



## **INTERNATIONAL REFERENDUM OBSERVATION MISSION**

### **The former Yugoslav Republic of Macedonia, Referendum, 30 September 2018**

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#### **STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS**

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#### **PRELIMINARY CONCLUSIONS**

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While the legal framework did not cover all aspects sufficiently, the 30 September Referendum was administered impartially and fundamental freedoms were respected throughout the campaign. The election administration was collegial and met deadlines, but was not always fully transparent in its work. The absence of an active ‘Against’ or organized boycott campaign meant that the media struggled to provide balanced coverage but did convey extensive information and diverse views to voters. Referendum day was generally calm and well-organized, and procedures were administered professionally and transparently.

On 30 July, the parliament called for a consultative referendum on approval of a bilateral agreement with Greece, which envisages constitutional amendments that would change the name of the country. Implementation of the agreement is considered to be a precondition for EU and NATO integration. The referendum asked voters to decide, “Are you in favour of EU and NATO integration by accepting the agreement between the Republic of Macedonia and the Republic of Greece?”. The Constitutional Court received three applications challenging the parliament’s decision to hold the referendum and the formulation of the question, but these applications were rejected.

The legal framework for the referendum is neither comprehensive nor harmonized. The Referendum Law sets out the basic rules for the referendum process, but lacks detail on certain substantive aspects. Attempts by the State Election Commission (SEC) to fill these gaps and clarify other issues through regulations raised questions about their legal basis and the scope of the SEC’s regulatory authority.

Recent amendments to the Electoral Code introduced a temporary SEC for six months. The SEC administered the referendum impartially and generally met legal deadlines. The commission held regular public meetings that were conducted in an efficient and collegial manner, but lacked substantive debate on key issues. The lower level commissions generally worked in a professional manner and enjoyed the confidence of local stakeholders.

The SEC conducted a voter information campaign which emphasized freedom of choice and participation rather than encouraging turnout. While the authorities made some efforts to provide public information related to the agreement, the content of the agreement was insufficiently explained. The broadcast media largely filled this gap by providing information programmes related to the agreement and referendum, which improved the ability of voters to make an informed choice.

Citizens at least 18 years of age have the right to vote, except for those declared legally incapacitated by a court decision. The final voter list included 1,806,336 eligible voters. Despite longstanding structural issues and the relevance of the turnout threshold for the referendum, the accuracy of the voter list was not cited as a major concern by IROM interlocutors.

The referendum campaign was peaceful and generally active across the country and the freedoms of assembly, association and expression were respected. The parliament, primarily through the ruling SDSM and DUI parties, led the ‘For’ campaign, which was broadly supported by ethnic communities

and also featured a high degree of engagement by foreign leaders and representatives of the EU, US and NATO. Although there was no active ‘Against’ campaign, a coalition of civic associations and two smaller political parties advocated a boycott through rallies and on social media, often featuring inflammatory language.

The legal framework for financing the referendum campaign does not include spending limits and lacks clear requirements for disclosure, auditing procedures and sanctions. The government allocated some EUR 1.3 million to the parliament to spend on media advertisements, which the opposition declined, thus only the ‘For’ portion of the public funds were spent. There were no comprehensive requirements for campaign finance reporting, undermining transparency.

The media provided citizens with an extensive amount of information related to the referendum. Campaign-related advertisements were aired regularly in private media. Public media were not obliged to provide free airtime. Given the lack of an active ‘Against’ campaign, combined with a ‘Boycott’ campaign conducted primarily on social media, the views expressed by the ‘For’ campaign clearly dominated across all broadcasters. Most monitored television channels organised special programmes that provided diverse information about the broader context of the referendum.

The legal framework provides for observation of the referendum by international and citizen observers. The “proposer” of the referendum, in this case the parliament, had the right to appoint representatives to observe in polling stations but declined to do so. Political parties were otherwise not permitted to observe.

Early voting and referendum day proceeded in an orderly manner. Procedures in polling stations were administered professionally and transparently, without major irregularities. In many cases, accredited citizen observers were unable to identify themselves and appeared to be affiliated with political parties.

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## PRELIMINARY FINDINGS

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### Background

The country’s accession to the European Union (EU) and North Atlantic Treaty Organization (NATO) has historically been impeded by a lack of consensus among member states of these organizations regarding the name of the country. On 17 June 2018, following a year of negotiations under the auspices of the United Nations, the country signed a bilateral agreement with Greece. The agreement envisages constitutional amendments that would include changing the constitutional name of the country to the “Republic of North Macedonia”.<sup>1</sup> Implementation of the agreement is considered to be a precondition for EU and NATO integration.<sup>2</sup>

A decision to hold a consultative referendum on approval of the agreement passed parliament on 30 July, without reaching a consensus with the opposition on the consultative nature of the referendum and the formulation of the question to be decided.<sup>3</sup> Following the referendum, constitutional amendments

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<sup>1</sup> See the [complete text of the bilateral agreement](#).

<sup>2</sup> In Article 2 of the agreement, Greece commits “not to object to the application by or membership of the Second Party [under the name ‘Republic of North Macedonia’] in international, multilateral and regional Organizations and institutions of which the First Party is a member”. At its summit in July 2018, NATO extended an official invitation to the country to begin accession negotiations, [on the condition that the agreement with Greece is implemented](#). The EU has similarly indicated that the [beginning of accession talks is related to the resolution of the name dispute](#).

