OECD Public Governance Reviews

Financing Democracy

FUNDING OF POLITICAL PARTIES AND ELECTION CAMPAIGNS AND THE RISK OF POLICY CAPTURE

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Please cite this publication as:
OECD (2016), Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture, OECD Public Governance Reviews, OECD Publishing, Paris.
http://dx.doi.org/10.1787/9789264249455-en

ISBN 978-92-64-24944-8 (print)
ISBN 978-92-64-24945-5 (PDF)

Revised version, February 2016.
Details of revisions available at: http://www.oecd.org/about/publishing/Corrigendum-Financing-Democracy.pdf

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Foreword

Understanding and addressing the role of money and its influence in politics can no longer be a taboo subject. When public policy making is captured by private interests, the "rules of the game" for markets and opportunities may be bent to favour the few and violate the interest of the many. The consequences include the erosion of democratic governance, social cohesion, and equal opportunities for all, as well as the decline of trust in democracy itself. The laborious recovery from the financial crisis, together with the widening income gaps between rich and poor, heighten the risk of policy capture while testing the ability of governments to develop and deliver policies and programmes that benefit all citizens.

It is not enough to put in place policies to promote growth. Governments are expected to ensure that the benefits of such growth are shared more evenly across society. The design and implementation of structural reforms to create conditions for economic recovery and sustain inclusive growth require a high-quality policy-making process that citizens can trust.

This report takes a comparative approach to examining how the funding of political parties and election campaigns has evolved, and how political finance regulations across OECD member and partner countries have been established. In particular, the report assesses the risks of policy capture through the funding of political parties and electoral campaigns, identifies regulatory loopholes and implementation gaps in existing policies, and suggests a comprehensive approach to integrity, including issues such as lobbying and conflict of interest. One clear-cut lesson from this study is that ensuring the effective implementation of political finance regulations still remains challenging in many countries.

The *Framework on Financing Democracy* presented in this report is intended to shape the global debate on risks and policy options, and provides tangible advice for the funding of political parties and electoral campaigns. Efficient oversight and auditing, meaningful sanctions, greater transparency and public scrutiny play a major role in averting policy capture. In this regard, independent electoral management bodies are becoming increasingly important. Such bodies currently exist in less than one-third of OECD countries, and there is no one-size-fits-all model. But whatever the structure, the institutions responsible for enforcing political finance regulations should have a clear mandate, legal power and the capacity to conduct effective oversight and impose sanctions.

This report is part of the policy toolkit being developed by the OECD Public Governance Committee and contributes to the OECD agenda on inclusive growth and trust. In democracies, public policy should never be for sale to the highest bidder. Better policy making is a shared responsibility of governments, businesses and citizens. The OECD brings together a wide range of stakeholders to make financing democracy a subject of evidence, data, and good practices across countries.

Angel Gurría

OECD Secretary-General

Acknowledgements

This report was prepared by the Public Sector Integrity Division of the Directorate for Public Governance and Territorial Development.

Under the guidance of Janos Bertok, the co-ordination and drafting of this report was led by Yukihiko Hamada. Invaluable input and guidance were provided by Julio Bacio Terracino. The preliminary draft report was prepared by Emma Cantera and Ulrika Bonnier. Data cleaning and follow-up were carried out by Chad Burbank. Editorial and administrative assistance was provided by Thibaut Gigou, Julie Harris, Anaísa Goncalves and Anastasia Slojneva.

Special thanks go to the experts who drafted the country chapters, namely: Stephane Perrault, Deputy Chief Electoral Officer, Regulatory Affairs, Elections Canada; Pamela Figueroa Rubio, Chief of the Studies Division and Francisco Espinoza Rabanales, Advisor of the Studies Division, Ministry General Secretariat of the Presidency of Chile; Vello Pettai, Professor of Comparative Politics, University of Tartu, Member of Estonian Party Funding Supervision Committee; Yves-Marie Doublet, Expert on Political Finance Legislation for the Group of States against Corruption (GRECO), Deputy Director of the National Assembly of France; Heeman Koo, International Cooperation Division, National Election Commission of the Republic of Korea; Raphael Riva-Palacio, Director of International Cooperation and Liaison, National Election Institute of Mexico; Rupert Grist, Regulatory Lawyer and Nick Wright, Senior Project Officer, United Kingdom Electoral Commission; José Antonio Dias Toffoli, President of the Superior Electoral Court of Brazil, Justice of the Federal Supreme Court of Brazil; Shahabuddin Yaqoob Quraishi, Former Chief Election Commissioner of India.

Particular appreciation goes to all the speakers and participants who actively engaged in the debates and exchanged views during the OECD Forum on Financing Democracy and Averting Policy Capture, organised in co-operation with the International Institute for Democracy and Electoral Assistance (IDEA) and the Organization of American States on 3-4 December 2014 in Paris, and the OECD Policy Forum on Restoring Trust in Government: Addressing Money and Influence in Public Decision Making on 14-15 November 2013 in Paris.

The Public Governance Committee and the Working Party of Senior Public Integrity Officials reviewed and approved the report in the autumn of 2015.

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Executive summary

This report addresses three key questions: What are the risks associated with the funding of political parties and election campaigns? Why are existing regulatory models still insufficient and not fully implemented to tackle those risks? What are the links between money in politics and broader frameworks for integrity in the public sector? The resulting analysis has produced a *Framework on Financing Democracy* for shaping the global debate, providing policy options and a mapping of risks. The report also features detailed country case studies of Canada, Chile, Estonia, France, Korea, Mexico, United Kingdom, Brazil and India, providing in-depth analysis of their political finance mechanisms and challenges in different institutional settings. The findings of these nine case studies also confirm the relevance of the Framework and provide good practices that can be applied to other countries.

Regulating political finance to minimise risks

Money in politics is a double-edged sword. It is a necessary component of the democratic process, enabling the expression of political support as well as competition in elections. Yet, the increasing concentration of economic resources in the hands of fewer people presents a significant threat to political and economic systems. If the financing of political parties and election campaigns is not adequately regulated, money may also be a means for powerful special interests to exercise undue influence, and "capture" the policy process.

For example, access to public procurement has been used by elected officials to "return the favour" to corporations that made significant contributions to their campaigns or to exclude those that supported their opponents. While high-spending areas such as infrastructure and urban planning are particularly vulnerable to the risk of policy capture, any policy-making process can be a target of powerful special interests. The consequence may be the adoption of inadequate policies or policies that go against the public interest, preventing inclusive growth and decreasing trust in government.

Loopholes and implementation gaps

Countries' experiences have revealed that several shortcomings still exist and are vulnerable to exploitation by powerful special interests. The allocation of public funding and the rules for private funding continue to require special attention to ensure a level playing field for all democratic actors. At the same time, loans, membership fees and third-party funding can be used to circumvent existing regulations such as spending limits. Many countries struggle to define and regulate third-party campaigning in particular, to prevent the re-channelling of election spending through supposedly independent committees and interest groups. At the moment, only a few countries, such as Canada, Ireland, the Slovak Republic, the United Kingdom and the United States have regulations for third-party campaigning.

Furthermore, countries have increasingly experienced that globalisation further complicates the regulation of private funding. Many foreign companies and wealthy individuals are deeply integrated with domestic business interests, blurring national boundaries. Where limits and bans on foreign and corporate funding exist in many countries, disclosure of donor identity has become important, serving as a deterrent to undue influence. In this regard, 50% of OECD member countries such as France, Korea and Mexico currently ban all anonymous donations to political parties, and 38% of countries ban anonymous donations to parties above certain thresholds.

However, the information disclosed needs to be organised in an intelligible and user-friendly way to facilitate effective public scrutiny. Civil society organisations and the media can only be effective watchdogs if substantive political finance information is publicly available for their analysis. Many countries have increasingly adopted online technologies to enable comprehensive proactive disclosure; however, only a few countries such as Estonia have so far managed to ensure that all reports are submitted and published in a standardised, machine-readable format and are thus comparable, clear and accessible for public scrutiny.

While most countries already have laws and regulations on party and election financing, if oversight institutions lack the independence and/or legal authority to meaningfully regulate potential violators, existing regulations cannot be fully enforced. Only 29% of OECD countries have an independent electoral management body. Moreover, the institutions responsible for enforcing political finance regulations sometimes have rather limited human and financial capacity to effectively deal with large volumes of oversight work. Data clearly show that sanctions have deterrent effects and promote higher compliance. For instance, since the UK Electoral Commission was given its civil sanction powers, compliance rates have increased by 9%. Yet, many countries still struggle to ensure the right balance in defining sanctions that are both proportionate and dissuasive.

Political finance regulation as part of an overall integrity framework

Political finance regulations are likely to be ineffective if they exist in isolation. They need to be part of an overall integrity framework that includes the management of conflict of interest and lobbying. On their own, political finance regulations are likely to result merely in the re-channelling of money spent to obtain political influence through lobbying and other activities. Therefore, integrity measures such as increasing transparency in lobbying, better management of conflict of interest strengthen the political finance regulations. However, incorporating various integrity policies into a wider framework to effectively address the risks of party and election funding remains challenging. Fewer than half of OECD countries have so far acted to set or tighten lobbying standards. While disclosure of private interests by decision makers is widely adopted by countries to manage conflict-of-interest situations and identify suspicious financial flows in public decision making, verification and auditing of disclosure forms are not strictly practiced. According to the OECD survey, only 32% of respondent countries carry out audits or review the accuracy of the information reported by public officials in the executive branch through disclosure forms, while 63% verify receipt of the forms.

The way forward

Most countries still struggle to monitor the performance of policy measures in place and there is an empirical deficit in assessing and comparing the practices of political finance regulations in different country contexts. The OECD is committed to further expanding comparative data and developing benchmarks and indicators relative to financing democracy, integrity in the public policy-making process, and averting policy capture in order to monitor and improve performance of existing measures. Addressing concerns related to the funding of political parties and election campaigns is a key lever for restoring trust in government and forming the foundation for inclusive growth. Countries would benefit from highlighting and sharing good practices so as to identify the conditions for policies and practices that effectively safeguard the integrity of the policy-making process and curb the risks of policy capture by powerful special interests.

Part I

Funding of political parties and election campaigns, risks of policy capture and policy options

Chapter 1

Addressing the risks of policy capture

Money is a necessary component of the democratic processes, enabling the expression of political support as well as competition in elections. Yet, the increasing concentration of economic resources in the hands of fewer people presents a significant threat to political and economic systems. This chapter highlights the risks of policy capture through political finance and presents a Framework on Financing Democracy: Supporting Better Public Policies and Averting Policy Capture, which provides policy options and a mapping of risks.

Money and influence are necessary components of democratic representation

Money plays a role both as a channel for citizens to support their candidates or political parties, and as a means for candidates and political parties to reach out to their constituencies, shaping the public debate with policy options. Access to resources for political parties and candidates also shapes political competition. There is a correlation between campaign spending and performance in elections, suggesting that well-funded candidates are likely to defeat opponents with fewer resources (Silver, 2013; Speck and Mancuso, 2013). However, whether the candidate is elected because he/she had more resources than the opponent, or because he/she was able to mobilise more funds as a result of a greater support from the electorate, is still unclear.

The legitimacy of financing the democratic process is tainted by risks that threaten to undermine its very purpose. Although money is necessary for political parties and candidates to operate and reach out to their voters, experience has shown that there is a real and present risk that some parties and candidates, once in office, will be more responsive to the interests of a particular group of donors rather than to the wider public interest. Donors may also expect a sort of "reimbursement" for donations made during an election campaign and to benefit in future dealings with the respective public administration, for instance through public procurement or policies and regulations.

A basic distinction can be made between influencing where politicians make decisions based on their discretionary power, and intermediation of favours granted by public administration, which typically includes transgression of laws and regulations. In the first case, lawmakers and governments shape laws and regulations of economic activities taking into account demands and interests from campaign donors, but also from lobbyists, public opinion, guidelines from political parties and their own convictions. In the second case, elected officeholders use their influence on civil service to arrange for donors to earn contracts, get access to public loans or earn other benefits. This involves undue political influence on public service and unlawful behaviour of public servants involved in policy making, public procurement, licensing, permissions or other areas where companies expect illegal favours in return for campaign donations.

Public opinion might accept a representative speaking for the interest of a specific economic segment, yet it may launch a public debate on the influence of donations. For example, German political parties regularly receive donations from the German automotive industry. Despite the fact that those donations are transparent, do not contravene any law and Germany is one of the main sites for the car industry, it still can lead to public debate on the influence of political donations in the policy-making process.

Globalisation shifts this debate as well. Where bans on foreign and corporate funding exist in many countries, many multinational corporations have become part of the economy of hosting countries, creating a large number of local jobs. The question of whose money, and thus whose political preferences, should influence a country's elections and political parties is becoming more complex.

Risk of policy capture through political finance is still prevalent in OECD countries

The other type of buying of economic favours by means of campaign donations evokes a different response. For elected officeholders to be able to grant or intermediate favours to individual companies, they need to have influence over parts of the public administration responsible for public contracting, public loans, tax inspection or any other state activity that is in contact with the private sector. While the term of the corrupting influence of private donations on politics is often used metaphorically, it is in these cases that campaign donations come closest to bribery in its original sense.

Policy capture occurs when the interests of a narrow group dominate those of other stakeholders to the benefit of that narrow group. In a democratic context, this involves the exclusion of parties and opinions, and violates basic democratic norms (Warren, 2003). When policy making is captured by a handful of powerful interests, rules may be bent to favour only the few in society. The consequences are likely to be the adoption of policies that counter public interest. At the centre of policy capture, there are exchanges of flavours between private and public actors, which can be set up for one exchange or established and maintained on a regular, even highly institutionalised basis. In the latter case, policy capture is best characterised as a stable flow of mutual favours among the captor network.

Access to public procurement, for instance, has been used by elected officials to "return the favour" to corporations that made important contributions to their campaigns or to exclude corporations that supported the opponent as a means of retaliation. Campaign donors can get access to overpriced public contracts; receive favourable conditions in public loans or receive other forms of illegal benefits from public administration (Box 1.1). Private companies depending on government contracts can also be forced to make donations to the ruling party or be prevented from supporting opposition parties.

Box 1.1. **Risks of policy capture in high-spending areas**

Research in Italy highlights that mayors who stayed in office for one extra term were associated with deteriorated procurement outcomes, such as lower numbers of bidders, higher prices, biased concentration of the local procurement market, and higher probability that the winning firm was local. This quantitative evidence indirectly points at how the local heads of administration could use their time in power to build a collusive network with bidding companies capturing local public procurement spending (Coviello and Gagliarducci, 2010).

Another study indicates that large companies' success on federal public procurement tenders in the United States is highly dependent on their political connections. The strongest predictor of these companies' value of contracts won was whether they had a former politician on their boards of directors associated with the political camp holding the power at the time (Goldman, Rocholl and So, 2013).

A recent study also shows that firms specialising in public works projects in Brazil can expect a substantial boost in contracts - at least 14 times the value of their contributions - when they donate to a federal deputy (lower house) candidate from the ruling Workers' Party and that candidate wins office (Boas, Hidalgo and Richardson, 2013).

Box 1.1. **Risks of policy capture in high-spending areas *(continued)***

Similarly, if government favouritism is rampant, the change of government and the corresponding turnover of political leadership are likely to affect the winning chances of firms in the public procurement market in some countries. Research in Hungary highlights top managers of large construction, information technology (IT), and healthcare companies supplying public organisations expressed the view in which the swings in market shares of companies reflect the changing preferences of the political leadership for particularly well-connected companies (Fazekas, King and Tóth, 2013). According to this interpretation, success in the public procurement market may depend much more on political connections than on the competitiveness of companies, implying a preferential allocation of public resources. In the same research (Fazekas, King and Tóth, 2013), such claims are demonstrated by tracking the changes in market shares of the largest companies before and after the new government entered office. It highlights that the companies with the largest market share throughout the one and a half years leading up to the elections in the first half of the 2010 lost about 25-30% of their combined market share. This change was accompanied by a comparable increase in the total market share of companies dominating the post-election market between the second half of 2011 and 2012.

Source: OECD (forthcoming), *Policy Making in the Public Interest: Curbing the Risks of Policy Capture*, OECD Publishing, Paris.

In addition to the awarding of public procurement contracts, other favours may include granting tax breaks or state subsidies, preferential access to public loans, and selling public assets below market prices. While high-spending areas, such as infrastructure and urban planning, are particularly vulnerable to the risk of capture, any policy-making process can be a target of powerful special interests. Policy capture involves varieties of actors and means, but one of the most effective remedies to avert policy capture in policy making is to adequately regulate the funding of political parties and election campaigns.

Though much of the attention regarding political finance regulation focuses on national parties and election campaigns, the risks of undue influence and corruption are also present at the local or regional level as well. Local-level studies have pointed out the most revealing experiences when it comes to vote buying, the exchange of public contracts for political donations, and the role of illicit financial flows and organised crime. It is also at local or regional level that capture of public authorities may occur (Pinto-Duschinsky , 2013). For example, research argues that political party financing has been the major corruption driver in France: a process that has been further accelerated by administrative decentralisation and regionalisation in recent decades. Public contracts in large cities like Paris have been granted to companies that have provided support to political parties (Lalam, 2012).

Assisting inclusive growth though averting policy capture

Over the past three decades, income inequality has risen in most OECD countries, reaching in some cases historical highs. The increasing concentration of economic resources in the hands of fewer people presents a significant threat to increase the risks of policy capture. When government policy making is captured by a handful of powerful special interests, the rules may be bent to favour the rich. The consequences of a widespread feeling that governments are not working in the wider public interest are

grave, leading to the erosion of democratic governance, the pulling apart of social cohesion, and the undermining of crucial concepts that underlie democracy such as equal opportunities for all.

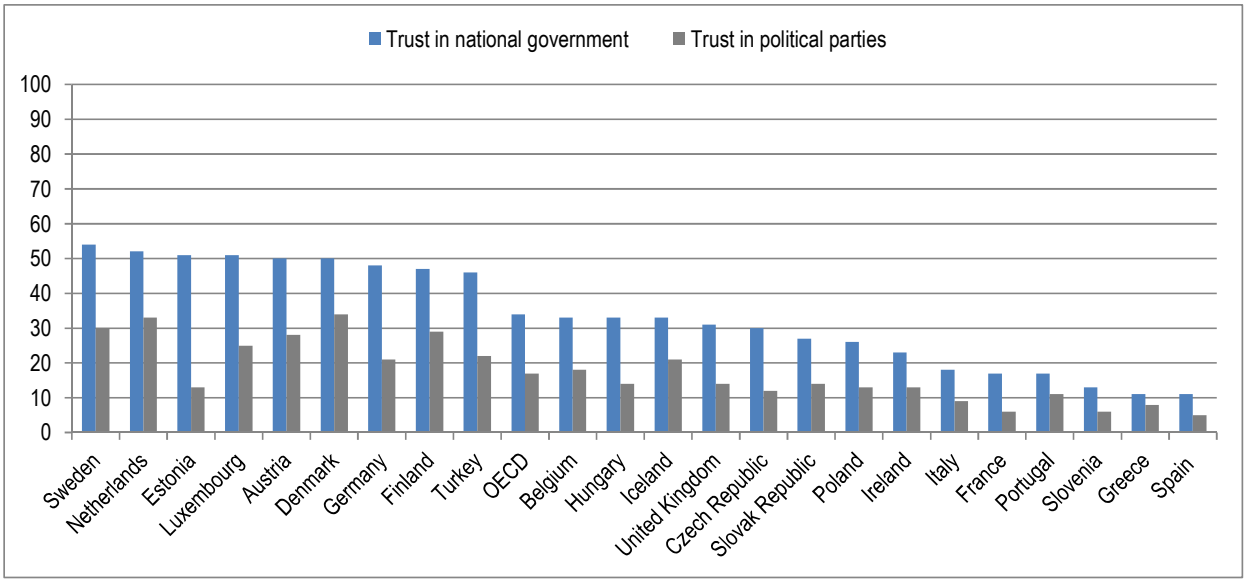
The challenges of the 21st century continue to test the ability of governments to develop and deliver policies and programmes that benefit all citizens. In this regard, the pursuit of inclusive growth has become one of the priorities for OECD countries. The OECD Initiative on Inclusive Growth highlights that it is not enough to put in place policies that harness growth, countries are also expected to ensure that the benefits of growth are shared by everyone. The design and implementation of effective reforms to create conditions for economic recovery and to sustain inclusive growth require a top-quality, policy-making process that citizens can trust.

Embedding the policy-making process with mechanisms that safeguard the public interest and curb the undue influence of money and power is essential to inclusive growth. The relationship between inequality and undue influence in politics through political financing is often overlooked. Socio-economic inequality is only the tip of an iceberg of inequalities of different dimensions, including differences in influence, power and voice. Consequently, governments are expected to proactively address high-risk areas at the intersection of the public and private sectors, including lobbying, conflict of interest in public decision making, and the influence of vested interests exercised through political financing. In-depth analysis of facts and comparative evidence on political finance and its associated risks to the fairness of policy making is needed to understand the risks and opportunities in different institutional settings and to move away from an ideological discussion.

Captured policies lead to low levels of trust in government, and the fairness of decision making is being questioned

In a number of countries money is perceived as having undermined the government decision-making process, which has led to low levels of trust in government. The 2013 Edelman Trust Barometer found that 52% of respondents surveyed in 26 countries distrusted government. Among the key factors they cited to explain the prevailing distrust were “wrong incentives driving policies” and “corruption/fraud”. Together, the two factors accounted for half of all reasons for trusting government less. The figure stood at the same level in the 2015 survey as well. In addition, the 2014 Eurobarometer shows that while levels of trust in government are low, trust in political parties is even lower (Figure 1.1).

Figure 1.1. **Trust in government and political parties in 23 European OECD countries, 2014**



Note: Trust in national government and political parties: % of "tend to trust" answers to the question: I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it; national government and political parties.

Source: European Commission (2014), "Standard Eurobarometer", http://ec.europa.eu/public_opinion/archives/eb_arch_en.htm (accessed on 27 October 2015).

Trust in public institutions is driven not only by the substance and outcomes of policies, but also by the policy-making process

A solid foundation of trust for effective policy making is of particular importance in the current economic situation, where structural reform involves difficult, unpopular choices and requires the confidence of citizens and markets to reignite growth. Accordingly, the OECD has put the building of trust in institutions and government at the heart of its New Approaches to Economic Challenge (NAEC) Initiative and its forward-looking Trust Agenda.

The OECD has identified five key policy dimensions for action by governments seeking to invest in trust:

1. Integrity: The alignment of government and public institutions with broader principles and standards of conduct that contribute to safeguarding the public interest while mitigating the risk of corruption.
2. The fairness of public policy making: The ability to propose policy-making processes and decisions that are perceived as fair and meet locally accepted standards.
3. Openness and inclusiveness: A systematic, comprehensive approach to institutionalising two-way communication with stakeholders, whereby relevant, usable information is provided and interaction fostered as a means to improve transparency, accountability and engagement.

4. Reliability: The ability of governments to minimise uncertainty in the economic, social, and political environment of their citizens and act in a consistent and predictable manner.
5. Responsiveness: The provision of accessible, efficient, and citizen-oriented public services that effectively address the needs and expectations of taxpayers.

The first three policy dimensions - integrity, fairness, openness and inclusiveness - are especially relevant to financing democracy, where it is essential to ensure fairness and a level playing field for stakeholders who seek to influence the decision-making process. All stakeholders are entitled to participate effectively in that process and the information enabling their participation needs to be available. Furthermore, the integrity of decision makers also needs to be ensured so that the wider public interest - and not only vested interests that can afford to make large political contributions - forms the basis of policy making.

In this context, trust in public institutions is driven not only by the substance and outcomes of policies, but also by the process of policy making. The way policies are designed and implemented, and the compliance that policy makers show with broader principles and standards of behaviour, matters to trust.

OECD Framework on Financing Democracy

Recognising that adequately regulated political finance forms the foundation for restoring trust in government and inclusive growth, this report builds on the discussions and findings of the 2013 OECD Forum on Restoring Trust in Government: Addressing Risks of Influence in Public Decision Making and the 2014 OECD Forum on Financing Democracy and Averting Policy Capture, and presents a *Framework on Financing Democracy: Supporting Better Public Polices and Averting Policy Capture* that maps a range of risk areas and provides policy options to adequately regulate the financing of political parties and electoral campaigns, thus strengthening the integrity and credibility of the government decision-making process (see Table 1.1 at the end of this chapter).

The Framework has four main pillars: promoting a level playing field; ensuring transparency and accountability; fostering a culture of integrity; and ensuring compliance and review. The following four chapters look at each of the pillars with comparative data to highlight the trend of political finance regulations and remaining areas for improvement in OECD countries.

Third-party campaigners and transnational private interests present risks to levelling the playing field

Chapter 2 reviews various policy options to promote a level playing field in financing democracy. Allocation of public funding and the rules for private funding continue to need special attention to ensure a level playing field for all stakeholders. To be effective, a comprehensive regulation of political finance should focus on the whole cycle including the pre-campaign phase, the campaigning period itself, and the period once the elected official take office. Additionally, applying spending limits also contributes to stopping the spending race and framing the impact of private funding. Privileged access to state resources also needs to be understood through an analysis of the incumbency factor - the advantage which entails that ruling political parties may have privileged access to public resources.

It also highlights that certain shortcomings in the regulations are particularly vulnerable to exploitation by powerful special interests. Loans, membership fees and third-party funding can be used to circumvent the regulations of private funding. Many countries struggle to clearly define and regulate third-party funding to prevent re-channelling of election spending through supposedly independent committees and interest groups. Third-party campaigners are sometimes referred as non-party campaigners and may include charities, faith groups, individuals or private firms that campaign in the run up to elections, but do not stand as political parties or candidates. Increasing globalisation also further complicates the regulation of private funding as many foreign companies and wealthy individuals are deeply integrated with domestic business interests, blurring the national boundaries. In addition to bans and regulations on foreign and corporate funding, regulation of anonymous donation and disclosure of the donor identity serve as complementary measures to minimise the impact of undue influence.

Institutionalising an enabling environment for better transparency and public scrutiny

Chapter 3 focuses on measures to ensure transparency and accountability in financing democracy. Keeping records of election campaigns expenditure as well as keeping books and accounts of political parties and their affiliated entities forms a basis for greater transparency and accountability. Comprehensive disclosure of income sources of political parties and candidates contributes to greater transparency, serving as a deterrent measure to limit undue influence. No oversight mechanism is complete without the participation of civil society and media. In this regard, civil society organisations (CSOs) can be effective watchdogs and have proven instrumental in advancing transparency and anti-corruption efforts in the field of political finance.

For disclosure of information to make sense and inform the citizen, information needs be organised in an intelligible and user-friendly way. In this regard, online technologies facilitate countries developing more comprehensive proactive disclosure. Ideally, all reports are submitted and published in a standardised, machine-readable format so as to ensure their comparability, clarity and digestibility. CSOs and media can only be effective watchdogs if substantive political finance information is publicly available for their analysis. In order to mobilise CSO support in advocacy, political finance information must be reliable and accessible, creating an enabling environment in which CSOs, media and private citizens can conduct effective public scrutiny.

Promoting a holistic approach to avert policy capture by connecting surrounding integrity measures with political finance

Chapter 4 looks at the importance of fostering a culture of integrity to effectively promote a holistic approach to connect surrounding integrity issues, such as lobbying and conflict of interest, to better understand the impact of money in politics on the quality of policies. Matters such as conflict of interest, asset disclosure and lobbying cannot realistically be considered without taking into account the role of political finance in many countries. Conversely, controls of party and election funding are likely to be ineffective if they exist in isolation. On their own, they are likely to result merely in the re-channelling of money spent to obtain political influence through lobbying, and through third-party financing. Any consideration of political funding needs to be part of an overall strategy to assure public integrity and good governance. However, less than half of

OECD member countries have so far acted to set or tighten lobbying standards. While disclosure of private interests by decision makers is also essential for managing conflict-of-interest situations and spotting any suspicious financial flows in public decision making, the level of disclosure of private interests (assets, liabilities, income source and amount, paid and un-paid outside positions, gifts and previous employment) and the public availability of the disclosed information varies considerably among and within countries in the different branches of government.

Increasing importance of independent electoral management body for effective oversight

Chapter 5 focuses on policy measures and institutional mechanisms to ensure the compliance and review of political finance regulations. Regulating income and spending are not sufficient if there is no proper and efficient oversight and enforcement. In many cases, the responsibilities of monitoring and supervising breaches to political financing regulations are rather diluted among various institutions. This raises concerns over effective co-ordination, information sharing, and responsiveness. An independent electoral management body (EMB) is desirable although there is no one-size-fits-all model. In 29% of OECD countries, the EMB receives financial reports from political parties and/or candidates for oversight. Institutions responsible for enforcing political finance regulations should also have a clear mandate and power, not just the capacity, but the legal power to conduct investigations, refer cases for prosecution, and impose sanctions. Development of such powers is critical for the effective enforcement of a transparent and equitable campaign finance regime. Well-staffed and well-funded supervisory bodies that lack the independence and/or legal authority to meaningfully regulate potential violators limit the extent to which existing regulation can be enforced. Besides, sound political finance regulations need sanctions, serving as deterrents for breaches and indirectly promoting compliance. However, countries still struggle to ensure the right balance in penalising infringements to political finance regulations and define sanctions that are proportionate and dissuasive.

Country case studies provide in-depth analysis of political finance regulation and its challenges in different institutional settings

In order to examine practices and lessons learned in various country contexts, this report features country case studies from Canada, Chile, Estonia, France, Korea, Mexico, the United Kingdom, Brazil and India. Countries selected for case studies include both OECD member countries and key partner countries in Europe, North America, South America and Asia, providing detailed practices of political finance regulations and challenges that are of particular importance in each country. Findings from these country case studies also confirm the trend and emerging concerns in regulating political finance as well. Further elucidating the risks of money in the government decision-making process as well as identifying practical solutions based on evidence and good practices will contribute to refining the framework and develop an associated toolbox that may be useful in different country contexts.

Table 1.1. **Framework on Financing Democracy: Supporting Better Public Policies and Averting Policy Capture**

Overall objective	Policy options and specific risks to mitigate	
Promoting a level playing field	Balancing funding through direct and indirect public contributions	Direct funding which entails a monetary transfer to parties, candidates: - clear and equitable criteria such as equal access and proportionality - provision to promote gender equality. Indirect funding, including tax exemptions, subsidised access to media, meeting rooms, etc. *Unintended consequences may include:* *Risk of unbalanced playing field for the challengers and smaller parties if, for example, the criteria of allocation is based on past electoral performance.*
	Framing private funding	Banning certain types of private contributions, in particular: - foreign interest - corporations with government contracts or partial government ownership - corporate donations, trade unions, etc. Limiting anonymous donations. *Unintended consequences may include:* *Risks of avoidance through third-party funding and other legislative loopholes.*
	Applying spending limits	Clear limits based on absolute amount, percentage of total public funding, certain amount per citizen in the electoral district, etc. *Unintended consequences may include:* *Risk of avoidance through third-party funding* *Risk of an uneven playing field for the challengers if there is abuse of state resources by the incumbent.*
	Limiting privileged access to state resources	Controlling abuse of state resources: - ban the use of state resources for political purposes - ban state resources being given to, or received by, political parties or candidates (except regulated public funding) - ban disproportionate government spending on advertising before or during campaigns, hiring new public servants and signing large public contracts. *Unintended consequences may include;* *Risk of avoidance if the incumbents use the public resources to campaign for their votes in the name of "carrying out their legislative duties".*
Ensuring transparency and accountability	Requiring disclosures	Requiring comprehensive reporting, including: - timely provision of information. Not limiting reporting to only how public funds have been spent, but also include private donations.
	Enabling scrutiny	Timely, reliable, accessible and intelligible public disclosure of reports. Promote media and civil society scrutiny.
Fostering a culture of integrity	Applying the integrity framework in the public sector	Code of conduct. Conflict of interest and asset disclosure provisions. Disclosure on lobbying. Risk mapping. Whistleblower protection.
	Promoting standards of professionalism, integrity and transparency in private donors	Self-regulation of financing of political parties and electoral campaigns: - appropriate accounting practices - private sector codes of conduct - responsible lobbying.

Table 1.1. **Framework on Financing Democracy: Supporting Better Public Policies and Averting Policy Capture** ***(continued)***

Overall objective	Policy options and specific risks to mitigate	
Ensuring compliance and review	Assuring independent and efficient oversight	Strengthen independence of monitoring body and process: - independent appointment of members - ensure security of tenure to members - independent budget for the body to conduct monitoring. Provide capacity: - sufficient resources - specialised auditing capacities and methodologies. *Unintended consequences may include:* *Risk of over-complication of procedures among many different institutions.*
	Applying dissuasive and enforceable sanctions	Proportionate and dissuasive sanctions, for example: - lose public subsidies - confiscation of illegal donations or funds - fines - criminal charges such as imprisonment - ineligibility: loss of elected office, forfeiting right to run for elections - deregistration or suspension of a political party. Enforcement of sanctions in a timely manner.
	Appraising the system	Reviewing periodically - with the involvement of stakeholders - the functioning of the system and making necessary adjustments: - identify new risks to the policy objectives of the system - identify mitigation strategies.
	Support to political parties	Providing support to political parties to help them comply with regulations: - setting up a support unit within the monitoring agency focused on supporting compliance - dialogue between parties and monitoring agencies in order to facilitate adherence to the rules and allow for better understanding of political finance.

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Chapter 2

Promoting a level playing field through balanced funding

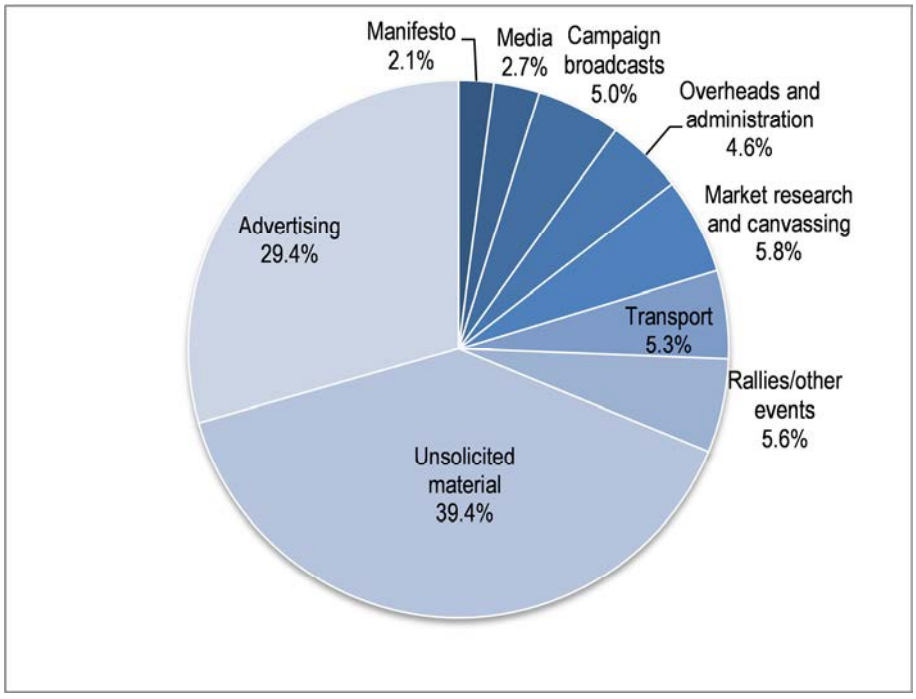
This chapter reviews various policy options to promote a level playing field in financing democracy. Allocation of public funding and the rules for private funding continue to require special attention to ensure a level playing field for all stakeholders. To be effective, a comprehensive regulation of political finance should focus on the whole cycle including the pre-campaign phase, the campaigning period itself, and the period once elected officials take office. The chapter also highlights that certain shortcomings in the regulations are particularly vulnerable to exploitation by powerful special interests. Loans, membership fees and third-party funding can be used to circumvent the regulations of private funding.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Finding the right combination of policy measures is key to ensuring a level playing field

Where strong party organisations exist, the demand for resources comes to cover recurring annual expenses of political party administration, public outreach as well as selecting and grooming candidates. In addition, the mobilisation of resources is needed during election campaigns for professional campaign management, including public relations, the expertise of consultants, and communication with voters. There is variation across parties and countries on how their expenditures are spent during campaigns. For example, in the United Kingdom, advertising expenses is the biggest spending category apart from unsolicited materials (Figure 2.1). In Japan, printing-related expenses were the biggest category, followed by advertising and staff salaries (Figure 2.2).

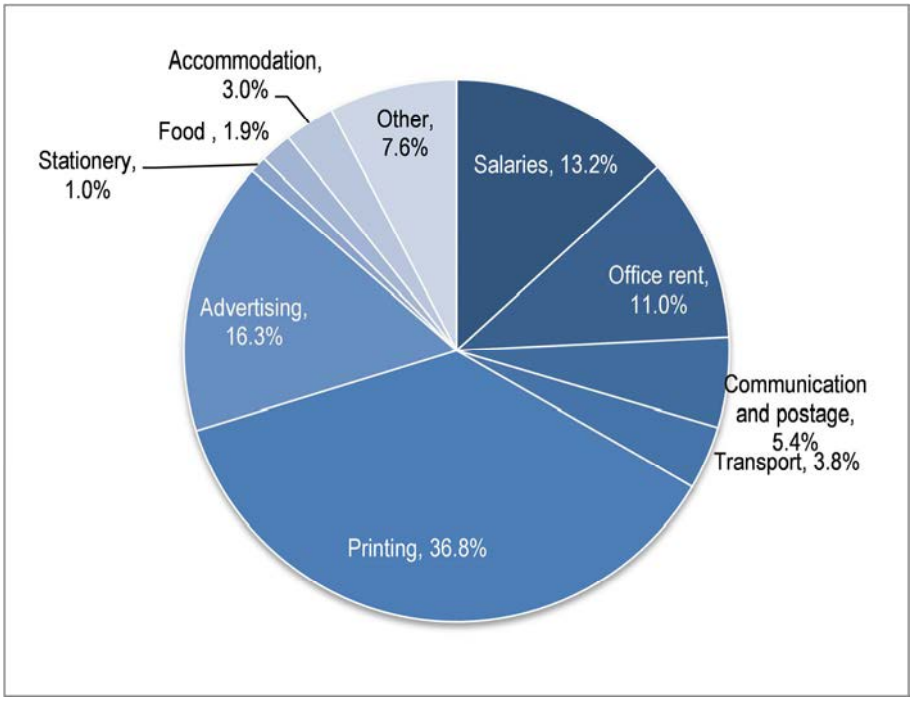
Figure 2.1. **Expenditures during the 2010 parliamentary general election in the United Kingdom**



Note: Total expenditure during the 2010 parliamentary general election was GBP 31 838 934 (approximately EUR 44,633,093, exchange rare as of 5 November 2015).

Source: UK Electoral Commission (n.d.), www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/political-party-spending-at-elections/details-of-party-spending-at-previous-elections (accessed on 27 October 2015).

Figure 2.2. **Expenditures during the 2013 Upper House election in Japan**



Note: Total expenditure during the 2013 Upper House election was JPY 1 569 659 950 (approximately EUR 11 874 460, exchange rate as of 5 November 2015).

Source: Ministry of Internal Affairs and Communications of Japan (n.d.), www.soumu.go.jp/menu_news/s-news/83101_2.html (accessed on 27 October 2015).

Recognising the risks associated with vested interests influencing policy making, a combination of measures to ensure a level playing field among all parties and candidates has been introduced by OECD countries in political finance regulations. This includes, in particular, the balancing of public and private funding, the regulation of direct and indirect state contributions, and spending limits for political campaigns.

The financing of political parties and election campaigns: Private or public funding?

Balancing private funding through direct and indirect public contributions is widely adopted in OECD countries

The balance between public and private funding varies across countries. For example, 11 political parties registered in the United Kingdom reported accepting approximately GBP 14.9 million (approximately EUR 20.8 million) in donations between 1 July and 30 September 2014, while 5 out of 11 parties also accepted over GBP 0.26 million (approximately EUR 0.36 million) from public funds during the same period. In the 2013 Upper House election in Japan, out of the total expenditure of JPY 1 569 659 950 (approximately EUR 11 874 460), 77% came from private funding.

While private donation is a channel of political participation, if the financing of political parties and election campaigns is not adequately regulated, money may also be a means for undue influence and policy capture by powerful special interests. In this

context, public funding helps to sustain the institutionalisation of political parties in democracies as they benefit from necessary financial support to conduct their daily activities. It also reduces their dependence on private funding, while there is a variation in such dependence across countries (Table 2.1). Such public support strengthens the capacity of political parties to level the electoral playing field.

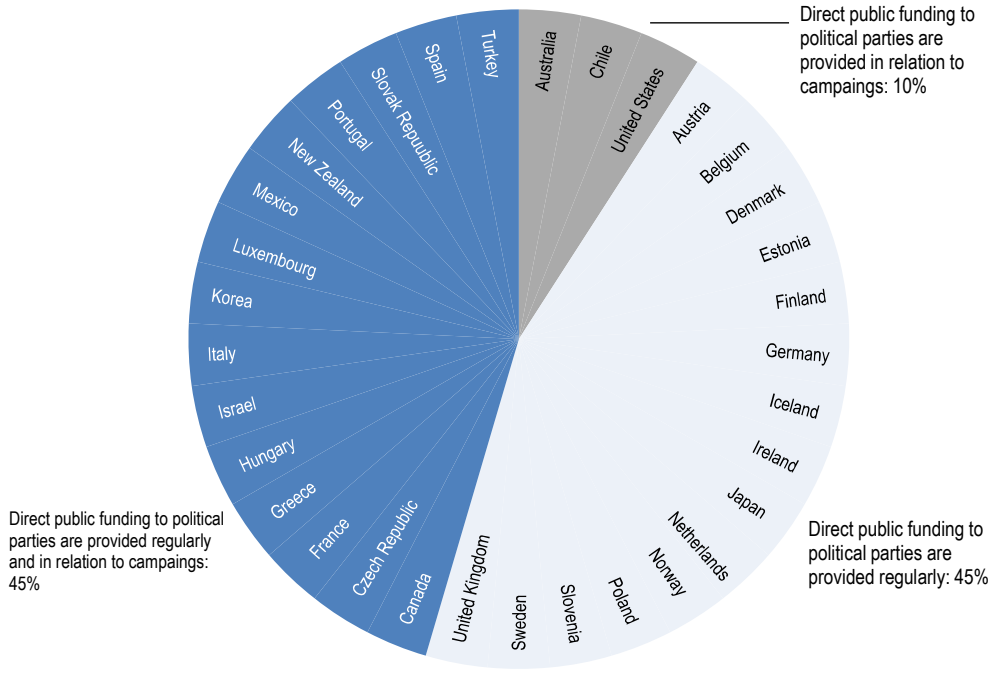
Table 2.1. **The balance between public and private funding to political parties in selected OECD countries, 2007 to 2015**

	Funding = % of party income	
Country	Public %	Private + other %
Belgium	85%	15%
Denmark	75%	25%
Finland	75%	25%
Greece	90%	10%
Hungary	60%	40%
Iceland	75%	25%
Italy	82%	18%
Netherlands	35%	65%
Norway	67.4%	32.6%
Poland	54-90%	10-46%
Portugal	80%	20%
Slovak Republic	87.5%	12.5%
Spain	87.5%	12.5%
Sweden	75%	25%
Turkey	90%	10%
United Kingdom	35%	65%

Source: Adapted from GRECO (n.d.), "Third Evaluation Round (launched in 2007 continuing to June 2015): Evaluation and Compliance Reports", Council of Europe, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ ReportsRound3_en.asp (accessed on 27 October 2015).

