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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

JOINT OPINION
ON THE DRAFT LAW ON STATE REGISTER OF VOTERS
OF UKRAINE

by
the Venice Commission
and
the OSCE Office for Democratic Institutions and Human Rights
(OSCE/ODIHR)

adopted by the Venice Commission
at its 71st Plenary Session
(Venice, 1-2 June 2007)

on the basis of comments by

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I. Introduction

1. *On 22 February 2007 the Verkhovna Rada (national Parliament) of Ukraine adopted a Law on the State Register of Voters.*
2. *This draft opinion is based on comments of the Law prepared by Messrs Joseph Middleton (expert for the Office of Democratic Institutions and Human Rights of the OSCE) and Ángel Sánchez Navarro (Substitute Member, Council of Europe's European Commission For Democracy Through Law, Spain), and are made on an English translation of the text.*
3. *A previous Draft Law on the State Voter Register of Ukraine had been prepared in 2005 and commented jointly by the OSCE/ODIHR and the Venice Commission upon a request from the Ministry of Justice of Ukraine. A Joint Opinion on the Draft Law on the State Register of Voters on Ukraine, (CDL-AD(2006)003), was adopted by the Venice Commission in December 2005.*
4. *This Law should be considered in view of the objective to complete the establishment of a voter register for 2010.*
5. *The present joint opinion was adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007).*

II. Summary

6. The introduction of a national voter register in the form of a regularly updated electronic database can lead to a significant improvement over existing arrangements for preparing voter lists. This Law provides a detailed framework for the introduction and maintenance of the new Register. It includes strong provisions to promote the accuracy of the list and the protection of voters' data and appropriate sanctions for unlawful access and abuse of registered data.
7. Concerning personal data protection, it must be noted however that, although Ukraine signed on 29 August 2005 Council of Europe's Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, the Convention is still to be ratified.
8. Substantial resources will be needed to set up and test the hardware and software required for introducing a new Register by October 2007, transferring data from existing voter lists and updating voter entries. Further resources will be needed to provide appropriate public awareness so as to ensure that voters play a full part in ensuring that they are included in the Register and that their entries are accurate.
9. The intention to update the Register four times a year is laudable but will require substantial on-going investment if the task is to be completed properly. If this proves to be too costly, less frequent updates may be more feasible.
10. The law is long, very detailed, sometimes reiterative and rigid, in a field where clear rules are necessary. The Law is quite complex and the use of some terminology is confusing, although this might be due to the translation. As a result, it could be difficult for citizens to understand, for political actors to handle, and for electoral bodies and courts to implement.

III. Outline of the new Law

11. Prior to the adoption of this Law there were no permanent arrangements for compiling voter lists in Ukraine. The work was done on an *ad hoc* basis, in that each exercise of compiling voter lists was undertaken anew for each election. For the first time the Law envisages the compilation of a national State Register of Voters. This will be a regularly updated permanent electronic database including each person eligible to vote in Ukraine. It will be used to create voter lists for both elections and referendums in Ukraine. The Register will also be used to provide statistical data to central and local government departments, to verify voter signature lists submitted in support of candidates participating in an election and for other election or referendum purposes (Article 26) and to verify personal data submitted by candidates in various elections (Article 29).

12. The text of the Law is considerably longer and more detailed than the draft Law presented to the Verkhovna Rada in 2005.

13. The bodies entrusted with supervising, maintaining and compiling the Register (the 'Register bodies') are organised at three levels. The overall process is managed by the Central Electoral Commission, the 'custodian of the Register'. One of the CEC's principal functions is to adopt detailed rules on access to the Register.

14. The bodies with the most direct responsibility for creating and maintaining the Register within their territorial area are the 'Register maintenance bodies'. These are structural subdivisions and executive bodies of districts, towns, cities and other administrative entities. It is to the maintenance bodies that voters apply in order to be included in the Register or to amend an already existing entry and it is only the maintenance bodies which have the ability to create, delete and amend any entries in the Register.

15. The Register is organised on a territorial basis. A particular maintenance body will have both read and write access to the section of the Register corresponding to the territory for which the maintenance body has jurisdiction, but it will have read-only access to the entire national Register. This allows the maintenance body to check the details of voters who may have moved from a different area and to ensure that the voter is not registered elsewhere.

