



Office for Democratic Institutions and Human Rights

## SWISS CONFEDERATION

### FEDERAL ASSEMBLY ELECTIONS

23 October 2011

OSCE/ODIHR Election Assessment Mission Report



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**SWISS CONFEDERATION  
FEDERAL ASSEMBLY ELECTIONS  
23 October 2011**

**OSCE/ODIHR Election Assessment Mission Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the Government of Switzerland to the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on 10 October 2011 the OSCE/ODIHR deployed an Election Assessment Mission (EAM) to observe the 23 October elections to the two chambers of the Swiss Federal Assembly, the National Council (*Nationalrat/Conseil National*) and the Council of States (*Ständerat/Conseil des Etats*).

The conduct of the elections demonstrated that Swiss democracy is deep-rooted, vibrant and pluralistic. Election stakeholders have an extremely high level of trust and confidence in the electoral system and its administration.

Switzerland is a confederation in which the 26 cantons retain substantial authority over the conduct of elections. Relations between the federal government and the cantons operate under the principle of subsidiarity, with federal legislation setting out minimal conditions while detailed procedures and their implementation are left to the cantons. In many cantons, the individual communes set the basic election procedures. The result is a highly decentralized system characterized by a broad range of cantonal variations. This is especially true for the Council of States elections, which are regarded as cantonal elections by the Swiss authorities, although the Council is a part of the Federal Assembly.

While federal election legislation provides a general framework for elections in line with OSCE commitments and other international standards, it does not touch on key aspects, such as the election administration, the election campaign, party and campaign financing, the role of the media, or election observers. Some of these issues are regulated by the cantons, reinforcing cantonal variation. Moreover, federal legislation applies only to the National Council elections. Cantonal laws governing the Council of States elections result in variations in electoral rights and opportunities for Swiss citizens living in different cantons.

Although election administration bodies are structured in very different ways across the cantons, election officials throughout the country appeared to be knowledgeable, efficient and professional, and to enjoy the full confidence of political parties, candidates, voters, and other stakeholders. As with other electoral issues, Switzerland's decentralized system results in substantial cantonal variations in almost all aspects of election administration. Perhaps as a consequence of the high level of trust, strict controls are not always in place to safeguard the secrecy and integrity of the voting and counting processes. Taken as a whole, the cantons have developed a wide range of good electoral practices but these have not been harmonized across the country, leaving each cantonal system with its own strengths and weaknesses.

The system of voter registration, based on population registers, appeared to be highly effective, accurate, and inclusive. Candidate registration was also inclusive and open; no individual wanting to become a candidate was denied registration. Because of differences in cantonal rules, candidates

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<sup>1</sup> The English version of this report is the only official document. Unofficial translations are also available in French and German.

were registered according to different schedules, giving candidates in some cantons more time to campaign than those in others, and giving voters in those cantons more time to consider their choices.

Candidates and parties campaigned freely and actively, with their political rights fully respected. The election campaign touched on a variety of economic, social and international issues.

There are no federal regulations governing campaign financing, including no disclosure requirements for income or expenditure. Reportedly, there are wide disparities in the amounts of funding available to different parties, but no official information is published on this issue. Before and during the campaign, there was an active public debate on the merits of developing campaign finance regulations.

The EAM did not undertake comprehensive monitoring of the media, but did look generally into the media environment. Taken as a whole, the media appeared to provide broad and varied coverage, with equitable access for candidates and parties.

Some 85 per cent of voters cast their votes by postal ballot. While postal voting has the advantage of convenience and is widely preferred by most citizens, certain questions can arise regarding the adequacy of provisions to ensure the integrity of postal votes. The ballots and voting system are complex, giving voters not only a wide choice of candidates and parties, but also the ability to change the names on candidate lists or to compile their own lists consisting of candidates from several parties.

Two pilot systems for internet voting were available for Swiss out-of-country voters from four cantons, the first time that such systems have been used in federal elections. The pilot systems performed reliably and enjoyed widespread trust. Nonetheless, there appeared to be some weaknesses in the systems, including both legal and technical issues. The systems would benefit from improvements in certification, security, transparency, and oversight.

## II. INTRODUCTION AND ACKNOWLEDGEMENTS

In response to an invitation from the Government of Switzerland to observe the 23 October 2011 elections, and based on the recommendation of the OSCE/ODIHR Needs Assessment Mission conducted from 5 to 8 July, the OSCE/ODIHR deployed an EAM from 10 to 28 October.<sup>2</sup>

The OSCE/ODIHR EAM was led by Peter Eicher and included eight experts from seven participating States, based in Bern, Geneva and Aargau. Members of the OSCE/ODIHR EAM were able to visit and hold meetings in 15 of Switzerland's 26 cantons. In line with the OSCE/ODIHR's methodology, the EAM did not undertake systematic or comprehensive observation of election day procedures, although EAM members did visit a limited number of polling stations and counting centres.

The OSCE/ODIHR wishes to express its appreciation to the Federal Chancellery, the Federal Department of Foreign Affairs, the cantonal chancelleries, other federal and cantonal authorities, political parties, and civil society for their co-operation and assistance during the mission.

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<sup>2</sup> All OSCE/ODIHR reports on elections in Switzerland are available at:  
[www.osce.org/odihr/elections/switzerland](http://www.osce.org/odihr/elections/switzerland).

### III. BACKGROUND

Switzerland has a unique political system characterized by strong decentralization and active citizen participation. Members of the bicameral Federal Assembly – consisting of the National Council and the Council of States – are citizen-politicians who serve only part-time as elected representatives. Swiss federalism is based on the principle of subsidiarity, with the powers of the federal government strictly limited. Decisions on most political issues are taken in the 26 cantons, which have their own parliaments and constitutions, or in the 2,516 communes. Citizens have the opportunity for regular participation at all three levels of government through regular referendums and popular initiatives.

Executive power at the federal level is vested in a seven-member Federal Council elected by the Federal Assembly. The Federal Council makes consensus-oriented decisions and represents Switzerland as a collective head of state, with its largely ceremonial presidency rotating annually among members. Traditionally, seats on the Federal Council have been distributed among the major political parties based on their strength in the Federal Assembly, although in recent years this approach has faced increasing challenges.

Switzerland has a lively multiparty system with 12 parties represented in the Federal Assembly at the time of the election. Parties having members in the Federal Council included the Conservative Democratic Party (BDP),<sup>3</sup> the Christian Democratic People's Party (CVP), the Radical Free Democratic Party (FDP), the Social Democratic Party (SP) and the Swiss People's Party (SVP). The SVP has been under-represented on the Federal Council since its gains in the 2007 elections due to reluctance by other parties to elect its candidates to the Council.<sup>4</sup> Over the past several years, the Swiss party system has undergone significant changes, with several traditional parties stagnating or declining in cantonal elections, and new parties such as the Swiss Green Party (GPS), BDP, and the Green Liberal Party (GLP) emerging.

Previously, OSCE/ODIHR deployed an EAM for the 2007 federal elections. The mission concluded in its final report that the elections reflected Switzerland's "long-standing democratic tradition" and were "conducted with a high degree of public confidence," as well as offering recommendations for improvement to the electoral process. Although the Federal Chancellery took measures to address some of the OSCE/ODIHR recommendations,<sup>5</sup> a number of issues remain and no legal changes were adopted with regard to OSCE/ODIHR recommendations.

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<sup>3</sup> BDP Federal Councilor Eveline Widmer-Schlumpf was a member of the SVP when she was elected to the Federal Council in 2007, but was expelled from that party for accepting election without being a SVP candidate for the post. She and her supporters formed the BDP in 2008.

<sup>4</sup> In particular, in 2007 the Federal Assembly did not re-elect Christoph Blocher, the SVP's vice-president and chief strategist.

