

ELECTORAL INSTITUTE



REPUBLIC OF AUSTRIA

PRESIDENTIAL ELECTIONS Repeated second round 4 December 2016

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Executive summary

- A team of two election experts from Slovakia was deployed to Austria with the task to evaluate the problematic issues which led to the repetition of the second round of the presidential election on 4 December 2016. This undertaking took a form of a limited election assessment mission.
- The current legal framework, consisting mainly of the Constitution, the Presidential Election Law and the Parliamentary Election Law, provides a sound basis for the conduct of democratic elections, despite some minor issues that leave room for improvement, such as for example, the missing provision for domestic observation, or the avoidable restrictions present in the complaints and appeals mechanism.
- The structure of electoral administration corresponds to the respective levels of public administration. The partisan setup of electoral boards reflects the outcome of the last parliamentary election. As a result, small and new parties, as well as truly independent presidential candidates are effectively prevented from having representatives with voting rights in boards created in this way. These electoral boards administer all elections and referenda falling in the given legislature's term.
- The increasing and unrestricted usage of postal voting as an alternative voting mechanism represents a potentially serious threat to the integrity of the vote despite its explicit anchoring in the Constitution in 2007, as it became evident on various occasions in the 2016 presidential election. By its nature, postal voting opens possibilities for a whole range of irregularities, since voters cannot mark their ballots under fully controlled and secured circumstances.
- Both voting on election day as well the counting of postal votes on the following day were conducted in a smooth, orderly and professional manner. The results were accepted by all stakeholders and no major objections were presented. Nevertheless, in order to further enhance the transparency of the election process it would be worthwhile to publish detailed results broken down to the polling station level. Similarly, in order to improve the protection of the integrity of the vote, some well established safeguards might be implemented in the voting procedures.

Background

Since none of the six candidates had managed to secure an absolute majority of the valid votes in the first round of the presidential election on 24 April 2016, a second round was held on May 22. The run-off between Mr. Alexander Van der Bellen (independent) and Mr. Norbert Hofer (FPÖ) was narrowly won by the former who got into the lead only after the postal votes had been factored in on the following day. Following the alleged shortcomings in the handling of postal votes at several district election boards the FPÖ appealed the results. On July 1 the Constitutional Court, while upholding the constitutionality of postal voting *per se*, maintained that postal votes were not processed according to the law¹ by 14 district election boards. Further, it decided that the principle of free elections had been violated by the transmission of partial results to and the dissemination thereof by some media before the official end of voting, as the announced tendencies in the partial results might have influenced citizens who had not yet voted. Therefore the Constitutional Court ordered a repetition of the second round in its entirety in all of Austria, which was later set for October 2, yet had to be postponed again due to the unsatisfactory quality of the glue used for the postal vote envelopes. A separate law² fixed the new date for the repeated second round on 4 December 2016.

In a broader European context the 2016 Austrian presidential election was one of the most closely watched and the interest to gain first-hand insights especially into the second round had grown both among governments and election professionals. As the Austrian election legislation³ foresees the presence of observers from OSCE member states, the Slovak Ministry of Foreign Affairs successfully requested the accreditation of two election experts from the NGO "Electoral Institute". Hereby the team would like to thank the Austrian Ministry of Foreign Affairs and the Austrian Ministry of Interior as well the Ministry of Foreign and European Affairs of the Slovak Republic for their assistance.

Due to the very limited nature of this election assessment mission only several aspects of the electoral process will be covered in detail, namely those related to the legal framework governing the election, functioning and competences of electoral authorities, the practice of postal vote, and the conduct of the election day. The purpose of this election assessment mission was to evaluate the problematic issues which led to the repetition of the second round of the presidential election, not to provide an exhaustive analysis of this electoral process in its entirety.