16. A third level of administration is provided by the 'regional Register administrators', established by the administration of each of Ukraine's oblasts and other equivalent entities (Article 34.6). The regional administrators will have an overview of the many maintenance bodies within their area of jurisdiction but will have no access to the Register itself. Their duty is to provide organisational support to the maintenance bodies and ensure co-operation between local government bodies and other organisations in creating and maintaining the Register.

17. The Law sets out an extensive list of data to be included in the Register. The list is exclusive (Article 5.3). The data is divided into separate categories: voter's identification data (full names, date and place of birth); data pertaining to the place and conditions of voting (including whether the voter has mobility problems, such as would necessitate the use of a mobile ballot box); the voter's full address details; and 'internal personal registered data'. The last category includes date of acquisition or loss of Ukrainian citizenship and data about the voter's mental incapacity, as certified by a court.

18. It is anticipated that once the initial Register has been created (see below), new additions will be the result of either voter initiative or periodic updates by the maintenance bodies. Where a voter finds him or herself not registered, s/he may apply to the local maintenance body to be added to the Register (Article 19.1). The application must be made in writing and supported by the appropriate documentary evidence. The application is checked against any previous registrations of the applicant and relevant organisations are consulted. If there are no grounds

for refusing registration, the voter is added to the Register and notified of that fact together with the details of the voter's polling station. Similar arrangements apply for making amendments to the voter's entry in the Register, for instance a change of address (Article 20.1). Any refusal to add a voter to the Register or amend his/her details must be notified to the voter together with the reasons for refusal. A refusal to amend the voter's address is sent to both the previous and the new address (Article 20.7).

19. As for periodic updates, these are to be conducted by the maintenance bodies on a quarterly basis (Article 22.1). The local office of the Ministry of Internal Affairs¹ is responsible for informing the maintenance body of all persons who have reached 18, acquired Ukrainian citizenship or have changed their registered place of residence within the relevant area in the preceding three months.

20. The accuracy of the Register will be further enhanced by the sending of a printed notification to each voter every year, between 1 and 21 September. This will set out the voter's data as contained in the Register, invite the voter to check the data and specify the procedure for requesting an amendment (Article 23.3).

21. The Law includes numerous provisions on data protection. These are considered in more detail below.

22. For voters with several addresses, the voting address included in the Register will ordinarily be the address at which they are registered under the Law on Freedom of Movement. However, if the voter so requests, a different address may be specified, provided that this does not give rise to the voter being registered at more than one address. The voter's assigned polling station as specified in the Register depends entirely on the registered voting address.

23. The Law makes full provisions for appealing against refusals to add a new entry to the Register, refusals to amend or correct existing entries and other such decisions and omissions. Appeals may be brought to an appropriate Register body, e.g. from a maintenance body to a regional Register administrator (Article 31), or to a court (Article 32). Cases of simultaneous complaints to the Regional Register Administrator and to a court are covered by relevant provisions contained in the Code of Administrative Procedure, Code of Criminal Procedure and Code of Civil Procedure, which provide that the complaint lodged with a Register body shall be suspended if the complainant has made a simultaneous complaint to a court, pending a final decision on the court

24. The Law also amends the Administrative Violations Code and Criminal Code to create of range of administrative and criminal sanctions for failure to comply with the requirements of the Law.

25. Apart from the transitional provisions (see below) the Law will enter into force on 1 October 2007. The requirement on the CEC to ensure the adoption of appropriate regulations and other subordinate legislation takes effect from the date of official publication of the Law. It is expected the Cabinet of Ministers will also have to develop a number of regulations to implement the law.

¹ The English translation provided refers to the Ministry of Foreign Affairs, but it is obviously a translation error, the law actually refers to the Ministry of Internal affairs.

IV. Commentary

General comments

26. This is on the whole a carefully considered law in which the functions, responsibilities and potential problems arising from the creation of the Register have been addressed in some detail. The creation of a permanent, regularly updated voter register is a considerable improvement on the previous reliance on *ad hoc* voter lists compiled *ex nihilo* for each new election. However, sufficient resources will be needed to support the creation of the new Register and to inform voters about the mechanisms for adding and correcting entries in the Register. If they are, this Law should make a significant contribution to protecting and implementing the right to vote in Ukraine.

