



Office for Democratic Institutions and Human Rights

# REPUBLIC OF FRANCE

## PRESIDENTIAL ELECTION

23 April and 7 May 2017

OSCE/ODIHR Election Expert Team  
Final Report



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**REPUBLIC OF FRANCE  
PRESIDENTIAL ELECTION**

**OSCE/ODIHR Election Expert Team Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the Permanent Mission of the Republic of France to the OSCE and based on the findings and conclusions of a Needs Assessment Mission deployed from 13 to 15 March 2017, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Expert Team (EET) to observe the 23 April presidential election and remained in the country to follow the second round contest on 7 May. The OSCE/ODIHR EET focused on campaign finance and the legal provisions pertaining to media coverage of the election. The OSCE/ODIHR EET consisted of three experts drawn from three OSCE participating States.

France is a presidential republic with a bicameral parliament that comprises a directly elected lower house, the National Assembly, and an indirectly elected upper house, the Senate. The president is elected for a five-year term under a two-round system and can serve a maximum of two consecutive terms. The election took place against a backdrop of slow economic recovery, distrust of the establishment, high unemployment, especially among youth, and the rise of a far-right sentiment. The campaign was marked by a substantive discussion of political issues and topics of national concern, such as employment, welfare, immigration, state spending and environment.

The political finance system relies on a comprehensive and extensive regulatory framework which has grown gradually over the past couple of decades. It has a constitutional foundation with separate legislation for political party funding and election campaign financing. Although fundamentally sound, there are areas that could be improved to ensure it fulfils the twin goals of limiting the prevalence of money in elections and ensuring proper regulation of campaign finance. The Commission for Control of Electoral Accounts and Political Finance is the principal body charged with overseeing party and election finance but its role and powers are constrained by the Constitution and regulatory framework.

The media environment is pluralistic, lively and offers a diverse range of views. Television is considered to be the primary source of political information, followed by internet, radio and print media. The legal framework grants all candidates a right to access the media. Audiovisual media coverage of the election was regulated by the Supreme Audiovisual Council which issued specific regulations and oversaw media compliance with them. Print and online media were not subject to a specific regulation during this election, except for prohibition of purchasing and publishing paid political advertising, which extends to all type of media. Media extensively covered the election, offering pluralistic information that enabled citizens to make an informed choice.

**II. INTRODUCTION AND ACKNOWLEDGEMENTS**

Following an invitation from the Permanent Mission of the Republic of France to the OSCE and based on the findings and conclusions of a Needs Assessment Mission deployed from 13 to 15 March, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Expert Team (EET) to observe the 23 April and remained in the country to follow the second round contest on 7 May. The OSCE/ODIHR EET consisted of three experts drawn from three OSCE participating States.

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<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in French.

The OSCE/ODIHR EET focused on campaign finance and the legal provisions pertaining to media coverage of the election. Therefore, the report is limited in scope and does not offer an overall assessment of the electoral process. Specific areas under review were assessed for their compliance with OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation. In line with the OSCE/ODIHR methodology, the OSCE/ODIHR EET did not undertake a comprehensive and systematic observation of the election day procedures. This final report should be read in conjunction with the 2017 OSCE/ODIHR NAM report and previous ODIHR reports, which provide additional detail on the electoral process in France.<sup>2</sup>

The OSCE/ODIHR EET wishes to thank the Ministry of Foreign Affairs and International Development, Ministry of Interior, Constitutional Council, as well as representatives of political parties, media, civil society and other interlocutors for their co-operation and assistance.

### III. BACKGROUND AND POLITICAL CONTEXT

France is a presidential republic with a bicameral parliament that comprises a directly elected lower house, the National Assembly, and an indirectly elected upper house, the Senate. Since 2002, presidential election is held in the same year as the elections to the National Assembly.

The 2017 presidential election took place against a backdrop of slow economic recovery, distrust of the establishment, high unemployment, especially among youth, and the rise of a far-right sentiment. The pre-electoral environment was marked by uncertainty in the political landscape and ongoing corruption scandals involving several presidential candidates.

