



Office for Democratic Institutions and Human Rights

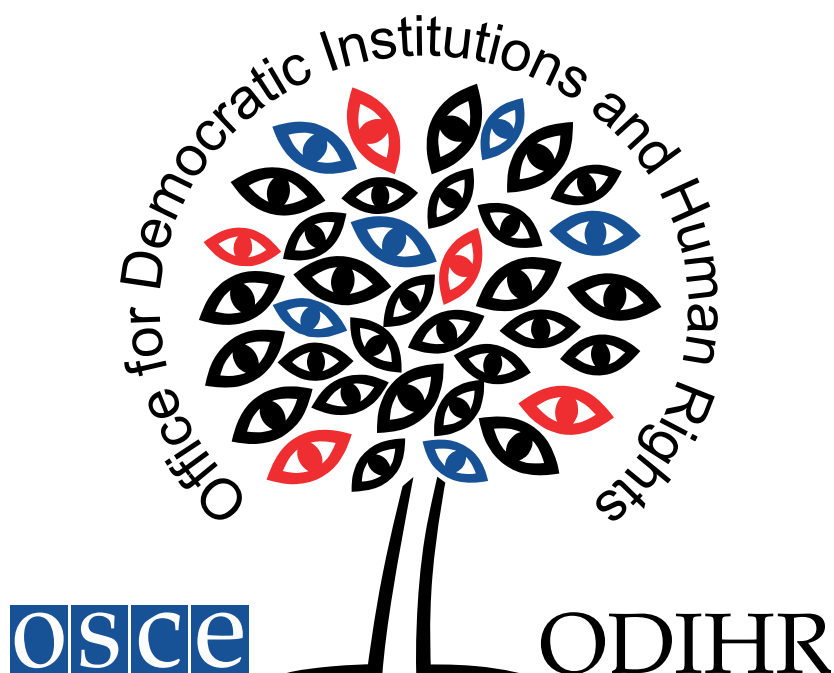
UKRAINE

PRESIDENTIAL ELECTION

31 March 2019

ODIHR NEEDS ASSESSMENT MISSION REPORT

20-23 November 2018



Warsaw
21 December 2018

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ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In accordance with its mandate and in anticipation of an official invitation to observe the 31 March 2019 presidential election in Ukraine, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 20 to 23 November. The NAM included Alexander Shlyk, Head of the ODIHR Elections Department, and Ulvi Akhundlu, ODIHR Election Adviser. The ODIHR NAM was joined by Francesco Pagani, Chief Political Adviser of the OSCE Parliamentary Assembly.

The purpose of the mission was to assess the pre-election environment and preparations for the presidential election. Based on this assessment, the NAM should recommend whether to deploy an ODIHR election-related activity for the forthcoming election 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 civil society, and the international community. 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

On 26 November, the parliament of Ukraine voted to schedule the presidential election for 31 March 2019. The president is elected for five years through a nationwide majoritarian system. If no candidate wins an absolute majority of votes in the first round, a second round between the top two candidates will be held three weeks later. The presidential election will take place in a difficult political, economic and security environment against the backdrop of continuous challenges to Ukraine's territorial integrity that started in 2014. All ODIHR NAM interlocutors attributed great importance to the upcoming presidential election, perceiving it as an important test for Ukrainian democracy and the country's ongoing reform efforts and modernization aspirations.

The legal framework has not been changed substantially since last presidential election, and many previous ODIHR recommendations remain unaddressed, including those on the harmonization of the electoral legislation, the appointment of election commissions, and the complaints and appeals process. Many ODIHR NAM interlocutors opined that the adoption of certain technical changes was still necessary to harmonize, simplify or clarify certain procedures related to candidate registration, voter registration and identification, as well as the procurement of election-related materials.

Presidential elections are managed by a three-tiered administration headed by the Central Election Commission (CEC), whose composition was renewed in September 2018. It remains to be confirmed how many of the 225 District Election Commissions (DECs) and some 30,000 Precinct Election Commissions (PECs) will be formed given the impossibility of organizing the presidential

election in certain regions of the country that are not under control of the Ukrainian authorities. Although women remain underrepresented in political life, nine of 16 CEC members are women, including the chairperson and the secretary. With an expectation of a high number of candidates, a number of ODIHR NAM interlocutors noted that DEC's may face challenges due to a high quorum requirement, as well as difficulties in establishing PECs and later a high turnover among PEC members, which can impact on the efficiency of election commissions in administering the election day. Several ODIHR NAM interlocutors particularly underscored the need to follow the tabulation procedures.

The CEC informed the ODIHR NAM that election preparations were ongoing, including logistical arrangements and drafting of instructions and the election calendar. Responding to a range of potential cybersecurity threats, the CEC is undertaking special measures to strengthen overall cybersecurity of the electoral process by upgrading its information technology infrastructure and promoting safe and responsible cyber behavior.

