



Office for Democratic Institutions and Human Rights

KINGDOM OF BELGIUM

FEDERAL ELECTIONS

26 May 2019

ODIHR NEEDS ASSESSMENT MISSION REPORT

25-28 February 2019



Warsaw
5 April 2019

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ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Government of Belgium to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to observe the 26 May federal parliamentary elections and in accordance with its mandate, ODIHR undertook a Needs Assessment Mission (NAM) to Belgium from 25 to 28 February. The NAM included Ana Rusu, ODIHR Senior Election Adviser, and Alexey Gromov, ODIHR Election Adviser.

The purpose of the NAM was to assess the pre-election environment and preparations for the elections. Based on this assessment, the NAM should recommend whether to deploy an 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 parties, media, and civil society. A list of meetings is annexed to this report.

ODIHR would like to thank the Federal Public Service of Foreign Affairs for their assistance and cooperation in organizing the NAM. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

On 26 May, voters will elect members to the Chamber of Representatives of the federal parliament for a five-year term. The 150 members will be elected through a proportional representation system with preference voting in 11 constituencies from Dutch-, French- and German-speaking political parties.

Elections are primarily regulated by the Constitution and Electoral Code, as well as other federal and regional laws covering the campaign and campaign financing. All ODIHR NAM interlocutors expressed their overall satisfaction with the legal framework and considered it a comprehensive basis for the conduct of democratic elections. The legal framework was amended in 2016-2018 and addressed some prior ODIHR recommendations, introducing uniform procedures for verification of nomination documents and extending deadlines for delivery of postal ballots. At the same time, a number of prior ODIHR recommendations remain unaddressed in the law, particularly in respect of complaints and appeals, proxy voting and lack of specific provisions for citizen observation.

The organization of federal elections is co-ordinated by the Federal Public Service of Interior (FPSoI) with support from the judiciary and municipal administration structures. Specific measures have been taken to enhance cybersecurity of the election administration and to enhance accessibility to voter information and voting processes for persons with disabilities. All ODIHR NAM interlocutors expressed high level of confidence in the professional and effective administration of elections by the relevant institutions.

All citizens over 18 years of age are entitled to vote, except those deprived of their voting rights by an individual court decision. Voting is compulsory. Voter registration is passive and voter lists are

compiled at the municipal level based on population data. There are some 8.2 million registered voters. No ODIHR NAM interlocutors questioned the accuracy of voter lists.

Voters are provided with alternative voting mechanisms, including voting at embassies and consulates or by mail for those abroad, as well as proxy voting both in the country and abroad. Despite potential challenges to the secrecy of the vote, the majority of ODIHR NAM interlocutors did not express fundamental concerns with the practice, referring to longstanding traditions and effective safeguards against systemic abuse of proxy voting.

Nearly half of the electorate will use touch-screen voting machines in these elections. In line with a prior ODIHR recommendation, all machines will be equipped with voter-verified paper audit trails. However, other recommendations regarding the transparency of certification of the new voting technologies (NVT) remain unaddressed. Most ODIHR NAM interlocutors expressed trust in the technical performance of NVT.

Any citizen over the age of 18, who is resident in Belgium and enjoys civil and political rights, may be elected to the Chamber of Representatives. Political parties can register candidate lists on the basis of a reasonable number of supporting signatures or the support of three members of parliament (MPs). The law provides for gender parity on candidates lists, including among the two top candidates. Women represent 37 per cent of MPs in the outgoing parliament.

Public funding is provided to political parties represented in the federal parliament and is the main source of their campaign funds. Private donations from individuals are limited and donations from legal entities are prohibited. Recent legal changes that will apply for the first time in these federal elections, expanded the period during which the campaign finance rules are applied, widened the application of disclosure rules, and increased sanctions. Some ODIHR NAM interlocutors criticized the lack of impartiality of the campaign finance oversight body, as well as the system of allocation of public funds and financial limits applied to individual candidates as favouring big parties.

The media environment is diverse and structured along linguistic lines. Media coverage of the election campaign is regulated by regional legislation and by means of self-regulation. Defamation and libel are criminal offenses. Paid political advertisement is prohibited in broadcast media during the campaign. Public broadcasters are obliged to provide free airtime for contestants and, for this purpose, organize numerous political debates in different formats. Specific rules deny live airtime for political messages from so-called 'non-democratic' political parties, raising some concern among ODIHR NAM interlocutors about freedom of expression. Most interlocutors noted that the media provide for diversity of political information to voters and commended the impartiality and professionalism of public broadcasters.

Decisions and actions of election bodies cannot be appealed to the courts, except in cases regarding voter and candidate registration and production of ballots. Media-related complaints are considered by media regulators and are appealable to court. Only the parliament can consider complaints against the final election results and election day complaints with no possibility for judicial review.

All ODIHR NAM interlocutors expressed a high level of confidence in the election administration and integrity of the electoral process. No major concerns were raised with regard to the legal framework, voter and candidate registration, voting methods, campaigning, or media coverage. At the same time, some prior ODIHR recommendations related to NVT and election dispute resolution remain unaddressed.