¹ Namely, the envelopes containing postal votes must have been processed (this includes also their opening), only by the board as a collegiate body, and not by auxiliaries of its members, as it actually happened. These infringements concerned a total of 77,926 postal votes, which by far exceeded 50% of the difference between the two candidates (30,863). Further, in order to preserve the principle of the equal vote, the Constitutional Court had to order a repetition of the second round in the whole country, otherwise some persons would have possibly had two valid votes provided they had been registered in one of the 14 affected districts, yet deposited their postal vote in the first round outside of them, yet in the second round voted within those 14 districts. See: https://www.ris.bka.gv.at/Dokumente/Vfgh/J_FT_20160701_16W_I00006_00/J_FT_20160701_16W_I00006_00.pdf

² https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_86/BGBLA_2016_I_86.pdf

³ PEL (NRWO) Art 20a.

Electoral System and Legal framework

The Austrian President is elected for a six-year term through a direct vote. If none of the candidates gains an absolute majority of valid votes straightaway, the two most voted candidates enter a second round. There is a limitation of two consecutive mandates.

The legal framework governing the presidential election consists mainly of the 1929 Constitution, 1971 Presidential Election Law (PrEL) and 1992 Parliamentary Election Law (PEL)⁴. In the view of the repeated second round all three documents saw minor adjustments in 2016, such as for example allowing to open the voter register in order to introduce those reaching the legal voting age before the repeated second round. However, all election legislation was substantially amended in 2007, when the voting age was lowered to 16 years, the possibility to vote by mail was introduced and the mandate of the members of the parliament was increased from four to five years. The same reform paved the way for election observation, however explicitly limited to representatives of OSCE member states. All in all the current legal framework provides a sound basis for the conduct of democratic elections as confirmed by the previous OSCE/ODIHR missions (2010, 2013). Nonetheless, these OSCE/ODIHR missions pointed out a few minor shortcomings such as the lack of provisions on domestic observation or observation by international entities other than OSCE, which is in contradiction with paragraph 8 of the Copenhagen Document. In the same fashion, any complaints and appeals other than those related to voter registration can only be lodged after the declaration of the final election results and only by candidates or party representatives, and not by common electors which is at odds with the good practice. Moreover, with regards to campaign financing the OSCE/ODIHR missions demanded more transparency and accountability through a prohibition of anonymous donations, more detailed reports on campaign expenditures and their disclosure before the election day, and the assurance of equal conditions for party and independent candidates.

The upcoming reform of the election legislation could address also these shortcomings and, among others, make the election observation accessible to domestic and non-OSCE international organisations; improve the complaints and appeals mechanism by enabling the lodging of complaints also at earlier stages of the electoral process and granting the right to complain and appeal also to ordinary citizens; and further advance the transparency and accountability of party and campaign financing.

⁴ Among other applicable laws are the 1953 Constitutional Court Act, the 1947 Prohibition Act, the 1973 Act on the Electoral Register, the 1974 Penal Code, the 2012 Political Parties Act, and the 2012 Federal Act on Financing of Political Parties.

Electoral Authorities

The structure of electoral boards roughly mirrors the country's administrative division with a considerable involvement of the Federal Ministry of Interior (FMI) and local administration. These boards are created anew before each parliamentary election as permanent bodies which later convene as necessary. Their voting members are appointed by parties in a proportional manner according to the results of the last parliamentary election at each corresponding level by means of the *d'Hondt* method⁵. Subsequently, they administer all the elections and referenda falling in the given legislative period. However, if the relative strength of political parties is changed after the corresponding parliamentary election, the composition of boards is proportionally adjusted⁶. Parties with no representation in the current parliament or parties which are not entitled for a seat according to the above-mentioned distribution formula can still appoint their representatives (*Vetrauenspersonen*) to all the boards, who have, however, no right to vote.

The Federal Election Board (FEB, *Bundeswahlbehörde*) is presided by the Minister of Interior or one of the three appointed deputies, and is composed of 17 members out of which two represent the judiciary. The remaining 15 seats are distributed proportionally among the political parties according to the outcome of the last parliamentary elections at the national level with at least one seat in the board automatically reserved for each party present in the national assembly. The FEB oversees the overall activities of all lower level election boards, confirms the candidate nominations, certifies the final election results and deals with eventual complaints or appeals. Despite repeated OSCE/ODIHR recommendations, FEB sessions are still not public, which limits the transparency of its work.