<sup>3</sup> The decision to hold the referendum passed with 69 votes for and none against. Representatives of the opposition were not present for the vote.

would still require a two-thirds majority vote in parliament to be completed by the end of 2018.<sup>4</sup> Once the amendments are enacted, the agreement would then require adoption by the parliament of Greece.

## Legal Framework

The referendum is primarily regulated by the 1991 Constitution (last amended in 2011) and the 2005 Law on Referenda and Citizen Initiatives (Referendum Law).<sup>5</sup> The legal framework is neither comprehensive nor harmonized.<sup>6</sup> The Referendum Law sets out the basic rules for the referendum process, but it lacks detail on certain substantive aspects.<sup>7</sup> The Referendum Law stipulates that provisions of the 2006 Electoral Code apply if not otherwise specified. The SEC issued regulations that applied the Electoral Code provisions on election administration and voter registration to the referendum, but not on campaign finance and campaigning.<sup>8</sup> The exemption of these areas from the legal framework led to some confusion among stakeholders with regard to applicable rules and detracted from legal certainty.<sup>9</sup> SEC attempts to fill these gaps and to clarify other issues through new regulations raised questions about their legal basis and the scope of the SEC's regulatory authority.<sup>10</sup>

The Referendum Law requires that the issue being decided be “precisely formulated and unambiguous, so that the citizen may answer ‘For’ or ‘Against’”. The question on the ballot was, “Are you in favour of EU and NATO membership by accepting the agreement between the Republic of Macedonia and the Republic of Greece?” Some IROM interlocutors noted that the compound nature of the question, the lack of explicit reference to the change of the country's constitutional name and other implicit constitutional amendments could mislead voters. Other stakeholders argued that there was a direct relationship between the different parts of the question, as evidenced by the public statements of EU and NATO officials that the agreement is a precondition of integration.<sup>11</sup> In a public hearing on 19

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<sup>4</sup> The Referendum Law requires a legally binding referendum for membership in an international association or community. The government informed the IROM that an additional referendum would be required in advance of possible EU accession. A 1993 decision of the parliament, later reaffirmed in 2012 and 2018, approved the country's potential membership in NATO.

<sup>5</sup> Additional legislation includes the Criminal Code, Law on Public Assemblies, Law on Prevention of Corruption, Law on Administrative Disputes, Law on Media, and Law on Audio and Audiovisual Media. In line with prior ODIHR and the Council of Europe's Venice Commission recommendations, the government, in consultation with civil society and political parties, has undertaken steps to reform the electoral legislation, though these reforms are still pending.

<sup>6</sup> The SEC's regulations for this referendum acknowledge that the Referendum Law is not harmonized with the Electoral Code. The inconsistencies include composition of the Electoral Boards, dispute resolution procedures and presence of partisan observers in polling stations.

<sup>7</sup> For example, what constitutes campaigning, the right and rules for individuals and entities to campaign, campaign finance rules, and a right of the authorized proposer to file complaints. These issues were addressed in different SEC regulations.

<sup>8</sup> The SEC explained to the IROM that the notion of “electoral campaign” in the Electoral Code refers to candidates and political parties and therefore does not apply to referendum campaign activities.

<sup>9</sup> For example, contradictory guidance was issued by the SEC and the Agency for Audio and Audiovisual Media Service (see *Media*). In addition, the SEC received letters requesting clarification on applicability of the Electoral Code and the Law on Financing of Political Parties with regard to campaigning by foreigners, presence of political party observers, and the use of special accounts for campaign financing (see *Campaign Finance*).

<sup>10</sup> For example, the SEC regulations mandated special media space for the campaign to be allocated to the parliament, and shifted complaints related to voter registration to the jurisdiction of the Supreme Court. The Supreme Court later held that there was no legal basis for this shift in competence. Paragraph 9 of the UN Human Rights Committee (CCPR) General Comment 25 states such “rights and obligations... should be guaranteed by law”. Section II.2.a. of the [2007 Venice Commission Code of Good Practice on Referendums](#) recommends that “apart from rules on technical matters and detail (which may be included in regulations of the executive), rules of referendum law should have at least the rank of a statute”.

<sup>11</sup> Section III.2. of the [Code of Good Practice on Referendums](#) recommends that the question not be misleading and not suggest an answer, and that “there must be an intrinsic connection between the various parts of each question put to the vote, in order to guarantee the free suffrage of the voter, who must not be called to accept or refuse as a whole provisions without an intrinsic link”.

September, the Constitutional Court debated weaknesses in the formulation of the question, but upheld the constitutionality of the process (see *Complaints and Appeals*).

The law requires a threshold of a majority of registered voters for a referendum to be considered adopted, but does not explicitly state if this applies to a consultative referendum.<sup>12</sup> Given the consultative nature, the government did not identify *de facto* criteria, such as a turnout threshold or proportion of ‘For’ votes, upon which it would or would not pursue the proposed constitutional amendments in parliament following the referendum. However, the prime minister, foreign minister and the speaker of parliament each indicated that the amendments would be pursued regardless of the turnout, should a majority vote ‘For’. The public, including those advocating a boycott, broadly connected the threshold to the success of the referendum. Differing interpretations of the threshold created uncertainty as to the procedural consequences of the vote.

