



Office for Democratic Institutions and Human Rights

REPUBLIC OF FRANCE
PARLIAMENTARY ELECTIONS
10 and 17 June 2012

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT
10-11 May 2012



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TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. EXECUTIVE SUMMARY	1
III. FINDINGS.....	2
A. BACKGROUND AND POLITICAL CONTEXT	2
B. ELECTION SYSTEM AND LEGAL FRAMEWORK	3
C. ELECTION ADMINISTRATION.....	3
D. METHODS OF VOTING	4
E. VOTER REGISTRATION	5
F. CANDIDATE REGISTRATION.....	6
G. POLITICAL FINANCE.....	6
H. MEDIA	7
I. COMPLAINTS AND APPEALS	7
IV. CONCLUSION AND RECOMMENDATION.....	8
ANNEX: LIST OF MEETINGS	9

**REPUBLIC OF FRANCE
PARLIAMENTARY ELECTIONS, 2012**

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Permanent Representation of France to the OSCE to observe the forthcoming 2012 parliamentary elections and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 10 to 11 May 2012. The NAM comprised Armin Rabitsch, OSCE/ODIHR Senior Election Adviser, and Alexander Shlyk, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the forthcoming parliamentary elections. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions, including the election administration, as well as with representatives of political parties and civil society. A full list of meetings is annexed to this report, which should be read in conjunction with OSCE/ODIHR's recent NAM report on the 2012 French presidential election.¹

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs for its assistance and co-operation in organizing the visit. The OSCE/ODIHR is grateful to all of its interlocutors for taking the time to meet with the mission.

II. EXECUTIVE SUMMARY

In the forthcoming 10 and 17 June parliamentary elections, voters will directly elect 577 members of the National Assembly. All interlocutors met by the OSCE/ODIHR NAM expressed a high level of trust in the professionalism and impartiality of the election administration.

Since the last elections, the Constitution and the legal framework were amended. A 2008 Constitutional amendment introduced 11 deputies to be elected by voters residing abroad. Following this amendment, and in order to account for changes in population numbers, constituency boundaries were redrawn in 2009-10. The process of re-districting was reportedly preceded by limited public debate, but according to OSCE/ODIHR NAM interlocutors reduced disparities.

In parliamentary elections, voters can cast their ballots in person at polling stations or by proxy. The Ministry of Foreign Affairs (MFA) is organizing voting for the approximately 1.1 million citizens registered abroad. For the first time, voters abroad will have the possibility to vote via the internet. While there has been little public awareness about the introduction of internet voting,

¹ All previous OSCE/ODIHR reports with regard to France can be found at: <http://www.osce.org/odihr/elections/france>.

some OSCE/ODIHR NAM interlocutors voiced concerns with regard to the security and secrecy of internet voting and of the limited public debate prior to its introduction.

There is no centralized voter register and municipality offices are responsible for maintaining lists of voters on the basis of voters' ties to the *commune*. Voter registration is conducted on the basis of voters' requests, with the exception of citizens reaching the age of 18 who are included in voter lists automatically. Voter registration is not linked to the civil register, but the *Institut National de la Statistique et des Études Économiques* checks for duplicates and corresponds with the municipalities.

Candidates are registered by prefectures at the department level. All citizens older than 18 and enjoying full suffrage rights can run in these elections. Prospective candidates should nominate an alternate and a financial proxy. There are no other requirements to register as a candidate.

Political finance is subject to extensive regulation that was further detailed by legal amendments in 2011. Most interlocutors expressed general trust in the regulation of political finance, albeit underscoring a need for further increasing its transparency.

A diverse media landscape provides for vibrant political discourse. The Supreme Audiovisual Council applies a principle of equity in campaign coverage for contestants in each constituency and among political parties presenting candidates in multiple constituencies.

All OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality and professionalism of the election administration and their ability to organize elections in an effective manner. No significant concerns were expressed relating to the respect for fundamental freedoms, the transparency of the electoral process, the campaign environment, and election day proceedings. Some interlocutors mentioned concerns over political finance regulations and oversight and the complexity of media regulations. In addition to conventional voting, the Election Code allows out-of-country voters to vote via the internet for the first time.

