



Office for Democratic Institutions and Human Rights

REPUBLIC OF MALTA
PARLIAMENTARY ELECTIONS
9 March 2013

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

15-17 January 2013



Warsaw
7 February 2013

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Permanent Mission of Malta to the OSCE to observe the upcoming parliamentary elections scheduled for 9 March 2013, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) from 15 to 17 January. The NAM included Ms. Nicola Schmidt, Deputy Head of the OSCE/ODIHR Election Department, and Ms. Tamara Otiashvili, 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 state institutions and the election administration, as well as with representatives of political associations and media. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Permanent Mission of Malta to the OSCE and the Ministry of Foreign Affairs for their 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

On 9 March 2013, the citizens of Malta will elect 65 members of the parliament for a five-year term. These members are elected on the basis of proportional representation, using a single transferable vote system. Two political parties have been most prominent in Malta's politics for the last two decades, resulting in closely contested elections and contributing to political tension. The last elections of 2008 were decided by a difference of some 1,500 votes.

The legal framework, primarily regulated by the Constitution and General Elections Act, provides a sound basis for the conduct of democratic elections. The 2012 changes to the Elections Act refined voter registration regulations and introduced voting for hospital in-patients. A complaint to the Data Protection Commissioner regarding issues with the protection of data of those voting in hospitals is pending.

Eligible candidates may stand as representatives of a political party or independently, in line with paragraph 7.5 of the 1990 OSCE Copenhagen Document. A resident citizen of voting age may stand for elections; however, the law imposes some restrictions on candidacy rights based on residency and incompatibility with certain official functions.

The Nationalist Party and the Labour Party have been represented in the parliament for the past two decades. Other small parties have not received sufficient support to enter the

parliament. Divisions between the two political parties are marked. They are very active in mobilizing their electorate, which is shown in the high turnout figures typical of national elections in Malta.

A third party, the Democratic Alternative – Green Party, is also contesting these elections. However, OSCE/ODIHR NAM interlocutors noted that it is very difficult for candidates not belonging to the two big parties to have substantial influence in the political process.

Parliamentary elections are administered by an Electoral Commission (EC) that has wide-ranging responsibilities and oversight over the electoral process. A special Sub-Committee is established by the EC for voting in hospitals and retirement homes. On election day, polling is conducted in polling stations, administered by Assistant Commissioners. The two big political parties are actively involved in the electoral process, being present at and supervising every stage.

There is no out-of-country voting. However, voters can cast early ballots during the week preceding election day. In addition, the government subsidizes flights operated by Air Malta during the election period for eligible voters and their dependents.

The voter register is based on passive voter registration and maintained on a permanent basis by the EC. The 2012 amendments to the General Elections Act allow review of the register once elections are announced. As of 16 January 2013, some 310,000 voters were registered to vote in the upcoming elections. Voters can only vote upon presenting a special voting card, produced by the EC.

The election campaign officially commenced following the announcement of elections on 8 January and has since been intensive due to the very close race. Despite the political tension, the campaign is expected to be peaceful and free from violence.

There are no political finance regulations in place. The Council of Europe's Group of States against Corruption (GRECO) highlighted this issue as well as the lack of transparency mechanisms. It extended six recommendations to overcome these shortcomings. Attempts to pass a draft law addressing these recommendations have not succeeded.

While the General Elections Act imposes a campaign expenditure ceiling for each candidate, there are no such regulations for political parties other than this. The cap of EUR 1,400 per candidate was widely criticized by OSCE/ODIHR NAM interlocutors. It was believed that candidates spend much more than the maximum amount permitted and find ways to circumvent this legal provision.

There is a wide variety of public and private television channels, radio stations and newspapers, as well as community media outlets providing a diversity of views. The public broadcaster operates two television channels and three radio stations. The two main political parties both own media outlets, including a TV and radio station each, as well as print and internet media.

The Broadcasting Authority, established by the Constitution, regulates the media and ensures that impartiality is preserved and different political views are presented. For these elections, the Authority issued a directive highlighting the importance of balance and impartiality,

including in media outlets owned by political parties. While access to media by the two main political parties seems to be generally ensured, the OSCE/ODIHR NAM was informed that smaller parties and independent candidates face problems with equitable access.

Timely legal redress is ensured through different administrative and judicial bodies. All OSCE/ODIHR NAM interlocutors expressed trust in the complaints and appeals system.

The legislation does not include specific provisions for international or domestic observers. However, the OSCE/ODIHR was given assurances of full access to all stages of the electoral process if an election observation activity were to be deployed.

All OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality and professionalism of the election administration and their ability to organize elections in an effective manner. No significant concerns were expressed relating to respect for fundamental freedoms, the transparency of the electoral process, the campaign environment, and election day proceedings. Nevertheless, most interlocutors stated that they would welcome a potential OSCE/ODIHR observation activity for these elections, recognizing that further improvements could be made to the electoral process and that an independent, external assessment may contribute to this.

In this regard, the election process could benefit from closer scrutiny in a few areas, including provisions for political finance, election observation, as well as the media coverage of electoral campaign. As none of the interlocutors expressed any concerns related to the conduct of election day procedures, the OSCE/ODIHR NAM recommends the deployment of an Election Assessment Mission (EAM) for these elections.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

On 7 December 2012, the parliamentary majority lost the vote over the 2013 budget. Subsequently, on 7 January 2013, President Abela confirmed the dissolution of the parliament and announced elections for 9 March 2013.

Malta essentially has a two-party system, with the Nationalist Party (NP), led by Prime Minister Laurence Gonzi, and the Labour Party (LP), led by Joseph Muscat. These two parties are the only parties to have been represented in the parliament for the past two decades, with the NP being in government for nearly all of that time. In recent years, the policies of the two parties have converged to the centre. Other parties have not had electoral success: in the 2008 election, the Democratic Alternative – Green Party (DA) secured only 1.31 per cent of votes. OSCE/ODIHR NAM interlocutors noted that it is very difficult for candidates not belonging to the two big parties to have substantial influence in the political process.

Political parties are active in mobilizing their electorate. The 2008 elections were decided by some 1,500 votes in favor of the NP and a similarly close race is expected for the upcoming elections. Malta is unique for the very high level of participation in national elections without compulsory voting. Turnout during the 2008 elections reached 93 per cent. Political parties

are involved in every stage of the election process, contributing to transparency. While no party representative met with by the OSCE/ODIHR NAM questioned the competence and professionalism of the election administration, a lack of trust among the parties exists. This, reinforced by the margin in recent election results has resulted in close scrutiny of the electoral process.

OSCE/ODIHR has not previously observed or assessed elections in Malta, although it did visit the country in context of the June 2009 elections to the European Parliament.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The legal framework governing parliamentary elections comprises the Constitution, the General Elections Act and the Electoral Polling Ordinance. These are supplemented by the Public Meetings Ordinance and the Law on Broadcasting.

The General Elections Act was initially adopted in 1991 and has since been amended several times, most recently in July 2012. These latest amendments introduced new provisions for revising the electoral/voter register, and introduced voting in hospitals. Now hospitals are tasked with producing a list of patients in hospitals on a daily basis from the day after the elections were announced. This provision was challenged to the Data Protection Commissioner by the DA – Green Party on the ground that a provision that allows parties' access to lists of patients undermines data protection principles. The decision of the Data Protection Commissioner was pending at the time of the OSCE/ODIHR NAM.

There are no legal provisions explicitly allowing international or domestic election observation, which challenges paragraph 8 of the 1990 OSCE Copenhagen Document.¹ However, the OSCE/ODIHR NAM was given assurances of full access to all stages of the electoral process in the event of an election-related activity.

The parliament consists of 65 members elected for terms of five years.² For the purpose of these elections, Malta is divided into 13 electoral divisions each returning 5 elected members.³ Elections are conducted based on the principle of proportional representation, each voter having a single transferable vote (STV). With STV, all voters are asked to give a preference ranking as many candidates on the ballot as they wish, in numerical order. When indicating their preferences, voters may choose candidates from different political parties although OSCE/ODIHR NAM interlocutors noted that Maltese voters rarely stray from the candidates of their chosen party.

In order to win a seat, a candidate must receive a specified quota of votes in the respective electoral division. This quota is determined by taking the number of valid votes and dividing them by the number of seats plus one. Granting an additional seat to the party that won the

¹ Paragraph 8 of the 1990 OSCE Copenhagen Document states that participating States “consider the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from OSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law”.

² Subject to the provisions of Article 52(1) of the Constitution, the number of members can change as long as each electoral division elects no less than five and no more than seven members.