### Referendum Administration

The referendum was administered by a three-level administration, comprising the State Election Commission (SEC), 80 Municipal Election Commissions (MECs) and the City of Skopje Election Commission, and 3,480 Election Boards (EBs).<sup>13</sup> An additional 33 EBs were established in Diplomatic–Consular Offices (DCOs) for out-of-country voting, and one additional EB in the SEC to administer the voting of EB members deployed to these DCOs.

Departing from good practice, the latest amendments to the Electoral Code from July 2018 introduced a temporary SEC with a mandate of six-months.<sup>14</sup> The seven members, three of whom are women, were nominated by parliamentary parties; four from the ruling coalition, including the vice president, and three from the opposition, including the president.<sup>15</sup> The Electoral Code foresees the appointment of a deputy secretary general; however, this position was not defined or filled.

MECs are composed of five members (and deputies) who serve a five-year term and are randomly selected from among public employees. MECs oversaw the administration of the referendum in each municipality, appointed and trained EBs, and managed other technical preparations. EBs comprise three members (and deputies) who are randomly selected from among public employees and were responsible for management of the polling stations and conducting voting and counting procedures.<sup>16</sup> For the referendum, EBs did not include two temporary members nominated by parties, as provided for in the Electoral Code for elections. Despite some late changes in the composition of MECs and EBs, the requirement for balanced ethnic and gender representation in election commissions was broadly respected.<sup>17</sup>

The SEC administered the referendum impartially and generally met legal deadlines. The commission held regular public meetings that were conducted in an efficient and collegial manner. However, public

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<sup>12</sup> Article 8 of the Referendum Law provides for both mandatory and consultative referenda, and Article 30.1 stipulates the required quorum of a majority of registered voters for a referendum to be “considered adopted”.

<sup>13</sup> On 14 September, the SEC published a list of 81 polling stations located in 27 municipalities with fewer than 10 voters. MECs were instructed not to appoint EB members for these polling stations and to direct the concerned voters to the next nearest polling stations. However, results from these polling stations are still recorded on a separate protocol which could breach the secrecy of the vote due to the very small numbers of voters.

<sup>14</sup> Sections II.3.1.c of the [Code of Good Practice on Referendums](#) and II.3.1.c. of the [2002 Venice Commission Code of Good Practice in Electoral Matters](#) recommend that the central commission be permanent in nature. The prior SEC members resigned in January 2018 following a corruption scandal.

<sup>15</sup> Three of the members have prior experience with the electoral administration, including a former SEC president.

<sup>16</sup> MEC and EB members were appointed for five- and four-year terms, respectively, in 2016 and 2017.

<sup>17</sup> The Electoral Code stipulates that ethnic communities that constitute more than 20 per cent of the population in a municipality should be represented in MECs and EBs, while at least 30 per cent of members in all election bodies should come from each gender.

sessions lacked substantive debate, with decisions being adopted unanimously following prior working meetings that were not open to the public or observers.<sup>18</sup> While the SEC uploaded most of its decisions and key information on its website, not all decisions were published, at odds with the SEC's internal rules of procedures.<sup>19</sup> In addition, all decisions on tendering procedures for selection of contractors were taken in closed meetings of the SEC procurement committee.

The lower level commissions generally worked in a professional manner and enjoyed the confidence of local stakeholders. However, although sessions of most MECs were public, in a few cases they were not announced beforehand, making observation difficult.<sup>20</sup> A number of MECs informed the ODIHR ROM about overdue salary payments from 2016 and 2017, and many complained that the allocation of funds did not take into account the number of or distance between polling stations in each municipality.

The SEC conducted cascade trainings for lower level election commissions, utilizing presentations, manuals, and videos. MEC trainings observed by the ODIHR ROM were well organized, interactive, and conducted in both the Macedonian and Albanian languages where required. However, the SEC was late in delivering trainings for the MECs and decided to merge these with the training of trainers. The trainings of EBs observed by the ODIHR ROM were less organized and of lower quality. Training manuals were made available only for the training of EB members.

Positively, in line with a prior ODIHR recommendation, the SEC conducted a voter information campaign, including televised and online content, much of which targeted younger voters. The material focused on referendum day procedures and how to locate polling stations, and emphasized freedom of choice and participation rather than encouraging turnout. The authorities made some efforts to provide information related to the agreement. However, the substance of the agreement and its potential impact were explained insufficiently or too late in the campaign.<sup>21</sup> The broadcast media largely filled this gap by providing information programmes related to the agreement and referendum, which improved the ability of voters to make an informed choice (see *Media* section).<sup>22</sup>

## Voter Registration

Citizens at least 18 years of age have the right to vote, except for those declared legally incapacitated by a court decision. Deprivation of the right to vote on the basis of mental or intellectual disability

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<sup>18</sup> According to the SEC, these working meetings assessed the implementation of the calendar of activities and reached consensus on draft decisions and reports prepared by the professional staff. Article 32.2 of the Referendum Law and Article 24 of the Electoral Code require the work of SEC to be public, as is also recommended by paragraph 3.1 of the 2002 Venice Commission Code of Good Practice in Electoral Matters.