Voter registration is passive and continuous and is based on the centralized State Voter Register. The number of registered voters is around 35.9 million. Voters are able to check their records online and can request amendments to their records with the Register Maintenance Body at their current residence. Some ODIHR NAM interlocutors noted concerns about the accuracy of the voter lists, specifically referring to the data on internally displaced persons, internal labour migrants and citizens living abroad.

Candidates should be older than 35 years, be a citizen of only Ukraine, have the right to vote, have resided in Ukraine for at least 10 years prior to election day, and have command of the Ukrainian language. Candidate registration begins from the official start of the election process (31 December for this election) and lasts until 55 days prior to election day. ODIHR NAM interlocutors did not expect issues to arise regarding the inclusiveness and transparency of the candidate registration process.

The election law contains provisions aimed at ensuring equal campaign opportunities for all contestants, including access to campaign premises and designated locations for political advertising. While parties confirmed to the ODIHR NAM their ability to campaign freely, many stakeholders raised concerns regarding biased coverage by private media, potential pressure on voters and vote-buying, as well as possible misuse of administrative resources.

The legal framework for party and campaign financing has been amended since the last presidential election, addressing many previous recommendations of ODIHR and the Group of State against Corruption of the Council of Europe (GRECO). Key changes include the introduction of direct public funding of political parties, restrictions on private donations, increased reporting requirements, and introduction of oversight by the National Agency for the Prevention of Corruption (NAPC). While the majority of ODIHR NAM interlocutors recognised that these amendments seek to ensure a higher degree of transparency, some had concerns regarding their effective implementation and the ability of the NAPC to perform its mandate independently and professionally.

Ukraine has a wide range of media outlets both at national and regional levels. However, most of ODIHR NAM interlocutors noted that concentration of media ownership may affect pluralism and contribute to political polarization of reporting. The presidential election law provides for equal conditions for all candidates in state and private media, including free airtime on state broadcast media. The state-owned National Television and Radio Company has been transformed into a

public-service broadcaster in 2016, but remains severely underfunded. Some of the ODIHR NAM interlocutors opined that the media regulator lacks sanctioning authority and resources to provide effective oversight.

The right to appeal decisions, actions, or inactions of election commissions and other authorities involved in the process is granted to all participants in the election process. They can submit their complaints and appeals to both the commissions and courts in the format that is strictly regulated by the election law.

The law provides for observation of the election process by international and citizen observers. Several citizen organizations informed the ODIHR NAM of plans to implement a range of election-related activities, including voter education, media and campaign finance monitoring, parallel vote tabulation activities and country-wide long-term election observation efforts, including the deployment of a large number of observers on election day.

All interlocutors that the ODIHR NAM met with underscored the need for an ODIHR election observation activity for this election and encouraged a sizable full-scale election observation mission to be deployed well in advance of election day. In considering an observation activity, the ODIHR NAM has taken into account the various findings outlined in this report, status of implementation of previous ODIHR recommendations, and the views expressed by stakeholders. Aspects that could merit specific attention by an ODIHR election observation activity include efficiency of election administration, including on election day, the legal framework and its implementation, including campaign finance oversight, media coverage of the campaign, as well as possible voter intimidation, vote-buying, and the potential misuse of administrative resources during the campaign.

On this basis, the ODIHR NAM recommends the deployment of an Election Observation Mission (EOM) to Ukraine for the 31 March 2019 presidential election. In addition to a core team of experts, the ODIHR NAM recommends the secondment of 100 long-term observers from OSCE participating States to follow the electoral process countrywide, and 750 short-term observers to follow election day proceedings. In line with ODIHR's standard methodology, the EOM would include a media monitoring element. Once a decision is taken on the administrative-territorial units where the presidential election will not be held, ODIHR may adjust its deployment plan accordingly.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Ukraine is a semi-presidential republic with executive power shared between the president and the government with legislative power vested in the unicameral 450-member *Verkhovna Rada* (parliament). The president exercises considerable power over foreign and defence policies, and holds certain executive powers, including the right to suspend decisions of the Cabinet of Ministers and the right to appoint the heads of regional state administrations. The prime minister and the government are responsible for economic and budgetary policies, social development, and the daily administration of state affairs.

In the previous presidential election held in May 2014, Petro Poroshenko won in the first round with 54.7 per cent of the votes. Following the last parliamentary elections held on 26 October 2014,

eight political parties are represented in the parliament. The government was formed in November 2014 by the political parties Petro Poroshenko Bloc (PPB, 135 seats), People's Front (PF, 81), Self Reliance (*Samopomich*, 25), Fatherland (*Batkivshchyna*, 20) and Radical Party (RP, 21).¹ The ruling coalition fractured in February and March 2016, leaving only two of the original 2014 coalition parties - the PPB and the PF - supporting the government.

