has already been finished for them, due to a large difference in received votes during the first round of elections between the two competing candidates (Lviv, Kiev, Sumy and Vinnytsa). Only a few candidates have intensified their campaign in the last days before the voting, as noticed by ENEMO observers.

Based on reports from many interlocutors and direct observation, candidates who are already in an administrative position, such as acting mayors seemingly had a significant advantage over their counter candidates in terms of campaigning. The possibility to use and/or abuse state resources may have significantly increased their visibility and campaigning tools. Mayoral candidates in Lviv, Chernivtsy, Vinnytsa, Rivne, Chernihiv, Zaporizhia and Poltava have been accused to have used their public position in order to gain votes by our interlocutors, whereas in most of these cases there was a conflict between the administrative duties of previously elected officials and their campaign activities.

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<sup>14</sup>Odessa District Administrative Court. Case No 815/5725/15;

Numerous accusations of vote buying continued to be widespread among most of cities before the second round. Those candidates that already hold an administrative position were accused of indirect vote buying and of presenting the work of the public administration as their own achievement. This was specifically the case in Vinnytsa, Lviv, Poltava and Ivano-Frankivsk. In the city Kryvyi Rih, Dnepropetrovsk oblast, Opposition Bloc candidate for mayor was accused of blackmailing the workers in the public sector to vote for him. In Ivano-Frankivsk, one mayoral candidate organized free tours for Ivano-Frankivsk citizens to Kalush. The trip included a free lunch, free medical examinations and medications.

ENEMO observers, as well as domestic observation organizations have documented a series of cases in which voters took a photo of their ballots before casting it in several regions. This has raised serious suspicions of vote buying, whereas in some cases the authorities reacted efficiently to cope with this problem and to punish possible perpetrators. This was the case in Chernivtsy where the deputy of Ridne Misto was officially placed on the wanted list by the local police following many accusations of vote buying. In relation to the same case, a number of students were arrested for selling their votes. While such actions from the local authorities are a step forward in the right direction, the high number of allegations of vote buying across the country should alert all relevant authorities to intensify their investigations and or sanction possible perpetrators accordingly. Their task is made more difficult by the fact that most instances of vote buying are made indirectly and through the abuse of state resources. The lack of transparency of campaign finances and the failure of many candidates to present proper financial documentation after the first round of elections compounds to this matter too.

During this campaign period certain candidates received undue electoral support from elected state officials, as noticed at Ivano-Frankovsk and Zhitomir for example. Such situations should be avoided in the future and previously elected and appointed state officials should refrain from publicly supporting any candidate at the local/regional level.

Instances of black PR remained an issue during the campaign for the second round too in many cities, especially in Dnepropetrovsk, Cherkassy, Mikolaev, Ivano-Frankovsk, Vinnytsa, Lvov, Poltava, Chernivtsy and Chernihiv.

A number of cases where candidates had violated election rules by starting their campaigns earlier were noted<sup>15</sup>, especially in Zhitomir, Chernihiv, Mikolaev, Poltava, Lviv and Ivano-

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<sup>15</sup> In Zhytomir Sergiy Suhomlin from Solidarnost started campaigning three days before the legal term and subsequently police referred his case to the court. Similarly, in Chernihiv mayoral candidate Sokolov started his campaign early by spreading black PR against his competitor, as did Opposition Bloc candidate Igor Dyatlov in Mikolaev. In Poltava, mayoral candidate Andriy Matkovskyi started his campaign immediately after the first round. In Ivano-Frankivsk Svoboda candidate Ruslan Martsenkiv started campaigning before the results for the first round were even announced. He presented the achievement of local government as his own and was accused of attempted vote buying by granting financial support to

Frankovsk. According to the new Law, in case of repeated voting (the second round of elections too), the election campaign shall be resumed on the day following the day of official publication of the respective TEC's decision on repeated voting.