<sup>19</sup> According to Article 76 of the SEC's internal rules of proceedings, all acts adopted by the Commission should be published on its website. From the first seven SEC sessions, 4 decisions out of 13, have not yet been published.

<sup>20</sup> For example, meetings of the Butel MEC are only open to accredited observers if requested with advance notice. Meetings of the Aerodrom MEC are closed and meeting minutes are not published, but decisions are published in the municipal gazette. Meeting minutes of some MECs were not made available to ODIHR ROM observers.

<sup>21</sup> For example, several ODIHR ROM interlocutors expressed uncertainty as to whether an additional referendum would be required for EU membership, and whether this issue was a proposal of the current referendum question.

<sup>22</sup> Paragraph 11 of the UN CCPR General Comment 25 states that "voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community". Section I.3.1. of the [Code of Good Practice on Referendums](#) states that "authorities must provide objective information", and that "materials from supporters and opponents should be made available to electors sufficiently in advance".



contravenes international standards.<sup>23</sup> According to the Electoral Code, only persons with a registered address and valid identification card or biometric passport are included in the voter register. Acting on a prior ODIHR recommendation, the authorities launched an operation to renew expired documents of persons confined in prisons.<sup>24</sup>

Voter registration is passive for in-country voting. Voter lists are compiled by the SEC based on data from various civil and population registers. During the public scrutiny that took place from 9 to 23 August, a total of 5,641 voters came in person to check their personal information, which resulted in 94 new inclusions, 295 deletions and 74 corrections. The SEC closed the voter list on 7 September and the final list included 1,806,336 eligible voters. The Ministry of Foreign Affairs informed the SEC that 2,694 voters actively registered for out-of-country voting.

All IROM interlocutors acknowledged that longstanding issues related to the accuracy of the voter lists and structural deficiencies identified in previous ODIHR and PACE reports remain unaddressed.<sup>25</sup> However, despite the relevance of the turnout threshold to the referendum, the accuracy of the voter list was not cited by interlocutors as a major concern.

## Referendum Campaign

Although the official campaign period began on 30 July, the day of the announcement of the date for the referendum, most stakeholders intensified their activities after 10 September.<sup>26</sup> The campaign ended 48 hours before the referendum day and was generally active and peaceful throughout the country. There were no restrictions on fundamental rights associated with the campaign, including the freedoms of assembly, association and expression.<sup>27</sup>

The parliament, as the authorised proposer of the referendum, led the ‘For’ campaign, which was visible across the country and focused on the benefits of EU and NATO membership, especially to the younger generation.<sup>28</sup> The ruling party, the Social Democratic Union of Macedonia (SDSM), joined together with over 100 civil society organizations to advocate for a ‘For’ vote, with the message “Go out for a European Macedonia”. Campaign means included distribution of posters, brochures, billboards, door-to-door canvassing, as well as rallies and town hall meetings.<sup>29</sup> The campaign also relied on social media platforms to complement its activities.

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<sup>23</sup> Articles 12 and 29 of the 2006 UN Convention on the Rights of Persons with Disabilities (CRPD). See also paragraph 9.4 of the 2013 CRPD Committee’s Communication No. 4/2011, which states 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, within the meaning of article 2 of the Convention”. Paragraph 41.1 of the 1991 OSCE Moscow Document commits participating States “to ensure protection of the human rights of persons with disabilities”.

<sup>24</sup> This initiative resulted in the issuance of 260 new ID cards.

<sup>25</sup> The legal provisions regulating the address register, including on updating the records, deleting expired addresses and preventing registration at addresses with insufficient proof, are inconsistent, as are the definitions of temporary and permanent residency of citizens living in-country and abroad. In addition, the rule requiring persons to declare a change of address is not enforced.

<sup>26</sup> This date coincides with the beginning of the parliamentary recess and also allows for 20 days of campaigning, in line with Article 69-a(2) of the Electoral Code.

<sup>27</sup> Representatives of “United Macedonia” informed the ODIHR ROM that advertising companies refused to place their billboards.

<sup>28</sup> The Referendum Law foresees that the “authorised proposer” of a national referendum can be the parliament or a group of 150,000 citizens.

<sup>29</sup> The ODIHR ROM observed a total of 45 ‘For’ campaign rallies in Bitola, Demir Hisar, Gostivar, Kriva Palanka, Krusevo, Kumanovo, Ohrid, Štip, Struga, Strumnica, Tetovo, and Veles, among others.

Unlike the Electoral Code, the Referendum Law does not regulate the involvement of public and foreign officials in the campaign. The prime minister, cabinet members and members of parliament actively participated in the ‘For’ campaign, and were often joined by mayors at local campaign events.<sup>30</sup> The campaign also featured a high degree of international engagement, with foreign leaders and representatives of the EU, United States, and NATO visiting Skopje to promote the bilateral agreement and to encourage turnout.<sup>31</sup> Almost all of these officials categorized the agreement as “historic” and its approval as a pre-condition for EU and NATO membership, with some officials explicitly endorsing the ‘For’ vote.<sup>32</sup> The Delegation of the European Union conducted outreach activities under the slogan “Imagine a future together”. Many IROM interlocutors described a lack of distinction between the international activities and the national ‘For’ campaign, which was consequently bolstered.