Since OSCE/ODIHR has not previously observed parliamentary elections in France, given that new electoral legislation will be applied for the first time, and that some OSCE/ODIHR NAM interlocutors indicated that they would welcome an OSCE/ODIHR election-related activity, OSCE/ODIHR considered that such an activity would bring added value. In such circumstances, and given that no concerns were expressed with regard to election day proceedings, the OSCE/ODIHR NAM recommends deploying an Election Assessment Mission (EAM) to specifically look into the issues outlined in this report.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

France is a presidential republic with a parliament comprising two chambers – a directly elected lower house of 577 deputies, the National Assembly, and an upper house, the Senate, composed of 348 indirectly elected senators. In the forthcoming 10 and 17 June parliamentary elections,

voters will directly elect the National Assembly. For the first time, 11 of the deputies will be elected by French citizens residing abroad in special constituencies.

The OSCE/ODIHR has previously deployed election-related activities for the presidential elections in 2002 and 2007. The OSCE/ODIHR Election Assessment Mission (EAM) for the 2007 presidential election noted that the election was held “in a competitive environment which provided overall equitable conditions for the candidates” and underscored that “the process enjoyed a high level of public confidence.” Among other issues, the mission recommended that the practice of proxy voting be reviewed, that transparency and accountability of electronic voting machines be improved, that the legislation be changed to provide for international and domestic election observers, and that rules for media coverage of candidates be simplified. These will be the first parliamentary elections in France to be observed by the OSCE/ODIHR.

B. ELECTION SYSTEM AND LEGAL FRAMEWORK

Parliamentary elections will be held in two rounds on 10 and 17 June. In each of the 577 constituencies, if no candidate obtains an absolute majority of votes cast by at least a quarter of the registered voters, a second round is held between the candidates who received at least 12.5 per cent of the number of registered voters. If one or none of the candidates gets this quota in the first round, the two leading candidates participate in the run-off. Each candidate runs together with an alternate, who would replace the elected candidate if s/he vacates the seat.

Parliamentary elections are regulated by the 1958 Constitution and the Electoral Code. Various regulations, decrees, instructions and opinions address specific areas of the electoral process, such as voter registration, voting abroad, the registration of candidates, and political finance.²

Since the last parliamentary elections, the Constitution and the legal framework were amended. A 2008 Constitutional amendment introduced 11 deputies to be elected by voters residing abroad, while maintaining a total of 577 deputies in the National Assembly. Following this amendment, and in order to account for changes in population numbers, constituency boundaries were redrawn in 2009-10. According to a number of OSCE/ODIHR NAM interlocutors, this resulted in reduced disparities. Some interlocutors, however, noted that re-districting was conducted with limited public debate and raised some concern as to what political impact these changes will have.

C. ELECTION ADMINISTRATION

Elections are administered by a range of executive and judicial institutions that are mandated to deal with electoral matters. All OSCE/ODIHR NAM expressed a high level of trust in the professionalism and impartiality of the election administration. No concerns were expressed relating to the transparency of electoral process and election day proceedings.

² Since 1980, France is also party to the International Covenant on Civil and Political Rights (ICCPR). It has been party to the UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW) since 1983 and the UN Convention on the Rights of Persons with Disabilities (CRPD) since 2010.

The Ministry of the Interior, Overseas, Local Authorities and Immigration (MoI) is responsible for the technical and logistical administration of the elections. It issues instructions to 101 prefectures that represent the state at the department level, which in turn liaise with approximately 36,000 *mairies* (local government authorities) at the *commune* level. *Mairies* are responsible for managing the work of approximately 65,000 polling stations.