All ODIHR NAM interlocutors attributed great importance to the upcoming presidential election, perceiving it as an important test for Ukrainian democracy and the country's ongoing reform efforts and modernization aspirations. The presidential election will take place in a difficult political, economic and security environment against the backdrop of continuous challenges to Ukraine's territorial integrity that started in 2014. The overall context is characterized by the illegal annexation of the Crimean peninsula by the Russian Federation, ongoing hostilities in the east of Ukraine, and the continued *de facto* control of parts of Ukraine's territory by illegal armed groups. Despite resolute efforts by the authorities, the 2014 national and 2015 local elections could not be held in the Autonomous Republic of Crimea, the city of Sevastopol and in certain areas of Donetsk and Luhansk regions (oblasts) declared by the parliament as temporarily occupied territories.² Although, a nominal ceasefire has been in effect for four years, the situation in conflict-affected parts of eastern Ukraine remains tense and volatile, is characterized by persisting attacks on fundamental freedoms and a deteriorating humanitarian situation.³

As a result of developments near the Kerch Strait, where on 25 November three vessels of the Naval Forces of the Ukrainian Armed Forces were involved in an incident with vessels of the Russian Federation, the Ukrainian parliament voted on 26 November to introduce martial law for 30 days in 10 oblasts.⁴ On the same day, the parliament voted to schedule the presidential election for 31 March 2019.

ODIHR has previously deployed 12 election-related activities to Ukraine, most recently for the 2015 local elections, and prior to that for the 2014 early presidential and parliamentary elections. In its final report on the 25 May 2014 early presidential election ODIHR concluded that the election "was characterized by high voter turnout and the clear resolve of the authorities to hold what was a genuine election largely in line with international commitments and with a respect for fundamental freedoms in the vast majority of the country. This was despite the hostile security environment in two eastern regions and the increasing attempts to derail the process by armed groups in these parts of the country."⁵

¹ The remaining parliamentary seats are distributed among the Opposition Bloc (43), the Revival (24), People's Will (19) and non-affiliated members (60).

² See the United Nations General Assembly [resolution 68/262](#) of 27 March 2014 on the territorial integrity of Ukraine (supported by 45 OSCE participating States), as well as [resolution 71/205](#) of 19 December 2016 referring to Crimea as being occupied by the Russian Federation and [resolution 72/190](#) of 19 December 2017 urging the Russian Federation to comply with its obligations as an occupying power in Crimea, both supported by 42 OSCE participating States.

³ See the [United Nations reports on the human rights situation in Ukraine](#). In its [22nd report](#), the OHCHR highlighted that "with the official campaign season for 2019 presidential and parliamentary elections forthcoming, protection of the freedoms of opinion and expression, media, and peaceful assembly and association is imperative to ensure an open and constructive democratic and civic space."

⁴ The oblasts include Chernihiv, Donetsk, Kharkiv, Kherson, Luhansk, Mykolayiv, Odesa, Sumy, Vinnytsia, and Zaporizhia.

⁵ See [previous ODIHR election-related reports on Ukraine](#).

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The legal framework for presidential elections primarily comprises the 1996 Constitution, the 1999 Law on Presidential Election, the 2004 Law on the Central Election Commission (CEC) and the 2001 Law on State Voter Register (SVR).⁶ Ukraine is party to major international and regional instruments related to the holding of democratic elections.⁷

The legal framework has not been changed substantially since last presidential election and many previous ODIHR recommendations remain unaddressed, including those focusing on the harmonization of the electoral legislation, the appointment of election commissions, the complaints and appeals process, and additionally concerning special measures for voter registration, and the role of campaign finance and media oversight bodies. Positively, the 2015 amendments to several acts in connection with the prevention of and counter-action against political corruption have enhanced the general regulatory framework on campaign finance (See *Campaign Finance* section).

Authorities and other electoral stakeholders informed the ODIHR NAM that some previous ODIHR recommendations were to be addressed by several draft laws currently pending before the parliament.⁸ However, most interlocutors voiced doubts about their adoption due to the limited time ahead of the presidential election and a lack of a broad consensus among parliamentary factions regarding the draft laws. Many ODIHR NAM interlocutors opined that the adoption of certain technical changes was still necessary to harmonize, simplify or clarify certain procedures related to candidate registration, voter registration and identification, as well as the procurement of election-related materials.

The Constitution provides for equality between women and men in public and political life. In addition, the Law on Equal Opportunities for Women and Men specifically provides for equal rights and opportunities in the election process. Still, women remain underrepresented in political life.⁹

The president is elected for five years through a nationwide majoritarian system and can serve up to two consecutive terms. A candidate needs to receive more than 50 per cent of the valid votes cast to win in the first round. If no candidate receives the majority of votes, a second round takes place three weeks after the first round between the two candidates who won the most votes.

⁶ The primary legislation is supplemented by the Law on Political Parties, and some provisions of the Code of Administrative Proceedings, the Code of Administrative Offences and the Criminal Code as well as regulations adopted by the CEC.