The nine Provincial Election Boards (PEBs, *Landeswahlbehörden*), 112 District Election Boards (DEBs, *Bezirkswahlbehörden*) and over 2100 Municipal Election Boards (MEBs, *Gemeindewahlbehörden*) are composed of nine members nominated by political parties on a proportional bases (reflecting the parliamentary election results at the corresponding level, see above) and are chaired by the head of the corresponding administrative level. Yet at these levels, the *d'Hondt* method is strictly applied with no automatically guaranteed seats for each party. The main responsibility of PEBs and DEBs is to assure smooth data transfer and provide guidance for lower level boards. In addition DEBs decide about appeals concerning voter registration and process and count all the postal votes received in a given district. MEBs are, along with the municipal authorities, responsible for the maintenance of voter register⁷, the practical conduct of election days, and in small municipalities they also serve as polling station committees. With regards to the number of eligible voters within a municipality, one or more Parish Election Boards (PsEBs, *Sprengelwahlbehörden*) might be created. They have only three members nominated by parties, as described above, and a chair and a deputy (named by

⁵ This formula is known to slightly over-represent stronger parties especially in smaller elected bodies or boards.

⁶ PEL (NRWO) Art 19 (4). Thus electoral bodies for the 2016 Presidential election reflect in their composition the results of the 2013 parliamentary elections.

⁷ Yet, through a constitutional amendment of 7 December 2016 a centralised voter register will be created.

mayors), and they serve as polling station personnel instead of the MEBs' members. In fact, this is the most typical form of polling station committees as their number reached over 10,300 in the 2016 Presidential election. The chairperson does not have the right to vote, however, in the event of a tie, the position favoured by the chairperson prevails.

The election unit at the FMI is tasked with the technical aspects of elections such as the design, production and distribution of all sensitive electoral material as well as guidelines. Apart from the difficulties with the glue used for voter cards no major shortcomings were reported. There were no major In addition they provide guidance to all level levels of electoral administration.

The manner in which the various levels of electoral boards are created and staffed is a product of a certain stability and predictability of the post- World War II period. For long decades the Austrian political scene had been dominated by the two main parties⁸ which for the most time have governed the country in grand coalitions in which from time to time switched the lead. Similarly all Austrian post-war presidents were members of one of these parties or ran officially as independent candidates, albeit with the full backing of one of the two parties. As a result, the system of party nominations of electoral board members tends to have difficulties to accommodate potential changes in the political landscape occurring in the course of a given legislature's term. According to the PEL, parties having at least three parliamentary seats, yet whose results in the last parliamentary election do not entitle them for a full membership seat, can still appoint to electoral boards at each level one or two representatives who have, however, no voting rights. To new parties, or parties with no parliamentary seats, this right to appoint representatives is limited only to the FEB and PEBs⁹. While this method is fully justified in the context of parliamentary, provincial or municipal elections due to a high number of different candidates, it might leave the potential truly independent candidates who reach the second round unavoidably with no representatives possessing voting rights in election boards.

Therefore consideration could be given to a possibility of having a guaranteed fully-fledged representation, i.e. with voting rights, for all presidential candidates, or at least for both contenders in a second round of presidential election in electoral boards at all levels¹⁰.

In addition, the sessions of the FEB should be open to public in order to increase the transparency of its operation.

In smaller municipalities the single available polling station is chaired by a mayor or his nominees who are usually clearly associated with some political force. As the previous OSCE/ODIHR missions noted, this arrangement potentially involving a deciding vote by an elected official might be regarded as inappropriate especially in closely contested elections. Moreover, three principal as well as four deputy members of the current FEB are at the same time elected members of the Austrian or European Parliament. *Therefore some consideration could be given to identifying*

⁸ The SPÖ - The Social Democratic Party of Austria and the ÖVP - The Austrian People's Party.

⁹ PEL (NRWO) Art 15 (4)

¹⁰ Austrian election experts, e.g. from "wahlbeobachtung.org" propose also some kind of an inclusion of representatives of the civil society in electoral boards.

such arrangements for the polling staff that would prevent any suspicion of bias as mentioned above.

Voter card as an alternative voting procedure

One of the reasons for the rerun of the second round of the presidential election were irregularities in handling of the so-called voter cards (*Wahlkarten*). At present, voter cards are applied in a number of different voting mechanisms such as voting in regular polling stations outside the elector's usual constituency; postal voting from abroad; postal voting within the country; as well as voting through mobile polling stations.