The two biggest parties – the Republican Party and the Socialist Party, which dominated French politics in the last decades and alternated in the presidency, nominated their candidates, for the first time, through open primaries in two-rounds. Eleven candidates, including two women, were registered by the Constitutional Council. The incumbent President François Hollande did not stand for a re-election despite being eligible.

The presidential election was conducted under an ongoing state of emergency, which has been renewed five times since being enacted in November 2015 following a high-profile terrorist attack in Paris. This, however, did not affect the campaign environment and the conduct of election. The presidential campaign drew considerable public interest and took place in an environment of open debate and discussion. The campaign was marked by attention to substantive discussion of political issues and topics of national concern, such as employment, welfare, immigration, state spending and environment.

Following the result of the first round held on 23 April, Emmanuel Macron of *En Marche!* and Marine Le Pen of the National Front continued to the 7 May runoff. For the first time in the history of the Fifth Republic, the runoff took place without a nominee of the traditional left or right parties.

The OSCE/ODIHR previously assessed three elections in France since 2002, most recently in 2012, when the OSCE/ODIHR deployed an Election Assessment Mission (EAM) for parliamentary elections. The EAM noted that the elections were administered in an efficient and transparent manner and provided voters with a wide choice among diverse political options. Among various issues, the EAM recommended to improve certain elements of the legal framework, to review the practice of proxy voting, to further strengthen the transparency of campaign finance, and to introduce greater transparency into the process of Internet voting, especially regarding certification and audit.

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<sup>2</sup> See [all previous OSCE/ODIHR reports on France](#).

#### **IV. ELECTORAL SYSTEM, LEGAL FRAMEWORK, AND ELECTION ADMINISTRATION**

The president is elected for a five-year term under a two-round system and can serve a maximum of two consecutive terms. To be elected in the first round, a candidate must receive more than 50 per cent of valid votes cast. Otherwise, a second round is held two weeks later between the two leading candidates. The candidate who receives more votes in the second round is elected president.

The legal framework for presidential election is complex and includes the 1958 Constitution (last amended in 2008), the 1958 Law on the Constitutional Council, the Electoral Code (last amended in 2017), and the 1962 Law on the Election of the President of the Republic (last amended in 2016). Specific aspects of the elections are further regulated by the laws on Freedom of Press, Public Meetings, and Financial Transparency of Political Life, as well as the Audiovisual Code and the Penal Code. Secondary legislation includes regulations, decrees, court decisions and deliberations, and instructions on different aspects of the electoral process, such as candidate and voter registration, campaign activities and financing, and media coverage. Overall, the legal framework provides sound basis for the conduct of democratic elections.

The administration of elections is decentralized and different institutions and authorities share responsibility in managing the process. The Ministry of Interior is charged with technical preparations of the elections. It issues instructions on legal and organizational matters to the prefectures (representation of the state at the department level).<sup>3</sup> Prefectures coordinate the work of the approximately 36,000 local administrations that managed some 68,000 polling stations across the country. The responsibility for general oversight of the elections is vested with the Constitutional Council, which reviews, advises on, and validates election-related legislation, and adjudicates election-related complaints and appeals.<sup>4</sup>

#### **V. CAMPAIGN FINANCE**

##### **A. LEGAL FRAMEWORK**

The political finance system relies on a comprehensive and extensive regulatory framework which has grown gradually over the past several decades. It has a constitutional foundation with separate legislation for political party funding and election campaign financing.<sup>5</sup> In addition, different judicial bodies contribute to the legal fabric through case law and advisory opinions.<sup>6</sup> Although fundamentally sound, there are areas that could be improved to ensure that the legal framework fulfils the twin goals of limiting the prevalence of money in elections and ensuring proper regulation of campaign finance. The legal framework still contains some loopholes which create potential avenues for circumventing the campaign expenditure regulations. (See *Campaign Expenditure*)

*Consideration could be given to simplifying, modernising and re-codifying the regulatory framework with special attention to closing the potential avenues of circumvention.*

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<sup>3</sup> Departments are the administrative division below the national level – 101 in total (96 in-country and 5 for overseas territories).