27. It must be noted that it is an ambitious project, to which sufficient time must be allocated. The political situation might lead to pressure for hasty implementation and compressed timelines. Under no circumstances should quality of data be compromised for the sake of meeting deadlines.

28. As it was underlined in a previous opinion on the State Register², the very idea of passing a law setting up a model of permanent State Voter Register seems to be technically correct. In particular, its objective of replacing all the different rules about “compiling and maintaining voter lists” foreseen by other electoral laws (Final Provision number 3) is a good departing point... even when it could have been completed: in fact, this replacement will only take place “as far as the other Laws do not contravene this text”. In other words, this Law will need to be completed by other provisions fixed in other laws, so that citizens, lawyers, electoral authorities or judges will have to take into account different texts in order to be sure about the applicable rules. This underlines the expediency of incorporating all election related legislation into one single Electoral Code.

Timeframe

29. The new law establishes, in principle, a reasonable calendar for its entry into force. In particular, it distinguishes two blocks: the main one will come into effect on 1 October 2007. The second (Section VI, Interim provisions; and part of the VII: the Final rules) fixes some measures that have to be taken by different bodies for the rest of the Law to be applicable.

Terminology and Drafting

30. Some provisions appear to be long, often reiterative and potentially confusing. For instance, the “State Voter Register” is defined as being “aimed at state registration”, and its main goal is the “individual registration of voters” (Articles 1 and 2.1.1, that seem a bit reiterative). Similarly, Article 1 provides for the “registration of citizens of Ukraine having the right to vote in accordance with the Article 70 of the Constitution... (hereinafter called the voters)”³, whilst Article 2 distinguishes, as “main goals of the Register”, those of “individual registration of the voters” and “compiling voter lists for the elections of the President of Ukraine, people’s deputies of Ukraine... [and] in all-Ukrainian and local referendums”. The reader just may wonder if it would not be much easier to unify all these references, without specifying all kind of possible popular consultations (as the Law makes not only in Article 2.1.2, but also in very similar terms in Articles. 26.1, 26.2 and, in a certain way, in Article 29).

² See the *Joint Opinion on the Draft Law on the State Register of Voters on Ukraine, submitted by people’s Deputies Mr O. Zadorozhny and Mr Yu. Klyuchkovsky* (CDL-AD[2006]003), adopted by the Venice Commission in December, 2005).

³ Article 70 C.: “Citizens of Ukraine who have attained the age of eighteen on the day elections and referendums are held, have the right to vote at the elections and referendums”.

31. The text provides many definitions, including some references to the other Laws of Ukraine or decisions, which might seem to be superfluous. In particular provisions such as “in order to transliterate... proper names in Ukrainian, the transliteration rules established by the Cabinet of Ministers of Ukraine shall apply” (Article 4.2), or such as “the date of acquiring Ukrainian citizenship... is determined in accordance with the Law... on Citizenship of Ukraine” (Article 9), or that “the voter’s voting address is determined by the registered place of residence and domicile of the voter under the Law of Ukraine On Freedom of Movement and Free Choice of Place of Residence”, after having stated that “the voter’s voting address is an address of the voter’s place of residence or stay or another address replacing the voters domicile” (Article 8.1 & 2). Yet, if it appears that these references to other laws are required for consistency within the Ukrainian legal system, they should be retained altogether.

New registrations and amendments to existing entries

32. It is not entirely clear whether an application to be registered must be submitted in person or can be delivered by other means. There is no obvious reason why an application should be made in person but in any event the position should be spelled out in the CEC regulations.

33. Article 19.4 stipulates that the voting address of a person applying for registration is determined in accordance with Article 8 parts three and four. Those parts deal only with the relatively unusual cases where a voter has no registered address under the Law on Free Movement or is seeking to use a different address for his or her voting address. Presumably the reference in Article 19.4 should therefore be to Article 8 parts two to four.