Originally it was an instrument that has been part of the Austrian electoral system for decades, by which eligible voters who are not present in their constituency on election day, can exercise their right to vote practically in any polling station in the country. In 1990 Austrian citizens residing or temporarily staying abroad were for the first time given the opportunity to participate in elections by requesting a voter card and sending it by mail to applicable electoral boards in Austria. It was prohibited by law to send in the voter card from within Austria. In 2007, following a major political crisis and a subsequent deal between the two main parties, the possibility to send the voter card by mail¹¹ was introduced also for voters residing in Austria who for any reason could not cast their vote in their assigned polling station. Interestingly enough, for a long period of time, the introduction of postal voting had been effectively barred by the 1985 decision of the Constitutional Court¹² about its application in local elections. The Constitutional Court declared that postal vote was not reconcilable with the constitutionally guaranteed principles of a secret and free vote. In its argumentation the Constitutional Court emphasised that in order to effectively provide its citizens with the right and opportunity to a free and secret vote the state is obliged to proactively create necessary conditions for assuring secrecy of voters' choice. Since voters opting for a postal vote are left to their own devices in fending off potential unwanted influence from third persons when marking their ballots, the constitutional right to a free and secret vote cannot be guaranteed by the responsible state organs. In fact, by enabling postal voting, the State renounces this responsibility and delegates it to its citizens. Furthermore, the Constitutional Court did not consider the signed affidavit declaring that the voter has marked the ballot alone, in secrecy and free from any influence or coercion, as a sufficient proof thereof, since should such undue influence or coercion take place, depending on personal life circumstances of each voter, their impact would most likely extend to the act of signing the aforementioned affidavit. However, in 2007 this presumed conflict of postal vote with the constitution was overcome by a constitutional amendment¹³ which anchored postal voting directly in the constitution.

¹¹ The so-called postal vote (*Briefwahl*).

¹² http://www.konvent.gv.at/K/DE/J/UDIK-K/J/UDIK-K_00035/fname_033633.pdf

¹³ A direct reference to postal vote was done by introduction of the point 6 in the Article 26 of the Constitution:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2007_I_27/BGBLA_2007_I_27.html

Between 2007 and 2011 voter cards arriving as late as five days after elections were taken into account by electoral authorities. In practice this procedure opened a way for tactical voting in which voters could send their voter card even after the actual election day and the announcement of the preliminary results. This practice was abolished after a recommendation of the OSCE/ODIHR EAM in 2010, and now all voter cards have to reach electoral authorities before the close of voting at 5 PM.

At present, a voter card is produced in the form of a sealable envelope bearing the elector's data and a space for signing the aforementioned affidavit. This envelope contains in turn another smaller envelope with a folded ballot inside. In the Austrian electoral practice it is not the ballot but the larger envelope that is considered sensitive material which cannot be replaced in case of its loss.

The use of voter cards and especially of postal vote has gradually grown in popularity to such an extent that for the second round of the presidential election in May 2016 approximately every seventh registered voter was issued a voter card. According to the law¹⁴ there are basically four categories of voters who can request a voter card: I. those who will not be on election day in the municipality in which they are registered; II. those who will be abroad on election day; III. those in hospitals, caring homes, bed-ridden or otherwise unable to reach the assigned polling station in person¹⁵, IV. those in prison, asylums or otherwise legally prevented from visiting the polling station in person.

The issuance of a voter card can be requested at the municipal authority from the day of calling an election, either in writing (per mail, fax, email, or dedicated websites) up to four days before the election (or up to two days before the election if requested in person or through an authorised person), or orally (yet not by phone) in person at the municipal authority up to two days before the election day. The identity of each person requesting a voter card must be convincingly proved which understandably becomes slightly more problematic in case of written requests. If the person has no authorised electronic signature they can use their passport number or can attach a copy of a picture ID or a different certificate¹⁶. Even though there is a requirement to provide an acceptable reason when requesting a voter card, the law does not foresee any verification of the reasons stated by the elector. Thus, virtually everyone can be eligible for obtaining and voting by a voter card, in many cases even without ever having to appear in person before responsible authorities, which might open up possibilities for potentially unwanted illicit behaviour (see below). Voter cards are handed over to electors directly at the municipality or are sent by registered mail. Persons who are awarded voter cards are marked on the voter role of their municipality.