Even though the overall electoral atmosphere is much calmer in this round of elections, observers have reported several cases of violence related to elections, committed against mayoral candidates and elected deputies, their staff and even against election commissioners. ENEMO condemns such acts and urges relevant authorities to thoroughly investigate such cases and adequately sanction their perpetrators in order to reduce their count in future elections. In Zaporizhia, the Chief of Staff of the runner-up in the city mayoral elections was admitted to hospital after being beaten on the street by unknown attackers. At the same city, campaign materials of one of the mayoral candidates, as well as those of an organization named "We – Zaporizhcy" were destroyed. In Sumy the car of an elected member of the city council from Samopomoch party was set on fire on 3 November, whereas in Rivne, the car of former Opora activist was set ablaze. Since this person is now involved in a movement against the current mayor this action might be politically motivated. In Vinnytsa, a rubber bullet was fired towards the headquarters of Svoboda party. Police is investigating all these cases.

## Complaints and Appeals

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ENEMO observers reported on more than 600 election-related cases submitted before administrative courts and courts of general jurisdiction. During the post-election period, most cases were related to complaints on actions or inactions of TECs and PECs, followed by the complaints related to alleged violations of vote counting and registration of candidates. Number of cases was rejected on the grounds of lack of evidence, untimely submissions or submissions made in an inadequate form. Courts have mostly met tight time frames provided by the law, although the adjudication of votes' re-count at times was marked by inconsistent interpretation of the Law.

The Criminal Code of Ukraine criminalizes electoral offences related to obstructing one's right to vote or right to take part in elections, falsification of electoral documents, and illegal use of vote ballots by a voter, violation of the secrecy of voting, violation of election funding campaign, vote buying and other. Criminal sanctions related to the electoral related offences vary between one to three year prison terms, whilst terms for the crimes committed under aggravating circumstances is increased to five years. The Code criminalizes direct vote

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students of the local high school. In Lviv, mayoral candidate Ruslan Koshulinski breached campaign provisions by placing promotional stickers in the public buses.

buying but contains no provisions to sanctioning indirect vote buying.<sup>16</sup> Moreover, there is a divergence as to what is an illegal benefit provided by election participants to voters during the pre-election campaign between the Criminal Code and the new Law. Under the Criminal Code, the pre-election campaigning by means of providing enterprises, establishments, or organizations with illegal benefits are sanctioned if their value exceeds three percent of the minimum wage.<sup>17</sup> The Law on Local Elections, however prohibits conduct of the election campaign accompanied by giving money to voters, or other goods except for goods which contain visual images of name and party symbols which does not exceed value of such good does not exceed five percent of the minimum wage.<sup>18</sup>

Since the beginning of the 2015 local election process, law enforcement bodies have received notifications on 7,105 election related crimes and initiated 478 criminal proceedings.<sup>19</sup> ENEMO observers have reported on high number of criminal cases opened in Kiev, Poltava, Kharkiv, Dnepropetrovsk and Odessa. The large number of these cases concerned obstruction of right to vote, attacks on candidates or other participants of the electoral process as well as vote-buying, stealing of ballots and falsification of electoral documents. ENEMO observers reported that the Shevchenko District Court in Chernivtsy sentenced three students for vote-buying for a three year prison term suspended by one year probation period.<sup>20</sup>

The Law on Judicial System and the Status of the Judges defines the legal grounds for organization and administration of justice of Ukraine. It also entitles the Appeal Courts to analyze judicial statistics, study and generalize the judicial practice. The law also provides for the methodological assistance to local courts in applying the relevant legislation.<sup>21</sup> In a separate provision the law mandates the plenary session of a High Specialized Court – a panel of all judges of a High Specialized Court to ensure uniform application of provisions of the law in resolving certain categories of cases within the respective judicial specialization and to summarize the practice of substantive and procedural law. The plenary session of the High Specialized Court is convened by the Chairperson of the court as many times as necessary or at the request of at least one fifth of the judges of the high specialized court, but not less than twice a year.<sup>22</sup>

The new law adopted only several months before elections stressed the importance of adequate trainings of judges on election related disputes. Based on the information received by ENEMO, the Kiev Administrative Court of Appeals has organized four workshops on the election related disputes including the matters related to application of the electoral

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<sup>16</sup> Indirect vote buying can be sanctioned under Article 212<sup>10</sup> of the Code of Administrative Offences where campaigning in forms and by means, which are inconsistent with the Constitution and Laws of Ukraine or other violation of restriction on conduction of election campaign are punishable by relatively low fines for citizens and public officials.

