



Office for Democratic Institutions and Human Rights

**FEDERAL REPUBLIC OF GERMANY**  
**ELECTIONS TO THE FEDERAL PARLIAMENT**  
**(BUNDESTAG)**  
**22 September 2013**

**OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT**  
**21-23 May 2013**



**Warsaw**  
**15 July 2013**

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**FEDERAL REPUBLIC OF GERMANY  
ELECTIONS TO THE FEDERAL PARLIAMENT (BUNDESTAG)  
22 September 2013**

**OSCE/ODIHR Needs Assessment Mission Report**

**I. INTRODUCTION**

Following an invitation from the Permanent Mission of the Federal Republic of Germany to observe the 22 September 2013 elections to the Federal Parliament (*Bundestag*) and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Berlin from 21 to 23 May 2013. The NAM included Tatyana Bogushevich, Senior Election Adviser, and Steven Martin, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the elections. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs.

Meetings were held with officials from federal institutions, including the Federal Foreign Office, the Federal Ministry of the Interior, the Federal Constitutional Court, the *Land* Returning Officer for Berlin and the Election Scrutiny Board, as well as representatives of political parties, civil society, and the media. A full list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Federal Foreign Office for its assistance and co-operation in organizing the NAM. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

**II. EXECUTIVE SUMMARY**

Germany is a federal republic composed of 16 states (*Länder*) with legislative power vested in the Federal Parliament (*Bundestag*). On 22 September 2013, voters will elect the members of the 18<sup>th</sup> *Bundestag*. Six parties are represented in the outgoing parliament.

The *Bundestag* consists of 598 members, subject to variations resulting from the implementation of the electoral system. Of these, 299 members are elected in single-seat electoral districts under a first-past-the-post system. The remaining members are elected by proportional representation on the basis of closed party lists. All members are elected for four-year terms.

Elections to the *Bundestag* are primarily regulated by the Basic Law, the Federal Electoral Act, the Federal Electoral Regulations and the Law on the Scrutiny of Elections. OSCE/ODIHR NAM interlocutors noted significant confidence in the legal framework in that it provides a solid basis for the conduct of democratic elections.

Following the last federal parliamentary elections, the legal framework was revised in an effort to address gaps and concerns, which contributed to bringing election-related legislation into closer conformity with the OSCE commitments for democratic elections. Amendments were introduced to allow political parties and associations to appeal the denial of a nomination to participate in an election, and to ease the complaints submission process. Other amendments, introduced in May 2013, relate to voter registration and the method of seat allocation. While these changes were

adopted based on cross-party consensus, this occurred less than one year before the elections, which is contrary to good electoral practice.

The elections are administered by a four-tiered structure, consisting of the Federal Election Committee (FEC), 16 *Land* Election Committees, 299 single-mandate District Election Committees and some 80,000 Election Boards. Parliamentary parties are able to appoint members to election bodies at different levels. Parties that met with the OSCE/ODIHR NAM expressed confidence in how the forthcoming elections would be administered and noted their good co-operation with the election administration.

Some 61.8 million citizens are registered for the upcoming elections. Voter registration is passive and voter lists are extracted from municipal civil registers based on a voter's permanent residence. OSCE/ODIHR NAM interlocutors did not signal any issues regarding voter lists and expressed confidence in their accuracy and overall quality.

Political parties that were continuously represented with at least five members in the *Bundestag* or *Land* parliaments since the last elections can contest elections without prior notification of the election administration and without the need to submit supporting signatures. All other parties and political associations must first submit a notification of their intention to contest elections to the FEC in order to be recognized as eligible to put forward candidates and party lists.

Political parties met with by the OSCE/ODIHR NAM have already begun preparations for the upcoming elections. Campaign topics emphasize the economy, social justice, labor market, education and minimum wages and the impact of the elections upon European Union issues.

While no formal gender quota exists, the majority of parties that the OSCE/ODIHR NAM met with mentioned internal quotas for party lists. Fewer parties mentioned internal mechanisms for the promotion of women candidates in single-seat districts.