All OECD countries provide direct public funding to political parties, except Switzerland. Of the remaining 33 OECD member countries, direct public funding to political parties is provided regularly in 15 countries; in 3 countries direct public funds are provided only if they are campaign-related. The other 15 OECD member countries regularly provide funding to political parties and provide funds in relation to campaigns (Figure 2.3). In some countries, the large majority of political financing is based on public funding at the national level, such as in Greece and Turkey (Table 2.1).

Figure 2.3. **Direct public funding to political parties in OECD countries**



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

The eligibility criteria for receiving public funds may depend on the votes in the previous election, representation in an elected body, or the share of seats in the previous election, among others (Table 2.2).

In the context of levelling the playing field, the details of eligibility criteria for receiving public funds are also important (Box 2.1). While many countries adopt the party's performance in the previous election as an indicator for the eligibility criteria, the actual percentages vary across countries. For example, Germany, Slovenia and Turkey may seem identical in terms of public funding eligibility in Table 2.2, but Germany requires a 0.5% threshold, whereas Slovenia requires 3% and Turkey 7%. The OSCE/Venice Commission guidelines on party regulation suggest that the pay-off threshold for public funding should be lower than the electoral threshold (OSCE/ODIHR and Venice Commission, 2010).[1] Otherwise, it would make it harder for new parties and small parties to enter the political arena and compete under fair conditions with better established parties (Piccio, 2014).

Table 2.2. **Eligibility criteria for direct public funding to political parties in OECD countries**

	Share of votes in the previous election	Representation in an elected body	Share of seats in the previous election	Participation in the election	Number of candidates	Registration as a political party	Other
Australia	x						
Austria	x	x	x				
Belgium		x					
Canada	x						
Chile				x			
Czech Republic	x	x					
Denmark	x						
Estonia	x	x					
Finland		x					
France	x						
Germany	x				x		
Greece	x	x					
Hungary	x	x		x			
Iceland	x	x					
Ireland	x						
Israel		x					
Italy		x					
Japan	x	x	x				
Korea	x	x	x				
Luxembourg	x				x		
Mexico	x					x	
Netherlands		x					x
New Zealand		x				x	x
Norway	x	x					x
Poland	x						
Portugal	x	x		x	x		
Slovak Republic	x	x					
Slovenia	x						
Spain		x					x
Sweden	x	x					
Turkey	x						
United Kingdom	x	x					x
United States	x						x
OECD 33	25	20	3	3	3	2	6

Note: In addition to the categories listed in the table, the category "Other" includes the following: the numbers of party members in the Netherlands. Party must give notice in New Zealand. For part of the funding there is no threshold in Norway. Spain doesn't have someone in a leading position found guilty of serious offence. The share of seats in the next election in the United Kingdom, and share of votes in next election as well as limit campaign expenses and private contributions. Providing closed captioning in TV commercials for hearing-impaired individuals in the United States.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Box 2.1. **Eligibility criteria for receiving public funds in Austria, Belgium, Chile and Turkey**

In **Austria**, parties are eligible for public funding if they have obtained at least 1% of the votes in the previous election.

In **Belgium** funding is only available to parties with parliamentary representation.

In **Chile** funding is available to all political parties that nominate candidates in elections.

In **Turkey**, parties must obtain at least 7% of the votes in the previous election.

Furthermore, the calculation of the allocation of direct public funding to political parties varies across OECD countries (Table 2.3), amongst equal access and proportionality are the dominant policy options. In other words, the most common allocation calculation formula entails an equal sum distributed evenly to all parties that meet the eligibility threshold and an additional variable sum, which is distributed in proposition to the votes or seats obtained in previous elections.

Allocation of public funding based on the previous electoral performance may result in an uneven playing field for the challengers and smaller parties

Evidently, the most common policy option is distributing resources according to past record, for example proportional to the share of votes or the share of seats in past elections. This reflects past performance and such distribution helps parties that reproduce past results. If resources matter for electoral success, and if public funding covers a significant share of overall expenses, proportional distribution of funding may result in replicating past results.

Another common allocation is based on equal access to public funding, where all candidates or parties have access to the same amount of public funding. State funding based on equal shares of resources creates incentives for new competitors to run for election. When all parties receive equal shares of resources, and no other thresholds to participate in elections exist, one expected drawback is to have a proliferation of political parties run for office.

A third option for the allocation of funds is performance based. After elections, political parties will have some of their expenses reimbursed, depending on the number of votes or seats received. The performance of parties depends on the capacity to generate funding in advance, either from loans or from savings. This system sets strong incentives for competitors to take risks. Depending on the success at the polls, parties will be able to balance the budget, or walk away with campaign debts (Box 2.2).

Table 2.3. **Allocation calculation of direct public funding to political parties in OECD countries**

	Equal	Proportional to votes received	Proportional to seats received	Flat rate by votes received	Share of expenses reimbursed	Other
Australia				x		
Austria	x	x		x		
Belgium	x	x				
Canada				x	x	
Chile				x		
Czech Republic	x	x	x	x	x	
Denmark				x		
Estonia	x	x	x			
Finland			x			
France		x	x			
Germany		x				x
Greece	x	x				
Hungary	x	x				
Iceland	x	x				
Ireland		x				
Israel	x			x		
Italy		x				x
Japan		x	x			
Korea		x	x		x	
Luxembourg	x	x				
Mexico	x	x				
Netherlands	x		x			
New Zealand		x	x			
Norway		x				
Poland		x				
Portugal	x	x				
Slovak Republic		x	x			
Slovenia	x	x				
Spain		x	x			
Sweden	x	x	x			
Turkey		x				
United Kingdom		x	x			x
United States	x	x				
OECD 33	15	25	12	7	3	3

Note: In addition to the categories listed in the table, the category "Other" includes the following: In Germany, funding cannot be higher than the private funds raised by the party. In Hungary, 25% is distributed equally among parties with parliamentary representation, and 75% in proportion to the votes of the party and the candidates of the party in the first valid round in parliamentary elections. In Italy, 30% of the funds are distributed according to the parties' self-financing capacity (EUR 0,5 for each euro received annually from private funds, up to EUR 10 000). In the United Kingdom, funding relating to the House of Commons is proportional to seats and votes won. Funding relating to the House of Lords is determined by the House of Lords Policy Development Grants, which in accordance with a formula weighted by votes, won in the preceding election.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Box 2.2. **Allocation criteria for public funds in Australia, Estonia and the United States**

In **Australia**, parliamentary parties receive a flat rate for each vote won (EUR 2.50/vote). For parliamentary parties, the total funding (EUR 4.60/eligible voter) is divided proportionally by votes won after deduction of EUR 218 000 for each party with at least five parliamentary seats. This amount is then given equally to each eligible party.

In **Estonia**, equal amount is provided to smaller parties while larger parties receive funding proportional to votes and seats won.

In **the United States**, public funding is distributed equally between eligible major parties in the general election. Minor parties eligible for public funding receive an amount that bears the same ratio to the major parties public funding as the number of popular votes received in the previous presidential election does to the average number of popular votes received by the major parties.

Earmarking public funding is one way to further ensure that money is spent to promote a level playing field

Some 43% of OECD countries set provisions on how political parties should use direct public funding. For instance, in Greece direct public funding should be used for campaign spending, ongoing party activities and research and study centres. In Ireland, it needs to be used for ongoing party activities and for the promotion of women and youth participation. In Mexico and the Netherlands, direct public funding must be used for campaign spending, ongoing party activities and intra-party institution. In Slovenia, it is specified that direct public funding cannot be used for loans, settling fines, donations or to support presidential election campaigns.

Public funding can be used to promote gender equality in politics

Promoting gender equality is also an important element of levelling the playing field. Political finance for female candidates remains one of the greatest barriers to their entry into politics. According to research conducted by UN Women in 2013, over 80% of respondents identified the lack of access to funding as one of the biggest obstacles for women to participate in a political competition (Ballington and Kahane, 2014). In order to facilitate participation of female candidates in politics, some countries tie the allocation of public funding to the enforcement of electoral quotas and the nomination of women as candidates. Making gender equality as one of public funding allocation criteria provides political parties financial incentives to take the issue seriously and increase the number of female candidates.

Such initiatives are still relatively few. France introduced a gender equality law in 1999, with the equal access of both men and women to electoral mandates and elective positions. Furthermore, an electoral reform in 2000 introduced the penalty for non-compliance with the parity rule. A political party can lose a portion of its public funding if there is a greater than 2% difference between the number of male and female candidates. Portugal introduced a similar reform in 2006, requiring at least 33% of candidates to be women, and stipulating that parties will lose 50% of public funding if either gender is represented below 20% or lose 25% of public funding if either gender is

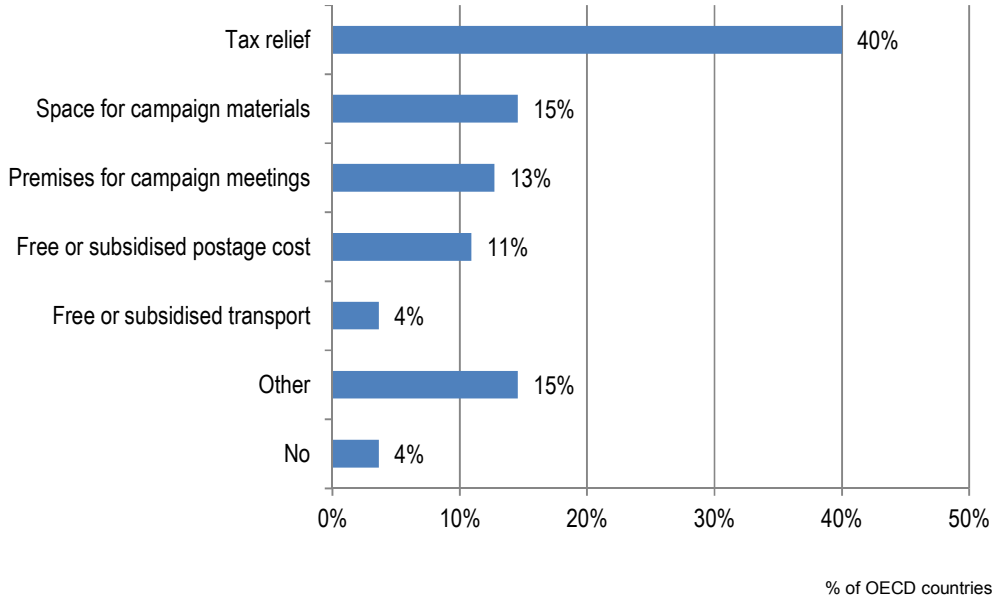
represented between 20% and 33.3%. Ireland also introduced a similar measure in 2012 by setting 30% quota for female candidates with penalty of loss of up to 50% of public funding in case of non-compliance. However, it is also pointed out that these measures may have limited impact on well-resourced parties, which may choose to pay the penalty rather than nominate more female candidates (Ballington and Kahane, 2014).

Earmarking public funding for activities related to gender equality is also another measure to promote a level playing field. For example, in Mexico legislation requires parties to spend 2% of public funding on activities that aim to promote, develop and train women's political leadership. Similarly, Korea adopts an initiative requiring political parties to use no less than 10% of their subsidies to promote women's political participation.

Indirect public funding is widely adopted across OECD countries and takes a number of different forms

Many countries also provide indirect public funding to political parties. It can take a variety of forms, including tax breaks, free access to public services including airtime, access to public buildings, provisions of goods, and allocation of financial resources. Considering the impact of resources on political competition, the two most important policy options countries use for public subsidies are financial support and free airtime (Figure 2.4).

Figure 2.4. **Most common types of indirect public funding in OECD countries**



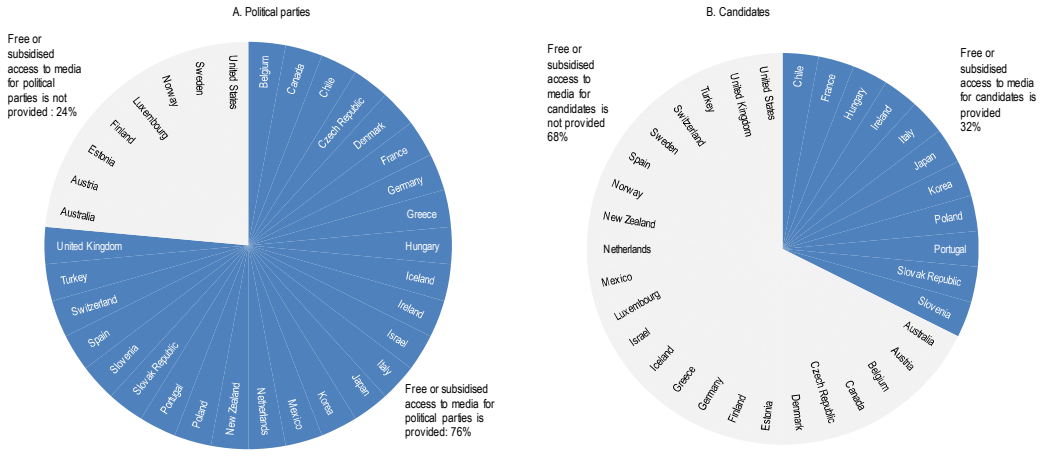
Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Tax exemption is the most common policy option for indirect public funding. For example, in Finland, donations to parties (and to candidates if total amount donated is less than EUR 3 400 over three years) are tax exempt. Political parties are not subject to income tax in Portugal and the United States. For instance in Belgium, campaigns enjoy

exemption from tax stamps for election posters, advertising space, preferential treatment for election mail and free provision of a copy of the electoral register.

Another type of indirect public funding is free or subsidised access to media for political parties or candidates. The media plays an important role in conveying parties' or candidates' messages to the widest audience possible. While 76% of OECD countries give free or subsidised access to media for political parties, only 32% do the same for candidates (Figure 2.5). For instance in Chile, it only applies to television during the 27 days prior to the end of the campaign period, and in the case of legislative elections. In Hungary, for example, media programme providers publish free of charge the political ads produced by nominating organisations and candidates on the last day of the election campaign. In Mexico, political parties are granted free permanent access to radio and TV. Political parties are not allowed to buy airtime, directly or indirectly. On the other hand, in Australia, broadcasters must give all parties reasonable opportunity to broadcast, but must not offer free or subsidised access.

Figure 2.5. **Free or subsidised access to media for political parties and for candidates in OECD countries**



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Despite a general trend of promoting public funding, doing so also raises questions as to whether or not it has effectively fostered fair political competition. One of the growing challenges is, for instance, how to adequately allocate indirect public funding while ensuring a level playing field between parties. Another concern is to understand to what extent direct public funding creates a level playing field between stakeholders. For example, the criteria of allocation to parties according to past electoral performance allow major traditional parties to rely on public funding while new competitors or small parties cannot benefit from it. This could lead to a cartelisation of political parties (Katz and Mair, 1995).

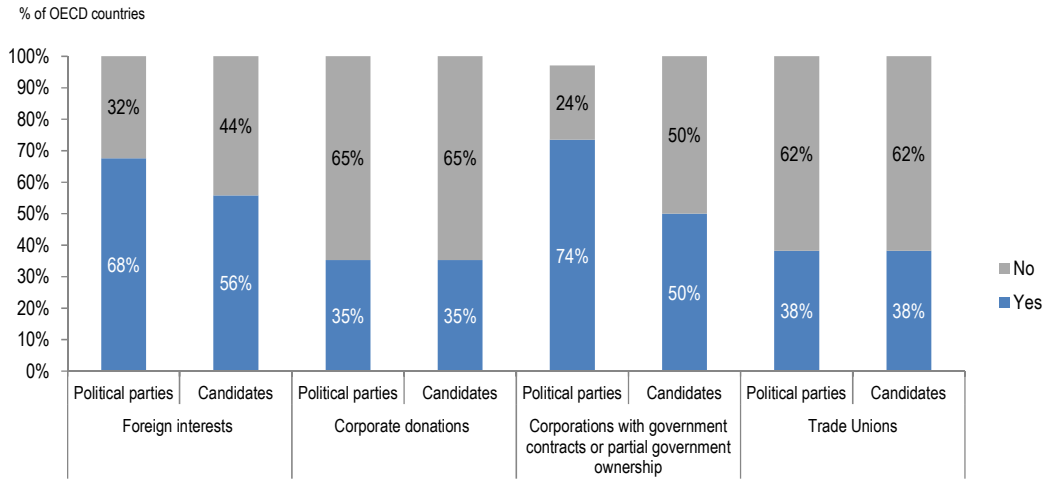
Framing private funding to level the playing field

Private funding is an important means for political expression by citizens; if it is not adequately regulated, however, it may be vulnerable to policy capture

Private funding allows for support from society at large for a political party or candidate, and is widely recognised as a fundamental right of citizens. Yet, if private funding is not adequately regulated, it can be easily exploited by special private interests. Therefore, OECD countries increasingly regulate private funding to ensure a level playing field among parties and candidates.

Regulating private funding underlies a concept of banning or limiting sources or amounts of financing. Sources considered inappropriate and therefore banned include foreign financing, financing from state organisations, such as state owned enterprises, from corporate donations or from trade unions (Figure 2.6). The rationale for limiting the amounts of private donations is related to the extent of influence of single donors on the outcome of elections or on the process of policy making after election day.

Figure 2.6. **Types of banned private contributions in OECD countries**



Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

When private donations play a significant role in political funding, special attention must be paid to understand the extent to which specific sectors or single donors hold a large share in the overall amount of funding. In Brazil, for example, corporate funding responds to 75% of overall campaign costs, and the group of 20 largest donors accounts for more than 30% of all donations from all 20 000 corporate donors. This represents both a considerable share and a high concentration. On the other hand, corporate donations constitute 7% of the annual income of all parties in Germany.

In addition, not all private funding limits shape actual contributions towards more equality. A few countries also linked contribution limits to the income of the donor. Companies in Brazil, for example, can contribute up to 2% of their turnover, while the limit is 10% of income for private citizens. In this case the design of contribution limits

makes donors unequal under the law. A citizen with a higher income can contribute more than others who earn less.

Setting the ceiling for donations helps to frame private funding

Many countries also set the maximum ceiling for donations from natural and legal persons to political parties. Such a ceiling plays an important role in understanding the room for manoeuvre for potential policy capture, but it is very difficult to strike the right balance. If the limit is very high, it will have little impact. If the limit is very low, donors, political parties and candidates will find ways to circumvent the limit, most likely through splitting and channelling donations through multiple donors (Table 2.4).

Table 2.4. **Maximum donation ceilings for individuals in selected OECD countries**

	Party	Candidates
Australia	No limit	No limit
Austria	No limit	No limit
Belgium	EUR 500	N/A
Brazil	Yes[1]	Yes[1]
Canada	CAD 1 200 per party	CAD 1 200
Chile	No limit	USD 80 000
Denmark	No limit	No limit
Finland	EUR 30 000	EUR 5 000
France	EUR 7 500	EUR 4 600
Germany	No limit	No limit
Greece	EUR 15 000	EUR 3 000
Hungary	No Limit	No limit
Iceland	EUR 2 720	EUR 2 720
Ireland	EUR 2 500	EUR 1 000
Japan	EUR 146 300	EUR 11 000
Korea	No limit	USD 10 000/5 000
Netherlands	No limit	No limit
New Zealand	No limit	No limit
Norway	No limit	No limit
Poland	Yes[2] -	Yes
Portugal	Yes[3]	Yes[3]
Spain	EUR 10 000	EUR 6 000
Sweden	No limit	No limit
United Kingdom	No limit	No limit
United States	USD 33 400	USD 2 700

Notes:

1. Individuals may contribute up to 10% of their gross income of preceding year.

2. Membership fees to parties limited to equivalent of minimum monthly wage as set for each year, political donations to parties limited to 15x minimum monthly wage

3. Donations from individuals to parties limited to 25x minimum monthly wage as set for each year.

Source: For Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Netherlands, Norway, Poland, Portugal, Spain, Sweden and the United Kingdom: GRECO (n.d.), "Third Evaluation Reports on the Transparency of Party Funding", Council of Europe, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp (accessed on 27 October 2015). For Japan: www.soumu.go.jp/main_content/000174716.pdf (JPY 20 million for party and JPY 1.5 million for candidates, exchange rate as of 12 October 2015). For Australia and New Zealand: IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015). For Brazil, Chile and Korea: case studies in this volume.

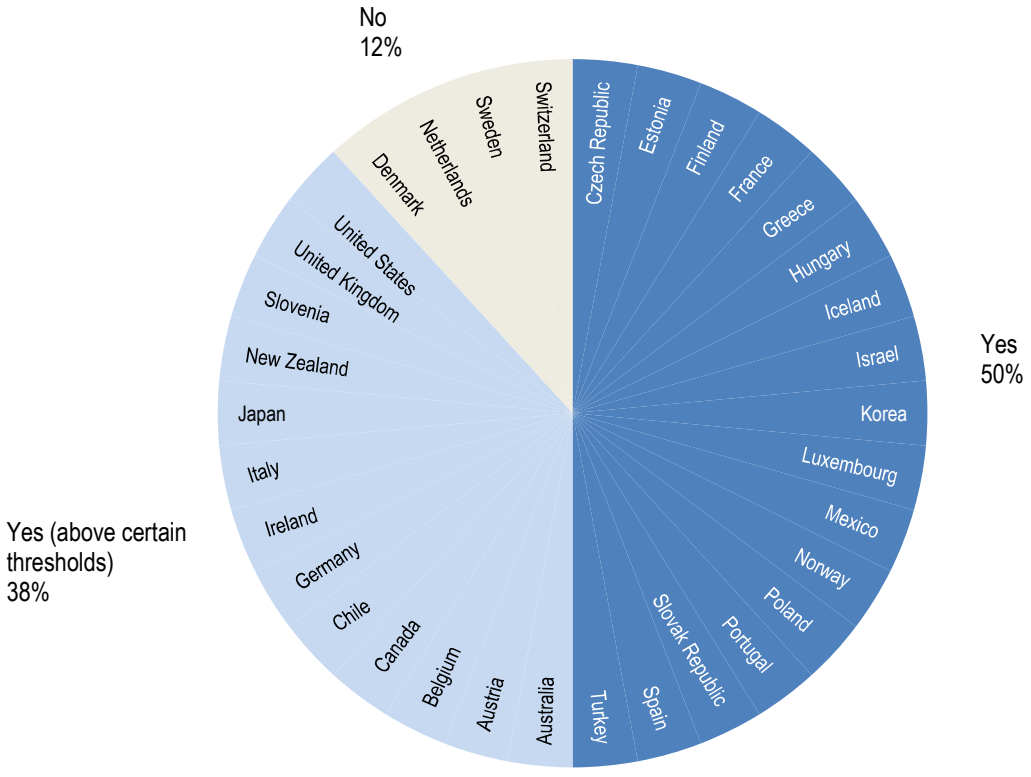
In Korea, for example, individuals can donate up to USD 20 000 every year to political fundraising associations. The contribution limit per association is USD 5 000 for National Assembly members and candidates, and USD 10 000 for presidential candidates. In Italy, new legislation introduced a limit on corporate donations to political parties. Under Article 7 of the Law 13/2014, "legal persons' donations in favour of a single

political party shall not exceed, in cash or with goods or services of any kind of form, […], a value of EUR 100 000 yearly." This is the first time such a limit was introduced in Italy; however, its relatively generous donation limit raises the question as to whether such a limit serves its purpose to mitigate undue influence on political parties. In France, there is a ceiling of EUR 7 500 per year for all donations paid by individuals to the same political party or regional or specialist entities attached to it, and the donor must be identified.

Most countries ban anonymous donations to limit undue influence

Another source of concern is anonymous donations. Half of OECD countries (17) ban all anonymous donations to parties and 13 countries ban anonymous donations to parties above certain thresholds. In addition, 10 OECD countries ban all anonymous donations to candidates and 14 countries ban anonymous donations to candidates above certain thresholds (Figure 2.7). For example, in Estonia, political parties are not allowed to accept concealed or anonymous donations, nor donations from legal persons. If possible, political parties are to return anonymous donations or donations from legal persons to the donor; otherwise, they have to transfer the donations to the state budget within ten days for addition of the funds to be allocated to political parties in the following budgetary year.

Figure 2.7. **Ban on anonymous donations to political parties in OECD countries**



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Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Regulating private funding remains a very complex matter, as it often generates debate on how to achieve diverging policy objectives: namely freedom of speech versus protecting the public interest through ensuring a level playing field. Furthermore, new ways to circumvent regulations emerge if regulatory loopholes are not addressed (e.g. using membership fees to conceal donations, or rely heavily on loans and consequently on credit institutions).

Membership fees and loans can be used to circumvent limits on private donations

Membership fees to parties can, for instance, also be used to circumvent limits on private donations. For example, in Korea, political parties are only required to disclose the total amount of membership fee collected, therefore there is no way to access the information on party members who paid a large amount of membership fees. According to financial reports submitted by political parties in 2015, the total amount of membership fees collected from party members was USD 52 million, amounting to 25.8% of their total income of USD 201.3 million (Chapter 10).

Aware of such risks, some countries introduced mandatory transparency requirements in relation to membership fees (Box 2.3): in Estonia, for instance, the 2010 reform of political financing regulations, obliged parties to register donations and membership fees separately and to publish them in a public register maintained by the parties on their websites. This public register must include the name and personal identification of the party member paying the fee as well as the amount of the fee and date of payment. In France, membership fees are limited to EUR 7 500 per person.

Box 2.3. **Regulation of membership fees as a source of political party funding in selected OECD countries**

Membership fees and subscriptions have been declining as a source of funding for political parties in recent years. However, many countries do not regulate the amount or frequency of membership fees as a source of party funding, opening potential loopholes to circumvent annual donor limitations by individuals.

In **Iceland**, annual membership fees are capped at a limit of ISK 100 000 (approximately EUR 670) per year.

In **France** and **Ireland**, membership fees are treated as part of overall donations, which are subject to certain ceilings.

In **Poland**, membership fees cannot exceed the amount of one month's minimum wage, which is set each year by the government. In 2015, this amount is equal to EUR 409.*

In **Estonia**, parties are required to declare membership fees separately from donations, and publish them in a public register posted on their websites.

Austria, **Denmark, Finland** and **Germany** are just a few of the countries who have no limitations on the amount or frequency of membership fees that may be paid to political parties.

*Eurostat, available at http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00155&plugin=1.

Other emerging risks are the loans granted to parties/candidates or sponsorships. This may be considered hidden private funding. Countries have defined their own models for regulating this source of funding. In Spain, for instance, the high indebtedness of parties was recognised by the Third Evaluation Round of GRECO (Group of States against Corruption), as a challenge to the independence of parties' *vis-à-vis* credit institutions. The Spanish Court of Audit - also a main institution responsible for the control of party funding, but with non-binding recommendations - had already highlighted this risk to parties in particular as it observed many irregularities in the management of the loans granted to parties.[2] Turkey, on the other hand, has simply forbidden parties from borrowing money or taking loans. In Italy, while taking loans is not forbidden, all candidates to the national parliament and regional councils need to include the debts incurred for campaigning in the accounting report and elections statement that they need to provide to the Board of Comptrollers.

Globalisation further complicates the regulation of foreign money and interests in ensuring a level playing filed

Political parties and candidates need to be responsive to their constituents and not influenced by foreign interests. Too much foreign interference in elections is a danger to a country's sovereignty. While 68% of OECD countries ban donations from foreign interests to political parties and 56% of them also ban such donations to candidates, much variation exists across OECD countries in terms of regulatory scope of foreign donations (Table 2.5).

For example, while Australia permits foreign contributions subject only to a reporting requirement, Mexico does not allow Mexican citizens living abroad to make donations from abroad. Germany prohibits donations from aliens outside of the European Union if the donation exceeds EUR 1 000. Contributions from foreign corporations are also prohibited in Germany. In France, foreign states or foreign legal entities cannot make direct or indirect donations to political candidates or parties. Foreign individual contributions are prohibited in Israel in the general election but permitted in primaries. The United Kingdom prohibits the receipt of contributions from abroad, other than from British citizens living overseas who are still eligible and registered to vote. In Sweden, receiving money from a foreign donor or someone acting on behalf of a foreign donor is a criminal offence if the purpose is to influence public opinion in matters fundamental to the governance of the country or a matter of national security.

Table 2.5. **Bans on foreign donations to political parties in OECD countries**

	Ban on foreign donations to political parties	Details
Austria	No	
Austria	No	However, donations from foreign natural or legal persons must not exceed EUR 2 500.
Belgium	No	
Canada	Yes	
Chile	Yes	Ban does not apply to foreign natural persons who are registered to vote in Chile.
Czech Republic	Yes	
Denmark	No	
Finland	Yes	Ban does not apply to donations from foreign individuals or international organisations that share the ideological stance.
France	Yes	
Germany	No	There is however a limit on how much foreigners may contribute, which is EUR 1 000 (approximately USD 1 200).
Greece	Yes	
Hungary	Yes	
Iceland	Yes	
Ireland	Yes	
Israel	Yes	
Italy	No	
Japan	Yes	
Korea	Yes	
Luxembourg	No	
Mexico	Yes	Not even Mexican citizens living or working in other countries are allowed to make contributions from abroad.
Netherlands	No	
New Zealand	No	Ban applies to "overseas donations" exceeding NZD 1 600 (approximately USD 1 000).
Norway	Yes	
Poland	Yes	
Portugal	Yes	
Slovak Republic	Yes	Ban does not apply to foreign political parties, groups of political or legal persons established or owned in majority by a political party.
Slovenia	Yes	
Spain	Yes	
Sweden	Yes	Receiving money from a foreign power or someone acting on behalf of a foreign power is a criminal offence if the purpose is to influence public opinion in matters fundamental to the governance of the country or a matter of national security (within the purview of parliament or the government).
Switzerland	No	Ban does not exist on the federal level. The Cantons may however institute their own regulations.
Turkey	Yes	
United Kingdom	Yes	In the UK system a donation to a political party is defined as a contribution exceeding GBP 500 (approximately USD 820). Foreigners cannot make donations since they are not listed as permissible donors, except where they support international travel, accommodation or subsistence or subsistence by party officers/staff (as long as the amount is "reasonable").
United States	Yes	

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Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Despite wide variety of regulations on foreign donations, there are still cases in which foreign interests might have unduly exerted influence over national interests. For example, it was revealed that "anti-Islam groups in the United States have provided financial support to Dutch politician, Geert Wilders, an anti-immigration campaigner.

While this is not illegal in the Netherlands, it sheds light on the international connections of Mr. Wilders, whose Freedom Party is the least transparent Dutch parliamentary group and a rallying point for Europe's far right. Wilders' party is self-funded, unlike other Dutch parties that are subsidised by the government. It does not, therefore, have to meet the same disclosure requirements" (Deutsch and Hosenball, 2012). According to the same source, a director of the Philadelphia-based think tank, said his organisation provided Mr. Wilders' legal defence fund in 2010 and 2011. It sent an undisclosed amount of money directly to his lawyer. Another conservative activist also admitted that he paid Wilders "a good fee" for making speeches in the United States. The same activist also paid for security costs and for hotel accommodations for Wilders' Dutch bodyguards in 2009. Both "denied funding Wilders' political activities in the Netherlands. Both run non-profit, tax-exempt research and policy organisations which, under US tax laws, are forbidden from giving direct financial backing to any political candidate or party. US law does allow such groups to support policy debates financially. Wilders has not revealed how his political activities are paid for. Former Freedom Party officials have said he has no personal funds and relies almost entirely on foreign donations" (ibid.).

Globalisation of corporate donors blurs national borders and its regulation becomes difficult

Where bans on foreign funding do exist in many OECD countries, money-laundering schemes and a variety of other techniques are often used to evade them. This is a particularly challenging area for enforcement agencies, as a number of ways exist for wealthy foreign individuals and corporations to make contributions to a political party or candidate without violating prohibitions in place. Globalisation of corporate structures makes it difficult to prevent foreign nationals from participating in a country's elections as long as private money is part of the financing mechanism for political campaigns. Some notorious ways of evading foreign funding bans include setting up branches of the political party disguised as other organisations, such as think tanks or party foundations, sometimes referred to as "offshore islands" of political parties. In other cases, foreign donors and political parties may simply be able to take advantage of a loose definition of "foreign" in the prohibition (IFES, 2009).

The globalisation of large firms' organisational structures allows foreign nationals to influence a country's elections in direct and indirect ways. Many of these firms do business abroad through foreign subsidiaries and/or partnerships with foreign companies. Firms are linked together through mergers and partnerships into global networks that share information, engage in long-term contracts, and work within host countries to create and protect opportunities for other firms within the network. Through these processes, foreign nationals can become part of the internal decision-making apparatus of domestic firms. Moreover, many of the foreign firms are companies operated by wealthy families with close ties to foreign governments (Deutsch and Hosenball, 2012; Weinberg, n.d.).

For example, global corporations spent millions to influence the outcome of the US presidential and congressional elections in 2012. Records show that scores of banks, liquor manufacturers and telecom companies outside the United States directed USD 18.1 million to the 2012 US elections and likely much higher amounts through other means that are not traceable. Non-US companies circumvented election laws by creating political action committees (PACs) through their US subsidiaries and by asking their US employees to donate. While it is not possible to know the extent to which foreign parent companies are driving campaign donations, some US subsidiaries were highly active contributors (Table 2.6). UBS, Swiss banking group, donated USD 861 500 in total.

Anheuser-Busch, which is now owned by the Belgium-based beer giant InBev, gave USD 806 381 while BAE Systems, a UK defence contractor, gave USD 747 000. Under US regulations, foreign companies are not supposed to direct or influence the PAC of a US subsidiary. But in practice, it is virtually impossible to ensure that these US subsidiaries are truly independent of their foreign parenting firms.

Minimising the dangers of foreign interference in politics remains problematic. While public funding can be a useful tool to reduce the interference of foreign interests, it should not replace private funding from those who favour a certain political party or candidate. It is crucial to remember that political parties and candidates are supposed to compete with each other for the support of the voters. Only allowing public funding would be to treat political parties as public institutions, and such an approach could potentially give the state a biased incentive to treat ruling parties more favourably, reinforcing inequality rather than promoting a level playing field. Striking the right balance between public and private funding remains critical.

Table 2.6. **Top 20 US campaign donations from foreign-owned firms in 2012**

	PAC name	Country of origin	Total	Democrats	Republicans
1	UBS Americas	Switzerland/UBS AG	USD 861 500	USD 461 500	USD 400 000
2	Anheuser-Busch	Belgium/Anheuseur-Busch InBev	USD 806 381	USD 361 381	USD 445 000
3	BAE Systems (BAE Systems)	UK/BAE Systems	USD 747 000	USD 286 000	USD 461 000
4	AstraZeneca Pharmaceuticals (AstraZeneca PLO)	UK/AstraZeneca FLC	USD 640 452	USD 296 952	USD 343 500
5	GlaxoSmithKline	UK/GlaxoSmithKline	USD 521 250	USD 239 000	USD 282 250
6	Credit Suisse Securities	Switzerland/Credit Suisse Group	USD 519 000	USD 239 500	USD 279 500
7	T-Mobile USA	Germany/Deutsche Telekom AG	USD 473 500	USD 198 500	USD 275 000
8	Bayer Corp	Germany/Bayer AG	USD 470 000	USD 150 000	USD 320 000
9	Experian	UK/Experian plc	USD 426 000	USD 99 500	USD 326 500
10	BASF Corp	Germany/BASF SE	USD 411 500	USD 118 500	USD 293 000
11	DRS Technologies	Italy/Finmeccanica SpA	USD 405 300	USD 173 000	USD 232 300
12	Novartis Corp (Novatis AG)	Switzerland/NovartisAG	USD 330 200	USD 130 500	USD 199 700
13	Sprint Corp (Sprint Nextel)	Japan/Softbank Corp	USD 312 306	USD 151 500	USD 160 806
14	Accenture (Accenture)	Ireland/Accenture plc	USD 304 500	USD 160 000	USD 144 500
15	Siemens Corp	Germany/Siemens AG	USD 290 000	USD 138 500	USD 151 500
16	Ace INA	Switzerland/ACE Ltd	USD 281 500	USD 121 500	USD 160 000
17	Rolls-Royce North America	UK/Rolls-Royce PLC	USD 272 250	USD 73 500	USD 198 750
18	Genentech Inc (Roche Holdings)	Switzerland/Roche Holdings	USD 269 500	USD 134 000	USD 135 500
19	Syngenta Corp	Switzerland/Syngenta AG	USD 255 000	USD 90 500	USD 164 500
20	Compass Bancshares	Spain/Banco Bilbao Vizcaya Argentaria	USD 249 500	USD 62 000	USD 187 500

Source: Center for Responsive Politics (n.d.), "Foreign-connected PACs", www.opensecrets.org/pacs/foreign.php?cycle=2012 (accessed on 27 October 2015).

Spending limits for election campaigns: Promoting integrity and fairness or a limitation of political expression?

Setting spending limits for parties or candidates during electoral campaigns contributes to reducing the overall cost of elections and prevents a spending race between political parties and between candidates. Spending limits could limit the incentives for undue influence and corruption stemming from high expenditures. On the other hand, opponents of spending limits argue that spending money on political campaigns falls

under the fundamental freedom of free speech, and that any limitation of spending equals a limitation of political expression. In 2010, the US Supreme Court ruled in this sense in Citizens United vs. Federal Election Commission. Research has also shown that resources are more important for challengers than for incumbents. Consequently, spending limits may only establish equality formally, while *de facto* causing a disadvantage for challengers who need more funds to unseat an incumbent candidate.

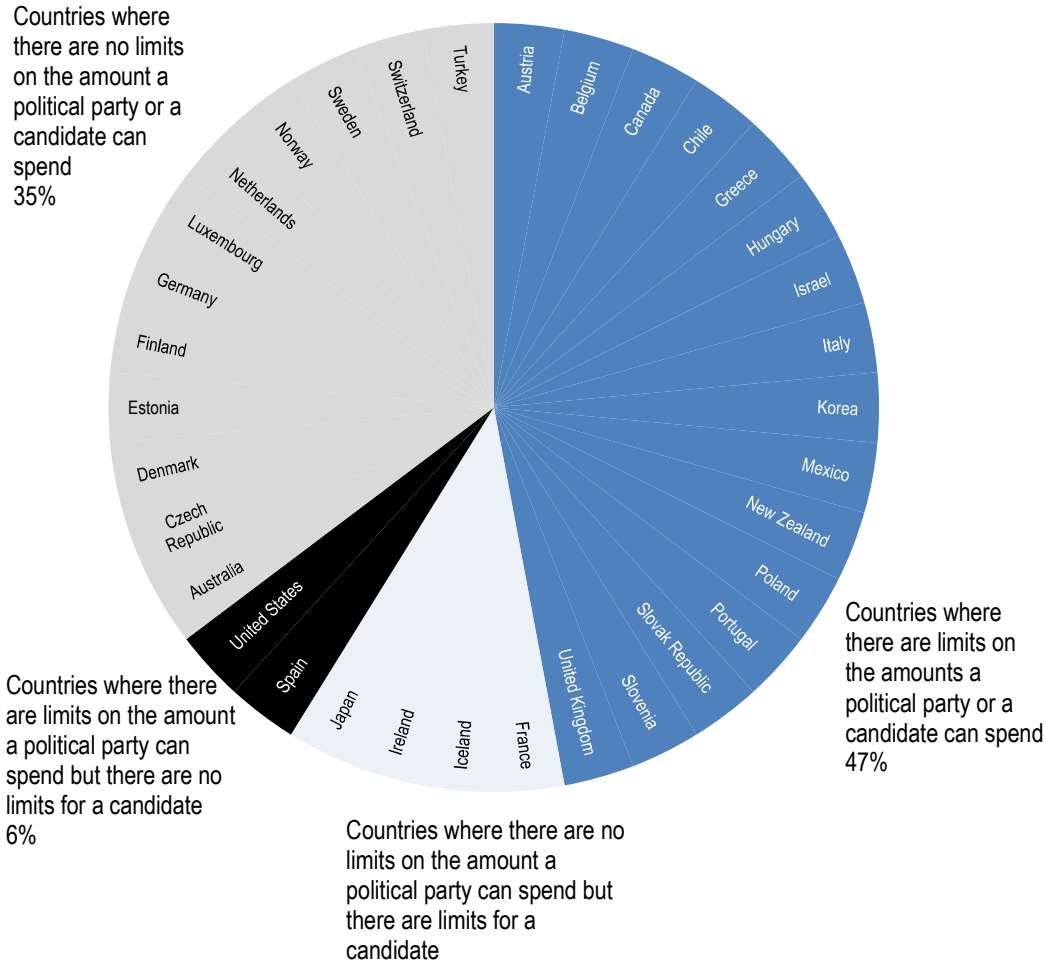
There are no limits in 35% of OECD countries on the amounts a political party or candidate can spend. Some 47% of OECD countries have introduced spending limits for both political parties and candidates. On the other hand, 12% of OECD countries only limit the amount a candidate can spend, but not political parties, and 6% limit spending by political parties, but not candidates (Figure 2.8). For example, in France, Iceland, Ireland, and Japan, there are spending limits on the amount a candidate can spend, but no limits for political parties. In Spain and the United States, there are spending limits for political parties, but not for candidates (Table 2.7).

In order to reflect the change the socio-economic circumstances, some countries also set different amount of spending limits for every election. For example, in Korea, spending limits for every election are calculated in consideration of voter population, number of constituencies and the inflation rate. In addition to overall spending limits, some countries also place spending limits on particular items and services. For example, Brazil, Chile and Mexico, among others, ban or restrict political party spending on TV advertisements.

The definition of third-party campaigning is subject to debate, and its regulation remains challenging in many countries

An emerging challenge to spending limits is to effectively apply restrictions on third-party spending. If not, the limits will be evaded by re-channelling election spending through supposedly independent committees and interest groups. Third-party campaigners are sometimes referred as non-party campaigners and may include charities, faith groups, individuals or private firms that campaign in the run-up to elections, but do not stand as political parties or candidates. Where spending on certain campaigning activities can be seen as reasonably intended to influence voters to vote for or against a political party or a category of candidates, there should be rules that apply. Only a few OECD countries currently have regulations for third-party campaigning (Table 2.8). In practice, the activities of many private firms and other organisations and their political impact are often difficult to measure precisely; therefore, there is a grey area as to what kind of political activities should be subject to third-party campaigning regulation (Box 2.4).

