



Office for Democratic Institutions and Human Rights

# PORTUGAL

## EARLY PARLIAMENTARY ELECTIONS

30 January 2022

### ODIHR NEEDS ASSESSMENT MISSION REPORT

22-26 November 2021



Warsaw  
21 December 2021

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**ODIHR Needs Assessment Mission Report**

## **I. INTRODUCTION**

Following an official invitation to observe the 30 January 2022 early parliamentary elections in Portugal, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 22 to 26 November 2021. The NAM included Alexey Gromov, ODIHR Senior Election Adviser, and Dr. Martina Barker-Ciganikova, ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and preparations for the early parliamentary elections. Based on this assessment, the NAM should recommend 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 as well as with 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 for its assistance and co-operation in organizing the NAM. 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**

Portugal is a semi-presidential republic, with legislative powers vested in the unicameral parliament. Following the parliament's rejection of the draft 2022 state budget, on 5 December, in accordance with the Constitution, the president dissolved the parliament and called for early parliamentary elections on 30 January 2022. Political parties will contest for the 230 parliamentary seats under a proportional closed list system in 22 multi-member constituencies.

The legal framework for elections consists of numerous fragmented pieces of legislation that regulate specific aspects of the electoral process. Despite this, most ODIHR NAM interlocutors expressed overall satisfaction with the electoral legal framework. All interlocutors welcomed the amendments made ahead of the elections that expanded alternative voting methods due to the COVID-19 pandemic. Many prior ODIHR recommendations remain unaddressed, such as on the disenfranchisement of persons with mental disabilities, lack of provisions for independent candidates and for observers, decriminalization of defamation, proper oversight of campaign finance and adjudication of media related complaints.

The elections are administered by a number of institutions both at the national and local levels. The National Election Commission (NEC) is responsible for oversight of the electoral process, while 22 Tabulation Centre Commissions and some 14,000 Polling Station Commissions conduct election day procedures. The Ministry of Internal Administration (MoI) together with the local government structures are in charge of the logistical and administrative tasks. District courts are responsible for candidate registration. All ODIHR NAM interlocutors expressed trust in the integrity and professionalism of the institutions administering the elections, including in the conduct of election day procedures. The NEC and MoI informed the ODIHR NAM about organizational challenges regarding preparation of early elections and implementation of anti-pandemic measures, such as expected shortage of polling staff, allocation of additional polling stations, including for early voting, while also ensuring accessibility for voters with mobility impairment.

Voter registration is passive, and all citizens of at least 18 years of age are eligible to vote, unless explicitly revoked of this right by a court decision for a grave criminal offence. Restrictions on the right to vote for those with intellectual and psychosocial disabilities remain, contrary to international standards. The centralized electronic voter register, which includes some 10.8 million voters, is drawn from the population register database maintained by the MoI. Voter lists are available for public scrutiny, and voters can request correction of their data. Overall, ODIHR NAM interlocutors expressed confidence in the accuracy and inclusiveness of the voter register.

All citizens who have the right to vote are eligible to stand as candidates, with the exception of certain high level public officials. Individual candidates are not allowed to contest, and only political parties may nominate candidate lists. ODIHR NAM interlocutors raised no concerns regarding inclusivity of the candidate registration process.

The outgoing parliament had 40 per cent of women among its members. The law provides that in order for a candidate list to be registered, each gender must account for a minimum 40 per cent representation, with each gender among every three consecutive candidates. While some parties noted difficulties in fielding a sufficient number of female candidates, civil society interlocutors informed the ODIHR NAM about the perceived lack of diligent efforts by many parties to promote the electoral participation of women.

Political parties that the ODIHR NAM met with expressed confidence in their ability to campaign freely. Nevertheless, most interlocutors noted increased use of xenophobic discourse, including what they referred to as “hate speech” as well as continued instances of sexist rhetoric and negative commentary about women candidates, in particular online. These interlocutors also highlighted possible implications of this on the participation of women and marginalized groups in political life. The official campaign period lasts 14 days, and campaign strategies and outreach methods are expected to evolve depending on the extent of COVID-19 related restrictions. The legislation provides for equal campaign conditions and prohibits campaigning by public entities. Economic recovery amid the pandemic is anticipated by most ODIHR NAM interlocutors to dominate as campaign topic.