³ Electoral boundaries were most recently reviewed in 2012. The corresponding decision on delimitation of electoral districts was published in the Official Gazette on 23 April 2012.

largest share of the popular vote resulted from the 1996 constitutional changes aimed at ensuring a legislative majority.⁴

C. ELECTION ADMINISTRATION

Parliamentary elections are administered by the Electoral Commission (EC). It is a permanent body with eight members and a Chief Electoral Commissioner, with three-year terms in office. Members are appointed by the President of Malta upon proposal by the Prime Minister, after consultations with the Leader of the Opposition. The commissioners have traditionally come equally from the two political parties in parliament. The Chief Electoral Commissioner is appointed from the public service by the commission members. In addition to the EC members, every political party has the right to nominate two party delegates to the EC. Both parliamentary parties informed the OSCE/ODIHR NAM that they will be fielding delegates for these elections.

The rights and responsibilities of the EC are wide-ranging. Legal representation of the EC is vested with the Chief Electoral Commissioner, who is also responsible for implementing EC decisions. In addition to technical aspects of the electoral process, the EC reviews the boundaries of electoral divisions every five years and, if necessary, proposes alterations. This proposal is communicated to the Prime Minister and the Leader of the Opposition, and requires the approval of the parliament.

The EC is also mandated to suspend the elections, either in all electoral divisions or in any one or more of such divisions, if it has reasonable ground to believe that illegal practices or other offences connected with the elections have been committed and provided that these offences have been of a nature that could affect the outcome of elections. The Chief Electoral Commissioner then has to refer the matter to the Constitutional Court for its decision. All OSCE/ODIHR NAM interlocutors noted that the entire process is scrutinized carefully by the two largest political parties and that complaints over election results are rarely filed.

There is no out-of-country voting for citizens living abroad. However, voters can cast an early ballot within seven days of election day if they apply to do this by 1 March 2013. In addition, the government subsidizes flights operated by Air Malta during the election period for eligible voters and their dependents.⁵ A petition calling for a system allowing citizens living abroad to vote in the 2013 elections in embassies in their respective countries of residence obtained some 1,200 support signatures. All interlocutors met with by the OSCE/ODIHR NAM, however, noted that any change would require further discussions and legal amendments and would not be in place for these elections.

There are no intermediary commissions between the EC and polling stations. A special sub-committee is established for voting in hospitals and retirement homes. On election day, polling is conducted at each polling station by Assistant Commissioners (AC), appointed by the EC on the basis of nominations by the parliamentary parties. The two parliamentary parties informed the OSCE/ODIHR NAM that they would make full use of their right to nominate ACs. The third contesting party, the DA – Green Party, is considering nominating members for the sub-committee for voting in hospitals and retirement homes.

⁴ In the 1981, 1987 and 1996 elections the party which obtained the majority of the popular vote, did not have a legislative majority.

⁵ Flights will be operated between 27 February and 17 March and will cost EUR 35.

All interlocutors met with by the OSCE/ODIHR NAM expressed high confidence in the election administration and their ability to organize elections professionally and transparently.

D. VOTING RIGHTS AND REGISTRATION

All citizens over the age of 18 who have not been deprived of their voting rights by a court due to mental incapacity and are not serving a prison sentence of more than 12 months are eligible to vote. In addition, a voter must be a resident in Malta during the 18 months preceding election day and be resident for a continuous period of 6 months or for periods amounting to 6 months. The residency criteria exclude citizens in public and diplomatic services abroad. The residency requirement was challenged several times before the Constitutional Court. In March 2003, the Constitutional Court decided that residence does not require a continuous presence in the country.

Malta has a passive voter registration system, with the voter register compiled and maintained by the EC. Of a permanent resident population of some 479,000, some 310,000 citizens will be eligible to vote in the upcoming elections. The electoral register is revised twice a year and published in the Official Gazette for public scrutiny. In addition, following recent amendments to the General Elections Act, the EC bears the responsibility of publishing a revised electoral register within five days of the publication of the decision to hold elections. This revised register should include voters from the previous electoral register as well as those added or removed since then (those who will be 18 years of age by election day or are deceased). In this respect, the police commissioner, the registrar of the Court of Malta, and the registrar of the Court of Gozo are required to provide the EC with the required information to determine whether or not a person is entitled to be registered as a voter.

For the 9 March elections, the revised register was published and opened for public scrutiny from 12 January to 2 February, allowing voters to check the register for any omissions or errors and apply to the Revising Officer of the EC for corrections. Decisions on corrections can be appealed to the Court of Appeals. However, if an application is filed on the ground of a voter's mental incapacity, the case is referred to a medical board.⁶ Any complaints regarding a voter's eligibility must be decided at least 14 days before election day.