⁷ This includes the 1966 International Covenant on Civil and Political Rights, 1979 Convention for Elimination of All Forms of Discrimination against Women, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, and the 2006 Convention on the Rights of Persons with Disabilities. Ukraine has also ratified the 2001 Council of Europe Convention on Cybercrime.

⁸ These include the draft Election Code (Law No. 3112-1), which passed the first reading in November 2017 and has since been under the consideration by the working group under the auspices of the parliament's Legal Policy and Justice Affairs Committee due to a high number – over 4,400 - of tabled amendments; draft Law No. 6240 enfranchising internally displaced persons (IDP) and simplifying voter registration procedures for IDPs and internal labour migrants; draft law No. 8270 ensuring effective, proportionate and dissuasive sanctions for electoral offences; draft law No. 5559 ensuring voting rights of persons with disabilities; and draft law No.9293 clarifying the use of plastic national identity cards in the elections.

⁹ Five of 24 ministerial portfolios in the government are held by female ministers, and women's representation in the parliament currently stands at 12.3 per cent (52 members).

C. ELECTION ADMINISTRATION

Presidential elections are managed by a three-tiered administration comprising the CEC, 225 District Election Commissions (DECs), and some 30,000 Precinct Election Commissions (PECs). For the 2014 early presidential election, only 213 DECs were formed due to the impossibility of holding elections in the Autonomous Republic of Crimea and the city of Sevastopol, and in certain areas of Donetsk and Luhansk regions. The ODIHR NAM was informed that a similar restriction is likely to be applied for this election. The Ministry of Foreign Affairs, in co-operation with the CEC, will facilitate voting abroad in 105 diplomatic and consular representations in 72 countries.

The CEC is a permanent, independent state institution responsible for overall planning and conduct of national elections. Its 17 members are appointed for renewable seven-year terms by the parliament, on the basis of presidential nominations reflecting the composition of the parliament.¹⁰ The CEC composition was renewed in September 2018 although it still has one vacant seat.¹¹ While most ODIHR NAM interlocutors regarded the new CEC as capable of organizing elections in a professional manner, some opined that its composition favoured the political party of the incumbent president. Nine of 16 CEC members are women, including the chairperson and the secretary.

DECs are responsible for organizing elections in their respective districts, including by creating PECs and providing them with legal and administrative assistance and training, controlling the compilation of voters list and their display for public scrutiny, registering official observers, and tabulating election results. DECs are created not later than 40 days prior to election day and are comprised of at least 12 members based on the nominations of all presidential candidates. The DEC chairpersons, deputy chairpersons and secretaries are assigned in proportion to the number of nominations, using a formula established by the CEC; a process which ODIHR has previously recommended to reconsider. Some ODIHR NAM interlocutors noted that a high number of perspective candidates may negatively affect the work of DECs due to a high quorum requirement. Several ODIHR NAM interlocutors particularly underscored the need to follow the tabulation procedures.

PECs are created not later than 18 days prior to election day and, depending on the number of voters assigned to the election precinct, range from 10 to 18 members. The CEC and other stakeholders noted to the ODIHR NAM that DECs may face challenges in establishing PECs due to insufficient nominations by candidates and, later, a high turnover among PEC members, potentially impacting the efficiency of administering the election day procedures.

The CEC informed the ODIHR NAM that election preparations were ongoing, including logistical arrangements and drafting of instructions and the election calendar. In co-operation with its international and domestic partners, the CEC plans to undertake a comprehensive awareness

¹⁰ On 18 September 2018, the Law on CEC was amended to increase the number of its members from 15 to 17. Subsequently, on 20 September, 14 members that were proposed by the president were voted in to replace the 13 commissioners whose term expired in 2014. Two seats are held by the commissioners appointed in 2014 whose mandates will expire in 2021.

¹¹ Eight of the new CEC members were nominated by the current ruling coalition partners (five by PPB and three by the PF). Five new candidates were nominated by the *Batkivshchyna*, Revival Group, the RP, *Samopomich* and People's Will. One candidate newly-appointed from the president's list was not formally nominated by any party. The two members remaining from the previous composition were nominated by UDAR (now part of PPB) and Freedom Party (no longer in the parliament). The Opposition Bloc, which argues that it is entitled to two seats on the CEC, is not represented in the current composition.

campaign on various aspects of the election and make efforts to facilitate voting for persons with disabilities and to increase the participation of youth.

The CEC plans to upgrade its information technology infrastructure prior to the election to address a range of cybersecurity threats that it expects to face. Additionally, the representatives of the CEC Secretariat and the SVR have been trained by the International Foundation for Electoral Systems (IFES) on the best cyber hygiene practices, including how to prevent phishing, security basics on the Internet as well as guiding cybersecurity principles. Similar trainings will be offered to a wide range of electoral stakeholders, including representatives of civil society and DEC members and staff prior to elections.