Figure 2.8. **Spending limits for candidates and political parties in OECD countries**



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Table 2.7. **Spending limits for political parties and candidates in OECD countries**

	Limits on the amount a political party can spend	Limits on the amount a candidate can spend
Australia	No	No
Austria	EUR 7 million per party[1]	In theory, EUR 7 million, if no other candidate of the party, nor the party, spends any funding.[2]
Belgium	EUR 1 million per campaign	Depends on candidate's position on the nomination list; limit includes fixed amount and amount for registered voter in previous election.
Canada	CAD 0.70 (EUR 0.49) multiplied by number of names on the electoral list(s)[3]	Based on the number of names on the preliminary or revised lists of electors for each electoral district. The limit is adjusted for inflation.
Chile	One-third of the overall amount of the expenses allowed to its nominated candidates	Varies from office to office, but in every case is set according to a formula clearly set forth in the law.
Czech Republic	No	CZK 40 million (EUR 1.45 million) for presidential elections (first round), and CZK 10 million (EUR 361 000) for presidential run-off elections.
Denmark	No	No
Estonia	No	No
Finland	No	No
France	No[4]	Depends on the kind of election and the population of each constituency
Germany	No	No
Greece	20% of the most recent total annual amount of regular public funding received	- Local elections: Based on the number of seats in their respective constituency or population in the relevant prefecture or municipality. - Parliamentary elections: Based on the amount applicable for the candidates for the election in the A'Electoral Region of Athens.
Hungary	HUF 1 million (EUR 3 270) per candidate for independent candidates and nominating organisations on elections. Thus, party expenditure cannot exceed HUF 386 million (EUR 1.26 million).	Independent candidates may spend maximum HUF 1 million (EUR 3 270) on the elections.
Iceland	No	ISK 35 million (EUR 226, 000) (presidential candidates); ISK 100 000 (EUR 646) (candidate nomination)[5]
Ireland	No	- European election: EUR 230 000 - 3-seat constituency at a Dáil general or by-election: EUR 30 150 - 4-seat constituency at a Dáil general or by-election: EUR 37 650 - 5-seat constituency at a Dáil general or by-election: EUR 45 200
Israel	Election expenses may not exceed 70 financing units. Limits also vary depending on how many Knesset members a party has on the determining day (101st day before elections).[6]	The limit applies to the candidates party
Italy	EUR 1 per vote cast to a party for the elections to the Chamber and EUR 1 per vote cast for the Senate elections.	EUR 52 000 plus EUR 0.1 per citizen in the electoral district, in addition to the limit for political parties
Japan	No	Limit varies depending on registered voters in constituency and type of election
Korea	Multiple of population size in electoral area; multiple varies per type of election.	Limit is a multiple of the population size in each electoral area; multiple varies per type of election
Luxembourg	No	No
Mexico	Limit varies for each federal public office[7]	Limit varies for each federal public office
Netherlands	No	No
New Zealand	NZD 1.07 million (EUR 666 855) plus NZD 25 000 (EUR 15 652) per district contested[8]	NZD 25 000 (EUR 15,652) for general elections; NZD 50 000 (EUR 31 300) for by-elections[9]
Norway	No	No
Poland	Based on the number of voters and (for legislative elections) number of seats per constituency	Depends on the number of seats and registered voters in each district
Portugal	From 150 to 12 500 minimum monthly wages depending on election type	80% of 10 000 minimum monthly wages for first round, 80% of 2 500 minimum monthly wages for run off round.
Slovak Republic	Limit of SKK 12 million for political parties on advertising	EUR 132 775 for presidential candidates

Table 2.7. **Spending limits for political parties and candidates in OECD countries *(continued)***

	Limits on the amount a political party can spend[10]	Limits on the amount a candidate can spend
Slovenia	Limit is based on the number of eligible voters; exact limit depends on the type of election	Depends on the type of election
Spain	General elections: EUR 0.24 per resident in the electoral districts where the party presents its list. European Parliament elections: EUR 0.12 per resident. Municipal elections: EUR 0.07per resident. Additional EUR 96 162 for each province where the political party meets certain conditions.	No
Sweden	No	No
Switzerland	No	No
Turkey	No	No
United Kingdom	GBP 30 000 (EUR 37 500) per constituency or GBP 810 000 (EUR 1.01 million) (England), GBP 120 000 (EUR 150 000) (Scotland) and GBP 60 000 (EUR 75 000) (Wales), whatever is the greater (GBP 30 000 [EUR 37 500] per constituency in Northern Ireland).	Fixed amount combined with amount per registered voter, exact amount depends on the type of constituency, and is higher if Parliament has sat for over 55 months.
United States	Limit for co-ordinated expenditure is USD 0.02 (EUR 0.016) multiplied by the voting age population of the United States	No[11]

Notes:

1. If the same list of candidates is supported by two or more political parties, the maximum amount shall apply to the aggregated expenses of those parties.

2. The total campaign expenditure limit of political parties is EUR 7 million. In this, all individual candidates' campaign expenditures are included, which means that the theoretical spending limit of a candidate is EUR 7 million. If, however, a candidate spends EUR 15 000 or less, this will not count toward the party's limit.

3. The limits for political parties are calculated according to a formula based on the number of names on the preliminary or revised lists of electors for each electoral district. For a party, the electoral districts are those in which the party has endorsed confirmed candidates. The amount is adjusted for inflation and the base figure with which the names are to be multiplied is CAD 0.70.

4. No general ceiling on expenses for political parties fixed before the elections. Political parties must only respect the ceiling on expenses that is applied in each constituency where they endorse candidates. On the other hand, candidates have to declare the amount of money that comes from political parties.

5. Limit introduced for presidential candidates in 2010. General limit only relates to the internal selection process (primaries).

6. A “financing unit” is an amount designated by the Finance Committee of the Parliament.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

7. The limit for the presidential race is equal to 20% of the public funding allocated to all political parties for campaign expenses. Candidates for the lower chamber may spend 1/300th of the limit set for presidential candidates (equals the funding limited divided by the number of lower chamber seats), and senate candidates may spend the amount set for the lower chamber multiplied by the number of districts in the area for which they are campaigning (not to exceed 20x the amount set for the lower chamber).

8. The Governor-General can set the limit to another amount.

9. The Governor-General can set the limit to another amount.

10. There is a limit of SKK 12 million for political parties on advertising and campaigning expenses. Note that although the euro was introduced in 2009, the law does not discuss the method and rate of exchange from the original 1994 amount in SKK.

11. The expenditure limits is only applicable to candidates (presidential and for federal office) who accept public funding in the general election. Candidates who accept public funding must limit spending to the amount of the grant.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Table 2.8. **Examples of third-party campaigning regulations in selected OECD countries**

	Regulation of third parties	Regulating body	Method of regulation
Canada	Yes	Chief Electoral Officer in Canada (Elections Canada)	Expenditures of CAD 500 or more on advertising[1] must file a Third-Party Election Advertising Report; Statutory limited on third party expenditures[2]
Ireland[3]	Yes	Standards in Public Office Commission (Standards Commission)	Donation thresholds, restrictions, and registration requirements
Slovak Republic[4]	Yes - presidential elections only	Ministry of Finance	Reporting – publishers or distributors or advertising firms who do so for the benefit of a candidate must report it to the Ministry of Finance within 30 days after election
United Kingdom[5]	Yes	Electoral Commission	Statutory limits on expenditures of third parties; Obligatory reporting of expenditures: GBP 20 000 in the United Kingdom, GBP 10 000 in Scotland, Wales or Northern Ireland[6]
United States	Yes	Federal Election Commission (FEC) (political committees, candidates) Department of Treasury Internal Revenue Service[7] (501[c] non-profit organisations, 527 political committees)	Registration;[8] Obligatory reporting of expenditures of political action committees[9] Public reporting required for non-profit organisations and certain political committees Certain types of expenditures must also be reported to the FEC

Notes:

1. Canada Elections Act (S.C. 2000, c. 9, Section 349).

2. Elections Canada (n.d.), "Third party election advertising expenses limits", www.elections.ca/content.aspx?section=pol&document=index&dir=thi/limits&lang=e (accessed on 27 October 2015).

3. See GRECO Second Compliance Report on Ireland (2013) – pg. 7, paragraph 33. www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282013%2910_Second_Ireland_EN.pdf

4. GRECO report on the Slovak Republic (2008) – pg. 12, paragraph 49-50. www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282007%294_Slovakia_Two_EN.pdf

5. Political Parties, Elections and Referendums Act, §§ 85-94.

6. Electoral Commission (n.d. a), "Introduction for non-party campaigners", www.electoralcommission.org.uk/__data/assets/pdf_file/0008/169451/intro-campaigner-npc-ukpge.pdf (accessed on 27 October 2015).

7. IRS (n.d.), "Tax Information for Political Organizations", www.irs.gov/Charities-&-Non-Profits/Political-Organizations (accessed on 27 October 2015).

8. FEC (n.d. a), "Quick answers to PAC questions", www.fec.gov/ans/answers_pac.shtml (accessed on 27 October 2015).

9. FEC (n.d. b), "Independent expenditures", www.fec.gov/info/report_dates_2015.shtml#ie (accessed on 27 October 2015).

Box 2.4. **Third-party campaigning during the 2015 parliamentary elections in Estonia**

Another emerging challenge for oversight concerned the appearance of stealth campaigning by third-party groups during the 2015 parliamentary elections. In January 2015, a conservative civil society organisation distributed across several regions of Estonia flyers calling on voters not to vote for a number of candidates, who in the previous parliament had voted in favour of a same-sex partnership law. At the same time it encouraged voters to vote for three particular candidates, who had opposed the partnership law.

While the first aspect of the flyer (i.e. negative advertising) did not breach any element of campaign financing law, the second dimension in which the foundation was providing positive advertisement for certain candidates did. Under Estonia law this could be considered an illegal campaign contribution, which the candidate in question would have to pay back to the foundation. When asked about this incident by the press, the foundation claimed that it was operating merely as a civil society actor wanting to promote a political message. However, because foundations are also legal persons in Estonia, the group was already in violation of this provision of Estonian law (that bans legal entities from making campaign contributions). And even if it claimed that it was distributing its flyers without any active knowledge or help from the candidates concerned, Estonian law holds the candidates accountable, not the foundation.

The case raised vexing issues in terms of whether candidates in the future might be vulnerable to having non-party groups suddenly campaigning for them without their approval. In August 2015, the Estonian Party Financing Supervision Committee (EPFSC) asked the Estonian police to charge the foundation with a misdemeanour offence based on the financing law infringements. However, the police authority denied the request, maintaining that because the foundation had included all of the major parties running for parliament on its flyer, this could not be seen as favouring any one of them and therefore could not be considered as campaign advertising. This issue remained unresolved.

Note: For more details, see Chapter 8 in this report.

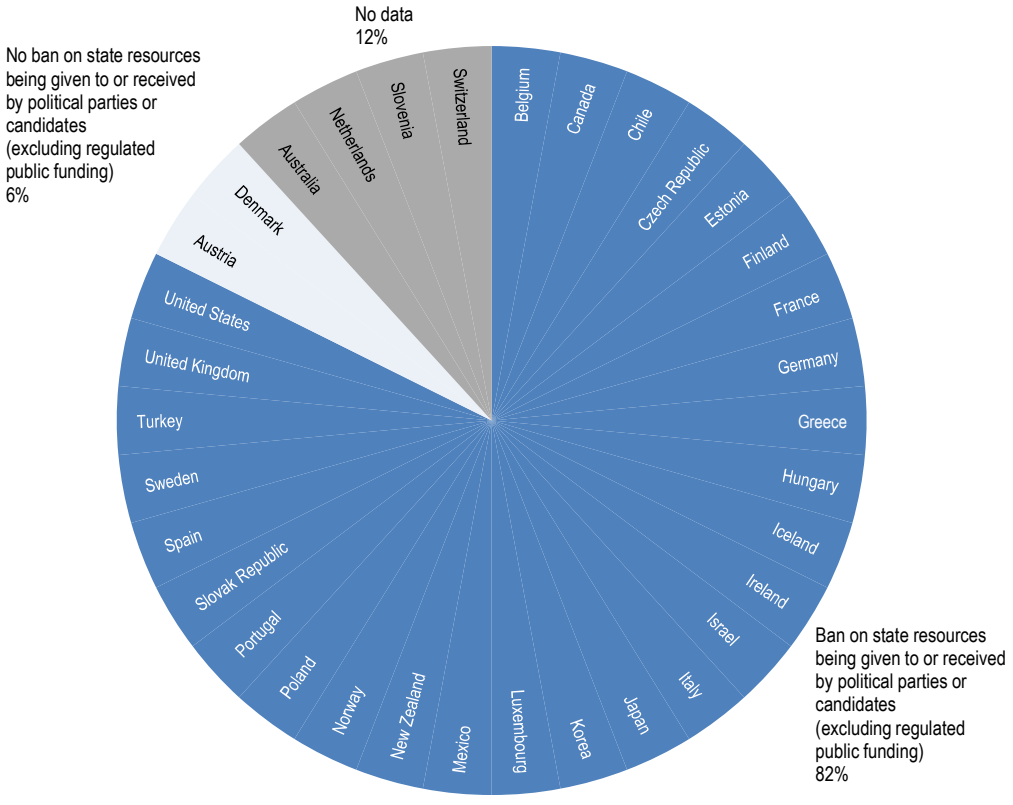
In the United Kingdom, the Electoral Commission requires individuals or organisations that spend or plan to spend more than GBP 20 000 in England or GBP 10 000 (each) in Scotland, Wales or Northern Ireland on regulated campaign activities during a regulated period to register as non-party campaigners. If they register with the Electoral Commission, they will have a higher spending limit. The spending limits will depend on which election they are campaigning in and once they are registered, there are rules they must follow on donations, spending and reporting. For the 2015 general elections, the spending limit for a particular constituency is set at GBP 9 750. A register of non-party campaigners is made public on the UK Electoral Commission website. For example, as of 7 May 2015, there were 66 registered non-party campaigners (Electoral Commission, n.d. b).

Abuse of state resources presents a risk to the level playing field, but most OECD countries limit privileged access to state resources by the incumbents

The already unequal level between the incumbent and a challenger can be further affected by the misuse of state resources by the incumbent. Abusing government

resources to promote re-election of those in power, or unilaterally subsidising political parties, jeopardise the level playing field. The abuse of resources includes government officials using official vehicles during campaigns, printing campaign material in national printing offices or holding party meetings and rallies in official precincts. In the case of incumbent officeholders running for re-election, abuse of public resources includes office staff working for the campaign and travel costs being billed as expenses. Some 82% of OECD member countries have banned state resources being given to, or received by, political parties or candidates, excluding regulated public funding (Figure 2.9).

Figure 2.9. **OECD countries that ban state resources being unevenly given to, or received by, political parties or candidates (excluding regulated public funding)**



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

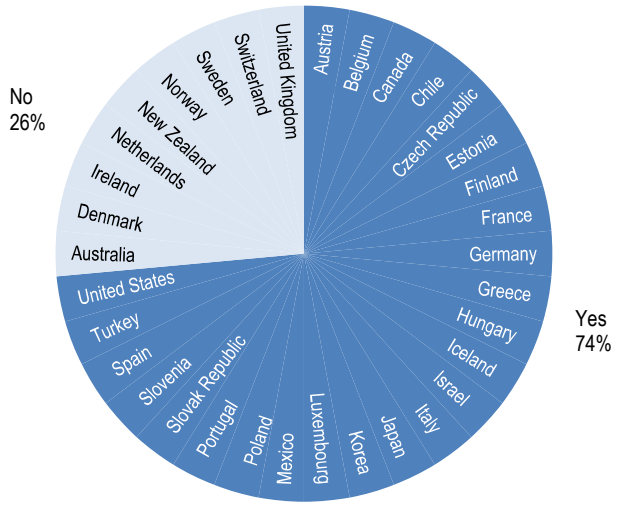
Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

While the debate on solution for abuse of resources tends to focus on legal measures, it is important to take into account underlying historic and structural factors. In countries where one-party regimes were in place for a long time, the separation between the state and the ruling party is often still blurred. Regulatory measures like bans and limits for the government to use state vehicles, mobilise public servants or limit public propaganda may fall short of solving the problem.

Some countries employ specific and targeted measures to prevent the government from abusing its advantage for re-election. There are bans on disproportionate government spending on advertising before elections, hiring new public servants, and signing public contracts.

Since communication is a key asset in election campaigns, public advertising is a target for abuse during election campaigns. One indicator for abuse of public advertising for electoral purposes is increased spending on government advertising in election years. Many countries limit or ban political advertisement in media before and during elections. For example, Japan tightly controls campaign advertisements for candidates. They are paid for by the government and candidates are not allowed to purchase their own advertisements. The number and type of candidate advertisements are also limited, including the size of newspaper advertisements, and length of television and radio advertisements. Campaign advertisements can only be broadcast during the two-week official campaign period and are closely monitored for violations of election law. As for mitigating risks related to public contracting, 74% of OECD countries ban donations from corporations with government contracts or partial government ownership to political parties (Figure 2.10). In the United States, it is prohibited for a contractor that provides goods and/or services to the federal government or any affiliated department or agency to make any contribution to any political party, political action committee or candidate in connection with a federal election.

Figure 2.10. **OECD countries that ban donations from corporations with government contracts or partial ownership to political parties**



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Much variation also exists in terms of regulatory scope to ban donations from these corporations. Austria prohibits donations from corporations if the state holds a share of at least 25%. In Chile, a ban applies to cases where the amount of the contract represents more than 40% of the annual revenue of the corporation.

It is interesting to note that the combination of spending limits and the abuse of state resources may lead to unintended consequences. If there is a limit on permitted spending by candidates in parliamentary election campaigns and if incumbent legislators are able to use public funds supposedly to carry out their duties to their constituents, but in practice to campaign for their votes, there will be a double unbalanced effect. First, incumbents will obtain public funds while the challengers will not; second, the incumbents will be able to escape the spending limit by funding activities designated as "carrying out their legislative duties" while challengers will be unable to spend in parallel even if they are able to raise the funds to do so (Pinto-Duschinsky, 2013).

The issue of the use of public resources for partisan purposes reaches beyond central governments to legislatures, local government authorities and elected mayors and councillors, and other public bodies as well as state governments in countries with federal systems. Underlying facts related to privileged access to state resources still need to be understood, such as the incumbency factor or incumbency advantage which entails that political parties have privileged access to certain public resources, thus distorting the level playing field among all parties and candidates.

Notes

1. For a more detailed discussion on political finance regulations in OECD countries, see OECD (2013).
2. Recommendation i. "GRECO recommended to take appropriate measures to ensure that loans granted to political parties are not used to circumvent political financing regulations" (Paragraph 74).

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Chapter 3

Increasing transparency and accountability through disclosure of political party and election-campaign funding

This chapter focuses on measures to ensure transparency and accountability in financing democracy. Comprehensive disclosure of income sources of political parties and candidates contributes to greater transparency, serving as a deterrent measure to limit undue influence. For disclosure of information to make sense and inform citizens, information needs to be organised in an intelligible and user-friendly way.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

A cornerstone of ensuring transparency and accountability in political finance is the requirement for political parties and candidates to disclose information about how they raise and spend money. Such information can facilitate better informed voter decisions as well as effective oversight of political finance. Comprehensive disclosure of financial information can also serve as a deterrent measure to minimise the impact of undue influence.

Reporting requirements as a tool for ensuring accountability in the decision-making process

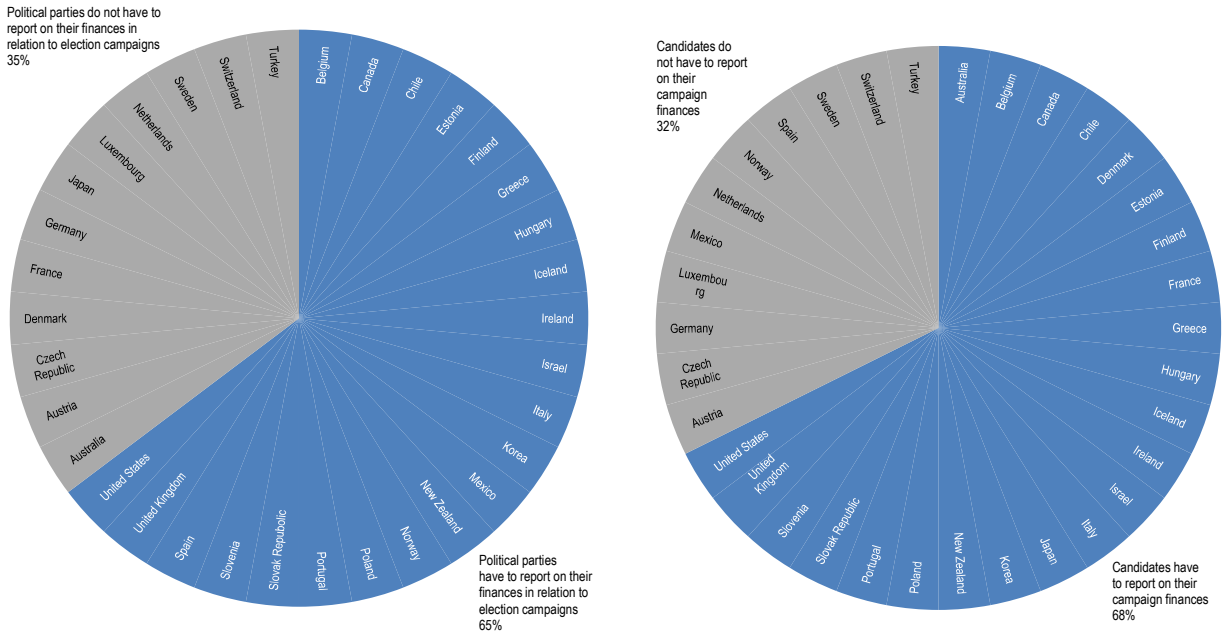
It is important to keep records of election campaigns expenditure as well as books and accounts of political parties and their affiliated entities. The primary rationale for disclosure is to enable public oversight institutions to check the books and accounts of parties, candidates and donors to verify their compliance with the law. The GRECO Thematic Review of the Third Evaluation Round stressed that "a system that fails to ensure that sources of income and accounts are properly disclosed makes it much harder to monitor the application of the law and impose necessary sanctions" (Doublet, 2012). While violators cannot be expected to admit to infringements in their reports, requiring them to provide financial accounts provides a paper trail that can assist in further investigations. Reporting requirements concerning activities and organisations covered (party organisations, candidates, fundraising organisations, donors) and the detail of information (assets and liabilities, income and expenses, organisation costs, electioneering activities, political advertising) vary widely across OECD countries. While regular financial reporting by political parties takes place in almost all OECD countries, 68% of OECD countries also require candidates to report on their campaign finances to the oversight body. In 65% of OECD countries, political parties must report on their finances in relation to election campaigns (Figure 3.1).

Comprehensive disclosure of both public and private funding is crucial

In some countries, reporting is limited to how public funding was spent. In this case, reporting requirements that apply to all recipients of public funds also extend to political parties. For the discussion on how money influences public policies, only providing such information has limited value.

Public funding is generally tied to stronger rules and controls to ensure that they are provided fairly to all stakeholders. These controls have been increasingly strengthened after political scandals showcasing major irregularities in party funding. In Italy, for instance, public funding regulation was limited to reimbursement of actual campaign expenditures, rather than campaign expenditures and routine party activities, as it used to be prior to 1993 (Doublet, 2012). This has, however, led to scenarios in which candidates rely solely on private funding to avoid tighter controls. In the 2012 US presidential elections, for instance, both final candidates relied exclusively on private funding (US Federal Election Commission, 2014).

Figure 3.1. **Separate reporting of information on election campaigns by political parties and/or candidates in OECD countries**



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Thorough auditing of political finance reports ensures transparency and accountability

After reports have been submitted, it is of utmost importance to verify and audit the data submitted. However, even when election campaign accounts are submitted by the legal deadline, verification and audit of such data are not always carried out thoroughly, meaning that there is limited incentive for candidates and political parties to present accurate figures. Verification and audit of financial records are effective measures to spot irregularities of financial flow in politics (Box 3.1) and should be conducted by auditors and specialised experts.

In Estonia, political parties are subject to a yearly financial audit by the tax authority and are required to submit electoral campaign reports and quarterly financial reports to the Estonian Party Financing Monitoring Committee (EPFMC). EPMFC also conducts analysis of political parties' financial health and publishes the results on its website. In France, annual accounts of political parties are certified by two auditors and submitted to the National Commission for Campaign Accounts and Political Funding (CNCCFP). The CNCCFP can request as necessary the communication of any accounting or supporting document needed for the accomplishment of its control function. In the United Kingdom, a political party with a gross income or total expenditure in a financial year that exceed GBP 250 000 must have its statement of accounts audited. An audit is also required of any return of party election expenditure if the expenditure exceeds GBP 250 000 during a campaign period. In addition, the UK Electoral Commission undertakes its own

compliance checks of the information it receives, e.g. checking the permissibility of donations, and cross-referencing statements made in different reports to identify any inconsistencies.

Box 3.1. **Verification of financial records sheds light on suspicious use of political funding in Japan**

In Japan, verification of financial records led to the discovery of a number of discrepancies in political funding reports of two support groups linked to the former trade minister in 2014. The two groups were both set up to aid her political activities. Among their initiatives, they organised an annual trip to Tokyo for local voters that included a private performance by a popular singer at a leading theatre.

They collected fees for the event, but a discrepancy in the accounting was spotted following verification. The recorded contribution by tour participants was substantially smaller than the expenses the two groups reported paying the theatre. The discrepancy was reportedly around JPY 26 million (EUR 200 000 euro) in 2010 and 2011. The financial reports also showed that expenditures for theatre tours organised for the supporters in 2013 exceeded revenue by JPY 7.87 million (EUR 60 000 euro). While JPY 10.89 million (EUR 83 700 euro) was recorded as revenue in the reports, payments to the theatre in Tokyo totalled JPY 18.76 million (EUR 144 000). The reports were disclosed by the election board.

If the declarations are correct, it would mean the two groups subsidised the trip, a likely violation of the election campaign law that prohibits bribing voters. But if the participants did in fact cover all costs, it would mean inaccuracy in reporting, a violation of the political funds control law. Allegations were also raised that the trade minister's political funds were used to buy goods from shops run by her relatives, and other purchases ranging from baby goods to groceries.

Source: Aoki, Mizuho and Reiji Yoshida (2014), "Two of Abe's female ministers resign over separate scandals", *Japan Times*, www.japantimes.co.jp/news/2014/10/20/national/politics-diplomacy/two-of-abes-female-ministers-resign-over-separate-scandals/.

Where compulsory disclosure of information of all donors is not always feasible, donations above certain thresholds are usually disclosed to ensure transparency and mitigate the risks of undue influence

In relation to disclosure provision, identifying individual donors is necessary in order to track their doing business with the state (Box 3.2). Even in established democracies, donors may feel the requirement to disclose political contributions as a significant deterrent to political giving. Donors may simply not wish for their political sympathies to become a matter of public and media scrutiny. They may in some circumstances also fear that they will be subject to discrimination in the award of government contracts if they publicly back the "other party". The question is therefore whether the aforementioned issues and loss of privacy can be justified on the basis of preventing public policies capture by party and election campaign donations. In some countries, the identities of the donors are only disclosed when their contributions are above a certain threshold. Such provisions seek a balance between transparency and protecting the privacy of those making smaller donations while they also limit the administrative burden on those required to submit reports. Yet, in just over a quarter (27%) of OECD countries, the identity of donors is reported on a regular basis in reports from political parties and/or

donors. The identity is disclosed on certain conditions in 73% of OECD countries (Figure 3.2).

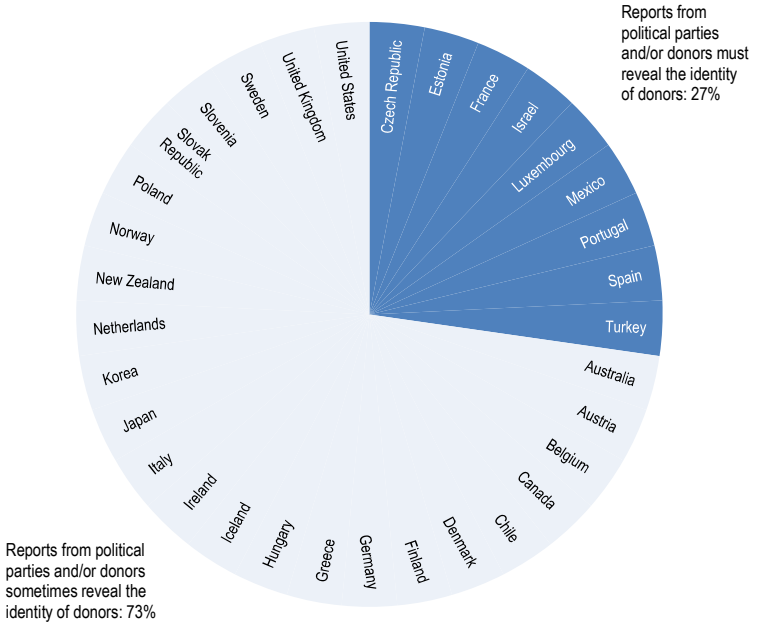
Box 3.2. **Donor anonymity in small donations in Japan**

Under the Political Funds Control Law in Japan, names of donors who give less than JPY 50 000 (approximately EUR 380) annually are not required to be listed in political fund reports, while political organisations must state in their account books the names and addresses of all donors including those who make small donations of up to JPY 50 000 annually, and the amount of each contribution.

In 2009, then Prime Minister's political fund management body was charged with fabricating a report on approximately JPY 22 million (EUR 170 000) donated from about 90 people between 2005 and 2008. It falsely reported the personal donor names, which included deceased persons' names, and also disguised the total amount of JPY 180 million (EUR 1.4 million) in personal donations of up to JPY 50 000 collected for five years since 2004, because donations under JPY 50 000 are not required to list donor's names. His fund management body also accepted over JPY 340 million between 1998 and 2007 from individuals anonymously, accounting for 60% of the JPY 590 million (EUR 4.5 million) it accepted in donations in ten years. This ratio of anonymous donations was significantly higher than the rest of the members of parliament. It was impossible to know with certainty that donations were actually made by individuals.

Source: Japan Times (2009), "The price Mr. Hatoyama pays", Editorial, www.japantimes.co.jp/opinion/2009/12/01/editorials/the-price-mr-hatoyama-pays/.

Figure 3.2. **Requirement to include the identity of donors in reports from political parties and/or candidates in OECD countries**



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

For example, in the Czech Republic, the Law on Political Parties and Movements requires all registered political parties regardless of whether they receive public funding or not, to submit a report on their finances to the Chamber of Deputies by 1 April the following year. There is no separate reporting requirement for election campaigns. The annual financial report is to include information on income whereby the Law on Political Parties and Movements provides both a list of permitted and prohibited sources of income and expenditure. Some of the information on income contained in the reports are remarkably detailed. As there is no disclosure threshold, all donations, regardless of their amount, have to be reported, including donors' names and addresses or in the case of legal entities, their business names, addresses and identification numbers. In Finland, political parties are required to file a disclosure form with the National Audit Office if the value of an individual contribution or the total value of several contributions from the same donors exceed EUR 1 500 per calendar year. Adding up multiple contributions received from the same donor and reporting them as a single campaign contribution is crucial in order to avoid circumvention of the threshold rules.

Public availability of disclosures to enable public scrutiny

Institutionalising transparency and accountability for effective regulation of political finance is a critical aspect to safeguard the integrity and fairness of public decision making. International instruments such as the United Nations Convention against Corruption, requires State Parties to "enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties" (UNODC, 2003). Transparency has two potential advantages:

1. It is a guard against corruption and improper influence. If a politician is elected to office with major financial support from an individual donor, corporation or industry and subsequently uses his or her power unduly to benefit the benefactor, the link between donation and reward will not pass unnoticed.
2. If donations have to be declared before the poll, transparency may permit the elector to know the identity of each candidate's and each political party's main backers. This information will permit the elector to be informed about the interests behind the rival contestants.

One way to promote transparency in political finance is by disclosing information on political party or candidate sources of funding. Some 93% of OECD countries (excluding Switzerland where political parties do not report regularly, Spain and Turkey) make information in the reports from political parties and/or candidates public (Table 3.1). For example, in Italy, party financial accounts must be published on the websites of the political parties, the website of the Chamber of Deputies, as well as in newspapers, and the Official Gazette of the State. In the United Kingdom all parties' reported financial information, i.e. donation/loan reports, campaign expenditure returns and statement of accounts are made available on the Electoral Commission's website. This includes PDF (portable document format) copies of invoices and receipts for campaign expenditure. In addition to online publication of the final report on financial information, online disclosure of raw data and information submitted by political parties and candidates would also facilitate further scrutiny by media and civil society organisations (CSOs).

Table 3.1. **Public disclosure of information in reports from political parties and/or candidates in OECD countries**

	Is information in reports from political parties and/or candidates made public	Comments
Australia	Yes	
Austria	Yes	However, not all information is made public.
Belgium	Yes	Published by the electoral management body.
Canada	Yes	All reports are published on www.elections.ca.
Chile	Yes	The information should be available to any person who wants to have a copy, as well as published and updated on the Internet.
Czech Republic	Yes	
Denmark	Yes	
Estonia	Yes	
Finland	Yes	
France	Yes	
Germany	Yes	However, there is no obligation of political parties to publish their financial records.
Greece	Yes	
Hungary	Yes	
Iceland	Yes	Only certain information.
Ireland	Yes	Though donations will only be disclosed if they exceed a certain level.
Israel	Yes	The public is informed of the volume of income and expenditures of parties through the State Comptroller's report. Details are given in cases where violations have occurred.
Italy	Yes	Party financial accounts must be published on the websites of the political parties, the website of the Chamber of Deputies, as well as in newspapers, and the Official Gazette of the State.
Japan	Yes	
Korea	Yes	
Luxembourg	Yes	
Mexico	Yes	All financial reports submitted by political parties are regarded as public information, and as such should be publicly available.
Netherlands	Yes	Financial accounts are made public.
New Zealand	Yes	
Norway	Yes	
Poland	Yes	
Portugal	Yes	
Slovak Republic	Yes	For political parties.
Slovenia	Yes	
Spain	No	Report by Court of Audit is however published, normally containing summary information on parties' annual accounts.
Sweden	Yes	
Switzerland	N/A	
Turkey	No	In practice, some political parties publish summaries of their financial information.
United Kingdom	Yes	All parties' reported financial information, i.e. donation/loan reports, campaign expenditure returns and statement of accounts are made available on the Commission's website. This includes pdfs of invoices and receipts for campaign expenditure. Their financial information is publicly available.
United States	Yes	The reports are available at www.fec.gov.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Even though in Spain and Turkey regulations do not require publication of party financial information, there are several transparency initiatives. In Spain, the Court of Audit report is published and normally contains summary information on parties' annual accounts that is published. In Turkey, some political parties publish summaries of their financial information.

Online technologies facilitate information disclosure being organised in a timely, reliable, accessible and intelligible manner

Transparency, however, is not synonymous with vast amounts of information. Large amounts of information or information not adequately presented may have a contrary effect on citizens. For example, the case studies of Mexico and India presented in this volume show that establishing an efficient online system for reviewing and publishing financial reports is one of the major challenges to their political finance reforms.

In order to allow comprehensive, proactive disclosure, data should be timely, reliable, accessible and intelligible (Pfeiffer and Speck, 2008):

1. Timely information is key where civil society organisations get involved as watchdogs over political financing. Information available only months or years after the election or at the end of the fiscal year makes the information less relevant for public discussion. Long delays in reporting also make the falsification of information possible.
2. Information might not be reliable when data are first disclosed, but over time public scrutiny of information and enforcement by state agencies make data more reliable.
3. Reports are often not accessible, either because there is no legal ground for disclosure, or because access to reports is difficult and time consuming for most people.
4. Even when data is disclosed, the information might not be in a readable format. A hard copy of a financial report in PDF format is different from a database with all financial records available for download. Data are not information. For disclosure of information to make sense and inform citizens, they need be organised in an intelligible and user-friendly way. Ideally, all reports should be submitted and published in a standardised, machine-readable format so as to ensure their comparability, clarity and digestibility.

While several countries proactively disclose comprehensive information on line (Table 3.2), GRECO acknowledged that the US Federal Election Commission website is an impressive source of information and transparency of political financing, of an exemplary level (Box 3.3).

Table 3.2. **Examples of online availability of political finance information in selected OECD countries**

	Oversight body	Online report Submission and availability of reports	Information contained	Searchable
Canada	Chief Electoral Officer in Canada (Elections Canada)	Yes, but a signed physical copy required as well, as the CEO sees fit (according to the case study, as found in this volume)	Information on contributions and contributors Expenses related to elections, leadership and nomination contests, loans and unpaid claims	Yes
Chile	SERVEL (Electoral Service)	No Compiled statistics released periodically	General income statements of parties Expenses by provider, category All in Excel spreadsheets	No
Estonia	Estonian Party Financing Supervision Committee	Yes Within a few days	Party income from membership dues, state funding, donations or other income Expenditures, including advertising, events, publications Campaign donors and amounts Campaign expenses such as wages, advertising, transportation, events and administrative expenses	Yes
France	*Commission Nationale des Comptes de Campagne et des Financements Politiques* (CNCCFP)	No	Information on donations by individuals, loans by candidates or political parties, and contributions by candidates to their own funds Expenses In-kind contributions by the candidate or party Other miscellaneous income	No
Korea	National Election Commission of Korea	No Available for three months following the election	All income and expenditure of political funds, with a detailed statement of income and revenue of political funds, together with proof of expenditures and copy of records of transactions shown in the bank register	No
Mexico	National Electoral Institute (INE) – Unit for Resources of Political Parties	Yes	Origin, amount, destination and use of the income received through any kind of funding	No
United Kingdom	Electoral Commission	Yes[1] As soon as possible	All income including donations, public funding, loans, or other sources All expenditures on wages, offices, campaign expenses, fundraising costs, or other miscellaneous expenses	Yes[2]
United States	Federal Election Commission	Yes[3] Often 24–48 hours after submission	All income and donations, including contributor information for donations more than USD 50, loans, non-monetary and other miscellaneous income All expenditures, including information on the recipient and a receipt or invoice	Yes[4]

Source:

1. Electoral Commission (n.d. a), "PEF online user guide", www.electoralcommission.org.uk/__data/assets/electoral_commission_pdf_file/0008/154682/PEF-Online-user-guide-creating-and-submitting-your-statement-of-accounts.pdf (accessed on 27 October 2015).

2. Electoral Commission (n.d. b), "Registers search site", http://search.electoralcommission.org.uk/?currentPage=0&rows=10&sort=AcceptedDate&order=desc&tab=1&et=pp&et=ppm&et=tp&et=perpar&et=rd&prePoll=false&postPoll=true (accessed on 27 October 2015).

3. FEC (n.d. a), "Electronic filing", www.fec.gov/elecfil/electron.shtml (accessed on 27 October 2015).

4. FEC (n.d. b), "Disclosure data search", www.fec.gov/finance/disclosure/disclosure_data_search.shtml (accessed on 27 October 2015).

Box 3.3. **Transparency and accessible information in the United States**

The Federal Election Campaign Act of 1971 (FECA) requires that the accounts of political committees contain the name and address of any person making a contribution in excess of USD 50 along with the date and the amount of the contribution. This implies that anonymous donations to political committees are not allowed in excess of that amount. Moreover, in respect of contributions exceeding USD 200 per year, the required details are even stricter in that the contributor's identity (i.e. name, address, occupation and employer) is to be noted in the accounts. The FECA also prescribes that any disbursement over USD 50 is to be accounted for together with the name and address of the receiver. The accounts are to be held by the committee for at least three years.

The FECA obliges political committees to submit financial reports to the Federal Election Commission, which in turn makes them publicly available in person at the FEC in Washington, D.C. or on line. The FEC has developed detailed standard forms to be used, requiring, inter alia, precise information concerning contributions, donors, disbursements and receivers. All contributions to federal candidates are aggregated on the basis of an election cycle, which begins on the first day following the date of the previous general election and ends on the date of the election day, while contributions to political party and other political committees are based on a calendar year.

The intensity of the reporting may differ. For example, a national party committee is obliged to file monthly reports in both election and non-election years; a principal campaign committee of a congressional candidate must file a financial report 12 days before and another report 30 days after the election in addition to quarterly reports every year. The FECA prescribes that the financial reports are to be made public within 48 hours; however, in most cases, the FEC manages to make reports available on line within 24 hours.

Source: GRECO (2011), "Third Evaluation Round: Evaluation Report on the United States of America: Transparency of Party Funding", Council of Europe, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282011)2_USA_Two_EN.pdf.

Similarly, the Estonian Party Financing Supervision Committee (EPFSC) makes comprehensive political financial information available on its website (www.erjk.ee/et), including all electoral and financial reports in a searchable database, incoming and outgoing correspondence relating to the monitoring work of the EPFSC and the EPFSC protocols. Such a structured database allows greater media monitoring of party finance and CSO scrutiny. In Finland, the disclosures are to be filed electronically not later than on the 15th day of the calendar month following the month when the contribution was received, in order to secure the transparency of external funding received both during election campaigns and during periods in between. In addition, the Act on Political Parties in Finland has a provision concerning a voluntary advance disclosure , according to which a political party and a subsidiary association to the party may before the election day file an advance disclosure with the National Audit Office containing an estimate of campaign funding and costs.

Creating enabling environments, where CSOs and media can be effective watchdogs, further increases transparency and accountability

Where campaign finance information is made public, scrutiny from the media and civil society is an important complement to state oversight. It is claimed that civil society organisations can be effective watchdogs and have proven instrumental in advancing transparency and anti-corruption efforts in the field of campaign finance. Transparency of political donations has led to a third form of soft regulation: disclosing the names of large donors and of the recipients of funding. In countries where reporting requirements allow for individual donors to be identified, activists and the media have exposed large donations, to public criticism. This can be an alternative to bans and limitations (Box 3.4).

Box 3.4. **The monitoring role of CSOs in political finance in the Slovak Republic and the United States**

Slovak Republic: Database for tracing public money

The Slovak Republic reformed its access to information laws in 2000 and created a system that has grown exemplary over the last 15 years. Freedom of access to information has allowed CSOs and think tanks to devise innovative solutions to flag risks and to build an information network, allowing for the detection of conflicts of interest and improper influence on decision making. The CSO Fair Play Alliance (http://datanest.fair-play.sk/en/pages/index) created a database that anyone can access via their website. The database focuses on public money paid to private entities (state subsides, privatisation, tax and custom remissions, grants, European funds, debts to the public sector) and on public representatives (managers of state institutions, governments, elected positions, the judiciary, self-governing bodies, Parliament, advisers to political leaders). It provides media and CSOs with tools for monitoring, and makes public administration aware of the fact that their decisions can be easily monitored. This database is also helpful for investigative journalism; for example, the media were able to draw attention to concrete allegations of illicit practices regarding political party finance including fake donors and non-transparent party loans. The network has been emulated by CSOs abroad and the software is used in the Czech Republic, Hungary and Georgia.

United Sates: Center for Responsive Politics

The Center for Responsive Politics is a non-profit, nonpartisan research group based in Washington, D.C. that tracks the effects of money and lobbying on elections and public policy. The Center was established in 1983 with aims to create a more educated voter, an involved citizenry and a more transparent and responsive government. It maintains a public online database of its information. Its website, OpenSecrets.org, allows users to track federal campaign contributions and lobbying by lobbying firms, individual lobbyists, industry, federal agency, and bills. Other resources include the personal financial disclosures of all members of the US Congress, the President, and top members of the administration. In 2012, OpenSecrets.org recorded nearly 35 million page views from more than 5 million unique visitors.

Source: European Commission (2014), "EU Anti-Corruption Report: Slovakia", http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_slovakia_chapter_en.pdf; Center for Responsive Politics (n.d.), www.opensecrets.org/ (accessed on 27 October 2015).

It is important to stress that CSOs can only be effective watchdogs if substantive political finance information is publicly available for their analysis. As such, it is important to make sure that the system itself can facilitate their effective participation. In order to mobilise CSO support in advocacy, political finance information must be more transparent, creating an enabling environment in which CSOs, media and private citizens can be effective watchdogs. To create such an environment, legal and regulatory frameworks mandate that political finance information is published proactively in a method that allows for timely and effective public scrutiny and comparison.

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Chapter 4

Fostering a culture of integrity among political parties, public officials and donors

This chapter looks at the importance of fostering a culture of integrity to effectively promote a holistic approach to connect surrounding integrity issues such as lobbying and conflict of interest, in order to better understand the impact of money in politics on the quality of polices. Controls of party and election funding are likely to be ineffective if they exist in isolation. On their own, they are likely to result merely in the re-channelling of money spent to obtain political influence through lobbying and other means.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Embedding political finance regulations in the overall integrity framework addresses the risk of money in politics more effectively

The regulation of financing of political parties and election campaigns cannot be complete without taking account the impact of other integrity issues such as codes of conduct, conflict of interest, asset disclosure, lobbying and whistleblower protection. On their own, controls of party and election funding are likely to result merely in the re-channelling of money spent to obtain political influence through lobbying and through third-party financing. For example, the case of the fossil fuel industry in the Unites States clearly shows that political finance is just one of many channels through which powerful special interests exert influence over public policies (Box 4.1).