<sup>17</sup> Article 160 (3) of the Criminal Code of Ukraine

<sup>18</sup> Article 60 of the Law on Local Election.

<sup>19</sup> IFES Ukraine, Local Elections Bulletin no 11.4 November, 2015.

<sup>20</sup> Decision of the Shevchenko District Court of 9 November 2015. Case no727/8656/15-к.

<sup>21</sup> The Law on Judicial Systems and Status of the Judges. Article 27.

<sup>22</sup> Ibid, Article 36.

legislation and judicial practice. Whilst workshops were open to all judges, ENEMO learned that not all judges from the regional administrative courts were able to attend the training workshops. Moreover, judges from the courts of general jurisdiction that adjudicate election disputes hardly had any training on the new law. ENEMO also learned that the plenary session to study the judicial practice related to the election related legislation is usually convened right after the end of elections.

## Media

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ENEMO Election Observation Mission did not carry a systematic media monitoring for the Local Elections of 25 October and 15 November 2015. The data presented in this section are based on interviews with media and other domestic and international stakeholders, and non-systematic observations of the LTOs.

Using media outlets for electoral campaigning purposes for the second round of elections was much lower than for the first round, in line with the overall reduced campaigning throughout Ukraine. According to various interlocutors of ENEMO, such situation could be explained both the fact that in many cities the difference in results from the first round was high enough for some candidates not to lead an aggressive campaign, as well as to the lack of funds for paying for media advertisement or debates, especially given the fact that the law does not provide for free airtime during local elections. Those candidates that had enough funds for the second round campaigning mainly chose the television as an advertising channel.

Partisanship and lack of autonomy of the media was observed or reported by interlocutors of ENEMO observers in almost all oblasts also for the second round, with media outlets giving priority to some candidates and ignoring or giving less space to others. Despite that, no media interlocutors have declared being under open pressure by candidates or parties. In many cases media outlets under local government ownership have been reported to give space to undercover political advertising for incumbent mayors, which apart constituting media bias is also an abuse of public resources<sup>23</sup>.

Advertising, or articles which put selected candidates under an unfavorable light for the audience<sup>24</sup> (also known as black PR) and paid-for news items were also reported for the second round.

The only responsible body for monitoring media conduct is the National Television and Radio Broadcasting Council of Ukraine (NTRBC). In case of observing or being reported about media bias, NTRBC can either address the media directly and request it to correct the bias, or notify the relevant election management body - CEC (for national media) and TECs

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<sup>23</sup>Vinnitsia, Cherkassy, Chernihiv and Lviv.

<sup>24</sup>Vinnitsia, Zhytomyr, Mykolaiv, Zaporizhia and Lviv.

(for local media). Nevertheless, the election management bodies consider their intervention in media matters as out of their competencies, since the media are not considered as electoral subjects. In case the request of the NTRBC is sent to the media directly, the media has one month to reply to such a request, in which case the correction of the bias can appear when the campaign is already over. The only legally effective means the candidates have to address biased media coverage is addressing a court, in case of defamatory news pieces and force the relevant media to publish an article disapproving the first one, in case the court rules in their favor.

## Election Day

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During the observation of PECs on 15 November election day, ENEMO observers found that most PECs were opened on time, whereas just 1,5% of them were opened within 15 minutes delay. This represents an improvement compared to the first round of elections held on 25 October, when 88,20% of the monitored polling stations opened on time, 9,7% opened within the next 15 minutes and 2,20% of all PECs opened after more than 15 minutes delay.