The legal framework does not contain specific regulations on campaign financing and does not set limits on the amounts that political parties may raise or spend on election campaigns. Political parties that met with the OSCE/ODIHR NAM were satisfied with the existing regulation of party financing and opined that it provides for an overall adequate level of transparency and accountability. Some interlocutors suggested that tightening up certain provisions could further enhance transparency.

The media environment is diverse and pluralistic. Many OSCE/ODIHR NAM interlocutors underscored the media's maturity and professionalism, including in covering electoral campaigns, noting that it consistently provides comprehensive, responsible, and balanced coverage. Political parties opined that they generally have fair access and representation in the media.

The OSCE/ODIHR NAM noted full stakeholder confidence in the integrity of the election process and the professionalism and impartiality of the election administration. The existence of a wide range of political parties and media contributes to a pluralistic election environment. All OSCE/ODIHR NAM interlocutors noted the solid legal framework coupled with the presence of various checks and balances. Considering the significance attributed by interlocutors to the recent legislative amendments and the extensive review process that preceded their adoption, the OSCE/ODIHR NAM sees benefit in undertaking a more in-depth assessment of the legal framework. In light of the views shared by interlocutors concerning political party and campaign financing and recalling previous OSCE/ODIHR recommendations, further review of political party

financing regulations and practice could be of added value. Accordingly, the OSCE/ODIHR NAM recommends the deployment of an Election Expert Team for the upcoming elections to the *Bundestag* to specifically review the amendments to the legal framework, as well as the regulation and practice related to political party and campaign finance.

### III. FINDINGS

#### A. BACKGROUND

Germany is a federal republic composed of 16 states (*Länder*).<sup>1</sup> Legislative power is vested in the Federal Parliament (*Bundestag*), with members directly elected for four-year terms. The Federal Council (*Bundesrat*) is the body through which the *Länder* participate in the legislation at the federal level with its members delegated by the respective state governments.

Executive power is vested in the Federal Cabinet, which is led by the Federal Chancellor who is elected by the majority of the *Bundestag* on the proposal of the Federal President for the duration of the legislative term. The Federal President is elected by a Federal Convention, which consists of members of the *Bundestag* and *Länder* parliaments. On 8 February 2013, the Federal President signed the order to hold the 18<sup>th</sup> elections to the *Bundestag* on 22 September.

Following the last federal parliamentary elections on 27 September 2009, six political parties were elected to the parliament: the Christian Democratic Union (*Christlich Demokratische Union Deutschlands*; CDU) with 194 seats, the Social Democratic Party (*Sozialdemokratische Partei Deutschlands*; SPD) with 146 seats, the Free Democratic Party (*Freie Demokratische Partei*; FDP) with 93 seats, the Left (*Die Linke*) with 76 seats, Alliance '90/The Greens (*Bündnis 90/Die Grünen*) with 68 seats, and the Christian Social Union of Bavaria (*Christlich-Soziale Union in Bayern*; CSU) with 45 seats.<sup>2</sup> The CDU/CSU alliance together with the FDP formed the government, led by Chancellor Angela Merkel of the CDU.

The OSCE/ODIHR previously deployed an Election Assessment Mission (EAM) for the 2009 federal parliamentary elections and an expert group in conjunction with the 2009 European Parliament elections. The 2009 EAM final report concluded that “the federal parliamentary elections confirmed a solid experience in conducting democratic elections in Germany. They demonstrated an open, pluralistic and competitive process, founded on the respect for fundamental freedoms, equitable conditions for all contestants, the efficiency and professionalism of the election administration as well as a high level of public confidence in the overall integrity of the electoral process.”<sup>3</sup>

#### B. ELECTORAL SYSTEM

The Basic Law provides for general, direct, free and equal suffrage by secret ballot. The members of the *Bundestag* are elected according to a mixed-member proportional system combining proportional representation and a majoritarian element.

