

Election Observation inside the European Union: a Void to be Filled

— Michael Lidauer and Armin Rabitsch

Introduction²³

Election observation is a globally recognised instrument to maintain and advance electoral integrity. International election observation, such as the European Union (EU) Election Observation Missions (EOMs), showcases the commitment to advance democratisation and foster global adherence to human rights and the rule of law.²⁴ On the national level, citizen election observation (also called domestic or national observation) contributes to safeguarding electoral democracy and can serve as a catalyst for electoral reform. Few citizen observer organisations, however, have developed in states with long established traditions of democratic elections. Paradoxically, many of the countries that promote international election observation lack enabling legislation and mechanisms for election observation domestically.

Inside the EU, conditions and approaches vary considerably, in particular with regard to the legal recognition of election observers. Ahead of the 2024 elections to the European Parliament (EP) – which take place concurrently across the EU and are organised separately by all member states – the European Commission (EC) has called upon the member states to encourage and facilitate impartial and independent election observation at all stages of the electoral process, both by citizens and international bodies.²⁵ Yet no specific support framework or independent funding has been provided. This contribution emphasises the value of engaging citizen election observers in electoral processes within the EU and provides recommendations for the European institutions and the member states to create the relevant enabling conditions.

Election observation and its principles

International observation of elections enhances the integrity of democratic institutions and builds public confidence in electoral processes by independently assessing the compliance of legal frameworks and electoral practices with international standards and regional commitments.²⁶ Since the political transformations in eastern Europe, including the formation of new states following the break-up of the Soviet Union and Yugoslavia, international election observation has become a standard practice and election observers have recently been acknowledged as human rights defenders by the United Nations.²⁷ Several international and regional organisations – including the EU and the Organization for Security and Co-operation in Europe (OSCE), through its Office for Democratic Institutions and Human Rights (OSCE/ODIHR) – have developed standard procedures for election observation missions and other election assessment formats.²⁸

In parallel, in-country citizen election observation,²⁹ providing independent third-party assessments of electoral processes potentially linked to post-electoral advocacy for democratic reforms, is

now a recognised electoral good practice undertaken by more than 250 recognized civil society organisations worldwide.³⁰ Citizen election observers can play a pivotal role in democratic processes, serving as independent witnesses to ensure the integrity and fairness of their own elections. Unlike international observer missions, citizens are in-country throughout all the stages of the electoral process, from voter registration to the implementation of results, and their scope of activities reaches beyond the electoral period as such.

Citizen election observers are able to assess the adherence of electoral stakeholders to electoral laws and regulations. This entails assessing electoral campaigns, monitoring campaign finance as well as equitable access to media and resources, and evaluating the conduct of election officials. Observers document violations or discrepancies, prompting electoral authorities to address deficiencies and improve electoral procedures. What is more, their findings can serve as a basis for legal challenges and long-term electoral reforms. Through follow-up to recommendations, citizen observers can become initiators, advocates, and stakeholders in electoral reform processes, with impact far beyond election day.³¹ Their activities also include the conduct of research on aspects of electoral processes, the compilation and sharing of electoral good practices, and the provision of expertise throughout the electoral reform process. With their continued presence in-country, citizen observers can stay engaged throughout the electoral cycle in promoting better elections and by awareness raising and capacity building for other civil society organisations.

International and citizen election observation have evolved side by side over the past thirty years. Despite similar methodologies, international and citizen observers have complementary functions, and observation by citizens is considered more crucial than ever.³² Citizen observers defend human rights in-country, are more familiar with the political context, can conduct process and results verification for transparency, and are better positioned to advocate for electoral reforms. By providing bottom-up scrutiny and holding governments and election management bodies accountable throughout the electoral cycle, they strengthen the rule of law and contribute to peace and security. Although international voices often get more attention in the media, citizen observers have a legitimacy of their own and contribute uniquely to the transparency of democratic processes.