D. METHODS OF VOTING

In parliamentary elections, voters can cast their ballots in person at polling stations or by proxy. The practice of proxy voting remains in place although past OSCE/ODIHR reports recommended that the practice be reconsidered.³ In a few municipalities, where those systems are still in use, voters cast their vote by electronic voting machine without a paper trail.⁴

The Ministry of Interior is responsible for organizing voting in overseas ‘collectivities’ and departments of France. The OSCE/ODIHR NAM was told that while results of the vote will be established immediately after the close of polls, measures will be taken to avoid their public release until polling stations in metropolitan France close.⁵

The Ministry of Foreign Affairs (MFA) is organizing voting for the approximately 1.1 million citizens registered abroad who will directly elect 11 National Assembly deputies in as many single member constituencies. For the first time, following legal amendments from 2009, voters abroad will have the possibility to vote via the internet, besides voting at embassies and consulates in person or by proxy. The OSCE/ODIHR NAM was informed that out of approximately 1.5 million citizens residing abroad, some 1.1 million are registered with embassies or consulates.

Internet voting will be overseen by a commission led by a judge of the Council of State (*Conseil d’État*) and include one representative each from the MFA, the MoI, the French Network and Information Security Agency (ANSSI), and five representatives of the Assembly of the French living abroad. All operations for the conduct of internet voting will be done in Paris. The internet voting system source code was audited by a private company hired by the *Commission Nationale de l’Informatique et des Libertés* (CNIL), and the system was tested in January 2012 with the participation of more than 5,000 users.

The MFA has sent letters to inform voters abroad about the upcoming elections and the different options available to cast their votes. These letters also contained an individual code needed to access the on-line voting interface for all citizens living abroad. The same code was also sent via SMS to each voter who had indicated a telephone number. Starting from 16 May, voters who

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

⁴ Currently, 64 municipalities are authorized to use the electronic voting machines.

⁵ The OSCE/ODIHR NAM was informed that polling stations close at 18:00, with the exception of Paris where they close at 20:00.

provided their e-mail addresses will receive a first-round password for voting via e-mail (and a second-round password starting from 30 May).⁶ Voters will be able to cast their ballots via the internet from 23 to 29 May, for the first round, and from 6 to 12 June for the second round.⁷ While there has been little public awareness about the introduction of internet voting, some OSCE/ODIHR NAM interlocutors voiced concerns with regard to the security and secrecy of internet voting and of the limited public debate prior to its introduction.

E. VOTER REGISTRATION

All citizens over the age of 18 are eligible to vote, unless disenfranchised by a final court decision for reasons of legal incapacity or as part of a court sentence. Penal Code provisions contain a definitive list of misdemeanor crimes and offences where additional penalties may include forfeiture of certain civil rights, including the right to vote and to stand for election.⁸ The law stipulates that such limitations must be sanctioned by a judge in an open court process.

For historic reasons, voter registration is not linked to the civil register. According to the law, voter registration is conducted on the basis of voters' requests, with the exception of citizens reaching the age of 18 who are included in voter lists automatically. Operational guidance on the establishment and maintenance of voter lists is provided by the Electoral Code and by additional MoI instructions.⁹ According to legal procedures, municipality offices (or *prefectures* in some overseas collectivities) are responsible for maintaining voter lists on the basis of voters' ties to the *commune*.¹⁰ Hence, there is no centralized voter register and eligible voters are entered into voter lists at the level of the *commune*.

Mairies process registration throughout the year, but voter lists close on 31 December each year and are passed to the *Institut National de la Statistique et des Études Économiques* (INSEE) to be checked for errors. The final voter lists are released on 1 March and can be checked by voters upon request.

As per a 1969 law, the *gens du voyage* (travelers) are required to reside for at least three years in a municipality to obtain registration and thus vote. The OSCE/ODIHR NAM was, however, informed that the provision of the Electoral Code that was revised in March 2007 to allow registration of homeless people after six months' stay in a municipality should also apply to the *gens du voyage*.¹¹ This interpretation of the legal provision would be in line with a previous OSCE/ODIHR recommendation.

⁶ According to the MFA, some 700,000 voters provided their e-mail addresses.

⁷ The OSCE/ODIHR NAM was informed that an advance internet voting period was introduced to allow for longer processing times for voters who wish to cast their ballots in person during the second round.