D. VOTER REGISTRATION

All citizens of 18 years of age by election day are eligible to vote. Persons deemed mentally incapacitated by a court decision are deprived of the right to vote. Voter registration is passive and continuous and is based on the centralized SVR. The CEC oversees the SVR, which is updated monthly and maintained continuously by 27 Registration Administration Bodies (RABs) and 756 Register Maintenance Bodies (RMBs).

Voter lists are extracted from the SVR and compiled separately for each polling station. Preliminary voter lists together with voter invitation cards are prepared by the respective RMB for regular polling stations, no later than 16 days before election day. Voter lists for special polling stations are prepared by the respective PEC based on the list of voters submitted by the heads of the respective institutions 15 days before election day.¹² PECs should post voter lists for public scrutiny the day after they receive them to allow voters to verify their records and request amendments if necessary. Voters can check their records online. Registration on election day is not permitted. IDPs and other voters who cannot vote at their assigned polling stations can temporarily change their voting location without changing their residence.¹³

The total number of registered voters as of 30 November is 35,622,943. In addition, some 522,000 citizens residing abroad who have registered with a Ukrainian embassy or consulate will be able to vote there.¹⁴ Some ODIHR NAM interlocutors noted concerns that voter lists may not be sufficiently accurate citing difficulties in updating the information on IDPs and internal labour migrants as well as an allegedly higher than officially registered number of Ukrainians living abroad. Concerns were also voiced with regard to a potential disenfranchisement of military personnel serving in the areas of active combat.

E. CANDIDATE REGISTRATION

In addition to the requirements to be an eligible voter, presidential candidates have to be older than 35 years, are required to have a command of the Ukrainian language, cannot hold dual citizenship, and be permanently resident in Ukraine for at least 10 years prior to election day. ODIHR has previously recommended to consider removing the residency requirement for candidates. ODIHR NAM heard concerns on how restrictively the residency requirement could be interpreted.

¹² Except for those in medical institutions and special polling stations established by the CEC in exceptional cases where the deadline stands at 7 days prior to election day.

¹³ As of December 2018, over 1.5 mln IDPs were registered in the database of the Ministry of Social Policy.

¹⁴ In the 2014 early presidential election, only 72,817 of 474,056 voters who were officially registered abroad cast their ballots.

Candidates may be nominated by registered political parties (a party can nominate only one candidate) and coalitions of parties and through self-nomination. Candidate registration begins from the official start of the election process and lasts until 55 days prior to election day.¹⁵ Potential candidates must first submit a comprehensive set of documents to the CEC, which then has five days to approve the nomination. In addition, each prospective candidate should deposit UAH 2.5 million (around EUR 83,000) in a special bank account of the CEC. The electoral deposit is returned to the rejected nominees, elected candidate or his/her nominating party, and the candidate who competes in a run off.

Registered candidates are listed on the ballot in an alphabetical order. Candidates can only be de-registered on the grounds of a loss of voting rights or the right to be elected. The deadline for the withdrawal of candidates is 23 days before election day. ODIHR NAM interlocutors did not expect issues to arise regarding the inclusiveness and transparency of the registration process. A high number of candidates is expected to contest the election.

F. ELECTION CAMPAIGN

Candidates can officially start campaigning the day after they are registered. The official campaign ends at midnight on the Friday before election day (29 March for this election). For a possible second round, the campaign will restart from the day the run off is called and until midnight on the Friday before election day.

The election law contains provisions aimed at ensuring equal campaign opportunities for all contestants, including access to campaign premises and designated locations for political advertising. By law, all contestants are required to submit samples of campaign materials to the CEC not later than seven days after their publication. Campaigning by foreign citizens, employees of the state executive bodies, law-enforcement agencies, courts, and members of election commissions is prohibited. The law also prohibits enticing voters through the distribution or promise of money, employment or free goods and services. While parties confirmed their ability to campaign freely, many stakeholders raised concerns with the ODIHR NAM regarding biased coverage by private media, potential pressure on voters and vote buying, as well as possible misuse of administrative resources.

Candidates are expected to use billboards, banners, rallies, as well as advertisements in the media and door-to-door canvassing to reach out to voters. Many ODIHR NAM interlocutors noted the importance of social networks and online media as well as communication applications such as WhatsApp, Viber and Telegram.¹⁶ A number of potential candidates have been running advertising campaigns, both online and through traditional means, for several months prior to the start of the campaign period. Some ODIHR NAM interlocutors raised concerns about ongoing negative campaigning against potential candidates.

The campaign is expected to be intense and divisive and focus on issues related to economic development and social protection, territorial integrity and peace efforts, corruption, and future relations with the European Union, NATO and the Russian Federation. Some of the ODIHR NAM

¹⁵ For this election, the registration process will start on 31 December and conclude on 4 February 2019.