Box 4.1. **Various channels through which powerful special interests exert influence over public policies: An example from the United States**

It was reported that fossil fuel interests had increasingly focused their resources over the past two years on putting industry-friendly politicians in charge of both chambers and laying the groundwork for the new congress to promote special-interest priorities, such as approving the new projects and increasing the export of American oil to foreign buyers. According to an analysis of contributions and lobbying data from the Center for Responsive Politics and advertising spending data from Kantar Media Intelligence/CMAG, as published by the Atlas Project, the fossil-fuel industry directly invested USD 721 million in order to influence a congress of its choosing and a friendly energy agenda. Of these investments, the fossil-fuel industry directly contributed more than USD 64 million to candidates and political parties, spent more than USD 163 million on television ads across the country, and paid USD 493 million to the lobbyists in the two years leading up to the November 2014 congressional elections.

According to the report, these efforts seem to have brought some favourable results to the extraction industries including approval of a large-scale mining project and a number of provisions that would facilitate the industry activities in the Cromnibus spending bill passed in December 2014.

As mentioned above, the fossil-fuel industry spent more than USD 163 million on television advertising in media markets across the country throughout 2013 and 2014. These ads aimed to influence public opinion in favour of industry priorities, promote the industry's brand, and urge voters to support industry priorities at the ballot box. It is reported that major energy-related organisations ran ads throughout the election cycle supporting hydraulic fracturing, promoting the use and benefits of natural gas in targeted locations and reassuring the public about the safety of offshore drilling.

In the end, contributions to political parties and candidates accounted for only 9% of total spending by the fossil fuel industry to influence the US public polices, while 68% and 23% were spent for lobbying and advertising respectively.

Source: Moser, Claire and Matt Lee-Ashley (2014), "The fossil-fuel industry spent big to set the anti-environment agenda of the next congress", Center for American Progress, www.americanprogress.org/issues/green/news/2014/12/22/103667/the-fossil-fuel-industry-spent-big-to-set-the-anti-environment-agenda-of-the-next-congress/#.VJk7TzB0e4o.mailto.

Therefore, any consideration of political funding needs to be part of an overall strategy to assure public integrity and mitigate the risks of money in politics (Table 4.1). Certain elements of the integrity framework of a country are particularly relevant to foster

a culture of integrity for those who are on the receiving end of political party and campaign financing.

Table 4.1. **Promoting a culture of integrity in the public sector: Key elements**

Determining and defining integrity standards	Integrity standards and conflict-of-interest policies 1 Code of conduct / code of ethics 2 Pre/post public employment policy 3 Disclosure of private interests by public officials (including asset disclosure) Recruitment and career 4 Integrity emphasised in recruitment (e.g. background checks) 5 Integrity as criterion for evaluation and promotion
Guiding towards integrity	Training and guidance 6 Training on integrity standards 7 Guidance to resolve integrity-related questions and problems Promoting integrity in the regular discourse 8 Announcing the integrity policy through channels of internal and external communication 9 Creating an open culture of communication where integrity issues can be raised easily
Monitoring integrity	Public scrutiny 10 Citizen complaint mechanisms Whistleblowing policy/regulation 11 Accessible procedures for reporting misconduct 12 Protection for whistleblowers 13 Raising awareness on whistleblowing policy/regulation Mechanisms for control and audit 14 Integrity-related internal control 15 Integrity risk management/mapping 16 Integrity-related internal audit

Codes of conduct can be seen as a commitment to integrity by political parties and politicians, but the adoption of an enforceable code is still relatively limited in OECD countries

Codes of conduct are an important part of fostering a culture of integrity as they impose binding, enforceable rules for what is clearly legal and acceptable and what is not for politicians, public officials and other stakeholders. When those in need of political funding are fully aware of what is expected of them, combined with the possibility of sanctions in the case of non-compliance, and the fact that they are monitored, render them more likely to act with integrity. The adoption of an enforceable code of conduct can also be seen as a commitment to integrity by political parties and politicians. As noted in the introduction of this report, governments and political parties in many parts of the world suffer from low levels of public trust. Fostering a culture of integrity is an important policy lever to restore public trust in public institutions.

In some countries such as Denmark, Finland and Switzerland, rules of procedures in the civil service cover ethical issues. One example of a code of conduct that governs legislators' dealings with private interests is the UK Code of Conduct for Members of the House of Lords (Box 4.2).

Box 4.2. **UK Code of Conduct for Members of the House of Lords**

The UK Code of Conduct for Members of the House of Lords states that "Members of the House shall base their actions on consideration of the public interest, and shall resolve any conflict between their personal interest and the public interest at once, and in favour of the public interest."

Paragraph 8(d) of the Code states that Members "must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services."

The Guide to the Code of Conduct offers guidance as to how to interpret Paragraph 8(d). It states that Members may not assist outside organisations or persons in influencing Parliament in return for payment or other incentives or rewards. This includes "making use of their position to arrange meetings with a view to any person lobbying Members of House, ministers or officials."

Although Members are allowed to work for or hold financial interests in organisations that are involved in parliamentary lobbying on behalf of clients (such as public relations and law firms), the guidance to Paragraph 8(d) states that:

"Members themselves are prohibited from personally offering parliamentary advice or services to clients, both directly and indirectly. Also, Members who have financial interest in, or receive a financial benefit from, a representative organisation (e.g. a trade association, trade union, staff association, professional body, charity or issue-related lobby group), are not allowed to advocate measures for the exclusive benefit of that organisation or the trade, industry or interest that it represents; nor speak or act in support of a campaign exclusively for the benefit of the representative organisation or its membership."

Source: House of Lords (2012), "Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct", www.publications.parliament.uk/pa/ld/ldcond/code.pdf.

In Canada, there is a separate code of conduct for the employees of the electoral management body as well. Elections Canada employees must commit to a specific additional code of conduct that highlights the environment employees of Elections Canada face as a result of the unique mandate of the Chief Electoral Officer in Canadian democracy. In following this code, employees must conduct themselves in a way that public confidence and trust in the integrity, objectivity and impartiality of the electoral process is preserved and enhanced. Election administrators (returning officers, assistant returning officers and additional assistant returning officers) are required by law to comply with a code of professional conduct issued by the Office of the Chief Electoral Officer, which highlights that they have an obligation to act in a manner that will bear the closest public scrutiny. The obligations in this code extend to all acts and transactions performed by election administrators during their tenure of office, whether or not in the course of the performance of their duties as election administrators (see Chapter 6).

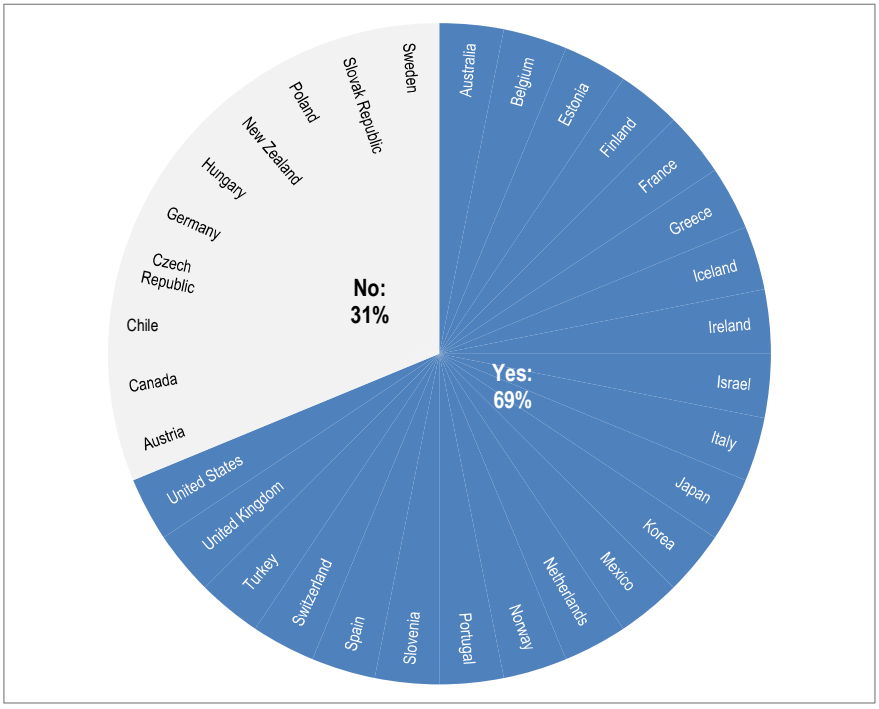
In addition to codes of conduct, party manifestos may also provide political parties an opportunity to express their commitment to curb the risk of policy capture through political finance, demonstrating the political will that is crucial to help level the playing field for parties and candidates, tackle illicit funding and restore public confidence in the government. Political leadership is the starting point for meaningful reform and change. For example, in 2012, the then ruling Democratic Party of Japan published its manifesto for the general election, featuring proposals to: *i)* prohibit political contributions by

businesses and organisations; *ii)* disclose the financial statements of political organisations with ties to Diet members on the Internet; and *iii)* extend the disclosure period for financial statements of political organisations with ties to Diet members from three to five years. Such a manifesto brought the role of money in politics to the centre of public debate.

Mitigating risks such as conflict of interest and lobbying in relation to political finance through proactive disclosure of related information is crucial

Most OECD countries employ integrity measures such as conflict-of-interest policies and asset disclosure provisions to mitigate the risks of policy capture by special interests within the policy-making process. These measures are effective tools to spot suspicious flows of money between public officials and private actors, further strengthening political finance regulations. In 2014, the OECD reviewed the data and experiences of 32 countries in managing conflict of interest in the public service, highlighting good practices as well as areas for improvement in the future. According to the survey, 69% of respondents have a central function responsible for conflict-of-interest policies within the central/federal government (Figure 4.1). Having such a function within the central government facilitates the oversight of irregular financial flow and other suspicious interactions between public officials and private sector actors, which could lead to the discovery of a breach of political finance regulations. Most countries apply the same or almost same set of definitions of conflict of interest, guidelines for handling the situation and consequences for non-compliance to their ministries and agencies, ensuring the consistency of their preventive measures. In terms of developing a specific policy for managing conflict of interest for particular categories of public officials, 58% of respondents adopted special measures for their ministers and 48% for senior public officials while ministerial advisors and staff in ministerial cabinets/offices tend to receive less attention in this regard (Figure 4.2). Yet, these categories of public officials are regularly exposed to lobbying and other interactions with private actors, including donors. Therefore, creating specific conflict-of-interest policies for high-risk categories of public officials should be considered in order to further safeguard their integrity against undue influence.

Figure 4.1. **OECD countries with a central function responsible for the development and maintenance of conflict-of-interest policies**

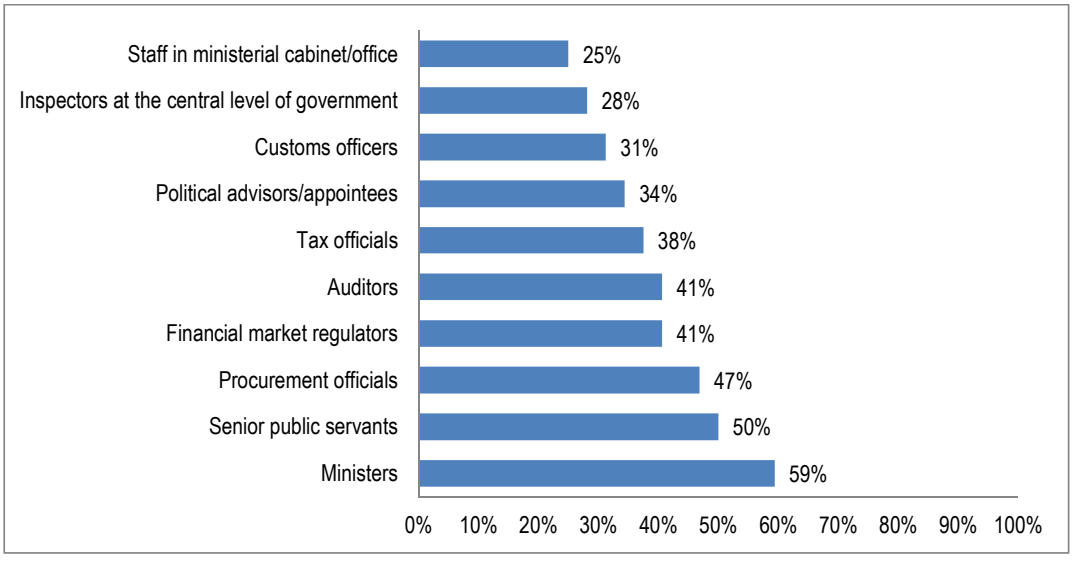


Note: The central function may not necessarily be an independent agency.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: OECD (2014a), "Survey on Managing Conflict of Interest".

Figure 4.2. **Specific conflict-of-interest policy for particular categories of public officials in OECD countries**



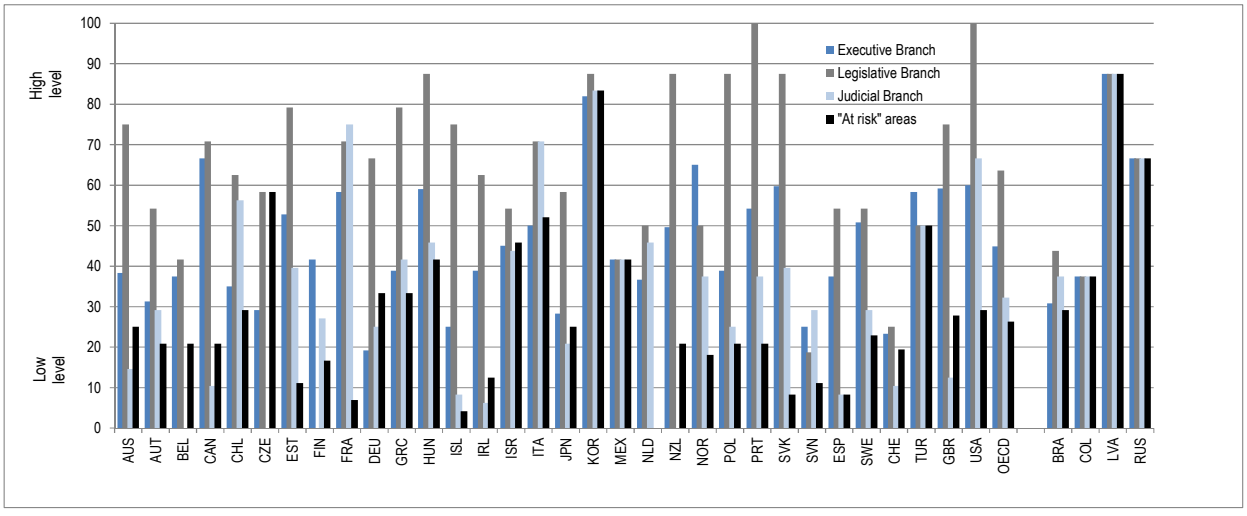
Source: OECD (2014a), "Survey on Managing Conflict of Interest".

While disclosure of private interests by decision makers is essential for managing conflict-of-interest situations and spotting any suspicious financial flows in public decision making, the level of disclosure of private interests (assets, liabilities, income source and amount, paid and un-paid outside positions, gifts and previous employment) and the public availability of the disclosed information varies considerably among countries and within countries in the different branches of government (Figure 4.3). As Chapter 3 stated, political parties and candidates report their financial information on a regular basis in almost all OECD countries. However, comprehensive disclosure of private interests by different categories of public officials further increases transparency in the policy-making process and reduces the risk of policy capture by special interests. Lower levels of disclosure by public officials make it difficult to assess the impact of private interests on them and cross-check with the information disclosed by political parties and candidates.

In the executive branch, countries such as Portugal and Korea have a high degree of information disclosure. Disclosure of selected private interests and public availability of such information are widely practiced in the legislative branch of most respondent countries (especially in the Lower House) with the exception of Finland where there is no requirement for information disclosure for legislators. Disclosure practices are considerably higher in the executive and legislative branches than in the judiciary. For example, disclosure is not required for judges and prosecutors in the Czech Republic, France and New Zealand.

As already mentioned in Chapter 3, auditing the financial reports of political parties and candidates plays an important role in securing transparency. In this connection, it is equally important to ensure that public officials' asset and private interest disclosure forms are also subject to auditing in order to spot any suspicious financial flow and mitigate the risk of undue influence. However, according to the OECD survey, only 32% of respondent countries carry out audits or review the accuracy of the information following the collection of disclosure forms from public officials in the executive branch, while 63% of them verify receipt of the forms (Table 4.2).

Figure 4.3. **Level of disclosure of private interests and public availability of information in the three branches of government in OECD countries**



Source: OECD (2014a), "Survey on Managing Conflict of Interest".

Table 4.2. **Actions taken after collecting the private information for public officials in the executive branch in OECD countries**

	Verifying receipt of the submitted disclosure form	Verifying that all required information was included in the submitted disclosure form	Auditing or reviewing the accuracy of the information submitted in the disclosure form
Australia	●	●	●
Austria	○	○	○
Belgium	●	○	○
Canada	●	●	●
Chile	●	○	○
Czech Republic	○	○	○
Estonia	●	●	▲
Finland	●	●	○
France	●	●	●
Germany	●	●	▲
Greece	●	●	▲
Hungary	●	●	●
Ireland	●	○	○
Israel	●	●	○
Italy	○	○	○
Japan	●	●	●
Korea	●	●	●
Mexico	▲	▲	▲
Netherlands	●	●	●
New Zealand	●	●	●
Norway	○	○	○
Poland	○	○	○
Portugal	○	○	○
Slovak Republic	○	○	○
Slovenia	○	○	○
Spain	○	○	○
Sweden	●	●	●
Switzerland	●	●	●
Turkey	●	○	○
United Kingdom	●	●	●
United States	●	●	○

Note:

● For all those required to disclose private interest

▲ For some of those required to disclose private interest

○ Action is not taken

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: OECD (2014a), "Survey on Managing Conflict of Interest".

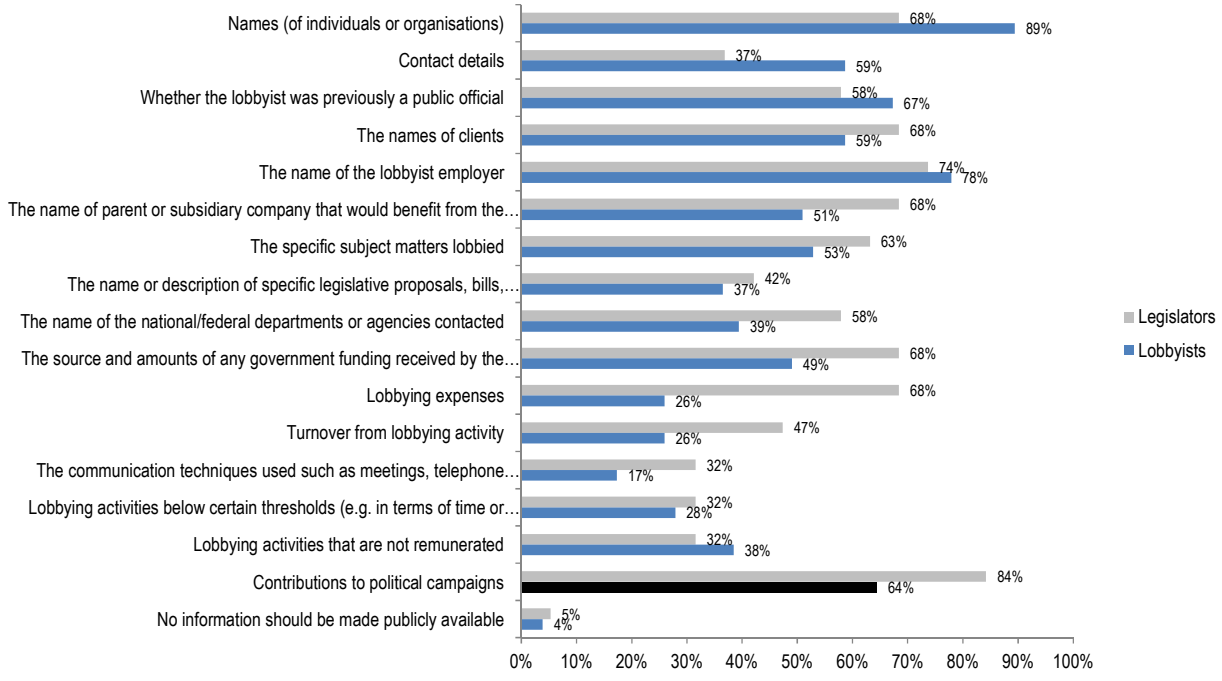
Over 60% of lobbyists support the disclosure of their contributions to political campaigns

In addition to management of conflict of interest, there is clear concern from both sides of legislators, but also lobbyists themselves, about political financing. According to the OECD 2013 Survey on Lobbying, as many as 84% of surveyed legislators and 64% of lobbyists are of the opinion that information on lobbyist contributions to political campaigns should be made publicly available through, for example, a register (Figure 4.4). However, out of the surveyed OECD member countries with a register of lobbyists, information on lobbyists' contributions to political campaigns are only

disclosed in Slovenia and the United States. In Slovenia, lobbyists must report the type and value of donations made to political parties and the organisers of electoral and referendum campaigns. Total contributions per year to political parties are not allowed to exceed ten times the average monthly wage in Slovenia. In addition, Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act was enacted in the United Kingdom in 2014. While the bill does not directly require lobbyists to disclose their political contributions, it increases transparency in relation to spending by some non-party campaigners/third-party campaigners by requiring them to publish and record more information about their spending, donations, accounts and board members.

With a consensus among stakeholders and decision makers that lobbying through political finance should be regulated and is currently inadequately so, the growing number of countries opting to regulate is an encouraging sign. To date, however, most have introduced or reformed lobby regulations on an ad hoc basis and largely in response to political scandals. Securing the necessary consensus among stakeholders before scandals take place and enough political support is mobilised has been difficult. However, in countries that have taken a more incremental approach, experience shows that consensus building has been less challenging.

Figure 4.4. **Types of information that legislators and lobbyists believe should be made publicly available in OECD countries**



Source: OECD (2013), "Survey on Lobbying".

Whistleblower protection can strengthen a culture of integrity in relation to political finance; countries are expected to consider introducing or strengthening protection through dedicated legislation

Protecting public and private sectors persons that report wrongdoing regarding the financing of political parties and electoral campaigns can be a powerful mechanism to safeguard public interest. While whistleblower protection mechanisms exist in most countries either through dedicated law or provisions in another law, dedicated legislation can provide more comprehensive protection and foster a culture of integrity within the political finance process. The risk of corruption and policy capture increases in environments where the reporting of wrongdoing is not protected, since whistleblowing is not only a way to declare wrongdoing, but can also have a deterrent effect on it. Providing effective protection for whistleblowers supports an open organisational culture where employees are not only aware of how to report, but also have confidence in the reporting procedures.

In this context, translating whistleblower protection into legislation legitimises and structures the mechanisms under which public officials can disclose actual or perceived wrongdoings in the public sector, protects public officials against reprisals, and, at the same time, encourages them to fulfil their duties in performing efficient, transparent and high-quality public service. If adequately implemented, legislation protecting whistleblowers, together with an organisation culture to safeguard them, can become one of the most effective tools to support anti-corruption initiatives, detecting and combating corrupt acts, fraud and mismanagement (Council of Europe, 2009).

In addition to whistleblower protection, citizen complaint mechanisms can also facilitate reporting of wrongdoing in political finance and safeguard public interest

Citizen complaint mechanisms can also contribute to the identification of political finance malpractices and foster a culture of integrity. Submission of complaints is a way to draw the attention of oversight bodies to problems, and also to increase pressure on them to address these issues. Citizen complaints therefore are sources of knowledge and opportunities for better regulation of political finance in the pursuit of a responsive policy-making process. For example, as the chapter on India describes, a 24-7 call centre and a complaint monitoring unit in each district were set up. A toll free telephone number is now widely publicised for the public to report corrupt electoral practices. For example, between 1 March 2011, around the time the elections of the Tamil Nadu assembly was announced, and 15 May 2011, two days after the vote count, the Election Commission of India received a total of 3 159 calls, with vigilant voters themselves reporting malpractices and demanding action (Quraishi, 2014).

Private donors are also expected to share the responsibility of strengthening integrity

Promoting a culture of integrity in the public sector, i.e. in those that receive and use the financing is only part of the equation. A culture of integrity can and should also be promoted among those that provide the funding. The OECD has a wide range of legal and policy instruments designed to promote responsible business practices, including the OECD Guidelines for Multinational Enterprises, the OECD Principles on Corporate Governance, the OECD Anti-Bribery Convention, and the OECD Anti-Cartel

Recommendations. These instruments advise governments on how to create fair market conditions, and often provide companies with guidance on how to comply with the rules set by their governments.

In relation to financing democracy, many companies adopt a global policy against making contributions to political parties, which is often set forth in their code of conduct and internal business practices guidelines. These policies prohibit the use of company resources for contributions to any political party or candidate, whether federal, state or local. This prohibition covers not only direct contributions but also indirect assistance or support through buying tickets to political fundraising events or furnishing goods, services or equipment for political fundraising or other campaign purposes. For example, the World Economic Forum Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery aims to promote private sector initiatives to strengthen integrity, and recommends that companies consider controls and procedures to ensure that improper political contributions are not made (Box 4.3).

Private companies should maintain comprehensive compliance procedures to ensure that their activities are conducted in accordance with their codes of conduct and all relevant laws governing political contribution activities. Procedures include employees' annual review and acknowledgment of their code of conduct responsibilities as well as periodic reviews conducted by an outside law firm and internal audit. In the Unites States, many companies participate in the political process through setting up a political action committee (PAC), which is funded by voluntary contributions from their employees and subject to several integrity measures. For example, Google created the Google NetPAC in 2006. The Google NetPAC Board of Directors, which is a bipartisan group of senior Google employees, makes the final decisions about the contributions made by NetPAC. These contributions are closely overseen by Google's VP of Public Policy and Government Affairs, along with Google's Director of State Public Policy, and are also reviewed by Google's Ethics and Compliance team and outside ethics counsel. The private political preferences of Google executives, directors and employees do not influence political contributions in any way. In the 2012 election cycle, the Google NetPAC spent USD 1 039 679.

It is important to note that effective implementation of a compliance programme requires top-level commitment at the level of the board and chief executive officers (CEOs), who must provide appropriate resources. It is not enough to declare and provide procedures and processes. Business leaders must make their employees understand them and incorporate these priorities into their behaviour through adequate training. Companies should customise procedures against the risk they need to address in order to develop a real culture of integrity in the DNA of the company. Companies also need to efficiently communicate their programme to all their business partners involved in their business. A compliance programme must constantly evolve and be appropriately included in the business behaviours without preventing the business itself, but becoming a competitive added value.

Box 4.3. **The World Economic Forum Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery**

4.2 Political contributions

4.2.1 The enterprise, its employees or intermediaries should not make direct or indirect contributions to political parties, party officials, candidates or organisations or individuals engaged in politics, as a subterfuge for Bribery.

4.2.2 All political contributions should be transparent and made only in accordance with applicable law.

4.2.3 The Programme should include controls and procedures to ensure that improper political contributions are not made.

4.3 Charitable contributions and sponsorships

4.3.1 The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for Bribery.

4.3.2 All charitable contributions and sponsorships should be transparent and made in accordance with applicable law.

4.3.3 The Programme should include controls and procedures to ensure that improper charitable contributions and sponsorships are not made.

4.4 Facilitation payments

4.4.1 Recognizing that facilitation payments* are prohibited under the anti-bribery laws of most countries, enterprises which have not yet eliminated them entirely should support their identification and elimination by (a) explaining in their Programme that facilitation payments are generally illegal in the foreign country concerned, (b) emphasizing in their Programme that they are of limited nature and scope and must be appropriately accounted for, and (c) including in their Programme appropriate controls and procedures for monitoring and oversight of facilitation payments by the enterprise and its employees.

4.5 Gifts, hospitality and expenses

4.5.1 The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements could improperly affect, or might be perceived to improperly affect, the outcome of a procurement or other business transaction and are not reasonable and bona fide expenditures.

4.5.2 The Programme should include controls and procedures, including thresholds and reporting procedures, to ensure that the enterprise's policies relating to gifts, hospitality and expenses are followed.

*Facilitation payments: These are small payments made to secure or expedite the performance of routine action to which the enterprise is entitled.

Source: World Economic Forum (2005), "Partnering Against Corruption - Principles for Countering Bribery", www.weforum.org/pdf/paci/principles_short.pdf.

Self-regulation of lobbying is an encouraging sign, although its enforcement remains challenging

Promoting responsible lobbying is also important in fostering integrity and transparency in financing democracy. To self-regulate, lobbyists come together in professional groups to regulate their activities, mostly voluntarily, through: *i)* a code of conduct; *ii)* a registry; and/or *iii)* a monitoring and enforcement system. In general, self-regulation focuses more on codes of conduct and registers, than monitoring and enforcement.

At the European Union level, major lobbyist associations regulate the lobbying activities of their members. Although they have codes of conduct in place, the associations do not generally have monitoring and enforcement systems in place for detecting breaches to their codes and applying sanctions.

One exception is the European Public Affairs Consultancies Association (EPACA). It has drawn up a code of conduct (www.epaca.org/code-of-conduct/text-of-code) and instituted a professional practices panel for disciplinary hearings. The EPACA code of conduct includes 12 best practices for public affairs professionals working in consultancies across the European Union. Signatories of the code commit to abiding by the practices. EPACA has also set up a Professional Practices Panel (PPP) which is an autonomous body of such professionals as former members of the European Parliament, representatives of industry associations, and academics. Although it has no direct ties with the lobbying industry, the PPP is responsible for judging alleged breaches of the EPACA code of conduct. However, the effectiveness of this can be questioned. Between 2009 and 2014 only two breaches have come before the management committee of EPACA. Of these, the committee deemed one to be admissible and referred it to the PPP. However the PPP threw out the case as it did not directly involve the subject company's relationship with the EU institutions.

In addition to the lobbyist associations, the important elements of self-regulation of lobbying for individual private firms are to ensure that: *i)* relevant staff assigned to conduct advocacy activities have a good understanding of transparent, responsible and thus professional interaction; and *ii)* accurate and consistent processes and procedures for transparent interaction with authorities and organisations are implemented in order to reassure the public that lobbying is done professionally and with high standards. One example is the French bank, BNP Paribas, which has adopted a "charter for responsible representation with respect to public authorities" (Box 4.4).

It is important to note that self-regulation alone is sometimes insufficient to alleviate influence peddling by private donors and the ultimate responsibility for safeguarding the public interest and rejecting undue influence lies with public officials. Moreover, for governments wishing to promote a level playing field between actors in the public decision-making process, a consistent and holistic approach to political finance will be needed. Together with support from the private donors, money in politics needs to be addressed in the wider, whole-of-government, integrity framework that is applicable to all stages of the policy cycle, effectively linking political finance with other risk areas in the public decision-making process.

Box 4.4. **BNP Paribas' charter for responsible representation with respect to public authorities**

In December 2012, BNP Paribas published its charter for responsible representation with respect to public authorities. The charter applies to all employees in all countries, and to all activities carried out in all countries in which BNP Paribas operates. BNP Paribas was the first European bank to have adopted an internal charter for its lobbying activities.

The charter contains a number of commitments to integrity, transparency, and social responsibility. Under the terms of the integrity commitment, the charter establishes that:

"The BNP Paribas Group shall:

- comply with the codes of conduct and charters of institutions and organisations with respect to which it carries out public representation activities;
- act with integrity and honesty with institutions and organisations with respect to which it carries out public representation activities;
- forbid itself to exert illegal influence and obtain information or influence decisions in a fraudulent manner;
- not encourage members of institutions ad organisations with respect to which it carries out public representation activities to infringe the rules of conduct that apply to them, particularly regarding conflict of interest, confidentiality and compliance with their ethical obligations;
- ensure that the behaviour of employees concerned by the Charter is in accordance with its code of Conduct and internal rules regarding the prevention of corruption, gifts and invitations."

In addition, BNP Paribas employees and any external consultants who may be engaged must inform the institutions and organisations with which they are in contact who they are and whom they represent. The bank has also undertaken to publish its main public positions on its website. BNP Paribas provides employees concerned with regular training in best practices in public representation activities.

Source: BNP Paribas (2012a), "Annual Report 2012", p. 7, http://annualreport.bnpparibas.com/2012/ra/index.html#/0; BNP Paribas (2012b), "BNP Paribas charter for responsible representation with respect to the public authorities", www.bnpparibas.com/sites/default/files/ckeditor-upload/files/PDF/Nous%20Connaitre/Banque%20Responsable/Charter%20representation%20BNPP_UK.pdf.

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Chapter 5

Ensuring compliance with political finance regulations

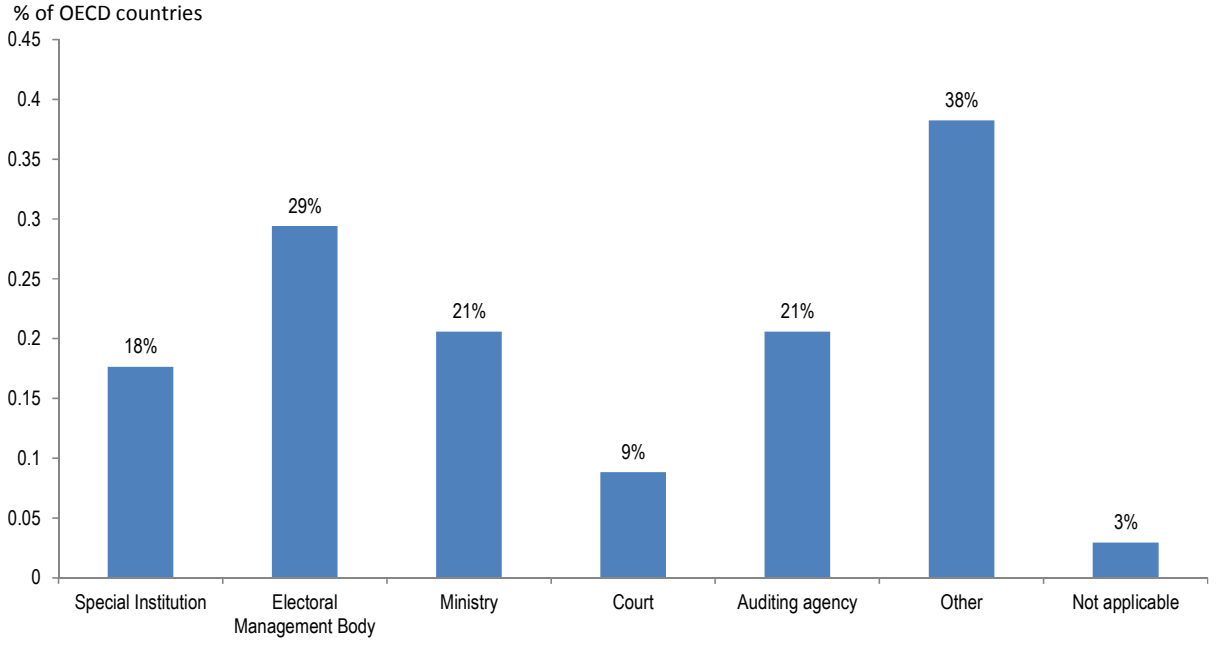
This chapter focuses on policy measures and institutional mechanisms to ensure the compliance and review of political finance regulations. While most countries have laws and regulations on party and election financing, if oversight institutions lack the independence and/or legal authority to meaningfully regulate potential violators, existing regulations cannot be fully enforced. The chapter also highlights that sound political finance regulations need sanctions, serving as deterrents for breaches and promoting compliance.

Countries should assure independent and efficient oversight over political finance

The regulatory body tasked with the supervision of political finance is a key element of any well-functioning political finance system. The first question concerning oversight is which institution holds the power to review reports on party and campaign financing, followed by the question of how independent such an institution is from political influence. The 2003 Recommendation of the Council of Europe on Common rules Against Corruption in the Funding of Political Parties and Electoral Campaigns recognised that "member states should provide for independent monitoring" of parties and campaign funding. Furthermore, "the independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication."

In 29% of OECD countries, the Electoral Management Body receives financial reports from political parties and/or candidates (Figure 5.1). In some member countries (18%) such as France and the United States, a dedicated supervisory body was established to monitor political financing and ensure high-level compliance with regulations. In other countries - for instance, Belgium and the Netherlands - a combination of bodies fulfil this monitoring, investigation and sanctioning functions. Moreover, parliaments (e.g. in Denmark, Germany), constitutional courts (e.g. in Turkey), and ministries (e.g. in Finland) could have responsibility for monitoring and enforcing political financing regulations. Supreme audit institutions (e.g. Iceland or Slovenia), or judiciary bodies (e.g. Portugal and Turkey) may play such a role as well.

Figure 5.1. **OECD country institution(s) receiving financial reports from political parties and/or candidates**



Note: Other refers to: In Belgium, to Presidents of the House of Representatives and the Senate; in the Czech Republic, to the Chamber of Deputies; in Denmark, to the Parliament; in Germany, to the President of the Bundestag; in Greece, to the Expenditure Audit Committee; in Ireland, to the Standards in Public Office Commission; in Italy, to the President of the chamber the party is running; in Luxembourg, to the Prime Minister, Minister of State and President of the Chamber of Deputies; in Norway, to the Register of Company Accounts and Statistics; in the Slovak Republic, to the National Council of the Slovak Republic; in Slovenia, to the National Assembly; in Turkey, to the Office of the Chief Public Prosecutor; and in the United Kingdom, to the local Returning Officer, often referred to as the (Acting) Returning Officer.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

In the absence of an independent supervisory body of political financing, the responsibilities of monitoring and supervising breaches to political financing regulations are often diluted among different institutions. This raises concerns over effective co-ordination, information sharing, and responsiveness. It has been recommended that countries consider at the minimum "proper auditing of political financing accounts by independent auditors" (Doublet, 2012). Independent audit is a growing practice in OECD countries (e.g. Norway) to promote the accountability of parties for the funds they use for their activities or to participate in elections.

In order to strengthen investigatory capacity, some countries also closely co-operate with the police. In India, a flying squad was set up under each police station to track illegal cash transactions or any distribution of liquor or other items intended to bribe voters. These squads are given a dedicated vehicle, a mobile phone, a video camera and the necessary documents required for seizure of cash or goods. To keep eye on the money used in the campaign, video surveillance teams are deployed to capture visuals of all big rallies, processions and public meetings. These video footages are used to assess the expenses of these meetings in order to deter candidates from suppressing or under-reporting expenditure (Quraishi, 2014).

Parties in OECD countries have also been promoting internal auditing (e.g. in Austria) within their structure. The challenge, however, remains in ensuring the independence of the internal auditor or certified experts *vis-à-vis* the political party (e.g. the internal auditor can be a member of the party in the Czech Republic and Germany). Common standards for internal control procedures could provide further clarity to internal auditors and party members on the acceptable practices related to political funding.

How to ensure independence of oversight bodies poses a problem

Despite the variety of institutional arrangements, the following factors are considered critical for a proper functioning of supervisory bodies: *i)* independent appointment of its members (independence from both political parties and the executive at the same time) and security of their tenure; *ii)* independent budget providing sufficient resources; and *iii)* specialised expertise of personnel and methodologies to discover illegal funding of political parties and candidates.

Concerning the appointment of members of oversight bodies, while there clearly need to be ways to ensure that they are as independent as possible of those whom they regulate, this poses problems as well (Box 5.1). According to the US model, there is an equal division between Democrat and Republican members. This could produce deadlock and in any case is less suited to countries without a dominant two-party system. If members are to be appointed according to an independent procedure rather than by division between parties, the question arises of how that independence is to be assured. In the United Kingdom, the chair of the Electoral Commission is appointed by a parliamentary committee chaired by the Speaker of the House of Commons. The Speaker by convention gives up all party affiliations and acts as a politically neutral figure. However, this is a matter of political culture and would not work in all countries. In some countries, a senior judge acts as the head of the supervisory body.

Box 5.1. **Composition of the Estonian Party Funding Supervision Committee (EPFSC)**

The EPFSC is comprised of representatives from each party in parliament (from 2011 to 2015 there were four; after April 2015 there are six.) Moreover, these representatives may not be members of parliament (MPs) or government ministers, and ideally not in the executive bodies of their party. Hence, the idea is that these representatives serve as autonomous individuals, not as delegates or conduits for their party's interests. In addition, the Committee includes three expert members: one appointed by the Chancellor of Justice, one by the National Electoral Committee and one by the State Auditor. The Committee is supported by an administrative advisor and a legal advisor.

While the inclusion of experts in the work of the EPFSC via other state institutions is seen as positive, it remains a question, whether the prison (i.e. the party finance system) isn't still being guarded by the inmates (i.e. the parties). Especially given that the number of party representatives grew in April 2015 to six (alongside three experts), the need to ensure that the Committee focuses on more than just party interests remains paramount.

Note: For more details, see Chapter 8 on Estonia.

Sufficient capacity and resources ensure the ability of electoral management bodies to perform their tasks

Although there is no one-size-fits-all model, establishing a single independent supervisory body to ensure effective enforcement is desirable. However, even if a supervisory body is technically independent, they may be reluctant to pursue powerful politicians and their parties. The third GRECO Evaluation Round observed that countries with monitoring entities do not always provide the necessary financial and human resources to effectively undertake its mission (e.g. Spain, Turkey). Oversight bodies are often run by public servants with a background in law; economists, auditors and statisticians are rare. Modern auditing of campaign finance reports requires confronting databases on campaign donations with records from the public budget, contracting or public work and services, loans from public banks, licenses and permits. While public interest groups have started exploring this field, oversight bodies are underequipped for this task. As a result, even where oversight is independent, where the rules are clear and sanctions are in place, the quality of oversight may remain poor due to limited capacity of the oversight body. For example, Chapter 11 (the case study chapter on Mexico) clearly highlights this challenge. In Mexico, the National Electoral Institute (INE) has to analyse approximately 37 000 campaign reports within 37 days after election day. The limited capacity of the INE remains an obstacle to effectively dealing with large volumes of oversight work. In terms of the number of staff and the mandate of the electoral management body (EMB), there is variation across countries (Table 5.1).