OSCE/ODIHR NAM interlocutors generally expressed confidence in the accuracy of the electoral register. Some expressed concerns that a large number of citizens hold expired identification cards, which would make it difficult to determine the residency of a voter. In addition, a few interlocutors argued that many of these do not currently reside in Malta and should be removed from the electoral register.

To cast a ballot, a voter must present a voting card. This includes information on the voter as well as a photograph. At the time of the OSCE/ODIHR NAM, the EC was in the process of printing these cards. The police then take over the responsibility of distributing the voting cards personally to every voter within 15 days. If voters cannot be reached, their names are published in the Official Gazette with a request that they collect their voting cards. Representatives of each parliamentary party accompany this process. The OSCE/ODIHR

⁶ The medical board consists of a doctor appointed by the EC, as well as a doctor appointed by each parliamentary party. Decisions of the board must be unanimous.

NAM was informed that the distribution of voting cards to each individual voter contributes to the high level of trust of the electorate.

E. CANDIDATE REGISTRATION

Citizens enjoying voting rights are entitled to stand as candidates in parliamentary elections. However, Article 54 of the Constitution imposes further eligibility criteria; the person should not be a citizen of another country, a public officer, a member of the armed forces, hold a leading role in a body contracted by the government, be bankrupt, or be convicted or sentenced for a serious crime. While these incompatibilities are clearly defined and intended to prevent conflict of interest, some of these restrictions may present overly restrictive limitations.

Candidates can be nominated independently or through a political party, in line with paragraph 7.5 of the 1990 OSCE Copenhagen Document. Registration of political parties is not regulated by law. The only definition of a “political party” is enshrined in Article 2 of the General Elections Act. A political party is defined as any person or group of persons contesting the election or having contested an election and “is actually represented, by at least one member, in the House of Representatives, or who was so represented immediately prior to the dissolution of the House.” This definition is restrictive and may disadvantage parties not represented in parliament.

Eligible candidates must present their nominations in writing and pay an electoral deposit of EUR 90. Each candidate can stand in two electoral districts and each nomination is to be supported by at least four voters registered in the respective electoral district in which the candidate is nominated.

Both parliamentary parties informed the OSCE/ODIHR NAM that they would nominate candidates in each electoral district, while the AD – Green Party was considering fielding only 17 candidatures.

F. ELECTION CAMPAIGN AND CAMPAIGN FINANCE

The election campaign officially commences following the announcement of elections and ends 24 hours before election day. A number of OSCE/ODIHR NAM interlocutors pointed out that the campaign had already been going on before the official commencement date in anticipation of elections being announced.

The OSCE/ODIHR NAM was informed that campaigning methods would primarily involve door-to-door canvassing by the candidates. In addition, parties noted that campaigning on the internet and social media now plays an important role.

Due to the close contest between the two largest parties, the campaign is very intense. It is focused on economic and social issues, as well as on the general welfare of citizens. Despite political tension, the campaign is expected to be peaceful and free from violence.

There are no regulations on party funding and only limited rules exist for campaign financing. The Electoral Polling Ordinance provides for a maximum of EUR 1,400 to be spent by each candidate during the campaign. This low expenditure limit was widely criticized by OSCE/ODIHR NAM interlocutors, who opined that candidates spend much

more than the maximum limit and find ways to circumvent the legal provision, including by supporters making direct campaign-related purchases. While there are statutory limits of expenditures by candidates, there are no such provisions imposed for political parties.

Although political parties are not directly financed by the state, parliamentary groups (or members) get limited reimbursements for expenditures from the state budget. Political parties and their campaigns are funded primarily through individual and company donations. Parties can receive unlimited funds from any source. There are also no requirements for the disclosure of the sources and amounts of donations, as well reports of campaign expenditures.

The Council of Europe's Group of States against Corruption (GRECO) highlighted the lack of any regulations and transparency mechanisms in its 2009 evaluation report and extended six recommendations.⁷ In 2011, the government proposed a draft law on party and campaign financing partly addressing GRECO recommendations. However, attempts to pass a draft law addressing these recommendations have not succeeded. During the OSCE/ODIHR NAM, the political discourse reflected widespread agreement that political finance be addressed, especially with respect to regulating donations and enhancing transparency through disclosure of income and expenditure.

G. MEDIA ENVIRONMENT

There is a wide variety of public and private television channels, radio stations and newspapers, as well as community media outlets providing a diversity of views.

