



Office for Democratic Institutions and Human Rights

GRAND-DUCHY OF LUXEMBOURG

PARLIAMENTARY ELECTIONS

14 October 2018

ODIHR NEEDS ASSESSMENT MISSION REPORT

12-14 June 2018



Warsaw
1 August 2018

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I. INTRODUCTION

Following an invitation from the government of the Grand-Duchy of Luxembourg to observe the 14 October 2018 parliamentary elections, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) to Luxembourg from 12 to 14 June 2018. The NAM included Ana Rusu, ODIHR Senior Election Adviser, and Radivoje Grujić, ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the elections. Based on this assessment, the NAM recommends whether to deploy an ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions and the election administration, as well as representatives of political parties, media and civil society. A list of meetings is annexed to this report.

ODIHR would like to thank the Ministry of Foreign Affairs, including its Delegation to the OSCE, for their assistance in organizing the visit. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM and for sharing their views.

II. EXECUTIVE SUMMARY

In line with the legislation, the parliamentary elections will be held on 14 October 2018. The Grand-Duchy of Luxembourg is a constitutional monarchy headed by a Grand Duke based on a parliamentary representative system. Legislative power lies with the parliament while executive power is exercised by the government and the Grand Duke. The Prime Minister is usually the leader of the political party that won the most seats in the parliament.

Parliament consists of 60 members elected directly for a five-year term through an open list proportional system in 4 constituencies, each differing in the number of MPs elected. Some ODIHR NAM interlocutors opined that the constituency delineation should be reviewed to reflect movements of population between the constituencies in recent years, while others considered that for parliamentary elections there should be only one constituency for whole country. A voter can opt to fill in the ballot by three methods and has as many votes as the number of mandates in the given constituency.

The parliamentary elections are primarily regulated by the Constitution and a unified electoral law. Recent amendments to the electoral law introduced, among other changes, new rules related to the start and end dates for the mandate of deputies, extended possibility for postal voting to all citizens, and provided for the use of tactile ballot sleeves by voters with visual impairments.

Elections are administered by a number of state bodies, including the Ministry of State (MoS), 4 Constituency Electoral Offices, 102 Municipal Electoral Offices and some 630 polling stations. All ODIHR NAM interlocutors expressed full confidence in the professionalism and impartiality of the election administration.

All citizens who are 18 or older have the right to vote, except those sentenced for felony or for offences resulting in a court-ordered revocation of the right to vote. People under guardianship for civil incapacity are also disenfranchised, contrary to international standards. Voter registration is passive and

voter lists are based on the population register. No concerns were expressed regarding the accuracy of the voter lists.

Right to stand for elections is granted to eligible voters who reside in country. The law provides for a number of positions incompatible with the right to stand. Candidate lists can be put forward by political parties or groups of candidates. A candidate can be included in only one list in no more than one constituency. There is the possibility to register an individual candidate as a list.

Women are underrepresented in the political life, with 17 MPs in the outgoing parliament, and 4 in the current Government. The 2016 amendments to the law on political party financing introduced incentive mechanisms for lists that have at least 24 candidates of the same gender.

Legislation provides for both public and private funding of political parties. There are no limits on campaign spending and donations. Anonymous donations and contributions from legal entities are forbidden. Only parties qualified for public funding and wishing to receive public reimbursement are obliged to submit annual reports, which are published on parliament's website.

Election campaigning is generally unregulated and the framework and conditions are usually agreed between political parties contesting the elections. The campaign is expected to focus on economic growth and strategic future planning, social policies, housing, infrastructure and mobility of citizens, and to rely on the use of the Internet and social media.

The media coverage of the election campaign is not regulated by the law and is subject of agreement before every election between the media and political parties, in a process co-ordinated by the MoS's Information and Press Service. The agreement should contain details related to time allocated to each candidate list free of charge, duration of TV and radio spots for these purposes, timetable, number and format of debates with representatives of candidate lists. An agreement is still pending on the format of the debates.