<sup>4</sup> The Constitutional Council is composed of nine members who serve for non-renewable nine-year terms. The incumbent President of the Republic, the Presidents of the National Assembly and the Senate each appoint three members of the Council.

<sup>5</sup> Article 4 of the Constitution recognises the role of parties and political groups in the exercise of the right to vote. The right to form parties and their freedom of action are unrestricted.

<sup>6</sup> Especially important are decisions of the *Conseil d'État* and the Constitutional Council.

The 2015 Report of the Council of Europe’s Group of States against Corruption (GRECO) concluded that a number of its recommendations to enhance transparency of political funding have not been fully addressed.<sup>7</sup> Domestic reviews such as the Report by the National Assembly’s Committee on finance and budgetary control also considered aspects of the political finance framework and recommended measures to strengthen the transparency of political finance.<sup>8</sup> A few amendments have been adopted since the last elections, which addressed certain shortcomings, including those related to the supervisory functions of the Commission for Control of Electoral Accounts and Political Finance (CNCCFP) in respect of political parties. However, a number of issues related to the transparency of campaign and party finance remain, including laying down an appropriate threshold above which the identity of the donor must be disclosed, publication of accounts, including on a regular basis in the course of the campaign, shortening the period for submission of campaign finance accounts, and granting investigative powers to the CNCCFP to undertake on-site checks and real-time campaign monitoring.

## B. FUNDING SOURCES

Candidates for the presidential election can fund their campaigns using private donations, party contributions and their own funds. With regard to private donations, French citizens and foreign individuals are allowed to donate up to EUR 4,600 per election to one or more candidates.<sup>9</sup> Donations from domestic and foreign legal entities are prohibited. There is no explicit legal prohibition on making donations in the name of another person. Cash donations are allowed up to EUR 150 but cannot cumulatively exceed 20 per cent of the authorised spending limit.<sup>10</sup> For this election, the ceilings for cash donations amounted to EUR 3.3 million and 4.5 million for the first and second rounds, respectively. There is no ceiling on donations by a political party or on the use of a candidate’s own funds. The candidate’s own funds may include loans incurred by the candidate.

*To enhance transparency and accountability in the sources of campaign financing, consideration should be given to explicitly prohibiting contributions made in the name of another person. Consideration could also be given to lowering the ceiling for cash donations, both individually and cumulatively.*

Public funding for the presidential campaign consists of both direct and indirect support. The state covers the costs associated with the official campaign, such as debates and programmes on radio and television, direct mail and the printing and displaying of official campaign posters.<sup>11</sup> Another indirect source of public funding consists of the 66 per cent tax relief accorded to donors on their donations. Direct public funding is distributed largely on a reimbursement basis, although each presidential candidate receives an advance of EUR 153,000 toward campaign expenses. Reimbursement of

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<sup>7</sup> See: [GRECO Third Interim Compliance report on France](#).

<sup>8</sup> See the Report by the President of the Republic “[Renewing Public Confidence](#)”, the [Report](#) by the National Assembly’s Committee for on finance and budgetary control. See also the Transparency International–France [Report on Financing Electoral Campaigns and Political Parties in France](#).

<sup>9</sup> Under the law, individuals can donate a total of EUR 7,500 to political parties, per year. Thus, in 2017, a person could donate a total of EUR 16,700 (EUR 4,600 in donations to candidates in the presidential election, EUR 4,600 for the legislative elections and EUR 7,500 to one or more political parties). Under the current legal framework, no information identifying the donor or their donations is publicly available although the total amount of permissible donations is more than seven times the average monthly net French salary of EUR 2,157.

<sup>10</sup> For the first round of the presidential election, the law established the campaign expenditure ceiling for each candidate at EUR 16.8 million, while the total limit for each of the two candidates reaching a potential second round is EUR 22.5 million.