<sup>5</sup> Federal Chancellery, July 2011, "Implementation of Recommendations of the OSCE/ODIHR 2007 Election Assessment Mission." See:  
[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2Fwww.bk.admin.ch%2Fthemen%2Fpore%2Fnrw%2Findex.html%3Flang%3Dde%26download%3DM3wBPgDB\\_8ull6Du36WenojQ1NTTjaXZnqWfVpzLhmfhnppmmc7Zi6rZnqCkkIZ6gXp\\_bKbXrZ6lhuDZz8mMps2gpKfo&ei=UG0dT-bmFcu7hAfOmKXKCg&usq=AFQjCNGmq6gYEOXyzHy0SsDqVve2wtz2Ag](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2Fwww.bk.admin.ch%2Fthemen%2Fpore%2Fnrw%2Findex.html%3Flang%3Dde%26download%3DM3wBPgDB_8ull6Du36WenojQ1NTTjaXZnqWfVpzLhmfhnppmmc7Zi6rZnqCkkIZ6gXp_bKbXrZ6lhuDZz8mMps2gpKfo&ei=UG0dT-bmFcu7hAfOmKXKCg&usq=AFQjCNGmq6gYEOXyzHy0SsDqVve2wtz2Ag).

## IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

### A. Legal Framework

The legal framework governing the federal elections consists primarily of the Federal Constitution, the 1976 Federal Act on Political Rights (as amended), and the 1978 Federal Decree on Political Rights (as amended), as well as cantonal constitutions, election laws and decrees, and numerous other federal and cantonal laws.<sup>6</sup>

The Federal Constitution includes basic principles for elections on “federal matters”, including political and voting rights. It explicitly states that “the confederation shall regulate the exercise of political rights in federal matters, and the cantons shall regulate the exercise of these rights in cantonal and communal matters”, adding that “the cantons shall determine the rules for the election of their representatives to the Council of States.”<sup>7</sup> In case of any conflicting provisions with cantonal law, federal law should take precedence. Elections for the National Council are considered federal elections, whereas elections to the Council of States are considered by Swiss authorities as cantonal elections, even though the Council of States is a chamber of the Federal Assembly.

Federal legislation sets only the general parameters and principles for the National Council elections, leaving organizational matters and implementation to the cantons. As a consequence, there is little uniformity of procedures for the conduct of National Council elections.

All aspects of the Council of States elections, including political rights, are under the exclusive jurisdiction of the cantons, resulting in further diverse rules and practices, including variations among communes within the same canton. The cantonal laws do not appear to be overly prescriptive. They provide for efficient elections which enjoy broad public confidence.<sup>8</sup>

### B. Voting and Candidate Rights

#### *The Right to Vote*

With regard to National Council elections, the Federal Constitution stipulates that all Swiss citizens over the age of 18 have political rights in federal matters, unless they have been deprived of legal capacity by a court order.

For elections to the Council of States, voting rights are set out in cantonal laws, leading to significant variations. For example, the cantonal Constitution of Glarus sets the voting age at 16 for Council of States elections. In the canton of Schaffhausen, the cantonal election law makes voting compulsory for all elections, including federal and a fine is imposed for non-compliance.<sup>9</sup>

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<sup>6</sup> Other relevant legislation includes the 2002 Federal Decree on the Registration of Political Parties, the 2006 Federal Act on Radio and Television, the 2005 Federal Act on the Supreme Court, the 1975 Federal Act on Political Rights of the Swiss Abroad (as amended), the 2003 Rules of Procedure of the National Council, Articles 52-79 of the 1907 Swiss Civil Code (as amended) on associations, and Article 279 of the 1937 Swiss Criminal Code (as amended) on election-related criminal offenses.

<sup>7</sup> Articles 39 and 150(3), respectively, of the Federal Constitution.

<sup>8</sup> The OSCE/ODIHR EAM was in a position to review only partially some cantonal laws including those of Bern, Geneva, Glarus, Neuchâtel, Nidwalden, Obwalden, Schaffhausen, and Zurich.

<sup>9</sup> Article 9 of the Schaffhausen Law on Peoples’ Initiatives, Referendums and Elections, and Exercise of Political Rights. The fine of CHF 3 (EUR 2.4) is largely symbolic.

Swiss citizens residing abroad have the right to vote for the National Council in all 26 cantons. However, only 11 cantons provide the right for their citizens abroad to vote for the Council of States.<sup>10</sup> There are an estimated 695,000 Swiss citizens living abroad, amounting to almost ten per cent of the electorate. Of these, 125,567 (18.1 per cent) were registered to vote.

### *The Right to Stand for Elections*

The Federal Constitution sets the parameters for elections to the National Council. For the Council of States, however, different criteria apply in different cantons. For example, the Constitution of Geneva limits the right to stand for elections to “lay persons” who have reached the age of 27.<sup>11</sup> Citizens abroad are entitled to stand for election in some cantons, but not in others.<sup>12</sup> Cantonal officials in some cantons are required to resign if elected to a federal office, while in others they may hold as many as three offices at the same time.<sup>13</sup> In several cantons, there are no formal candidate lists and all ballots are write-in.<sup>14</sup> In principle, therefore, every citizen in the canton who is eligible to vote can be considered a candidate, although in practice, there are usually some “known” candidates who campaign actively. In other cantons, candidates can only stand if they are part of a formal list of candidates.<sup>15</sup>

*While the Swiss political system is based upon the principles of federalism and subsidiarity, it is unusual for a country to have different eligibility requirements and conditions for citizens to be elected to the same body of the national parliament (Council of States). The federal and cantonal authorities could reflect on the extent to which these differences may affect the principle of equality of political rights of all citizens and the extent to which they comply with international standards.*<sup>16</sup>

### *Non-citizens*

It is estimated that there are 1.7 million non-citizens who are long-term residents of Switzerland (21.7 per cent of the population). Non-citizens do not have voting rights in National Council elections. However, the cantons of Neuchâtel and Jura allow non-citizens to vote in Council of States elections.<sup>17</sup> In addition, eight cantons grant voting rights to non-citizens in some commune or canton elections after they meet certain residency requirements,<sup>18</sup> which also vary among

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<sup>10</sup> The cantons of Basel-Landschaft, Bern, Fribourg, Geneva, Graubünden, Jura, Neuchâtel, Schwyz, Solothurn, Ticino, and Zurich.

<sup>11</sup> Article 72 of the Constitution of Geneva: “Sont éligibles tous les citoyens laïques...”

<sup>12</sup> Eleven cantons provide the right for their citizens abroad to vote and to be elected to the Council of States. Basel-Landschaft, Bern, Fribourg, Geneva, Graubünden, Jura, Neuchâtel, Schwyz, Solothurn, Ticino, and Zurich grant voting right to the Swiss abroad for the National Council and the Council of States elections.

<sup>13</sup> Only the canton of Ticino explicitly prohibits holding more than one office at a time.

<sup>14</sup> For example, the cantons of Appenzell Inner Rhodes and Zurich.

<sup>15</sup> For example, the cantons of Bern, Basel-Stadt, Geneva, Nidwalden, Obwalden and Vaud.

<sup>16</sup> See, for example: Paragraph 7.5 of the 1990 OSCE Copenhagen Document, which provides that participating States will “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”. Paragraph 4 of the 1996 UN Human Rights Committee General Comment 25 stipulates that any restrictions on the right to stand for office should be “based on objective and reasonable criteria.” The 2002 Code of Good Practice in Electoral Matters of the Venice Commission of the Council of Europe, Principle 1.1.1, stipulates the right of “all” citizens to stand for election and that where age limits apply to candidacies, they should not exceed 25, except where there are qualifying ages for specific offices.

<sup>17</sup> Approximately 22,000 non-citizens are registered voters in Neuchâtel and 3,180 in Jura.

<sup>18</sup> The cantons of Appenzell Outer Rhodes, Basel-Stadt, Fribourg, Geneva, Graubünden, Jura, Neuchâtel, and Vaud.

cantons. A recent report of the Swiss Federal Commission for Immigration encouraged cantons to introduce local voting rights for non-citizens.<sup>19</sup> However, a series of recent cantonal initiatives and referendums on extending voting rights to non-citizens have failed.<sup>20</sup>

## C. The Election System

### *National Council*

Most of the 200 members of the National Council are elected through a proportional system with the cantons functioning as constituencies. Seats are allocated to cantons according to their population, with a minimum of one seat per canton. The largest canton, Zurich, has 34 seats, while the six smallest cantons have 1 seat each. In the single-seat cantons, elections are held under a majoritarian system.