Despite the fact that IROM interlocutors from ethnic communities and parties confirmed that they were in favour of the referendum and would encourage their followers to vote ‘For’, the campaign remained low-key in these communities. Most ethnic Albanian and Roma parties campaigned separately with messages targeted to their communities; the largest of these, the Democratic Union for Integration (DUI), co-ordinated with SDSM activities on occasion.

The main opposition party, Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE), denounced the agreement with Greece as a “capitulation” and a threat to the country’s identity and history. However, the party did not take an official position on the referendum, and the party president announced on 11 September that citizens should “act according to their conscience”.<sup>33</sup> A few current and former officials of VMRO-DPMNE criticized the party leadership stance, with some publicly supporting the referendum question and encouraging turnout, and others indicating their intention to vote against.<sup>34</sup> Although the party conducted no official campaign related to the referendum, it conducted an ongoing anti-government campaign, which included protest marches and social media content to criticize government policies while also condemning the agreement with Greece.

Although there was no organized “Against” campaign, 72 civic associations and two non-parliamentary political parties, United Macedonia and Voice for Macedonia, advocated a boycott to prevent the referendum from reaching a 50 per cent turnout threshold. The boycott campaign was active through rallies and on social media, featuring nationalistic language which was often inflammatory.<sup>35</sup> There were instances of disinformation, some allegedly funded by foreign actors, but these were not picked up by traditional broadcast media and their reach remained limited to the online space.<sup>36</sup> The president,

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<sup>30</sup> The appearances of local officials observed by the ODIHR ROM occurred mostly outside of working hours.

<sup>31</sup> Among others, the EU High Representative, NATO Secretary General, US Secretary of Defence, German Chancellor, Austrian Chancellor, and Italian Defense Minister.

<sup>32</sup> The NATO Secretary General said publicly, while [visiting the country on 6 September](#), “I know that some in the country think they can say ‘no’ on the referendum, but ‘yes’ to NATO and EU membership. There is no such alternative. The option that the Treaty can be rejected, while joining NATO, is an illusion”. The participants at the meeting of the EU’s Joint Parliamentary Committee (JPC) in September indicated that the agreement allows the country to move faster towards integration into EU and NATO.

<sup>33</sup> See the [full statement](#).

<sup>34</sup> On 12 September, a group of party founders released a document in support of the referendum. The mayor of Kavadarci stated that the party should call on its members to vote and a municipal councilor in Skopje declared his support for the referendum. A former foreign minister and party leader openly advocated for a boycott.

<sup>35</sup> The ODIHR ROM has observed 6 boycott rallies and a *bojkotiram* bus in Bitola, Kumanovo, Mogila, Novaci, Rankovce, and Staro Nagoričane.

<sup>36</sup> With respect to social media, analyses of Twitter conducted by the news aggregator [Time.mk](#) indicated that this was likely a result of a number of small number of users on Twitter sharing the same content to reinforce the visibility of a topic, but without reach to a wider social media audience.

who previously refused to sign the parliament's ratification of the agreement, announced that he would not vote in the referendum.

Allegations of pressure on civil servants and school teachers to vote were made by some ODIHR interlocutors, though concrete evidence to substantiate the allegations was not produced. A complaint was filed with a local public prosecutor related to an alleged violation of the Criminal Code during one of the prime minister's public campaign appearances.<sup>37</sup>

## Campaign Finance

Parties and other participants self-financed their campaigns through private donations. Although the legal framework does not provide for public funding of the referendum, the government allocated MKD 80 million (some EUR 1.3 million) to the parliament in its role as authorised proposer to spend on media advertisements during the referendum campaign. A co-ordination committee within the parliament opened a designated bank account for this public funding and made direct payments to television and radio stations for airtime. VMRO-DPMNE criticized the decision to allocate public funds and rejected its portion of the funding, stating that this use of public financing was not in the interest of the citizens.<sup>38</sup> As a result, public funds were only spent on behalf of the 'For' campaign. Several small parties and civil society organizations also objected to the use of government funds.<sup>39</sup>

The legal framework for financing the referendum campaign does not include spending limits and lacks clear requirements for disclosure, auditing procedures and sanctions. SEC regulations require only the parliament as the authorised proposer to file a campaign finance report on its use of the public funds within 30 days of the referendum.<sup>40</sup> Unlike in elections, political parties and other stakeholders are not required to account for their expenditures or donations for the referendum campaign. The limited regulation and lack of transparency of campaign financing is at odds with international standards.<sup>41</sup>

## Media

Most journalists met by the ODIHR ROM acknowledged an improved working climate and reduced political pressure in recent years. While media outlets continue to struggle financially, especially locally, a large number of broadcasters, including over 15 television channels with national reach, operate in the country. Television is the primary source of political information.

The ODIHR ROM commenced its media monitoring activities on 3 September.<sup>42</sup> During the monitoring period the media provided citizens with an extensive amount of information related to the

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<sup>37</sup> At a 12 September rally in Kriva Palanka, the prime minister appeared to [encourage business owners](#) to pay bonuses to employees for voting (video with English subtitles).

<sup>38</sup> The 40 percent of funding allocated to the opposition will be returned to the government budget.