<sup>11</sup> Privately paid-for TV and radio advertisements are prohibited by law.

campaign expenses is predicated on the candidate having complied with all obligations.<sup>12</sup> The reimbursement ceiling for first round candidates receiving less than 5 per cent of the votes cast is 4.7 per cent of the spending limit (EUR 800,000 maximum). Those exceeding the 5 per cent threshold are entitled up to 47% reimbursement (EUR 8 million). For the runoff, the reimbursement ceiling was set at EUR 10.7 million.

### C. CAMPAIGN EXPENDITURE

Campaign expenditure is not defined in the Electoral Code but case law has interpreted it to mean ‘costs associated with getting votes.’<sup>13</sup> The Commission for Control of Electoral Accounts and Political Finance (CNCCFP) has developed additional criteria for assessing the electoral nature of an expense.<sup>14</sup> There has been a significant amount of case law on the issue of what constitutes campaign spending and recent changes in electoral process and campaign techniques, such as open primary elections and pre-candidature expenses, have presented new challenges. For this election, campaign expenditure was capped at EUR 16.8 million per candidate for the first round and EUR 22.5 million for the second round. The regulated period for the 2017 election began on 1 April 2016 and extended until the evening before the last election in which the candidate is on the ballot.

The law is also silent on expenditures incurred by unaffiliated, non-party campaigners (third parties). The OSCE/ODIHR EET interlocutors noted that such activity is insignificant in France. However, in the circumstances when direct donations to candidates and candidate spending are capped, third party expenditure presents a potential means of circumventing donation and spending limits.

*Consideration should be given to clarifying and codifying the definition of campaign expenditure in the primary law to provide clear guidelines on which activities are prohibited during the pre-election campaign. To enhance transparency of campaign finance, the authorities could consider amending the law to require reporting on election-related expenditures by third-parties.*

All expenses must have been paid when a candidate submits their campaign accounts for approval by the CNCCFP. This means that any deficit must be addressed by soliciting additional funds from eligible donors or by the candidate borrowing money. In a presidential campaign, individuals are prohibited from lending funds but legal entities, domestic or foreign, are legitimate sources for such loans.<sup>15</sup> Thus, non-repayment of a loan would constitute an impermissible donation. Although the law now requires loans to be listed in the candidate’s account with terms and conditions detailed, oversight of repayment is limited to a six-month period from submission of the candidate’s campaign account.

*To address concerns with regard to a potential for circumventing the ban on donations from legal entities, the authorities could consider capping the length of loans to the period of on-going oversight.*

### D. REPORTING AND DISCLOSURE

There is no reporting or disclosure of campaign funding before the election. Every candidate must appoint a financial agent (either a person or an association) before collecting any funds. The agent is

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<sup>12</sup> The obligations include the appointment of a financial agent, adherence to electoral rules, accounts signed by a chartered accountant and the timely submission of an accurate and complete campaign account approved by the Commission for Control of Electoral Accounts and Political Finance (*Commission nationale des comptes de campagne et des financements politiques*, CNCCFP).

<sup>13</sup> See *Conseil d’État Arrêt Gourlot* No. 272551 of 27 June 2005.

<sup>14</sup> See the [CNCCFP Guide for candidate and financial agents](#), pages 46 – 47.

<sup>15</sup> See *Avis* No. 392602 of the *Conseil d’État*.

responsible for handling all financial transactions. A campaign account is prepared and signed by an accountant before being filed with the CNCCFP by the tenth Friday following the first election round, which is unduly long in view of international good practice.<sup>16</sup> Once the CNCCFP completes its reviews of all campaign accounts, it publishes a summary of campaign financial data; the specific details of the accounts, including the identity of donors, suppliers and lenders are not disclosed.<sup>17</sup> The legislation also does not require that the financial reports be accompanied by supporting documents, which challenges international standards that call for transparency of political finance.<sup>18</sup>

The lack of transparency has been consistently highlighted in reviews of the French political finance system by the OSCE/ODIHR and the Council of Europe's GRECO. Recommendations to address the gaps have been met with a strict interpretation of the Constitutional protection afforded to political parties, the sanctity of the secret ballot and a desire to maintain privacy of donations.