¹⁶ In May 2017, presidential decree № 133/2017 applied economic sanctions against Russian businesses, including those in the media and television-communicational sector. Consequently, most of Ukrainian Internet-providing companies limited the access to Russian social networks *Vkontakte*, *Odnoklassniki* as well as to the *Yandex.ru* search engine and *Mail.ru* email service.

interlocutors noted that the presidential campaign will be linked to the upcoming parliamentary elections. ODIHR NAM interlocutors emphasized the importance of preventing and responding to possible foreign interference in the upcoming election campaign and noted concerns with potential cyber threats to election infrastructure as well as potential negative effects of disinformation on the conduct of the campaign.

G. CAMPAIGN FINANCE

The Presidential Election Law and the Law on Political Parties regulate party and campaign finance, including public funding, sources of income and reporting requirements. The legal framework for party and campaign financing has been amended since the last elections, addressing many previous recommendations of ODIHR and the Group of State against Corruption of the Council of Europe (GRECO).¹⁷ Key changes include the introduction of direct public funding of political parties, additional restrictions on private donations, increased reporting requirements, and introduction of oversight by the National Agency for the Prevention of Corruption (NAPC), which was established in 2016.¹⁸ This will be the first election where the NAPC, will be responsible for auditing party and candidate campaign finance reports. Many ODIHR NAM interlocutors underlined the importance of ensuring the agency's independence and the adequacy of its human and financial resources to fully implement its broad mandate.¹⁹

Public funding is made available to political parties that receive at least two per cent of the votes cast in the latest parliamentary elections. The amount of annual funding per party is established based on the number of votes received times two per cent of the minimum monthly salary.²⁰ Some ODIHR NAM interlocutors opined that the amount of public funding was significantly below expected campaign budgets.

The law stipulates that a candidate must establish two designated campaign bank accounts, for income and expenditures, and appoint financial agents to carry out all campaign transactions. All expenditures must be made by bank transfer from the expense account. There are no limits to campaign spending. A presidential campaign can be financed from candidates' private funds, individual donations from physical persons, and funds from the nominating party. There is no limit that a party can contribute to its candidate's campaign. Individuals can donate up to 400 minimum monthly salaries to a candidate, while the limit for legal entities is set at 800 minimum salaries. Donations from foreign citizens, anonymous sources and state-owned legal entities are not permitted.

Political parties submit quarterly donation reports to the NAPC as well as annual fiscal reports on income and expenditures, verified by external independent auditors. In addition, contestants must submit interim campaign income and expenditure reports to the NAPC and the CEC no later than five days before election day. Final campaign finance reports are due 15 days after election day. While the majority of ODIHR NAM interlocutors recognised that recent amendments seek to provide a higher degree of transparency, some concerns were expressed regarding their effective

¹⁷ See Law No. 731-19 "On Introducing Certain Changes to Legislative Acts of Ukraine in Connection with the Prevention of and Counter-Action Against Political Corruption".

¹⁸ See [the 2017 Addendum to the Second Compliance Report on Ukraine by GRECO](#).

¹⁹ The NAPC has a broad mandate to oversee the appropriate use of state funds by parties for funding their statutory activities; the timeliness of the submission by parties of reports on property, incomes, costs and obligations of financial character, reports on receipts and use of campaign funds.

²⁰ A minimum monthly salary currently equals to some UAH 3,700 (approximately EUR 115).

implementation and the ability of the NAPC to perform its mandate independently and professionally.

H. MEDIA

Ukraine has a wide range of media outlets both at national and regional levels. However, most of ODIHR NAM interlocutors noted that the media lack autonomy from political or corporate interests and that the increasing concentration of media ownership may affect pluralism and general trust in the media and contribute to political polarization of reporting. Despite the growing significance of online and social media, private television channels remain the primary source of political information.

The state-owned National Television and Radio Company, which includes national and regional channels, was transformed into a public-service broadcaster in 2016, but it remains severely underfunded, with its annual budget reduced for the second consecutive year.²¹ The authorities undertook measures to reduce state influence in the print sector through the adoption of the law on reforming the state-owned and communal print media.²²

The presidential election law provides that both state and private media shall cover the campaign by providing equal conditions to contestants. Candidates are granted free airtime (up to 30 minutes each) in the public broadcast media as well as print space in the *Holos Ukrainy* and *Uriadovy Kurier* newspapers; the CEC is responsible for the allocation of the free time and space.

Paid campaign material is allowed without limitations. While paid content should be clearly marked as such, a number of ODIHR NAM interlocutors noted the malpractice of paid-for coverage presented as news, known as ‘*jeansa*’. Public broadcast media are obliged to organize one debate between the two candidates contesting a possible second round, and the broadcasters are entitled, but not obliged, to organize candidate debates before the first round. Apart from free airtime and paid advertising, electronic and print media plan to cover the campaign through a variety of thematic programmes and articles. Several media outlets and political actors noted to the ODIHR NAM that they are mutually selective about whether to co-operate, which can further contribute to the existing polarization in the media coverage.

