



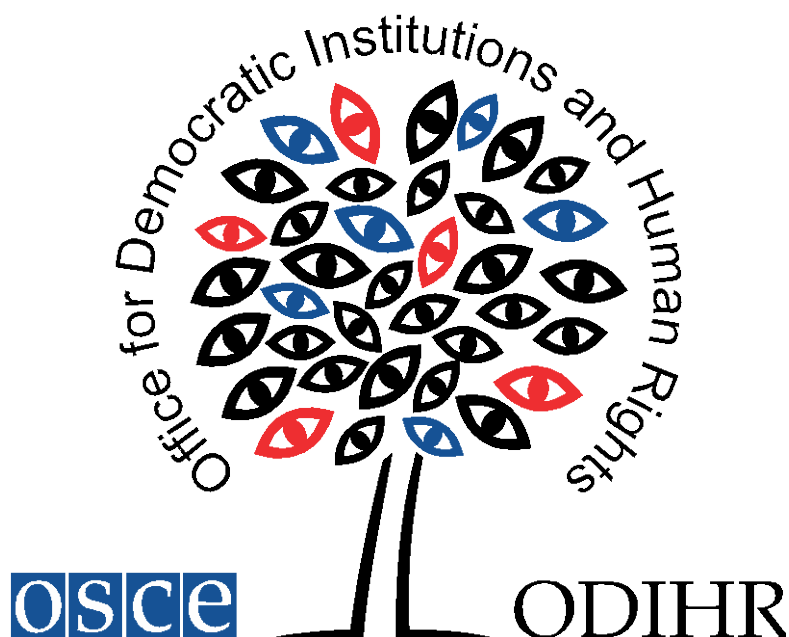
Office for Democratic Institutions and Human Rights

PRINCIPALITY OF MONACO

ELECTIONS OF THE NATIONAL COUNCIL 11 February 2018

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

22-24 January 2018



Warsaw
2 February 2018

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PRINCIPALITY OF MONACO
ELECTIONS OF THE NATIONAL COUNCIL
11 February 2018

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Permanent Representative of the Principality of Monaco to the OSCE to observe the 11 February 2018 elections of the National Council, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) from 22 to 24 January. The NAM included Alexander Shlyk, Head of OSCE/ODIHR Election Department, and Ulvi Akhundlu, 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 Representative of the Principality of Monaco 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 and for sharing their views.

II. EXECUTIVE SUMMARY

On 11 February 2018, the citizens of Monaco will vote to elect the 24 members of the National Council (parliament) for a five-year term. Members of the parliament are elected by secret ballot through a mixed electoral system combining majoritarian and proportional representation from a single nationwide constituency.

The electoral legal framework has undergone a number of substantial changes in the last years with broad cross-party support. The most recent amendments to the electoral law broadened suffrage rights for detainees, clarified provisions for candidate registration, and modified campaign regulations. Most OSCE/ODIHR NAM interlocutors expressed confidence in the legal framework as a sound basis for the conduct of democratic elections.

The administration of the elections is centralized, with the City Hall being responsible for the overall conduct. Only one polling station will be established for election day. The preparations for the elections are well underway in line with established deadlines. All OSCE/ODIHR NAM interlocutors expressed confidence in the professionalism and impartiality of the election administration.

Voter registration is passive, and 7,063 voters are registered for these elections. OSCE/ODIHR NAM interlocutors did not raise concern over the voter registration process and expressed confidence in the overall integrity of the process.

Any registered voter who has reached 25 years of age and has been a citizen for at least 5 years is entitled to contest the elections. Eligible candidates may stand as candidates of political associations. Legislation does not allow for individual independent candidates.

The official campaign period begins 16 days before election day and ends 24 hours before the opening of polls. Campaign topics are expected to include the negotiations of the Association Agreement with the European Union, housing, quality of life and the protection of the environment. No OSCE/ODIHR NAM interlocutor raised any concerns about the ability to campaign freely.

The legal framework on campaign finance was substantially amended in 2017. The changes addressed a number of previous recommendations of the OSCE/ODIHR and the Council of Europe's Group of States against Corruption (GRECO), including on establishing a permanent supervisory body and the introduction of penalties for breaches of campaign finance rules. Most OSCE/ODIHR NAM interlocutors agreed that the party and campaign finance systems could be further improved and would benefit from additional external scrutiny.