Periodic updates

34. So far as periodic updates are concerned, the intention to engage in this process four times a year seems very ambitious. Most countries with developed voter registers do not seek to update their lists more than once or twice a year. Whilst the provisions in the present Law should ensure that the voter lists produced for a particular election are very up-to-date, a quarterly update of the Register will consume significant resources if the task is performed properly. This is something which will need to be kept under careful review. If sufficient resources are not made available, it may be necessary in due course to reduce the frequency of periodic updates.

Deadlines

35. The Law imposes a number of obligations on Register maintenance bodies and other Register bodies with fundamental importance for the electorate, most obviously the obligation to register new voters and amend entries for existing voters. It is essential that these processes are subject to clear deadlines, notwithstanding the fact that in some cases the maintenance body will need to make certain inquiries before adding, removing or amending an entry on the Register. It is understood that the Law on Citizens’ Appeals, which regulates the procedure for citizens addressing the state administration, contains all deadlines relevant in this case, including the procedures for voter appeals to the Register bodies as well as all necessary deadlines. The inclusion of deadlines ensures that voters know the timescales in which they can expect such steps to be taken and that they have a clearly identifiable basis for appealing inaction on the part of the maintenance body (see Article 33.3(2)). It is strongly recommended that for the sake of clarity for both for citizens and administrators, the Law on the State Register of Voters refers to these deadlines as well.

Data contained in the register

36. The provisions on voter's addresses are more extensive than those set out in the draft Law commented in 2005. As noted above, a voter may request that his or her voting address is different from the address registered under the Law on Freedom of Movement. There is nothing in the Law to stipulate the grounds on which such a request may be made (Article 8.2), although any such request must be 'justified'. If this question is not regulated in the Law on Freedom of Movement, the applicable grounds will need to be addressed by the CEC in its regulations. Given that it should not be difficult to prevent double registration in these circumstances, the grounds for specifying a different address should not be unduly stringent.

37. There will be some voters, in particular those who are homeless, who do not have a registered place of residence. This Law goes much further than most in ensuring that these people do not lose their right to vote. Such persons must specify a voting address but this can be agreed with the relevant Register maintenance body and a special agency responsible for registering homeless people (Article 8.4).

Data protection

38. The Law contains very extensive provisions relating to privacy and data protection. Access to the Register is permitted only in the circumstances stipulated in the Law (Article 12.2) and in accordance with specific rules on access to be adopted by the CEC (Article 11.2). The Law introduces a range of administrative and criminal penalties for unlawful access to and use of data in the Register.

39. Concerning personal data protection, it must be noted however that, although Ukraine signed on 29 August 2005 Council of Europe's Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, the Convention is still to be ratified.

40. The Law gives surprisingly broad rights to political parties with a faction in the Verkhovna Rada (Article 24). Such parties are entitled to an electronic copy of the Register edited to show the voter's name, address, date and place of birth and place and conditions of voting. According to the Law, this is done with a view to enhancing 'public control' over the Register: the version of the Register provided to the political parties is to be used to check the Register's completeness and the reliability of voters' registered personal data. The circumstances in which a political party would seek to verify the completeness or reliability of the Register are far from obvious. Political parties tend to act for political motives and the parties may seek to use the Register for partisan purposes, perhaps as a tool for campaigning. The implementation of this provision will need to be monitored with careful scrutiny.

Transitional arrangements

41. It is envisaged that the Register will initially be created on the basis of the electronic voter lists which were created under the Law on Elections of People's Deputies of Ukraine as of 1 February 2006. This alone will be a very substantial task and considerable efforts and resources will be needed to install the computer hardware and to develop and test the new software. The task will be made even more difficult because:

- (i) the new Register includes data which is not presently recorded on voter lists; and
- (ii) a significant number of new entries and amendments to existing data will be required to reflect changes arising since the existing lists were created.

42. A considerable initial investment will also be required in public education and awareness programmes. Thereafter, further resources will be needed to ensure that voters are aware of the need to keep the Register up to date and to provide the Register bodies, especially the Register maintenance bodies, with the funds they require to perform their duties.

Sanctions for abuse

43. The Law introduces an appropriate range of sanctions for more or less serious abuses of the register, including deliberate provision of false information by a voter and hacking into the Register, both of which are administrative violations. The most serious penalties are for officials who intentionally falsify records.