Ballots are delivered by the cantons or communes. In the multi-seat cantons, eligible voters receive a packet containing a separate ballot for each candidate list indicating the list name, the list number, any list combination, and the names of the candidates. In addition, the packet includes a blank ballot with no list or candidate information. Voters are entitled to a number of votes equal to the number of seats the canton has in the National Council. The voting system is complex, giving voters several options:

- Vote for a candidate list in its entirety by placing the list, unmarked, into the envelope – if provided – or directly into the ballot box;
- Vote for a candidate list, but delete names and add names from other lists (*panachage* or *panachieren*), up to the number of seats available;
- Vote using the blank ballot by writing in any combination of candidate names from any list, up to the number of seats available;
- Vote by placing a list name at the top of the blank ballot and entering candidate names from any list; any blank spaces are allocated to the list named at the top.

Candidate lists may include the name of the same candidate up to two times, or voters may write in the name of a candidate or candidates so that they appear on the ballot twice (*cumul* or *kumulieren*), provided that the total number of entries on the ballot does not exceed the number of seats available.

Seats are first allocated proportionally to the successful parties, based on the total number of votes received by all their candidates,<sup>21</sup> using the *Hagenbach-Bischoff* formula for seat allocation.<sup>22</sup> Then, the seats won by each party are allocated to the candidates on the party's list who received the highest number of votes.

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<sup>19</sup> Federal Commission for Immigration Issues, 2010, "Citizenship – Redefine Participation": [http://eudocitizenship.eu/docs/Swiss\\_recom.pdf](http://eudocitizenship.eu/docs/Swiss_recom.pdf).

<sup>20</sup> In the most recent example, on 4 September 2011, a referendum in the canton of Vaud rejected a proposal on extending voting and candidacy rights to non-citizens for Council of States elections.

<sup>21</sup> For example, if a voter in Zurich casts a ballot that is an unchanged candidate list with 34 names on it, that party receives 34 votes. However, if the voter casts a candidate list ballot but deleted 4 names and added 4 names of candidates from other parties, then just 30 votes would go to the list that was cast, with the remaining 4 votes distributed among the lists of the write-in candidates.

<sup>22</sup> This formula uses a quota system (the "droop quota") to make the initial allocation of seats to candidate lists, and then uses the more familiar *d'Hondt* system to allocate any remaining seats.



Swiss parties frequently use “combined lists” as a strategy to increase the number of seats they are allocated.<sup>23</sup> Party list combinations can be different in different cantons and do not necessarily mean that parties will campaign together. Parties may also have sub-lists, for example a women’s list or a youth list, but no candidate may be on more than one list.

While the voting system is unusually complex, it has the positive effect of enhancing voters’ choice. Some OSCE/ODIHR EAM interlocutors advocated more targeted voter education for first-time voters but, overall, the understanding of the system appeared high.

### *Council of States*

The systems for electing the 46 members of the Council of States are determined by each canton, with the result that systems vary considerably. In 20 cantons, 2 representatives are elected, while 6 cantons elect just 1 representative.<sup>24</sup> With the exception of Jura and Neuchâtel, all cantons use electoral systems that are essentially majoritarian, although cantons with two representatives use different formulas for allocating seats. Cantonal legislation often provides for two rounds of voting if no candidate was named on 50 per cent of valid ballots in the first round. Each canton decides the timing of its elections for the Council of States. In 2011, the Council of States elections took place at the same time as the National Council elections in all cantons except Appenzell Inner Rhodes, where the canton’s single member of the Council of States was elected by a citizens’ assembly (*Landsgemeinde*)<sup>25</sup> held in May 2011.

## **V. ELECTION ADMINISTRATION**

The organization and administration of federal elections in Switzerland varies substantially among cantons and communes. Because there are so many variations, this report can provide only a general overview.

The Federal Chancellery assumes a co-ordination role for federal elections and is responsible for ensuring federal standards are respected. It provides information on candidate registration to parties and checks candidate eligibility. It oversees the use of internet voting. It is also mandated to provide voter information and, for these elections, produced a leaflet that was distributed to all voters, describing the political parties. In addition, the Federal Chancellery publishes the final nationwide results.

At the cantonal level, electoral administration tasks are generally undertaken by cantonal civil servants. Under federal law, the cantons are responsible for preparing the ballot papers. Many other key responsibilities are generally delegated to the communes, including the dispatch and return of the ballot packets to voters, the administration of early voting, the operation of polling stations, and the count.

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<sup>23</sup> When using combined lists, each list retains its own ballot, but the linkages with other lists must be indicated on the ballot. During counting, the votes in favour of the candidates of all lists in the combination are counted together to determine how many seats will be allocated to the list combination. Then, the *Hagenbach-Bischoff* system is used to allocate the seats among the parties on the combined list.

<sup>24</sup> The cantons of Appenzell Outer Rhodes, Appenzell Inner Rhodes, Basel-Landschaft, Basel-Stadt, Nidwalden, and Obwalden. These single-seat cantons resulted when previous cantons decided to split into two parts, leaving each with one seat in the National Council.

<sup>25</sup> A *Landsgemeinde* is a traditional public assembly open to all citizens of a canton or commune, at which issues are debated and decided by consensus or open vote. Only Appenzell Inner Rhodes and Glarus still use *Landsgemeinde* at a cantonal level.

The composition of election administration bodies varies considerably across cantons and communes. In some, political party representatives take part in the electoral administration, while in others voters are chosen at random to participate in polling and counting processes, or they may volunteer or be directly employed. The Federal Decree on Political Rights mandates that cantons designate a dedicated body to handle electoral matters. In at least two cantons, Central Election Commissions (CECs) have been established. In Geneva, the CEC's role is to monitor electoral operations, while in Zurich the cantonal statistics office is designated as a CEC and assumes responsibility for the organization of the elections. Overall, election administrators met by the OSCE/ODIHR EAM throughout the country were knowledgeable and performed efficiently and professionally.

## **VI. VOTER REGISTRATION**

Switzerland uses a passive system of voter registration. Each commune maintains a regularly updated population register from which the voter register is extracted. An efficient system ensures that people moving between communes or cantons are automatically transferred to the corresponding voter register and removed from the previous one. Amendments to the voter register may be made up to five days prior to the election. The register is available for inspection by those who are eligible to vote at the civil registry office at the commune level, although in practice few people check the voter register. OSCE/ODIHR EAM interlocutors expressed full confidence in the accuracy of the register and the professional way in which it is produced.

Swiss citizens abroad can register to vote at their nearest diplomatic or consular mission, which forwards the registration details to the relevant commune. The OSCE/ODIHR EAM received no adverse comments about the registration process for Swiss citizens abroad.

## **VII. CANDIDATE REGISTRATION**

Federal elections can be contested by candidates nominated by political parties, by coalitions of political parties, or by independent candidates. The Federal Chancellery assumes a co-ordination role for candidate registration for National Council elections. It provides information on candidate registration to parties, checks candidate eligibility, and ensures that no candidate is registered in more than one canton.

Cantonal chancelleries are responsible for registering candidate lists in the cantons that use proportional representation. In general, political parties submit lists accompanied by a required number of supporting signatures of eligible voters from the canton for which the candidates are standing (this ranges from 100 to 400 for the National Council, depending on the number of seats allocated to the canton). In Neuchâtel, for example, just 3 signatures are required for the Council of States, while 100 are required for the National Council elections. Signatures in support of candidate lists are not required if the political party is registered with the Federal Chancellery, is represented in the National Council, and submits only one candidate list in the canton or gained at least three per cent of the vote in the same canton at the previous election. The Federal Act provides that a voter may not sign more than one candidate list.