Table 5.1. **The institutional capacity of electoral management bodies in selected OECD countries**

	Electoral management body	Staff numbers	Mandate and powers	Budget
Canada	Elections Canada www.elections.ca/	500 staff[1] Up to 235 000 temporary employees to administer elections or referenda	Provide guidance to political parties and candidates Review Investigate suspected violations Issue caution letters, engage in public compliance agreement Commissioner may disqualify candidates or levy fines up to CAD 100 000 Refer criminal matters to public prosecutors	CAD 120million (2014[2])
Chile	SERVEL (Electoral Service) www.servel.cl/	276 staff 80 professional 196 technical and administrative	Administrative review of financial statements for compliance with laws and regulations No fine or sanction powers	USD 12.727 million (2014) USD 4.678 million for elections (2014)
Estonia	Estonian Party Funding Supervision Committee www.erjk.ee/	2 staff Administrative manager Legal advisor To support the 9 Committee members	Review party and candidate financial disclosures Investigate suspected violations or complaints Demand additional evidence from parties or third parties Impose civil fines up to EUR 15 000 Refer criminal matters to prosecutors	
France[3]	*Commission Nationale des Comptes de Campagne et des Financements Politiques* (CNCCFP) www.cnccfp.fr/	33 staff Utilises temporary employees to review campaign accounts or undertake investigations	Review financial reports- and approve, reject or revise them Rejection of accounts can result in non-reimbursement of expenses Refer suspected criminal violations to the public prosecutor	EUR 6.7 million (2015 case study)
Korea	National Election Commission of Korea (NEC) www.nec.go.kr	330 staff at headquarters 620 staff 17 metropolitan or provincial commissions 1 820 staff in district commissions	Review party financial reports Issue regulations, conduct investigations into suspected violations of the Public Official Election Act or Political Funds Act Issue administrative fines or correction orders[4]	USD 329 million (2014)
United Kingdom	Electoral Commission www.electoralcommission.org.uk/	127 staff[5] 14 executives 103 managers/ senior advisers / advisers /officers 10 assistants	Provide guidelines and advice to parties, candidates and the public Review party and candidate financial disclosures Investigate suspected violations and complaints Conduct interviews Issue civil fines or compliance or stop notices[6]	GBP 20.965 million (2014-15)[7]
United States	Federal Election Commission www.fec.gov/	350 staff[8] Attorneys IT professionals Auditors, administrators	Issue regulations Review party and candidate financial disclosures, and conduct audits of disclosure reports Investigate suspected violations or complaints Compel witness testimony or documents Impose civil fines Refer criminal matters to federal prosecutors	USD 66 million (FY 2011)

Source:
1. Elections Canada (n.d. a), "The Role and Structure of Elections Canada", www.elections.ca/content.aspx?section=abo&dir=role&document=index&lang=e (accessed on 27 October 2015).
2. Elections Canada (n.d. b), "2013–14 Departmental Performance Report", www.elections.ca/content.aspx?section=res&dir=rep/est/dpr2014&document=financial&lang=e (accessed on 27 October 2015).
3. CNCCFP (2014), "CNCCFP - France's National Commission for Campaign Accounts and Political Financing", www.cnccfp.fr/presse/kit/cnccfp_en.pdf.
4. Ace Electoral Knowledge (n.d.), "South Korea: An Independent and Neutral Electoral Management Body", https://aceproject.org/ace-en/topics/em/electoral-management-case-studies/south-korea-an-independent-and-neutral-electoral.
5. Electoral Commission (2014), "Corporate plan 2014-15 to 2018-19", www.electoralcommission.org.uk/__data/assets/pdf_file/0006/167091/EC-Corporate-Plan-2014-15-to-2018-19.pdf, p. 33.
6. Electoral Commission (2011), "Enforcement policy, December 2010", www.electoralcommission.org.uk/__data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf.
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8. GRECO (2011), "Third Evaluation Round: Evaluation Report on the United States of America: Transparency of Party Funding", Council of Europe, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282011)2_USA_Two_EN.pdf.

Clear mandate and sufficient power should be given to the electoral management bodies

Institutions responsible for enforcing political finance regulations should also have a clear mandate and power, not just the capacity, but the legal power to conduct investigations, refer cases for prosecution, and impose sanctions. Development of such powers is critical for the effective enforcement of a transparent and equitable campaign-finance regime. Well-staffed and well-funded supervisory bodies that lack the independence and/or legal authority to meaningfully regulate potential violators limit the extent to which existing regulation can be enforced.

For example, the UK Electoral Commission's enforcement policy guideline sets out the principles that underlie the supervisory, investigatory and sanctioning aspects of the Commission's regulatory role. It provides details on the sanctions that apply to different offences and contraventions of political finance regulations, the way in which financial penalties are calculated, the circumstances in which voluntary enforcement undertakings may be accepted, and other information relating to the Commission's regulatory activity (Box 5.2).

Box 5.2. **Supervisory, investigatory and sanctioning aspects of the electoral management body's regulatory role in the United Kingdom and Korea**

United Kingdom

The enforcement policy guideline of the UK Electoral Commission sets out a number of detailed provisions of the Commission's responsibility to ensure compliance with the political finance regulations. Some examples include:

5.1 As part of its statutory role monitoring compliance, the Commission may need to obtain information from, and visit premises used by, those it regulates. Where possible, this is done on a voluntary basis, and the Commission will give advance notice. However, the law provides the Commission with powers to ensure that information can be obtained where it is necessary.

6.1 The Commission may carry out investigations where it has reasonable grounds to suspect that a person has committed an offence under the Political Parties, Elections and Referendums Act 2000 (PPERA) or contravened any restriction or other requirement of PPERA. The Commission will only use its investigatory powers where it is reasonable and proportionate to do so.

6.2 Investigatory activity may be instigated for a number of reasons, for example where a statutory report is not submitted, or where a submitted report indicates a potential breach of the law. Other circumstances which may lead to an investigation include where an allegation is made to the Commission that the law has been broken or where the Commission becomes aware of a potential problem through another route, such as a press report.

9.1 Following the conclusion of any investigation, the Commission will review the evidence it has obtained to determine if a breach has occurred. The standard of proof which the Commission is required to utilise will vary depending on which provision of the Political Parties, Elections and Referendums Act 2000 (PPERA) is being considered. Certain provisions of PPERA entitle the Commission to apply to a court to seek forfeiture of an amount equivalent to a donation or a restoration order in respect of a loan. Where the Commission instigates court proceedings using these provisions, the standard of proof applicable to civil proceedings, namely the balance of probabilities, applies.

9.2 For all other breaches where the Commission itself will be responsible for determining if a breach has occurred, it must be satisfied beyond reasonable doubt that a regulated organisation or individual has breached the law. If this evidential test is met, the Commission will proceed with the sanctioning process

Box 5.2. **Supervisory, investigatory and sanctioning aspects of the electoral management body's regulatory role in the United Kingdom and Korea *(continued)***

10.1 Sections 11 to 14 of this guidance explain the procedures that the Commission will follow when seeking to use the civil sanctions available to it. These sanctions are: fixed monetary penalties, discretionary requirements (variable monetary penalties, compliance notices and restoration notices), and stop notices.

Discretionary requirements can be used either on their own or in combination. A fixed monetary penalty cannot be used in combination with a discretionary requirement.

10.2 Discretionary requirements can be used either on their own or in combination. A fixed monetary penalty cannot be used in combination with a discretionary requirement.

Korea

The National Election Commission (NEC) of Korea oversees and controls activities that cause damage to fairness in election as well as takes preventive actions against election law violations to ensure an equal opportunity for political parties and candidates and to hold elections in a fair way while the election processes are complied with.

Its Election Surveillance Unit consists of election malpractice monitoring groups, volunteers and personnel who report election law violations, and arranges the joint Election Surveillance Units in each metropolitan area or city to ensure the smooth election process. In addition, the NEC operates the Cyber Election Units to monitor and control the online activities that violate the election laws.

The NEC has several authorities regarding the investigation of illegal campaign spending:

- To request the submission of relevant documents. This is the authority to request for information that is necessary for the investigation of election crime.
- To request financial institutions to submit details of financial transactions. The NEC can request information on bank accounts, copy of the bankbook, name/date of birth/contact information of the individual that holds the account involved in transactions, the organisation that first issued the cheques and information of the person that requested their issuance.
- To demand to accompany or summon where necessary for questioning and investigation related to election irregularities.
- To collect and store evidence used at the scene of crime.
- To request that the communication network provides for the viewing or submission of information necessary to identify the user in order to investigate crimes using information networks or phones.

The NEC issues a suspension, warning, or correction order against election law violations and imposes a fine on the violators. If they disobey orders or do not stop their behaviour, the NEC brings a formal charge or requests an investigation against the violators.

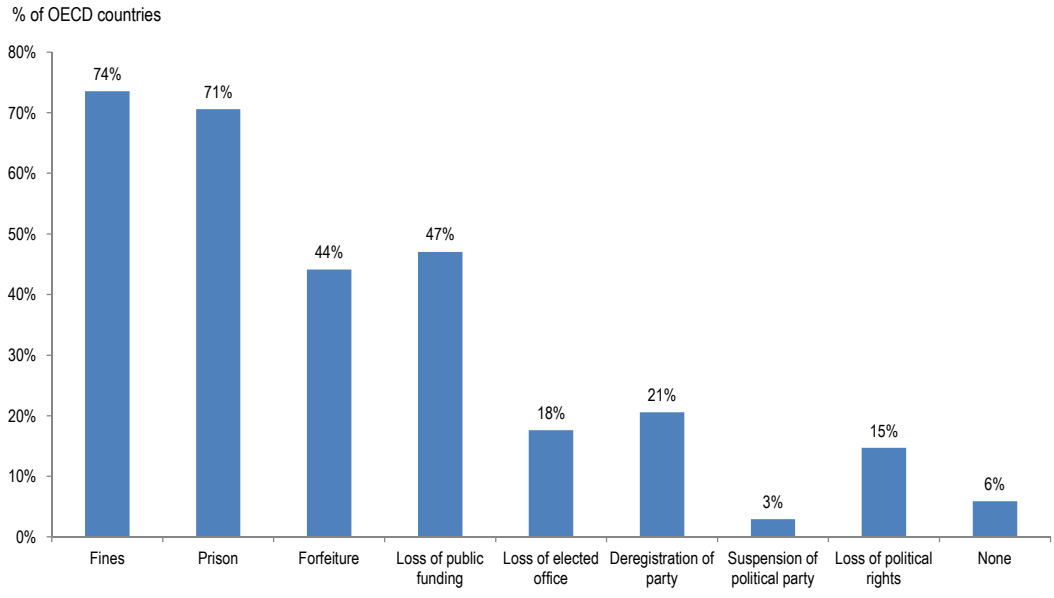
Source: Electoral Commission (2011), "Enforcement policy, December 2010"; Republic of Korea National Election Commission (n.d.), "Duties and responsibilities", www.nec.go.kr/engvote_2013/01_aboutnec/01_03.jsp (accessed on 27 October 2015).

Chile is also undergoing a major political finance reform to expand the institutional capacity of the Electoral Service (SERVEL) and strengthen its mandate. The structure of the SERVEL was comprised of 276 permanent staff in 2013, which increased at election time by temporary staff that perform specific functions only during this period. Of the permanent staff, 80 (approximately 29 % of the total employees) are professionals, while the remaining 71% are technical, administrative and support staff. However, Chapter 7 (the case study on Chile) highlights that SERVEL's current capabilities are limited since it is not a body with effective control capability. The Bill on Democracy Strengthening and Transparency, which is currently under consideration by the Chilean Congress, aims to provide the SERVEL with the power to levy sanctions before, during and after the elections, particularly in relation to campaign finance. The goal is to strengthen the supervisory organ and effectively hand over power and capabilities to control and monitor compliance, thus ensuring that the rules are applied to all political actors (for more details, see Chapter 7).

Dissuasive and enforceable sanctions can deter breaches and promote compliance

Sanctions are the "teeth" of regulations on financing political parties and election campaigns, serving as deterrents for breaches and indirectly promoting compliance. In OECD countries, sanctions range from financial, to criminal and political. Parties may have to pay fines (74%), have their illegal donations or funds confiscated (44%), or lose public subsidies (47%) when breaching the laws (Figure 5.2). More severe sanctions include criminal charges, such as imprisonment (71%), loss of elected office (18%), forfeiting the right to run for election, or even deregistration (21%) or suspension (3%) from a political party.

Figure 5.2. **Sanctions for political finance infractions in OECD countries**

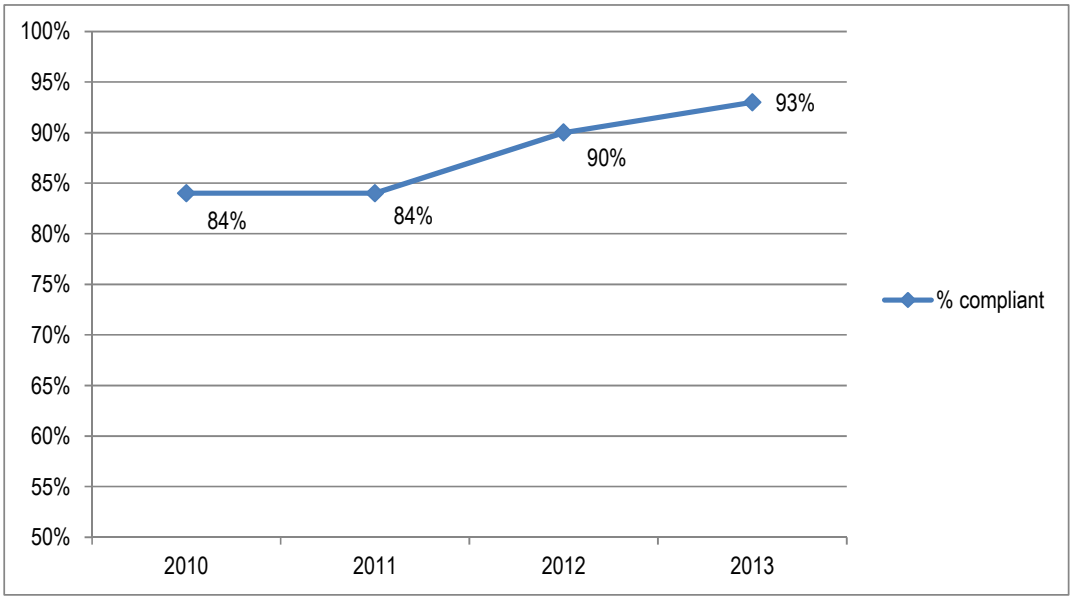


Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

In Hungary, for example, late financial reports are fined, unauthorised donations are confiscated and public funding is reduced by the sum of unauthorised contributions. In New Zealand, non-submission of reports can lead to fines. If anonymous donations exceed NZD 1 500 (USD 1 000), the exceeding amount must be paid to the electoral management body. Persons convicted of corrupt practices lose their right to vote for three years, and face imprisonment not exceeding two years. In cases of corrupt or illegal campaign practices, the election of a candidate can be voided. In Korea, voters are also subject to sanctions in case of vote buying. The fine is equal to 50 times the value of money or any materials provided by a candidate, his/her family or a third party on behalf of a candidate. Those reporting any electoral crimes are also rewarded up to USD 500 000 by the National Election Commission of Korea. In Japan, in certain cases, a candidate can be prosecuted for illegal fundraising by members of his or her staff as well. In Switzerland there are no sanctions for political finance infractions at the national level. However, sanctions are available at the sub-national (cantonal) level in Switzerland.

Sanctions clearly have deterrent effects and promote higher compliance. In the United Kingdom, since the UK Electoral Commission was given its civil sanction powers, compliance rates have increased by 9%. Figure 5.3 provides examples of compliance rates in the United Kingdom since 2010, in respect of delivery of yearly statements of accounts and quarterly returns of reportable donations by political parties.

Figure 5.3. **Compliance rates in the United Kingdom, 2010-13**



Source: UK Electoral Commission

GRECO's Third Evaluation Round showed that countries need to ensure the right balance in penalising infringements to political finance regulations and define sanctions that are proportionate and dissuasive (Table 5.2). In some countries, sanctions are not sufficiently dissuasive, which results in low levels of compliance with the regulations in place. For instance in France, violations of private donation rules, including donations from a banned source or exceeding the maximum legal limit of EUR 7 500, are sanctioned with a maximum fine of EUR 3 750 euro and a one-year prison sentence. The maximum amount of fines for unlawful funding is EUR 3 750 euro may not deter

acceptance of a sizeable illegal donation. In Norway, cessation of public funding is the only sanction available, but this can only be applied for the most serious breaches.

Table 5.2. **Variation of sanctions across selected OECD countries**

	Administrative sanctions	Body responsible for administrative sanctions	Criminal sanctions	Number of investigations (last available year)	Number of prosecutions or sanctions
Hungary[1]	Violation of financing rules by political party: Fined sum of illegal/improper contribution, and reduction of state subsidy by the same amount.	State Audit Office (some offenses) Public prosecutor	Possible for crimes such as fraud, embezzlement, etc.		5 – violations of financial management / accounting rules (2009)
Italy[2]	Improper reporting (p. 18) Suspension of public funding or reimbursement Exceeding election spending Suspension of reimbursement Failure to submit statement of election expenses: Fines from EUR 51,645 to EUR 516 457 Failure to disclose funding sources: Fines from EUR 5 147 to EUR 51 645 Breach of spending limits: Fines from .5–3 times the amount in excess of limit.	President of the Chamber of Deputies - For elections to Chamber of Deputies President of the Senate - For Senate elections	Illegal political funding (p. 18) 6 months to 4 years prison Fines of 3 times the value of the donation	Irregular reporting: 91 instances by political parties (1997–2009) Failure to file declaration statements: N/A Illegal political funding: 6 Failure to submit financial reports (public funding): 7 (1996-2011)	Irregular reporting: 6 sanctioned, remainder had already received reimbursement and could not be sanctioned (1997-2009) Failure to file declaration statements: 4 prosecutions, 3 still pending (2009) Illegal political funding: 1 prosecution, 5 still pending (2009) Failure to submit financial reports (public funding): 1 sanctioned – remainder were remedied (1996-2011)
Norway[3]	Failure to comply with any rules of Political Parties Act: Withholding of part or all public funding *Note:* Ministry of Government Administration can also suspend governments grants in individual cases.	Political Parties Act Committee	Accounting offenses, false Reports: Fines or imprisonment up to 2 years Serious or repeated violations of the Political Parties Act: Imprisonment up to 2 years	124	Withheld grants in 112 cases (2008)

Table 5.2. **Variation of sanctions across selected OECD countries *(continued)***

	Administrative sanctions	Body responsible for administrative sanctions	Criminal sanctions	Number of investigations (last available year)	Number of prosecutions or sanctions
Poland[4]	Failures to submit report or rejected report: Withholding of party's public funds for following year (or up to 3 years if appealed and rejected).	National Electoral Committee (appealable to Supreme Court)	Violation of funding, expenditure or reporting rules under Political Parties Act: Most violations: Fines up to EUR 29 000 Some violations: Fines up to EUR 29 000 and up to 2 years imprisonment (depending on violation)	13 (2007)	6 (2007)
Portugal[5]	Violation of rules of financing parties: Fines of EUR 426 to EUR 170 400 Violations of duty to communicate and co-operate with Entity for Accounts and Public Financing (EAPF): Fines of EUR 853 to EUR 13 632.	Constitutional Court Entity for Accounts and Public Financing	Raising or allocation of prohibited funds: Imprisonment 1-3 years, and confiscation of proceeds Exceeding spending limits of accepting prohibited funds: Imprisonment 1-3 years, and confiscation of proceeds		54 decisions (1996-2009), with 12 cases being assessed fines
Spain[6]	Exceeding limits on donations or accepting from illegal source: Fine of 2 times illegal contribution Non-submission of financial report: Withholding of public funds	Court of Audit Appealable to Supreme Court	Violation of requirement to keep accurate accounts and/or proper use of public funds: Fines from EUR 180 to EUR 1 800, and imprisonment from 6 months to 3 years Use of public funds for personal enrichment: Imprisonment from 3 to 8 years		70 sanctions of violations 35 findings which resulted in withholding of public funds (2007)
United Kingdom[7]	Civil / administrative sanctions available – vary by offense	Electoral Commission	Criminal sanctions available, vary by offense False statements, failure to provide information on accounts or donors, file returns, etc.		29 prosecutions, resulted in 23 convictions (2000-08)

Source:

1. All information from GRECO (2010a), "Third Evaluation Round: Evaluation Report on Hungary: Transparency of Party Funding", Council of Europe.
2. All information from GRECO (2012), "Third Evaluation Round: Evaluation Report on Italy: Transparency of Party Funding", Council of Europe.
3. All information from GRECO (2009a), "Third Evaluation Round: Evaluation Report on Norway: Transparency of Party Funding", Council of Europe.
4. All information from GRECO (2008a), "Third Evaluation Round: Evaluation Report on Poland: Transparency of Party Funding", Council of Europe.
5. All information from GRECO (2010b), "Third Evaluation Round: Evaluation Report on Portugal: Transparency of Party Funding", Council of Europe.
6. All information from GRECO (2009b), "Third Evaluation Round: Evaluation Report on Spain: Transparency of Party Funding", Council of Europe.
7. All information from GRECO (2008b), "Third Evaluation Round: Evaluation Report on United Kingdom: Transparency of Party Funding", Council of Europe.

GRECO also found that the sanctions in place are limited in scope (generally only focusing on electoral campaign funding) and that the sanctions are not consistently applied. If sanctions are not applied, the entire regulation of political financing is undermined. Table 5.2 also highlights wide variation in the number of investigations and prosecutions across countries.

Education and training for political parties as a tool to promote compliance

In order to ensure compliance, providing support to political parties to help them comply with regulations is also crucial. This is an angle that is often neglected, but very much in need from the point of view of political parties. This could, for example, take the form of some sort of parallel support agency or unit within the monitoring agency focused on supporting compliance. It could also take the form of a space for dialogue between parties and monitoring agencies, which would facilitate adherence to the rules and allow for better understanding of where problems lie and how they could be better addressed. For example, the website of the UK Electoral Commission provides detailed guidance for political parties to help them comply with the rules as well as a number of updates to related regulations. The guidance covers issues such as how to register a party or maintain a party's details, report donations and loans, report campaign spending, and submit a party's accounts.

Similarly, the Election Commission of India noticed that sometimes political parties and their candidate violated the law because of ignorance. The Commission set up its own training institute in 2011, India International Institute of Democracy and Election Management (IIIDEM), which is tasked with organising a training workshop for party leaders from all the poll-going states and to raise awareness about the new mechanism of political finance regulations. The rationale was to focus on prevention instead of punishment or punitive action (Box 5.3).

Box 5.3. **India International Institute of Democracy and Election Management (IIIDEM)**

The Election Commission of India set up the India International Institute of Democracy and Election Management in 2011 in order to provide training on electoral practices to meet domestic and international requirements.

The IIIDEM has four components:

1. Training and capacity development wing

It seeks to prepare and groom a new generation of well-trained and committed electoral managers by updating their knowledge, skills and professional competency for building a positive electoral culture in the country. It also supports a bilateral and multilateral capacity development programme through direct understanding or in co-operation with international agencies.

2. Voter education and civic participation wing

It is to build a chorus of positive voices and views in favour of democracy, promote and sustain it through election literacy, facilitation programmes and enlightened voter participation.

Box 5.3. **India International Institute of Democracy and Election Management (IIIDEM)** ***(continued)***

3. Research, innovation and documentation wing

This wing works as a resource unit and think tank for the ECO by seeking to explore, study, and build an authoritative knowledge and information pool, providing research and policy support to ECI's programmes, operations and activities.

4. International projects and technical collaboration wing

This unit is to promote inter institutional and international collaboration and provide technical support to electoral management bodies on request.

Source: Election Commission of India (n.d.), "India International Institute of Democracy and Election Management: Towards Efficient Elections and Enlightened Participation", brochure, http://eci.nic.in/eci_main1/current/IIIDEM_brochure.pdf (accessed on 27 October 2015).

Appraising the system: Identifying evolving risks of policy capture and involving stakeholders

Countries could review the functioning of their rules and guidelines related to the funding of political parties and electoral campaigns on a periodic basis and make necessary adjustments to them in light of experience.

As well as appraising the system on a regular basis, inclusive policy making enhances public confidence in the system. To this end, stakeholder engagement in the design and delivery of policy and services regarding party and election financing can help decision makers better understand the needs of political actors, leverage a wider pool of information and resources, improve compliance, contain costs and reduce the risk of conflict and delays downstream.

Informed decisions based on greater stakeholder engagement are likely to: *i)* raise the quality of political finance policies and regulations; *ii)* demonstrate a commitment of public officials to accountability and transparency; *iii)* raise the chances for successful implementation and voluntary compliance; and *iv)* reinforce the legitimacy of the decision-making process and its final results in financing democracy.

Consultation is one of the most frequently used stakeholder engagement tools, but processes differ widely across countries with respect to the timing, availability of guidelines and the degree of openness of the process. For example, Northern Ireland Office (NIO) of the UK published draft legislation which would increase the transparency of donations and loans to Northern Ireland political parties in January 2014. The NIO conducted an online consultation for 12 weeks to seek views on the draft legislation from stakeholders. The proposed changes will enable the UK Electoral Commission to provide information to the public about the scale and sources of funding to Northern Ireland parties for the first time.

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Annex I.1

Bodies responsible for receiving and examining financial reports submitted by parties and candidates in OECD countries

	Receiving body	Examining/investigating body
Australia	*EMB* Australian Electoral Commission	Australian Electoral Commission
Austria	*Auditing agency* Austrian Court of Audit	Austrian Court of Audit
Belgium	*Ministry and others* Ministry of Finance and Presidents of Senate and House of Representatives	Control Commissions
Canada	*EMB* Chief Electoral Officer (Elections Canada)	Commissioner of Canada Elections (Office of the Director of Public Prosecutions)
Chile	*EMB* Servicio Electoral (SERVEL)	SERVEL
Czech Republic	*Others* Chamber of Deputies	Supervisory Committee within the Chamber of Deputies
Denmark	*Ministry and others* Ministry for Interior and Social Welfare Parliament	None General Audit Office has authority to account for public money, but does not review party accounts in practice
Estonia	*Other/independent oversight body* Estonian Party Funding Supervision Committee	Estonian Party Funding Supervision Committee
Finland	*Ministry and auditing agency* Ministry of Justice National Audit Office	Ministry of Justice for regular political party reporting National Audit Office for Campaign Reports
France	*Special institution* National Commission for Campaign Accounts and Political Funding (CNCCFP)	National Commission for Campaign Accounts and Political Funding Irregularities reported to public prosecutor, police or tax authorities
Germany	*Other* President of the *Bundestag*	President of the *Bundestag*
Greece	*Ministry, special institution and other* Ministry of the Interior Expenditure Audit Committee Control Committee for the Financial Accounts of Parties and Parliament Members	Control Committee for party accounts and members of parliament. Special Investigative Service of Ministry of Economy and Finance, local committees, chartered auditors
Hungary	*Auditing agency* State Audit Office of Hungary	State Audit Office
Iceland	*Audit agency* National Audit Office	National Audit Office
Ireland	*Other* Standards in Public Office Commission	Standards in Public Office Commission
Israel	*Audit agency* State Comptroller	State Comptroller
Italy	*Special institution and other* *Corte di Conti* (Court of Audit)	Commission for Transparency and Control of Political Parties' and Political Movements' accounts
Japan	*EMB and ministry* Ministry of Internal Affairs and Communications, Central Election Management Council, Local Election Management Council	Ministry for Internal Affairs and Communications or Prefectural Commission check inaccuracies
Korea	*EMB* National Election Commission of Korea	National Election Commission of Korea

	Receiving body	Examining/investigating body
Luxembourg	*Court and others* Courts of Accounts President, Promise Minister, Minister of State and President of Chamber of Deputies	Court of Auditors
Mexico	*EMB* Federal Electoral Institute (IFE)	Special Unit of the IFE
Netherlands	*Ministry* Ministry of Interior and Kingdom Relations	Ministry of the Interior
New Zealand	*EMB* Electoral Commission	Electoral Commission reports suspected offenses to New Zealand police
Norway	*Other* Statistics Norway	Political Parties Act Committee and Party Auditing Committee
Poland	*EMB* State Electoral Commission	State Electoral Commission
Portugal	*EMB and court* Constitutional Court EMB for Referenda	Political Financing Supervisory Body (EMB) Constitutional Court
Slovak Republic	*Ministry and other* Annual and campaign reports to National Council of the Slovak Republic Presidential candidate reports to Ministry of Finance	National Council and Ministry of Finance make formal checks of party reports, Ministry of Finance reviews presidential candidate reports
Slovenia	*Audit agency and other* Agency for Public Legal Records and Related Services (AJPES) supervises submission of reports Supervision of Funding with Court of Audit	Inspectorate for Internal Affairs supervises minor offenses Ljubljana Local Court has jurisdiction on criminal offenses
Spain	*Audit agency* Spanish Court of Audit	Court of Audit
Sweden	*Special institution or ministry* *Kammarkollegiet* (Legal, Financial and Administrative Services Agency of the Ministry of Finance)	*Kammarkollegiet*: Legal, Financial and Administrative Services Agency
Switzerland	None	N/A
Turkey	*Court and other* Constitutional Court Office of the Chief Public Prosecutor	Constitutional Court
United Kingdom	*Special institution* Electoral Commission	Electoral Commission has main responsibility, police and courts can also investigate
United States	*EMB* Federal Election Commission	Federal Election Commission

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), *Political Finance Database*, www.idea.int/political-finance/ (accessed on 27 October 2015).

Part II

Country case studies

Chapter 6

Canada

By Mr. Stephane Perrault

Deputy Chief Electoral Officer, Regulatory Affairs Elections Canada

This case study reviews the Canadian Elections Act, the primary legal framework for funding and oversight of political parties, candidates and campaigns. It also discusses role, mandate and practices of the Office of the Chief Electoral Officer of Canada, and the challenges presented going forward.

Overview of the mandate and political finance legislation

The Office of the Chief Electoral Officer, commonly known as Elections Canada, is an independent, non-partisan agency that reports directly to Parliament. Its mandate is to be prepared at all times to conduct a federal general election, by-election or referendum. Elections Canada also:

- administers the political financing provisions of the Canada Elections Act (CEA);
- monitors compliance with electoral legislation;
- conducts public information campaigns on voter registration, voting and becoming a candidate;
- conducts education programs for students on the electoral process;
- provides support to the independent commissions in charge of adjusting the boundaries of federal electoral districts following each decennial census in each province.
- carries out studies on alternative voting methods and, with the approval of parliamentarians, may test alternative voting processes for future use during electoral events; and
- provides assistance and co-operation in electoral matters to electoral agencies in other countries or to international organisations.

The political financing provisions can be found in part 18 of the CEA. These provisions regulate the financial activities of federal political entities. These include nomination contestants, candidates, registered political parties, electoral district associations (EDAs) and leadership contestants. The Act also regulates election advertising undertaken by third parties. While candidates must submit their nominations to the returning officer, all of these other entities must register with the Chief Electoral Officer and are subject, as the case may be, to contribution limits, disclosure requirements, public funding and spending limits.

As part of its mandate, Elections Canada also issues guidelines and interpretation notes on the application of the provisions of the CEA to political entities, as well as formal written opinions on the application of any provision of the Act to an activity or practice that a political entity proposes to engage in. Guidelines and interpretation notes can be issued at the request of a registered party or at Elections Canada's own initiative. These are maintained in a Registry and published on the Elections Canada website.

To ensure compliance with the Act, Elections Canada has a wide offering of training programs for political entities including live information sessions, online tutorials and brochures. A Help Line is also operated to supplement those trainings.

The *Canada Elections Act,* and other related information can be found on the website at www.elections.ca. Specific sections on the web have been devoted to Political Financing and Political Participants.

Political finance rules

In order to promote a fair political competition, the CEA provides restrictions on spending, and sources of funding received.

Limits on expenses

Although there are no limits on spending for the periods between elections, the Canada Elections Act provides for limits on expenses incurred by political parties and candidates during an electoral period. This is intended to facilitate a level playing field among political participants. The limits apply to the total of all election expenses, whether paid, unpaid, or accepted as non-monetary contributions or transfers. The limits on expenses are different for political parties and candidates. Limits are based on the number of names on the list of electors, and vary depending on the length of the election period, the electoral district and the number of electoral districts in which a political party is sponsoring candidates. In the last general election, the highest election expenses limit for a party was CAD 21 025 793.23 and the highest election expenses limit for a candidate was CAD 134 351.77.

The Act also provides for limits on the amount of election advertising expenses that a third party may incur to promote or oppose a registered party or the election of a candidate, including by naming them, showing their likeness, identifying them by their respective political affiliation, and taking a position on an issue with which the registered party or the candidate is associated.

Other entities such as nomination contestants, leadership contestants and electoral district associations, are not subject to expenses limits.

Sources of funding

Sources of funding received are broken down into three categories: private funding, indirect public funding and direct public funding.

Private funding- or contributions- is defined as monetary contributions (amount of money provided that is not repayable) or non-monetary contributions (commercial value of a service, other than volunteer labour, or of property of the use of property or money to the extent that they are provided without charge or at less than commercial value).

Only a Canadian citizen or permanent resident can make a contribution to a political entity. Corporations, trade unions, associations and groups cannot make political contributions. In addition, the CEA provides for limits on contributions and loans.[1]

The 2015 annual limit is CAD 1 500 to each registered party; CAD 1 500 in total to all the registered associations, nomination contestants and candidates of each registered party; CAD 1 500 in total to all leadership contestants in a particular contest. The limits will increase by CAD 25 on January 1st in each subsequent year. There are no limits on the contributions that a third party may receive.

In addition to these amounts:

- a nomination contestant is permitted to give an additional CAD 1 000 in total per contest in contributions, loans or loan guarantees to his or her own campaign;

- a candidate is permitted to give a total of CAD 5 000 in contributions, loans and loan guarantees to his or her campaign
- a candidate is also permitted to give an additional CAD 1 500 in total per year in contributions, loans or loan guarantees to other candidates, registered associations and nomination contestants of each party. (This includes contributions to the registered association in the candidate's electoral district and contributions to the candidate's own nomination campaign);
- a leadership contestant is permitted to give a total of CAD 25 000 in contributions, loans and loan guarantees to his or her campaign; and
- a leadership contestant is also permitted to give an additional CAD 1 500 in total per year in contributions, loans or loan guarantees to other leadership contestants.

Indirect public funding comes in the form of tax credits for eligible monetary contributions to parties, candidates and registered EDAs. The maximum tax credit one can receive is CAD 650. The cost of these credits is estimated to be at CAD 25M in an election year.

Direct public funding includes registered party election expenses partial reimbursement (50% of eligible expenses), candidate election expenses partial reimbursement (60% of eligible expenses) and audit subsidies. Other entities such as nomination contestants, leadership contestants, electoral district associations and third parties do not receive partial reimbursements.

Transparency and accountability

The CEA requires political entities to file, within specific deadlines, financial and campaign returns. These returns serve to meet reporting requirements for the disclosure of all incoming and outgoing funds. Included in these returns is information in regards to contributions and contributors, expenses related to elections, leadership and nomination contests, loans and any conditions on them, and unpaid claims. Event-based political entities must respect reporting requirements for the specific event in which they have participated. Ongoing political entities, such as EDAs, also have yearly reporting requirements to fulfill. Entities must submit a signed paper return. An electronic filing system may be used, but a signed paper copy must also be submitted. Third parties that engage in electoral advertising must be registered with Elections Canada if a total amount of advertising expenses incurred is CAD 500 or more. Every registered third party must file an election advertising report.

These returns are verified by Elections Canada through a compliance audit process. This process ensures that appropriate administrative requirements, systems, procedures and practices are in place to properly record, verify and report information concerning compliance with the financial provisions of the CEA. The process also validates information concerning receipts for contributions for the purposes of the Income Tax Act. The electoral and financial performance of a political entity and compliance with reporting requirements under the CEA determine eligibility for certain disbursements, such as payments and reimbursements from the Consolidated Revenue Fund. In addition, the external auditor appointed by each party must also perform a compliance audit review of the party's financial returns.

The disclosure of information is a key feature in monitoring compliance with legislative provisions. As required by the Act, the Office of the Chief Electoral Officer publishes financial and campaign returns of various political entities, including personal information of contributors, in the manner that the Chief Electoral Officer considers appropriate. As such, even though all contributors who contributed CAD 200 or more are required to provide their full name and full address, only the contributor's full name, city, province and postal code are published on the Elections Canada Web site. In addition, in order to access this information, a requestor must individually click on each contributor name, which opens a separate window. The partial address of each contributor is not available in a downloadable database format, in hopes to prevent bulk access and data mining of this information. The rest of the contribution information, i.e. the amount contributed, the entity to which it was made and its party affiliation is downloadable in a plain text version of the search results.

Alternatively, the CEA provides for transparency of information included in returns by allowing for public inspection of returns and all other reports and statements, other than electoral documents. Upon request, one can inspect these documents at Elections Canada premises during regular business hours. In addition, on payment of a fee, copies of these documents can be obtained.

Compliance

The financial reports submitted by federal political entities and third-party election advertisers undergo an audit to ensure they are in compliance with the financial provisions of the CEA. Instances of non-compliance are addressed in a manner that reflects the seriousness of the non-compliance and its impact on the integrity of the political financing regime, possibly requiring a referral to the Commissioner of Canada Elections (the Commissioner).

The Commissioner is part of the Office of the Director of Public Prosecutions and is responsible for ensuring that the CEA and the Referendum Act are complied with and enforced. The Commissioner acts independently of the Chief Electoral Officer He decides in what manner complaints and referrals will be handled, what investigation are to be carried out, the cases to be referred for possible prosecution and the charges to be recommended.

The CEA contains a long list of offences, most of which relate to political financing. However, only a small proportion of these offences relate to misconduct that directly threatens the core values of the regime- fairness, transparency and preventing the undue influence of money. These core offences relate to:

- **Ineligible contributions -** instances where an agent of a political entity does not return an ineligible or excessive contribution or returns it past the prescribed deadline. In total, 8% of non-compliance cases relate to the acceptance of illegal funds into the regulatory system through ineligible or excessive contributions that are not returned in a timely manner.
- **Spending violations -** instances where a candidate registered party, nomination contestant or third party advertiser exceeds the expenses limit in a general election, by- election or nomination contest. In total, 1% of instances of non-compliance relate to the exceeding of spending limits as prescribed by

the CEA- either by a candidate, a registered party, a nomination contestant or a third party advertiser.

- **Filing a false or misleading** document - instances where an agent of a political entity files a financial transactions return that contains a materially false or misleading statement or does not substantially set out the required information outlined in the CEA. Overall, 1% of non- compliance cases relate to the filing of a false or misleading document.
- **Late and non-filers -** instances of not filing a financial document as required by the CEA and of late filing over the prescribed deadline. In total, 19% of all non-compliance cases are related to not filing a financial document or late filing over the prescribed deadline, therefore compromising an important core value of the political financing regime; that timely financial information regarding regulated political entities be made available to the public.

Other political financing offences in the CEA are of a less serious nature and may generally be considered "accessory" in that they concern requirements of the CEA that serve to support fundamental objectives of the system. These requirements include the opening of a bank account, the appointment of an official agent for a candidate and the issuing of a receipt for a contribution.

The vast majority of contraventions are instances of minor regulatory non-compliance that do not imperil the integrity of the political financing regime and as a result the criminal justice system is ill-equipped to deal with them.

In 2010, Elections Canada developed with the Commissioner an *Administrative Compliance Policy for Political Financing.*[2] ·Pursuant to that policy, matters of a less serious nature are treated through administrative educational measures, rather than a referral to the Commissioner. Further to the recent separation of the Commissioner of Canada Elections from Elections Canada, as a recent of the coming into force of the Fair Elections Act in 2014, this policy is currently under review.

For cases that are not dealt with through the administrative compliance policy, depending on the gravity of the offence, penalties can range from a member of parliament being unable to vote or sit as a member, an individual not being eligible to be a candidate at future elections, fines up to CAD 100 000, or imprisonment.

Integrity

Canada's public service as a whole must follow the Values and Ethics code for public servants, as well as the Policy on Conflict of Interest and Post-Employment. Moreover; lobbyists (individuals who are paid to communicate with federal public office holders) are bound by the *Lobbying Act* and code of conduct to ensure transparency and accountability in order to increase the public's confidence in the integrity of government decision-making.

In addition, the Public Service Commission is responsible for safeguarding the political impartiality of the public service and public servants' involvement in political activities, including:

- Providing guidance with respect to involvement in political activities;
- Granting permission and leave for candidacy in federal, provincial, territorial and municipal elections; and

- Investigating allegations of improper political activities and taking corrective action when they are founded.

Elections Canada employees must also commit to a specific additional Code of conduct that highlights the environment employees of Elections Canada face as a result of the unique mandate of the Chief Electoral Officer in Canadian democracy. In following this code, employees must conduct themselves in a way that the public confidence and trust in the integrity, objectivity and impartiality of the electoral process is preserved and enhanced.

Election administrators (Returning Officers, Assistant Returning Officers and Additional Assistant Returning Officers) are required by law to comply with a code of professional conduct issued by the Office of the Chief Electoral Officer, which highlights that they have an obligation to act in a manner that will bear the closest public scrutiny. The obligations in this code extend to all acts and transactions performed by election administrators during their tenure of office, whether or not in the course of the performance of their duties as election administrators.

There is currently no code of conduct for political parties and their entities. Historically, the assumption was that political parties would regulate their own behaviour, and, if they crossed ethical lines, the remedy resided in the electoral and wider political process. In 2014, the Chief Electoral Officer recommended to Parliament that the establishment of a code of conduct for political parties be considered.

Challenges and risks

Canada's electoral regime has seen the introduction of a complex, sophisticated and detailed regulatory framework over the years seeking to enhance accountability and transparency of political entities. The complexity of this system has become one the most significant challenges given that political campaigns are largely conducted by volunteers. In carrying out its responsibilities to provide guidance to entities in regards of the political financing provisions, Elections Canada has developed a number of administrative tools and delivered training programs to help political entities understand the statutory requirements and facilitate their compliance.

Another challenge relates to the fact that, while candidates, nomination contestants and leadership contestants are all required to provide supporting documentation for their reported expenses, registered parties have no similar obligation. This has been partly compensated for in recent legislation by adding external compliance audits the election expenses returns submitted by political parties. However, the transparency of political party finances, and the ability of the Chief Electoral Officer to monitor compliance with the rules remains very limited, despite the fact that election expenses of political parties are heavily subsidised.

Finally, the *Canada Elections Act* can be enforced only through the criminal courts, not administrative penalties, even for purely regulatory matters. As a result, only a very small portion of non-compliances ever get sanctioned. A list of major Court Cases Relating to the Federal Electoral Legislation can be found in the resources section of the Elections Canada website.

Notes

1. Limits to contributions and loans apply to: total contributions, the unpaid balance of loans made during the contribution period and the amount of any loan guarantees made during the contribution period that an individual is still liable for. The sum of these three amounts cannot at any time exceed the contribution limit.
2. The Administrative Compliance Policy for Political Financing is on Elections Canada's website.

Chapter 7

Chile

By Ms. Pamela Figueroa Rubio
Chief of the Studies Division

Mr. Francisco Espinoza Rabanales
Advisor of the Studies Division

Ministry General Secretariat of the Presidency

This case study presents the proposed reforms to political funding and election oversight in the Republic of Chile put forth by the administration of President Michelle Bachelet. It details the measures to increase public funding, ensure transparency in finances, and create effective sanctions for violations.

Introduction

This chapter aims to explain in detail the bill put forward by President Michelle Bachelet (2014-18) on Democracy Strengthening and Transparency, which is currently under consideration by the Chilean Congress, and will become law of the republic in the second semester of 2015. The system of financing political parties and candidates in Chile is currently based on the Law 19,884 on Transparency, Limit and Control of Campaign Spending. The purpose of this law is to monitor campaign spending, meaning any payment made for the financing of equipment, office space, political parties and candidates.

The financing structure provided in the current legislation applies only over the period of time between the expiration of the declaration of candidates and the day of the respective elections. Only disbursements during this period will be considered as election expenses.

Current legislation combines a system of public and private funding. Public funding is understood as any contribution and reimbursement of election expenses incurred by candidates and parties by the state upon presentation of tickets or invoices. On the other hand, private funding is understood as any funding made to a party and candidate in the form of a grant, loan, or any free agreement, whether or not it has payment associated for the financing of election expenses. The current law allows for contributions from private individuals to electoral campaigns with a maximum of 2 000 UF (1 UF is equivalent to about USD 40) for one candidate or political party, and 10 000 UF for multiple candidates or political parties.

However, in order to strengthen transparency and political financing, Law 19,884 has a number of limitations, summarised in three main aspects: *i)* weak auditing powers of the Electoral Service; *ii)* a restrictive definition of informers, preventing citizen complaints; and *iii)* it erodes the principle of control and transparency of election income and expenses.

This initiative is part of the recommendations of international organisations, as well as various proposals that have emerged from the debate on the development and improvement of democracy in Chile since 2000. In particular, with the aim of responding to three central variables that have been diagnosed as the key areas for improvement, this initiative focuses its efforts on three essential pillars for the functioning of the democratic system: equity, transparency and democratic control.