Public and private funding is permitted in election campaigns, and the law sets individual donation and expenditure limits. Contestants are not required to submit an interim report before election day. The financing of political parties and campaigning by third parties is not regulated. Some ODIHR NAM interlocutors expressed concern that the activities of these private entities and potential misuse of removal of income limits from party fundraising events might circumvent campaign finance rules. The oversight entity audits campaign finance reports submitted by each contesting party after the elections and may impose graduated sanctions for violations.

Portugal enjoys a free and diverse media environment. The law provides for equitable coverage of election contestants, prevents the undue concentration of media ownership and sets guarantees of independence of the public broadcasters. Contrary to international standards, defamation, insult, and slander remain criminalized. Some ODIHR NAM interlocutors noted certain political bias by private media, but generally expressed confidence in the overall conduct by media in election campaigns.

Citizens have the right to challenge decisions, actions or inactions that impact their election rights to the election commissions and courts. The NEC handles complaints and imposes sanctions for violations with respect to equal treatment of voters and contestants. Election-day related complaints are decided upon at polling stations and further reviewed by higher-level election commissions. The Constitutional Court rules on complaints related to candidate registration and election results as well as against the NEC

decisions. No ODIHR NAM interlocutors raised concern about the effectiveness of the election dispute resolution process.

Majority of interlocutors welcomed a potential ODIHR observation activity for the upcoming elections, but many opined it was not necessary as they had confidence in the democratic process in Portugal. Still, several ODIHR NAM interlocutors noted that certain aspects, such as preparations for the expanded use of alternative voting methods due to COVID-19 pandemic restrictions, the campaign, including online, and practical implication of the regulatory framework for campaign financing would merit specific attention by ODIHR. Further, many ODIHR NAM interlocutors highlighted possible implications of negative campaign rhetoric on participation of women in elections. On this basis, the ODIHR NAM recommends deploying an Election Expert Team for the 30 January 2022 early parliamentary elections to assess the election administration, campaign, women's electoral participation and campaign finance. ODIHR also encourages the authorities to consider previous recommendations, which remain unaddressed and reaffirms its readiness to support Portugal in a post-electoral reform process.

### III. FINDINGS

#### A. BACKGROUND AND POLITICAL CONTEXT

Portugal is a semi-presidential republic, with legislative powers vested in the 230-member unicameral parliament (Assembly of the Republic). Executive powers are exercised by the government led by the prime minister who is appointed by the president, who is directly elected.

Following the last parliamentary elections on 6 October 2019, nine political groups gained representation in parliament: the Socialist Party (PS, 108 seats), Social Democratic Party (79 seats), Left Bloc (19 seats), Unitary Democratic Coalition (UDC, 12 seats),<sup>1</sup> the People's Party (5 seats), People-Animals-Nature (4 seats) and three first-time entries with 1 seat respectively, the Chega party, the Liberal Initiative and LIVRE. PS formed a minority government, with Antonio Costa as Prime Minister. In the outgoing parliament, 92 members (40 per cent) are women.<sup>2</sup>

On 27 October 2021, the parliament rejected the draft 2022 state budget proposed by the government. On 5 December, the President of the Republic, Marcelo Rebelo de Sousa, officially dissolved the parliament, 55 days before holding of the elections, in accordance with the Constitution.<sup>3</sup> To set the date, the president consulted all parliamentary parties, and none of the parties the ODIHR NAM met with expressed any disagreement with the holding of early elections.

ODIHR has previously observed two elections in Portugal.<sup>4</sup>

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<sup>1</sup> UDC is a political coalition between the Portuguese Communist Party and the Ecologist Party "The Greens".

<sup>2</sup> In addition, 8 of 19 government ministers and 17 of 40 state secretaries are women. [The UN Human Rights Committee 2020 Concluding Observations on the fifth periodic report of Portugal](#) (28 April 2020, CCPR/C/PRT/CO/5, paragraph 3) positively noted the 2019 increase of the minimum threshold of women in candidate lists and minimum 40 per cent threshold of women among top civil servants in public administration, public higher education institutions and public associations.