Once in possession of a voter card the person has several options how to deliver his or her vote to electoral authorities. If abroad they can be sent by mail to an Austrian embassy respecting fairly reasonable deadlines which should still allow the

¹⁴ PEL (NRWO) Art 38.

¹⁵ These persons can request a visit by a mobile polling station committee in order to cast their vote.

¹⁶ There is no list of acceptable documents or certificates. It is left upon the discretion of each municipality.

embassies to dispatch them to Austria, or they can be addressed directly to electoral boards in Austria. However, the vast majority of those who request voter cards, always over 90%, make use of them within the territory of Austria. Here they have again several options how to use the issued voter cards. They can be deposited in person at any polling station¹⁷ during its normal operating hours, either as sealed envelopes with filled out elector's data and signed affidavits¹⁸ or, if not yet signed and sealed, the voter proceeds to casting his or her ballot in the same way¹⁹ as regular voters registered with the given polling station. Further, as already mentioned above, following the 2007 amendment of the Constitution and relevant laws, voter cards can be sent by regular mail²⁰ (or any other means) from within Austria to the corresponding DEB before the end of election day, a procedure which constitutes the actual postal vote. Finally, bed-ridden persons at home, or hospitalised persons with permanent residence outside the institutions, as well as prisoners can only vote upon previous request and solely by means of voter cards before special mobile polling stations (*besondere Wahlbehörde, fliegende Wahlkommission*).

To some extent the increasing popularity of alternative voting methods²¹ awakens the earlier concerns about the possibilities of infringing the integrity of voting realised outside of regular polling stations. In fact, the vast majority of people who have requested voter cards mark their ballots in uncontrolled environments and send them to DEBs by mail. In the repeated second round election in December 2016 out of 708,175 solicited voter cards 651,726 were sent by mail²² (92%), out of which 617,539 were accounted for, including the 43,410 voter cards coming from abroad. While track of those who brought the unsealed voter cards to polling stations on election day and subsequently voted by regular procedure is meticulously kept by polling staff, this information and its aggregates seems to be entirely lost at higher levels. Therefore, it is virtually impossible to establish the overall return rate of the issued voter cards. Nevertheless, given the sheer extent and the tendency of the usage of postal voting it might be appropriate to devote some reflections to this alternative voting mechanism.

As it is well known from other countries, postal voting opens up possibilities for impersonation while requesting the voter card, to vote buying, family voting, all sorts of influence or coercion, or a loss of envelopes on the way, all of which can only be sufficiently prevented by voting in controlled environments, such as polling stations²³.

¹⁷ Duly sealed and signed voter cards can be delivered also by other persons to any PS or any DEB.

¹⁸ Declaring that the voter has marked the ballot in person in an unobserved and uninfluenced way.

¹⁹ Such voter uses the unmarked ballot contained in the beige envelope drawn from the A4 voter card, yet the beige envelope is replaced for a blue envelope for regular voters. In case the ballot is already marked but the voter card envelope is not sealed yet, the voter is issued a new ballot paper.

²⁰ The costs for a regular mail delivery from inland as well as from abroad are covered by Austrian state.

²¹ For example in the May 2016 2nd round almost 14% of eligible voters were issued voting cards. In the repeated second round in December 2016 their share was still 11%

²² Or much less commonly delivered in person.

²³ The Code of Good Practice in Electoral Matters as adopted by the Venice Commission in 2002 does not recommend any application of postal voting beyond "hospital patients, persons in custody, persons with restricted mobility and electors resident abroad" (paragraph 38 and 39) [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

Until the 2016 Presidential election postal voting, and voter cards in general, had been widely accepted and enjoyed a considerable degree of trust among stakeholders and general public. Nevertheless, the mock-requests of voter cards conducted by journalists revealed serious deficiencies in the procedures when it was possible to request voter cards at a number of municipalities with no or false passport numbers on behalf of any person whose name and the date of birth was known²⁴. The problems with the poor quality of the glue used for voter cards leading to a postponement of the repeated second round have certainly not improved the trustworthiness of this alternative voting arrangement. These incidents which put in question the applied safeguards and thus the integrity of the vote, have stirred up the public debate.