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<sup>1</sup> The term “states” is the closest literal English language translation of the German word “*Länder*” (in plural form), which is used in the Basic Law (the Constitution, or *Grundgesetz*) to refer to the territorial administrative divisions of Germany. The singular form is “*Land*”.

<sup>2</sup> While the CDU and CSU are separate political entities, they co-operate at the federal level and together represent the largest political bloc in the *Bundestag*.

<sup>3</sup> All OSCE/ODIHR reports on Germany are available at: [www.osce.org/odihr/elections/germany](http://www.osce.org/odihr/elections/germany).

The *Bundestag* consists of 598 members, subject to variations resulting from the implementation of the electoral system. Of these, 299 members are elected in single-seat electoral districts under a first-past-the-post system. The remaining members are elected by proportional representation on the basis of closed party lists at the *Land* level. Each of the 16 *Länder* constitutes one multi-seat electoral constituency.

Voters are entitled to cast two votes. The first vote is cast for a candidate in the respective single-seat district. The second vote is cast for a party list in the respective multi-seat constituency, which determines the strength of parties in the *Bundestag*. The candidate obtaining the majority of votes cast in each district is elected. Parties that have passed a five per cent threshold of valid second votes at the national level or have won seats in at least three districts are eligible to participate in the allocation of proportional seats.

Following the seat allocation per party at the federal level, and subsequently in each *Land*, the number of single-seat districts won by a party in each *Land* is deducted from the overall number of seats allocated to the party on the basis of results in the proportional contest in that *Land*. The remaining mandates are distributed according to the order of candidates on the multi-seat party list. However, there may be a situation in which a party wins more single-seat district seats in a *Land* than it is entitled to according to the results of the second vote. These excess seats (known as overhang mandates, *Überhangmandate*) are retained by the party, resulting in an increase in the total number of seats in the *Bundestag*. Following the 2009 federal elections, the *Bundestag* included 24 overhang mandates.

The number of single-seat districts in each *Land* should correspond to the respective proportion of citizens countrywide. Where possible, the borders of single-seat districts should respect administrative borders of lower-level units such as municipalities. The population of any one district should not deviate from the average district population by more than 15 per cent; and where the deviation is greater than 25 per cent, the boundaries should be redrawn. This could mean that discrepancies between 15 and 25 per cent are permitted.<sup>4</sup> The authorities noted that the *Bundestag* retains discretion to adopt recommendations to redraw constituencies when the deviation is less than 25 per cent. Considerations such as maintaining the stability of constituency boundaries and respecting existing municipal and district boundaries are deemed as important as readjusting boundaries based on population changes. A constituency commission within the *Bundestag* is appointed to review the delimitation of electoral district boundaries on the basis of periodic population changes and to make proposals for amending boundaries as required. Ahead of the upcoming elections, constituency boundaries were reviewed and boundaries were redrawn in 32 constituencies.<sup>5</sup>

### C. LEGAL FRAMEWORK

Elections to the *Bundestag* are primarily regulated by the Basic Law, Federal Electoral Act (*Bundeswahlgesetz*, FEA), Federal Electoral Regulations (*Bundeswahlordnung*; FER), and Law on the Scrutiny of Elections (*Wahlprüfungsgesetz*), as well as guided by relevant Federal

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<sup>4</sup> The 2009 OSCE/ODIHR EAM final report recommended that “consideration could be given to narrowing the deviation limits in line with good electoral practice.”

<sup>5</sup> Of these 32 changes, 21 constituencies were adjusted due to population changes and boundaries in 11 constituencies were adjusted due to earlier changes of the municipal territory.

Constitutional Court (*Bundesverfassungsgericht*; FCC) rulings.<sup>6</sup> OSCE/ODIHR NAM interlocutors noted significant confidence in the legal framework in that it provides a solid basis for the conduct of democratic elections.