Based on the findings of this report, the ODIHR NAM does not recommend an election-related activity for the upcoming 26 May federal elections. However, ODIHR would like to reiterate that a

number of issues raised in this report could be taken into consideration during further efforts to refine electoral legislation and practice. ODIHR stands ready to offer its assistance upon request in a post-election process.

III. FINDINGS

A. BACKGROUND

Belgium is a federal state and a parliamentary and constitutional monarchy. Institutions and decision-making reflect the country's complex federal structure and specific linguistic arrangements. Federal legislative power operates under a bicameral system, comprising the Chamber of Representatives (lower house, the Chamber) and the Senate (upper house). On 26 May, voters will elect members to the Chamber, as well as to Regional and Community parliaments and the European Parliament.

There are three levels of government. The highest level jointly comprises the Federal State, three Regions (Flemish, Walloon and Brussels-Capital) and three Communities (Dutch, French and German-speaking). The boundaries of the Communities and Regions do not coincide. There are four different linguistic areas: the Dutch-speaking area (Flemish Region), the French-speaking area (most of the Walloon Region), the German-speaking area (a small part of the Walloon region) and the Dutch/French bilingual area (Brussels-Capital Region). The intermediate and lower levels of government are divided into 10 provinces and 581 municipalities respectively.

The Federal State, Communities and Regions are equal under law. The Federal State, among other functions, is in charge of foreign relations, defence, justice, and internal affairs. The Communities are in charge of language, education and culture and implement social policies. The Regions have significant autonomy and powers in relation to the economy, regional development, labour policy, agriculture, housing and the environment. Each Region and Community has their own parliaments and governments.¹

The last federal elections were held on 25 May 2014 and resulted in 13 parties elected to the Chamber.² A coalition government led by Prime Minister Charles Michel (MR) was formed in October 2014 and initially included N-VA, MR, CD&V and Open VLD. In December 2018, N-VA left the coalition due to a stated disagreement over the endorsement of the UN Global Compact for Safe, Orderly and Regular Migration. This led to the resignation of N-VA ministers and subsequently to a formal resignation of the Prime Minister who has been heading a caretaker government since 21 December.

In the outgoing Chamber, 87 Members of Parliament (MPs) are part of the Dutch-speaking group and 63 are part of the French-speaking group. There is no German-speaking group in the Chamber, but German-speaking parties are represented in the Senate and the Community parliament. While women

¹ The institutions of the Flemish Region and the Flemish Community were merged in 1980, and one parliament and one government exercise both the Region and the Community powers.

² The Dutch-speaking parties, which formed a parliamentary group of minimum five MPs in the outgoing Chamber, are the New Flemish Alliance (*Nieuw-Vlaamse Alliantie*, N-VA) with 31 seats; the Christian Democrats (*Christen-Democratisch en Vlaams*, CD&V) with 18 seats; the Liberals (*Open Vlaamse Liberalen en Democraten*, Open VLD) with 14 seats; the Social Democrats (*Socialistische Partij Anders*, SP.a) with 13 seats. The French-speaking parties with parliamentary groups in the outgoing Chamber are the Social Democrats (*Parti Socialiste*, PS) with 23 seats; the Liberals (*Mouvement Réformateur*, MR) with 20 seats; the Christian Democrats (*Centre Démocrate Humaniste* (cdH) with 9 seats. The Greens (Dutch-speaking *Groen!* and French-speaking *Ecolo*, with six seats each) formed a united parliamentary group. Other four parties and two independent candidates have combined 10 seats.

are relatively well represented in politics, they held only 56 out of 150 seats in the outgoing Chamber, 27 out of 60 Senators, and 3 out of 13 current federal ministerial positions.³

Previously, ODIHR deployed an Election Assessment Mission for the 2007 federal elections and an expert study of electronic voting systems for the 2006 local elections.⁴

B. ELECTORAL SYSTEM

The bicameral federal parliament consists of the 150-member Chamber and the 60-member Senate, with all MPs serving a five-year term. Members of the Senate are not directly elected.⁵

Members of the Chamber are elected from 11 constituencies through a regional proportional representation system with preference voting.⁶ The number of seats per constituency varies from 24 (Antwerp) to 4 (Luxembourg) according to official population figures. The Constitution provides that each seat should represent a similar population number.⁷ Most ODIHR NAM interlocutors expressed their overall confidence in the constituency boundaries delineation.⁸

Voters have the possibility to vote for lists in their entirety (list votes) or to express preferences for individual candidates within one list (preference votes). Preference votes can be given to as many candidates on a list as the voter wants.

Seats are allocated to lists that reach a five per cent constituency threshold, according to the d'Hondt method of highest average.⁹ After allocation of preference seats, the remaining seats are awarded to the candidates following the order of the list. In this way, the list votes are used to top-up preference votes to reach the quotient. In order to increase the effect of preference votes, only half of the list votes are used to top-up the number of preference votes cast for candidates. If the list votes are distributed, but there are still seats not allocated within the list, the rest of the seats are awarded to the remaining candidates with the highest number of preference votes.