*To enhance the transparency of campaign finance, the law could be reviewed to require the disclosure of large donors' identify and publication of detailed post-election reports accompanied by all supporting materials.*

## **E. OVERSIGHT**

The CNCCFP is the principal body charged with overseeing party and election finance but its role and powers are constrained by the Constitution and regulatory framework. It has authority, for example, to monitor political party income but no role in supervising party expenditure because of the interpretation accorded to Article 4 of the Constitution.

The CNCCFP approves, rejects or requires revisions of presidential campaign accounts within six months of receipt and decides the level of reimbursement due. The Commission is tasked with assessing the truthfulness, accuracy and completeness of the accounts.<sup>19</sup> However, it lacks the power to undertake real-time campaign monitoring or to obtain information from donors and service providers. The CNCCFP does not have investigative powers and cannot impose fines in case of irregularities, but can reduce an amount of reimbursements candidates receive. The CNCCFP now has the power to request documents from parties relating to their support of presidential candidates, but lacks the power to require parties to actually produce the requested documents.

*Authorities could consider amending the law to provide the CNCCFP with more resources and authority to conduct investigations in order to improve effectiveness of political and campaign finance oversight. The CNCCFP's mandate could be further strengthened with increased sanctioning authority.*

A number of OSCE/ODIHR EET interlocutors suggested that in addition to having adequate powers, the CNCCFP needs adequate resources and tools to perform its role efficiently. New technologies such as e-filing and the creation of a searchable database could facilitate the submission of information in a standardized manner.

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<sup>16</sup> Paragraph 200 of the 2010 OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation recommends that "reports on campaign financing should be turned in to the proper authorities within a period of no more than 30 days after the elections."

<sup>17</sup> The 2007 presidential election summary was published in May 2008 and the 2012 presidential election summary was published in September 2013.

<sup>18</sup> Article 7.3 of the [2003 United Nations Convention against Corruption](#) provides that states should "consider taking appropriate legislative and administrative measures... to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties".

<sup>19</sup> Where the CNCCFP has grounds to suspect a criminal violation of the campaign finance law, it can refer the matter to the prosecuting authority.



*To enhance the CNCCFP's oversight capacity and expedite the review process, consideration could be given to the development of an appropriate e-filing and database system.*

## VI. MEDIA

### A. MEDIA LEGAL FRAMEWORK

The media environment is pluralistic, lively and offers a diverse range of views. Television is considered to be the primary source of political information, followed by internet, radio and print media.<sup>20</sup> While traditional media are facing a growing distrust from the citizens, internet-based news services and social media are growing in popularity. Some OSCE/ODIHR EET interlocutors raised concerns that this tendency may increase the chances of potential misinformation.

Freedom of speech is guaranteed by 1789 Declaration of the Rights of Man and of the Citizen, and the amended Press Law of 1881 guarantees freedom of the press, subject to several exceptions, including defamation and insult, which are still considered as a criminal offence. Additionally, the Press Law grants special protection to a number of public figures and entities and limits the possibilities for a defendant to establish the truth in certain cases of alleged defamation.<sup>21</sup>

*Authorities could consider decriminalizing defamation and revising the Press Law in order to bring it in line with international standards on freedom of expression.*

Journalists generally enjoy a high degree of freedom, and in case of changes in the ownership or clear modification of editorial line of their media outlet, they can resort to the *clause de cession* (transfer clause) and *clause de conscience* (conscience clause) respectively, allowing them to leave the media outlet and receive a severance package.<sup>22</sup> However, some concerns were raised by OSCE/ODIHR EET interlocutors regarding the concentration of media ownership, which could potentially affect the editorial independence of media outlets.<sup>23</sup> In this regard, the National Assembly adopted in November 2016 a law aimed to reinforce media freedom, independence and pluralism. The law requires media outlets to adopt an ethics code and create an ethics committee to facilitate solving internal controversies as well as conflicts between newsrooms and media owners.

OSCE/ODIHR EET interlocutors, expressed concerns over the current legal provision for protection of the sources of information that provides for exceptions in case of “an overriding requirement in the

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<sup>20</sup> The definition of “internet” includes online and social media versions of traditional media (print media, television and radio) which constitute a considerable part of online sources.