Election observation is embedded in a set of international standards.³³ The right to participate in public affairs is enshrined in the Universal Declaration of Human Rights and in the single-most important binding standard for democratic elections: the International Covenant for Civil and Political Rights.³⁴ Building on decades of practice, international observer organisations like the EU, the Organisation of African States (OAS), and OSCE/ODIHR have developed similar methodologies for international election observation³⁵ and have published guidebooks for citizen observers.³⁶ In 2005, the leading international observer organisations endorsed the Declaration of Principles for International Election Observation (DoP) together with a Code of Conduct, which provides common guidelines. The EP, the EC and the Council of the EU are all endorsers.³⁷

A similar framework for citizen observers was agreed under the auspices of the United Nations in 2012: The Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations.³⁸ It declares that citizen observers “can be considered as specialised human rights defenders focused on civil and political rights, which are central to achieving genuine elections.” The endorsing organisations of the Declaration of Global Principles have come together to form the

Global Network of Domestic Election Monitors (GNDEM), which promotes solidarity, common norms and methodology, exchange of experiences, good practice, and lessons learned among citizen observer organisations.³⁹

Guiding documents like the Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations and the DoP help to raise the standards of election observation and foster recognition by peers, the media, and the international community. A common principle enshrined in the codes of conduct of both citizen and international observers is that of non-interference in electoral processes. Such agreed standards also serve to distinguish impartial election observers from so-called fake observers, who simulate compliance with election observation norms, but pursue a partisan agenda and undermine trust in professional election observation.⁴⁰

Distinguishing between non-partisan observers and political party agents or scrutineers is also critical. While the access of political party (and candidate) representatives to polling stations and counting centres is a fundamental transparency measure enshrined in legislation across Europe, party agents are not observers and cannot replace them. Party agents represent stakeholders competing for electoral victory, whereas observers represent the interests of voters and offer a non-partisan, third-party assessment without interfering in the electoral process.

The context for election observation in the EU

Few citizen observer organisations have developed in states with long established traditions of holding democratic elections. In most cases, they originated in emerging democracies or countries which recently underwent a political crisis. The formation of citizen election observation can be understood as a result of the combination of serious electoral malpractice (grievances) and the freedom of civil society to mobilise (political opportunities).⁴¹ Accordingly, the lack of citizen observation initiatives in established democracies might be due to a high level of public confidence and the lack of a perceived need for engagement and scrutiny by citizens. However, while the confidence of European citizens in their national election administrations is indeed high,⁴² there is a growing awareness of potential vulnerabilities and of the need to enhance the resilience of elections in Europe.⁴³

Under an overarching legal framework at European level, elections to the European Parliament are organised concurrently, but separately, by all EU member states. These modalities reflect the heterogeneity of Europe's electoral heritage, but also reveal a lack of coherence in the applicability of basic rules. For example, the minimum voting age and the age of candidate eligibility differ across the EU resulting in inequalities among its citizens.⁴⁴

Over the last decade, established democracies have witnessed new trends such as increased online advertising for election campaigns as well as threats to electoral integrity including unsubstantiated allegations of fraud to diminish trust in the election administration, cyber-security threats to electoral infrastructure, and mal-intentioned foreign disinformation activities. The EU is addressing these challenges on various fronts, including through the Digital Services Act, which is now in force. Its impact on the next European elections will have to be assessed by election observers.

Based on United Nations and European standards, jurisprudence, and soft law, in particular the right to participate and the requirement for independent oversight, citizen election observers are well placed to assess the respect for fundamental rights, point out shortcomings, and, where necessary, advocate for electoral reforms. Citizen election observation is, therefore, becoming increasingly relevant in the EU, which requires member states to provide enabling conditions for election observation as well as to include observer organizations in electoral reform processes.

European standards for election observation

The EU established the main objectives of EU international election observation in its Communication from the Commission on EU Election Assistance and Observation⁴⁵ with a commitment to strengthening the respect for fundamental freedoms and political rights, but there is no such guiding document for election observation inside the EU.

The Council of Europe's European Commission for Democracy through Law, better known as the Venice Commission, in its Code of Good Practice in Electoral Matters⁴⁶ provides for election observation in and outside Europe, setting forth that "[b]oth national and international observers should be given the widest possible opportunity to participate in an election observation exercise".⁴⁷

The OSCE, with its Warsaw-based Office for Democratic Institutions and Human Rights (OSCE/ODIHR), conducts election observation within Europe in accordance with the 1990 Copenhagen Document's guiding principles for election observation for OSCE participating States, twenty-seven of which are EU member states.⁴⁸ Embedding provisions for citizen and international election observation in the law, as required by the OSCE Copenhagen Document, guarantees access and provides protection. An accreditation system is usually established by legislation to implement observer regulations and to regulate observer access and deployment. The agreed norms for international, non-partisan election observation by citizen organisations guarantee full accreditation by the relevant authorities and countrywide access to the electoral process, including polling stations and storage sites, during the pre-election, election-day, and post-election periods.⁴⁹