Following the last federal parliamentary elections, the legal framework was revised in an effort to address gaps and concerns, which among others, were noted in the 2009 OSCE/ODIHR EAM final report. In July 2012, amendments were introduced to allow political parties and associations to appeal rejected nominations to stand in an election and to ease the complaints submission process. These changes brought the respective provisions into closer conformity with OSCE commitments for democratic elections. Other amendments introduced in April and May 2013 responded to rulings of the FCC, which required changes to certain aspects of the electoral framework related to voter registration and seat allocation.<sup>7</sup>

In July 2008, following a legal challenge, the FCC ruled that provisions in the FEA allowing for ‘negative vote weight’ (additional votes for a party list that could lead to the loss of a seat) were unconstitutional and violated the principles of equality and directness of elections. While the FCC ruled that the *Bundestag* had until 30 June 2011 to amend the FEA, new legislation attempting to remedy this issue was only passed on 25 November 2011. On 25 July 2012, following complaints from several opposition parties and a group of some 3,000 citizens, the FCC once again declared certain provisions in the electoral framework unconstitutional.<sup>8</sup> The FCC ruled that provisions related to ‘negative vote weight’ again violated the principles of equality and directness of elections. Additionally, while the FCC did not void provisions related to overhang mandates, it limited their number to 15.

In response to the 2012 FCC ruling, the *Bundestag* amended the electoral legislation on 3 May 2013 and introduced a revised seat allocation method.<sup>9</sup> The FEA stipulates that political parties are to receive compensation seats for any overhang mandates in order to maintain the overall proportionality established on the basis of the second votes. In addition, to avoid a possible scenario leading to ‘negative voting weight’, the formula used to calculate the distribution of seats was modified.

OSCE/ODIHR NAM interlocutors expressed satisfaction with the most recent amendments, in that they adequately address the issues identified by the FCC and serve to further strengthen the electoral framework. However, interlocutors also noted that the amendments represented a compromise among parliamentary political parties, which strived to ensure that an adequate framework was in place ahead of the upcoming elections. Some interlocutors noted that the new seat allocation method could potentially result in a significant increase to the size of the *Bundestag*. While the most recent changes to the framework were adopted based on cross-party consensus, this occurred less than a year before the elections, which is contrary to good electoral practice.<sup>10</sup> In addition, some recommendations still remain unaddressed, including those related to the disparity in

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<sup>6</sup> Additional legislation includes the Political Parties Act (*Parteiengesetz*), the Law on Election Statistics (*Wahlstatistikgesetz*), and relevant sections of the Civil and Criminal Codes.

<sup>7</sup> FEA as amended by the 21<sup>st</sup> Amendment Act of 27 April 2013 and the 22<sup>nd</sup> Amendment Act of 3 May 2013; and FER as amended by the 10<sup>th</sup> Amendment Act of 13 May 2013, which amended some 30 articles and 16 annexes.

<sup>8</sup> See FCC Judgment of 25 July 2012, 2 BvF 3/11.

<sup>9</sup> See Article 1 of the FEA, as amended by 22<sup>nd</sup> Amendment Act of 3 May 2013.

<sup>10</sup> See paragraph 65 of the Code of Good Practice in Electoral Matters of the Council of Europe’s Commission for Democracy through Law (Venice Commission) <http://www.venice.coe.int/webforms/documents/CDL-AD%282002%29023rev-e.aspx>.

the size of electoral districts, absence of explicit provisions for election observation, and the need to ensure an accelerated publication of party and campaign finance reports.

Voters are able to submit complaints concerning various aspects of the electoral process. A limited number of complaints can be submitted to and addressed by the election administration (related to voter registration, polling cards (*Wahlschein*), and nomination of candidate and party lists), which are subject to appeal. Determining the validity of elections lies with the *Bundestag* through the parliamentary committee called the Election Scrutiny Board (*Wahlprüfungsausschuss*; ESB). The ESB is appointed by the *Bundestag* for the duration of the legislature and delivers decisions based on submitted complaints, which are subsequently passed to the *Bundestag* for adoption. Eligible voters may file an appeal to the ESB within two months of the elections. Decisions by the ESB are subject to appeal with the FCC. Following the 2009 elections, 163 complaints were submitted to the ESB. The OSCE/ODIHR NAM was informed that not all documents associated with the complaint review process were made publicly available, thus detracting from its transparency.