<sup>21</sup> Paragraph 47 of the 2011 United Nations Human Rights Committee (CCPR) General Comment No. 34 to the Article 19 of the 1966 International Covenant on Civil and Political Rights (ICCPR) states that “defamation laws must be crafted with care to ensure that they do not serve, in practice, to stifle freedom of expression... States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty... At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence”. Paragraph 38 states that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties”.

<sup>22</sup> See [Labour Code](#) Article L7112-5.

<sup>23</sup> In October 2016, the appointment of a programme host by the new major shareholder of the news TV channel *I-Tele* was harshly criticized by the TV channel's newsroom. The confrontation between the journalists and the ownership led to a 31-days strike. Eventually, at different times, two thirds of *I-Tele*'s journalists decided to resign.

public interest”, which might leave room for arbitrary application.<sup>24</sup> In the past, media professionals have called on the authorities to amend the law to further limit possible exceptions. Most recently, the Constitutional Court rejected a new legal provision approved by the National Assembly aiming to reinforce the protection of the secrecy of the sources, as its formulation was deemed unconstitutional.<sup>25</sup> The National Assembly, alongside with the enactment of the state of emergency in November 2015 by the Council of Ministries, positively, abolished a provision in the 1955 Law on the State of Emergency that had allowed controls of media content and administrative searches of journalists’ offices.<sup>26</sup>

## B. MEDIA COVERAGE OF ELECTION

The election was extensively covered in television, internet, radio and print media in a variety of formats, offering pluralistic information that enabled citizens to make an informed choice. For instance, in addition to the traditional election debate between the two contestants in the run-off, for the first time TV channels organized the debates before the first round of the election.<sup>27</sup> In a further positive development, media outlets strived to minimize misinformation on election by joining in a collaborative journalism project, *CrossCheck*, which gathered 37 national and international media outlets working to fact-check and debunk dubious election related information.<sup>28</sup> Moreover, some media outlets were equipped with permanent fact-checking initiatives.<sup>29</sup>

Traditional mainstream media in France face a growing distrust of the citizens.<sup>30</sup> Some candidates built their respective campaign strategies on this, targeting media outlets that described them as part of the establishment that they were opposing. Moreover, a candidate harshly reacted against media that reported on an open investigation on him over a “fake jobs” scandal. In addition to verbal attacks, in some instances journalists were denied access to election campaign events.<sup>31</sup>

Audiovisual media coverage of the election was regulated by the amended 1986 Law on Freedom of Communication, which sets a regulatory framework also for political pluralism during and between elections. The law mandates the Supreme Audiovisual Council (CSA), a regulatory body, to issue specific regulation for each election and to oversee media compliance with them. Print and online media were not subject to a specific regulation during this election, with exception for prohibition of purchasing and publishing paid political advertising, which extends to all type of media.

Recent amendments to the Law on the Election of the President reduced the period of application of the strict equal time from five to the last two weeks before the election day, and introduced the principle of equitable coverage under comparable conditions in the second phase of the election

<sup>24</sup> 2010 Law on the Protection of Secrecy of Journalistic Sources.

<sup>25</sup> [Constitutional Court Decision](#) No. 2016-738, 10 November 2016.

<sup>26</sup> [Law n° 2015-1501](#) of 20 November 2015 extending and reinforcing the state of emergency provisions.

<sup>27</sup> A first debate among five candidates was organized on 20 March by *TF1*, the main French private channel, followed by a second debate on 4 April hosting all eleven candidates organized by *BFMTV* and *CNews*, two 24/7 private news channels. The public television attempted to organize an election debate on 20 April, three days before election day, but due to refusal of some candidates the format was changed into a series of 15 minutes interviews with each candidate. A debate between two contestants for the second round was organized by *TF1* and *France2* and broadcasted simultaneously also by other TV channels.

<sup>28</sup> The [CrossCheck project](#) was launched by the international network *First Draft News* with the support of *Google News Lab* and *Facebook*.