Except for issues related to voter registration, there are no special terms and expedited deadlines for other election-related appeals. The newly elected parliament is the only instance at which the election results can be appealed. Several interlocutors met with by the ODIHR NAM raised concern for the lack of judicial control over the validation of election results.

All ODIHR NAM interlocutors expressed a high level of confidence in the electoral process as well as the ability of the election administration to manage the elections in a professional, impartial and transparent manner. No significant concerns were expressed relating to the respect for fundamental freedoms, the campaign environment, and election day proceedings. While noting the potential usefulness of an external assessment, most interlocutors stated that there is no specific need for an observation activity. Based on these findings, ODIHR NAM does not recommend an election-related activity for these elections. In principle, any electoral process and system can benefit from independent and impartial examination and advice, also outside the campaign period. ODIHR encourages the authorities of Luxembourg to engage in future electoral reform and stands ready to assist them, including with a possible review of any current or draft electoral legislation.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

The Grand-Duchy of Luxembourg is a constitutional monarchy headed by a Grand Duke based on a parliamentary representative system. Legislative power lies with the parliament while executive power is exercised by the government and the Grand Duke. The Prime Minister is usually the leader of the political party that won the most seats in the parliament.

The outgoing parliament was elected in early elections in October 2013 when six parties gained mandates.¹ Current Government is supported by coalition of Democratic Party (DP), Luxembourg Socialist Workers' Party (LSAP) and The Greens, with a Prime Minister from DP. Women are underrepresented in the political life, with 17 out of 60 MPs in the outgoing parliament, and 4 out of 15 in the current Government.

In 2015 a constitutional referendum was organized with proposals to lower the voting age from 18 to 16, expand voting rights in national elections to non-citizen residents and limit ministerial functions. All three proposals were rejected.²

ODIHR previously did not observe national elections in Luxembourg. It did, however, undertake an election visit to Luxembourg in 2009 as part of the assessment of the European Parliament elections.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The parliamentary elections are primarily regulated by the Constitution (adopted in 1868 and last amended in 2011) and a unified electoral law (adopted in 2003 and last amended in 2018) which regulates different aspects of the organization of parliamentary, local and European Parliament elections. In addition, there are a number of other regulations related to the conduct of elections. Luxembourg is a party to major international and regional instruments related to democratic elections.³

Recent amendments to the electoral law introduced, among other changes, new rules related to start and end dates for the mandate of deputies, extended possibility for postal voting to all citizens, and provided for the use of tactile ballot sleeves by voters with visual impairments.

Parliament consists of 60 members (MPs), elected directly for a five-year term, through an open list proportional system in four constituencies: Centre, East, North, and South.⁴ The electoral law defines the number of MPs elected in each constituency based on their population size as following: South – 23, Centre – 21, North – 9, and East – 7.⁵ While some ODIHR NAM interlocutors opined that the constituency delineation should be reviewed in order to take into account movements of population

¹ Christian Social People's Party (CSV) 23 MPs, LSAP 13 MPs, DP 13 MPs, The Greens 6 MPs, Alternative Democratic Reform Party 3 MPs, and The Left 2 MPs.

² A draft proposal for a new Constitution reflecting *inter alia* the results of the referendum will be submitted to the newly elected parliament.

³ Including the 1950 European Convention on Human Rights (ECHR), 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and 2006 Convention on the Rights of Persons with Disabilities (CRPD). Luxembourg is also a member of the Council of Europe's Venice Commission, and the Group of States against Corruption (GRECO).

⁴ The boundaries of constituencies correspond to those of geographic regions and administrative units.

⁵ The largest constituency is South with 40 per cent of the total population while the smallest constituency is East with 12 per cent of the population.

between the constituencies in recent years, others considered that for parliamentary elections there should be only one constituency for the whole country.