C. LEGAL FRAMEWORK

The legal framework for the federal elections mainly comprises the 1831 Constitution (last amended in 2017), the 1894 Electoral Code, the 2014 Law on Organizing Electronic Voting with Paper Proof (both last amended in 2018), as well as laws at federal and community levels covering campaign

³ See also, UN Committee on the Discrimination against Women [Concluding observations on the seventh periodic report of Belgium](#), CEDAW/ C/BEL/CO/7, 14 November 2014, paragraphs 28 and 29.

⁴ See all previous [ODIHR reports on Belgium](#).

⁵ Following the 2011 state reform, 29 members of Senate are appointed from among MPs of the Flemish parliament and of the Dutch-speaking group of Brussels-Capital Region; 20 Senators from among MPs of by the parliaments of Walloon region, French-speaking Community and the French-speaking group of Brussels-Capital Region; and 1 Senator by the parliament of the German-speaking Community. These newly appointed French and Dutch-speaking Senators co-opt 10 more Senators from among citizens eligible to stand for the federal elections.

⁶ There are five constituencies in the Flemish Region, five in the Walloon Region and one in Brussels-Capital.

⁷ The size of the population was last determined by the 2011 census. According to the ODIHR NAM analysis, maximum deviation of number of voters per MP seat in a constituency does not exceed 9 per cent from the national average number, with notable exceptions in province of Namur (16 per cent more than average) and Brussels-Capital (24 per cent less than average).

⁸ Few ODIHR NAM interlocutors considered that the reform of the so-called 'BHV constituency' which led to transferring the territories of *Hal/Halle* and *Vilvorde/Vilvoorde* to Flemish Brabant constituency was unfair for the French-speaking population. The decision in question was taken within the framework of the 2011 state reform and was based on a 2003 ruling of the Constitutional Court.

⁹ Once the number of seats per list is known, the seats are allocated to candidates whose number of preference votes reached a quotient representing the number of votes won by a list divided by the number of seats allocated to the list +1.

financing and the campaign. Belgium is a party to major international and regional instruments related to democratic elections.¹⁰

All ODIHR NAM interlocutors expressed their overall satisfaction with the legal framework and considered it a comprehensive basis for the conduct of democratic elections. Legal amendments to the federal electoral legislation in 2016, 2017 and 2018 related to, among others, administration of out-of-country voting, reallocation of some municipalities within the constituencies, synchronization of deadlines for candidate nomination at different levels of elections, application of gender quota for candidate lists in their entirety and tightening of campaign finance rules.

Some legal amendments, which will be applied for the first time for the federal elections, address a number of previous ODIHR recommendations. These relate to uniform templates for collecting supporting signatures for nomination of candidates, uniform procedures for verification of nomination documents, extension of deadlines for delivery of postal ballots, and use of Voter-Verified Paper Audit Trails for all voting machines. Some other ODIHR recommendations remain unaddressed in the law, particularly in respect of complaints and appeals, proxy voting and lack of specific provisions for citizen observation.

Additionally, some ODIHR NAM interlocutors noted lack of clarity in the application of the law related to the distribution of public funds based on election results (see *Campaign and Campaign Finance*). Others expressed support for a federal constituency where parties could represent all regions, noting that potential change of the electoral system has been a part of the political discourse for several years.

The Electoral Code allows for the presence of international observers and political party observers in polling stations and at all other election administration bodies. Many political parties informed the ODIHR NAM of their intention to deploy observers across the constituencies that they will contest, with the aim to enhance transparency of the electoral process. The Electoral Code, however, does not provide for citizen observation.¹¹

D. ELECTION ADMINISTRATION

The upcoming elections will be administered by what is, essentially, a four-tiered structure, comprising the Federal Public Service of Interior (FPSoI) at the federal level, 11 Main Electoral Committees of the Constituency (MECCs) at the constituency level, 208 Canton Electoral Committees (CanECs) at the cantonal level with some support from 581 municipal authorities, as well as some 10,750 Polling Station Boards (PSBs) and 6,800 counting offices at the local level. In addition, the Federal Public Service of Foreign Affairs (FPSoFA) is co-ordinating the voting process for citizens residing abroad and the State Security Service is responsible for cybersecurity issues. The King is

¹⁰ Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 1979 Convention on the Elimination of All Forms of Discrimination against Women, 2003 UN Convention against Corruption, and 2006 Convention on the Rights of Persons with Disabilities (CRPD), as well as the 1950 European Convention on Human Rights (ECHR). Belgium has signed but not yet ratified the 1995 Council of Europe Framework Convention for the Protection of National Minorities. Belgium is a member of the Council of Europe's European Commission for Democracy through Law (Venice Commission) and Group of States against Corruption (GRECO).