Federal law provides that cantons must set a deadline between 1 August and 30 September for submission of candidate lists. As a consequence, in some cantons (for example, Bern) the deadline

is as early as the first week of August, whereas in other cantons (for example, Nidwalden) it is as late as 5 September. The different timeframes do not provide candidates across the country with equal opportunities to convey their messages to the electorate, nor do they provide voters with equal opportunities to consider their voting options and to make an informed choice. Since candidates compete against each other in the same canton, however, each candidate has the same conditions as his or her competitors.

## VIII. PARTY AND CAMPAIGN FINANCING

Federal legislation does not contain any provisions regulating party or campaign financing. There are no limits on campaign expenditures and no disclosure requirements. Parties can receive unlimited funds from any source, including foreign donors, corporations, and government contractors. Political parties informed the OSCE/ODIHR EAM that they received their income primarily through individual and company donations, membership fees, and mandatory contributions from elected party representatives. Some parties have introduced internal rules placing limits on donations. A few have voluntarily released financial information. Some candidates fund their own campaigns or are funded by citizen or lobbying groups.

Political parties do not receive direct funding from the federal government, although parliamentary groups receive some public funding.<sup>26</sup> In addition, some cantons, such as Geneva, Fribourg, and Valais, provide limited public subsidies to parties. Two cantons have adopted legislation on campaign or political party financing. In 1998, Ticino adopted legislation stipulating a maximum total amount of donations to a candidate. In 1999, Geneva adopted legislation (as amended) requiring that parties disclose the sources and the total amount of private donations, as well as prohibiting anonymous donations.

Although there is no official data, campaign expenditures are widely believed to have increased substantially in recent years and particularly in the 2011 elections. Many interlocutors indicated to the OSCE/ODIHR EAM that undisclosed funding may allow powerful interest groups and individuals to influence elections and, in particular, referendums on questions that concern them. Party income and expenditures vary widely and there was extensive speculation in the media and among OSCE/ODIHR EAM interlocutors that the expenditures of the SVP in 2011 matched or exceeded those of all other parties combined.

Most parties have expressed their reservations about publishing the names of their donors. They assert that privacy is a central value in Swiss society and have concerns that publishing donors' names would discourage contributors. Nevertheless, before and during the 2011 election campaign, there was an active public debate on the merits of regulating campaign finance disclosure, income, and expenditure. In 2011, the Council of Europe's Group of States against Corruption (GRECO) recommended that Switzerland introduce legal requirements for transparency of party and campaign financing.<sup>27</sup> Several initiatives to introduce regulation of party

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<sup>26</sup> A parliamentary group comprises members of the same party or parties which share similar political views. At least five members from the same parliamentary chamber are required to establish a parliamentary group. Parliamentary groups are paid a fixed allowance of CHF 144,500 per year (approx. EUR 120,000) and each of their members receives an additional CHF 26,800. At the date of publication of this report, the exchange rate was 1 EUR:1.2 CHF.

<sup>27</sup> GRECO Evaluation Report on Switzerland – Transparency of Party Funding, 27 October 2011: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)4\\_Switzerland\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)4_Switzerland_Two_EN.pdf).

and campaign financing at the federal level have recently been undertaken, but none has been successful. Efforts to regulate disclosure are complicated by the question of whether regulations should also extend to referenda and popular initiatives.

*In order to comply with international good practice,<sup>28</sup> to increase electoral transparency and to better inform voters, the authorities should consider introducing an obligation for public disclosure of candidate and party campaign receipts, sources, and expenditures. Authorities should also consider whether such requirements should extend to interest groups making political donations or expenditures, and to referenda and popular initiatives as well as elections.*

## **IX. ELECTION CAMPAIGN**

The variations in cantonal electoral systems and political environments force political parties to adopt different electoral tactics and political alliances from canton to canton. Parties may run together in a pre-election coalition against the dominant party in a single-mandate canton, form list combinations in one of the bigger cantons, or compete actively with each other in another canton. In 2011, list combinations were widespread in the larger cantons. Another tactic used by parties in an election year is to launch a public initiative so as to collect signatures on a popular issue and motivate supporters.<sup>29</sup>

Because most Swiss vote by post, the political campaign began early and reached its peak weeks before election day. Overall, the parties organized a modest level of campaign activity. Contestants generally used traditional methods such as posters, billboards, newspaper advertisements, and the distribution of leaflets. Party and candidate billboards were often concentrated at railway, bus, and tram stations. Social media such as Facebook, Twitter and YouTube were used individually by some, mainly young, candidates, but were not used by parties in an organized manner. National parties, which have traditionally been decentralized, relied heavily on the work of their cantonal branches and candidates. At the same time, however, parties are increasingly developing national corporate identities and campaigning on a more unified national basis. Candidate personalities remained an important factor in the campaign.

No single issue dominated the campaign. In several instances, events outside of Switzerland spilled over into the domestic campaign. For example, the Fukushima atomic disaster in Japan sparked an internal debate over nuclear energy, while the European financial crisis raised concerns for the domestic economy, employment and relations with the European Union (EU). The SVP campaign focused on issues related to mass immigration and expressed reservations about closer ties with the EU. The SP put social issues and health care at the centre of its campaign. The CVP focused on family policy. The FDP campaigned to maintain the successful Swiss economic model and against government bureaucracy.

Interest groups were active in providing financial support or endorsements to candidates. Business organizations, trade unions, and the Swiss Farmers Association supported specific candidates.

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<sup>28</sup> For example, the Venice Commission, Code of Good Practice in Electoral Matters, section 3.5, which states that electoral campaign “funding must be transparent”; and the UN Convention against Corruption, Article 7.3, which requires each state party to “consider taking appropriate legislative and administrative measures to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”

<sup>29</sup> For example, SVP, SP, FDP and CVP organized initiatives on their main campaign topics in the course of 2011.

Small and medium-sized entrepreneurs within the Swiss Trade and Crafts Association used a “quality seal” to endorse enterprise-friendly candidates and paid for newspaper advertisements on their behalf. Trade unions made modest financial donations to their preferred parties or candidates. Some groups of voters also came together to support specific candidates.

An increased number of voters – ten per cent, according to some OSCE/ODIHR EAM interlocutors – used internet platforms such as “Smart Vote” and “Vimentis” to identify candidates and parties who share their political opinions, based on user responses to a questionnaire. Since the results often suggest that users split their vote among candidates of different parties, larger parties were reserved about the platforms, while smaller parties tended to be more supportive. Some academics met by the OSCE/ODIHR EAM criticized the methodology as potentially producing misleading results.

## **X. MEDIA**

Switzerland’s media landscape follows the multilingual and federal character of the country. Separate television, radio and newspaper outlets report in German, French, Italian, and Romansh. The OSCE/ODIHR EAM did not carry out systematic media monitoring, but did meet with media representatives and discussed media issues with political parties and other electoral stakeholders.

The print media includes several high profile daily newspapers and weekly magazines, as well as a large number of local newspapers in the three main languages. As in many countries, the print media in Switzerland suffers from a shrinking circulation due to competition with online news sources and free-of-charge newspapers. The result has been consolidation of ownership, merging of editorial teams, and reduction of staff, which, according to some OSCE/ODIHR EAM interlocutors, has led to more uniform political information and editorial opinions across the country. Nonetheless, the print media actively covered the political campaign and parties in its regular reporting, as well as in feature articles, surveys, and investigative reports.

Political advertising on television and radio is not permitted in Switzerland. This ban includes advertising in support of parties, candidates, office-holders, and issues which are the subject of popular vote.

The dominant source of political information remains the public radio and television SRG-SSR, which is the only national broadcaster. SRG-SSR is obliged to be objective and to present diverse facts and opinions. SRG-SSR developed detailed internal policies on electoral coverage. It devoted coverage to political parties and candidate lists based on their strength at the federal and cantonal levels. Programmes were regionally tailored according to different languages. SRG-SSR radio and television produced special information programmes on the elections, including debates featuring party leaders and candidates, as well as various roundtables on political issues.