<sup>3</sup> Prior to the official dissolution, on 4 November, the president announced early parliamentary elections to be held on 30 January 2022.

<sup>4</sup> See all previous [ODIHR election-related reports on Portugal](#).

## B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Parliamentary elections are primarily regulated by the 1976 Constitution and the 1979 Law on Parliamentary Elections (hereinafter election law).<sup>5</sup> The electoral legal framework is also comprised of several laws regulating specific aspects of the process, such as the laws on the National Election Commission (NEC), on the voter register, on out-of-country voting, on political parties, on funding of political parties and campaigns, on the right of assembly, on media coverage of elections, on the format of political campaigns, and on opinion polls.<sup>6</sup> While the legislation allows contestants to observe election day proceedings, it does not provide for citizen or international election observation, which is not fully in line with paragraph 8 of the 1990 OSCE Copenhagen Document.<sup>7</sup> The laws are further supplemented by subsidiary regulations.<sup>8</sup> In general, ODIHR NAM interlocutors expressed satisfaction with the electoral legal framework, nevertheless some pointed to the fact that the legislation is too voluminous and, at times, lacks clarity.

In November 2020, legislative changes were introduced due to the COVID-19 pandemic, which expanded opportunities for early voting and allowed for voting in self-isolation for all elections and referenda scheduled to take place in 2021. In November 2021, these amendments were extended for the 2022 elections. All ODIHR NAM interlocutors welcomed these changes and deemed them necessary to adapt procedures to the COVID-19 pandemic.

Many prior ODIHR recommendations remain unaddressed, including those regarding the need to address the consolidation of the electoral legal framework, disenfranchisement of persons with mental disabilities, lack of provisions for independent candidates and for observers, decriminalization of defamation, oversight of campaign finance, and media related complaints.<sup>9</sup>

Members of parliament are elected through a proportional system for four-year terms from closed lists in 22 multi-member constituencies, including 2 constituencies for the autonomous regions of Azores and Madeira, and 2 constituencies for voters residing in Europe and elsewhere abroad. On 6 December, the NEC allocated the number of parliamentary seats per constituency based on the number of registered voters respecting the principle of equality of the vote across most constituencies.<sup>10</sup> There is no electoral threshold for political parties to obtain parliamentary seats, and seats are allocated among the parties in accordance with the d'Hondt method. Elected deputies enjoy a free mandate but cannot join a party other than their nominating party without losing their seat in parliament.

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<sup>5</sup> Portugal is party to major international and regional instruments related to the holding of democratic elections, including the 1966 International Covenant on Civil and Political Rights, 1979 Convention for the Elimination of All Forms of Discrimination against Women, 1965 Convention on the Elimination of All Forms of Racial Discrimination, the 2006 Convention on the Rights of Persons with Disabilities (CRPD), the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the 1995 Framework Convention on the Protection of National Minorities. Portugal is a member of the Council of Europe's European Commission for Democracy through Law (Venice Commission) and Group of States against Corruption (GRECO).

<sup>6</sup> In February 2020, the parliament established a working group comprised of representatives of all parliamentary parties, MoI and the NEC, with the aim of defining possible options for consolidation of the electoral legislation.

<sup>7</sup> Paragraph 8 of the 1990 OSCE Copenhagen Document states that participating States "consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place".

<sup>8</sup> The NEC together with the Ministry of Health have developed joint guidelines on voting procedures aimed at protecting public health.

<sup>9</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations". See ODIHR Electoral Recommendations Database [Paragraph25.odihr.pl](#).

<sup>10</sup> Average number of votes in all but out-of-country constituencies deviates within 15 per cent from national average.

### C. ELECTION ADMINISTRATION

The elections are administered by a number of institutions on the central, district and local levels of public administration and by a three-tiered structure of election commissions: the NEC, 22 Tabulation Centre Commissions (TCCs) and some 14,000 Polling Station Commissions (PSCs). In addition, the General Secretariat of the Ministry of Internal Administration (MoI) along with regional and local government structures (including 308 municipal authorities and some 3,000 parishes), are in charge of the logistical and administrative preparations for elections.<sup>11</sup> All ODIHR NAM interlocutors expressed trust in the integrity and professionalism of election administration, including in the conduct of election day procedures.