Equity in political participation requires the State to assume a more active role in creating contexts for participation and competition among various political actors on equal terms, levelling the playing field so that unequal access to financing will no longer be decisive to the outcome of elections, and economic inequality does not replicate as political inequality.

Transparency, meanwhile, has a dual role in politics. On the one hand, it is a disincentive to corruption, and secondly, enables the democratic and citizen control of public funds. In politics, transparency is the key to ensuring that personal interests do not take precedence over general interest.

But transparency alone does not prevent conflicts of interest from arising in politics. It not only seeks to prevent and meet potential conflicts of interest, but what is required is to proscribe them from political activity. For this, rules are required that prohibit institutions that defend purely commercial or private corporate interests involved in

politics. Furthermore, it is essential to have an effective control system of such rules, which involves the strengthening of control and sanctions, in order to create a deterrent effect that encourages respect for democratic rules.

All of the above is at the core of the proposed policy reform, and comes to reflect an interest in raising Chilean democracy to the highest standards of probity and transparency, fairness in political competition and control of the main political actors, and in this way to contribute to and consolidate greater legitimacy and stability in the Chilean political system.

State of the art/diagnosis

Chile is in the process of undertaking major reforms, as democracy requires institutions to be able to adapt to new challenges. In this sense, one of the main challenges aims to find new value in political activity and raise its importance in society.

In recent years, a significant disaffection has been shown to parties and politicians both locally and internationally. One of the main reasons for this is related to the perception of interference of money in politics.

It is a fact that politics has an operating cost that needs to be settled. For example, the last presidential election, in the first round, cost CLP 10 623 534 969, while total expenditures on campaigns for deputies was CLP 14 104 479 095, and in the case of senators was CLP 11 128 078 256. These figures include the total spending of all candidates for each election. It is essential that it is the democratic system that controls the money, and not the other way round (Moboji, 2003). In this sense, the regulation of financing, including its institutional structure, has a direct effect on generating opportunities, barriers and incentives in the way that political actors behave and, therefore, on how democracy works. In this regard, to ensure fair competition, to monitor the effect of money and material resources on the results of political representation, to adequately protect freedom of expression and association, to ensure transparency, and to limit the space for influence peddling, corruption and circulation of illicit funds are crucial objectives to consider in the design of political financing systems (UNDP, 2015).

Having legislation in line with these capabilities will allow Chile to adopt international standards and to create democratic mechanisms that allow greater control and transparency of the activities associated with politics.

Currently, the legislation governing the relationship between money and politics is a matter of debate in the Chilean parliament. However, it should be noted that this debate is not new, but dates back to 2000, where under the administration of former President Ricardo Lagos (2000-06), the first regulations and standards on the relationship between the public and private world appeared. It has been a gradual process and today, in the current administration of Michelle Bachelet (2014-18), where a concrete commitment has been made to promote an agenda of Probity, Transparency, State Modernisation and Strengthening of Democracy, aiming to make progress and improve the quality standards of democratic in the country will advance and improve. So to fulfil this commitment, in December 2014 the bill on Democracy Strengthening and Transparency was sent to Congress. It seeks to strengthen the Chilean democratic system by introducing high standards of transparency, control and public financing to public and electoral activity, in order to ensure adequate public service of authorities and political parties.

The bill, based upon a detailed analysis of political and social reality, considers the recommendations provided by various international agencies for the proper functioning

and development of contemporary democracies. In this regard, greater democratic quality is closely linked to the search for greater social equality, the effective fight against poverty, and the expansion of the rights of citizens. Such is the conviction of the need to provide new tools for equal political participation that it has been proposed to establish institutional principles that achieve greater equity in the access to positions of popular representation.

The need for democracy strengthening and transparency

After 25 years of democratic rebuilding, Chilean society has evolved rapidly, where concepts that were previously questioned are today the basis of requirements for a more open, transparent and participative government. It is precisely in light of this evolution that the country's institutions have lagged behind national momentum. One of the most concrete ways to advance concerns legal amendments to establish a new and improved framework for political activity, where access conditions and electoral competition can be improved; the role of political parties as articulators of social interests be revitalised; and the establishment of clear and strict rules on transparency, arrangement and access to information produced by political parties in view of the public resources received can be concretised.

The effort aims to address the aforementioned three key elements to respond to repeated requests from the public regarding government elements and the political system as a whole:

1. the need for better politics quality:
   a) promoting democratic governance and strengthening the political system.
2. to raise the role of parties in the pursuit of the common good:
   a) deepening the institutionalisation of political parties, the emergence of new leadership and the generation of long-term projects
   b) providing greater legitimacy to political parties to channel the general interests of society.
3. to strengthen the role of government in promoting democracy:
   a) improve standards of transparency and control to respond to new demands of citizens and for citizens to know how political parties are funded and spend money.

All democratic systems assume that for proper development, political parties must be provided with a financing system that complies with the principles of transparency and political equality in order to establish clear and concrete institutional conditions to achieve greater equity in access to elected office.

Thus, equal participation in democratic processes and effective realisation of the rights of political participation are fully viable only if there is a system of political financing that prevents contributions from individuals who could influence the behaviour and decisions of such entities and authorities later. This view is shared by various international organisations such as the Organisation for Economic Co-operation and Development (OECD), Transparency International and the European Council, who have sought to establish and promote basic international standards to regulate the public financing of political parties and candidates, against contributions of legal persons, arguing that the influence of corporate interests on politics must be controlled, and thus to

promote the autonomy of the parties regarding possible capture of private interests, reducing corruption and undue influence peddling, as well as being able to consolidate trust, institutional framework and transparency of political parties and democratically elected authorities.

Promoting a level playing field: Equity in political competition

Increasing public funding

Double public contributions to political parties

A permanent contributions fund to political parties will be created. The objective of this aims to strengthen the public role of political parties and enable them to develop research activities, and develop civic education, among others.

In addition to the above, it states that at least 10% of funds received by the parties shall be for activities to promote the participation of women in politics.

A decreased campaign spending limit is also established, by defining a distinct reduction for each type of election.

The objective is that campaigns are more austere, where advertising spending, radio appearances or street signs do not trespass on the city's daily life. This measure presents a challenge for candidates, since they must find new ways of campaigning and attracting citizens to their political ideas.

Framing private funding

A limitation is established on the contribution that a candidate can make to his own campaign so that the money a person has would not be an advantage when applying for public office. In this line, ideas are favoured over access to campaign finance itself.

Contributions from legal entities are prohibited. The reasons for regulating and gradually eliminating such contributions consider both normative arguments as effective equity. Indeed, the constitutive nature of legal persons is established that legal persons, besides not having the right to vote, usually represent interests and not preferences. Its aim is to maintain and increase their assets so the link with politics cannot be other than related to the political system to that end.

The limit on contributions from individuals to political campaigns is decreased. This seeks to ensure that contribution from an individual to a candidate does not result in possible future pressure from donor to the representative.

Anonymous donations are regulated and reserved contributions are eliminated. Also, electoral advertising in public spaces is prohibited, only exceptionally allowing electoral propaganda in public squares and parks floes, when previously authorised by the Electoral Service and prior to a report by the City Council to such effect.

Finally, regulation of expenditures on media by political parties and candidates is established. This specifies that the press and radio stations are only allowed electoral propaganda if they inform SERVEL of their fees within the time limits fixed by law, thereby discouraging discretion in price schemes that could favour one candidate or party over another.

With the above, the role of money is limited in democracy, slashing the amount that candidates and parties can spend on a campaign, and reducing the impact and dependence on private contributions themselves, and in election campaigns.

Ensuring more transparency

In order to qualify for public financing contributions, any political party shall appoint a General Manager of the Funds, established in Chile, who will be personally responsible for civil and criminal misuse of State funds delivered to the party. While in the case of private financing, parties must permanently keep public all available information about such contributions through their websites: the monthly balance of income and expenses, updated quarterly, and broken down into specific categories. All contributions, whether public or private, should be made publicly available.

Transparency in politics discourages corruption and allows citizen control. This is the key to ensuring that private interests do not take precedence over general interest. It is for this reason that only low amounts of anonymous donations are allowed and these will vary according to the type of election.

In this regard, OECD member countries have adopted similar regulations in this area, in order to promote transparency and confidence in political parties. One such measure concerns the regulation of financial contributions from private donors to ensure transparency of donations, avoid damaging political activities and ensure the independence of political parties (OECD [2011], Integrity and Transparency in Political Finance).

Integrity

There are several mechanisms in Chile that seek to ensure the integrity of public service. Of these, three are important to note, given the effect they have on public officials' actions and the way citizens can exercise control over their representatives:

1. The Law on Access to Public Information (2008), obliges the authorities and officials of the state administration to strictly comply with the principle of transparency in public service: that is, to respect and promote the publicity of acts, resolutions, procedures and documents management, as well as all base information, and to facilitate the access of any person to such information, either by publishing all information described above on line (active transparency), as well as providing any person with the possibility of requiring all the history of documents appropriated in accordance with the provisions of the law (passive transparency).
2. The Lobby Act, which regulates lobby and the conduct representing particular interests for authorities and officials, constituting a breakthrough for providing tools to public activities that make its exercise more transparent. The entry into force of this law represents a profound change in the relationship between the state and the people, establishing the duty of the authorities and public officials (having the status of "passive subject"), the recording and publicising of: *i)* the meetings and hearings requested by lobbyists and special interests managers aiming to influence a public decision; *ii)* any travels made in the exercise of their functions; *iii)* any gifts received as authority or official.

3. The Statement of Assets and Interests, which aims to expand the legal obligation of high responsibility officers to show to the public the absence of conflict to exercise their positions in the various departments of the State. This has been deepened with the Law of Probity in Public Service, which increases the number of subjects who must make this declaration of assets and interests. Declarations of assets and interests are one of the mechanisms that draw close and clear the link between the authority and administration official to public scrutiny. It fosters a culture of transparency and probity in public administration, to discourage corrupt and abusive practices, because it allows the public to be informed about the financial position of the respondents.

Control, enforcement and supervision

Currently, electoral bodies are one of the main solutions to secure, monitor, control and sanction the open, clean and fair elections, and to generate and increase confidence in the elections, playing a key role in the consolidation of democracy. They are called legitimacy providers within each electoral process to resolve conflicts that may occur in the context of modern democracies.

Clearly, to ensure that the rules become effective, the mere determination of an act as wrongful is not enough, but also require an adequate system of control, supervision and sanctions, which must be accompanied by a strong institutional framework that allows this organism to supervise the effective implementation of the regulation.

In the Chilean case, the Electoral Service (SERVEL) is the highest body of electoral administration in the country, and one of its specific functions is to ensure compliance with the electoral law. In particular, the control function of the financial statements of the candidates or political parties is exercised exclusively by this body. The structure of the Electoral Service is comprised of 276 permanent staff by 2013, which is exponentially increased at election time by people that perform specific functions only during this period. Of the permanent staff, 80 are professionals, equivalent to 29% of the total, while the remaining 71% are technical, administrative and support staff. SERVEL's current capabilities are limited, since it is not a body with effective control capability, and in practice, mainly plays an administrative role. To change this situation it is essential that the new Electoral Service may exercise control and the power to levy sanctions before, during and after elections, particularly as related to campaign finance. The goal is to strengthen the supervisory organ and effectively hand over power and real capabilities to control and monitor compliance, thus ensuring that the rules are applied to all participants.

In this context, the reform of the electoral body in Chile to expand its institutional capacity appears imperative to achieve higher levels of legitimacy and improve the quality of democracy. The bill identifies this flaw in the system and addresses the need to strengthen the transparency and legitimacy of the electoral process by creating a suitable institutional framework to the requirements it entails a stronger and consolidated democracy.

A strong body is needed with oversight and sanction powers appropriate for the role it plays in democracy, protecting transparency in the electoral processes. To achieve this, the political reforms that are being carried out seek to provide SERVEL with the necessary tools to effectively monitor the compliance of the rules governing the financing of democracy. The supervisory body, in order to monitor campaign spending, should have

sufficient powers to monitor accountability, conduct and order audits of annual statements of public account, and should have the power to enter the premises where political parties or candidates are based and the ability to access the books of accounts and documents, to monitor the financial status of the subjects under their supervision, among others, as well as during campaign time as on election day itself. This is the only way in which an *in situ* and *ex post* control can generate disincentives for any behaviour outside the law, and can create incentives for better performance of both parties and election campaigns.

Penalties as mechanisms to ensure effective compliance

The proposed mechanism for effective compliance with the rules is the application of a series of sanctions, mainly financial, relative to the crime committed.[1] Thus, the strengthening of the supervisory body will be linked to a strong system of sanctions, a theme on which our country had a number of shortcomings, due to the inability of SERVEL audit noted above.

The objective is to implement a general administrative disciplinary proceeding, which shall determine the penalties payable by the offending party or candidate determined by SERVEL by taking into consideration a number of factors, such as damage to public property or the number of infractions, among others. In addition, penalties will be established for the candidate or General Manager of the Funds of political parties that obtain State contributions through misrepresentation or deception.

In this matter, the relationship between SERVEL, as the body in charge of the electoral administration, and the Electoral Court (TRICEL), which, in the Chilean legal system certifies national elections, resolves complaints and proclaims the elect, becomes very important.

To have a solid monitoring and compliance body, it's imperative that the work of these two entities be co-ordinated. In this sense, the initiative establishes that in those cases where violations of the law of parties may involve the suspension, dissolution or inability to fill management positions, the competent court to resolve this issue will be the TRICEL.

Concrete measures to respond to citizens and adopt international standards on money and politics

Modifications to campaign spending and contributions to campaigns:

- Double public contributions to political parties.
- Election expenditure limit on campaign period is reduced.
- Contributions by legal persons are prohibited to election campaigns.
- The contributions by natural persons is regulated by lowering the limit on the amount an individual can donate to one or more candidates or parties during a campaign.
- The contributions of candidates to their own campaigns are regulated.
- Transparency rules are established where all contributions made to candidates or their parties during the campaign period must be made through the website of the

Electoral Service. It is further stated that public contributions should be open and transparent.

- No party may contract services with companies that do not respect labour standards.
- There shall be no reimbursement owed for the number of votes obtained if there is any pending fine.
- Finally, contributions to political training institutes are regulated, stating that these contributions are public and may only be made by political parties or individuals.

Regulation of electoral propaganda with fairness and respect for citizenship:

- The concept of election expenditure expands, not only considering this as one that seeks to influence the vote, but also aimed at promoting candidates.
- A period of 90 days is established for conducting written press and radio campaigns and 30 days for campaigns in the street.
- The role of radio as media and broadcast power is enhanced, creating opportunities for radial debate and disseminating information spots with election information.
- The obligation is established for radios to report their rates to the Electoral Service.
- Use of public spaces is regulated where the installation of electoral propaganda is permitted.

With respect to enforcement and penalties:

- The powers of the the Electoral Service and auditing standards are strengthened.
- A system of penalties and efficacy more severe is established, with sanctions including dismissal from office in the case of non-compliance.

On permanent contributions to political parties:

- A permanent contributions fund to political parties will be created to strengthen the public role of political parties and enable them to develop research activities, and develop civic education, among others.
- In addition to the above, it states that at least 10 % of funds received by parties shall be for activities to promote the participation of women in politics.

Challenges

The improvement of the parties financing system should be part of the discussion of the political system as a whole. The success of any reform will be primarily attained based on the ability of the Government and Congress to adopt an integral view of the political system, as it is already being done with the presentation of the project that seeks to strengthen political parties, regarding the institutional strengthening of the Electoral Service, and the already approved constitutional autonomy of this body of electoral administration and management.

Political periods that fit properly is a complex issue and it represents the main challenge to give Chile a modern political system that can respond to a new society, and where it is necessary for institutions and processes to function in a co-ordinated way, meeting the needs of citizens. To the extent that the triad: money in politics (campaigns and parties), reform of the law on political parties, and strengthening the electoral management body work in harmony, it is highly likely that the objectives pursued in the reform plan can be successfully achieved and can provide the political system greater legitimacy in its role as co-ordinator of social interests.

Note

1. The current bill establishes a sanctioning administrative procedure and a series of fines for violations to the Law on Transparency and Control Limit Campaign Spending (Law 19,884). These fines are applied by the Director of the SERVEL and their amounts depend on the percentage of the amounts of money given or received illegally.

   Besides this sanctioning administrative procedure applied by the SERVEL, our system provides the possibility of jointly applying appropriate criminal penalties on the candidates or their representatives for the crimes they would have committed. The most common criminal offenses in these cases are tax fraud and embezzlement of public funds, which are punished with imprisonment and fines, following the declaration as guilty in a due court proceeding.

   Thus, the competent court may judge the facts at the same time the SERVEL provides the necessary background information. During the proceedings the parties may be summoned to declare and to gather records for finally passing sentence, in strict compliance with the rules of due process. It is noteworthy that the judicial process will take place and give sentence independently of what the SERVEL decides, so it may happen that while one discards the charges, the other finds it guilty. Criminal liability does not depend on what the SERVEL determines on administrative grounds.

   On the other hand, a disciplinary procedure can be developed by the Comptroller General of the Republic in the event a civil servant or an authority is involved in illegal practices. In these cases, any person may present the corresponding complaint, duly providing the background on which it is based.

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Chapter 8

Estonia

By Dr. Vello Pettai

Professor of Comparative Politics, University of Tartu

Member, Estonian Party Funding Supervision Committee

This case study presents the Political Parties Act, the legislative framework for funding, regulating and monitoring political parties and candidates. It also discusses the Estonian Party Funding Supervision Committee, the electoral management body charged with overseeing compliance with the Political Parties Act.

Overall description

Estonia presents the case of a post-communist country, which has slowly developed an integrated system of party finance regulation, reporting and oversight. The system is based on parties receiving relatively generous amounts of state funding, while contributions by corporate bodies are banned. Parties are therefore more insulated from *quid pro quo* politics. But controversy remains around whether this system has created a cartel of dominant political parties (Pettai, 2013). It has also not prevented some parties from engaging in questionable campaign practices, such as using local government resources to carry out veiled electoral campaigning. The Estonian Party Funding Supervision Committee plays a central role in both monitoring political party finance reports well as investigating and punishing violations of these regulations. The Committee is not a completely autonomous body, since a majority of its members are from the political parties themselves. However, during its first four years it has proven itself to be above these possible pitfalls and has been able to implement a rigorous and efficient oversight structure.

In Estonia, political party finance is regulated by the Political Parties Act, first adopted in 1994 and most recently amended in 2014. The Act oversees all aspects of political parties, including their founding, registration, membership rules, dissolution and certain areas of party governance. In addition, the Act establishes ground rules for party finance, meaning it lays out the permitted types of party income and expense, regulations for reporting party finance and the operating procedures for the main party financing monitoring body, the Estonian Party Funding Supervision Committee (EPFSC). It should be noted that in Estonia, independent, single candidates may also run for a seat in parliament as well as for local government councils; likewise, in local elections non-party citizen alliances may field candidates. Both of these electoral types are also covered by the financing rules stated in the Political Parties Act.

The regulation of party finance in Estonia is separate from electoral management. The Estonian National Electoral Committee oversees the organisation of all elections, including Estonia's unique system of Internet voting. Because, however, party finance is something that is not linked uniquely to elections or campaigning, it was felt that the monitoring of this domain should be carried out by a separate body.[1] This orientation also grew out of how party financing was monitored from the mid-2000s to 2011, namely through a special parliamentary anti-corruption commission comprised fully of members of parliament (MPs). This indicated that the main approach toward monitoring party finance would involve party representatives, and not uniquely independent experts, judges or officials.

During the mid-2000s, party financing received a lot of public attention. Scandals surrounding the mysterious ways in which parties were financing electoral campaigns led to much criticism in the media, but also to a special constitutional review complaint filed by Estonia's Chancellor of Justice (or ombudsman) arguing that parliament's failure to enact effective party finance regulation constituted a breach of good governance principles enshrined in the country's constitution. After four years of wrangling, the Chancellor of Justice lost his appeal. However, the debate did eventually lead to a thorough re-examination of the Political Parties Act.

In April 2011, the Estonian Party Funding Supervision Committee was created as an independent oversight body (based in administrative law) with the task of compiling party and other electoral finance reports, enforcing the accuracy of these reports, investigating

complaints surrounding party finance as well as issuing administrative penalties and seeking criminal fines where party finance regulations have been violated. The Committee therefore has a clear mandate to monitor and enforce a broad range of issues related to political finance.

The Committee's composition is also broader than the anti-corruption commission in parliament that previously oversaw party finance. The Committee is comprised of representatives from each party in parliament. (From 2011 to 2015 there were four; after March 2015, there were six.) Moreover, these representatives may not be MPs or government ministers, and ideally not in the executive bodies of their party. Hence, the idea is that these representatives serve as autonomous individuals, not as delegates or conduits for their party's interests. In addition, the Committee includes three expert members: one appointed by the Chancellor of Justice, one by the National Electoral Committee and one by the State Auditor. The Committee is supported by an administrative advisor and a legal advisor.

During its first four years of operation, the EPFSC has built up an efficient and transparent financial reporting system, established numerous precedents in terms of investigatory and sanctioning power, and gained a reputation of credibility and integrity in the eyes of the public and most politicians. Needless to say, political finance remains controversial in Estonia, with certain parties calling for a drastic reduction in the amount of money that parties receive from the state budget. Likewise, because many of the EPFSC's investigations have focused on one particular party (the Centre Party), the Committee has sometimes been accused of being biased in its activities. However, all major parties in Estonia have come under the Committee's scrutiny at one point or another and no party has so far voiced a desire to alter or boycott the system.

Practical implementation of political finance regulations

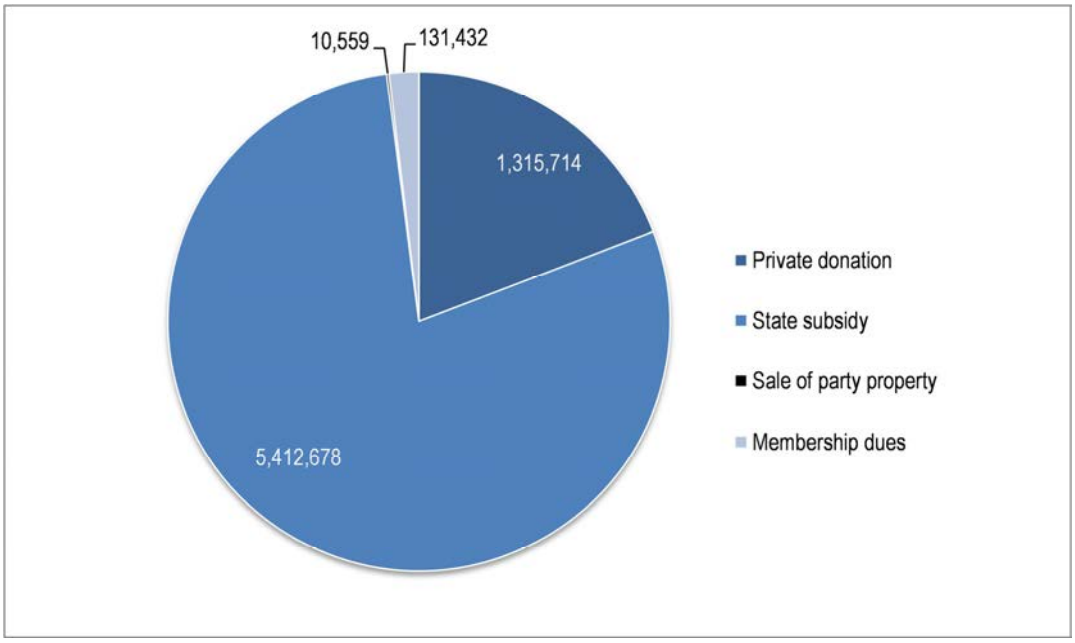
Level playing field

As a post-communist country, Estonia has been developing its democracy over the last 25 years through various stages. An important milestone in this process was a decision in 2003 to forbid private companies and other legal persons from contributing money to political parties together with a tripling in the level of public funding for parties. The rationale here involved the widespread notion that extensive public financing for political parties helps to insulate them from business and other lobbying interests and thereby improve governance. Hence, Estonia first introduced public funding for parties in 1996, although initially this system remained modest and existed alongside private individual and corporate donations to parties. When the decision was made to ban corporate funding in 2003, public financing was raised from 20 million kroons (EUR 1.28 million) to 60 million kroons (EUR 3.84 million). In 2008, this figure rose to 90 million kroons (EUR 5.75 million), and for 2015 the overall amount was EUR 5.4 million.

This shift prompted a commensurate decrease in the share of private funding for political parties. Whereas previously parties had received upwards of 90% of their income from members and private sponsors (Sikk, 2006, p. 74), roughly 80% of parties' funding came from state allocations in 2014. Another 18% came from individual private contributions and merely 2% came from formal party dues (Figure 8.1).

Figure 8.1. **Sources of political party income in Estonia, 2014**

In EUR



Source: Party reports filed with the EPFSC.

It is an open question to what extent this heavily public system of party finance creates a level playing field. Firstly, the system distributes money according to parties' representation in parliament, thereby allowing larger electoral parties to spend more during a legislative term and thereby maintain their political advantage. Second, although the system does allocate money to non-parliamentary parties, these sums have been paltry when compared to those earned by parliamentary parties. Up until 2014, a party that just missed Estonia's 5% electoral threshold would receive only a tiny fraction of what a party would get once it entered the legislature (EUR 15 978 as opposed to EUR 320 406). Parties that received between 1% and 4% of the national vote received just EUR 9 587 annually. All of this is in stark contrast to the amount (over EUR 1 million) that a party would get with, say, 20 seats in Estonia's 101-seat parliament.

In 2014, thanks to a prolonged public discussion over the openness of Estonia's political system, the party financing system was changed to accord slightly more money to non-parliamentary parties.[2] However, the overall amount of public party financing remained the same. This therefore became a major campaign issue for a new political party in Estonia, the Free Party, which successfully entered parliament during elections in March 2015. One of its key demands was to halve the amount of public money given to political parties. After the elections, Prime Minister Taavi Rõivas invited the newcomer party to hold coalition talks. But this same party financing issue became a stumbling block, and the Free Party went into the opposition.

During the March 2015 elections, parties and candidates reportedly spent around EUR 6 million (Koch, 2015; EPFSC). This figure was approximate and a combination of two sources. On the one hand, parties are required to submit one month after an election a report to the Estonian Party Funding Supervision Committee that details all personal campaign expenses incurred by candidates running on a party list or as an independent candidate. These figures are presented in Table 8.1.

Table 8.1. **Personal campaign expenses incurred by candidates on party lists and by independent candidates, 2015 Riigikogu elections, Estonia**

Expense category	CP	SDE	RP	PPRPU	FP	CPP	Other parties	Independent candidates	Total
Advertising expenses	173 874	40 977	27 598	129 678	6 688	7 465	4 474	4 275	395 031
TV	*24 808*	*240*	*3 888*	*19 993*	*0*	*0*	*0*	*0*	*48 930*
Radio	*8 004*	*6 883*	*1 239*	*11 169*	*230*	*0*	*732*	*0*	*28 259*
Internet	*3 838*	*3 915*	*1 384*	*9 561*	*602*	*331,2*	*214*	*2*	*19 850*
Outdoor	*17 825*	*960*	*0*	*2 156*	*0*	*1 703*	*0*	*0*	*22 645*
Print media	*24 354*	*10 435*	*7 773*	*26 145*	*945*	*2 313*	*2 000*	*4 117*	*78 085*
Promotional materials	*95 042*	*18 543*	*13 313*	*60 651*	*4 910*	*3 117*	*1 526*	*156*	*197 260*
Public relations	3 890	816	70	0	0	0	0	0	4 776
Publications	0	0	0	18 053	0	0	0	0	18 053
Events	9 193	5 667	643	4 355	0	0	83	4	19 947
Other expenses	31 212	10 305	1 933	4 834	564	7 258	147	68	56 325
Total	218 170	57 766	30 245	156 922	7 253	14 723	4 704	4 348	494 134

Legend: CP = Center Party, SDE = Social Democratic Party, RP = Reform Party, PPRPU = Pro Patria and Res Publica Union, FP = Free Party, CPP = Conservative People's Party.

Source: Party reports filed with the EPFSC.

At the same time, personal candidate expenditures amount to only about 10% of what is actually spent during a campaign. The reason is that typically parties will spend their national funds on advertising and events for the entire party (in particular, TV and radio advertising). These amounts, however, are not reported as formal campaign expenditures, since it is felt that it is too difficult (or sometimes too arbitrary) to require parties to specifically designate certain expenses as being linked to an electoral campaign, when the activity might also be about promoting the party as such. Likewise, it is difficult to establish a starting date after which all party expenses (or donations, for that matter) might be automatically considered as linked to an electoral campaign.[3] Until mid-2011, parties in Estonia were required to submit campaign finance reports. However, since there were no unified rules about what counted as a true campaign expense or funding source, the reports varied in their quality and were not seen as very useful in terms of either aggregating statistics or holding parties accountable.

As of 2011, parties are required simply to submit quarterly income and expense reports, within which one of the expense categories relates to "political activity" (alongside basic administrative costs and wages). It is under this rubric that parties incorporate most of their electoral campaign expenses. In this respect, one can look at what these political activity expenses were for the final quarter or two before an election in order to assume that some part of this money must have represented campaign expenses. Table 8.2 gives an indication that during the end of 2014 and early 2015 the four parliamentary parties did ramp up their spending on political activities. However, simply adding up these figures does not give a definitive account of campaign financing.

Because campaign finance reporting is not fully elaborated in Estonia, it is difficult to say how much public as opposed to private funding is used specifically for electoral campaigns. As a rule, money spent by individual candidates can be classified as private campaign spending. Hence, the roughly EUR 500 000 listed in Table 8.1 belonged to this category during the 2015 campaign. Money spent by the parties as a whole originates mostly from their state subsidy, partly from individual donations, minimally from party dues, and occasionally from bank loans (see Figure 8.1).

Table 8.2. **Expenditures on political activities by the four parliamentary parties in Estonia, 2014-15**

Party	2014, 1st quarter	2014, 2nd quarter	2014, 3rd quarter	2014, 4th quarter	2015, 1st quarter
Center Party	25 814	250 665	20 011	97 668	900 091
Reform Party	202 661	474 425	168 827	425 923	1 237 593
Pro Patria and Res Publica Union	168 021	550 220	72 925	482 696	1 015 314
Social Democratic Party	98 722	252 187	47 836	185 568	879 588

Source: Party reports filed with the EPFSC.

The results of the 2015 elections showed that although Estonia's party financing system favours established, parliamentary parties, it is possible for new parties to break in if there is enough popular support behind them. Both the Free Party (mentioned above) and another new party, the Conservative People's Party, entered into parliament in 2015 with eight and seven seats, respectively. While the Free Party campaigned explicitly on a platform of democratic political reform, the Conservative People's Party espoused a more Eurospectic programme, but still called for a broadening of the party system. The fact that together these two parties received nearly 17% of the vote after having spent just EUR 220 000 over the past year (as opposed to over EUR 7 million by the four parliamentary parties), showed that the system was still open to newcomers.

Transparency and accountability

Both the campaign expense reports as well as quarterly finance reports submitted by political parties are relatively detailed. Each must itemise their figures into a number of specific categories listed in Table 8.3.

Table 8.3. **Categories of information to be provided within party finance reports, Estonia**

Quarterly finance reports		Campaign expense reports	
Expenditures	Income	Expenditures	Donations
1) Advertising, including:	1) Membership dues	1) Administrative costs,	1) The names of individuals
TV	2) State subsidy	including communications	donating to the party or
Radio	3) Individual donations	2) Salaries and wages paid	independent candidate
Internet	4) Sale of party property	3) Advertising expenses	
Outdoor		categorised by type	
Print media		4) Public relations costs	
Printed materials		5) Publications	
2) Public relations		6) Transportation	
3) Publications		7) Rental expenses	
4) Events		8) Events	
5) Other expenses		9) Other expenses	

Source: Political Parties Act (RT I, 12.07.2014, 39), Sections §12[1](8) and (9), §12[8](9) and (10), §12[1](2), §12[8](8), respectively.

In addition, each entry representing income for parties or campaign donations for individual candidates must state:

1. the date of the receipt of the donation
2. the type of income (mostly for parties: dues, state allocation, donation, sale of property)
3. the name of the payer
4. the personal identification or registry code of the payer
5. the amount of income received.

Meanwhile, each line of expenditure must include:

1. the date of the expense receipt
2. the number of the expense receipt
3. the name of the recipient
4. the personal identification or registry code of the recipient
5. the cost type
6. the price of the cost
7. the cost amount paid
8. the cost amount payable
9. the date of payment.

Lastly, each party must disclose at the end of each quarter a list of all expenses still unpaid as well as the balance sheet of its accounts. Quarterly finance reports must be submitted to the EPFSC by the 10th of the month following the end of a quarter. Campaign finance reports must be submitted no later than one month following an election. All reports must be submitted electronically, using a special spreadsheet prepared by the EPFSC. They must also be signed digitally using Estonia's digital signature system.[4]

The entire system is streamlined in such way as to make the reports speedily accessible to the public. Generally within a few days of each deadline, the information is already available on the EPFSC's website. The database is searchable according to any number of categories, beginning with individual parties and successive elections (including individual municipal elections), but also including the names of donors, the names of expense recipients, the types of expenses and the types of income sources. Media outlets regularly monitor the EPFSC's website and scrutinise every new reporting period looking for news on large-scale individual donors as well as data on broader trends (Koch, 2015).

A final level of scrutiny involves the annual audits that parties must submit to the E-Business Register. In addition to tax authorities verifying these reports, the EPFSC also examines them and makes public a written analysis of parties' financial health, drawing attention to those parties that have considerable debt or may otherwise be weak financially and therefore perhaps vulnerable politically.

Needless to say, any reporting system prompts false reporting from time to time. In 2012, the Center Party came under special scrutiny, when its secretary general asked the EPFSC to amend an earlier income report and add a list of EUR 11 030 in donations made to the party in the fall of 2010. Upon closer examination, Estonian authorities began to suspect that the secretary general of the party, Priit Toobal, had faked the receipts certifying these donations, and hence had laundered money for the party. The state prosecutor took the matter to court and in October 2014 Toobal was convicted of falsifying documents. A year later, however, Toobal was still appealing the decision to the Estonian Supreme Court.

Integrity

The system that has been developed around the EPFSC is gradually helping to build integrity within the party financing system. The credibility of party finance reports has grown thanks to specific rules for itemisation as well as the procedures for electronic submission. The EPFSC has also gained in stature by starting investigations not only when called upon by individual complaints, but also on the basis of media reports. When a newspaper reported that an Estonian member of the European Parliament (MEP) was using her expense money to rent an office in Tallinn and was sharing that space with her home party in Estonia, the EPFSC examined whether this constituted an illegal in-kind donation to the party. In the event, the Committee concluded that because the MEP was paying the same rent as the party and was also actually using the office space (alongside occasionally allowing her home party to use a room for meetings), this did not constitute a hidden contribution to the party.

Likewise, in November 2014 the Committee investigated a promotional video made by the governing Reform Party, in which Prime Minister Taavi Rõivas was shown at one point walking down a runway at an Estonian airforce base. The video was made even more powerful when producers superimposed a clip of fighter jets streaking above the prime minister's head. The image of the fighter jets had been obtained from another, unrelated source; they were not Estonian equipment. However, the fact that the prime minister was filmed walking on military territory as part of a party-political advertisement did raise objections that this was an abuse of state resources.

Estonia's military authorities attempted to stem the controversy by immediately announcing that other parties could also use the military facility if they so desired. This was an attempt to come into compliance with the Political Parties Act that says that if all parties are given access to a particular resource, then its use is not discriminatory. However, eventually the minister of defence forbade any use of military facilities, and it was left up to the EPFSC to decide what to do. Following various queries to individuals involved with the incident, the Committee concluded that the idea for filming the prime minister at the air base came from the producer hired for the video, and there was no sign of the prime minister's office having exerted any influence on the decision. Therefore the Committee did not find any direct fault with the Reform Party. The Committee did, however, chide the air base's officials for having allowed the filming in the first place.

Compliance and oversight

There are three important levels at which the Estonian Party Funding Supervision Committee contributes to compliance and oversight. The first involves the verification and analysis of finance reports that the EPFSC and its staff conduct on a regular basis. The fact that these reports are scrutinised thoroughly is extremely important in terms of establishing credibility. This includes checking up on cases, where a party, for example, has not paid an invoice for more than six months, and therefore there is a suspicion that the party and supplier have agreed to write off the expense as an in-kind contribution.

Secondly, the EPFSC has extensive powers to demand supplementary information or documents from not only political parties and candidates, but also from whomever else might be involved with an investigation. Hence, the Committee can ask purveyors of services what terms, prices or conditions they may have given to parties when providing their services, whether these services have been paid for, etc. The Committee can also demand to see payment documents or other relevant information.

Thirdly, the Committee can impose administrative penalties or request law enforcement officials to issue criminal fines against individuals and/or parties who violate political finance rules. Administrative penalties can range from EUR 500 to EUR 15 000. Generally these have to do with independent candidates who have not submitted their campaign reports on time, or if a candidate or party does not pay back on time campaign expenses that the Committee has determined to have been improper. Criminal fines can be imposed on candidates and parties if they knowingly submit false information or fail to report required information to the Committee. In these instances, the Committee must pass the complaint on to law enforcement officials, who then pursue the matter according to criminal procedure.

While the EPFSC's overall authority is clear, this does not mean that all of its decisions go uncontested. During late 2013, the Committee began to scrutinise a series of media campaigns (videos, outdoor banners) launched by the Tallinn City Government that promoted special events or achievements by the city authorities, but that also usually featured the mayor, Edgar Savisaar, as well as many other members of his Center Party, who were all running in the October 2013 municipal elections. The Committee was obliged to investigate, whether these public information campaigns constituted veiled electoral advertising for the Center Party and its candidates prior to an election. If this were the case, the cost of the videos and banners would represent an in-kind contribution to the Center Party by the Tallinn City Government, and the Center Party would be obliged to reimburse the city for these expenses.[5] After a period of investigation, the Committee decided to issue a penalty to Savisaar and several other party members, directing them to pay back the city for these videos and banners. Savisaar and his allies, however, appealed the penalties in court, maintaining that the different activities were part of any city's responsibility to inform its residents about current affairs. The case promised to have important ramifications, since it would help establish judicial practice in relation to how veiled electoral campaigning could be investigated as well as whether the EPFSC could reach that far.

Another emerging challenge for oversight concerned the appearance of stealth campaigning by third-party groups during the 2015 parliamentary elections. In January 2015, a conservative civil society organisation, the Foundation for the Defense of Family and Tradition, distributed across several regions of Estonia flyers calling on voters not to vote for a number of candidates, who in the previous parliament had voted in favour of a same-sex partnership law, and at the same time it encouraged voters to vote for three particular candidates, who had opposed the partnership law.

While the first aspect of the flyer (i.e. the negative advertising) did not breach any element of campaign financing law, the second dimension in which the foundation was providing positive advertisement for certain candidates did. Under Estonia law this could be considered an illegal campaign contribution, which the candidate in question would have to pay back to the foundation. When asked about this incident by the press, the foundation claimed that it was operating merely as a civil society actor wanting to promote a political message. However, because foundations are also legal persons in Estonia, the group was already in violation of this provision of Estonian law (that bans legal entities from making campaign contributions). And even if it claimed that it was distributing its flyers without any active knowledge or help from the candidates concerned, Estonian law holds the candidates accountable, not the foundation.

The case raised vexing issues in terms of whether candidates in the future might be vulnerable to having non-party groups suddenly campaigning for them without their

approval. Presumably, the incident involving this foundation will serve to create a broader understanding that engaging in such stealth campaigning may not do a candidate or party any favours, if the candidate or party is later forced to pay the cost of the external group's efforts. Nonetheless, there was plenty of ambiguity in terms of determining what needed to be regulated. As of May 2015, the EPFSC was still examining the matter. In August 2015, the EPFSC asked the Estonian police to charge the foundation with a misdemeanour offence based on the financing law infringements. However, the police authority denied the request, maintaining that because the foundation had included all of the major parties running for parliament on its flyer, this could not be seen as favouring any one of them and therefore could not be considered as campaign advertising. This issue remained unresolved.

Challenges and risks

Estonia's system of party finance regulation and oversight has evolved gradually over 20 years, and still has a number of grey areas to be resolved. On the one hand, the system rests firmly on the principle of strong public funding for parties, totalling around EUR 5.4 million per year. While few in Estonia argue that public funding should be done away with, many question whether this particular amount of funding is warranted. The reason is that parties spend most of this money on electoral campaigning, and this means that parties spend nearly EUR 7 per voter to get out their message. Some believe this is too much. Limits on campaign spending have never been seriously considered in Estonia.

Secondly, the approach to oversight involves a mixture of party and non-party representatives. While the inclusion of experts in the work of the EPFSC via other state institutions is seen as good, it remains a question whether the prison (i.e. the party finance system) isn't still being guarded by the inmates (i.e. the parties). Especially given that the number of party representatives grew in April 2015 to six (alongside three experts), the need to ensure that the Committee focuses on more than just party interests remains paramount. This has been a priority of the Committee's first chair, Ardo Ojasalu (from the Social Democratic Party), and has been reinforced by a very committed staff.

In 2016, parliament will need to renew the mandate of the EPFSC. In the process, it may make certain amendments to the Political Parties Act in order to clarify a few procedural matters that remain open. As it is, the original Political Parties Act from 1994 has been amended nearly 30 times and could stand a complete re-writing in order to clearly lay out the current system. Likewise, parliament will have to review the EPFSC's own financing. When the Committee was originally created, it did not reckon with having to prepare dozens of legal documents, especially in instances were defendants took the Committee to court. Over the last three years the Committees outlays for legal representation have grown considerably. Making sure that parties in parliament support funding for the EPFSC to continue its work will be essential.

Notes

1. Estonia's very first procedure for campaign finance reporting (adopted in 1995) required parties to submit to the National Electoral Committee an approximate disclosure of expenses and campaign finance sources, in relation to which, however, the Committee had no formal powers of scrutiny or oversight. It merely received the disclosures and put them on file.
2. Henceforth, parties receiving between 2-3% of the vote during parliamentary would receive annually EUR 30 000, between 3-4%, EUR 60 000 and between 4-5%, EUR 100 000.
3. Elections are formally announced by the president of the republic three months before the election day. However, this announcement is generally a constitutional formality and has little to do with when parties begin their election expenditures.
4. Occasionally this stipulation has caused difficulty, since some independent candidates have either not been in possession of a chip-embedded ID card necessary for digital signatures or they have not been able to come to terms with the electronic spreadsheet. In these cases, EPFSC staff have been ready to help candidates fill out the form at the EPFSC's office in Tallinn or they have agreed to accept a campaign finance report submitted simply on paper.
5. It was not within the Committee's jurisdiction to determine whether Edgar Savisaar or other city officials had misused municipal funds by having such videos and banners made so close to an election. Rather, it was to determine whether these municipal expenditures could be interpreted as illicit campaign spending. In January 2015, Estonia's State Auditing Office did issue a report, in which it alleged that the Tallinn City Government had systematically used city money to stage various public information campaigns just prior to the 2013 municipal elections and that these involved prominent members of the Center Party. However, the Office could merely produce an analysis of the situation; it was up to the EPFSC to issue penalties.

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Chapter 9

France

By Mr. Yves-Marie Doublet

Expert on Political Finance Legislation for the Group of States against Corruption (GRECO)

Author of "Droit des elections" (Elections Law) with Laurent Touvet, Economica 2007 and 2014

Deputy Director, National Assembly

This case study presents the French system of funding for political parties and campaigns, the expenditure rules that apply to campaigns, as well as the transparency and reporting measures in place. It also discusses the role of the French oversight body charged with ensuring compliance with existing rules.