Overall, ENEMO observers rated the activity of PECs during the opening as either good or very good. Such ratings represent a positive development compared to the first round of elections, when the activity of 2,2% of PECs was considered very bad by ENEMO observers.

PECs generally conducted the opening in order and according to legal procedures in 97% of monitored cases, a fact reflected by the lack of substantial complaints related to their activities. This is an increase from the first round when 89,2% of the monitored PECs followed all prescribed procedures.

At the same time 1% of observed PECs did breach opening procedures in various ways. Most common violations of such procedures were cases of improper sealing of ballot boxes, failure to insert control sheets, or the failure to properly fill in the opening protocol – all being reported problems in the first round of elections as well.

Unlike in the first round when commissions received fewer ballots than the number of registered voters in many PECs, during this round this problem was generally solved, with only a few instances of mismatch still reported.

ENEMO observers rated the organization of the voting process of PECs as good and very good in 98,9% of cases, a slight improvement compared to the first round (95,8%). The conduct of the PEC commissioners was highly commended by ENEMO observers in 99% of



cases. However, reports also noted that in some cases commissioners did not receive proper training and were not fully aware of the procedures.

Voting procedures were implemented without any substantial complaints and generally all PEC commissioners were present. The process of issuing the ballots was transparent and the secrecy of voting was ensured in almost 100% of cases. The set up of precincts was in 97,2% of cases in line with legal requirements.

At the same time, however, 3,5% of visited PECs were reported as crowded and disorganized, but the commissioners seemed capable to cope with such a situation. In few instances (1,4% of visited PEC) there were cases of campaign agitation outside the PECs. Moreover, only about half of PECs (52,7%) displayed full information about voting procedures and candidates.

A number of shortcomings and irregularities were reported during the Election Day, although without significantly disturbing the entire voting process. Such problems were related mainly to improper sealing of stationary and mobile ballot boxes, especially in PECs located in Zaporizhia, Ivano-Frankovsk, Kirovograd and Vinnytsa. Due to lack of funds, TECs were unable to provide the requisite electoral materials, such as seals and posters and as a result, PEC commissioners were forced to improvise. Incorrect protocols, family voting, improper signaling and design of the voting stations and instances of unauthorized people in PECs were also reported.

More significantly, PEC 181353, in Zhitomir was closed at the time of ENEMO observers' visit. There was no sign that this PEC was ever opened.

At some PECs, representatives of one candidate predominantly manned these commissions, sometimes even exceeding the legal quota. This was the case specifically in Kiev, where representatives of mayoral candidate Vitaliy Klitschko clearly outnumbered those of his competitor.

Instances of citizens taking a photo of their vote continued to be reported, raising again suspicions of vote buying. For example, several such instances were reported in PEC 181429, Zhitomir oblast. Another incident that raised concerns of vote buying occurred in PEC 741019 at Chernihiv oblast, where 11 voters had a strange white sticker on their ID card.

Another serious case occurred in PEC 531230 at Poltava oblast, where ENEMO observers and commission members witnessed that a voter inserted two ballots into the ballot box. It seemed that the voter managed to get hold of two ballot papers, by bribing two citizens into selling their votes. The police was alerted and are now investigating this case.

ENEMO observers rated the closing and counting procedures as good and very good in 98,5% of monitored PECs, which is a big improvement compared to the first round of elections, when 88% of visited PECs received such a rating. Moreover, during the first round of elections, ENEMO observers marked the counting procedures as bad in 12% of PECs, as opposed to this round of elections, where such percentage dropped to 1,5%. Nevertheless, 11,8% PECs made slight mistakes during counting procedures, but without distorting the entire process.

ENEMO observers also commended PEC officials for the timely manner in which they finished the counting procedures. While the process of filling in the protocols proved again problematic in some cases, the accuracy of the process was significantly improved.