Therefore, in line with the original objections of the Constitutional Court, considerations should be given to restricting or entirely abolishing the use of postal voting within the territory of Austria, even though the same objections apply in principle also to postal voting from abroad. It can be assumed that a vast majority opts for postal voting out of pure convenience and not due to justifiable inhibitions to visit a polling station on election day. Hence, in order to strike a balance between inclusiveness and secrecy of the vote, people who are not present on election day where they were registered should be encouraged to cast their vote in any polling station in the country, an option which has existed for decades in Austria. Additionally, a possibility of early voting in specially designed centres across Austria (for example at district level) for those who are not able to attend any polling station on election day itself, could be introduced. Similarly, mobile polling stations could use regular voting procedure and acceptable arrangements, not involving postal voting, could be applied also for voters residing abroad.

Election Day

The somewhat decentralised nature of Austrian elections is apparent also with regards to the opening and closing times of polling stations which are largely based on local traditions and fall entirely into the competence of MEBs. Thus in this election polling stations opened between 7 and 10 AM, while some closed as early as 10:30 AM²⁵, yet more commonly until 2 or 3 PM, or as late as at 5 PM, as for example all polling stations in Vienna. The variable closing times led in some instances to early announcement of election results in the May 2016 second round, which was one of the reasons for cancelling the election by the Constitutional Court. Despite the fact that some Austrian NGOs recommend the introduction of uniform closing times for all PSs across the country, this potential threat seems to have been reasonably well mitigated by a strict prohibition to reveal and publish any partial results before 5 PM, which was this time rigorously observed.

²⁴ This was possible in municipalities of Voralberg, Lower Austria, Linz and the city of Salzburg. <http://www.salzburg.com/nachrichten/dossier/bundespraesidentschaftswahl-2016/sn/artikel/mit-falscher-passnummer-kann-wahlkarte-beantragt-werden-221191/>

²⁵ As for example in the municipality Stallehr in Voralberg which, however, opened at 7:30 AM.

Due to a very limited size of our mission the two experts decided, in coordination with the official OSCE/ODIHR mission, to observe a small number of polling stations in Burgenland which provided an impression about the conduct of election day. In all visited polling locations voters were handled in a smooth and organised way, and procedures were strictly followed. The identity of voters was consistently checked, albeit noticeably less strictly in smaller communities. There were slight, yet admissible variations in procedures, such as for example the manner in which track of voters was kept, ranging from a purely manual way to a combination of manual and computer or scanner assisted one. The Austrian electoral system however applies a rather limited range of safeguards that can protect the integrity of the vote. Thus, for example, voters are not obliged to sign the voter roles, instead they are ticked off the list by polling staff. Ballots are printed in simple black ink on regular paper with no watermarks or any other established advanced security features, whatsoever. Instead, they are machine-folded in a precisely clean way halving the size of the ballot which presumably cannot be done by hand. Moreover, neither ballots nor envelopes issued to voters are signed or stamped by polling staff, a measure that could identify potential fake ballots. Similarly, ballot boxes are not explicitly required to be sealed. Apparently, much of the burden of preserving the integrity of voting falls on mutual control and trust of party nominated polling staff whose composition reflects the latest parliamentary election results.

The very experienced staff in the observed polling stations conducted the counting of votes phase in an orderly and professional manner. The validity and attribution of ballots was done always correctly and consistently with the inclusive rules respecting the voters' intention which are in line with the good practice for elections²⁶. After having finished the counting of votes, the polling staff quickly transmitted the results by phone to respective DEBs and swiftly filled in the results protocols. Only aggregated results for the whole municipality were made available to the public. However, the international good practice requires a publication of detailed results broken down to the polling station level (i.e. the lowest possible level) which is considered an important transparency measure.