<sup>39</sup> Section II.3.4. of the [Code of Good Practice on Referendums](#) states that the general rules on the funding of political parties and electoral campaigns must be applied to both public and private funding of referenda. The political party *Levica* submitted a letter to the State Audit Office (SAO) requesting that they review the conformity of the decision on allocation of public funds with the Law on Financing of Political Parties. The SAO informed the ODIHR ROM that it will review this request during its next annual audit.

<sup>40</sup> SEC regulations require these reports to be filed to the SAO, the State Commission for Prevention of Corruption (SCPC) and the SEC. However, the SCPC is not currently operating, as all of its members have resigned.

<sup>41</sup> Article 7.3 of the 2003 UN Convention Against Corruption requires states to "consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties". See also, paragraph 159 of the 2010 [ODIHR/Venice Commission Joint Guidelines on Political Parties](#).

<sup>42</sup> The ODIHR ROM monitored prime time (18:00-24:00) programmes aired by public TV channels *MRT1*, *MRT2*, and *Sobraniski Kanal* and private TV channels *Alfa*, *Alsat-M*, *Kanal 5*, *Sitel*, *Telma*, and *TV 24 Vesti*. News programmes and segments of paid advertising of *TV21* were also monitored.



referendum. Campaign-related ads were aired regularly in private media beginning on 8 September. Public media were not obliged to provide free airtime.

The media generally provided fair coverage. However, the lack of any ‘Against’ campaign, combined with a ‘Boycott’ campaign conducted primarily on social media, complicated the ability of news media to present equitable coverage of both sides of the campaign. As a result, across all broadcasters, the views expressed by the ‘For’ campaign clearly dominated.

Information related to ‘Against’ or ‘Boycott’, including critical views of the agreement or of EU and NATO, rarely exceeded 10 per cent of the airtime allocated to referendum related issues in the news programmes of each television channel monitored. Information related to the ‘For’ campaign and items presenting views favourable or neutral to EU and NATO, amounted to some 50 per cent on most channels.<sup>43</sup> In addition, all channels dedicated a significant portion of airtime to voter information and other details of the referendum context and process.

Information extolling the benefits of EU and NATO integration was extensively presented in the media, especially in news programmes, through coverage of the government’s campaign activity and frequent state visits from EU and NATO officials. Positively, most monitored television channels organised special programmes dedicated to the wider context of the referendum, and presented a variety of views regarding the agreement which was the subject of the referendum question.<sup>44</sup>

Regulations adopted by the Agency for Audio and Audiovisual Media Services (AVMS) called for an equal division of the publicly funded airtime, with a maximum of four and a half minutes per hour for each side. However, most media who aired paid advertisements did not always respect these limits, allocating a larger share to the ‘For’ campaign.<sup>45</sup> In addition to the official referendum campaign, spots promoting the EU and its benefits were aired as part of an official EU campaign (“EU for you”). Civil society organisations also promoted EU and NATO membership in paid television advertisements. In the absence of MPs advocating for ‘Against’ or ‘Boycott’, only the publicly-funded advertisements promoting the ‘For’ campaign were aired in the media. However, at the end of the campaign, a non-parliamentary party *Glas za Makedonija* conducted a limited paid campaign promoting the boycott.

The AVMS monitored broadcast media from 10 September. On 14 September, the agency issued a statement to alert media that the time allocated to ‘For’ advertisements was exceeding the permissible limits and warned broadcasters to comply with the legal framework and AVMS guidelines. According to its first monitoring report of 25 September, the AVMS fined two broadcasters for not respecting the provision related to paid advertising.<sup>46</sup>

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<sup>43</sup> *TV Alfa* allocated a significant portion of airtime to the ‘For’ campaign, but its coverage and the comments of its journalists were generally critical. *TV Alfa* was also the only channel that presented the current government in a negative light. Portrayal of the government and political actors by other TV channels was predominantly neutral.

<sup>44</sup> Discussion programmes related to the referendum appeared on the following monitored television channels: MRT1, MRT2, Alfa, Alsat-M, Kanal 5, Telma, TV 24 Vesti and TV 21. Particularly diverse coverage of the referendum issues was offered by a political show *360 degrees* aired on Alsat-M.

<sup>45</sup> The SEC and the AVMS each presented contradictory instructions concerning the access of referendum stakeholders to paid advertising. The AVMS guidelines stipulated that radio and television stations may dedicate a maximum of 9 minutes per hour for advertisements concerning the referendum, accessible to all campaign participants, with no campaign spots aired outside the 9 minutes. In contrast, the SEC regulations held that only the parliament was to be allocated dedicated airtime for the campaign, while other entities could place advertisements during regular commercial advertising slots. Furthermore, the parliament’s coordination committee for implementation of the referendum held a position that 71 MPs who declared themselves ‘For’ the referendum, representing 59 per cent of MPs, were entitled to use 59 per cent of time allocated for the paid campaign. Most monitored media followed this position and at times exceeded the time limits for ‘For’ spots set by the AVMS.

<sup>46</sup> The AVMS concluded that 1TV had failed to observe the permitted time limits for airing the advertising messages “For” the referendum, and Sonce TV had aired the advertising messages calling to boycott of the referendum in its information programmes.

