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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SECOND SECRETARIAT NOTE
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.*

1. In the meeting of the Council for Democratic elections held in March 2016, a document on the publication of lists of voters having participated in the elections was discussed ([CDL-EL\(2016\)003](#)). This note is a follow up to this document and to the discussion held.
2. The *Code of good practice in electoral matters*, as adopted by the European Commission for Democracy through Law (Venice Commission) in October 2002, states, under the principle of “*Secret suffrage*”, that “*c. The list of persons actually voting should not be published*” (I.4.c). The Explanatory Report further enounces that “since abstention may indicate a political choice, lists of persons voting should not be published”.¹ More generally, making personal data from the voters’ lists broadly available would raise problems of data protection.²
3. The possibility of the publication of signed voter lists raises several questions. On the one hand, publication could be seen as a tool to control or pressure voters and publishing the list could have an impact on participation. On the other hand, the act of voting as such is not secret, the secrecy of the vote refers to the content of the political choice and therefore will not be undermined if the list of voters having participated in elections is published. Moreover, the publication can be considered a measure able to prevent electoral fraud.
4. The problems linked to impersonation of voters residing abroad have been raised in particular during the process leading to the adoption of the new Electoral Code of Armenia in May 2016. In its preliminary opinion on the draft electoral code of Armenia, the Venice Commission has stated that “a balance between data protection and secrecy of the vote on the one hand and stakeholders’ interest in consulting the signed voter lists on the other has to be found”.³ The opinion further establishes a difference between the **publication** of signed voter lists, as such not recommended by the *Code of good practice in electoral matters*, and providing meaningful **access** to voter lists, which can be considered a necessary measure. This is in line with the discussions held during the meeting of the Council for Democratic Elections in March 2016 on this matter.⁴
5. In order to prevent possible electoral abuses and frauds, the following considerations should be taken into account:
 - a. Meaningful access to the lists of voters having voted in elections could be provided:
 - To candidate proxies and observers under controlled conditions and within a reasonable timeframe.
 - To an electoral stakeholder in preparation of an appeal, after identifying possible irregularities in signed voter lists, as well as during the appeal process. This access should be ensured within a reasonable timeframe.
 - b. Independent review of signed voter lists could also be recommended under confidentiality obligation.
6. In view of the above considerations, the Secretariat suggests to prepare an *Interpretative Declaration* of the *Code of good practice in electoral matters* in this sense.

¹ Code of Good Practice in Electoral Matters ([CDL-AD\(2002\)023rev](#)), 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-PI\(2016\)004](#), para. 60.

⁴ [CDL-EL-PV\(2016\)001](#).