The NEC is responsible for general oversight of the electoral process, including equal treatment of voters and contestants, voter education and the publication of election results. The NEC is comprised of a Supreme Court judge, who serves as the chairperson, representatives of the MoI, Ministry of Justice, the media regulator as well as members appointed anew by the parliamentary parties after every parliamentary elections. The current NEC consists of 11 members, 4 women and 7 men. There are no legal provisions for gender composition of election management bodies, and no gender-disaggregated data is collected. The NEC's meetings are not public contrary to previous ODIHR recommendations.

The TCCs are responsible for tabulation of results and allocation of mandates in each of the 22 constituencies. Each TCC is chaired by a judge of the district court and is comprised of a secretary and 11 members, including 2 lawyers appointed by the chairperson, 2 mathematicians appointed by the Ministry of Education and Culture or, in Azores or Madeira, by the Minister of the Republic, and 6 chairpersons of the PSCs of the respective constituency, selected by the district court. The TCCs and PSCs are temporary bodies formed only for the election period.

The PSCs are in charge of administering the elections at polling stations. Each PSC consists of five members, including a chairperson, a deputy, a secretary and two clerks. The mayor of each parish appoints PSC members on the basis of nominations of parties contesting the elections. In case of insufficient party nominations, the mayor may compel citizens who are residents of the election precinct to serve as a PSC member, though certain categories of citizens may opt out of this service, such as the elderly, sick, or those residing abroad. The NEC and the MoI informed the ODIHR NAM about difficulties in identifying a sufficient number of polling staff in previous elections. Such a shortage is expected also for these elections given the increased number of polling stations as a response to the COVID-19 pandemic. Although the law does not require that PSC members receive any form of training related to election day procedures, the NEC and the MoI produce guidance documents and manuals.

The MoI informed the ODIHR NAM about logistical challenges to prepare the early elections, mostly due to the health crisis, but also due to the fact that the number of polling stations increased since the last presidential election from some 12,000 to 14,000.<sup>12</sup> The ODIHR NAM was informed that this puts additional pressure on the local government structures to identify locations accessible for voters with mobility impairment. The MoI maintains voter registration and election results management systems. It is also responsible for providing public information, including voter education and information materials about the location of polling stations, and ensuring unimpeded access.

Voting is conducted in-person, and voters have multiple possibilities to cast their ballots. In addition to election-day voting at polling stations, early and mobile voting options are available. Voters abroad can

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<sup>11</sup> Each municipality is sub-divided into several parishes.

<sup>12</sup> Following the 2019 parliamentary elections, the maximum number of voters per polling station was reduced from 1,500 to 1,000, and for these elections – further reduced to 750.

also cast their ballot by post.<sup>13</sup> Early voting takes place on the Sunday one week prior to election day and since 2019 is now available to all voters upon request submitted online or by post without providing a justification.<sup>14</sup> These requests must be submitted 10 to 14 days before election day. Many ODIHR NAM interlocutors expect a high increase in the number of voters choosing the option of early voting. Each of the 308 municipal authorities is obliged to organize at least one polling station for early voting, with each location serving up to 500 voters.<sup>15</sup> Mobile voting for those in self-isolation due to COVID-19 and those residing in rest homes has been recently introduced. To vote at home, voters can register online 10 to 7 days before election day. While some parties noted a need for strengthening guarantees for secrecy during early and mobile voting, all ODIHR NAM interlocutors expressed confidence with election day proceedings.

The law provides for assisted voting for voters with various disabilities and the use of Braille ballot guides. Some interlocutors made the ODIHR NAM aware of sign language used in voter education materials and news programmes broadcast on TV. Nevertheless, representatives of civil society organizations informed the ODIHR NAM of persistent challenges, such as inadequate physical infrastructure of many polling stations and lack of voter education materials in accessible formats, which continue to hinder independent exercise of voting rights by people with different needs.

The National Cyber Security Centre (CNCS) organizes awareness raising campaigns and developed an online training course for the public regarding the spread of fake news and misinformation. In cooperation with the election administration and other institutions, the CNCS sets up an election day situation room and monitors activities of selected platforms for malicious activities, including the platforms used by the election administration and political parties. The CNCS and MoI informed the ODIHR NAM of special activities aimed at enhancing cyber/ICT security of the platforms operated by election administration, including for election results management.