In order to further enhance the general protection of integrity of the vote considerations could be given to introducing specific security features to sensitive material, such as ballot papers, results protocols and ballot boxes. Additionally, in light of the possibility to deposit the issued voter card in any polling station, an introduction of a uniform or at least an earliest permissible closing time for all polling stations could be considered in order to prevent potential disenfranchisement of citizens voting outside their regular polling locations. As an important transparency measure detailed results broken down to the polling station level should be made available to the public.

Counting of Postal Votes

²⁶ See for example the paragraph 49 of the Code of Good Practice in Electoral Matters as adopted by the Venice Commission [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

All the sealed voter cards received by DEBs or corresponding polling stations before the close of voting by mail, through mobile polling stations or delivered in person are counted on the day following the election at 9 AM at the DEBs. With regards to its increasing popularity the processing of the postal vote can become considerably time-consuming. In the 2016 presidential election the average number of postal votes to be processed by a DEB lay over 5,500 with some districts in Vienna being confronted with over 10,000 voter cards. Therefore, the deferment of the processing of postal votes to the day after elections seems justified, even though it might delay the announcement of even preliminary results especially in a tight election.

The observed DEBs were very well organised and the voter cards were dealt with swiftly by five teams of two. The handling of voter cards was significantly eased by machine-operated opening of envelopes, while the constantly updated excel table with results per teams projected on the wall kept the process transparent. In case of problematic issues, like for example handling of voter card envelopes that lacked the stamp of the issuing DEB, advice was readily available from the responsible PEB. This time no objections with regards to the counting of postal votes were reported in Austria.

Conclusion and Recommendations

The Austrian election system has in the entire post-war period undoubtedly provided a robust and reliable means for translating the will of people and their political views into elected positions of their representatives. On closer examination, it becomes evident that this system based on tradition relies to a great extent on trust and assumed respect for rules and fair play. However, the social and political changes of the past decades marked by an ever increasing diversity might eventually bring about lower levels of trust and a decline in the preparedness to cooperate and respect the established rules. The 2016 presidential election revealed some of the weaknesses of the election system, yet it also showed its ability to resist and overcome major difficulties. Nevertheless, the intended reform of the election legislation could among others, address the issues mentioned above in order to further enhance the robustness of the election system.

List of recommendations:

The upcoming reform of the election legislation could address some shortcomings in the legal framework for elections and, among others, make the election observation accessible to domestic and non-OSCE international organisations; improve the complaints and appeals mechanism by enabling the lodging of complaints also at earlier stages of the electoral process and granting the right to complain and appeal also to ordinary citizens; and further advance the transparency and accountability of party and campaign financing.

With regards to the composition of electoral boards consideration could be given to a possibility of having a guaranteed fully-fledged representation, i.e. with voting rights, for all presidential candidates, or at least for both contenders in a second

round of presidential election in electoral boards at all levels. In addition, the sessions of the FEB should be open to the public in order to increase the transparency of its operation.

Concerning the vulnerability of postal voting to potentially fraudulent behaviour, considerations could be given to restricting or entirely abolishing the use of postal voting within the territory of Austria, even though the same objections apply in principle also to postal voting from abroad. It can be assumed that a vast majority opts for postal voting out of pure convenience and not due to justifiable inhibitions to visit a polling station on election day. Hence, in order to strike a balance between inclusiveness and secrecy of the vote, people who are not present on election day where they were registered should be encouraged to cast their vote in any polling station in the country, an option which has existed for decades in Austria. Additionally, a possibility of early voting in specially designed centres across Austria (for example at district level) for those who are not able to attend any polling station on election day itself, could be introduced.

Similarly, mobile polling stations could use regular voting procedure and acceptable arrangements, not involving postal voting, could be applied also for voters residing abroad.

In order to further enhance the general protection of integrity of the vote considerations could be given to introducing specific security features to sensitive material, such as ballot papers, results protocols and ballot boxes. Additionally, in light of the possibility to deposit the issued voter card in any polling station, an introduction of a uniform or at least an earliest permissible closing time for all polling stations could be considered in order to prevent potential disenfranchisement of citizens voting outside their regular polling locations.

As an important transparency measure detailed results broken down to the polling station level should be made available to the public.