All OSCE/ODIHR NAM interlocutors expressed a high level of confidence in the electoral process as well as the ability of the election administration to manage the elections in a professional, impartial and transparent manner. No significant concerns were expressed relating to the respect for fundamental freedoms, the campaign environment, and election day proceedings. A number of previous OSCE/ODIHR recommendations have been taken into account in the course of amending the electoral law and establishing the new campaign finance regulations. Most interlocutors noted the usefulness of previous OSCE/ODIHR assessments and underlined the added value and importance of continued co-operation.

The OSCE/ODIHR NAM does not recommend an election-related activity for these elections, taking into consideration also the limited timeframe and other concurrent elections. In principle, any electoral process and system can benefit from independent and impartial examination and advice, also outside the campaign period. The OSCE/ODIHR encourages the authorities of Monaco to engage in future follow-up activities in the areas noted in this and previous reports, and stands ready to assist them in these endeavors.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Monaco is a hereditary and a constitutional monarchy with legislative power vested in both the sovereign Prince, currently Prince Albert II, and the unicameral parliament, the 24-member National Council. Executive power is exercised by the supreme authority of the prince, who is the head of state. The government, led by the Minister of State who is assisted by the government council, is directly appointed by the prince and is not accountable to the National Council. A network of advisory bodies mitigates the extensive powers of the prince as compared to the limited powers of the National Council.

Legislation can only be initiated by the prince and while the parliament has the responsibility to deliberate and vote on bills, the prince retains a power of veto. The National Council has exclusive responsibility for its own agenda and the examination of draft laws. While no law can be passed without the consent of the National Council, the government is entitled to withdraw

the bill before the final vote. The current political regime enjoys a high degree of consensus among the population and political leaders.

On 21 July 2017, the Minister of State called elections of the National Council for 11 February 2018. Following the 2013 elections, 20 seats in the parliament are held by the *Rassemblement et Enjeux pour Monaco* – Horizon Monaco (HM), 3 by the *Union Monegasque* and 1 by the *Renaissance*. Women hold only five seats in the outgoing parliament.

The OSCE/ODIHR previously deployed an Election Expert Team (EET) for the 2013 elections of the National Council.¹ The OSCE/ODIHR EET concluded in its final report that the parliamentary elections took place in a competitive environment and were administered professionally. Among various issues, the EET recommended to improve certain elements of the legal framework, to review the practice of proxy voting, and to further strengthen the transparency of campaign finance.

B. LEGAL FRAMEWORK

Parliamentary elections are primarily governed by the 1962 Constitution of the Principality (last amended in 2002) and the 1968 National Elections Act (electoral law, last amended in 2014). Specific aspects of the elections are further regulated by the Law on the Finances of Election Campaigns (last amended in 2017), the 2008 Act on Associations and Federations of Associations. The electoral legal framework is also supplemented by various governmental orders, including Ministerial Ordinances on proxy voting and on media campaigning, as well as municipal orders regulating the display of election campaign materials.

Monaco is party to major international and regional instruments related to the holding of democratic elections.² In the light of the progress achieved since its accession to the Council of Europe in 2004 and the efforts made by Monaco to honour its obligations, the Parliamentary Assembly of the Council of Europe ended its post-monitoring dialogue with Monaco in 2015.

The electoral legal framework has undergone a number of substantial changes in the last years with broad cross-party support. The most recent amendments to the electoral law in 2014 broadened suffrage rights for detainees, clarified provisions for candidate registration, and modified campaign regulations. The electoral law was also amended to permit internet voting and the use of electronic systems in elections, subject to further regulation by a separate ministerial order.³

The changes to the campaign finance regulations lowered campaign expenditure ceiling and introduced new measures to increase the transparency of party and campaign finance. Although given due consideration by the authorities, some specific ODIHR recommendations remain to be addressed, including on candidacy nomination, defamation, proxy voting, and election dispute resolution. Overall, OSCE/ODIHR NAM interlocutors expressed confidence in the legal framework as a sound basis for the conduct of democratic elections.