The media operated freely and it appeared to provide sufficient, varied information to enable voters to make an informed choice.

## **XI. PARTICIPATION OF WOMEN**

Although no official statistics are available, some academic studies and polling surveys indicate that Swiss women vote in lower numbers than men. Some analysts attribute this to the late

introduction of voting rights for women (only 40 years ago at the federal level) and believe that the difference is due to older women voting less frequently. Others assert that Swiss women of all ages vote less frequently than men. Youth organizations have suggested that both young women and young men have a decreasing interest in politics.

*Compiling gender disaggregated statistics on voting patterns would clarify the extent of women's participation and help to assess whether any steps are needed to increase it.*

Compared to 2007, when 35.2 per cent of candidates were women, the number decreased slightly in 2011 to 32.7 per cent. Reversing a trend from previous elections, most parties did not present separate lists of women candidates since this had not led to the election of more women. The GPS presented "zippered lists" (alternating men and women candidates). Considerable media attention was devoted to prominent women candidates, as well as to women challenging high-profile or long term incumbents.

While women remain a minority in the legislature, they became a majority of the seven-member Federal Council in 2010. The Federal Chancellor (the country's top civil servant) is also a woman, as are several cantonal chancellors.<sup>30</sup>

In response to the 2007 OSCE/ODIHR EAM final report, the Federal Chancellery took several notable initiatives to increase the participation of women in the elections,<sup>31</sup> including supporting the creation of an advocacy platform for women in politics. *Frauen bauen Zukunft* is an initiative under which the Federal Commission for Women's Issues (EKF), in co-operation with six national umbrella organizations for women, is attempting to increase the number of women elected and raise political awareness among women. The EKF sees this as a starting point for a long-term campaign on increasing women's participation in politics. The campaign will depend on the support of the cantonal offices for gender equality, some of which are more active and have more resources than others.

## **XII. INTERNATIONAL AND DOMESTIC ELECTION OBSERVERS**

Federal legislation does not contain explicit provisions for international or domestic non-partisan observers. According to federal authorities, however, there is no prohibition on observers.<sup>32</sup> Despite the lack of legal provisions, the OSCE/ODIHR EAM was accredited by the Federal Council and all levels of the election administration were co-operative and provided information that was requested. In addition, the OSCE/ODIHR EAM was granted access to all procedural steps and documentation related to internet voting.

Some cantonal laws foresee the presence of political party representatives or observation by voters during voting and counting. Cantonal legislation in Basel-Stadt states that the executive chooses

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<sup>30</sup> Among the female chancellors are those of the cantons Basel-Stadt, Fribourg, Geneva and Neuchâtel, as well as the vice-chancellors in Bern, Lucerne, Solothurn and Vaud.

<sup>31</sup> Federal Chancellery, July 2011, "Implementation of Recommendations of the OSCE/ODIHR 2007 Election Assessment Mission", p.4.

<sup>32</sup> Federal Chancellery, July 2011, "Implementation of Recommendations of the OSCE/ODIHR 2007 Election Assessment Mission", p. 3: "...the overall situation of international and domestic non-partisan observers is satisfactory and it is considered to be no need for further legislation. ...As for international observers, instruments such as the 1990 Copenhagen Document are directly applicable and binding for Swiss authorities."

voters who are to observe these processes.<sup>33</sup> In practice, however, there are no domestic observer groups.

*In order to comply fully with paragraph 8 of the 1990 Copenhagen Document, the OSCE/ODIHR reiterates its recommendation that the electoral legislation should be amended to allow explicitly for international and domestic non-partisan observers. This should include specific provisions to ensure effective observation of internet voting.<sup>34</sup>*

### **XIII. VOTING METHODS**

#### **A. Postal Voting**

About 85 per cent of Swiss vote by postal ballot, which has increased in popularity since its introduction for unrestricted use in federal elections in 1994. Cantonal authorities prepare the voting materials. They must ensure the ballot papers are delivered to voters at least ten days before election day and to out-of-country voters at least one week before the general mailing of ballots. In practice, the materials are generally sent out sooner, although the timing differs among cantons. The ballot packs are issued in the languages of the canton and include the polling card, ballot papers, envelope(s) for each ballot, and information on the political parties contesting the election. In some cantons, political party campaign materials are included in the ballot pack.

Federal Chancellery staff advised the OSCE/ODIHR EAM that due to issues identified in 2007, they have worked closely with the federal postal service to improve the delivery and return of postal votes to ensure that voters can be confident that their packs are received in time to be counted. No concerns were reported to the OSCE/ODIHR EAM during this election with regard to in-country voters. However, the Council of the Swiss Abroad informed the OSCE/ODIHR EAM that it had received some complaints from Swiss voters abroad who received their ballots late.

*Consideration should be given to introducing a longer lead time for the delivery of ballot packs for Swiss citizens living abroad. This should, however, be considered in conjunction with other election deadlines, including those for candidate registration.*

Upon receipt, the polling staff of the commune checks the envelope for invalidity; that is, for lack of polling card, lack of voter's signature, or in some cantons, failure to enter a birth date. The signature is not compared to an existing control signature, nor is the electoral register marked to show from whom a ballot has been received. Officials in some cantons or communes make extraordinary efforts to help avoid invalid ballots; in Lucerne, for example, if the polling card is not signed, officials return the pack to the voter for correction or even phones to ask her/him to come in and sign.

Any postal voting system can be open to manipulation. Secrecy can be compromised, family voting can occur, voters can be intimidated, vote buying can be facilitated, or voting packs can be used by unauthorized individuals. Nevertheless, postal voting enjoys considerable trust in Switzerland, with no complaints reported to the OSCE/ODIHR EAM.

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<sup>33</sup> Article 13 of the Basel-Stadt Law on Elections and Voting.

<sup>34</sup> See guideline five of the Council of Europe's "Guidelines on Transparency of E-enabled Elections": [http://www.coe.int/t/dgap/democracy/Activities/GGIS/E-voting/E-voting%202010/Biennial\\_Nov\\_meeting/Guidelines\\_transparency\\_EN.pdf](http://www.coe.int/t/dgap/democracy/Activities/GGIS/E-voting/E-voting%202010/Biennial_Nov_meeting/Guidelines_transparency_EN.pdf).

*Consideration should be given to reviewing the adequacy of existing safeguards against potential abuse of postal voting. A variety of means could be considered for this, for example, checking signatures on envelopes against control signatures; undertaking a random check with voters that they received their ballots and voted themselves; or requiring use of registered post with an identification check. Another measure could be to include on postal ballots warnings similar to those included for internet voting, reminding voters of legal penalties for impersonation or other violations.*

## **B. Polling Station Voting**

Although the OSCE/ODIHR EAM did not undertake a systematic observation of polling and counting, members of the EAM did visit polling stations in a dozen cantons. Because of the prevalence of postal voting, the number of polling stations and the length of polling hours have been greatly reduced. The hours of polling on election day vary by commune from as little as half an hour to two-and-a-half hours; it appeared common for opening hours on election day to be from 10:00 to 12:00. In addition, federal law requires polling stations to be open for an unspecified length of time during a minimum of two of the four days prior to the election day for advance voting. Information on polling station locations and opening periods are contained on the polling card sent to each voter.

Since communes are responsible for setting up and administering polling stations, the voting process is handled in many different ways. During in-person voting at the polling station, one member of the polling station staff is generally responsible for receiving the polling card, which in some cantons must be signed. In most cantons, there is no checking of voter identification. Polling station staff retains the polling card and this is often placed in a sealed box. Once the voter has marked their ballot papers, they are usually presented to a polling staff member for stamping on the reverse. The OSCE/ODIHR EAM observed that some voters placed their papers for stamping face up, making it possible to see their voting preferences. Following the stamping, the voter places the ballots into the ballot box. Most voters appeared familiar and comfortable with the voting process and seemed confident in the integrity of polling officials.