#### **D. VOTER REGISTRATION**

Citizens aged 18 or older on election day have the right to vote, unless explicitly revoked of this right by a court decision for a grave criminal offence. Restrictions on the right to vote for those with intellectual and psychosocial disabilities remain in election law, contrary to international standards.<sup>16</sup>

Voter registration is passive, and the voter register is linked to a national population registration database administered by the MoI. According to the MoI, there are currently some 10.8 million registered voters, including some 1.5 million voters abroad. The MoI continuously updates the voter register until 55 days before election day, when the register is finalized, and any voters who change their residence after this deadline have to vote according to their place of previous residence. Between 17 and 22 December, voter lists have to be displayed for public verification in each parish. Voters also have the possibility to verify

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<sup>13</sup> Following the 2018 amendments to the election law, eligible citizens with registered residence abroad may vote in-person at diplomatic missions, in addition to the established practice of postal voting.

<sup>14</sup> Early voting is also available for voters in prisons, hospitals as well as for certain voters temporarily out of the country.

<sup>15</sup> In the 2019 parliamentary elections, early voting was organized only in regional capitals, at a total of 29 locations. For the 2022 elections, the NEC anticipates some 1,500 polling stations to be established for early voting.

<sup>16</sup> Article 2.b of the election law disenfranchises persons “who clearly have a limitation or seriously impaired mental functions, even if they are not subject to monitoring, when they are admitted to a psychiatric establishment or declared as such by a board of two doctors”. Deprivation of the right to vote on the basis of mental disability is inconsistent with Articles 12 and 29 of the CRPD. See also paragraph 55 of the [2016 CRPD concluding observations on the initial report of Portugal](#) (20 May 2016, CRPD/C/PRT/CO/1), which states: “The Committee is seriously concerned that in the State party there are persons with disabilities, especially those who are deprived of their legal capacity or live in psychiatric institutions, who are deprived of their right to vote or prevented from exercising this right in elections...”.



their registration and confirm the location of their polling station by Internet or by free SMS. Those who detect irregularities in their records can request a change up to 27 December. While ODIHR NAM interlocutors expressed overall confidence in the accuracy and inclusiveness of the voter register, some noted a need for a thorough revision of the register due to an alleged number of deceased voters on the voter lists.

## **E. CANDIDATE REGISTRATION**

Citizens with active suffrage rights are eligible to stand as candidates, with the exception of certain high serving officials, including the president, judges, members of the NEC, as well as active military and diplomatic personnel. Only political parties can submit candidate lists, although candidates are not required to be members of the respective parties. The law does not provide for individual candidates, contrary to OSCE commitments.

To contest the elections, parties and their coalitions must have been registered by the Constitutional Court prior to the start of the nomination period.<sup>17</sup> Parties submit candidate lists to the district court of the respective constituency at least 41 days prior to election day. Candidates may not appear on more than one candidate list, or in more than one constituency. If a list is submitted by a coalition, each candidate must be designated to a constituent party. The district courts have to verify the lists no later than 39 days before election day. Parties and coalitions have two days to correct or challenge a rejected list to the Constitutional Court that acts as the court of final instance. In general, ODIHR NAM interlocutors did not raise concerns regarding the inclusiveness of the candidate registration process.

Since 2019, the “parity law” requires a minimum representation of 40 per cent of each gender on candidate lists and prescribes that each gender be represented among every three consecutive candidates. Failure to meet this rule results in rejection of the list. Candidates of the same gender must replace candidates who withdraw. While some parties informed the ODIHR NAM about difficulties in identifying and fielding sufficient numbers of female candidates, civil society interlocutors claimed a lack of diligent efforts by many parties to promote participation of women.

## **F. ELECTION CAMPAIGN**

The official campaign period, during which the rules for equitable media access for electoral contestants and coverage by media of the election campaigns apply, is limited to 14 days prior to election day. There is a campaign silence period on election day and the day preceding it, including online. Before the start of the official campaign, political parties may organize campaign rallies and distribute campaign materials. The election law provides for equal conditions regarding the allocation of public spaces for campaign purposes supervised by parish councils and mayors. Campaigning by public entities and their officeholders is prohibited, as is the inauguration of public works during the period of 60 days before election day.