## Complaints and Appeals

The Referendum Law gives all voters the right to file complaints related to irregularities in voting day procedures and tabulation to the SEC within 24 hours.<sup>47</sup> However, the SEC adopted a regulation on referendum-related dispute resolution which narrowed the legal standing for citizens to file complaints. Under this regulation, voters may file a complaint if they are included in the list of voters, were present in the polling station, and requested that the irregularity be reflected in the logbooks of the respective EBs or MECs. The legal basis for the SEC to restrict the complaint provision is unclear. Accredited observers are permitted by law to enter remarks in the EB logbook but they do not have the right to lodge complaints.

Under the Referendum Law, SEC decisions related to voting day procedures and results can be appealed within 48 hours to the Supreme Court. This mechanism differs from the Electoral Code, under which the Administrative Court is the highest instance of election dispute resolution.<sup>48</sup> In addition, the shift of jurisdiction on appeals related to voter registration to the Supreme Court, made by the SEC regulations, did not appear to have a legal basis.<sup>49</sup>

The SEC received 12 formal complaints prior to referendum day, which were adjudicated in closed sessions.<sup>50</sup> At the same time, the SEC received various communications, including on the applicability of provisions of the Electoral Code and the Law on Financing of Political Parties to the referendum.<sup>51</sup> In addition, a few complaints were filed with the Public Prosecutor, including challenges to the legality of certain SEC decisions.

The Constitutional Court received three applications challenging the parliament's decision to hold the referendum, questioning, among other things, the wording and the compound character of the referendum question, the consultative nature of the referendum, and the lack of explanation of the constitutional changes envisaged in the agreement.<sup>52</sup> These applications were rejected by a majority vote which debated weaknesses in the formalities of the decision to hold the referendum and the formulation of the question, but decided that they did not amount to unconstitutionality.<sup>53</sup> The majority decided that while the Constitution requires a binding referendum to join an international community or association, the current consultative referendum does not preclude a future referendum from being called. In addition, it was decided that the referendum question was clear because the issues contained were interrelated.

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<sup>47</sup> MECs have no jurisdiction over complaints for the referendum.

<sup>48</sup> The Minister of Justice informed the ODIHR ROM that this appellate route is the outcome of the outdated Referendum Law, which pre-dates the creation of the Administrative Court.

<sup>49</sup> Under the Electoral Code, appeals against SEC decisions related to voter registration are heard by the Administrative Court. The Referendum Law does not provide for jurisdiction of the Supreme Court on voter registration complaints. Section II.3.3.c. of the [Code of Good Practice on Referendums](#) states that "the appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative)".

<sup>50</sup> Of these, 10 complaints related to rejections of requests for homebound voting, and two related to exclusion from the voter list.

<sup>51</sup> The requests were submitted by political party *Levica* and by the organization *World Macedonian Congress* with regard to use of political party accounts for the campaign, presence of partisan observers in polling stations, campaigning by foreigners, financing of campaign from the state budget, and alleged intimidation of voters.

<sup>52</sup> The complaints were filed by *Levica*, *World Macedonian Congress* and a private citizen. Two applications were filed to the Constitutional Court following the 19 September public hearing.

<sup>53</sup> According to statements of the judges during the open hearing, seven out of nine judges upheld the constitutionality of the referendum. The deliberation and voting were not public and the text of the judgment has not yet been made available.

## Citizen and International Observers

The Electoral Code and SEC regulations provide for observation of the referendum by international and citizen observers. Under the legal framework, only the authorised proposer of the referendum, in this case the parliament, was allowed to appoint a special representative to observe the work of the referendum administration in each commission and polling station. Despite an application by VMRO-DPMNE, the parliament did not appoint any. Several political parties complained to the ODIHR ROM that the rules for observing the referendum denied them the right to observe. The exclusion of partisan observers in polling stations, combined with the absence of party-nominated members on EBs, detracted from the overall transparency of the process and challenged OSCE commitments and international good practice.<sup>54</sup>

The SEC accredited some 493 international and 11,927 citizen observers. Two well-established citizen observer organizations deployed observers for the campaign and voting day procedures. On referendum day, MOST deployed 1,902 observers, including some mobile teams, and ran a Parallel Vote Tabulation exercise. The CIVIL-Center for Freedom deployed 307 accredited observers. On the deadline to register, two additional organizations were accredited, the Macedonia Anti-Poverty Platform (MAPP) with 3,736 observers, and Agency for Civil Policies and Initiatives (IDULSJ) with 5,574.

## Referendum Day

Early voting and referendum day proceeded in an orderly manner without major irregularities. The referendum day process was well-organized and administered professionally. Voting, counting and tabulation procedures were generally well followed and the transparency of the process was ensured.

Citizen observers were present in 90 per cent of polling stations and tabulations centres observed. However, IROM observers noted widespread confusion over the identity of the organizations represented by some domestic observers. Even though there were no authorized representatives accredited by the SEC, in 91 observed polling stations citizen observers either could not identify their organization nor their duties as observers. In some cases, these observers identified themselves as authorized representatives of the parliament, political parties or the MEC, though IROM observers determined that many were accredited for MAPP or the IDULSJ.<sup>55</sup> Also, there were several incidents of voter intimidation through the recording of voters at polling stations.