At PEC 531196 in Poltava oblast, commissioners found out that half of a ballot papers were missing, during the counting. TEC advised PEC members to make a note of this incident and consider ballots as spoiled. At PEC 12139, Dnepropetrovsk oblast, a fake ballot was discovered in the ballot box and commissioners took a photo of it.

Transfer of materials from PECs to TECs was generally conducted in a proper manner and according to legal provisions in 98,5% of the cases observed. The activity of TECs was generally orderly and fully transparent. This was reflected by the fact that 97,6% of TECs received no complaints regarding their work. Overall, the activity of TECs was rated as very good (58,8%) and good (41,2%) by ENEMO observers.

Protocols coming from PECs continued to be affected by mistakes and as a result, TECs ordered corrections in 52,9% of cases. Nonetheless, ENEMO observers reported that TECs demanded a recount of ballots in only 5 cases, which is a major improvement compared to the first round of elections.

## Election observation Missions

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The Central Election Commission has approved the request of 14 international organizations, 14 foreign countries<sup>25</sup> and 83 domestic organizations to accredit observers for the Local Elections of 25 October and 15 November 2015. The CEC has accredited in total 1,669 international observers of which 115 were accredited for the runoff elections. The high number of observers following the local elections of 2015 shows a particular interest of the international community in them.

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<sup>25</sup> Austria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Japan, Lithuania, Poland, Slovak Republic, United Kingdom, and the United States.

The international election observation missions with the highest number of observers to follow the local elections were OSCE/ODIHR and ENEMO. OSCE/ODIHR's preliminary findings and conclusions for the first round were presented jointly with those of the Congress of Local and Regional Authorities of the Council of Europe and the European Parliament. ENEMO's preliminary findings and conclusions for the first round were presented on 27 October.

Domestic organizations also continued their activity, presenting their findings from the first round and observing preparations for the runoff elections.

ENEMO observers have not reported any serious case of obstruction of their monitoring activity throughout the whole period of monitoring.

## Mission information and acknowledgements

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The European Network of Election Monitoring Organizations (ENEMO) is an international network consisting of 22 leading election monitoring organizations from 18 countries of Central and Eastern Europe and Central Asia, including three European Union countries.

To date, ENEMO has organized 21 international election observation missions to seven countries, the present being the 10<sup>th</sup> election observation mission to Ukraine. ENEMO member organizations have monitored more than 200 domestic elections and trained more than 200,000 observers.

ENEMO seeks to support the international community's interest in promoting democracy in the region by assessing electoral processes and the political environment and offering accurate and impartial observation reports. ENEMO's international observation missions use international benchmarks and standards for democratic elections to evaluate the electoral process and the host country's legal framework.

The ENEMO Election Monitoring Mission for the Local Elections of 25 October 2015 in Ukraine has started its monitoring activity with the deployment of the Core Team, composed of 8 experts in Kyiv. Another 50 long term observers were deployed to assess the pre-electoral period, followed by 180 short term observers who observed the Election Day, counting and tabulation of results for the first round. The complaints and appeals in the post E-Day period were observed and assessed by long term observers and core team, as well as the electoral campaign and activity of the election administration bodies in preparing the second round of elections in 29 cities and towns across the country.

In the observation of the E-Day, counting and tabulation of results for the repeated elections held on 15 November 2015 ENEMO deployed 90 short term observers and 50 long term observers, for a total of 67 teams of observers in the field. The EOM will continue its

observation of the electoral process until the announcement of the final results.

This preliminary report is based on observations of the long-term and short-term observers and their findings in reference to compliance with international standards for democratic elections, national legislative framework and OSCE commitments. The report does not render a final assessment of the entire election process; ENEMO will defer its final assessment until the end of the election process and publish a final report within 30 days from the announcement of the final results of the entire election process.

ENEMO Mission wishes to express its appreciation to all institutions, interlocutors and organizations that have cooperated and assisted our work in the course of the observation. ENEMO also takes this opportunity to express the highest acknowledgements to the European Union for the support to the election monitoring mission.