Most of ODIHR NAM interlocutors anticipate the economic recovery from the COVID-19 pandemic to be overwhelmingly dominant in the campaign discourse. Social services, including health care, education and climate change might also feature as prominent topics. Parties noted that their campaign strategies would largely depend on the evolution of the COVID-19 pandemic and related restrictions. Media, in particular televised debates, and social networks are expected to play a significant role as an avenue of outreach to voters.

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<sup>17</sup> Political parties are prohibited to use regional or religious names or symbols. The Constitutional Court registers political parties based on the submission of 7,500 supporting signatures and other required documents. Parties may register electoral coalitions with the Constitutional Court prior to submission of candidate lists.

Political parties met by the ODIHR NAM expressed confidence in their ability to campaign freely. Nevertheless, they noted difficulties about conducting a meaningful campaign in a compressed timeframe amid the pandemic. All ODIHR NAM interlocutors expressed concerns related to increased instances of xenophobic and inflammatory rhetoric.<sup>18</sup> Some interlocutors also raised concerns about continued instances of sexist rhetoric and negative commentary directed against women candidates, in particular online, and highlighted the possible implications of this on the participation of women and marginalized groups in political life.

## G. CAMPAIGN FINANCE

Political party and campaign finance is regulated primarily by the 2003 Law on Financing Political Parties and Election Campaigns and the 2005 Law on the Organization and Functioning of the Entity on Political Finance and Accounts, both last amended in 2018. The amendments, among others, increased the powers of the campaign finance oversight body to issue sanctions, designated the Constitutional Court as the final appeal body on campaign finance matters and, in line with a previous ODIHR recommendation, obliged the Constitutional Court to make its decisions public. The amendments also removed income limits from party fundraising events in a way that the origins of funds accrued at fundraising events are not subject to disclosure. Some ODIHR NAM interlocutors raised concern that the latter amendment potentially allows for circumventing the limits on private donations.

The legislation provides for both public and private funding to election campaigns. Annual public funding is allocated to parties represented in parliament and those which received at least 50,000 votes in the previous parliamentary elections, proportionally to the number of votes received. Following parliamentary elections, additional state funding is available to parties which nominated candidates for more than a half of the parliamentary seats and won at least one. The base amount of state funding is some EUR 8.8 million (20,000 Social Support Indices), of which 20 per cent is divided equally among eligible parties, and the remainder allocated proportionally based on their election results.<sup>19</sup> Citizens may contribute up to some EUR 11,000 to each political party per year. Loans as well as in-kind contributions are counted towards these limits. In addition, an individual can donate to a campaign up to some EUR 26,300. Donations from legal entities and foreign sources are prohibited.

Financing of political parties and campaigning by third parties is not regulated. Some ODIHR NAM interlocutors expressed concern that the activities of private entities with vested interests in political parties such as corporations or banks, are not sufficiently accounted for in the election campaign and might lead to the circumvention of campaign finance rules.

All expenses incurred for campaign purposes within the period of six months before election day are considered as campaign costs and must be processed through a dedicated bank account. Per candidate the expenditure limit for the campaign is approximately EUR 26,300.

In addition to annual financial reports, parties must submit campaign finance reports within 90 days of the publication of official election results to the Entity for Political Finance and Accounts (EPFA), which

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<sup>18</sup> The 2020 UN HRC [Concluding Observations](#) report noted that “the Committee is concerned about reports of intolerance, prejudice, hate speech and hate crimes against vulnerable and minority groups, including Roma, African descendants, Muslims and lesbian, gay, bisexual and transgender persons, particularly in the media and on social networks. The Committee is further concerned at the low number of complaints and lack of information on convictions of hate crimes and information on penalties imposed [...]”.