International election observation activities by OSCE/ODIHR regularly include countries in the EU. The first OSCE/ODIHR election activities in current EU territory took place in 1996 with EOMs to Romania and Lithuania. Partly as a result of Russian objections that OSCE election observation was only directed to the eastern participating states, the Office began assessing specific aspects of elections in western European states in 2002.⁵⁰ Since then, the OSCE/ODIHR has regularly conducted assessments of elections in EU member states and has conducted around thirty observation activities since 2019 alone. In recent years, this has included limited and fully-fledged election observation missions (including long-term observers) in Bulgaria, Hungary, Poland, and Romania.⁵¹ However, a study of 200 ODIHR reports has illustrated that the commitments under the 1990 Copenhagen Document are not yet consistently implemented within the EU.⁵²

Insufficient enabling conditions

The EU member states' legislation and approaches to election observation differ greatly despite their shared OSCE commitments. Only seven member states (Bulgaria, Croatia, Finland, Lithuania, Poland, Romania, Slovenia) have legislation and accreditation systems in place for both international and

domestic observers. Five additional countries (Austria, the Czech Republic, Hungary, Luxembourg, the Netherlands) have legislation⁵⁵ and accreditation for international observers, but not for citizen observers; Belgium only permits international observers; Estonia and Slovakia permit election observation without accreditation; and Latvia accredits international and citizen observers without a corresponding legal framework. In six member states (Denmark, France, Germany, Malta, Spain, Sweden), while legislation does not contain explicit provisions for election observation, voting and counting processes are open to the public without an accreditation system. Such access allows a degree of transparency on election day, but does not substitute the legally enshrined possibility for independent observation. The remaining five member states (Cyprus, Greece, Ireland, Italy, Portugal) do not have any framework for election observation.⁵⁴

Table 1: Regulations for election observers in the European Union

	Voting and counting open to the public	Law foresees international election observation	Accreditation for international observers	Law foresees national election observation	Accreditation for national observers	Election-Watch.EU accredited in 2019
Austria		X ⁵⁵	X			
Belgium	X	X				
Bulgaria		X	X	X	X	X
Croatia		X	X	X	X	X
Cyprus						X
Czechia		(X) ⁵⁶	(X) ⁵⁷			
Denmark	X					
Estonia	X	X		X		
Finland		X	X	X	X	X
France	X					
Germany	X					
Greece						
Hungary		X ⁵⁸	X			X
Ireland						
Italy						
Latvia	X		X		X	X
Lithuania		X	X	X	X	X
Luxembourg		X	X			
Malta	X					X
Netherlands	X	X	X			X
Poland		X	X	X	X	X
Portugal						
Romania	X	X	X	X	X	X
Slovakia	X	X ⁵⁹		X ⁶⁰		
Slovenia		X	X	X	X	
Spain	X					
Sweden	X					

Five of the countries that have legal provisions for citizen and international election observers (Bulgaria, Croatia, Finland, Lithuania, Poland, Romania, Slovenia) and two additional countries that have legal provisions only for international election observation (the Czech Republic and Hungary) underwent post-1989 political transitions. This suggests that such legislation was introduced in implementation of OSCE/ODIHR recommendations together with incentives for international aid and recognition (and, historically, incentives to become member states of the EU). This argument is underlined by the fact that most countries with active citizen election observer groups are or were recipients of external democracy support.⁶¹

This points to a paradox in international democracy promotion: most of the norm-givers, the established democracies promoting international and citizen election observation externally, do not respect this norm domestically. The perceived legitimacy of external election observation could be enhanced if democracy-promoting states were to follow the same norms, *inter alia* by encouraging citizen election observation “at home”.⁶²

OSCE/ODIHR recommendations to EU member states include the establishment of conditions for international and national election observation where they do not exist. The Venice Commission, in its Summary on Recommendations of an Internationally Recognised Status of Election Observers, states that “[i]t often happens that recommendations made following election observation do not have any effect. In such cases, European countries should show a positive example and, if necessary, reform their electoral legislation in order to include provisions on the observation process.”⁶³

That said, election observation in the EU has its own intrinsic value, especially in times of new geopolitical pressures, shrinking civic space, and illiberal trends in some member states, as well as new technological developments effecting both the administration of elections and electoral campaigns. As narratives of election manipulation and voter fraud increase and may be used strategically by some political actors⁶⁴, voter trust in the election administration and electoral procedures can be safeguarded and enhanced through methodologically sound observation.