In the limited number of polling stations visited by the OSCE/ODIHR EAM, the process appeared to be conducted in an effective and professional manner and in a calm atmosphere. Among the many cantonal and communal variations in procedures, the EAM noted a number of good practices that could be recommended to other cantons. Examples include:

- In Fribourg, each ballot is placed inside a separate envelope before being handed to the polling station official to be stamped, increasing the secrecy of the vote;
- In some polling stations in Schaffhausen and elsewhere, a voter register was in the polling station to allow polling staff to check voters' identities;
- In Bern city and some other locations, the ballot boxes were secured with numbered seals;
- In Vaud, cantonal law allows voters to observe the elections;
- In some cantons, gender-disaggregated data on voters is collected.

At the same time, perhaps because of the high level of confidence that citizens have in the integrity of their elections, lax practices have developed in some cantons or communes. These could potentially allow irregularities although there were no suggestions any actually occurred. For example, the lack of a check of voter identification could potentially allow double voting. The absence of voting booths or privacy screens at some polling stations compromises the secrecy of the vote, as does the absence of a requirement that ballots be folded or placed in an envelope before being stamped by polling officials. Other simple safeguards are not always in place, such as



a requirement to check that the ballot box is empty before polling begins, or the use of numbered, tamper-evident seals on ballot boxes. In addition, some polling stations did not appear accessible to voters with disabilities.

*Each canton has examples of good electoral practices and safeguards that, if shared, could contribute to more secure elections and avoid the types of weaknesses described above. These include basic steps such as providing privacy screens in each polling station, ensuring that polling places are accessible for voters with disabilities, and using numbered, tamper-evident seals on ballot boxes. Consideration could be given to arranging a systematic discussion of procedures among cantons, with a view to consistent adoption of good practices.*

### C. Internet Voting

In 2002, the Federal Act on Political Rights was amended to allow cantons to conduct internet voting pilot schemes on a limited basis, with the permission of the Federal Council.<sup>35</sup> Trials are limited by law to no more than ten per cent of the Swiss electorate in any one election. Pursuant to these provisions, the cantons of Aargau, Basel-Stadt, Graubünden, and St. Gallen applied and were approved to run internet voting trials for the 2011 National Council elections. The trials were limited to citizens of the four cantons living abroad, or slightly over 22,000 eligible voters, about half of whom voted via the internet.<sup>36</sup> This was the first time internet voting was used in a federal election.

Two different systems were used.<sup>37</sup> The “consortium system”, developed and managed by the private company UNISYS for the canton of Zurich was used in Aargau, Graubünden and St. Gallen.<sup>38</sup> The “Geneva system”, managed directly by the canton of Geneva, was used by the canton of Basel-Stadt, but remotely administered by Geneva.<sup>39</sup>

Both systems have been used in numerous trials in several cantons, and reflect a gradual approach to the implementation of internet voting. The 2011 trials were considered by the Swiss authorities as an important milestone in deciding whether the use of internet voting should be further expanded. The Federal Chancellery informed the OSCE/ODIHR EAM of its intention to provide internet voting to a majority of out-of-country voters by the 2015 federal elections and, ultimately, to all eligible voters. The Federal Chancellery conceives the introduction of internet voting as an additional method of voting and not as a replacement for traditional methods. Internet voting is also viewed as a means of facilitating voting for Swiss citizens living abroad, who often face difficulties with postal voting. However, the system relies on the timely postal delivery of polling cards to overseas residents.

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<sup>35</sup> Further regulations on internet voting are included in Article 27 of the Federal Decree on Political Rights. In Switzerland, the term “vote électronique” (“electronic voting”) is understood to mean remote electronic voting via the public internet. There is no electronic voting at polling stations.

<sup>36</sup> The trials were further limited to Swiss citizens registered in countries that are parties to the 1995/1996 Wassenaar Agreement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, member states of the European Union as well as Andorra, Liechtenstein, Monaco, San Marino, the Holy See, and the territory of Northern Cyprus.

<sup>37</sup> A third system, developed for the canton of Neuchâtel, was not used in the 2011 elections.

<sup>38</sup> A consortium of seven cantons have since signed a contract with UNISYS and obtained licenses from the canton of Zurich to use the system. These are the cantons of Aargau, Fribourg, Graubünden, St. Gallen, Schaffhausen, Solothurn, and Thurgau.

<sup>39</sup> The internet voting component of Basel-Stadt’s elections has been conducted by Geneva on a contracted basis since 2009. The system was not used by Geneva itself during these elections. The Geneva system was originally developed by the private company Hewlett-Packard and then significantly expanded upon by Geneva canton.

The careful, limited, and step-by-step manner in which Switzerland is introducing and testing internet voting is a good practice, both to ensure the integrity of the systems used and build public confidence in the process. In general, the OSCE/ODIHR EAM found the internet voting trials to work reliably and enjoy wide public trust. Nevertheless, there appear to be some weaknesses in the systems, including both legal and technical issues.

### *Legal Provisions*

The minimum standards for internet voting trials are provided by Article 8a of the Federal Act on Political Rights and are regulated in more detail by Article 27 of the Federal Decree on Political Rights. These provisions place special emphasis on the verification of voter eligibility and the secrecy of the vote, as well as the necessity to prevent systematic abuse. However, precise details concerning cryptographic methods and testing standards are absent from the law. Most cantons using internet voting systems have amended their legislation to address issues specific to internet voting, but do not address detailed procedural aspects or assignment of operational duties and responsibilities. Other cantons have postponed changes to their legislation until internet voting has progressed beyond the trial phase.

Each canton is ultimately responsible for the conduct of its elections, regardless of whether internet voting is outsourced to another canton or a private firm. However, there is some ambiguity with regard to the hosting of internet voting by a second canton, and which canton has the final responsibility for complying with the law. Moreover, while federal law includes some technical requirements for systems in which cantons are hosted by other cantons, similar requirements do not exist for cantons which use private firms.

*Regulations for internet voting should be further detailed in the law. This could include clarifying provisions regarding the procedural steps for internet voting, standards for cryptographic methods, testing requirements, operational duties and responsibilities, certification requirements, and aspects of law governing hosting by other cantons or outsourcing to private companies.*

Federal law requires that personal data be used only for the intended purpose and deleted immediately afterwards.<sup>40</sup> However, contrary to good practice, there are no formal procedures for the deletion of personal data from internet voting systems once an election is completed.

*In order to ensure data protection standards are adhered to, it is recommended that a formal procedure be developed on how to dispose of electronically stored personal data.*

### *Internet Voting Process*

Voters were able to access the internet voting systems via an internet browser running on a personal computer. Communication took place over the public internet with basic protection of the data transmission provided by Secure Sockets Layer (SSL) technology. Overall, despite complex voting options, voter usability of both systems was assessed positively by the OSCE/ODIHR EAM.

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<sup>40</sup> See Federal Law on Data Protection, Article 4<sup>4</sup>, as well as Council of Europe Convention 108, Articles 5b and e.

Voter identification is done via the polling card, which is delivered to a voter by post. In cantons where internet voting is possible, the polling card includes a unique identification number and voter credentials consisting of an identification code and a password. The identification code is needed to open a ballot, and the password is needed to cast a vote. The OSCE/ODIHR observed that most steps of the printing of polling cards, including access to unprotected voter credentials, were conducted by a single person with minimal oversight.<sup>41</sup>

*The practice of printing polling cards should be reviewed to ensure security of sensitive data and protect against possible use of voter credentials by unauthorized individuals.*

Both internet voting systems were open to eligible voters for some four weeks. The systems do not allow voters to cast an invalid vote, nor can a voter change a vote after it has been cast. Voters can verify whether they are casting a vote on the official server by checking the SSL certificate of the voting server presented by the internet browser as well as by comparing unique pictorial symbols displayed on the screen to those printed on their polling card. However, as with postal voting, there are no mechanisms for the voter to verify that their vote has been cast and recorded as intended or to protect against possible manipulation such as voter coercion, family voting, or vote buying.