Level playing field

France's legislation on electoral campaigns and parties funding is treated separately and has three characteristics:

- Legislation on electoral campaigns finances dates from 1988, but it has been amended several times: 1990, 1993, 1995, 1996, 2001, 2006, 2011, 2013 and 2015. Legislation on party funding adopted in 1988 is much more stable.
- Rules on electoral campaign finances owe much to jurisprudence put upon the electoral courts involved in the proceedings.[1]
- Public funding represents the most important part of electoral campaigns and party funding.

Public financing of parties

Public financing of parties directly from the State budget represents roughly EUR 61 million each year. This amount is split into two instalments.

The first one depends on the results of the parties in the previous parliamentary elections. To be eligible for these funds, candidates put forward by political parties must have obtained 1% of the votes in the first ballot in at least 50 constituencies, and the allocation of public funds is proportional to the number of votes gained by the party. Payment of the first instalment of public funding must comply with the principles on gender parity. When the difference in the number of candidates of each gender having declared to be affiliated to a party or a political group at the last elections to the National Assembly exceeds 2 % of the total number of candidates, the amount of the first instalment given to this party or this group is reduced by a percentage corresponding to three-quarters of that difference in proportion to the total number of candidates. In 2013, political parties paid EUR 6 million in fines for that reason.

The second half of direct public party financing is based on the number of seats of the political parties in both chambers of Parliament that benefit from the first half of financing. The reattachment of a parliamentarian corresponds to EUR 45 000 each.

In 2015, the first half is EUR 28.4 million and the second half was EUR 33 million. The Socialist Party received EUR 25.4 million in 2014 and the opposition party, UMP (*Union pour un mouvement populaire*), EUR 18.1 million.

If we refer to the annual report of the National Commission for Campaign Accounts and Political Funding (CNCCFP), which is the supervising body of political party and electoral campaign finances, in 2013 direct public funding of political parties was 37.8% of the total income of political parties. But this figure does not totally reflect the different forms of indirect public funding to which political parties benefit, such as tax deductibility of donations,[2] broadcasting time, supply of staff and premises by local bodies, funding of political newspapers with small advertising subsidies or funding of parliamentary groups and foundations close to political parties. Direct and indirect public funding of political parties is estimated, in reality, to be between 60% and 70 % of the total income of the parties. Other sources of party funding are the followings: 20.3% from elected representatives' contributions, 14.7% from donations of physical persons, 14% from member contributions and 13.3% from others sources.

In 2013, 408 political parties filed their accounts but of this total, approximately 10 play a significant role. The total amount of political parties' income was EUR 199.6 million and the total amount of political parties' expenses was EUR 192.9 million.

Public funding of electoral campaigns

Limits of electoral expenditures apply to all elections in constituencies over 9 000 inhabitants. The spending limit for the 2012 presidential election was EUR 16.851 million for the first ballot and EUR 22.509 million for the second. The average spending limit for legislative elections is approximately EUR 60 000. This ceiling is readjusted every two years for inflation. If the candidate obtains 5% or more of the votes cast in the first round, he or she receives a flat reimbursement. The maximum amount of this flat reimbursement allowed by law is equal to 47.5% of the upper limit of electoral expenses, defined by each constituency according to the number of its inhabitants. To be reimbursed, the candidate must meet several requirements: appoint a financial agent, an individual or an association; file campaign accounts that must be submitted by an accountant registered with the Association of Chartered accountants in the legal time limit. The amount of flat reimbursement was EUR 36.3 million for the 2012presidential election, and EUR 49.3 million for legislative elections the same year.

Private funding of electoral campaigns

Only donations from individuals - domestic and foreign persons - are allowed with a limit of EUR 4 600 per donor per year for a candidate and EUR 7 500 per donor per year for a party. Contributions may be made by members and elected officials to parties. The only donations from legal persons to candidates which are allowed are donations from parties. French electoral code prohibits all public figures and state-owned enterprises from giving donations or other benefits to a candidate. Campaign accounts may be rejected on the ground that the candidate enjoyed a benefit within the meaning of these provisions. It is for the CNCCFP and the electoral court to assess whether the campaign accounts should be rejected accordingly, having regard to all the circumstances and in particular to the value of the benefit, the conditions in which the benefit, the in-kind contribution was given and its amount. For instance, the occasional use of a photocopier by a candidate, given the amount, the nature and the benefit, does not justify rejection of the candidate's campaign account.[3]

Public funding for the organisation of elections

The French State paid EUR 415 million for the organisation of the presidential and legislative elections in 2007 (EUR 1.90 per voter) and EUR 600 million for the same elections in 2012 (EUR 2.76 per voter).

Electoral expenses

At the last presidential election in 2012, if we refer to candidates who gained more than 5% of the votes cast, the breakdown of electoral expenses was the following: 45.9% for public meetings; 16.6 % for paper advertising; 10.3 % for personnel costs; 5.0% for Internet expenses; 4.5% for premises, equipment, telephone; 3.6% for other advertising expenses; 4.2% for fees; 2.7% for receptions; 1.8% for advice in communication, polls and enquiries; and 0.5% for postal costs.

From a general point of view, French funding regulations of politics has two merits. They have limited expenditures on elections, and they have a reduced dependence on private donations.

Exceeding the expenses ceiling results in the rejection of the campaign account by the CNCCFP. If it is confirmed by the electoral court, and if this excess is significant (17% for instance), the candidate may lose his/her flat reimbursement and he/she may lose office for three years. The same rule applies in the case of a significant infringement of the regulations on electoral campaign funding, when, for instance, before 2013 candidates made direct payments without going through an agent. This electoral sanction of ineligibility is not available for presidential elections but applies to other elections. For the legislative elections in 2007, the penalty of ineligibility has been applied twice for elected members of parliament (MPs), for the legislative elections in 2012, three times.

Transparency and accountability

Disclosure by candidates and political parties is achieved in two ways.

Candidates' campaign accounts

In constituencies of more than 9 000 inhabitants, all candidates in an election, whether presidential, legislative, senatorial, regional, cantonal, municipal or European, are required to file a campaign account. This campaign account must be submitted by a chartered accountant to the CNCCFP by the tenth Friday after the first round. Candidates who did not obtain 1% of the votes at the first ballot are exempt from this required submission of a campaign account.

This campaign account must include donations by individuals, the candidates' personal contributions, bank loans taken out by candidates, borrowings from political parties, expenses paid by electoral parties, in-kind contributions by the candidate, the political party and miscellaneous income.

In the same constituencies and for the same elections, candidates are required to appoint a financial agent or an electoral financial association. They are the sole intermediaries regarding campaign financing. The agents have to collect campaign funds over the course of the year before the first day of the month in which the election takes place, and up to the date of the filing of the candidate's accounts, i.e. the tenth Friday after the first ballot. They settle expenses incurred directly by the candidate or on his/her behalf. They must open a single bank or post office account for all transactions of the electoral campaign. According to the relevant provision of the Electoral Code, the account's title shall show that the holder is acting as financial agent for the duly named candidate. This agent shall be declared at the Prefecture of the residency of the candidate. These agents have to be declared when candidates submit their candidature and serves as a way for candidates to ease the centralisation of expenses and income of the electoral campaign.

Receipts enclosed to donations from physical persons below a threshold of EUR 3 000 serving as proof of payment for tax administration do not mention the candidate to whom the donation was given. The Group of States Against Corruption (GRECO) in one of its recommendations[4] suggested to French authorities to lay down an appropriate threshold above which the identity of the donor must be disclosed. French authorities view that it would excessively undermine the principle of freedom of political opinion, one of the consequences of which is the principle of the secret ballot. Given the

small amount of these donations (EUR 4 600 to a candidate and EUR 7 500 to a political party), the risk of an excessive influence of individuals on political actors should not be exaggerated.

Political party's accounts

Political parties must establish annual accounts, i.e. a balance sheet, and a profit and loss statement. These documents must be certified by two auditors and submitted to the CNCCFP before the 30th of June of the following year. These accounts are consolidated accounts including accounts of political parties or groups and all organisations or entities in which the party has more than the half of the authorised capital, holds seats in the managing body or within its exercises decision-making or managing authority, and prepared under accounting methods defined by the National Accounting Board. The political party itself determines the scope of its influence and the extent of the consolidated accounts. On the basis of guidelines, categories of expenditures include propaganda and communication, financial support for candidates' election campaigns, other financial support, purchase of consumables, other external expenses, interest expenses and bank charges, extraordinary expenses, depreciation and amortisation. Donations must be received through a financial agent or an association. Donations to associations are the most commonly used practice. Donations may not exceed EUR 7 500 per person per year and are eligible for tax deduction.[5] Fees to the party of national or local representatives are not included in the ceiling. Donations from foreign physical persons are permitted. Donations from foreign legal persons are prohibited but loans from foreign legal persons are permitted. For instance the National Front took out a loan of EUR 9.4 million from the First Czech Russian Bank in 2014. Political parties must submit to the CNCCFP the list of the individuals having made donations.

Concerning supervision of party accounts, the CNCCFP has three duties: establish whether there has been a breach of the rules for setting up accounts or donations by legal entities; publish the summary party accounts of political parties in the French Gazette; and determine and transmit to the Prime Minister the list of political parties that met their accounting obligations and may claim public funding.

Public information on party accounts is available in the French Gazette and on the CNCCFP website.

In practice, supervision relies mostly on the auditors. Two auditors from two different firms check the consistency of the accounts and compliance with legal regulations that prohibit donations from legal persons. Prior to an amendment adopted in 2013,[6] the CNCCFP had no means of investigating party funding. It did not have access to supporting documents, nor was it empowered to perform on-site supervision procedures. The 2013 amendment to the Act 88-227 of 11 March 1988 enabled the CNCCFP to request as necessary the documents of any accounting or supporting documents needed for its monitoring duties. Such provision strengthens the supervision power of the CNCCFP, however it may not issue any injunction or order to the party, and a party's refusal to co-operate is not liable to sanctions. But an injunction power would not comply with freedom of activity of political parties embodied in the Constitution.

Some 296 political parties submitted their accounts to the CNCCFP in 2012 and 408 in 2014.

Compliance and supervision

The CCNCFP is an independent administrative authority composed of nine active or honorary members from the highest courts: three from the Council of State, three from the Court of Cassation and three from the Audit court. These members are tasked with the election of their chair. Its budget amounted to EUR 6.7 million in 2015 (EUR 4.2 million for personnel costs and EUR 2.5 million for management costs). Some 47 employees work in the commission. It is expected to treat 11 600 accounts of candidates for departmental elections and 250 accounts of lists for regional elections in 2015.

Supervision of political parties funding

As previously mentioned, under Article 4 of the Constitution, the formation of political parties and groups and the performance of their activities are free. So regarding the constitutional status of the political parties, the CNCCFP is an independent administrative body with limited remits. For instance, it is not entitled to monitor the expenses of the political parties, and its monitoring must be focused on the lawfulness, but not on the expediency, of the financial operation. If a political party did not meet its obligations, it will not benefit from public funding. This means the loss of public funds for the party and for the funding of the candidates who participate in the electoral campaign. But the loss of public funds is not necessarily deterrent in practice, insofar as 80% of the parties presenting accounts with the CNCCFP do not receive public funds. Another sanction is the loss of the tax benefit attached to the donations to the party. Besides this financial sanction, the CNCCFP may declare to the National Financial Intelligence unit any acts for which there are reasons to suspect a tax offence. With respect to party funding if the powers of the CNCCFP are weak, the police and the judiciary may obtain access to political parties' accounts in the context of legal proceedings.

Other sanctions that may apply are administrative and penal sanctions. If a funding association fails to meet its obligations, its authorisation may be withdrawn by the CNCCFP. Fines of EUR 3 750 and a one-year prison sentence for persons who have made or received donations unlawfully may be applied.

Supervision of electoral campaign's accounts

In the case of the campaign's accounts, the CNCCFP has six months to approve, reject or revise them. Some 2.5% of accounts were rejected for the 2007 legislative elections, 2.1% for the 2012 legislative elections.

If the account is accepted, the State grants candidates with at least 5% of the votes cast at the first round 47.5% of the flat reimbursement of electoral expenditures. There are various possible reasons for the rejection of a campaign account: no account opened by an agent, a deficit unaccounted for, no invoices attached to the account, or a significant excess of the ceiling of expenses. In the event the CNCCFP rejects the campaign accounts, it refers the matter to the court with jurisdiction for the election. In the event the CNCCFP suspects that a criminal offence has been committed, it refers the matter to the public prosecutor.

If the CNCCFP has to deliver its decisions within a period of six months from the deadline for the submitting the accounts, this period is reduced to two months if the election has been challenged by a voter who has an interest in pursuing legal procedure.

Decisions of the CNCCFP may be challenged by the candidates before the relevant election jurisdiction.[7]

A sanction which may be applied is ineligibility, which is one of the main characteristics of the French system. This ineligibility may be ordered by the court if the campaign account has been rightfully rejected on grounds of fraud or serious breach of the rules on electoral campaign funding. It applies for a maximum of three years and to all elections, but not for the previous elections. It is a very effective sanction. Out of the 6 603 candidates at the 2012 legislative elections, 195 were declared ineligible by the Constitutional Council. In 18 cases, the candidate corrected his/her situation during the procedure, and in 19 cases the Constitutional Council determined that the infringement of the rules was not sufficiently serious to justify the penalty of ineligibility. If this penalty applies for only three years, in practice the disqualified elected representative may not be elected for the whole duration of the mandate, which will be fulfilled by another elected representative. One point has to be emphasised. Ineligibility applies to all elections except for presidential elections, because the announcement of the results of the election by the Constitutional Council is a judicial decision, just after the second ballot, which cannot later be questioned. Pursuant to Article 62 of the Constitution, this announcement shall be binding on public authorities, on all administrative authorities and all courts.

In the event the CNCCFP considers that a criminal offence has been committed, it can refer the matter to the public prosecutor. The Electoral code provides for sanctions of criminal offences with fines of EUR 3 750 and/or a prison sentence of up to one year.

Conclusions

The constitutional status of political parties prevents an increase of the investigative powers of the supervision body. If we benchmark French regulations regarding transparency, supervision and sanctions, we have to admit that these rules are honourable. They have succeeded in reducing the influence of money in politics, enhanced transparency of party funding, reduced expenses in legislative and local elections and set up an independent supervision body.

Notes

1. There are various courts with jurisdictions for elections in France: the Constitutional Council for Presidential, legislative elections, elections at the Senate and referendum and administrative courts and Council of State as court of appeal for municipal and cantonal elections, Council of State as unique court for regional elections and elections to European Parliament.
2. Some 66% of the amount donated within a limit of 20% of taxable income. Donations from individuals may be paid by cheque, bank transfer, direct debit or bank card. The amount of donations and fees was EUR 90 million in 2011 and 2012, what is considered as a tax expenditure of EUR 60 million by the CNCCFP.
3. CC, 97-2194AN, 9 décembre 1997, AN Loire-Atlantique, 5 ème circ., Rec. p. 285.
4. See www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%28008)5_France_Two_EN.pdf.
5. See http://bofip.impots.gouv.fr/bofip/5869-PGP.
6. Art.17 loi 2013-907 11 octobre 2013.
7. See Endnote 1, above.

Chapter 10

Korea

By Mr. Heeman Koo

International Cooperation Division

National Election Commission of the Republic of Korea

This case study presents the system of funding for political parties and elections in Korea. It also discusses the role of the National Election Commission in overseeing, monitoring and enforcing election regulations.

Definition and basic principle of political funds

Since being enacted in 1965, the Political Fund Act in Korea has undergone 24 revisions for the purpose of guaranteeing the fair provision, and transparency, of political funds. In the Political Fund Act, the term "political funds" is defined as money, securities or goods that are provided to persons who are engaged in political activities, including political parties, in addition to expenses that they need to undertake political activities, including elections.

With the aim to guarantee the proper provision of political funds, secure the transparency of political funds, and contribute to the sound development of democratic politics by preventing illegal political funding, the Political Fund Act lays out the following basic principles:

- No one shall contribute or receive any political funds that are not prescribed in this Act.
- Political funds shall be fairly and justifiably managed in order to keep them free of suspicion. Their accounting materials shall be open to public.
- Political funds shall be disbursed only to reimburse expenses required for political activities and shall not be disbursed for private expenses or illegal purposes.
- Anyone who makes a one-time contribution of political funds in excess of USD 1 200 or pays a one-time expense for political activities in excess of USD 500 (for election expenses, USD 200) shall make such contributions or pay such expenses by means of cheque, credit card, account transfer or by other means that ascertain the identity of those who donate and spend.
- Everyone shall be prohibited from contributing political funds in the name of another person or in a false name.

Also, pursuant to Article 31 of the Political Funds Act, foreign nationals are banned from making political contributions in Korea. Any corporations or groups at home and abroad are prohibited from contributing political funds or donating funds in connection with any corporate entities or groups. This ban stemmed from a large amount of illegal funds that political parties received from companies to cover their campaign expenses for the 2002 presidential election. In August 2005, the National Assembly of the Republic of Korea revised the Political Funds Act so that any corporations or groups were fundamentally prohibited from making political contributions with the aim of initiating political reforms and addressing problems with illegal political funds.

Although the Political Funds Act does not directly prohibit public officials from making political contributions, the Political Parties Act stipulates that public officials (except in certain cases) are not allowed to join a political party. In addition, since the State Public Officials Act bans any civil servants, not allowed to join a political party, from engaging in political activities, it is interpreted that public officials are not allowed to pay political party membership fees or donate political contributions to a fundraising association.

Restrictions on political fundraising and contributions

Under the Political Fund Act, any political party may collect party membership fees. However, the Act does not set an upper limit on the amount of fees which may be paid by an individual political party member. When a fundraising association that raises political funds for a National Assembly member or a candidate to run in an election for public offices submits a financial report, it is required to disclose the personal information of a donor who makes contributions exceeding a set amount. In comparison, political parties are only required to disclose the total amount of membership fees collected, therefore the general public has no way of accessing the information on party members who paid a large amount of membership fees.

According to financial reports submitted by political parties in 2015, the total amount of membership fees collected from party members was USD 52 million, 25.8% of their total income of USD 201.3 million. South Korea's ruling Saenuri Party collected USD 26.4 million in membership fees, which made up 27.0% of their total USD 97.6 million income. The New Politics Alliance for Democracy party collected USD 21.2 million, making up 23.1% of its USD 91.7 million total income.

Previously, political parties were allowed to raise political funds through fundraising associations. However the revision to the Political Fund Act in 2008 prohibited political parties from raising campaign funds from the public. Political parties that hold seats in the National Assembly or obtained a certain percentage of votes in previous elections are entitled to receive national subsidies for the operation of parties and campaigning for presidential, National Assembly member and local elections.

For political activities and for election campaigning, a National Assembly member or a candidate who runs for public office uses his/her private assets, including bank loans. A candidate nominated by his/her political party is allowed to receive funds from his/her own party and use them. A National Assembly member or a candidate in public office elections (except candidates running for local council member elections) can designate an association for fundraising. The designated association is allowed to collect political contributions when registered with the Election Commission.

A fundraising association is permitted to raise funds within the limit of contributions set forth in the Political Fund Act. A fundraising association for a presidential candidate is allowed to raise an amount up to the equivalent of 5% of the ceiling amount of election expenses. For a fundraising association of a National Assembly member, up to USD 150 000 (the amount will double in the year when nationwide public office elections take place), and for a fundraising association for a candidate running in an election to elect the head of local governments, up to 50% of the ceiling amount of election expense. When a fundraising association raises contributions, it is required to promptly forward those funds to the National Assembly member or the candidate who has designated the association, after deducting expenses directly incurred in the course of fundraising.

The limit on contributions an individual can make to a fundraising association in a year is USD 20 000: USD 10 000 a year to a fundraising association for a presidential candidate, and USD 5 000 a year to a fundraising association for every National Assembly member or fundraising group of a candidate running for the National Assembly election. Donors are required to reveal their names, dates of birth, addresses, occupations and telephone numbers. However, donors may anonymously make a one-time contribution of not more than USD 100, and not more than USD 1 200 a year.

Restrictions and reimbursements of campaign fund expenses

Beside what is stipulated in the Political Funds Act, new means to raise election funds from voters that do not violate the Act were first introduced in 2010. In the same year, a potential candidate running for the election for Gyeonggi-do governor set a goal of raising USD 4 million for election expenses, and within a matter of days had raised more than USD 4 million. Even though the method employed by the candidate to raise funds was not included in the Political Funds Act, it was accepted because the method was interpreted as the candidate borrowing funds under an open agreement between a candidate and a multiple number of individuals. One of the elements that encouraged voters to participate in the fundraising scheme was due to the following campaign expenses reimbursement. When candidates submit the financial report of their campaign spending to the Election Commission, the Commission is required to reimburse 50% of disbursed campaign spending to candidates who won 10% or more of the total votes cast in the election. If a candidate wins 15% or more of the total votes cast in the election, he/she is eligible to get reimbursed the total disbursed campaign spending by the Commission no later than 60 days after election day. With these reimbursed funds, the candidate was able to pay back the donors with interest, which was calculated based on the average interest rate at the time. Consequently, in this way of fundraising, the borrowed funds for campaign spending from donors are paid back from either the national budget for presidential and National Assembly elections, or from the budget of local governments for local elections, depending on the result of election. This method of fundraising is often utilised by candidates who are high profile but do not have sufficient funds.

According to the Public Official Election Act, "election expenses" are defined as money, goods, debt or other things of economic value used for election campaign in the election concerned and borne by a candidate. Expenses disbursed by a third party for the election campaign of the relevant candidate also fall under election expenses.

Vote-buying practices are strictly prohibited, and candidates who buy votes are subject to stern punishment, so as to promote fair elections. In order to reduce the inequality of opportunity in election campaigning caused by the difference in financial resources available to candidates, a limit has been set on the total amount of election expenses that can be disbursed for campaigning purposes by political parties or candidates running in official public elections.

The Election Commission is required to publicly notify political parties and candidates prior to each election of the ceiling amount of election expenses that have been calculated for each election. The ceiling amount is set by considering population and the number of Eup/Myeon/Dong (administrative districts) in each constituency as well as reflecting the fluctuation rate of national consumer prices. Different calculations of the ceiling amount of election expenses are applied depending on the type of elections, as follows:

- Presidential election: Population × USD 0.95
- National Assembly member election in district: USD 100 000 + (population × USD 0.20) + (the number of Eup/Myeon/Dong × USD 2 000)

The Election Commission is required to calculate those campaign expenses that are accepted as legitimate spending from the financial report submitted by a candidate or political party. The Election Commission is required to reimburse those legitimate

campaign expenses from the national budget or the budget of the relevant local governments (for local elections), as follows:

- Candidates who obtain 15% or more of the total votes are reimbursed the entire amount of election expenses calculated above, while candidates who obtain between 10% and 15% of the total votes are reimbursed half of their election expenses.
- Political parties are reimbursed for the entire amount of election expenses when any candidates from the party list are elected for proportional representatives.

Contributions of political funds through the National Election Commission

Individuals (including public officials who are prohibited from donating political funds to fundraising associations) may deposit their contributions to the Commission for the purpose of supporting the activities of political parties. The amount each individual can contribute each year is between USD 100 000 and less than 5% of his/her income of the previous year, whichever is larger. Every quarter, the National Election Commission distributes the deposited political funds to the headquarters of each political party, based on the distribution ratio of subsidies provided from the national budget.

Before the Political Funds Act was revised in 1997, corporations or individuals were able to designate a political party to which they wanted to donate and entrust their contribution with the Election Commission, which resulted in almost all political fund deposits being distributed to the ruling party. Upon the strong request from the opposition party, the Political Fund Act was revised, and thus, the deposit is now distributed to parties according to the number of seats at the National Assembly that each party has and the proportion of votes gained by each party in public official elections, similar to the distribution ratio of subsidies from the national budget. Nevertheless, this political fund deposit system became meaningless since people rarely entrusted their contribution with the Election Commission, as they were no longer able to designate the political party they wanted to donate to. Therefore, the Political Funds Act was revised again in 2004 to give contributors a tax rebate of up to USD 100. Such a revision encouraged the public to again entrust political funds to the Election Commission. In 2014, the National Election Commission distributed and paid more than USD 4.45 million to political parties, funded by 48 186 citizens.

Public subsidies to political parties

Article 8 of the Constitution stipulates that political parties shall enjoy the protection of the State and may be provided with operational funds by the State under the conditions as prescribed by this Act. Thus, the State shall appropriate subsidies for political parties to the national budget under the Political Fund Act. The amount of annual subsidies provided to political parties is calculated by multiplying the total number of eligible voters in the most recent National Assembly election by the amount that the National Election Commission determined considering the fluctuation rate in nationwide consumer prices (USD 0.97 in 2014). In 2014, approximately USD 38.9 million in subsidies were evenly divided in each quarter and provided to eligible political parties. In a year during which a presidential election, a nationwide National Assembly election or local elections are held, the National Election Commission shall, prior to the election, additionally distribute and provide election subsidies equivalent to the calculated amount stated above to each political party that nominated candidates. Four parties among those that

participated in the local elections held in June 2014 were subsidised with approximately USD 38.9 million for election expenses.

The public subsidy is distributed based on the following principles: 50% of the total subsidy shall be evenly distributed and provided to political parties that form negotiating groups in the National Assembly as they have 20 or more seats in the National Assembly. Political parties that hold 5-19 seats in the National Assembly are provided 5% of the subsidies, while political parties that hold less than 5 seats in the National Assembly and obtained 2% or more in the most recent National Assembly election or obtained 0.5% or more in the nationwide local elections are given 2% of the subsidies. Of the remaining subsidies, 50% shall be distributed to political parties according to the ratio of seats against the total seats in the National Assembly at the time of distribution of the subsidies, and the other 50% shall be provided according to the ratio of votes obtained in the previous National Assembly election.

Meanwhile, in order to promote women's political participation, the state provides subsidies to political parties that nominated female candidates to run for district National Assembly elections and local council members. The amount of the subsidy, calculated by multiplying the total number of eligible voters in the most recent National Assembly election by USD 0.10, is provided to political parties according to each party's ratio of the number of nominated female candidates, the number of seats in the National Assembly and the proportion of the votes won in the most recent National Assembly election. In 2010, in order to support the political participation of persons with disabilities, a system to provide subsidies to political parties that nominate persons with disabilities to run for public official elections was introduced. Such subsidies for nominating females and persons with disabilities shall be disbursed for the election expenses of female and disabled candidates only. While the State paid subsidies for nominating female candidates to two political parties that recommended 5% or more female candidates to run for district National Assembly elections held in 2012, the State did not to give subsidies for nominating persons with disabilities to any political party as there were no parties that met the requirement for the subsidies, which is to nominate 1% or more candidates with disabilities. In local elections in 2014, USD 2.06 million of subsidies was distributed to political parties that nominated female candidates to run for City/Do council members, and the elections for autonomous Gu/Si/Gun council members. Also, approximately USD 520 000 in subsidies was distributed to two political parties for nominating candidates with disabilities.

Taking a look at the proportion of the national subsidy in the total income of each political party, in 2014, the Saenuri party's income from the national subsidy accounted for approximately USD 36.3 million, making up around 37.2% of the USD 97.6 million in total income. New Politics Alliance for Democracy, the leading opposition party, received nearly USD 33.8 million, which was 36.9% of USD 91.7 million in total income. This shows that the national subsidy makes up the largest portion of the total income of political parties.

Tax benefits for political funds

In order to encourage political contributions, political parties and fundraising groups that raise campaign funds are exempt from income tax and donation tax. As part of an effort to promote political donations, those who contributed up to USD 100 are eligible to claim a tax deduction for the entire amount of their donation.

Contributions over USD 100 are entitled to a deduction from the taxable income by the exceeding amount of the donation.

Income and expenditure of political funds available to the public through financial reports

Political parties and fundraising groups that raise political funds, and all politicians who receive political donations, are required to appoint a treasurer and report his/her personal information to the Election Commission. The income and expenditure of the all political funds are required to be managed by the treasurer alone, through a bank account previously identified to the Commission.

The treasurer is required to provide the financial report on the income and expenditure of the political funds to the Commission. A treasurer for a candidate running for a public official position needs to submit the financial report on income and expenditure within 30 days after election day (or within 40 days for presidential elections). In addition, political parties are required to present a financial report showing income and expenditure every year by 15 February of the following year. If the parties were involved in nationwide public official elections, their financial report must be submitted within 30 days after election day (within 40 days for presidential elections).

The financial report is required to include the detailed statement of income and revenue of political funds, together with proof of expenditure, such as a receipt, in addition to a copy of a record of transactions shown in the bank book. The treasurer of fundraising groups is obliged to report personal information and the amounts contributed by those who donated more than USD 300 in one donation or more than USD 3 000 in a year (USD 5 000 for presidential elections).

The Commission that receives the financial report is required to keep it on file, make it available to the public, and open it to public inspection for three months by posting it on its website. Anyone can request a copy of a financial report on income and expenditure of political funds from the Commission.

The Commission reviews each financial report on income and expenditure of campaign funds submitted by a candidate for public official elections, and investigates whether there is a false statement, illegal spending or if they have exceeded the campaign expenditure ceiling.

Investigation and enforcement of control over political funds

In cases where the Commission suspects there have been violations of the Political Fund Act, the Commission and its staff can have access to the scene or summon the suspect before the Commission for inquiry and investigation. The Commission and its staff may also request the submission of additional documents necessary for the investigation, and ask heads of financial institutions for the submission of bank transaction records.

After investigating suspected violations of the Political Fund Act, when it turns out to be a serious violation, the Election Commission brings the case for prosecution. Those who are found to have violated the Political Fund Act may be punished with a fine or imprisonment following a court ruling. Depending on the extent of punishment, those punished are forbidden to be hired or serve as public officials for between five and ten years. If already sworn in or hired, they can be forced to resign. In the case that the

winner of an election is subject to a punishment of imprisonment or a fine of USD 1 000 or more, the election will be invalidated. The Election Commission can also impose administrative fines on minor violations against the Political Fund Act, such as a delay in issuing receipts or reporting by treasurers.

Since illegal political funds tend to be provided secretly, it is often revealed through a report or information brought by those concerned or related in the case. Therefore, the Political Fund Act has a provision to protect and reward informants. For instance, the driver for a company executive reported an illegal political contribution of USD 50 000 made by the executive to a former National Assembly member. The National Election Commission confirmed the charge and brought it for prosecution, resulting in a court ruling that punished the former National Assembly member for violation of the Political Fund Act. The driver was awarded USD 200 000 by the National Election Commission.

Chapter 11

Mexico

By Mr. Rafael Riva-Palacio

Director of International Cooperation and Liaison

National Electoral Institute of Mexico (INE)

This case study presents the legislation and compliance framework for the Mexican political system. It also includes information on public and private funding of political parties, candidates and campaigns. This chapter includes information taken from documents elaborated by the International Affairs Unit of the National Electoral Institute of Mexico.

Introduction

Enforcing regulation of finance and oversight procedures for political parties has been a permanent issue in all Mexican electoral reforms since the last century.

In 1986, political parties achieved the constitutional right to receive public funding for activities aimed at fulfilling their duties.

Since then, electoral legislation has established, developed and perfected provisions aimed at regulating, controlling and supervising the funding system for political parties and electoral campaigns in a clear, accurate and comprehensive way.

Political parties in Mexico are entitled to receive permanent public financing both directly and indirectly. They also have the right to obtain private financing, although there are some limitations. By law, public funding must prevail over private sources of funding.

There are also specific rules for transparency and accountability for political parties' money including filing temporary reports. Political parties are subject to fines if they do not observe applicable regulations.

According to the Mexican constitution and electoral law, the National Electoral Institute (INE), formerly the Federal Electoral Institute, is in charge of allocating and distributing both direct and indirect public finance to political parties at the federal level. The INE is also charged with managing free radio and television airtime for electoral matters, including political parties at the federal and local level, but also for electoral authorities around the country.

The INE has a special unit to receive and review political parties' reports on financing. The electoral management body is legally entitled to fine political parties in the event of a proven violation. Political parties have the right to appeal to the Electoral Tribunal of the Federal Judicial Branch, which is responsible for deciding these issues in a final and irrefutable manner.

In June of 2015, Mexico elected 500 deputies of the Lower Chamber of the Federal Congress. This chapter aims to share main aspects of financing procedures for political parties and candidates as part of our current federal election.

Finance for political parties and candidates

Political parties in Mexico are permanently entitled to receive direct and indirect public financing for their ordinary activities and campaign expenses. They receive money on three different concepts, and they also receive permanent and free access to radio and television, exemption from payment of postage and telegraphic fees, and a special fiscal regime.

Political parties also have the right to obtain private financing, both for permanent activities and for campaign purposes. The law establishes those sources who are eligible to give money to political parties, as well as those who are forbidden to contribute.

Direct public funding

Direct public funding is granted to political parties for three different purposes: permanent ordinary activities, specific activities as entities of public interest and campaign expenses.

It is important to state that the Mexican Constitution establishes a formula to determine the amount of public funding for political parties. This formula is based on the number of citizens registered in the Electoral Roll in July every year and 65% of the minimum wage established for the Federal District.[1]

The INE is in charge of determining the amounts based on procedures provided by the law. Public financing for permanent ordinary activities and for specific activities as entities of public interest are delivered proportionally each month. Campaign expenses during specific periods are delivered proportionally each month before election day.

The main characteristics of direct public funding are:

1. Political parties receive funding to support their daily operation activities. Of this, 30% of the total amount is allocated in equal parts to all political parties with parliamentary representation, and the other 70% is distributed according to the percentage of votes gained of the total sum cast for each political party with representation in Congress in the preceding election for Lower Chamber members at the national level.

   Additionally, each political party that has obtained their legal registration after the last election receives 2% of total amount.

   It is important to state that each political party must spend at least 3% of its funding for the training, promotion and development of political leadership of women.

2. Regarding specific activities as entities of public interest, political parties receive specific funding to finance activities that concern political training and education, socio-economic and political research, as well as editorial tasks. The subsidy granted for these activities aims at supporting political parties in activities. With this purpose, an additional amount that equals 3% of the amount for ordinary activities.

3. For campaign expenses, political parties receive specific funding. This funding is intended to finance activities to obtain votes; therefore, it is only granted in election years.

   In years of general federal elections (President, Lower and Upper Chamber), each party is granted an additional amount equal to 50% of the funding for ordinary activities corresponding to that year.

   During the years when only the 500 seats of the Lower Chamber are renewed, each political party receives an amount equal to 30% of the amount received for ordinary activities for campaign expenses.

   These provisions are considered for all political parties legally recognised at the Federal level, no matter if they have parliamentary representation.

Table 11.1 sets out a breakdown of public finance at the federal level for the Mexican political parties in 2015.

Table 11.1. **Public finance at federal level for Mexican political parties in 2015**

In USD

Political party	Ordinary activities	Specific activities	Campaign expenses	Total
National Action Party (PAN)	$57 249 659.02	$17 174 897.71	$1 717 489.77	$76 142 046.50
Institutional Revolutionary Party (PRI)	$68 161 440.59	$20 448 432.18	$2 044 843.22	$90 654 715.99
Democratic Revolution Party (PRD)	$43 643 274.41	$13 092 982.32	$1 309 298.23	$58 045 554.97
Labour Party (PT)	$18 797 028.88	$5 639 108.66	$563 910.87	$25 000 048.40
Green Ecological Party of Mexico (PVEM)	$21 548 923.44	$6 464 677.03	$646 467.70	$28 660 068.18
Citizen Movement (MC)	$17 727 493.86	$5 318 248.16	$531 824.82	$23 577 566.84
New Alliance Party (PNA)	$17 870 383.46	$5 361 115.04	$536 111.50	$23 767 610.00
National Regeneration Movement (MORENA)	$5 212 727.74	$1 563 818.32	$156 381.83	$6 932 927.89
Humanist Party (PH)	$5 212 727.74	$1 563 818.32	$156 381.83	$6 932 927.89
Social Encounter (ES)	$5 212 727.74	$1 563 818.32	$156 381.83	$6 932 927.89
Total	$260 636 386.88	$78 190 916.06	$7 819 091.61	$346 646 394.55

Source: National Electoral Institute of Mexico (MXN 15 = USD 1).

Law also establishes that independent candidates have the right to receive public direct finance for campaign expenses.

As a sole entity, all independent candidates receive the same amount as a political party that has obtained their legal registry after the last election. For general elections, this amount is divided into three equal amounts and distributed to each group of independent candidates: presidential, Senate and Deputies. At the midterm election, the total amount is delivered to independent candidates for the Chamber of Deputies.

Once public funding is allocated in the proper groups, the amount is equally distributed among all candidates. According to the law, no independent candidate can receive more than 50% of the total amount allocated to his/her group or the amount established as the limit of campaign expenditures. Money is delivered in two parts, and candidates must return unspent funding.

For the 2015 election, 22 independent candidates have successfully registered. Considering the legal rules, each one of them would receive USD 71 082.65.

Indirect public funding

Regarding indirect public funding, there are three main areas:

1. Permanent and free access to all radio stations and the TV free channels that operate in the country. The INE has the power, as the only authority that can administer the State's airtime on radio and TV times, to guarantee both the political parties' access rights in all the elections conducted in the country, and ensure that federal and local electoral authorities comply with their obligations.

It is important to state that radio and television time used for electoral purposes is part of the taxation paid by broadcasting enterprises. The INE is the only authority with constitutional powers to buy additional time, should it be necessary. Any other use of radio or television airtime for electoral purposes, other than that provided and regulated by the INE, is a violation of the law.

The law establishes allocation time as:

- During non-electoral periods, the time available for electoral purposes is 5 minutes 45 seconds on television, and 7 minutes 48 seconds on radio. Of this, 50% is equally distributed between all political parties. This means about 3 minutes on TV and about 4 minutes on radio, divided into 20-second slots; and a 5-minute monthly programme to each political party. The other 50% is used by the INE for its own purposes or for other electoral authorities.
- During electoral periods, the distribution of time clearly distinguishes between the ones of pre-campaigns, amounting to 30 minutes per day per radio station or television channel, and the ones of campaign, which are increased to 41 minutes to each media, although not equally distributed but under the same proportionality formula used for direct public funding: 30% equally and 70% according to the number of votes obtained in the previous Lower Chamber election.
- Independent candidates have the right to receive free time on the radio and television. For these purposes, they are considered as a sole political party, and proper time is allocated equally among all of them.
- During electoral periods (pre-campaigns and campaigns) the time is divided into 30-, 60- and 120-second slots, assorted to be broadcasted between 6:00 a.m. and 11:59 p.m.

It is important to state that all parties (including pre-candidates and candidates) may only access the media by means of the slots in radio and television allotted to the State. The use of those slots is exclusive of the political parties and entirely free. The INE is the only authority responsible for managing these slots.

2. Exemption from postal and telegraph payment, whenever necessary to achieve their functions. For 2015, each political party has a postal and telegraph exemption of USD 1 042 545.55. Independent candidates also receive support on postal and telegraph exemptions in the amount of USD 78 980.72 each.
3. Political parties also benefit from a special taxation system that includes a 25% tax exemption in members' fees and rent incomes, among others.

Private funding

Political parties have the right to receive private funding as permanent income and to cover campaign expenses.

The law specifies and regulates four sources of private funding for political parties, and limitations on these incomes:

1. From members, comprising the ordinary and extraordinary fees of members and the contributions of their social organisations, whose amounts and frequency are freely determined by each political party. It also includes the voluntary and personal fees that the candidates of each party contribute to their own campaigns.
2. From supporters, including all donations and contributions, in money or goods, freely and voluntarily made by Mexican individuals or corporations that reside in the country, provided they are not comprised among the categories specifically prohibited by law.

3. Self-financing, referring to all the income obtained from promotional activities, such as conferences, shows, games, draws, cultural events, sales of publications or similar that are carried out in order to collect funds and the internal party body in charge of its finances establishes the ceilings.
4. From financial yields, comprising the yields generated through the funds that the political parties may create with their own patrimony in Mexican banks.

Limits and restrictions

Limits on private funding and ceilings on campaign expenditures

The law entitles the INE to set ceilings for expenses that the political parties and candidates may incur during the electoral campaigns for president and members of Federal Congress.

The formulas used by the General Council of the INE to determine the ceilings are:

1. For presidential elections, the ceilings must be equal to 20% of the public funding for campaign expenses established for all parties in the year of presidential elections.
2. For relative majority Lower Chamber members, the amount is that resulting from dividing the ceilings for the presidential election campaign into 300, that is, into the number of districts into which the national territory is divided for the Lower Chamber representatives.
3. For each one of the Upper Chamber members elected by the majority principle (by state), the ceiling amounts from the result from multiplying the ceilings for the Lower Chamber representatives by the number of districts comprised by the entity, but without considering a number of districts more than 20.

For the 2015 election, the ceiling for campaign expenditure is set at USD 84 002.56.

Restrictions to party funding

The electoral legislation points out the different private and public agencies, both domestic and foreign, that may not make contributions or donations to the political parties, whether in money or goods, either by themselves or through third parties. Among them are:

- the federal executive, legislative and judicial branches; the state and town halls
- autonomous entities at federal, state and municipal level
- labour unions
- religious ministers, and associations, churches or groups of any religion or sect
- foreign political parties, individuals or corporations
- international organisations of any nature
- people who live or work abroad
- Mexican mercantile corporations.

Likewise, it sets forth that political parties and groups may not request credits from the Mexican Development Bank to finance their activities, nor receive contributions from unidentified individuals, except for those obtained through collections in rallies or on the street.

Accountability and transparency

Reports of political parties

Political parties must appoint an internal agency in charge of receiving and administering resources, as well as of filing annual, pre-campaign and campaign reports on the origin, amount, destination and use of the income received through any kind of funding. The agent must file four different reports, according to the following terms:

1. An annual report within 60 days after the last day of December of the fiscal year being reported. In this report, political parties must list all income and ordinary expenses that must be clearly accounted for, including a combined report of its patrimony, the expenses assigned to their internal selection processes and pre-campaigns, and the income obtained for their funding. This report must be authorised and signed by an external auditor appointed by the party itself.
2. Quarterly reports: during non-electoral years, within the first 30 days after the end of every quarter for informative purposes. Political parties must report the advance of ordinary income and expenses.
3. Pre-campaign reports: within the first 30 days after the end of the pre-campaigns, political parties must file a report for each one of the registered pre-candidates, specifying the origin, amount, and expenses made, as well as a list of the pre-candidates who failed to file their information according to the law.
4. Campaign reports: political parties must file a report for each candidate every 30 days from the beginning of the campaign, and present it within three days after each 30-day period concludes. Independent candidates must present these reports as well.

Control and oversight procedures

Control and oversight of the resources of the political parties and their campaigns is the responsibility of a specialised unit of the INE, the Oversight Unit for the Resources of the Political Parties (UTF).

The UTF reviews all reports presented by political parties and candidates, focusing on whether they have received financial support from legal sources. In order to accomplish this task, it has important powers; especially not being limited by bank, fiscal or fiduciary secrecy for the performance of its activities, among other tools and procedures.

Additionally, the INE has recently created the National Registry of Providers as an instrument that allows the UTF to verify the individuals and entities who are executing contracts for goods and services with political parties, candidates and independent candidates according to the provisions of the law, which states that registered suppliers may only provide goods and services to political parties, candidates and independent candidates.

If errors or omissions are detected, the UTF asks to the political party or candidate to submit the correct information, during a specific period of time.

Once the UTF has reviewed the reports, it presents to the Audit Commission of the General Council of the INE a draft resolution that contains the results and conclusions of the review of the reports, the mention of errors or irregularities found in them, and clarifications or corrections submitted by the parties after having notified this purpose.

The Audit Commission analyses the results presented by UTF and determines a resolution project to be presented at the General Council.

The General Council receives the resolution project and it can be approved, or the Council can ask for some additional information.