The July 2012 amendments removed the need of support by at least one hundred voters when appealing a decision of the *Bundestag* on the validity of an election. In addition, the ESB's scope of review was broadened to include assessing if the rights of a person or group of people have been violated in preparing or conducting the elections and to see if such a violation impacts the distribution of mandates.

#### D. ELECTION ADMINISTRATION

The federal elections are administered by a four-tiered structure, composed of the Federal Election Committee (*Bundeswahlausschuss*; FEC), 16 *Land* Election Committees (*Landeswahlausschüsse*; LECs), 299 single-mandate District Election Committees (*Kreiswahlausschüsse*) and some 80,000 Election Boards (*Wahlvorstände*; EBs).

All committees are chaired by returning officers (*Wahlleiter* for the FEC, LECs and DEC), and EBs are chaired by electoral officers (*Wahlvorsteher*).<sup>11</sup> The 11-member FEC includes the Federal Returning Officer as the chairperson who appoints eight members and two judges of the Federal Administrative Court. The LECs and DEC have seven members with a returning officer as a chairperson who appoints the other six members. Two judges of the *Land* Higher Administrative Court are additionally appointed to each LEC. EBs have an electoral officer as the chairperson, plus a deputy, and from three to seven appointed voters as members.

Parliamentary parties are entitled to nominate members to election bodies at different levels. In addition to these nominations, local authorities request nominations from various federal and local public bodies and institutions to staff the EBs. Parties noted to the OSCE/ODIHR NAM the benefit of participating on the commissions and their satisfaction with the overall performance of the election administration. They expressed confidence in how the upcoming elections would be administered and noted the good co-operation between the parties and election administration at different levels.

Existing legislation contains provisions governing the use of electronic voting machines. However, there remains consensus by Federal and *Land* administrators to follow the FCC ruling of 3 March 2009, which deemed that the specific type of voting machine used in the 2005 elections was

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<sup>11</sup> The Federal Returning Officer and *Land* returning officers are permanent appointees of the Federal Ministry of Interior and the *Länder* executive authorities, respectively. District returning officers and electoral officers are appointed before each election by the *Länder* executive authorities.



unconstitutional as it lacked a verifiable audit paper trail.<sup>12</sup> As such, electronic voting machines will not be used in the 2013 parliamentary elections.

## **E. VOTER REGISTRATION**

Some 61.8 million citizens are entitled to vote in the upcoming federal parliamentary elections.<sup>13</sup> Voter registration is passive and voter lists are extracted from municipal civil registers based on a voter's permanent residence. The Basic Law establishes that every citizen over 18 years of age by election day and who has a domicile or has been a permanent resident in Germany for at least three months is eligible to vote. Individuals found mentally incompetent or convicted of a serious crime based on a court decision are ineligible.

Following a decision by the FCC in July 2012, amendments to the FEA redefined the eligibility of voters not residing in Germany.<sup>14</sup> Citizens permanently residing abroad are eligible to vote if they have three-months of continual residence in Germany (not longer than 25 years ago) after reaching fourteen years of age. Additionally, Germans who have never resided in Germany are eligible to vote if they can demonstrate that they are familiar with and directly affected by the political situation in Germany.<sup>15</sup> Embassies and consulates are responsible for informing voters abroad about the new provisions. According to the law, voter eligibility is verified by the public administration in the location of a voter's last known residence and for those voters who have never resided in Germany, verification is done by the municipality with which they are most closely associated. While generally welcoming the broadening of enfranchisement, many interlocutors expressed a degree of concern and uncertainty as to how this new provision would be implemented in practice. According to the Federal Foreign Office, some 65,730 citizens residing abroad were registered to vote in the 2009 parliamentary elections.