The public broadcaster, Television Malta (TVM), operates two television and three radio stations. The two largest political parties dominate ownership of private broadcast outlets (one TV and radio station each).⁸ OSCE/ODIHR NAM interlocutors opined that these outlets express openly partisan views. There is also a diverse print media that provides coverage of elections.⁹

Media regulation of both public and private outlets is primarily provided for by the 1993 Broadcasting Act. This Act obliges each outlet to ensure accuracy and impartiality in its coverage. OSCE/ODIHR NAM interlocutors acknowledged that this provision is not always observed, particularly by party-owned media. It was noted, however, that as each outlet broadcasts distinct political views, this ensures a diversity of information for voters. This, nevertheless, may disadvantage small political parties.

The Broadcasting Authority (BA) is established by the Constitution and is responsible for overseeing the media in terms of impartiality and pluralism of political views, as well as that broadcasting facilities are fairly apportioned among different political parties. It is also mandated to review complaints on violations of the broadcasting rules and to impose fines, where appropriate.

⁷ See GRECO Evaluation Report on Malta, 6-8 October, 2009: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)2_Malta_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)2_Malta_Two_EN.pdf). The Compliance report followed on 21 October 2011: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)11_Malta_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)11_Malta_EN.pdf)

⁸ *Net TV* and *Radio 101* are owned by NP, *One TV* and *One Radio* are owned by LP.

⁹ Including independent daily *Malta Today*, *Il-Mument* and *In-Nazzjon* (owned by NP), and *It-Torka* and *L-orizzont*, affiliated with the LP.

The BA consists of a chairperson and four members appointed by the President of Malta on proposal by the Prime Minister, in consultation with the Leader of the Opposition. In practice, two members are chosen to represent the interests of the NP and two to represent the LP. This composition was criticized by some OSCE/ODIHR NAM interlocutors as being biased toward the two main parties.

According to the Broadcasting Act, political parties have a right to receive free air time and to participate in debates on all TVM outlets during the campaign period. In addition to this legal obligation, on 20 December 2012 the BA issued a directive,¹⁰ providing more explicit rules for media campaign coverage. It further highlighted the importance of safeguarding balance and impartiality, including in party-owned media. The directive imposes a campaign silence period 24 hours prior to election day and prohibits broadcast of information and statements that are of ‘a political nature’ or may influence voters. OSCE/ODIHR NAM interlocutors noted that while this can be monitored in traditional media, challenges to monitoring new social media exist.

IV. CONCLUSIONS AND RECOMMENDATIONS

All OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality and professionalism of the election administration and their ability to organize elections in an effective manner. No significant concerns were expressed relating to respect for fundamental freedoms, the transparency of the electoral process, the campaign environment, and election day proceedings. Nevertheless, most interlocutors stated that they would welcome a potential OSCE/ODIHR observation activity for these elections, recognizing that further improvements could be made to the electoral process and that an independent, external assessment may contribute to this.

In this regard, the election process could benefit from closer scrutiny in a few areas, including provisions for political finance, election observation, as well as the media coverage of electoral campaign. As none of the interlocutors expressed any concerns related to the conduct of election day procedures, the OSCE/ODIHR NAM recommends the deployment of an Election Assessment Mission (EAM) for these elections.

¹⁰ “Programmes and Advertisements Broadcast during the Period 7 January to 9 March 2013”

ANNEX – LIST OF MEETINGS

Ministry of Foreign Affairs

Jonathan Galea, Director General, European General Affairs and Economic Cooperation Directorate

Fiona Formosa, Assistant Director, European General Affairs and Economic Cooperation Directorate

Sharon Scicluna, Legal Expert, European General Affairs and Economic Cooperation Directorate

Electoral Commission

Saviour Gauci, Chief Electoral Commissioner

Joseph Calleja, Secretary to the Electoral Commission

Police Headquarters

John Rizzo, Police Commissioner

Joseph Cachia, Deputy Police Commissioner

Constitutional Court

Giannino Caruana Demajo, Judge

Department of Information

Diane Oswald, Director of Information

Paul Azzopardi, Manager of the International Services and Media

Broadcasting Authority

Pierre Cassar, Chief Executive

Political Parties

Simon Busuttil, Nationalist Party

Paul Borg Olivier, Nationalist Party

Alex Sciberras Trigona, Labour Party

Toni Abela, Labour Party

Stefan Zrinzo Azzopardi, Labour Party

Louis Gatt, Labour Party

Luciano Busuttil, Labour Party

Pio Camilleri, Labour Party

Arnold Cassola, Democratic Alternative - a Green Party

Carmel Cacopardo, Democratic Alternative - a Green Party

Media Representatives

Saviour Balzan, Malta Today

Roger de Giorgio, Malta Today