<sup>29</sup> A remarkable example was the newspaper [Le Monde’s fact-checking component](#) - *Les Decodeurs* - which run *inter alia* a live fact checking during the election debate for the second round, allowing to identify several misleading statement conveyed by the candidates.

<sup>30</sup> See [Barometer 2017](#) (Kantar).

<sup>31</sup> On 27 April 2017, 36 journalists’ associations representing their media outlets signed and published [an open letter](#) to denounce the hindrance to freely cover election campaign events organized by the National Front party.

period. Based on these amendments, the CSA issued a regulation, which divided the election period in three phases with progressive strict requirements for the *temps de parole et temps d'antenne* offered by broadcast media to contestants.<sup>32</sup> Media were required to cover the contestants in an equitable manner in the first period, to offer an equitable coverage under comparable conditions during the second period and to grant a strict equal coverage during the official campaign for the first and second round.<sup>33</sup> According to CSA findings, the reduction of the period of application of a strict equal time coverage led to an increase of the volume of election related information provided by broadcast media compared to the same period during 2012 presidential election campaign, thus positively contributing to voters ability to make an informed choice.

CSA required twenty-four major media outlets to self-monitor their coverage and submit their monitoring results on a weekly basis.<sup>34</sup> CSA run a verification of the received results on a random basis before validating and publishing them in a clear and timely manner on its website. Audiovisual media abided by their obligations and largely respected CSA regulation by offering a balanced coverage and refraining from disseminating election campaign messages during the silence period. Nevertheless, OSCE/ODIHR EET interlocutors, including journalists, voiced concerns regarding the complexity of the regulations and the difficulties in coping with a strict equality principle during official campaign period. CSA received few informal complaints during the entire election period and, based on its verification of the media monitoring results, issued a very limited number of public warnings. However, while announcing a public warning on its website, CSA did not publicly disclose the violation committed by media outlets.<sup>35</sup>

*Consideration could be given to enhance the transparency of CSA supervision by publicly disclosing the violation committed by a media outlet when issuing a public warning.*

During the official campaign period, as prescribed by the law, all presidential candidates were granted free airtime slots to convey their messages on public televisions and radios. Prior to the first round of the election, the eleven candidates were offered a total of 43 minutes in each public broadcast media, while during the last week of the official campaign for the second round the two contestants were granted one-hour of free airtime each.<sup>36</sup>

The law foresees a silence period starting 24 hours before election day and lasting until the closure of all polling stations. During this period, all media outlets are forbidden to disseminate statements or campaign material and publish opinion polls. The Commission for Opinion Polls (*Commission des Sondages*) and the CSA did not observe breaches of the law by the main research institutes or broadcast media. However, not all online media abided by the silence period regulation, especially with regard to a leak of data which occurred three days prior to the run-off and meant to damage one of the two candidates. The National Commission for Control of the Electoral Campaign on 31 May

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<sup>32</sup> *Temps de parole* is defined as the sum of candidate's direct speech and endorsement messages of its supporters. *Temps d'antenne* is defined as the sum of the *temps de parole* and the coverage devoted by the media outlet to the candidate. Negative coverage of the candidate was not taken in consideration and not counted in the total coverage/*temps d'antenne*.

<sup>33</sup> First period went from the 1 February to 19 March, the second period went from 20 March to 9 April, and the official campaigns were from 10 to 21 April for the first round and from 24 April to 5 May for the second round of the election.

<sup>34</sup> In the last five days of the official campaign for the first and second round, media outlets were request to send their monitoring results on a daily basis.

<sup>35</sup> CSA issued two warnings from 1 February to 9 April, three warnings from 20 to 21 April and one injunction for breaching the silence period on 22-23 April.

<sup>36</sup> A total of six national and international public TV channels and three radio stations granted free airtime to the candidates (TV channels: *France 2, France 3, France O, France Info TV, France 24, Outre-mer TV*. Radio stations: *France Inter, Radio France Internationale* and *Outre-mer Radio*).