¹¹ Paragraph 8 of the 1990 OSCE Copenhagen Document states that participating States "consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place".

vested with some powers regarding the electoral process, on the basis of decisions prepared by the FPSoI.¹²

The FPSoI has overall responsibility for the organization of the elections, including maintaining the national population register, regulating and overseeing new voting technologies (NVT), training MECCs, political parties and the media on election administration issues. The FPSoI also publishes the election results disaggregated by constituency, canton, and municipality. While ODIHR previously recommended that results be published by polling station (for electronic voting) and counting offices (for paper ballots), many ODIHR NAM interlocutors noted that in the Belgian context publication of the results by polling station or counting office could compromise the secrecy of votes returned from small polling stations and municipalities. Well in advance of the elections, the FPSoI published the calendar of election-related activities as well as public awareness materials on electoral procedures, including nomination of candidate lists, campaign finance rules and voting modalities. In the global context of cybersecurity threats, some ODIHR NAM interlocutors acknowledged potential security challenges during the transmission of election results. To remedy such situations, the FPSoI is putting in place a series of risk mitigation strategies, including training of qualified personnel and a crisis centre available on election day.

Persons with disabilities can be assisted in the polling stations in casting their vote by a person of their choice if authorised by the presiding officer. Several ODIHR NAM interlocutors reported meaningful progress in recent years in providing barrier-free access to polling stations, but noted a shortage of voting booths and other arrangements designed for persons with disabilities inside polling stations.¹³ According to ODIHR NAM interlocutors, some voter information materials are available in easy-to-read format and video with sign language.

The MECC's duties include registering candidate lists, counting postal votes, conducting potential recounts, tabulating the constituency election results and allocating seats. The CanECs are responsible for administering the NVT systems and tabulating the election results at cantonal level. They also nominate the presidents and members of the PSBs and counting offices and are responsible for their training.¹⁴ The municipalities organize material aspects of the electoral process, including sending invitations to voters and establishing polling stations.

The PSBs are responsible for the conduct of voting procedures at polling stations.¹⁵ Counting of paper ballots is performed in counting offices, which comprise a maximum 2,400 voters from three polling stations on average. In cantons where NVT is used, the tabulation is directly undertaken at the CanECs.

MECCs and CanECs are headed by judges, while PSBs and counting offices are headed by judges, attorneys, or civil servants. In addition to their heads, all election administration bodies have four members, four substitutes, and a secretary who has an advisory vote. The ODIHR NAM was informed that PSB and counting office members would be randomly selected from eligible voters, who are notified in advance of election day.¹⁶ All ODIHR NAM interlocutors expressed high level of confidence in professional and effective administering elections by relevant institutions.

¹² Among other responsibilities, the King may change the number of voters assigned to polling stations that use NVT, determine the rules of filing campaign finance declarations, define the colour and size of ballots, and prolong the working hours of the polling stations.

¹³ See also, CRPD Committee [Concluding observations on the initial report of Belgium](#) (28 October 2014), CRPD/C/BEL/CO/1, paragraphs 21 and 22.

¹⁴ The presidents and other members of PSBs and counting offices should be appointed by 23 May.

¹⁵ Polling stations can have from 150 to 800 assigned voters, or in the case of use of NVT, up to 2,000 voters. Voting will also take place at 102 embassies and consular offices abroad.

¹⁶ Non-participation in the election administration bodies is penalised.

E. VOTER REGISTRATION

All citizens above the age of 18 who are registered in a municipality or a consular representation and are not deprived of their voting rights by court order are eligible to vote. Voting rights of those imprisoned and of persons with mental disabilities can be suspended if it is explicitly provided in an individual court decision.¹⁷

Voters in the country are automatically included in the voter lists, while those residing abroad have to actively register at a consulate abroad.¹⁸ By 1 March, voter lists are compiled by municipalities based on information extracted from the national population register.¹⁹ As of 23 March, 8,167,709 voters were registered for the elections. After this date and up to 14 May, the voter lists will be available in municipal offices for voters' scrutiny and requests for changes or inclusions.

At least two weeks before voting, municipalities send an invitation with a reference number to each voter. On election day, this number is matched with the number in the voter list, facilitating quick identification of voters in polling stations. Voters who do not receive an invitation can obtain a duplicate in municipal offices, which are open on election day. No ODIHR NAM interlocutors raised any issues with regard to the accuracy of voter lists.

Voting is compulsory in Belgium since 1893, and penalties are foreseen in case of breach of this obligation.²⁰ However, the ODIHR NAM was informed that the enforcement of this provision is not systematic and is not a priority task of competent jurisdictions.

F. VOTING METHODS

In order to facilitate inclusive participation, the law offers five options for casting a ballot: voting in person or via proxy at polling stations in Belgium and, for citizens residing abroad, voting by mail, and in person or via proxy in consular representations. Voters residing abroad must indicate their voting option and their municipality when registering with the consulate.

If due to illness, work, studies, military service, imprisonment, staying abroad or religious beliefs, voters are unable to present themselves at a polling station, they may appoint a proxy to vote on their behalf. In each case, voters must provide a document certifying their inability to reach the polling station on election day. Each proxy can vote on behalf of only one voter on the basis of written authorization signed by the voter and proxy. Despite potential challenges to the secrecy of the vote, the majority of ODIHR NAM interlocutors did not express fundamental concerns about the practice of proxy voting, referring to longstanding traditions and effective safeguards against systemic abuse. ODIHR previously recommended considering a review of the rules and practice of proxy voting, in order to enhance consistency with the principles of equality and secrecy of the ballot.