In 2012, the EU adopted the Strategic Framework and Action Plan on Human Rights and Democracy, which established that its institutions have a responsibility to “systematize follow-up use of EU Election Observation Missions and their reports in support of the whole electoral cycle, and ensure effective implementation of their recommendations, as well as the reports of other election observation bodies (e.g. OSCE/ODIHR)”.⁶⁵ In 2015, a new EU Action Plan on Human Rights and Democracy was adopted which underscored the need to “consolidate best practices for leveraging EU and ODIHR EOM recommendations in EU and EU member state political dialogues and democracy support activities”, in order to maximise the impact of election observation.⁶⁶

These policies, however, relate to EU external action, where the EU is a major funder of electoral assistance.⁶⁷ Electoral support is one of the main components of the EU democracy support portfolio, accounting for around 100 million euros annually for the last two decades.⁶⁸ Electoral support activities, including support for citizen election observers, were funded by a range of instruments, but have now been incorporated within a single Global Europe⁶⁹ instrument.⁷⁰ There are neither policies nor funding arrangements for election observation inside the EU.

The EP is also actively engaged in international election observation and contributes to debates on further methodological and conceptual developments. A recent report recommends to strengthen the link between election observation work and the EU's wider support for human rights and democracy as well as to provide more support to initiatives related to election observation and knowledge-building at local, regional and international level.⁷¹ In two related resolutions, the EP has called on the OSCE, but not citizen election observer organisations, to organise an election observation mission during the June 2024 EP elections, and encouraged member states to make use of this possibility.⁷² However, while OSCE participating States committed themselves to invite OSCE/ODIHR to observe national elections, an official invitation is always required. It is, therefore, the individual EU member states which decide whether to invite OSCE/ODIHR observers for the EP elections.

The 2024 European elections provide an important opportunity to advance election observation within the EU. Although the EP has not explicitly called for citizen observation, the EC has clearly recommended member states to facilitate and establish enabling environments for independent election observation, including by citizens, in its recommendation on inclusive and resilient electoral processes in the Union⁷³ – part of the Defence of Democracy package.⁷⁴ This is in line with the EC's demonstrated interest in engaging with non-partisan citizen engagement around the European elections, as illustrated by projects for civic and voter education.⁷⁵ The EC has already recognised the role of accredited international and national election observers in assessing the transparency and targeting of political advertising.⁷⁶ This new legal framework provides scope for further observer inclusion and should be pursued by formalising independent election observer oversight.

In 2019, for the first time, the citizen-based network of election experts and observers Election-Watch.EU, to which both authors belong, conducted a comprehensive assessment of the EP elections covering all of the EU, with accreditation as observers in twelve member states.⁷⁷ Their findings and recommendations were presented to the EP Committee on Constitutional Affairs (AFCO) and the newly-formed European cooperation network on elections (ECNE).⁷⁸ The report was also referenced by the EC⁷⁹ and in subsequent electoral reform debates.⁸⁰ Ahead of the June 2024 elections, Election-Watch.EU conducted a pre-assessment mission and recommended the deployment of an Election Assessment Mission covering all member states.⁸¹

While representatives of European institutions have indicated their support for citizen election observation during the 2024 EP elections, no specific support framework has yet been envisaged. Election observation requires funding that is both independent and transparent in order to maintain credibility. Non-partisan observer organisations must avoid any perception of bias and cannot, therefore, receive direct state funding. Possible funding solutions could involve a range of partners including philanthropic foundations and regional organisations.

Conclusion and Recommendations

Citizen observers can play an important role in strengthening democratic resilience. Election observation efforts mobilise millions of citizens to participate in public affairs worldwide, but many EU member states still lack legal provisions for the recognition of citizen and international election observation. Past OSCE/ODIHR recommendations to address this gap have not been implemented,

despite commitments within the OSCE. This contrasts with the EU's overall engagement for democracy and human rights and is particularly problematic given the EU's prominent role in international election observation and its ongoing support for citizen election observers globally.

In this regard, the recent EC recommendation encouraging the EU member states to facilitate international and citizen election observation around the 2024 EP elections points to the policy void regarding election observation within the EU, and the need to create enabling conditions for international and citizen election observation.

In view of growing global and EU-internal societal, political, and technological challenges, the upcoming elections to the EP provide an opportunity to invest in democratic resilience, foster trust in electoral processes, and embrace a human rights-centred approach to further European integration. Implementing the idea of citizens across the EU observing their own elections as a means of building resilience and engaging with policy makers on weaknesses and good practices during the longer electoral cycle would be a step in the right direction.