2017 referred to the State Prosecutor a number of violations committed by online media and social media users during the silence period.<sup>37</sup>

The National Council for Individual Freedom and Information Technology (CNIL) set up a specific election observatory to oversee the misuse of citizens personal data by candidates while running their election campaign via internet and other telecommunications means. The CNIL received a number of informal complaints from citizens but with the exception of the misuse of messages spread via automatic calling machines, no major mistreatment of personal data was found.

## VII. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to further enhance the conduct of elections in France and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities of France to further improve the electoral process and in following-up on the recommendations contained in this and previous reports.<sup>38</sup>

1. Consideration could be given to simplifying, modernising and re-codifying the regulatory framework with special attention to closing the potential avenues of circumvention.
2. To enhance transparency and accountability in the sources of campaign financing, consideration should be given to explicitly prohibiting contributions made in the name of another person. Consideration could also be given to lowering the ceiling for cash donations, both individually and cumulatively.
3. Consideration should be given to clarifying and codifying the definition of campaign expenditure in the primary law to provide clear guidelines on which activities are prohibited during the pre-election campaign. To enhance transparency of campaign finance, the authorities could consider amending the law to require reporting on election-related expenditures by third-parties.
4. To address concerns with regard to a potential for circumventing the ban on donations from legal entities, the authorities could consider capping the length of loans to the period of on-going oversight.
5. To enhance the transparency of campaign finance, the law could be reviewed to require the disclosure of large donors' identify and publication of detailed post-election reports accompanied by all supporting materials.
6. Authorities could consider amending the law to provide the CNCCFP with more resources and authority to conduct investigations in order to improve effectiveness of political and

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<sup>37</sup> On Friday 5 May 2017, the candidate Emmanuel Macron was the target of a hacking attack. Emails belonging to his campaign team were hacked and their content was spread on internet alongside allegedly false information. The CCNP on 6 May issued a [press release](#) asking especially online media to refrain from publishing the leaked information, and on 31 May [announced](#) that it has referred to the State Prosecutor a number of violations of the silence period. No detailed information on detected violations was released.

<sup>38</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations".

campaign finance oversight. The CNCCFP's mandate could be further strengthened with increased sanctioning authority.

7. To enhance the CNCCFP's oversight capacity and expedite the review process, consideration could be given to the development of an appropriate e-filing and database system.
8. Authorities could consider decriminalizing defamation and revising the Press Law in order to bring it in line with international standards on freedom of expression.
9. Consideration could be given to enhance the transparency of CSA supervision by publicly disclosing the violation committed by a media outlet when issuing a public warning.

## VIII. ANNEX: ELECTION RESULTS

### 1<sup>st</sup> round

Candidate	Percentage of valid votes cast	Valid cast votes
Nathalie Arthaud	0.64	232,384
François Asselineau	0.92	332,547
Jacques Cheminade	0.18	65,586
Nicolas Dupont-Aignan	4.70	1,695,000
François Fillon	20.01	7,212,995
Benoît Hamon	6.36	2,291,288
Jean Lassalle	1.21	435,301
<b>Marine Le Pen</b>	<b>21.30</b>	<b>7,678,491</b>
<b>Emmanuel Macron</b>	<b>24.01</b>	<b>8,656,346</b>
Jean-Luc Mélenchon	19.58	7,059,951
Philippe Poutou	1.09	394,505
<b>Data regarding the voting process</b>		
# of registered voters		47,582,183
turnout / % of voting participation		37,003,728 / 77.77
# of total valid votes		36,054,394
# of blank ballots		659,997
# of invalid ballots		289,337
# of abstentions		10,578,455

### 2<sup>nd</sup> round

Candidate	Percentage of valid votes cast	Valid votes cast
<b>Emmanuel Macron</b>	<b>66.10</b>	<b>20,743,128</b>
Marine Le Pen	33.90	10,638,475
<b>Data regarding the voting process</b>		
# of registered voters		47,568,693
turnout / % of voting participation		35,467,327 / 74.56
# of total valid votes		31,381,603
# of blank ballots		3,021,499
# of invalid ballots		1,064,225
# of abstentions		12,101,366

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).