¹⁷ See Articles 12 and 29 of the 2006 CRPD. See also, paragraph 9.4 of the 2013 CRPD Committee's Communication No. 4/2011 (*Zsolt Bujdosó and five others v. Hungary*) which stated that "Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability".

¹⁸ Voter registration abroad is ongoing, but only those who registered by 31 January 2019 can exercise out-of-country voting for these elections.

¹⁹ Copies of voter lists are available free of charge for political parties contesting the elections and for a cost price for all standing candidates.

²⁰ Penalties range from a reprimand to fines from EUR 5 to 25, as well as possible deprivation of the right to vote after a fourth case of failure to vote within 15 years.

By the deadline of 31 January, 177,907 voters registered for out-of-country voting, with some 70 per cent of those choosing postal voting. Voting in 102 consular representations will be conducted on 22 May between 13.00 and 21.00 local time. After this, the ballots will be sent to counting offices established by the FPSoFA in 17 consular offices. The results aggregated for each constituency will be sent electronically to the corresponding MECCs by the close of polls in Belgium. By the same time, MECCs should receive all postal votes.

G. NEW VOTING TECHNOLOGIES

Since the early 1990s, parts of Belgium have been using touch-screen voting machines in polling stations. For these elections, 4,141 polling stations in 157 municipalities of Flemish region, 9 in German-speaking municipalities and in Brussels-Capital will be equipped with touch-screen voting machines.²¹ As previously recommended by ODIHR, all machines will be provided with a Voter Verified Paper Audit Trail (VVPAT). A paper printout acts as a VVPAT and confirms voter's choice in writing and by QR code. The voters can scan the QR code to check whether their votes have been recorded by the voting machine correctly before inserting the printout into an electronic ballot box, which scans the QR code and counts the votes. According to the FPSoI, extra audio guide modules for the voting machines will be piloted in two municipalities to enable persons with visual impairments to vote autonomously.

Despite several incidents of malfunctioning of the electronic counting system in 2014, most ODIHR NAM interlocutors did not express serious concerns over technical performance and testing of the NVT applied for these elections. The FPSoI certifies the new voting systems based on a private audit company's conclusions, which, contrary to a prior ODIHR recommendation, are published only partly.

The Federal College of Experts is an independent public permanent body whose members are appointed before the elections by the Chamber and the parliaments of the Communities and Regions. The College of Experts starts operating 40 days before election day and assesses the use and functioning of all automated voting, counting, tabulation and transmission systems mostly through analysis of the source codes and the hardware before election day and through spot checks on election day. The experts have access to all voting machines, systems and relevant information, can visit polling stations to carry out audits at any time, and are entitled to carry out recounts of individual polling stations. The College has to deliver a report with recommendations to the parliaments at all levels and to the FPSoI within 15 days after the elections. Most ODIHR NAM interlocutors expressed trust in the College of Experts and were of the view that most errors can be mitigated due to the work that is being done prior to the elections.

H. CANDIDATE REGISTRATION

Any citizen over the age of 18, who is resident in Belgium and enjoys civil and political rights, may be elected to the Chamber. Candidates cannot run for different elections or in different constituencies at the same time.

Any party, association, or group of citizens may nominate candidate lists. The law does not provide the possibility for self-nominated or individual candidates. The political landscape reflects the linguistic diversity and most parties usually present candidate lists in their respective linguistic areas, except in Brussels-Capital Region where candidate lists are presented by French-speaking and Dutch-speaking parties. However, the electoral system allows any party to present lists anywhere in the country regardless of language.

²¹ As such, NVT will be used by 44 per cent of the electorate. All voters in Walloon Region will vote with paper ballots.

The Constitution explicitly provides for men and women’s “equal access to elected and public mandates”. The Electoral Code requires gender parity on all candidate lists and provides that at least one representative of each gender is among the two top candidates. No other placement criteria are envisaged by law. All political parties met with by the ODIHR NAM assessed the quota as an effective tool to promote gender equality and noted overall equal opportunities for men and women to stand for elections. Nevertheless, some interlocutors noted that men are more often heading the candidate lists of many parties.

Following the 2018 legal amendments, and in line with a previous ODIHR recommendation, candidate lists should be submitted to MECCs on 29 and 30 March, one month earlier than in previous elections. Many ODIHR NAM interlocutors commended this change, as providing reasonable opportunities for authorities to organize postal voting and for voters to mail their ballots before election day. Each candidate list has to be supported by signatures from 200 to 500 voters, depending on the constituency population.²² A voter can sign in support of only one candidate list for federal elections.²³ Alternatively, lists can be supported by three MPs, each of whom can sign in support of only one list per constituency. The number of candidates included on a list cannot exceed the number of seats contested in the constituency and should be supplemented by a list of substitute candidates.²⁴

The FPSoI and MECCs are responsible for checking candidate eligibility as well as respect of nomination rules.²⁵ MECCs notify the contestants in question of any mistakes or omissions in the submitted documents. MECCs exchange the information on nominations with the FPSoI for verification purposes and should take decisions on registration of candidate lists on 4 April. The Electoral Code provides for the rejection of a candidate who does not sign a written commitment to respect campaign finance regulations. All ODIHR NAM interlocutors considered the nomination process as inclusive and transparent.

