



Strasbourg, 28 September 2016

CDL(2016)034*

Study No. 840/2016

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT INTERPRETATIVE DECLARATION
ON THE PUBLICATION OF LISTS OF VOTERS
HAVING PARTICIPATED IN ELECTIONS

**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

I. The *Code of good practice in electoral matters*, adopted by the European Commission for Democracy through Law (Venice Commission) in October 2002 ([CDL-AD\(2002\)023rev2](#)), states, under the principle of “*Secret suffrage*” (item I.4.c), that:

“c. *The list of persons actually voting should not be published.*”

II. The Explanatory Report to the *Code of good practice in electoral matters* further states that “since abstention may indicate a political choice, lists of persons voting should not be published”.¹ More generally, making personal data from the voters’ lists broadly available would raise problems of data protection.²

III. A balance needs to be struck between data protection and secrecy of the vote on the one hand and stakeholders’ interest in consulting the signed (or stamped) voter lists on the other.³ The publication of the lists of voters having participated in the elections could be considered as a measure capable of preventing electoral fraud, but it could also be seen as a tool to control or pressure voters and publishing the list could also have an impact on voter participation.

IV. Therefore, the Venice Commission makes the following *interpretative declaration* regarding item I.4.C of the *Code of good practice in electoral matters*:

- A. 1. The publication of the lists of voters having participated in elections should be avoided.
2. However, access to the lists of voters having participated in elections may be granted to certain electoral stakeholders, for example:
- to candidate proxies and observers;
 - to an electoral stakeholder who alleges irregularities in a given list of voters having voted, when preparing an appeal as well as during the appeal process.
3. Such access to the list of voters having voted should be meaningful, should be granted for a sufficient period of time and should take place under controlled conditions.
- B. If irregularities are alleged, it is recommended that an independent review of the lists of voters having participated in elections be authorised without making these lists public.

¹ Code of Good Practice in Electoral Matters ([CDL-AD\(2002\)023rev2](#)), para. 54.

² See for instance the joint Opinion on the revised Electoral Code of “the former Yugoslav Republic of Macedonia” ([CDL-AD\(2011\)027](#)), para. 20: “The issue of use or abuse of information from the voter lists is not sufficiently addressed by the amendments. Article 55(1) stipulates that the personal data contained in the voter lists must be protected in line with the law and cannot be used except for the purpose of “*exercising the citizens’ right to vote.*” However, Article 55(2) requires the State Election Commission (“the SEC”) to supply all of the data from the voter lists to any registered political party or independent candidate, upon request. The legal framework should clearly state the permitted usage of information obtained from the voter lists and whether the information can be used for the campaign activities of political parties and candidates. At a minimum, more guidance should be provided to political parties and candidates by providing a concrete definition for the term “*exercising the citizen’s right to vote*”.”

³ [CDL-AD\(2016\)019](#), para. 61; [CDL-PI\(2016\)008](#), para. 38.