¹ See previous [OSCE/ODIHR election-related reports on Monaco](#).

² Including the 1966 International Covenant on Civil and Political Rights, 1979 Convention for Elimination of All Forms of Discrimination against Women, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 2006 Convention on the Rights of Persons with Disabilities. Monaco is also a member of the Council of Europe's Venice Commission and Group of States against Corruption (GRECO).

³ Newly introduced Article 40-1 of the electoral law will not be enforced for these elections.

Despite a previous OSCE/ODIHR recommendation, there are no legal provisions related to international or citizen election observation, which challenges paragraph 8 of the 1990 OSCE Copenhagen Document.⁴ However, the OSCE/ODIHR NAM was assured full access to all stages of the electoral process in the event of an election-related activity. All registered candidate lists have the right to appoint representatives to the polling station. The counting process is open to observation by any citizen of Monaco.

C. ELECTORAL SYSTEM

The 24 members of the National Council are elected by secret ballot every five years under a mixed electoral system combining majoritarian and proportional representation from a single nationwide constituency. Members of parliament are elected from open candidate lists, each consisting of between 13 and 24 candidates. The 16 candidates who receive the largest number of votes are elected through a majoritarian system. In case of a tie, the older candidate is elected. The remaining eight seats are filled through a system of proportional representation based on the highest-average rule among the candidate lists that have received at least five per cent of the valid votes cast.

While each list is presented on a separate ballot sheet, voters can only cast one ballot. However, voters can modify a ballot paper by striking and/or adding candidates from other lists. Some OSCE/ODIHR NAM interlocutors opined that the electoral system favours broad political alliances and that the election of candidates from new or smaller alliances into parliament is unlikely.

Proxy voting remains available for voters who are unable to cast their ballot in person on election day, despite the OSCE/ODIHR previously recommending to reconsider its use.⁵ Persons held in pre-trial detention facilities and prisoners serving sentences that do not result in withdrawal of electoral rights are also eligible to vote by proxy. A voter can cast a maximum of two proxy votes granted to him/her by eligible voters. Voters are required to submit proof of absence. While OSCE/ODIHR NAM interlocutors recognized this practice was at odds with international standards, they underscored that it enjoyed a high level of trust and was a way to enfranchise voters. No concerns were raised to the OSCE/ODIHR NAM regarding the use of proxy voting in the upcoming elections.

D. ELECTION ADMINISTRATION

The administration of the elections is centralized, due to Monaco's small territory and population. The City Hall of Monaco is responsible for the overall conduct of elections, including the preparation of voter lists, registration of candidate lists, distribution of voter information, production of envelopes, as well as voting, counting, tabulation, and announcement of election results. The Mayor acts as a Chairperson of the Electoral Committee (EC), a

⁴ 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".

⁵ The OSCE commitments and other international standards for democratic elections stipulate the respect for the secrecy and equality of the vote to guarantee the free expression of the will of the voter. See paragraphs 5.3, 7.3 and 7.4 of the 1990 OSCE Copenhagen Document; Article 25 of the ICCPR; General Comment to Article 25, paragraphs 20-22; the 1950 Convention for Protection of Human Rights and Fundamental Freedoms, Protocol 1 of 1952, Article 3.

temporary body comprised of city council members and city hall employees who are responsible for various aspects of electoral process. The composition of the EC and the division of responsibilities within it are not clearly defined in the law. The Ministry of Interior supports the City Hall in preparations of elections by providing necessary legal interpretations and advise as well as by ensuring the security of the electoral process.

For election day, one polling station will be established where voters may cast their ballots from 08:00 until 19:00. In order to cast a ballot, a voter must present a valid identification document and a personal voting card, which is mailed to all registered voters at least two weeks before election day.

The City Hall informed the OSCE/ODIHR NAM that preparations for the elections are ongoing. Practical information on the elections and election day procedures has already been mailed to all voters. It included information on when to vote, as well as regulations for proxy voting. The format of the ballot paper has been established by the EC. While the City Hall provides envelopes for casting ballots, electoral contestants are financially and logistically responsible for providing ballots on election day. In a positive development and in response to the previous OSCE/ODIHR recommendation, the EC plans to display voter information at the polling station on election day.