I. ELECTION CAMPAIGN

The 1989 Law on the Limitation and Control of Electoral Expenses for Federal Elections and Financing and Accounts of Political Parties (last amended in 2018) regulates the campaign and campaign finance as well as public financing of political parties. The official campaign period was extended from three to four months since the last federal elections. Many ODIHR NAM interlocutors mentioned that the campaign would in fact start much later, but the extension of the official period would allow for more effective accounting of campaign finance expenditures.

The use of commercial billboards and posters, non-commercial posters exceeding four square metres and paid advertisement in broadcast media is prohibited during the official campaign period. A ban on paid campaign advertisements on the Internet was abolished in 2015. Contestants are not allowed to make any gifts during the campaign period, including low-value campaign souvenirs. Parties that the ODIHR NAM met with noted that limitations on advertisement, while reducing their expenses, restrict their options to campaign. They also informed that much of the campaign would be held via debates in

²² In line with recent legal amendments, voters can now sign in support of a chosen list either manually or with their electronic signature through the online application system on Management, Registration and Transmission of Information and Results about Elections (MARTINE), administered by the FPSoI.

²³ Paragraph 77 of the 2010 ODIHR and Venice Commission [Guidelines on Political Party Regulation](#) states that “in order to enhance pluralism and freedom of association, legislation should not limit a citizen to signing a supporting list for only one party”.

²⁴ If the number of all nominated candidates does not exceed the number of seats contested within a constituency, these candidates are declared elected by the corresponding MECC before election day without further formalities.

²⁵ The FPSoI has published detailed guidelines for the MECCs, including on accepting nomination documents, sharing those with the FPSoI, verifying the data received and preparing documents for potential appeals.

the media, door-to-door visits to voters, paid advertisements in print media, and extensive use of social media. Most ODIHR NAM party interlocutors stated their ability to campaign freely.

The campaign is largely expected to focus on issues related to, among others, climate change, migration, and social policies. Some political parties distribute easy-to-read leaflets for voters, and some broadcasters provide sub-titles and sign language in their political programmes. Nevertheless, many ODIHR NAM interlocutors noted a general lack of campaign information specifically designed for voters with disabilities.

J. CAMPAIGN FINANCE

All parties represented in the federal parliament are entitled to public funding based on the number of votes received and mandates won during the last federal elections.²⁶ The law provides that parties, which do not respect the ECHR, may be deprived of public funding for a specific period. While most parties that the ODIHR NAM met with expressed their satisfaction with the current funding system, several parties claimed that the allocation of public funds disproportionately favours large parties. Two parties informed the ODIHR NAM that there is a lack of legal clarity related to allocation of public funds in case an eligible party receives votes in constituencies from different linguistic communities and noted concern about the lack of judicial review of such decisions by the Audit Commission, the parliamentary body in charge of political party and campaign finance oversight.²⁷

Parties can also be financed privately through party membership fees, donations from individuals, including cash and in-kind, as well as bank loans.²⁸ While the law does not allow direct campaign donations from legal entities, the 2018 legal amendments allow for sponsorship by legal entities according to the same limits applicable to donations from individuals. This addressed a prior GRECO recommendation, but the majority of other recommendations remain only partially addressed, including on the lack of independence of the campaign finance oversight body, on accounting for small donations, on disclosure of donors and on more proportionate and dissuasive sanctions.²⁹

The ceiling for campaign expenses for a political party is set at EUR 1 million, and the majority of ODIHR NAM interlocutors found this limit reasonable. Despite a previous ODIHR recommendation, additional spending limits for each candidate take into account the candidate's incumbency and position on the list.³⁰ Many ODIHR NAM interlocutors raised concerns that this can create unequal conditions for political parties to compete with each other.³¹

²⁶ According to the law, a party gets an annual stipend of EUR 125,000 if it has at least one MP in the Chamber, and an additional EUR 50,000 if it is also represented in the Senate. Moreover, parliamentary parties obtain EUR 2.5 per vote received in the last federal elections or EUR 3.5 per vote, if also represented in the Senate. These allocations are subject to annual indexation. Additional funding for political parties is provided by the regional parliaments.

²⁷ In 2014, political parties *Défi* and PVDA/PTB nominated their candidate lists in all French-speaking constituencies and in some Dutch-speaking constituencies and entered the parliament. In these cases, the public funds were allocated to the parties based on the votes received in French-speaking but not Dutch-speaking constituencies. The parties challenged the decisions of the Audit Commission separately with a commercial court and with the European Court of Human Rights, with both cases still pending a decision.

²⁸ Donations from individuals are limited to EUR 500 per a candidate or a party and per year, with no more than EUR 2,000 in total from one donor per year. Cash donations are limited to EUR 125 from one person per year.

²⁹ See GRECO 2016 [Second Compliance Report](#) and 2019 [Second Addendum to the Second Compliance Report](#).

³⁰ Incumbent candidates and those placed first on a list can spend between EUR 15,875 (in Luxembourg) and EUR 54,937 (in Antwerp). Others can spend only EUR 5,000, while substitute candidates are limited to EUR 2,500.