It is, therefore, recommended that European institutions and EU member states should establish a shared policy for international and citizen election observation within the EU and establish appropriate funding mechanisms for such undertakings. In line with international commitments, OSCE/ODIHR recommendations, and the EC recommendation regarding the 2024 European elections, each EU member state which has not already done so should introduce legislative provisions to explicitly allow for the access and accreditation of election observers throughout the electoral process.

In support of its recommendation for EU member states to adopt legal provisions and enabling mechanisms for international and citizen election observation, the EU should design a mechanism to provide independent support for acknowledged citizen election observers inside the EU. Recognising its global role in international and citizen election observation and in line with the EC recommendation on the 2024 European elections, the EP should consider incorporating into its policy approach an encouragement and acknowledgement of citizen election observation inside the EU.

Michael Lidauer is a senior policy advisor and elections expert & Co-founder of Election-Watch.EU. Armin Rabitsch is the chairperson of Election-Watch.EU, a non-partisan election observer organisation. As election adviser including for European institutions he authored several reference documents in elections related to human rights and Artificial Intelligence.

The authors thank Paul Grohma and Markus Pollak for their comments on the article.

Notes

23 This contribution builds on a previous study by the authors: Michael Lidauer, Iris O'Rourke, and Armin Rabitsch, "Mapping Legislation for Citizen and International Election Observation in Europe: A Comparative Analysis on the Basis of OSCE/ODIHR Reports," *Nordic Journal of Human Rights* 35, no. 4 (2017): 360-374.

24 See the working paper: Armin Rabitsch, "Strengthening the Democracy Clause in EU Agreements and Instruments: Exploring Election Conditionality" Workshop Report (Brussels: European Parliament, 2023), 22-45, [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/702606/EXPO_STU\(2023\)702606_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/702606/EXPO_STU(2023)702606_EN.pdf).

25 European Commission, "Commission recommendation (EU) 2023/2829 of 12 December 2023 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament", 2023/2829, December 12, 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023H2829>.

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27 The status of election observers as human rights defenders was recognised by UN Special Rapporteurs in 2022: UN Special Rapporteur on Human Rights Defenders "The Status of Election Observers as Human Rights Defenders", Last modified October 27, 2022, <https://srdefenders.org/information/the-situation-of-election-observers-as-human-rights-defenders%EF%BF%BC/>

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31 European Union, "Beyond Election Day: Best practices for follow-up to EU Election Observation Missions", 2017, https://www.eeas.europa.eu/sites/default/files/eom_brochure_2017.pdf; and OSCE Office for Democratic Institutions and Human Rights, "Handbook for the Follow-up of Electoral Recommendations", 2016, <https://www.osce.org/files/f/documents/c/8/244941.pdf>.

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the Kofi Annan Foundation, 2012, <https://www.idea.int/sites/default/files/publications/deepening-democracy.pdf>. Compare also the election-related case law database provided by the European Union's Election Observation and Democracy Support (EODS) project: <http://www.eods.eu/elex-table>.

34 UDHR Article 21 and ICCPR Article 25. As stated by the UN Human Rights Committee "(t)here should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes." Comment to ICCPR Article 25, Paragraph 20, <http://www.osce.org/odihr/elections/19154?download=true>.

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39 See <http://www.gndem.org>.

40 Maria Debre and Lee Morgenbesser, "Out of the shadows: autocratic regimes, election observation and legitimization", *Contemporary Politics* 23, no. 3 (2017): 328-347; cf. European Platform for Democratic Elections, <https://www.fakeobservers.org/politically-biased-election-observers.html>.

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52 Lidauer et al, Mapping (2017).

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81 For comparison, OSCE/ODIHR deployed an Elections Expert Team in 2004 and an Elections Expert Group in 2009, and has conducted a Needs Assessment Mission ahead of the 2024 elections

This contribution is part of the report “The Future of European Electoral Support”, originally published by the European Democracy Hub.

The European Democracy Hub is a joint initiative of Carnegie Europe and the European Partnership for Democracy. It acts as a focal point for work on democracy, bringing together analysts and policymakers engaged with EU democracy support and democratic challenges in Europe.

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European Democracy Hub
Rue Froissart 123-133
B-1040 Brussels
info@europeandemocracyhub.epd.eu
<https://europeandemocracyhub.epd.eu/>