All interlocutors met with by the OSCE/ODIHR NAM expressed confidence in the professionalism and impartiality of the election administration and no concerns were raised regarding the technical preparations and conduct of elections.

E. VOTER REGISTRATION

Citizens of Monaco who are 18 years of age on election day, including those permanently residing abroad, are eligible to vote. The exceptions are those who have been temporarily deprived of their right to vote due to mental incapacity, a criminal conviction, irrespective of the gravity of crime, and those who have been pronounced bankrupt by a court decision. Positively, the electoral law was amended to provide for proxy voting for those in pre-trial detention.

Voter registration is passive. The voter register is permanently maintained and regularly reviewed by an interagency committee comprised of the Mayor, a representative of the Prime Minister, and two representatives of the Municipal Council. Starting from 15 October, the Committee holds meetings to review the voter register. In the event that a voter is taken off the voter register for a legally grounded reason, this voter is notified immediately by the Mayor. A voter has the right to appeal this decision within three days. The voter register closes on 31 December of each year. Final voter lists are sent to the Minister of State not later than 10 January and published in the *Journal de Monaco*. Beyond this date, complaints regarding the voter register can be submitted to the City Hall and appealed to First Instance Court and further the Supreme Court whose decision remains final.

Electoral contestants are by law entitled to receive a copy of the voter register. In addition, citizens can also receive a copy of the voter register upon request. The 2014 amendments to electoral law introduced stricter privacy regulations and penalties for misuse of the voter register.

The Principality, has about 36,000 residents, of whom only some 9,000 are Monegasque citizens. As of 8 January 2018, some 7,060 voters were registered to vote in the upcoming

elections. OSCE/ODIHR NAM interlocutors did not raise concern over the voter registration process and expressed confidence in the overall integrity of the process.

F. CANDIDATE REGISTRATION

Any registered voter who has reached 25 years of age and has been a citizen for at least 5 years is entitled to contest the elections. The provision regarding the length of citizenship has not been altered since previous elections, despite an OSCE/ODIHR recommendation. A nominated candidate has to give his/her consent to stand.

The law identifies a broad range of governmental and non-governmental positions as incompatible with candidacy. This includes Crown and State advisers, members of the Supreme Court, members of the royal family, government advisers, diplomatic or consular officials, judges, as well as voters who by virtue of other nationality hold elective office in another country. Some OSCE/ODIHR NAM interlocutors, citing potential conflict of interest but noting that this is not illegal, expressed their concern regarding the involvement of a former state minister in the upcoming elections.

Eligible candidates may stand on behalf of political associations. Legislation does not allow for individual independent candidates, but only for groups of those, as each list must contain at least 13 candidates. Nominations have to be submitted between 20 and 16 days before election day to the City Hall. The General Secretariat then checks candidate eligibility and issues a receipt of the nomination within 24 hours. A refusal of registration can be appealed to the court of first instance within 48 hours. The decision of this court is final.

The law prohibits any form of gender discrimination and stipulates the promotion of gender equality in all sectors of society. However, legislation does not contain provisions to promote the participation of women in elections and there are no requirements for gender balanced candidate lists. Political associations met with by the OSCE/ODIHR NAM opined that it was difficult to motivate female candidates to run and saw no need to impose quotas.

So far, three political associations declared their intention to contest these elections. Overall, OSCE/ODIHR NAM interlocutors did not express concerns with the inclusiveness of the registration process.

G. CAMPAIGN AND CAMPAIGN FINANCE

The official campaign period begins 16 days before election day and ends 24 hours before the opening of polls. The law also defines a pre-election period starting 75 days before election day.⁶

Legislation guarantees freedoms of association and assembly. It is, however, prohibited to campaign on behalf of a candidate or a list of candidates without obtaining their agreement. During the campaign, the posting of printed materials is limited to spaces designated by the City Hall which are provided free-of-charge on a strictly equal basis.⁷ Unauthorized posting and defacing of campaign posters is prohibited. Each list of candidates is entitled to use twice a meeting venue provided for free by the City Hall.