³¹ Paragraph 7.6 of the 1990 OSCE Copenhagen Document commits participating States to provide parties “with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”.

All parties and candidates submit their campaign finance reports to the relevant MECCs within 45 days after the elections.³² Within a month afterwards, the heads of the MECCs submit the aggregated report on campaign incomes and expenditures, including data on donors and the financial reports of relevant parties and candidates, to the Audit Commission. The latter refers all the documentation to the Court of Auditors, which should verify the reports for their accuracy within one month.

Based on the Court of Auditors verification results, the Audit Commission, within six months after the elections, approves aggregated data on campaign finance for the elections, the results of audit, and takes decisions on sanctions to be applied against parties and candidates, if needed.³³ The Audit Commission informed the ODIHR NAM that it intends to publish all campaign finance reports by the end of 2019 on the website of the Chamber. Several political parties raised concerns with the ODIHR NAM about the independence of the Audit Commission, including about issues related to allocation of public funds to political parties and in applying sanctions for financial violations.³⁴

K. MEDIA

The media environment is pluralistic with a wide variety of media outlets structured primarily along linguistic lines. Freedoms of expression, press and information are guaranteed by the Constitution. Limitations to freedom of expression are provided in federal law regarding incitement to discrimination, promotion of racism and xenophobia, as well as denial of the genocide committed by the German national-socialist regime. Defamation, libel, insult and slander, including against public officials, are criminalized and punishable with fines or imprisonment but they are rarely applied against media.³⁵

Media is largely self-regulated, with specific rules concerning elections set within the three Communities. All three Communities have established institutions in charge of supervising media, and their members are appointed by relevant governments from among media experts, journalists, and lawyers.³⁶ The regulators are mostly responsible for issuing licenses, supervising respect of media regulations, including by means of media monitoring during the campaign period, and considering complaints related to media, including with regards to the online content.

The French-language public broadcaster implements a so-called ‘*cordon sanitaire*’ rule, whereby a “non-democratic” political party is denied live airtime for political messages. According to some ODIHR NAM interlocutors, this rule originates from the 1973 Law on Guaranteeing the Protection of Ideological and Philosophical Tendencies (so-called Law of the Cultural Pact), imposing mechanisms to avoid discriminations and abuse of power at all levels of the state with competencies in cultural issues. The decision as to what constitutes a “non-democratic” party rests solely with the public broadcaster and some ODIHR NAM interlocutors noted that the judiciary could be in a better position to determine such status. Most ODIHR NAM interlocutors valued the application of *cordon sanitaire* and noted that it does not preclude parties in question from effective campaigning. Others noted that

³² Donations not exceeding EUR 125, including cash contributions, are not reported by contestants.

³³ The law provides for range of sanctions for financial infringements, including warning, monetary fines, withdrawing public funds from parties, and suspending and lifting mandates of MPs.

³⁴ Audit Commission consists of 21 members, including 17 current MPs and 4 independent experts. The membership of the Audit Commission is renewed within 60 days after every federal election.

³⁵ Paragraph 47 of the 2011 UN Human Rights Committee General Comment No. 34 to the ICCPR recommends states to “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”.

³⁶ High Audiovisual Council (CSA) for the French-speaking Community, Flemish Media Regulator (VRM) for the Dutch-speaking Community, and Media Council for the German-speaking Community.

such parties receive disproportionately little coverage by media, especially outside the campaign period, and that such practice could challenge the freedom of expression.³⁷

Legislation of Communities imposes an obligation of non-discrimination and impartiality on public broadcasters, while their internal rules often provide a number of good practices for election coverage, ensuring pluralism and objectivity. All three Communities have a public broadcasting service financed and supervised by the Community's institutions.³⁸ The public broadcasters play an important role in providing political information to voters. All three Communities provide free airtime for contestants on public media, and for this purpose, broadcasters organize political debates in different formats.³⁹

Most ODIHR NAM interlocutors commended the impartiality and professionalism of public broadcasters and noted recent positive developments contributing to gender balance in media, including in political programmes. Efforts of public broadcasters to facilitate access to information by means of subtitles and sign language were also noted. Most ODIHR NAM interlocutors stated that in general the media provide diversity of political information to voters.

L. COMPLAINTS AND APPEALS

Complaints against inaccuracies in the voter lists can be lodged no later than 14 May with the respective municipal administration and should be considered within four days. The decision may then be appealed to the Court of Appeals, which should take a final decision no later than one day before the elections.

All contestants within the same constituency may file a complaint to the MECC on any irregularities observed in nomination documents of other contestants. A rejection of registration of candidate lists and individual candidates may be appealed on the same day to the Court of Appeals, which should make a final decision within 10 days. The decisions and actions of MECCs regarding producing the ballots, including use of party logos, as well as decisions to declare the candidates elected before election day can also be appealed to the Court of Appeals.

Media-related complaints are heard by media regulators in each Community. Their decisions as well as decisions of the Audit Commission on imposing financial sanctions can be appealed to Administrative Court in final instance. The Constitutional Court adjudicates cases against the Audit Commission's decisions on suspending or lifting an MP mandate due to campaign finance violations.