The ODIHR NAM was informed that several draft laws are pending before the parliament that seek to counter threats to national security in the information sphere, potentially affecting freedom of the media and free access to online information.²³ The parliament has also petitioned the National Security and Defence Council to sanction two national television channels – *NewsOne* and *112* – perceived by the parliament as tools for spreading disinformation and Russian propaganda.²⁴

²¹ The OSCE Representative on Freedom of Media (RFoM) previously expressed concern about the decision to significantly cut the funding of the public broadcaster. See the [OSCE RFoM statement of 17 November 2017](#).

²² As part of the privatization process, 754 print outlets (661 communal and 93 state-owned) are to be transformed into independent media. However, as of November 2018, only 274 outlets have gone through the necessary procedures. The law provides for the withdrawal of licences of all outlets not having finished the transformation procedures by the end of 2018.

²³ The OSCE RFoM raised concerns regarding draft laws that may endanger free access to online information. See the [OSCE RFoM statement of 6 July 2018](#).

²⁴ The OSCE RFoM called on the Ukrainian authorities to refrain from taking disproportionately restrictive measures toward *NewsOne* and *112* without following the proper judicial procedures. See the [OSCE RFoM statement of 4 October 2018](#).

The election law does not clearly stipulate the body responsible for overseeing broadcast and print media during an election. However, according to the Law on the National Television and Radio Broadcasting Council (NTRBC), the broadcast media's compliance with existing laws during the election campaign will be regulated by the NTRBC. Some of the ODIHR NAM interlocutors opined that the NTRBC lacks sanctioning authority and resources to provide effective regulatory oversight.

I. COMPLAINTS AND APPEALS

The right to appeal decisions, actions, or inactions of election commissions and other authorities involved in the process is granted to all participants in the election process. Election-related complaints and appeals can be submitted to both the election commissions and the administrative courts with the High Administrative Court serving as the last instance. Complainants have 5 days from the action/inaction or decision to submit their complaint or appeal, and the competent authority has 2 days to respond. The election law sets out the required information for a complaint to be considered by the competent authority and effectively allows for rejection of complaints based on minor deficiencies in format.

J. CITIZEN AND INTERNATIONAL OBSERVERS

The law provides for observation of the electoral process by international and citizen observers, including non-governmental organizations that are registered in accordance with the legislation and whose statutory activities include observation and issues related to the electoral process.

Several citizen organizations informed the ODIHR NAM of plans to implement a range of election-related activities, including voter education, media and campaign finance monitoring, parallel vote tabulation activities and country-wide long-term election observation efforts, including the deployment of a large number of observers on election day. A number of media and journalist organizations are joining efforts to coordinate rapid fact-checking and debunking of ongoing online disinformation campaigns. While no issues were expected regarding observer accreditation and deployments, some ODIHR NAM interlocutors raised concerns about false observation activities that could be employed by third-parties to undermine the credibility of citizen observation efforts and cast doubt on the integrity of the process overall.

IV. CONCLUSIONS AND RECOMMENDATIONS

All interlocutors that the ODIHR NAM met with underscored the need for an ODIHR election observation activity for this election and encouraged a sizable full-scale election observation mission to be deployed well in advance of election day. In considering an observation activity, the ODIHR NAM has taken into account the various findings outlined in this report, status of implementation of previous ODIHR recommendations, and the views expressed by stakeholders. Aspects that could merit specific attention by an ODIHR election observation activity include efficiency of election administration, including on election day, the legal framework and its implementation, including campaign finance oversight, media coverage of the campaign, as well as possible voter intimidation, vote-buying, and the potential misuse of administrative resources during the campaign.

On this basis, the ODIHR NAM recommends the deployment of an Election Observation Mission (EOM) to Ukraine for the 31 March 2019 presidential election. In addition to a core team of

experts, the ODIHR NAM recommends the secondment of 100 long-term observers from OSCE participating States to follow the electoral process countrywide, and 750 short-term observers to follow election day proceedings. In line with ODIHR's standard methodology, the EOM would include a media monitoring element. Once a decision is taken on the administrative-territorial units where the presidential election will not be held, ODIHR may adjust its deployment plan accordingly.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Valerii Lobach, Deputy Head, Consular Service Department
Oleksandr Maznichenko, Head of the OSCE Desk

Ministry of Interior

Ivan Stoiko, Adviser to the Minister
Olga Yeromina, International Cooperation and European Integration Department

Central Election Commission

Oleh Konopolskyy, Deputy Chairperson
Natalia Bernatska, Secretary
Iryna Yefremova, Commission Member
Vitalii Plukar, Commission Member
Serhii Dubrovyk, Deputy Head of the Secretariat
Volodymyr Andrienko, Chief of the International Department