<sup>19</sup> The so-called Social Support Index, equal to EUR 438.81 in 2021, is a reference value established annually by the government and used for the determination of social contributions, pensions and other social benefits.

operates within the Constitutional Court. There is no administrative or financial autonomy of the EPFA from the Constitutional Court that is an appeal instance for its decisions. Contestants are not required to submit an interim report before election day. The EPFA must audit the campaign finance reports within 35 days of receipt, and parties have 10 days to respond to requests for clarification. The oversight body has six months to verify the parties' annual financial reports. A system of graduated sanctions for violations of campaign finance rules includes fines and prison terms of up to three years.

## H. MEDIA

The media environment is pluralistic, and television (TV) is considered the primary source of political information. The public broadcaster, *Radio e Televisao de Portugal (RTP)*, includes the national TV channels *RTP1*, *RTP2* and *RTP3*, two regional channels that broadcast in the autonomous regions of Azores and Madeira, as well as three national and six regional radio stations. The major private national TV networks are *SIC*, and *TVI*. A few ODIHR NAM interlocutors noted some political bias by the private media, but generally expressed confidence in the overall conduct of media in election campaigns.

The freedoms of expression and of the media are constitutionally guaranteed. The Constitution also protects the independence of the public broadcaster, ensures equitable coverage of contestants in election campaigns, and entails provisions to prevent concentration of media ownership. The regulation of the conduct of both traditional and online media is further dispersed across several different laws. These laws provide, among others, for editorial freedom of media during election campaigns, fair and equitable treatment of candidates in the news, and prohibition of paid political advertising on TV from the day the elections are called. Institutional and state-sponsored advertisements are also banned from the day the elections are called, except in case of urgent need. The Criminal Code specifically protects journalists against threats and physical assaults by considering these as serious crimes with higher penalties. Contrary to international standards, defamation, insult and slander remain criminalized and entail a higher penalty if the injured party is a state official or an elected politician.

The national media regulator (ERC) oversees the compliance of broadcast and print media with election related rules and can issue directives and guidelines to media outlets, which are not legally binding.<sup>20</sup> The ERC conducts systematic monitoring of major public and private TV networks. In this regard, the ERC informed the ODIHR NAM that due to lack of financial resources it might not monitor the upcoming campaign coverage. By law, the ERC can issue binding decisions *ex officio* or following a specific complaint by an interested party. By law, the ERC can initiate investigations but cannot issue sanctions during the two-week campaign period. The ERC's decisions can be appealed to administrative courts, and these disputes are not subject to expedited timelines in an election period. Some ODIHR NAM interlocutors questioned the capacity of the ERC to fully exercise its broad mandate due to insufficient financial and personnel resources.

Parties contesting parliamentary elections are entitled to free airtime on both public and private TV and radio stations. Free airtime on nationwide broadcasters is allocated among the parties and coalitions that contest at least a quarter of the seats in the parliament in at least a quarter of constituencies, proportionately to the number of candidates they put forward. Regional broadcasters allocate free airtime equally between all contestants running in the elections in respective constituencies.<sup>21</sup>

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<sup>20</sup> Four members of the ERC are appointed by the parliament and in turn select by themselves the fifth member, who serves as a chairperson.

<sup>21</sup> The MoI compensates the cost of the free airtime allocated to eligible parties to all broadcasters no later than six days before the official campaign starts.

*RTP* informed the ODIHR NAM of its plans to organize 28 one-to-one discussions between representatives of all parliamentary parties culminating into 2 big joint debates, 1 for parliamentary and 1 for non-parliamentary parties contesting the elections. The two joint debates are to be broadcast by all three major broadcasters, *RTP*, *SIC* and *TVI*. In addition to debates, *RTP* envisages to air two interviews with the leaders of all parliamentary parties, one before and one during the official campaign.

## I. COMPLAINTS AND APPEALS

Legal provisions for election dispute resolution are dispersed across different laws and regulations. The NEC handles complaints and imposes sanctions for violations of legislation on equal treatment of voters and election contestants. On election day, the PSCs consider complaints related to the voting and counting process, deciding on the admissibility and merits of each complaint by a majority vote of the members. The TCCs verify all decisions on complaints submitted to the PSCs. Decisions of the NEC and of TCCs can be appealed to the Constitutional Court, whose rulings are final. The Constitutional Court also rules on complaints related to candidate nomination and election results. Cases of a criminal nature are referred to the prosecutors and the police for investigation. By law, the NEC receives media-related complaints, and forwards them to the ERC within 48 hours accompanied by its opinion. Some ODIHR NAM interlocutors opined it would be more efficient to designate a single authority dealing with media-related complaints. The legislation provides for expedited deadlines for most election disputes, with the exception of media-related ones.