From 20 to 16 days before the elections, voters may review voter lists and request corrections in cases of incorrectness or incompleteness. After this point, voter lists are considered final and may not be altered. OSCE/ODIHR NAM interlocutors did not signal any issues regarding voter lists and expressed confidence in their accuracy and quality.

Local authorities are responsible for notifying voters on the location of their polling stations, polling hours and their numbers on the voter lists. The notifications also contain application forms for those voters wishing to vote by post.<sup>16</sup> Eligible voters residing abroad also vote by postal ballot. Election administrators noted the continued growth in the use of postal voting. No OSCE/ODIHR NAM interlocutors raised concerns with the use of postal voting and indicated their confidence to continue this practice.

## **F. CANDIDATE REGISTRATION**

The legislation provides candidacy rights for all eligible voters and allows for the participation of associations and political parties.<sup>17</sup> Political parties that have been continuously represented with at

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<sup>12</sup> See FCC Judgment of 3 March 2009, 2BvC 3/07, 2BvC 4/07.

<sup>13</sup> See the press release by the Federal Returning Officer:  
[www.bundeswahlleiter.de/en/bundestagswahlen/BTW\\_BUND\\_13/presse/001w13\\_Wahlberechtigte.html](http://www.bundeswahlleiter.de/en/bundestagswahlen/BTW_BUND_13/presse/001w13_Wahlberechtigte.html).

<sup>14</sup> See FCC Judgment of 4 July 2012, 2 BvC 1/11, 2 BvC 2/11.

<sup>15</sup> Article 12.2 of the FER.

<sup>16</sup> In May 2013, amendments to the FER introduced additional safeguards concerning postal voting, such as confirming with voters if they request their ballots to be mailed to an address other than where they are registered.

<sup>17</sup> Paragraphs 9 and 21 of the Basic Law define associations and political parties.

least five members in the *Bundestag* or *Land* parliaments since last elections can submit their nominations of candidates without notifying the election administration of their intention to compete in elections and without the need to submit supporting signatures. All other parties and associations wishing to field candidates are required to formally notify the FEC of their intention to contest the elections.<sup>18</sup> Following this initial approval by the FEC, nominations of single-seat district candidates from such parties need to be submitted to their respective district returning officers accompanied by supporting signatures of at least 200 voters. Party lists must be submitted to the respective *Land* returning officer and need to be supported by signatures of 1 per 1,000 eligible voters in the *Land*, but not more than 2,000 signatures. Decisions on the registration of candidates and party lists are taken by the District and *Land* election committees, respectively.

According to the Federal Returning Officer, 58 parties and political associations intend to participate in the 2013 elections.<sup>19</sup> Amendments introduced in 2012 allow parties or associations to appeal to the FCC if their registration to stand in elections is rejected by the FEC.

## G. CAMPAIGN AND CAMPAIGN FINANCING

Federal law provides only limited regulation of pre-election campaigns. This includes provisions in the Basic Law and the Law on Assemblies and Parades regarding the organization of public events and the Political Party Act, which require public authorities to treat political parties equitably in their utilization of public resources and services. *Land* and municipal authorities may adopt local, campaign-related ordinances.

Political parties met with by the OSCE/ODIHR NAM had already launched their preparations for the upcoming elections, with campaign offices operational and campaign programme development underway. Many have either completed or are in the process of finalizing candidate nomination and party list formation. Most parties plan to put forward party lists in all *Länder* as part of the traditional focus on the proportional ballot. Smaller parties intend to nominate individual candidates in fewer districts, focusing on their respective strongholds and the likelihood of winning seats.

While there is no formal gender quota for candidate nominations and party lists, the majority of the parties that the OSCE/ODIHR NAM met with indicated that they implement their own internal quotas for party lists, with some parties instituting up to a fifty per cent gender split of candidates, including alternating positions for men and women. Fewer internal quotas were noted for single-seat district candidates.