⁸ See Article 131-26 of the Penal Code.

⁹ See Article R.25 of the Electoral Code and Ministerial Circular No. INT/A/07/00122/C of 20 December 2007, available online at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/dossiers_thematiques/presidentielle_2012/INTA0700122C.pdf.

¹⁰ Article 19 of the Ministerial Circular No. INT/A/07/00122/C establishes domicile, residence and payment of taxes as sufficient types of attachment to a commune.

¹¹ See Article L.15-1 of the Electoral Code, as revised by Law No.2007-290 of 5 March 2007.

F. CANDIDATE REGISTRATION

National Assembly candidates are registered by 101 prefectures at the department level from 14 to 18 May. All citizens older than 18 and enjoying full suffrage rights can run in these elections.¹² The right to stand can be suspended for up to three years by a court decision or the Constitutional Council in the event that a person is found guilty of electoral fraud, fails to submit campaign accounts, or doesn't submit a financial declaration within one year of assuming office.¹³ Those in certain public positions, such as judges and prefects, cannot run for office.¹⁴

Prospective candidates should nominate an alternate and a financial proxy; the latter is legally responsible for all campaign reporting. There are no other requirements to register as a candidate. Following the announcement of first round results, eligible candidates and their alternates should be registered by the prefectures for the second round.

G. POLITICAL FINANCE

Political finance is subject to extensive regulation. Electoral Code provisions regulate campaign finance and are supplemented by the Law on Financial Transparency in Political Life that regulates political party finance. Several amendments to these laws were introduced in April 2011.¹⁵ In particular, amendments provide for penalties for failure to submit campaign accounts in accordance with legal regulations. Oversight is maintained by the National Commission for Control of Electoral Accounts and Political Finance (*Commission Nationale de Contrôle des Comptes de Campagne et de Financements Politiques*, CNCCFP). Most OSCE/ODIHR NAM interlocutors expressed general trust in the political finance system, albeit underscoring a need for further increasing its transparency.

According to the law, campaign finance regulations apply for one year before the elections. Candidates in the parliamentary elections can finance their campaigns from such sources as their personal funds, donations from political parties or private donations not exceeding EUR 4,600 per election. Each candidate who obtains at least five per cent of the vote is reimbursed his/her campaign expenditures. This reimbursement cannot exceed the actual expenditures incurred, the total sum of the funds contributed by a candidate personally and 47.5 per cent of the upper limit of the expenditures determined for each constituency.¹⁶ Some OSCE/ODIHR NAM interlocutors

¹² The age of eligibility to stand was lowered from 23 to 18 in April 2011.

¹³ See Article L.O. 128 of the Electoral Code, together with Articles L.118-3, L.118-4, L.O.136-1, L.O.136-2, and L.O.136-3.

¹⁴ See Articles L.O. 130 – L.O. 132.

¹⁵ See full text of the Law No. 2011-412 of 14 April 2011, available at <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023877131&categorieLien=id>. These amendments addressed some of the previous recommendations contained in the 2008 evaluation report of GRECO, see [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)5_France_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)5_France_Two_EN.pdf), as well as the 2011 GRECO compliance report, available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)1_France_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)1_France_EN.pdf).

¹⁶ The ceiling of campaign expenditures is determined based on the population of the constituency, in accordance with the provisions of Article L.52-11 of the Electoral Code and, for the parliamentary elections, ranges from approximately EUR 49,000 to approximately 86,000 for each candidate.

expressed concern that only those expenses acknowledged by candidates need to be reported. Although the use of administrative resources for campaign purposes is not expressly prohibited by law, electoral judges rely on extensive case law in such cases.

The CNCCFP is to receive candidates' financial reports from their campaign within two months of the second round. Neither the CNCCFP nor candidates are obliged to publish itemized accounts, although the CNCCFP publishes a summary of its decisions on the reports submitted.