Early voting was conducted on 29 September for homebound voters and those either under home custody or in prison. Early voting was observed in all 13 prisons in the country and 69 EBs.<sup>56</sup> Overall, the process was assessed as good or very good in 92 per cent of observations. However, in two prisons and five EBs the process was assessed negatively. The secrecy of the vote was not ensured in 5 observations, the ballot box was not properly sealed in 5 observations, and procedures were not followed nor understood by voters in five observations. Citizen observers were present in 45 per cent of observations.

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<sup>54</sup> In paragraph 8 of the 1990 OSCE Copenhagen Document, participating States recognized that the “presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place” and committed to invite observers “from any appropriate private institutions and organizations who may wish to do so to observe their national election proceedings”. According to Section I.3.2.a.x. of the Code of Good Practice on Referendums, “polling stations must include representatives of a number of parties, and the presence of observers appointed by the latter or by other groups that have taken a stand on the issue put to the vote...”.

<sup>55</sup> Many of them identified themselves as party observers for either SDSM or VMRO-DPMNE.

<sup>56</sup> In total there were 2,041 voters registered for homebound voting and 1,558 prisoners registered.

On referendum day, the IROM assessed the opening as good or very good in 72 of 75 observations. While most procedures were followed, in 15 cases observers noted that the ballot box was not shown to observers before being sealed and in 13 cases the opening protocol was not filled in before the polling station opened.

IROM observers were able to observe the voting process without restrictions, their assessment was positive in 98 per cent of cases. Voting procedures were well followed and the process was transparent. There were no major irregularities. Two thirds of the EBs observed were chaired by a woman. To facilitate the exercise of the voting rights of persons with impaired sight a braille tactile ballot frame was made available in 94 per cent of the polling stations observed. In 13 per cent of observations, some voters were refused the right to vote as they were not on the voter list or not in possession of a proper ID. While more than half of the observed polling stations were not independently accessible, the layout of the polling stations was generally adequate for persons with disabilities.

The IROM observed the counting procedures in 80 polling stations. While the assessment was positive, IROM observers noted that not all procedures were completed fully or in the correct order. For example, the reconciliation of signatures on the voter list against the number of unused ballots was not completed before opening the ballot box in 40 per cent of cases. Non EB members participated in the counting, mainly citizen observers, in 12 per cent of observations. In 47 polling stations, ballots were invalidated because they were marked with a mark other than a circle even though the intention of the voter was clear.<sup>57</sup>

The overall assessment of the tabulation process in all of the 68 MECs observed was positive, with procedures generally followed in a transparent manner. The EB chairperson was accompanied by an observer, who acknowledged themselves as a party representative, when transferring the election materials to the MEC in 22 cases. Corrections in the results protocol were not made in a consistent manner from one MEC to another, as some conducted recounts when others solved the discrepancy by amending the protocols without recount.

On referendum day the SEC received about 40 complaints made by citizens who could not find their names on voter lists.<sup>58</sup> The SEC rejected all complaints stating that the deadline for entries in the voter lists had passed.<sup>59</sup> In a positive step, unlike for pre-referendum day complaints, SEC decisions on referendum day complaints were uploaded in the electronic system for complaint management, contributing to the transparency of the process. However, the SEC continued to direct voters to appeal its decisions to the Supreme Court, compromising their right to legal remedy.<sup>60</sup>

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<sup>57</sup> Article 115 of the Electoral Code states that a ballot shall be considered valid if the intent of the voter can be established in a reliable and unambiguous way.

<sup>58</sup> The Ombudsman received similar complaints through a hotline for reporting irregularities.

<sup>59</sup> The law does not allow adding voters to the voter lists after the period of public scrutiny.

<sup>60</sup> Each SEC decision on complaints identified the Supreme Court as the next instance. Prior to referendum day, the Supreme Court ruled that it did not have a legal basis to adjudicate voter registration-related appeals.

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**MISSION INFORMATION & ACKNOWLEDGEMENTS**

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Skopje, 1 October 2018 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE). The assessment was made to determine whether the referendum complied with OSCE commitments, Council of Europe and other international obligations and standards, and with national legislation. Both institutions involved in this International Referendum Observation Mission (IROM) have endorsed the 2005 Declaration of Principles for International Election Observation.

Ambassador Jan Petersen is the Head of the ODIHR ROM, deployed from 26 August. Mr. Stefan Schennach headed the PACE delegation.

This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the referendum process. The final assessment of the referendum will depend, in part, on the conduct of the remaining stages of the process, including the announcement of results and the handling of possible post-referendum day complaints or appeals. ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the referendum process. The Head of the PACE delegation will present a memorandum to the Bureau of the PACE in Helsinki on 22 November 2018.

The ODIHR ROM includes 13 experts in the capital and 20 long-term observers deployed throughout the country. On referendum day, 206 observers from 35 countries were deployed, including 198 long-term and short-term observers deployed by ODIHR, as well as an 8-member delegation from the PACE. Opening was observed in 77 and voting was observed in 896 polling stations across the country. Counting was observed in 81 polling stations, and the tabulation in 73 MECs.

The IROM wishes to thank the authorities for their invitation to observe the referendum, and the State Election Commission for its assistance. The IROM also expresses its appreciation to other institutions, political parties, media and civil society organizations, and the international community representatives for their co-operation.

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