A voter can have as many votes as the number of mandates in the given constituency. There are three methods of filling in the ballot: 1) the voter can cast a vote for a list as a whole, in which case all votes go for that party; 2) the voter can vote preferentially by distributing votes among candidates of choice in one candidate list and casting a maximum of two votes for any candidate; 3) the voter may choose to cast a vote across candidate lists, splitting the votes among several parties (*panachage*). Each party is allocated a number of seats proportionally to the total number of votes cast for its candidates in that constituency. These seats are then allocated to party's candidates in the order of votes received by each candidate.

C. ELECTION ADMINISTRATION

Under the lead of the Ministry of State (MoS), responsibility for the organization of parliamentary elections is shared between a three-tiered structure of election boards established within the judicial structures, and municipalities. In addition to the MoS, these include 4 Constituency Electoral Offices (CEOs), 102 Municipal Electoral Offices (MEOs) and some 630 polling stations (PS).

The MoS oversees the technical and organizational aspects, including the preparation of voting materials and documents facilitating the conduct of the electoral process. Municipalities are responsible, among other things, for the allocation of polling premises, distribution of invitations to vote, voter list compilation and update. In addition, a centralization office is established by the government for election day data and results collection and processing to ensure the publication of preliminary results as they become available.

The CEOs are chaired by the presidents of district tribunals, who appoint other six members and a secretary. MEO and PS chairpersons are appointed by the chairpersons of higher election office from among the judges of the respective levels of courts or voters from corresponding municipalities. Chairpersons subsequently appoint their respective election boards' members and secretaries. Besides requirement of being voters from the respective municipality and not having family ties with candidates, there are no other explicit criteria for the appointment of election boards.

For these elections, based on recent amendments to the electoral law, the authorities will prepare sleeves with Braille alphabet, to assist voters with visual impairments in exercising their right to vote. While there are no special provisions in the legislation to ensure access to polling stations for voters with physical disabilities, no ODIHR NAM interlocutors expressed concerns related to accessibility of polling stations and ability of all voters to vote, including via post. In addition, ODIHR NAM was informed about a draft law introducing fines for municipalities that will fail to provide accessible polling stations.

While the electoral law provides for candidate lists' representatives to election boards, political parties met with by the ODIHR NAM shared that they do not plan to deploy such representatives as they have full confidence in the professionalism of the election administration and the conduct of elections.

The authorities informed the ODIHR NAM about planned awareness raising campaign on recent changes, including postal voting for all voters. In 2016, the MoS, together with the Ministry of Education, set up a foundation which aims at promoting and improving the political education of young

people. Also, election-related information will be published by the MoS's Information and Press Service.⁶

D. VOTER REGISTRATION

Citizens, who are 18 or older by election day, and enjoy civil and political rights, have the right to vote. Persons sentenced for felony or for offences resulting in a court-ordered revocation of the right to vote are deprived of voting rights.⁷ Also, persons of full age under guardianship for civil incapacity do not have right to vote, contrary to international standards.⁸

Voting is compulsory and fines are envisaged for failure to participate in elections. The obligation to vote is waived for people over 75 years of age and those who are away from their locality on election day.⁹ ODIHR NAM interlocutors did not express concerns about obligation to vote and informed that in practice the sanction is not applied.

Voter registration is passive and voter lists are based on residence register, maintained by the college of the mayor and aldermen, responsible to register all changes of voters' residence as they occur. Voters can check their names on the lists that are posted for public scrutiny for a period of a week. During this period, voters can address the respective college of the mayor and aldermen with requests of changes to the data, and in second instance the administrative court. No ODIHR NAM interlocutors raised concerns related to voter registration process and accuracy of voter lists.

As of these elections, the possibility to vote by post is extended to all eligible voters.¹⁰ To be able to use this method of voting, voters should apply for it with the municipality of the place of last residence in-country, starting from 12 weeks before election day and no later than 30 days prior to elections. Requests for postal ballot can also be made electronically. Municipalities should send ballots to voters residing in country 15 days prior to election day at the latest and 30 days prior to election day if they have to be sent abroad. Ballots from voters residing in country should be sent to respective PS, while ballots from abroad are sent to the President of the CEOs. To be taken into account, the postal ballots must reach respective PS/CEO by closing of polls on election day at the latest.