H. MEDIA

A diverse media landscape provides for vibrant political discourse. Apart from the public *France Télévisions*, which includes five national TV channels, and *Radio France*, which comprises seven national radio channels, there is a great variety of private broadcasters; most notably, TF1, M6, and Canal+. Major newspapers featuring political content include the dailies *Le Figaro*, *Le Monde*, *Libération* and a number of free morning editions, as well as the weeklies *Le Nouvel Observateur*, *Le Canard enchaîné*, and *L'Express*. Print media are not subject to regulation, except for a prohibition on paid political advertisement that extends to all media during the six months prior to an election.

Broadcast media, both public and private, are subject to strict and detailed regulations for campaign coverage. These are issued by the Supreme Audiovisual Council (*Conseil Supérieur de l'Audiovisuel*, CSA), based on the principles of equity for all contestants. The OSCE/ODIHR NAM was informed that equity of coverage is determined on the basis of past electoral results and the ability of contestants to generate public debate in the pre-electoral period. Based on a CSA resolution, coverage of election-related issues pertaining to a specific constituency should be equitable for all contestants in this constituency, while election-related coverage beyond a particular constituency should apply the same principle to all contestants nationwide.¹⁷

I. COMPLAINTS AND APPEALS

The legal framework envisages a complex system for adjudicating electoral disputes. Prior to the election, voters can submit complaints on alleged violations of their rights to the Administrative Court (*Tribunal Administratif*). Complaints regarding voter registration can be addressed to the first instance court, with an appeal possible to the Court of Cassation.

Complaints can be filed by any voter with the Constitutional Council within 10 days of the announcement of results. The Council is empowered to take a decision to invalidate results at individual polling stations and to proclaim a 'rightfully' elected candidate, based on such complaints or appeals challenging the announced results.¹⁸

¹⁷ See Resolution No. 2011-1 of 4 January 2011, available at <http://www.csa.fr/Espace-juridique/Deliberations-et-recommandations-du-CSA/Recommandations-du-CSA-en-vue-de-consultations-electorales-ou-referendaires/Deliberation-du-4-janvier-2011-relative-au-principe-de-pluralisme-politique-dans-les-services-de-radio-et-de-television-en-periode-electorale>.

¹⁸ See Ordinance No. 58-1067 of 7 November 21958 for a detailed account.

IV. CONCLUSION AND RECOMMENDATION

All OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality and professionalism of the election administration and their ability to organize elections in an effective manner. No significant concerns were expressed relating to the respect for fundamental freedoms, the transparency of the electoral process, the campaign environment, and election day proceedings. Some interlocutors mentioned concerns over political finance regulations and oversight and the complexity of media regulations. In addition to conventional voting, the Election Code allows out-of-country voters to vote via the internet for the first time.

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ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs:

François SAINT-PAUL, Directorate of the French Abroad and Consular Administration, Director

Marc FLATTOT, Directorate of the French Abroad and Consular Administration, Chief of Mission

David PEREZ, Directorate of the French Abroad and Consular Administration, Chief of Electronic Voting

Pascal DELUMEAU, Mission for International Civil Servants

Mathieu JAGOUR, Sub-Directorate of Arms Control and OSCE, Editor

Ministry of Interior:

Pascal COURTADE, Bureau of Elections and Political Studies, Deputy Chief

Constitutional Council:

Caroline PÉTILLON, Head of External Relations

Guy PRUNIER, Legal Department, Policy Officer for Elections

National Institute of Statistics and Economic Studies:

Richard MERLEN, Department of Demography, Deputy Chief

National Commission for Control of Electoral Accounts and Political Finance:

Barbara JOUAN, Legal Expert

Supreme Audiovisual Council:

Dominique LOUVEAU, Department of Pluralism, Chief

Gil MOUREAX, Department of European and International Affairs, Chief

Mairie of Issy-les-Moulinaux:

Marie-Paule SAMSON, Department of Demographic Services and General Affairs, Director

Stéphane CESBRON, Department of Electoral Services, Chief

Green Party:

Sylvain GAREL, Member of the Council of Paris

NGO Regards Citoyens:

Tanguy MORLIER, Member

Benjamin OOGHE-TABANOU, Member