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Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REVISED INTERPRETATIVE DECLARATION

ON

THE STABILITY OF ELECTORAL LAW

**Approved by the Council for Democratic Elections
at its 80th meeting (Venice, 20 June 2024) and
adopted by the Venice Commission at its 139th Plenary Session
(Venice, 21-22 June 2024)**

On the basis of comments by

Mr Srdjan DARMANOVIĆ (Member, Montenegro)

Mr Oliver KASK (Substitute member, Estonia)

Mr Eirik HOLMØYVIK (Member, Norway)

Ms Katharina PABEL (Substitute member, Austria)

**Mr Josep Maria CASTELLA ANDREU (Former member, Expert,
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Mr Rafael RUBIO NUÑEZ (Former member, Expert, Spain)

I. Introduction

1. The stability of electoral law is provided for in the Code of good practice in electoral matters of the Venice Commission ([CDL-AD\(2002\)023rev2-cor](#)) among the “conditions for implementing” the principles of electoral law, together with the “regulatory levels” (II.2.b). It was subsequently the subject of an Interpretative Declaration adopted by the Commission in 2005 ([CDL-AD\(2005\)043](#)). Many opinions and reports of the Commission have referred to the electoral stability criteria and have specified them and applied them to specific cases.¹ Furthermore, in 2022 the Commission’s Revised Code of good practice on referendums ([CDL-AD\(2022\)015](#)) has included similar principles on stability of referendum law (II.3).

2. On 3 November 2023, the Venice Commission and the University of Barcelona co-organised the 4th Scientific Electoral Experts Debates which was devoted to the topic of “The stability of electoral law”.² This conference had been initiated by the Council for Democratic Elections – the tripartite body of the Council of Europe in charge of electoral matters, including representatives of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities – which considered that, more than thirty years after the start of the internationalisation of electoral issues, it was high time to assess the meaning of the principle of stability of electoral law. Following the conference, the Council for Democratic Elections at its 79th meeting held on 14 December 2023 in Venice suggested to prepare a new interpretative declaration on the stability of electoral law, which could *inter alia* revisit the scope of the principle.

3. Mr Josep Maria Castellà Andreu, Mr Srdjan Darmanović, Mr Eirik Holmøyvik, Mr Oliver Kask, Ms Katharina Pabel and Mr Rafael Rubio Nuñez acted as rapporteurs for this revised interpretative declaration.

4. This revised interpretative declaration was drafted on the basis of comments by the rapporteurs. It was approved by the Council for Democratic Elections at its 80th meeting (Venice, 20 June 2024) and adopted by the Venice Commission at its 139th Plenary Session (Venice, 21-22 June 2024).

II. Revised interpretative declaration on the stability of electoral law

A. The Code of good practice in electoral matters ([CDL-AD\(2002\)023rev2-cor](#), item II.2.b) states:

“II.2. Regulatory levels and stability of electoral law

(...)

b. The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.”

This paragraph was completed by paragraph 66 of the Explanatory Report stating that a “solution would be to stipulate in the Constitution that, if the electoral law is amended, the old system will apply to the next election – at least if it takes place within the coming year – and the new one will take effect after that.”³

¹ See the Compilation of Venice Commission opinions and reports concerning the stability of electoral law, [CDL-PI\(2020\)020](#).

² See the Conference Proceedings published by the Venice Commission on 19 February 2024, [CDL-PI\(2024\)004](#).

³ See also Venice Commission, [CDL-AD\(2022\)015](#), Revised Code of Good Practice on Referendums, Guideline II.3.b.: “The fundamental aspects of referendum law should not be open to amendments to be applied during the year following their enactment or should be written in the constitution or at a level superior to ordinary law.”

B. The Venice Commission interprets this text as follows:

1. The principle according to which the fundamental elements of electoral law should not be open to amendment less than one year prior to an election does not take precedence over the other principles of the Code of Good Practice in Electoral Matters.

2. It should not be invoked to maintain a situation contrary to international electoral standards, to prevent amendments in accordance with these standards based on consensus between government and opposition and on broad public consultations, or to prevent the implementation of decisions by national constitutional courts or supreme courts with equivalent jurisdiction, international courts or of recommendations by international organisations.

3. The one-year principle aims at ensuring legal certainty, which is a key element of the Rule of Law. In the electoral field, legal certainty means that the confidence in democratic elections in line with international standards should not be undermined by late amendments to primary or secondary legislation, including from electoral bodies.

4. The principle concerns the fundamental rules of electoral law. Other changes to electoral law may be subject to the principle if the scope or timing of the changes may negatively affect legal certainty for voters, candidates or the electoral administration.

5. In particular, the following are considered fundamental rules:

- rules that determine the right to vote and stand for election, including voter and candidate registration;
- the drawing of constituency boundaries and rules relating to the distribution of seats between the constituencies;
- the electoral system proper, i.e. rules relating to the transformation of votes into seats;
- essential elements of the voting process;
- rules relating to the membership, independence and impartiality of electoral commissions or another body which organises the ballot or can decide on electoral rights;
- rules guaranteeing the effectiveness of election dispute resolution;
- electoral contestants' access to public media.

6. In addition to the one-year principle:

- a) once elections have been called, no amendments to electoral law should be made, unless they are strictly necessary to comply with binding decisions by national constitutional courts or supreme courts with equivalent jurisdiction, or by international courts;
- b) any reform of electoral legislation to be applied during an election should occur early enough to allow candidates and voters to understand the changes and the electoral management bodies to understand and apply them.