*Consideration could be given to providing voters with the possibility of verifying that their vote has been cast and recorded as intended, as well as with means to protect voters against possible coercion and other forms of manipulation. This could include options to allow voters to cancel their previous vote by casting another vote via the internet or in person.*

Once a vote is cast, the ballot is deposited in an electronic ‘ballot box’. While the consortium system encrypts the vote only once it is received by the server, the Geneva system provides an additional layer of security by encrypting the vote on the voter’s computer before it is sent. In all cantons, the ballots were decrypted after internet voting closed on 22 October, the day before election day.

*The highest level of security available should be used for encryption and transmission of electronic votes to ensure the integrity of the process and the secrecy of the vote. The authorities should conduct a review of state-of-the-art cryptographic methods for internet voting with a view to addressing any potential security weaknesses in the systems.*

*A greater measure of security would be achieved if electronic ballot boxes were not decrypted until the start of the vote count.*

In principle, the secrecy of the vote is protected by the separate storage of personal data and voter credentials following the secure generation of the polling card and before the electronic ballot box is opened. However, during the printing process in the cantons using the consortium system, electoral officials received a report that linked voter names with their voting credentials. This report allowed officials to block access from a given polling card if it was reported lost or if the voter moved and was no longer eligible to vote via the internet in that contest. Although the intention of such a report is to protect the integrity of the vote, it also risks undermining the secrecy of the vote.

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<sup>41</sup> The Federal Chancellery informed the OSCE/ODIHR EAM of new measures to address this issue, which would be effective from January 2012.

In Basel-Stadt, the password on the polling card is not protected by a tamper-evident overlay, which means that it is not possible to check whether a third party has tried to access the internet voting system without the voter's knowledge. It is also more difficult to check whether the same polling card has been used to cast a vote twice, both via the internet and by post.

*Most cantons already use a tamper-evident overlay to shield the password assigned to each voter. Adoption of this approach by all cantons would enhance security, as well as the secrecy of the vote.*

### ***Management***

As both internet voting systems are also used for cantonal elections and referenda, the systems are constantly maintained in operational mode. The set-up of the systems consists of configuration for the intended election; the generation, printing, and distribution of voting certificates; and the generation and storage of the private keys for access to the servers. These procedures took place between 5 and 23 September and were observed by the OSCE/ODIHR.

While the cantons are ultimately responsible for the administration of their elections, they seemed to rely entirely on external operators for the implementation of internet voting. In general, cantons appeared to have no technical experts of their own to oversee or test their systems beyond basic functionality and usability checks.

*As a good practice, all cantonal authorities should consider directly employing a core of technical staff to ensure adequate supervision and control of their internet voting system, and to avoid excessive reliance on external operators.*

A particular concern in this regard was the handling of cryptographic material. Access to the private keys used to decrypt the electronic ballot box should be limited and closely monitored. In the consortium system, the private keys were generated by external operators and delivered to election officials in person via an insecure medium (CD ROM). The passwords to access the keys were also generated by the external operator and mailed to the election officials by standard post. While no problems were reported, such a procedure opens the possibility for external operators to access the private key and password, allowing them to impersonate an electoral official at any stage of the process. To decrypt the votes, election officials uploaded the key remotely to the consortium internet voting servers.

In the Geneva system, the private key was generated at a meeting of the election commission with four members of different political parties present. The key was stored on insecure media (CD ROM and memory stick), sealed in an envelope and immediately passed to the police for storage. The password consisted of two parts, each part separately generated and retained by different election officials, with a copy also provided to a notary in a sealed envelope. The election commission reconvened to jointly decrypt the votes.

*It is recommended that all cantons adhere to good practice when handling cryptographic material, which provide that the private key be generated at a public meeting and that the key be divided in separate parts and shared by at least two people who are unlikely to collude. Preferably, this key should be generated and stored using secure cryptographic media (such as a smartcard). Essential procedures, such as the decryption of internet votes, could also take place at public meetings.*

The Federal Chancellery and the cantons established a crisis management body and developed contingency plans in the event of major problems with internet voting. Such preparations are a good practice and enable relevant actors to respond quickly to identify problems.

### *Testing and Certification*

In line with good practice,<sup>42</sup> the law requires cantons to test all components of their systems before every election. The canton of Geneva performs an additional end-to-end test of the casting and counting of a small number of votes prior to each use of the system. For these elections this test took place on 15 September.

*Mandatory end-to-end tests of all internet voting systems should be held before each election to ensure compliance with legislation, guarantee system security and accuracy, and to protect the secrecy of the vote. A detailed list of criteria should be developed as the basis for testing. The results of these tests should be made public.*

The Federal Decree on Political Rights requires that internet voting systems, and any changes made to them, be certified by “an independent body recognized by the Federal Chancellery.” To date, no such body exists and the required certification has not taken place. Currently, cantons self-declare their adherence to the provisions of the election law and provide a description of their system. Although the Federal Chancellery informed the OSCE/ODIHR EAM that plans are underway to meet this requirement, the current lack of certification is not in line with federal law and may damage public trust in internet voting. A further concern is that even if an independent body were created, there are no clear, written technical standards or requirements on which to base certification.

*In order to meet legal requirements and to ensure the integrity of internet voting systems, an independent body should be established to certify all systems, including through independent, third-party testing. Clear, written, and testable standards on certification should be developed and regularly reviewed and updated as the basis for the independent body’s work, covering such issues as security, transparency, reliability, ease of use, and protection of the secrecy of the vote.*

While the consortium system underwent comprehensive external review after its initial deployment in 2006 and again following an update in 2008, no external audits were performed after a 2010 update of the system. The canton of Geneva has undertaken four separate external security audits of its internet voting system in 2002, 2003, 2007 and 2010. The results of these audits, and the improvements the cantons have made to their systems as a result, have not been made public.

*In line with international good practice, it is recommended that evaluations of internet voting be carried out by an independent body and that the reports are made public.<sup>43</sup>*

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<sup>42</sup> See paragraph 31 of Recommendation Rec(2004)11 of the Committee of Ministers to Member States on Legal, Operational and Technical Standards for E-Voting.

<sup>43</sup> Council of Europe, 2011, *E-Voting Handbook*, section 5.1.1.

### *Oversight*

Overall, there did not appear to be a meaningful possibility for the general public to observe or oversee internet voting procedures. Most key documents and explanations were not readily available to the public. Although the Federal Chancellery reports regularly to the National Council on the progress of internet voting,<sup>44</sup> the OSCE/ODIHR EAM was informed that there has been limited parliamentary interest and political parties have not made any serious study or review of the internet voting systems.

The Federal Chancellery has established an internet voting task force composed of federal and cantonal officials to develop good practices and improve the security of the internet voting systems in use. According to OSCE/ODIHR EAM interlocutors, the impact of the task force was difficult to ascertain, as there is no public record of meetings or decisions made.

*To maintain the high public confidence in internet voting, further efforts should be made to exchange good practice amongst cantons, explain technical and operational elements, and ensure appropriate safeguards for transparency and accountability. The Federal Chancellery, possibly through the internet voting task force, could take a leading role in communicating information to political parties, civil society, and the general public.*

### **D. Counting of Votes**

In a limited number of instances, OSCE/ODIHR EAM team members observed the opening of postal ballots in advance of election day, counting of votes in advance of election day and counting of votes on election day prior to and after the close of polling. Different procedures applied in different cantons. In general, at the close of polls, the official in charge of the polling station counted the number of retained polling cards to check the number of people who voted. The ballot boxes and polling cards were then taken to the communal or cantonal level for counting.

Due to the complexity of voting options, counting is a labour intensive exercise. Ballots cast for the National Council are separated into ballots on which there have been no changes and those on which voters have deleted or written in names. The former are entered into the system as “bloc” votes for the particular party. The latter are carefully checked to make sure they are not invalid and then counted individually for the candidates. These ballots are then taken to another team who enter the data electronically into a computerized tabulation system.

At the limited number of counting centres visited, the OSCE/ODIHR EAM witnessed different levels of security of ballots and other procedures. At the Thune counting centre in the canton of Bern, there was a high level of ballot security, with envelopes signed for when handed over from team to team. In Geneva, the votes marked on each ballot were entered into a computer twice, by two separate teams of people, to ensure an accurate count. In some other counts, there were far less stringent practices that could have compromised the security or integrity of the ballot papers or the vote count.