Interlocutors anticipated a continued interest of the electorate in the upcoming campaign and noted an increased expectation of engagement and direct contact between political parties and voters. Some parties, however, pointed to the challenge of reaching out to and mobilizing non-voters. Campaigns are likely to include traditional methods such as canvassing, meetings with voters, leaflet distribution, billboards, and campaign spots in media, as well as the use of the Internet and social media, including using online town hall meetings. Campaign topics include the economy,

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<sup>18</sup> Section 18.2 of the FEA stipulates that notifications need to indicate the name of the party under which it intends to contest elections, be signed by at least three members of the national executive committee of the party, and that party's written statutes, programme and proof that the executive committee was duly appointed be enclosed.

<sup>19</sup> See the press release by the Federal Returning Officer:  
[http://www.bundeswahlleiter.de/en/bundestagswahlen/BTW\\_BUND\\_13/presse/004w13\\_Wahlbewerber.html](http://www.bundeswahlleiter.de/en/bundestagswahlen/BTW_BUND_13/presse/004w13_Wahlbewerber.html).

social justice, the labor market, education and minimum wages. Some interlocutors underscored the European Union dimension in the upcoming elections and their likely impact on European affairs.

The legal framework does not contain any specific regulations on campaign finance and does not limit the amount that political parties may raise or spend on electoral campaigns. Parties' campaign-related income and expenditure is reported through annual financial reports, which all parties are required to submit to the President of the *Bundestag*. No separate reporting during or shortly after an electoral period is required, with the exception of donations exceeding Euro 50,000 that must be reported immediately.

Political parties that met with the OSCE/ODIHR NAM were satisfied with the existing regulation of party financing and opined that it provides for an adequate level of transparency and accountability overall. At the same time, a few interlocutors suggested that transparency could be further enhanced by lowering the limit for the immediate disclosure of donations, requiring at least some degree of financial reporting during campaign periods, and accelerating the publication of financial reports.

## H. MEDIA FRAMEWORK

The media environment is diverse and pluralistic with a large number of public and private electronic and print media outlets operating throughout the country. Television, and in particular channels forming part of the two major public broadcasting networks, ARD (*Arbeitsgemeinschaft der Rundfunkanstalten Deutschlands*) and ZDF (*Zweites Deutsches Fernsehen*), is regarded as the main source of political information, despite the existence of a strong print media market and the increasing role of the Internet.

The activities of broadcast media are regulated predominantly by *Länder* laws and there are generally no media-related regulations at the federal level. The Interstate Treaty on Broadcasting and Telemedia (*Rundfunkstaatsvertrag*) provides a general framework for the media operating countrywide, stipulating requirements of plurality of opinion, coverage opportunities for all important political, ideological and social forces, and balance. Section 42(2) of the Treaty requires those parties that registered a party list in at least one *Land* be granted an 'appropriate amount' of broadcasting time. In public media, such broadcasts are provided free-of-charge, while private media only charge a fraction of commercial advertising prices. The principle of 'gradual equality' is applied in the allocation of airtime, and the relative strength of parties in the *Bundestag* is considered. Parties are responsible for providing their own content for these spots.

A variety of formats are used to cover the campaign. ARD informed the OSCE/ODIHR NAM that apart from free campaign spots, its coverage would include editorial content, including news, analytical programmes, documentaries, talk shows and interviews, as well as broadcasting of voter education information. In addition, ARD plans to organize debates for parliamentary political parties and at least one debate, co-ordinated with other broadcasters, between the two lead candidates for the post of Federal Chancellor. In addition, ARD noted that it would produce documentaries specifically focusing on the smaller political parties.