⁶ For next elections, a pre-election campaign will start 150 days before election day.

⁷ The City Hall has identified 31 such places.

The campaign is expected to be active, and candidates will rely on personal contacts with voters, small gatherings, and leaflets posted to voters. In addition, political contestants plan to use to a significant degree broadcast and print media, as well as the Internet, including social media. All three political associations that the OSCE/ODIHR NAM met with espouse a similar ideology. Campaign topics include the negotiations of the Association Agreement with the European Union, housing, quality of life and the protection of the environment. No OSCE/ODIHR NAM interlocutor raised any concerns about the ability to campaign freely.

Campaign finance is regulated by the 2012 Law on the Financing of Election Campaigns which was substantially amended in 2017. The changes addressed a number of previous recommendations of OSCE/ODIHR and the Council of Europe's Group of States against Corruption (GRECO), including those on the content of reports on campaign accounts, establishing a permanent supervisory body, and the introduction of penalties for breaches of the rules.⁸

Campaigns can be funded from three main sources: candidates' own funds, donations, and bank loans or borrowings. In-kind contributions are allowed and accounted towards the expenditure limit. Anonymous donations are not allowed. The campaign expenditure ceiling for these elections is set at EUR 320,000 per candidate list.⁹ Individuals and legal entities can donate up to 10 per cent of expenditure limit, and the cumulative total amount of donations that a candidate list can receive cannot exceed 20 per cent of the ceiling.

Supervisory functions are vested with the Campaign Accounts Supervisory Commission (CASC), a recently established permanent body comprised of seven members appointed for five-years terms. Parties and candidates are obliged to open a dedicated bank account and appoint a financial agent to carry out all campaign finance transactions. There is no oversight during the campaign or until the accounts are submitted. Candidate lists are required to submit externally audited finance reports detailing income and expenditures within two months after the elections. The CASC has three months to approve, reject, or require revision of these reports.

Candidate lists surpassing the 5 per cent threshold are entitled to reimbursement of half of their campaign expenses. The lists that polled at least 10 per cent of valid votes cast and got at least one candidate elected are entitled to receive a reimbursement of 80 per cent of campaign expenses incurred. The reimbursement decision is taken by the Minister of State, based on the CASC's opinion. Most OSCE/ODIHR NAM interlocutors agreed that the party and campaign finance systems could be further improved and would benefit from additional external scrutiny.

H. MEDIA

The media landscape is limited due to the small size of the population. The state-owned *Monaco Info* operates under public service obligations and is required to ensure objectivity, impartiality, accuracy and diversity in its programmes. There is no daily newspaper in Monaco; however, additional broadcast and print media are received from neighboring France and Italy, which include some coverage of political developments in the Principality. The internet, and particularly social media, is increasingly used as a source of information.

The Constitution guarantees freedom of expression; however, defamation of the royal family is prohibited by the Penal Code. The recent amendments to electoral law further strengthened the

⁸ See GRECO [2017 Addendum to the Second Compliance Report on Monaco](#).

⁹ The limits are fixed by the Ministerial Order 2017-765 of 19 October 2017.

responsibility for distribution of false and slanderous information which are now punishable by imprisonment up to two years. While there is no specific legislation covering the role of the media during an election, the Ministerial Ordinance on Media Campaign provides guidance for media coverage of campaign and is the primary legal instrument to ensure balanced coverage of the election campaign.

For these elections, the candidate lists are entitled to broadcast six campaign clips of five minutes each during the official campaign period. The production of these clips is funded from the state budget and is subject to oversight by a dedicated Co-ordinating Committee.¹⁰ In addition, electoral contestants are entitled to air campaign advertisements five times a day at 08:00, 12:00, 18:00, 20:00 and 22:00. Sequence and timing of the campaign broadcasts is determined by drawing lots.

All electoral contestants can purchase political advertisement in the media. The OSCE/ODIHR NAM was informed that the representatives of the three candidate lists have been engaged in negotiations over organization of political debates but no decision on the format has yet been reached. Some OSCE/ODIHR NAM interlocutors opined that the lack of specific guidelines on the conduct of debates and budgetary considerations, prevented the Monegasque media from taking a pro-active role in this field.