The NEC informed the ODIHR NAM about an increasing workload in recent years due to a high number of complaints submitted both by citizens and by contestants. No ODIHR NAM interlocutors raised concerns over effectiveness of the election dispute resolution process.

## IV. CONCLUSIONS AND RECOMMENDATIONS

All ODIHR NAM interlocutors expressed confidence in the integrity of the electoral process and the ability of the election administration to organize elections professionally and transparently. No interlocutors raised concerns over the electoral legal framework and its implementation with regards to voter and candidate registration. Nevertheless, many prior ODIHR recommendations remain unaddressed. Further, most ODIHR NAM interlocutors raised concerns related to intolerant and discriminatory rhetoric, including inflammatory language, during the election campaign, particularly on social networks.

Majority of interlocutors welcomed a potential ODIHR observation activity for the upcoming elections, but many opined it was not necessary as they had confidence in the democratic process in Portugal. Still, several ODIHR NAM interlocutors noted that certain aspects, such as preparations for the expanded use of alternative voting methods due to COVID-19 pandemic restrictions, the campaign, including online, and practical implication of the regulatory framework for campaign financing would merit specific attention by ODIHR. Further, many ODIHR NAM interlocutors highlighted possible implications of negative campaign rhetoric on participation of women in elections. On this basis, the ODIHR NAM recommends deploying an Election Expert Team for the 30 January 2022 early parliamentary elections to assess the election administration, campaign, women's electoral participation and campaign finance. ODIHR also encourages the authorities to consider previous recommendations, which remain unaddressed and reaffirms its readiness to support Portugal in a post-electoral reform process.

## **ANNEX: LIST OF MEETINGS**

### **Ministry of Foreign Affairs**

Ana Brito e Maneira, Director, Department of International Political Organisations  
Lucia Portugal Nuncio, Department of International Political Organisations  
Maria Manuel Durao, Deputy Director General, General Directorate for Consular Affairs and Portuguese Communities Abroad,  
Isabel Martins, Co-ordinator, Commission of the Electoral Registration of Portuguese living abroad

### **Ministry of Internal Administration**

Joaquim Morgado, Deputy Secretary-General for Electoral Management  
Isabel Ramos, Legal Director  
Sofia Teixeira, Head, Legal and Electoral Research Division  
Paula Vasco, Director, Electoral Information Systems Division  
Amélia André, Electoral Information Systems Division  
Nuno Silva, Project Management Officer

### **National Election Commission**

José Vítor Soreto de Barros, President  
João Almeida, Secretary  
Ilda Rodrigues, Co-ordinator of the Service  
Sandra Carmo, Marco Fernandes, Carla Freire, Carla Luís, Vera Penedo, Sergio da Silva, Members

### **National Cybersecurity Centre**

Pedro Matos, Development and Innovation Unit  
Nuno Marques, Operations Department

### **Media**

Paulo Barreto, Chief of Staff, Regulatory Council Cabinet  
Tania Soares, Head, Media Analysis Department, Regulatory Authority for Media  
Adilia Godinho, Deputy Head of News, *Radio e Televisao de Portugal*

### **Political Parties**<sup>22</sup>

Francisco Laplaine Guimarães, Vice-President, CDS, People's Party  
João Campelos, Deputy Secretary General, CDS, People's Party  
Jose Manuel Pureza, Vice-President, Left Bloc  
Ines Sousa Real, President, People-Animals-Nature

### **Civil Society**

Jorge Silva, Vice-President, National Confederation of Disabled Persons' Organizations  
José Reis, President, National Confederation of Disabled Persons' Organizations  
Emilia Leite, Member, National Confederation of Disabled Persons' Organizations  
Ana Sofia Fernandes, President, Portuguese Platform for Women's Rights  
Alexandra Silva, Project Co-ordinator, Portuguese Platform for Women's Rights

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<sup>22</sup> ODIHR offered meetings to all parliamentary political parties.