The practice in many cantons of beginning the count before polling has closed raises the possibility that preliminary counts could leak to the public and influence those voting later. This

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<sup>44</sup> To date, two reports have been published, in 2002 (<http://www.admin.ch/ch/d/pore/veD.pdf>) and 2006 (<http://www.admin.ch/ch/d/ff/2006/5459.pdf>). A third report is planned for 2012.

possibility is mitigated in Basel-Stadt, where election officials are required to maintain secrecy while the count is ongoing, and eliminated in Geneva, where counting of ballots cannot begin until all polling stations have closed.

*As is the case with voting in polling stations, cantons might benefit from a systematic comparison of vote counting practices, with a view to consistent adoption of good practices.*

Most cantons use at least some electronic systems as part of their counting and tabulation processes. A few technical problems arose with computerized tabulation in the canton of Vaud, where election results were delayed for several hours due to an overload of the ten-year old system.<sup>45</sup> There were also small problems with transferring results from the internet voting system to the tabulation system observed by the OSCE/ODIHR EAM in Aargau, which were quickly resolved. Neither instance appeared to be serious in terms of threatening the integrity of the vote, count or tabulation.

*Consideration could be given to requiring that all electronic systems related to elections meet specified, testable standards and be certified. A good practice would be for an independent body to undertake end-to-end testing of all computerized voting and counting system components such as data entry applications for vote recording, counting or tabulation.*

#### **XIV. COMPLAINTS AND APPEALS**

##### **A. Framework for Complaints**

Legislation provides for an effective right to judicial review for all aspects of the electoral process. In practice, it appears that very few formal election-related complaints are filed and most grievances appear to be rapidly resolved without recourse to the courts.

For elections to the National Council, the dispute resolution mechanism is regulated by the Federal Act on Political Rights. In the first instance, any complaints must be lodged within three days with the cantonal government. The cantonal authorities must issue a decision within ten days and order appropriate remedies if there have been irregularities. Cantonal authorities may reject an appeal without conducting an investigation if they consider that the nature or the extent of the alleged irregularities do not have the potential to have an impact on the result of the elections as a whole. Cantonal governments are obliged to notify the Federal Chancellery of any complaints. In line with the Federal Constitution, appeals of cantonal decisions may be filed with the Federal Supreme Court within three days of the cantonal decision. There is no legal deadline for the Federal Supreme Court to issue a decision. The deadline for filing a complaint about election results expires three days after the results have been published in the official gazette of a canton.

For elections to the Council of States, dispute resolution is regulated by cantonal legislation. In different cantons, complaints may be lodged with different authorities such as the cantonal government, the cantonal chancellery, or cantonal administrative courts. Appeals may be lodged with the Federal Supreme Court. OSCE/ODIHR EAM interlocutors did not raise any concerns about variations in the complaints and appeals procedures.

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<sup>45</sup> Press release by Bureau of Information and Communication of the Canton of Vaud, 25 October 2011, confirmed directly to the OSCE/ODIHR EAM by the Vaud Chancellery.

## B. Complaints Filed

According to information from the Federal Chancellery, 3 complaints were lodged with cantonal offices before the elections and 11 after the elections. Two pre-election complaints were filed on the grounds of misprinted ballots and one for alleged late receipt of ballots. Appropriate remedies were ordered by authorities.<sup>46</sup>

Two post-election complaints were filed in Valais and Zug cantons, challenging the election system and requesting that a different system be used. Both were denied. A third complaint, filed in Thurgau, was ruled frivolous.

The eight remaining post-election complaints were filed with the cantonal government of Ticino after its decision to draw lots by computer programme to determine the winner between two candidates for the National Council who obtained the same number of votes. Marco Romano and Monica Duca Widmer, both on the CVP candidate list, each received 23,979 votes. Monica Duca Widmer was declared the winner on 25 October after lots were drawn. Complaints were lodged by voters on a number of grounds, including alleged irregularities in some polling stations and procedural issues concerning the drawing of lots. All the complaints were rejected by the cantonal government. Five appeals on the case were then filed with the Federal Supreme Court. Two of these were rejected on procedural grounds as inadmissible. Two more, which had asked for a recount, were also rejected as inadmissible. In response to another appeal, however, the Court ruled against the Canton's decision to use a computer programme for the lottery and ordered new manual lottery. This was conducted on 25 November, and Marco Romano emerged as the winner.<sup>47</sup>

## C. Complaints on Media Issues

Complaints against print media may be lodged with the Swiss Press Council. The OSCE/ODIHR EAM was made aware of only one unofficial complaint by a candidate claiming that he was not provided with sufficient coverage.

For broadcast media, there is a three-tier complaints mechanism, including ombudspersons and the Independent Complaints Authority (ICA), with appeal possible to the Federal Supreme Court. Most complaints are resolved directly between parties that consider themselves aggrieved and the broadcaster, without a formal complaint being filed. Approximately 15 complaints were filed with ombudspersons, almost all by candidates alleging that they did not receive a fair share of airtime.

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<sup>46</sup> In Geneva canton, a complaint was lodged when the first name of one candidate was misspelled on the ballots. As the ballots could not be reprinted and delivered on time, the authorities sent out a correction note to voters explaining the mistake. Subsequently, a different party filed a lawsuit against the cantonal authorities requesting that the election be declared invalid due to the error on the ballots and the additional publicity that the first party gained as a result of the correction note; this complaint was also rejected.

In Solothurn canton, a party filed a complaint with the cantonal government, about a misprint on some ballots. The cantonal government dismissed the complaint but issued a press release calling on the voters to check their ballots. Some misprinted ballots were found and replaced. The party announced that it did not intend to appeal the decision.

In Basel-Stadt canton, a Swiss citizen living abroad complained that he did not receive the voting materials on time. However, the deadline for receiving the material had not yet passed and the complaint was rejected.

<sup>47</sup> The Federal Chancellery informed the OSCE/ODIHR that a final complaint on the election of Marco Romano was filed on 5 January 2012, which was rejected by the Federal Supreme Court.



In one case, an appeal was filed with the ICA, which dismissed it.<sup>48</sup> Officially, the ombudspersons have 40 days to rule on a complaint, while the ICA and the courts have no deadlines. In practice, however, election-related complaints are dealt with expeditiously.

*In order to guarantee effective remedy, authorities should consider instituting short, mandatory deadlines for adjudication of election-related complaints concerning the broadcast media.*

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<sup>48</sup> A small party alleged that it did not receive “equal” airtime on the French speaking Swiss Public Radio and TV. The ICA decided that broadcaster had some autonomy presenting different candidates and there was no obligation to give exactly equal airtime to all parties. The Federal Chancellery subsequently informed the OSCE/ODIHR that the complaint was withdrawn.

## ANNEX – FINAL RESULTS

### National Council

Party	Seats	Percentage of Vote
Swiss People's Party	54	26.6
Social Democratic Party	46	18.7
Free Democratic Party	30	15.1
Christian Democratic People's Party	28	12.3
Green Party	15	8.4
Green Liberal Party	12	5.4
Conservative Democratic Party	9	5.4
Evangelical People's Party	2	2.0
Ticino League	2	0.8
Christian Social Party	1	0.6
Geneva Citizens' Movement	1	0.4

Source: Federal Assembly

<http://www.parlamentswahlen-2011.ch/eckdaten-nationalrat.html>

### Council of States

Party	Seats
Christian Democratic People's Party	13
Free Democratic Party	11
Social Democratic Party	11
Swiss People's Party	5
Green Party	2
Green Liberal Party	2
Conservative Democratic Party	1
Independent	1

Source: Federal Assembly

<http://www.parlamentswahlen-2011.ch/conseil-des-etats-les-elections-en-chiffres.html>

## ABOUT THE OSCE/ODIHR

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

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

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

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

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

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

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

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

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