While some OSCE/ODIHR NAM interlocutors criticized the advantage for the governing political association in their media coverage, mainly due to the overlap of budgetary discussions in the National Council with the campaign period, the majority of OSCE/ODIHR NAM interlocutors expressed overall satisfaction with the media coverage of elections.

I. COMPLAINTS AND APPEALS

Electoral dispute resolution is primarily regulated by the electoral law, including by provisions related to voter registration, candidate registration, campaigning, and the election results. Complaints regarding the media regulation and campaign finance are additionally regulated by respective legislation on these issues. Each voter or electoral contestant has the right to complain. All grievances can be filed with the court of first instance, whose decisions can be appealed to the court of appeals. Several violations of electoral rights are subject to criminal sanctions under the Penal Code.

Deadlines for adjudicating appeals are up to one month, which could limit electoral stakeholders' rights to effective remedy. However, the electoral law also provides for the consideration of a case as an "urgent matter" to ensure that disputes are settled before election day. The law provides for elections to be annulled and repeated in the event of serious irregularities, although the laws do not provide strict criteria for the annulment. In such a case, new elections should take place within three months after a final court judgment is rendered. All OSCE/ODIHR NAM interlocutors expressed strong confidence in the complaint and appeals system.

¹⁰ Some prohibitions exist for campaign clips, including a ban on featuring the Royal Palace, the Palace of Justice, the national anthem and flag of the Principality

IV. CONCLUSIONS AND RECOMMENDATIONS

All OSCE/ODIHR NAM interlocutors expressed a high level of confidence in the electoral process as well as the ability of the election administration to manage the elections in a professional, impartial and transparent manner. No significant concerns were expressed relating to the respect for fundamental freedoms, the campaign environment, and election day proceedings. A number of previous OSCE/ODIHR recommendations have been taken into account in the course of amending the electoral law and establishing the new campaign finance regulations. Most interlocutors noted the usefulness of previous OSCE/ODIHR assessments and underlined the added value and importance of continued co-operation.

The OSCE/ODIHR NAM does not recommend an election-related activity for these elections, taking into consideration also the limited timeframe and other concurrent elections. In principle, any electoral process and system can benefit from independent and impartial examination and advice, also outside the campaign period. The OSCE/ODIHR encourages the authorities of Monaco to engage in future follow-up activities in the areas noted in this and previous reports, and stands ready to assist them in these endeavors.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs and Co-operation

Gilles Tonelli, Minister of Foreign Affairs

Isabelle Berro-Amadei, Permanent Representative of the Principality of Monaco to the International Organizations in Vienna

Isabelle Rosabrunetto, General Director, Department of International Co-operation

Marie-Noëlle Albertini, Adviser, Department of International Co-operation

Arnaud Pianta, Foreign Relations Secretary

National Council

Christophe Steiner, President

Sébastien Siccardi, Adviser on Judicial matters

Phillippe Mouly, Secretary General

City Hall

Georges Marsan, Mayor of Monaco

Françoise Gamerdinger, Deputy Mayor

Marjorie Crovetto-Harroch, Deputy Mayor

Hélène Zaccabri, Secretary General

Judiciary

Didier Linotte, President, Supreme Court

Brigitte Grinda-Gambarini, First President, Court of Appeals

Jacques Doremieux, Prosecutor General

Martine Coulet-Castoldi, President of the Court of first instance

Béatrice Bardy, Chief clerk

Campaign Accounts Supervisory Commission

Antoine Dinkel, Director of Fiscal services, Vice President of the Commission

Jean-François Bernicot, Member

Muriel Dorato-Chicouras, Vice President of the Court of Appeals, Member

Julien Veglia, Secretary General

Political Associations

Stéphane Valeri, President, *Primo! Priorité Monaco*

José Badia, *Primo! Priorité Monaco*

Christophe Robino, *Primo! Priorité Monaco*

Jean-Louis Grinda, *l'Union Monégasque*

Béatrice Fresko-Rolfo, President, *Rassemblement et Enjeux - Horizon Monaco*

Jacques Rit, *Rassemblement et Enjeux - Horizon Monaco*

Media

Geneviève Berti, Director, Government Communication Department