All ODIHR NAM interlocutors welcomed the possibility for all voters to vote by post, emphasizing that since voting is compulsory, this possibility will ease voters' ability to exercise their duty.

E. CANDIDATE REGISTRATION

Right to stand for elections is granted to eligible voters who reside in country. The law provides for a number of positions incompatible with the right to stand.¹¹ Members of the executive branch or of the Council of State, if elected to the parliament, need to resign from their previous post to keep the mandate of deputy.

⁶ See the [Information and Press Service website](#).

⁷ According to the Criminal Code a felony is the highest penalty in Luxembourg punishable with at least 5 years up to life imprisonment. Persons sentenced for misdemeanor may be deprived of their voting rights for a period from 5 to 10 years.

⁸ The UN Committee on the Rights of Persons with Disabilities (UN CRPD) expressed concerns "that the rights of persons with disabilities under guardianship to vote and be elected remain restricted by law." See the UN CRPD "[Concluding observations on the initial report of Luxembourg](#)", (10 October 2017), CRPD/C/LUX/CO/1, para. 50.

⁹ The fines range from EUR 100 to 250. In the event of a repeated offence, the fine is EUR 500 to 1,000.

¹⁰ For voters abroad, this is the only option to vote.

¹¹ Such as civil servants, Judicial Court magistrates, members of the Court of Auditors, the district commissioners, and active members of the military. There is also a legal provision prohibiting those related by blood, marriage or partnership, up to the second degree, to be deputies at the same time or to sign for a relative in the candidate nomination process.

Candidate lists can be put forward by political parties or groups of candidates.¹² The nomination of candidate lists should be supported either by 100 voters registered in the relevant constituency, by a current member of the parliament elected from that constituency who is not running for elections, or three municipal councillors elected in the municipalities of the relevant constituency. A candidate can be included in only one list in no more than one constituency. The lists should not contain more candidates than the number of mandates in the constituency. There is the possibility to register an individual candidate as a list. There are no clear procedures on signature verification. The ODIHR NAM was told that the only data that is being checked is whether the person who signed support is an eligible voter, against data from National Registry of Physical Persons. However, ODIHR NAM was informed that almost all parties are choosing their lists to be supported by current MP or municipal councillors, so signature submission occurs very rarely.

Candidate lists are to be submitted to the respective CEO in two days period between 65 and 60 days prior to elections. The CEOs should verify candidate list submission immediately upon submission, and to provide list to the MoS. If the CEO has reasonable doubt about the eligibility of a potential candidate, it can urgently task the public prosecutor to check on the conditions. While there are no formal quota requirements for women's representation, several parties met with by the ODIHR NAM informed that they apply internal quota rules for women and youth representation in their candidate lists. In addition, the 2016 amendments to the law on political party financing introduced incentive mechanisms for lists which have at least 24 candidates of the same gender.¹³ The UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern that the measure is gender-neutral.¹⁴

F. ELECTION CAMPAIGN

Election campaigning is generally unregulated and the framework and conditions are usually agreed between political parties contesting the elections. There is no official campaign period set by law and campaigning may take place up to and including on election day. The Constitution guarantees freedoms of association, assembly and expression and no ODIHR NAM interlocutors expressed serious obstacles concerning their ability to campaign freely.

The campaign is expected to be focused on economic growth and strategic future planning, social policies, housing, infrastructure and mobility of citizens. While traditional campaign methods will be in place, including meetings, posters, and canvassing, it is widely expected that campaign will rely heavily on the use of the Internet and social media.

Political parties met with by ODIHR NAM informed that there is an ongoing discussion between parties on agreeing on rules for the upcoming campaign. The agreement should contain the decision on when the campaign should start, but also on the limit to the paid advertisement in the media.