Since there is no federal-level media regulator, oversight of media conduct in public broadcasting corporations is ensured by independent Broadcasting Councils (*Rundfunkräte*) and private broadcasters are scrutinized by supervisory bodies at the *Land* level (*Landesmedienanstalten*). The German Press Council (*Deutscher Presserat*) oversees the print media, assessing journalistic practice against a Press Code, which was endorsed by the majority of print media outlets and publishers countrywide and provides for voluntary self-monitoring. According to assessments by

the Broadcast Council for Berlin and the Press Council, the limited number of complaints received could be interpreted as indicating the good level of journalistic work and a high ethical standard.

In drawing an overall assessment of the media environment, interlocutors indicated that while a difference in coverage of events may exist between media of different political viewpoint, most saw this as an intrinsic feature of a free media market. Many OSCE/ODIHR NAM interlocutors underscored the maturity and professionalism of the media, including in covering electoral campaigns, having assessed media overall, both public and private, as consistently providing comprehensive, responsible, and balanced coverage. Political parties opined that they generally have fair access and representation in the media, and that the public is provided with ample information about political options and platforms.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

The OSCE/ODIHR NAM noted full stakeholder confidence in the integrity of the electoral process and the professionalism and impartiality of the election administration. The existence of a wide range of political parties and of media contributes to a pluralistic election environment. All OSCE/ODIHR NAM interlocutors noted the solid legal framework coupled with the presence of various checks and balances. Considering the significance attributed by interlocutors to the recent legislative amendments and the extensive review process that preceded their adoption, the OSCE/ODIHR NAM sees benefit in undertaking a more in-depth assessment of the legal framework, its implementation, and the impact of recent changes. In light of the views shared by interlocutors concerning political party and campaign financing and recalling previous OSCE/ODIHR recommendations, further review of political party financing regulations and practice could be of added value. Accordingly, the OSCE/ODIHR NAM recommends the deployment of an Election Expert Team for the upcoming elections to the *Bundestag* to specifically review the amendments to the legal framework, as well as the regulation and practice related to political party and campaign finance.

## **ANNEX: LIST OF MEETINGS**

### **Federal Foreign Office**

Thomas E. Schultze, Head of Division 203 (OSCE)  
Michael Morgenstern, Deputy Head of Division 203  
Friederike Hellner, Deputy Head of Division 505 (Legal)

### **Federal Ministry of Interior**

Henner-Jörg Boehl, Head of Division V I 5 (Federal Election Law, European Election Law, Law of Political Parties)  
Sebastian Seedorf, Deputy Head of Division V I 5  
Karina Schorn, Head of the Office of the Federal Returning Officer

### **Election Scrutiny Board of the Bundestag**

Thomas Kopp, Deputy Head of the Secretariat

### ***Land* Returning Office, Berlin**

Petra Michaelis-Merzbach, *Land* Returning Officer  
Ulrike Rockmann, President of the Office of Statistics for Berlin-Brandenburg  
Maik Martin, Speaker for Constitutional Law and Parliament Elections and Referenda  
Geert Baasen, Head of the Office of the *Land* Election Commissioner

### **Parliamentary Committee on Internal Affairs**

Reinhard Grindel, Member

### **Federal Constitutional Court**

Michael Gerhardt, Justice (Second Senate)

### **Governing Mayor of Berlin – Senate Chancellery**

Sandra Winterberg, Deputy Head of Division II B, Media and Broadcasting Officer

### **Public Broadcaster ARD**

Michael Kühn, Authorised Agent of the ARD Chairman

### **German Press Council**

Edda Kremer, Press and Public Information Officer

### **The Social Democratic Party**

Saskia Freiesleben, Department for International Politics

### **The Christian Democratic Union**

Bertil Wenger, Deputy Head of the Office for Foreign Relations

### **The Free Democratic Party**

Manfred Eisenbach, International Co-ordinator  
Jörg Paschedag, Executive Director

### **The Left**

Matthias Höhn, General Secretary

**Alliance '90/The Greens**

Melanie Haas, Bureau Chief

**Humboldt University of Berlin**

Christian Tomuschat, Public, International and European Law