Committee on Legal Policy and Justice of the Parliament

Oleksandr Chernenco, Member of Parliament
Nataliia Novak, Member of Parliament

Committee on Freedom of Speech and Information Policy of the Parliament

Sergii Vysotskyi, Member of Parliament

High Administrative Court

Mykhaylo Smokovich, President
Nadiya Danilevich, Judge
Vladimir Bevzenko, Judge
Zhanna Bukan, Head of chamber for consideration of election-related
Lina Gubar, Head of Legal Department
Svitlana Pylypets, Head of Section

Security Service of Ukraine

Maxim Yurchishin, Department for the protection of national statehood
Yevgen Yakovenko, Cybersecurity Unit
Ivan Sukhorada, Cybersecurity Unit
Natalya Nabilskaya, International Relation Department

State Service of Special Communication and Information Protection

Yurii Tsyplinskyi, Acting Director of the State Cybersecurity Policy Development and Implementation Department
Oleh Bondarenko, Director of the Department for State Control in the Field of Information Protection
Ihor Stelnyk, Deputy Director of the Information Protection Department

National Agency for the Prevention of Corruption

Ruslan Igonin, Head of the Department on Political Corruption Prevention
Oleksandr Boietskyi, International Relations Department

National Institute for Strategic Studies under the President of Ukraine

Vasyl Yablonskiy, First Deputy Director

Iryna Pavlenko

Tetiana Zaiats, Chief Consultant, External Communications Department

Ukrainian Public Broadcasting Company

Olexiy Shevchenko, Editor-in-chief, Social political department

Andriy Saichuk, General producer

Roman Vintoniv, Managing Board member

National Television and Radio Broadcasting Council

Valentyn Koval, Member

Serhii Kostynskyi, Member

Serhii Kucheruk, Chief Administrative Officer

Roman Kifliuk, Head of Broadcasting Control and Analysis Department

Serhii Saveliev, Head of Department of Representatives of the National Council in the Regions

Anna Mazarska, Deputy Head of International Cooperation Division

Valentyna Pohorilets, Deputy Head of Public Affairs Division

Political Parties²⁵

Serhiy Soboliev, Member of Parliament, Batkivschyna

Ivan Krulko, Member of Parliament, Batkivschyna

Ruslan Sidorovich, Member of Parliament, Self-Reliance

Oleksandr Vikul, Member of Parliament, Opposition Bloc

Valeriy Pysarenko, Member of Parliament, Revival

Private media

Daryna Bilera, News One, Journalist

Bogdan Aminov, News One, Journalist

Volodymyr Poluev, 112, Editor

Nadezhda Sass, 112, Journalist

Civil Society

Ihor Rozkladai, Centre for Democracy and Rule of Law, Lawyer

Kateryna Kulyna, Centre for Democracy and Rule of Law, Lawyer

Olha Aivazovska, Civic Network OPORA, Head of Board

Vita Dumanska, CHESNO Civic Movement, Project Manager

Oleksii Haran, Democratic Initiatives Foundation, Head of Research

Nataliia Lynnyk, Committee of Voters of Ukraine, Programme Manager

Tetyana Durnyeva, Group of Influence, Executive Director

Olha Martynovska, Group of Influence, Trainer

Tetyana Lebedeva, Independent Association of Broadcasters, Chair of the Board

Kateryna Myasnykova, Independent Association of Broadcasters, Executive Director

Ihor Kogut, RADA Programme, Chief of Party

Tetiana Bibik, RADA Programme, Deputy Chief of Party

Heorhii Bushuiev, Reanimation Package of Reforms, International Relations Manager

Yevhen Fedchenko, StopFake.org, Co-founder

Ruslan Deynychenko, StopFake.org, Executive Director

²⁵ The ODIHR NAM requested meetings with representatives of all parliamentary factions.

International Organizations

Peter Erben, IFES, Senior Country Director, Senior Global Electoral Adviser

Harald Jepsen, IFES, International Senior Adviser

Serhii Saveli, IFES, Legal Officer

Gillian McCormack, Internews Ukraine, Chief of Party

Yevgen Poberezhny, OSCE Project Co-ordinator's Office, Elections and Governance Officer

Wolfgang Sporrer, OSCE Special Monitoring Mission, Head of Human Dimension Unit

Ellen-Rose Rogers, OSCE Special Monitoring Mission, Deputy Head of Human Dimension Unit

Manuel Morar, United Nations, Chief of the Department of Political Affairs

Marcus Brand, UNDP, Democratic Governance Adviser

Nadiia Babynska, UNDP, Integrity and Inclusivity Research Coordinator

Tomas White, USAID, Director, Office of Democracy and Governance

Tetyana Sira, USAID, Programme Manager

Diplomatic Community

Representatives of Embassies of OSCE Participating States