¹² There is no formal registration requirement for political parties.

¹³ The amendments introduced the scale of reimbursement of public funds for parties, with full reimbursement only for those parties who fulfilled this criterion, and lowering percentage of reimbursement for those who had fewer than 24 candidates out of 60 of one gender.

¹⁴ See the UN CEDAW "[Concluding observations on the combined sixth and seventh periodic reports of Luxembourg](#)" (14 March 2018), CEDAW/C/LUX/CO/6-7, para. 36.

G. CAMPAIGN FINANCE

Campaign finance is part of political party financing, regulated primarily by the Law on the Financing of Political Parties and the electoral law. While legislation provides for both public and private funding of political parties, in practice, parties heavily rely on subsidies received from the state.¹⁵

While anonymous donations and contributions from legal entities are forbidden, donations from abroad are allowed, as long as they are provided by individuals. There are no limits on campaign spending and donations.

To qualify for annual state subsidies, parties have to fulfill three cumulative conditions: to put forward full candidate lists in all four constituencies in parliamentary elections; to submit full list in European Parliament elections; and to receive at least two per cent of all the votes cast, in both parliamentary and European Parliament elections. In addition, for national elections, the state provides corresponding reimbursement of campaign-related spending to parties that put forward full lists in all four constituencies and gained at least one seat in the parliament, as well as costs of one postal campaign mailing to voters in a constituency to parties that gained at least five per cent of valid votes in that constituency.

Financial and in-kind donations exceeding 250 EUR and the identity of donors must be reported by political parties in the framework of annual financial reports. Only parties qualified for public funding and wishing to receive public reimbursement are obliged to submit annual reports, covering income and expenditure, accompanied with supporting documentation to the Court of Audit by 1 July of each year. The Court of Audit submits its report on the results of the verification to the parliament by 31 December, which publishes it on its website.

The Group of States against Corruption (GRECO) of the Council of Europe previously concluded that there was a need to further refine political party and campaign finance regulation to ensure a satisfactory level of transparency.¹⁶

H. MEDIA

The media environment is pluralistic and television and radio are considered to be the main sources of information, followed by newspapers which are publicly affiliated to political parties.¹⁷

The main television channel is owned by a private company Radio Télévision Luxembourg (RTL), which has the contractual obligations of a public service broadcaster. There is also a public broadcast radio 100.7. Only public broadcasters are required to respect a campaign silence period on the day before the elections and the election day itself.

The media coverage of the election campaign is not regulated by the law and is subject of agreement before every election between the media and political parties, in a process coordinated by the MoS's Information and Press Service. The agreement should contain details related to time allocated to each candidate list free of charge, duration of TV and radio spots for these purposes, timetable, number and format of debates with representatives of candidate lists. The ODIHR NAM was informed that several

¹⁵ Currently, 75 per cent of expenses by parliamentary parties are covered by public funding.

¹⁶ See the 2012 GRECO [Second Compliance Report](#) on Luxembourg on "Transparency of Political Party Funding", of the Third Evaluation Round.

¹⁷ It is publicly acknowledged, both by parties and newspapers themselves that *Luxemburger Wort* supports CSV, *Tageblatt* supports LSAP, and *Letzebuurger Journal* supports DP.

meetings were held up to date between interested parties, however an agreement is still pending on the format of the debates. RTL informed ODIHR NAM that it plans to organize a number of other election-related programs, debates, interviews, as well as to cover elections as part of its editorial coverage. Some ODIHR NAM interlocutors perceive the current system of agreement between the political parties as interference that could jeopardize editorial freedom of broadcasters.

The Independent Audiovisual Authority of Luxembourg (ALIA) is in charge of broadcast media oversight. It has the power to issue sanctions, such as warnings, fines or, ultimately, to withdraw local radio licences, as well as to suggest to the government whether to suspend or withdraw TV and radio licences.