Other decisions of election bodies cannot be appealed to the courts, including in respect of the election results, distribution of seats, and election day complaints.⁴⁰ Instead, the newly elected Chamber has the final authority in adjudicating election disputes when validating the election results. The jurisdiction of the Chamber to validate the election of their own members, with no possibility of

³⁷ Paragraph 9.1 of the 1990 OSCE Copenhagen Document provides that “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards”.

³⁸ RTBF (*Radio-Television Belge de la Communauté Française*), with five television channels and seven radio stations, serves the French-speaking Community. VRT (*Vlaamse Radio- en Televisieomroep*) with its four television and five radio channels serves the Dutch-speaking Community. The German-speaking Community has one public radio station BRF (*Belgischer Rundfunk*).

³⁹ The distribution of airtime is defined by the broadcasters based on the number of seats the parties hold at the Federal, Region and Community parliaments.

⁴⁰ Paragraph 5.10 of the 1990 OSCE Copenhagen Document states that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”. In paragraphs 18.2-18.4 of the 1991 OSCE Moscow Document, the OSCE participating States committed to provide for judicial review of administrative regulations and decisions.

judicial review, raised concerns among several ODIHR NAM interlocutors.⁴¹ ODIHR has previously recommended that authorities consider measures to provide for impartial resolution of electoral disputes, including the possibility of an appeal to a court.

IV. CONCLUSIONS AND RECOMMENDATION

All ODIHR NAM interlocutors expressed a high level of confidence in the election administration and integrity of the electoral process. No major concerns were raised with regard to the legal framework, voter and candidate registration, voting methods, campaigning, or media coverage. At the same time, some prior ODIHR recommendations related to NVT and election dispute resolution remain unaddressed.

Based on the findings of this report, the ODIHR NAM does not recommend an election-related activity for the upcoming 26 May federal elections. However, ODIHR would like to reiterate that a number of issues raised in this report could be taken into consideration during further efforts to refine electoral legislation and practice. ODIHR stands ready to offer its assistance upon request in a post-election process.

⁴¹ Section 3.3.a of the 2002 Venice Commission Code of Good Practice in Electoral Matters states: “The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible”.

ANNEX: LIST OF MEETINGS

Federal Public Service of Foreign Affairs, Foreign Trade and Development Cooperation

Martine Veldeman, Head, Out-of-Country Voting Unit, Consular Affairs Department
Evy de Middelaer, Advisor, Population and Election Affairs
Françoise Pletinckx, Advisor, Consular Affairs Department
Laura Strens, OSCE Desk Officer, Security Policy Department

Federal Public Service of the Interior

Régis Trannoy, Advisor, General Directorate of Population
Marlies Jaspers, Attaché, General Directorate of Population
David Van Kerckhoven, Project Manager for Electronic Voting Systems
Koen Schuyten, Communication Unit

Federal Parliament

Baert Luc, Advisor, Commission on Control of Campaign Expenses

Federal College of Experts

Emmanuel Willems, Member

Main Electoral Committee of Brussels-Capital

Luc Hennart, President, Court of First Instance of Brussels

UNIA, National Equality Body

Véronique Ghesquière, Head of the Disability Department
François Bouharmont, Advisor

Media

Geneviève Thiry, Advisor, High Audiovisual Council
Simon-Pierre De Coster, Head, Legal Service, Belgian Radio-Television of the French-speaking Community
Tim Pauwels, News Ombudsman, Flemish Radio and Television
Pol Deltour, National Secretary, Flemish Association for Journalists
Charlotte Michils, Legal Adviser, Flemish Association for Journalists

Political Parties

Gauthier de Sauvage, General Secretary, cdH
Isabelle Karl, Legal Advisor, cdH
Monika Van Steenbrugge, Advisor, Commissions on Foreign Affairs and Defence, CD&V
Véronique Caprasse, MP, *Défi*
Charles-Etienne Lagasse, Head, Study Service, *Défi*
Michel Genet, Political Director, *Ecolo*
Jean-Philippe Rousseau, Administrative Secretary, MR
Rita Bellens, MP, N-VA
Karel-Jan Senawe, Staff, N-VA
Laurens Verrelst, Staff, N-VA
Thomas Leys, Co-ordinator, Political Study Service, Open VLD
Ivo Flachet, Political Adviser of the Head, PVDA/PTB
Dominique Meeùs, Senior Electoral Expert, PVDA/PTB
Gilles Doutrelepont, Head, Study Service, PS
Rim Ben Achour, Electoral Law Advisor, PS
Tom Van Grieken, President, *Vlaams Belang*
Philip Claeys, Vice-President, *Vlaams Belang*
Bob de Brabandere, Political Secretary, *Vlaams Belang*
Klaas Sloomans, Spokesperson, *Vlaams Belang*

Civil Society

Julien Baudouin, Patrick Verhaeghen, Members, Collective Accessibility Wallonie-Bruxelles
Sébastien Van Drooghenbroeck, Vice-Rector of Education, Saint-Louis University
Yannick Vanderborcht, Professor, Centre for Research in Political Science, Saint-Louis University