I. COMPLAINTS AND APPEALS

Except for issues related to voter registration, where complaints can be filed with administrative court, there are no special terms and expedited deadlines for other election-related appeals, and they are to be dealt with and decided in line with general administrative procedures. The newly elected parliament is the only instance at which the election results can be appealed.

No ODIHR NAM interlocutors expressed concerns related to electoral dispute resolution, stating that there is a longstanding tradition of well administered elections and that remedy is rarely needed. At same time, several interlocutors met with by the ODIHR NAM thought that the judicial control over validation of election results should be introduced.¹⁸

IV. CONCLUSION AND RECOMMENDATION

All ODIHR NAM interlocutors expressed a high level of confidence in the electoral process as well as the ability of the election administration to manage the elections in a professional, impartial and transparent manner. No significant concerns were expressed relating to the respect for fundamental freedoms, the campaign environment, and election day proceedings. While noting the potential usefulness of an external assessment, most interlocutors stated that there is no specific need for an observation activity. Based on these findings, ODIHR NAM does not recommend an election-related activity for these elections. In principle, any electoral process and system can benefit from independent and impartial examination and advice, also outside the campaign period. ODIHR encourages the authorities of Luxembourg to engage in future electoral reform and stands ready to assist them, including with a possible review of any current or draft electoral legislation.

¹⁸ According to ODIHR NAM interlocutors such control is currently introduced in the draft amendments to the Constitution. Paragraph 18.4 of the 1991 OSCE Moscow Document states that “the participating States will endeavour to provide for judicial review of such [administrative] regulations and decisions.” Section II.3.3.a of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that “Appeal to parliament, as the judge of its own election, is sometimes provided for but could result in political decisions. It is acceptable as a first instance in places where it is long established, but a judicial appeal should then be possible”.

ANNEX: LIST OF MEETINGS

Ministry of Foreign and European Affairs

H.E. Marc Bichler, Ambassador-at-Large for Human Rights
Laurent Weyland, Focal Point for Election Observation Missions
Joaquim Monteiro, General Secretariat

Ministry of State

Manuel Dillmann, Counselor, Head of Electoral Process Division
David Del Nin, Legal Department
Anne Greiveldinger, Attachée, Legal Department
Carole Schmitz, Attachée, Finance Department

Ministry of Interior

Laurent Knauf, General Coordination

Information and Press Services of the Government

Jean-Claude Olivier, Director

Government IT Center

Nico Majerus, Deputy Director

Court of Auditors

Marie-Jeanne Conter, Counsellor
Tom Heintz, Counsellor

Luxembourg District Court

Joseane Schroeder, President

Independent Audiovisual Authority of Luxembourg

Thierry Hoscheit, President
Romain Kohn, Director

Political Parties

Jean Schoos, President, Alternative Democratic Reform Party (ADR)
Gast Giberien, Member of Parliament, Chair of parliamentary group, ADR
Laurent Zeimet, Secretary General, Christian Social People's Party
Claude Lamberty, Member of Parliament, Democratic Party
Jeff Feller, Democratic Party
Christian Kmiotek, President, The Greens
Marc Baum, Member of the Parliament, The Left Party
Carole Thoma, Spokesperson, The Left Party
Alex Bodry, President of the Parliamentary Faction, Socialist Worker's Party
Marc Angel, Member of Parliament, Socialist Worker's Party

Media

Steve Schmit, RTL Television Luxembourg, Program Director
Jean-Claude Franck, Radio 100.7 Editor-in-Chief
Luc Caregari, Association of Professional Journalists of Luxembourg

Civil Society

Sergio Ferreira, Support Association for Immigrant Workers (ASTI)
Fabienne Rossler, Human Rights Commission (CCDH)
Claude Weber, Action Luxembourg Ouvert et Solidaire - League for Human Rights (ALOS-LDH)
Kim Nommesch, Project Manager, Center for Political Education