If the political parties disagree with the resolution approved by the General Council, they can appeal it to the Electoral Tribunal of the Federal Judicial Branch, which is tasked with requesting a new review, or to settle the appeal in a final and irrefutable manner.

Transparency

The procedures and mechanisms for transparency of financial resources collected and handled by political parties have developed simultaneously with the widening and strengthening of the provisions regarding the political parties funding system.

Every interested person has the right to access political parties' information. Thus, the INE is committed to ensure maximum publicity of the accounting records and transactions of parties and candidates, in order to involve citizens in accountability and oversight and promote the scrutiny of public bodies.

Fines and penalties

The INE has the legal power to impose penalties on political parties or independent candidates who violate the laws regarding financing procedures, both in campaign periods or in ordinary reports.

Common violations of political parties and candidate finances in Mexico are:

- untimely accountability
- exceeding expense limits
- illegal funding sources or amounts.

A graded scale of penalties is applied, ranging from public reprimand to a reduction in public subsidy, but the penalty must be proportional to the violation: the greater the violation, the stricter the penalty. For serious and repeated violations of financial obligations, there is the possibility that a party could lose its legal status.

The recent electoral reform in Mexico established a system of annulment of federal and local elections for serious, intentional and decisive violations in the following cases regarding financing matters:

- exceeding the ceilings of campaign expenditures by 5% or more
- receiving or using resources of illicit or public origin.

To this effect, it is stated that the violations must be accredited objectively and materially, and they will be assumed to be decisive when the difference in votes between the first and second place is less than 5%.

In the 2012 general elections, political parties were fined USD 22 791 803.80 for violation of finance rules.

Challenges

As a result of a recent electoral reform in Mexico, the INE has more duties regarding the preparation and management of elections, both at the federal and local level.

Regarding political party finance, there are two main challenges for the 2015 election:

1. Due to its new duties as sole authority in charge of reviewing the financial reports of political parties both at federal and local level, the INE will have to analyse approximately 25 000 campaign reports. The deadline for this activity is no later than 37 days after election day, or before the election is declared valid.
2. Looking for more efficient procedures on reviewing financial reports of political parties, the law requires that the INE implement an online accountability system.

As a result of this duty, the INE has developed an accountability system in collaboration with the National Autonomous University of Mexico (UNAM). Since 6 April, the system is operational and can receive information from political parties and candidates.

Once the current election has finished, INE will be able to receive feedback concerning this new tool.

Note

1. In July 2014, there were 85 801 510 citizens in the Electoral Roll, and the minimum wage for the Federal District in 2015 was MXN 70.10 (approximately USD 4.67).

Chapter 12

United Kingdom

By Mr. Rupert Grist, Regulatory Lawyer

Mr. Nick Wright, Senior Project Officer

UK Electoral Commission

This case study presents the UK legislation, the Political Parties, Elections and Referendums Act, which controls the funding of political parties and campaigns. It also presents some key election statistics collected by the UK Electoral Commission.

Legislative framework

The main piece of legislation providing for registration and regulation of political parties (and certain other political entities), and also setting out the scope of functions and oversight of the Electoral Commission as the regulator, is the Political Parties Elections and Referendums Act 2000 (PPERA).[1]

Provisions regarding general elections to the UK Parliament, and other elections, including regulation of candidates, are set out in the Representation of the People Act 1983.[2]

Other legislation makes provision for other elections, including elections to the devolved legislatures within the United Kingdom.

The Electoral Commission is the UK body responsible for monitoring and taking steps to ensure compliance with many of these requirements. It makes sure people understand the rules around political party finance. Alongside this work, it also takes action when the rules are broken, and publishes information on political finance. The wider policy objectives are the responsibility of the UK and devolved Governments.

Practical implementation of political finance law

Level playing field – reporting of funding and expenditure

UK law does not prescribe relative amounts of public and private funding available for those campaigning at elections. But there are a wide range of provisions on funding and associated matters.

Public funding

There are provisions for specific state funding and services. This includes money given to opposition parties ("Short money" for parties in the House of Commons and "Cranborne money" for parties in the House of Lords), policy development grants to parties with two or more members of Parliament (administered by the Electoral Commission), and money for parties in the Scottish Parliament. There are restrictions on what this money can be used for: Short money and Cranborne money can only be used for a party's parliamentary business, and policy development grants can only be used to assist the party with the development of policies for inclusion in its manifestos. Services provided include the limited use of free mail for election material and free use of rooms for meetings.

Private funding

There are restrictions on the sources of private funding (mainly UK-based individuals and organisations), but no limits on the amounts that can be given.

Spending limits

Limits are imposed on the amount of election expenditure.

There are requirements to report relevant financial information. These include reports on expenditure and funding, and statements of accounts (showing, for example, total income and expenditure, and assets and liabilities, over a year).

Similar provisions concerning private funding and election expenditure apply to individual candidates as well as political parties.

There are also similar provisions on private funding and election expenditure regarding "third party" campaigners – those who campaign for candidates and parties. This is to ensure that indirect funding is also made transparent.

In addition to reporting funding through donations, parties are required to report certain loans and similar transactions that support their election expenditure.

Note that there are similar, but separate, provisions regarding the financing of campaigns at referendums in the United Kingdom.

Media spending

Media spending is included as part of regulated party expenditure (including party political broadcasts, albeit these are tightly restricted), subject to the exceptions set out in the legislation. One of those exceptions concerns spending on print media. There are also provisions including certain media spending as regulated expenditure by candidates and third parties. There is no separate regulation by the Electoral Commission of spending on media activities.

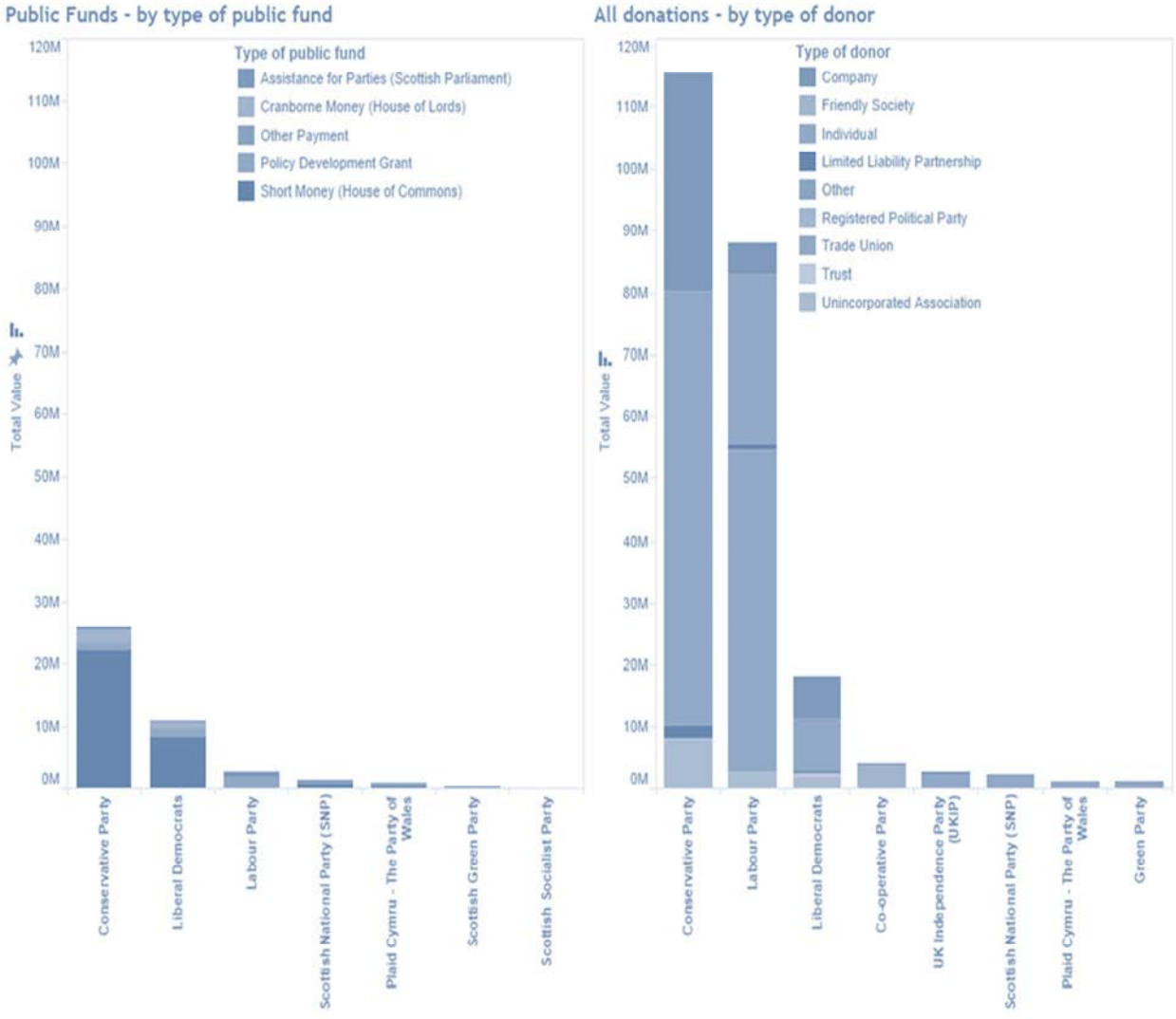
Figures 12.1-12.4 show reported figures for funding and expenditure of the main parties and their candidates, and the main third parties, in the run-up to the last UK parliamentary general election, held on 7 May 2010. (The parties and third parties shown have been included on the basis of the highest sums reported in each case.)

Transparency and accountability

The legislation provides – and the Commission ensures – public disclosure of all information required to be reported by political parties and third-party campaigners. Candidates provide reports to the local returning officer, but the Commission receives copies and collates information on a national level. All this information is available on the Commission's website as soon as possible after it has been reported. All data on donations, loans and statement of accounts is made available on line on the Electoral Commission website.[3]

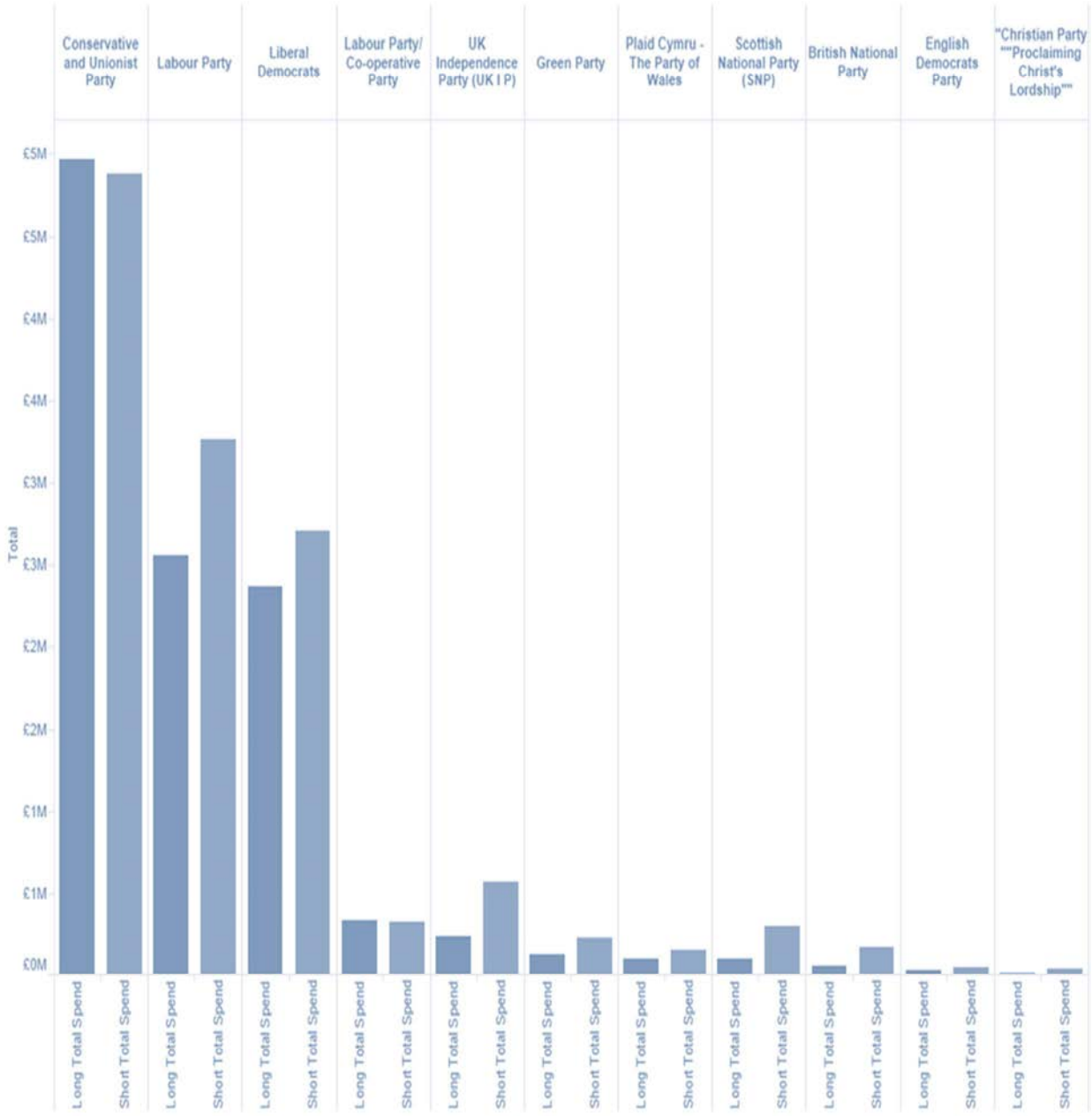
The legislation provides for some reports to be independently audited. For example, a political party with a gross income or total expenditure that exceeds GBP 250 000 in a financial year must have its statement of accounts audited; and an audit is also required of any return of party election expenditure if the expenditure exceeds GBP 250 000 during a campaign period. In addition, the Commission undertakes its own compliance checks of the information it receives by, for example, checking the permissibility of donations and cross-referencing statements made in different reports to identify any inconsistencies.

Figure 12.1. **Public funds and donations to political parties in the United Kingdom, 1 July 2005 to 30 June 2010**



Source: UK Electoral Commission.

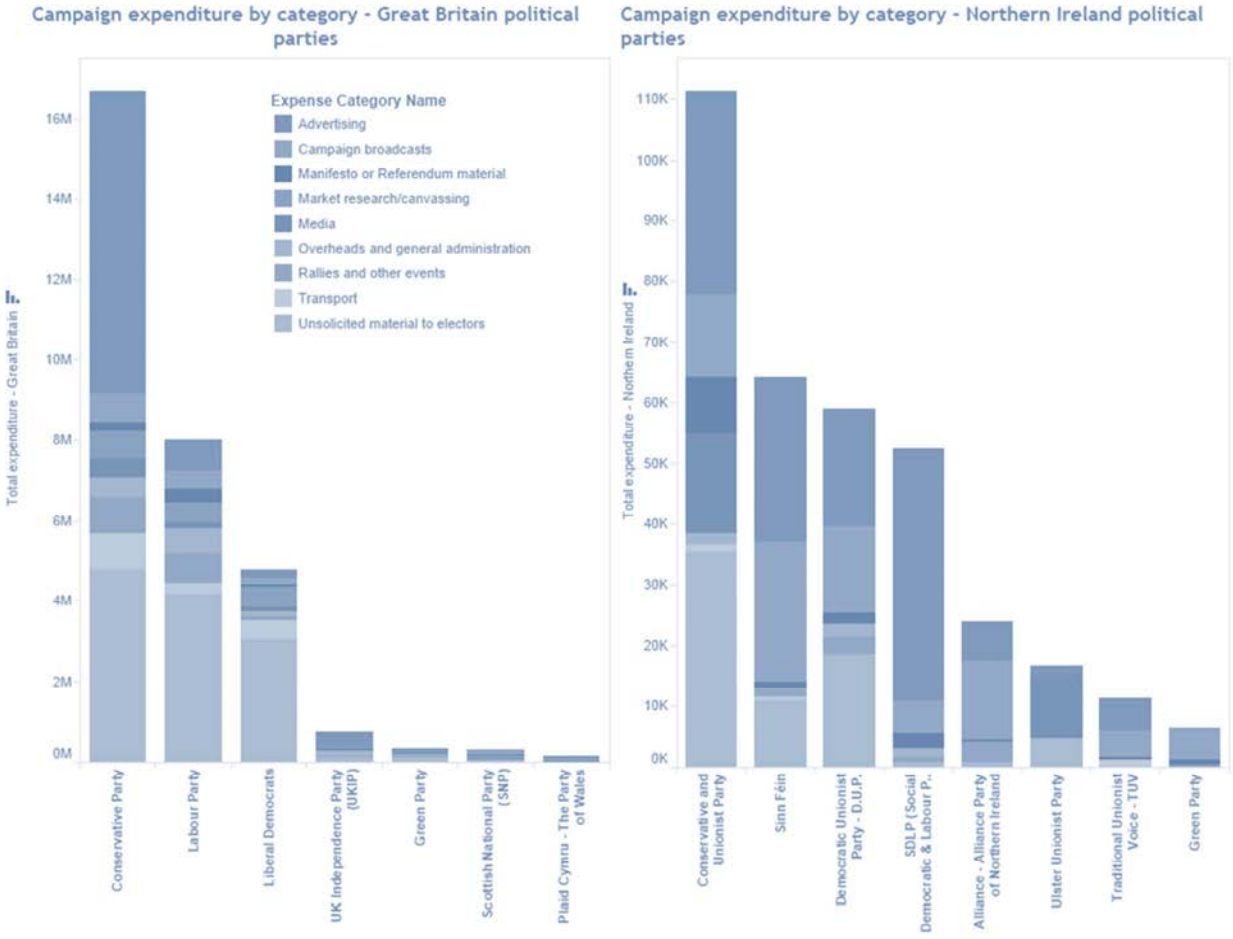
Figure 12.2. **Candidate spending at the UK Parliamentary General Election 2010, by political party in the long campaign and short campaign**



Note: The "long campaign" is the period of several months prior to a person formally becoming a "candidate" at a general election, for which there is one limit. The "short campaign" is the period of weeks after a person formally becomes a candidate and ending with polling day, for which there is another limit.

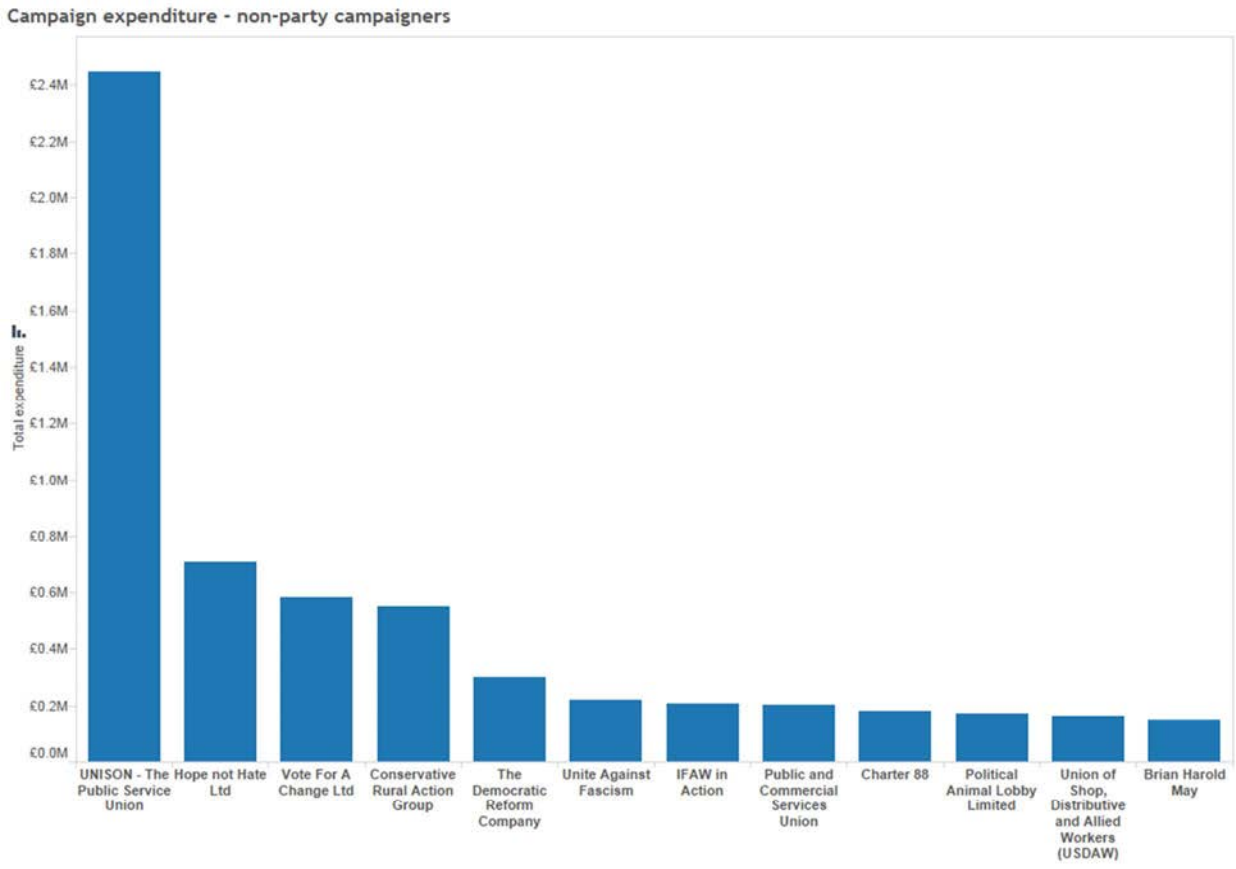
Source: UK Electoral Commission.

Figure 12.3. **Campaign expenditure, by category, at the UK Parliamentary general election 2010**



Source: UK Electoral Commission.

Figure 12.4. **Campaign expenditure (non-party campaigners) at the UK Parliamentary general election 2010**



Source: UK Electoral Commission.

Integrity – advice and guidance by the Commission

In the United Kingdom, the Electoral Commission is responsible for taking steps to ensure compliance with the requirements regarding party, candidate, and third-party finance. The Commission's policy is to regulate in a way that is effective, proportionate and fair, in line with the principles of good regulation. Wherever possible, it will use advice and guidance proactively in order to secure compliance. The Commission is committed to providing those it regulates with a clear understanding of their regulatory obligations. It produces comprehensive guidance on a wide range of subjects, responds to requests for advice, and provides training where requested.[4] The Commission is committed to making sure it is as easy as possible for people to comply with the rules, through good guidance and systems, publishing guidance that explains how to comply with the rules, offering advice in response to enquiries and continuing to find ways to reach out to those we regulate to keep them informed of the rules and how to comply with them.

The Commission is also proactive in encouraging compliance, for example in giving specific advice to newly registered parties, and issuing reminders to parties before deadlines for reports. It regularly meets with parties to discuss emerging issues, and

conducts campaign monitoring to determine whether individuals and organisations may need to be alerted to regulatory requirements impacting on them.

Compliance and oversight

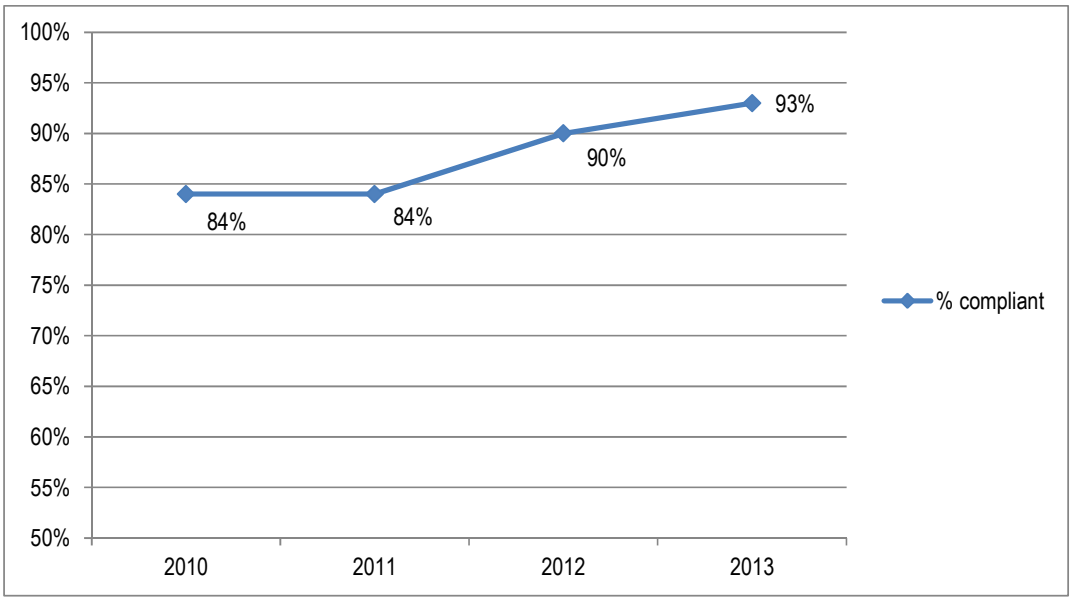
As noted above, the Commission seeks to use advice and guidance to secure compliance wherever possible. Where necessary, however, there are a range of powers that can be used to obtain information and penalise contravention of the law.

The Commission and the courts have a number of supervisory and investigatory powers, requiring the supply of information, attendance at interviews, and inspection of documents, including at specific premises. The Commission also has a number of civil sanction powers, comprising the imposition of fixed or variable monetary penalties, the issuing of compliance or restoration notices (requiring steps to be taken to stop non-compliance or undo its effects), the issuing of stop notices (failure to comply with which is a criminal offence), and agreeing enforcement undertakings. It may also refer cases to prosecuting bodies for criminal prosecution.

The Commission's Enforcement Policy sets out how it carries out its functions in this regard.[5]

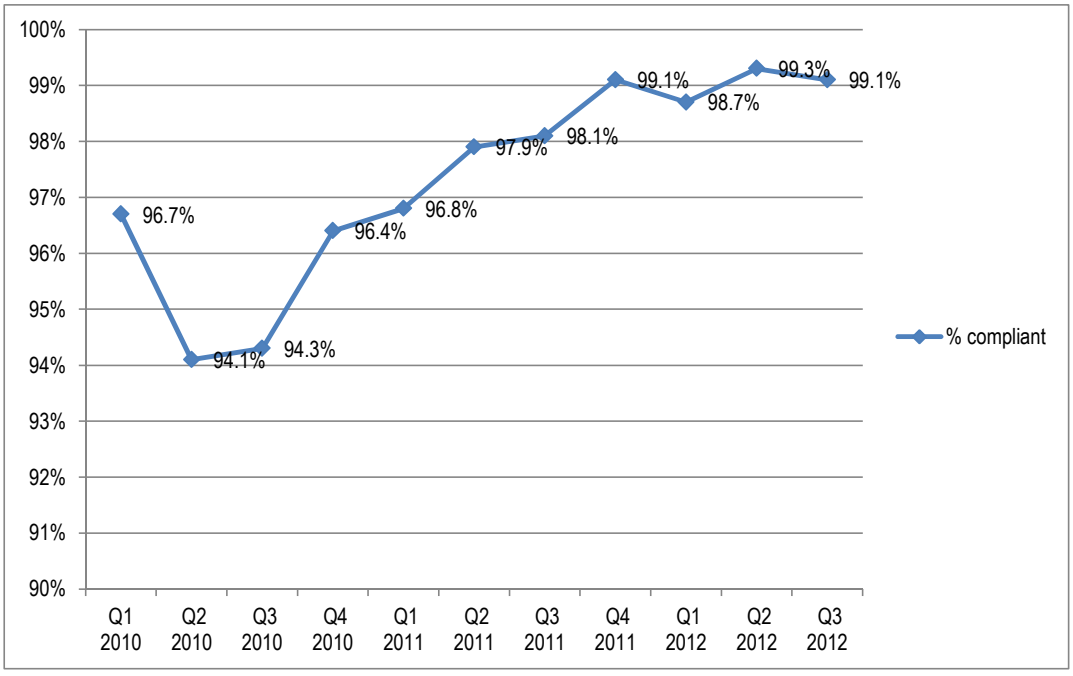
Compliance with the requirements is generally high. Since the Commission was given its civil sanction powers, compliance rates have increased. Figures 12.5 and 12.6 provide examples of compliance rates since 2010, in respect of delivery of yearly statements of accounts and quarterly returns of reportable donations by political parties.

Figure 12.5. **Compliance rate (statement of accounts) in the United Kingdom, 2010-13**



Source: UK Electoral Commission.

Figure 12.6. **Compliance rate (quarterly returns) in the United Kingdom, 2010-12**



Source: UK Electoral Commission.

The Commission has issued 25 sanction notices since it was given these powers in 2010, including a range of different monetary penalties and compliance notices. Many of these sanction notices stem from the late reporting of donations or loans, late or non-delivery of annual accounts, and acceptance of impermissible donations. None of these has been appealed to the courts. The Commission will continue to seek to improve these compliance rates and to improve compliance in other areas.

Challenges and risks

The issue of how political parties should be funded continues to be discussed, in the UK legislatures and elsewhere. While there is evidence of public disquiet at aspects of private funding, there is little evidence of public support for increased public funding.

The most recent legislative change to political finance provisions concerned the requirements on third-party campaigners, by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. It widened the scope of those entities that could be affected by the rules, as well as increasing certain reporting requirements. The Commission has engaged with those potentially affected to increase awareness of the new provisions, and has produced a revised suite of guidance for third parties in advance of the legislation coming into force.

Further devolution of powers is likely (to Scotland, and possibly to other parts of the United Kingdom), following the UK Parliamentary general election on 7 May 2015, and that is likely to have an impact on how political finance is regulated.

The Commission engages with Government, Parliament and interested bodies on any proposed legislative change. The Commission is politically neutral, but strongly supports any measures that are in the interests of voters, and ensures that its voice is heard whenever proposals are made that might affect voters' interests.

Notes

1. For additional information on the Political Parties Elections and Referendums Act, see www.legislation.gov.uk/ukpga/2000/41/contents.
2. For additional information and the text of the Representation of People Act 1983, see www.legislation.gov.uk/ukpga/1983/2/contents.
3. All data on donations, loans and statement of accounts is made available on line at www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations.
4. The Election Commission's guidance is made available on line at www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners/guidance.
5. The Commission's Enforcement Policy can be found on line at www.electoralcommission.org.uk/__data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf.

Chapter 13

Brazil

By Mr. José Antonio Dias Toffoli

President of Brazil's Superior Electoral Court and Justice of the Federal Supreme Court

This case study provides an overview of the Brazilian political financing system, including the applicable legislation, categories of political parties and funding, regulation mechanisms and transparency initiatives. It also reviews some of the tools provided to political actors to comply with the legal standards, and draft legislation designed to strengthen and reform the political funding system.

Introduction

As of the promulgation of the Constitution of 1988, Brazil has been experiencing an unprecedentedly long period of democratic stability. Our democratic basis has expanded substantially. Presently, the republican principle that establishes that self-governing people choose their representatives is achieved by means of universal suffrage and popular direct and secret vote of equal weight to all, as set forth in Article 14 of the Federal Constitution. Voting is compulsory for Brazilians aged 18 years and older; and optional for the illiterate, those over 70 years of age, and those over 16 and under 18.

Presently, registered voters account for 71% of the Brazilian population. With more than 142.8 million voters, Brazil is the world's fourth largest democracy, ranking after India, the United States and Indonesia.

In October 2014, for the seventh time since democracy has been restored in the country, Brazilians attended the largest election in Brazil's history and went in an orderly and peaceful manner to the polls to decide the future of their nation. They elected the president, governors and lieutenant governors in all Brazilian states and the Federal District, a number of senators and all representatives at the Chamber of Deputies (House of Representatives) and at the legislatures of all Brazilian states and the Federal District. More than 115 million voters appeared to vote in the first round of elections, and more than 112 million in the second round.

Nevertheless, there is still much to contemplate and advance so as to ensure the continuous improvement of the democratic process that enables us to choose our political representatives following free and equitable campaigns that ultimately implement the genuine will of the Brazilian people.

Our process of democratisation has not yet been able to prevent electoral financing from allowing economic power to abduct civil rights.

That being said, it is worth noting that the discussions on electoral financing necessarily comprise the debate on "the financing of democracy". The question that must be asked is: who is entitled to finance democracy and how can this be done? As the Tribunal sees it, the answer is to protect the foundations of democracy at all times, and that includes the sovereignty of the people, the freedom to vote, and the trust in the integrity of State policies.

Based on Brazil's history, it is possible to infer that the capture of the State by economic groups results from the combination of expensive electoral campaigns and the need to have them funded by private companies. That is the reason why the president of the Electoral Court has been advocating the prohibition for companies to fund political parties and electoral campaigns, as such entities create undue pressure upon politicians who are elected to represent the people before the Executive and Legislative Branches.

Currently, private companies constitute the largest funders of political parties, electoral campaigns and, indirectly, Brazilian candidates. Such private sector investments point to a natural and instinctive performance that seeks to ensure its own survival, being not limited by market or capitalist regulations. However, rules governing the public sector, which seek to limit the participation of the State or establish a very strict set of rules for it to occur, clash with the ones that regulate the private sector.

Thus, it is rather understandable that corporations are increasingly driven towards the public sphere, not with the purpose of imposing corrupting effects upon it, but seeking to

manage a portion of its power and wealth instead. It is precisely this indulgence of the activism of legal entities in elections, and exactly as it happens in Brazil.

This matter is already being examined before Brazil's Supreme Court, in Direct Action for the Declaration of Unconstitutionality n. 4,650, which was filed by the Federal Council of the Brazilian Bar Association. The votes presented so far constitute a majority favouring the unconstitutionality of the participation of legal entities in party and electoral funding, but four justices still need to issue their votes so that a decision is reached. After Justice Gilmar Mendes requested to see the record, case proceedings were stayed, remaining in that condition up to now.

I examine below the model currently adopted in Brazil, pointing to the fact that the country is increasingly subscribing to the need for reforms that ensure greater equality of conditions for candidates to run electoral races, eliminating potential sources of bribery and the abuse of economic power to the detriment of the legitimacy of elections and the balance of existing political forces.

Applicable legislation – the main competencies and attributions of Brazilian Electoral Courts in place to inspect, regulate and control party and electoral funding mechanisms

Brazil´s legal system comprises rules designed to monitor and prevent the abuse of economic power, bribery and other forms of distortion in local politics, adding to the protection of constitutional and republican principles, popular sovereignty and democracy itself. Such rules are established in the following law and statutes:

- Federal Constitution of 1988
- Law N. 4,737/1965 (Electoral Code)
- Law N. 9,096/95 (Political Parties Act)
- Law N. 9,504/97 (Elections Act)
- LC (Supplementary Law) N. 64/90 (Ineligibilities Act)
- Resolutions issued by the Superior Electoral Court (TSE).

In Brazil, the Electoral Court System is responsible for regulating and inspecting the amount of resources allocated in the democratic and political game. It constitutes an autonomous body of the Judicial Branch, and is granted administrative, judging and normative powers, which indicates the peculiar features that describe Brazil's electoral judicial and administrative system. Its institutional design combines the technicality and impartiality of the Judicial Branch with the temporary exercise of electoral functions, which mitigates the concentration of so many different powers within one single body. Regardless of being a permanent institution, it does not have its own staff. Electoral judges usually serve for only four years, and are not allowed to perform their attributions in two successive elections for the same elective office.

Its administrative and organisational attributions range from the organisation of the registration of voters and the registration of political parties to the disclosure of the results of elections and the certification of elected candidates. With regard to its judicial attributions, the Electoral Court System is responsible for settling electoral disputes, including objections to candidacy registration requests and lawsuits resulting from electoral crimes, such as abusive publicity in the media, abuse of power because of the

undue use of the structure of public administration, and the unlawful winning of votes (vote buying), which may lead to the cancellation of a candidate's registration or even the impeachment of an elected representative. In addition to being required to respond to consultations on electoral matters, Electoral Courts are also responsible for issuing resolutions that regulate general provisions set forth in the electoral legislation in place.

It is worth noting, albeit in a concise manner, that the attributions of Electoral Courts in Brazil are as follows:

1. analysis and appraisal of annual accounts of political parties
2. analysis and appraisal of campaign accounts of political parties, financial committees and candidates
3. Analysis and appraisal of complaints, enquiries and criminal actions based on unlawful acts related to irregular revenues or expenditures, slush funds, electoral bribery (criminal and non-criminal jurisdiction) and abuse of economic power to the detriment of the organisation and legitimacy of elections
4. normative attribution: specification of the rules established in the electoral legislation that are related to the funding of political parties and elections.

Categories of party and electoral funding

Brazilian legislation provides for a system of mixed funding of political parties and election campaigns, including the (direct and indirect) sources listed below:

1. party fund money
2. donations made by individuals and legal entities
3. tax exemption1
4. free airtime on radio and television (by means of the offsetting of taxes).

The party fund comprises the following revenues: *i)* monetary fines and penalties imposed pursuant to the electoral legislation in place; *ii)* financial resources allocated to it by law on a permanent or temporary basis; *iii)* donations made by individuals or legal entities by means of direct bank deposits credited in the Party Fund account; *iv)* annual budgetary appropriations of the Federal Government, provided they are always higher than the total number of voters registered by 31 December of the year that precedes the budgetary proposal, multiplied by BRL 0.35, according to rates consolidated in August 1995 (Article 38 of Law N. 9,096/95).

The amount approved for the party fund in the Federal Government's budget for 2015 was three times higher than the one of the previous year, totalling USD 322 million.[2] The distribution of monies from the party fund complies with the following criteria: 5% of the total amount shall be distributed in equal shares to parties that have registered their articles of incorporation before the Superior Electoral Court;[3] and 95% shall be distributed among parties proportionally to the votes obtained in the last general election for seats at the Chamber of Deputies (Article 41-A of Law N. 9,096/95).

Political parties are entitled to receive donations from individuals and legal entities. The donations made by legal entities to political parties shall not, either directly or indirectly, not even as publicity of any sort, originate from: *i)* foreign entities or governments; *ii)* public authorities or agencies; *iii)* self-regulated public bodies, public companies or utilities, government-controlled companies and foundations established in

law, which resources include funds from government bodies or agencies; and *iv)* professional associations or unions (Article 31 of Law N. 9,096/95).

Individuals and legal entities may also make donations to the party fund, the political parties or electoral campaigns during an election year, provided the legal figures that are usually constituted during this period are identified. Such figures include "candidate", "financial committee" and "campaign accounts".

Candidates, financial committees and political parties that raise funds and choose to use them in electoral campaigns are required to open "campaign accounts", which are aimed at recording all financial transactions made during such a period. Such accounts are created for this single purpose only, and the aforementioned individuals and entities are forbidden to make use of previously existing bank accounts (Head provision of Article 22 of Law N. 9,504/97). Additionally, they may use goods and services that have cash value in electoral campaigns, provided they also report their estimated value.

With regard to the raising of funds to electoral campaigns, Brazilian legislation has already prohibited certain legal entities from making donations with the purpose of preventing foreign entities, unions, public institutions and entities funded with public resources from interfering in elections. Thus, political parties and candidates are prohibited from receiving donations that originate from: foreign governments; bodies and agencies established under direct or indirect public administration; foundations maintained with government resources; public-utility companies; legal entities governed by private law that benefit from mandatory contributions established by law; public-utility types of entity; professional associations or unions; non-profit organisations that receive funds from abroad; entities devoted to charity and religious affairs; sports organisations; non-governmental organisations that receive public funds; and civil society organisations of public interest (Article 24 of Law N. 9,504/97). As established in a resolution issued by the Superior Electoral Court, with regard to the general elections of 2014, contributions that originated from notarial and registration offices were also prohibited (Article 24, item XIII of Resolution N. 23,406 of 2014).

Regarding electoral campaign donations made by individuals and legal entities, the legislation in place does not establish objective limits. Instead, it establishes a percentage to be calculated over the income of campaign donors. Thus, individuals are entitled to donate up to 10% of the gross income earned during the year preceding an election. With respect to candidates who choose to make use of own resources, the limit will be equivalent to 50% of its patrimony in the year preceding the election. Finally, donations made by legal entities are limited to 2% of gross sales revenues earned during the year preceding elections.

The establishment of maximum donation amounts based on the income of donors perpetuates the critical economic influence on election campaigns, such a measure being unable to prevent that the inequality of resources among competitors becomes a major condition for one winning the electoral race. Such a context is aggravated by the lack of legal limits to electoral expenditures, as explained further in this chapter.

Let's check selected data related to donations made to electoral campaigns in Brazil. Data retrieved from the systems operated by Brazilian Electoral Courts clearly points to increasing corporate influence when examining the percentage share of donations made in elections that were held between 2004 and 2014[4] (Tables 13.1 and 13.2).

Table 13.1. **Percentage share of donations made in Brazilian municipal elections, 2004-12**

Municipal elections	Percentage share (%)
2004	38.84%
2008	36.07%
2012	45.40%

Table 13.2. **Percentage share of donations made in Brazillian general elections, 2006-14**

General elections	Percentage share (%)
2006	66.49%
2010	74.72%
2014	76.48%

It becomes perfectly clear that, as of 2010, the share of corporate donations accounts for more than 75% of the funding of state and national campaigns, creating numerous distortions in Brazil´s political system and even leading to countless allegations of bribery and other unlawful acts related to electoral and political funding. With regard to municipal elections, although the funds raised by political parties and candidates are more balanced, the percentage share of donations made by legal entities is still rather significant.

Figures 13.1 and 13.2 demonstrate the evident lack of proportion between revenues obtained from legal entities and those earned from other sources of electoral funding in the 2014 elections.

Figure 13.1. **Percentage share of party fund money and private resources with regard to campaign donations, Brazilian general elections, 2014**

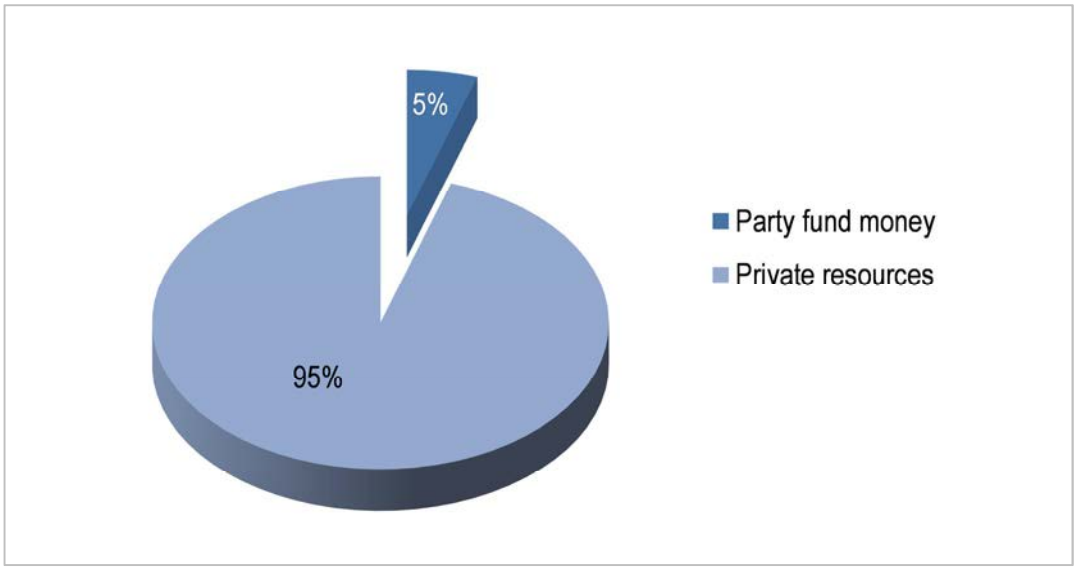
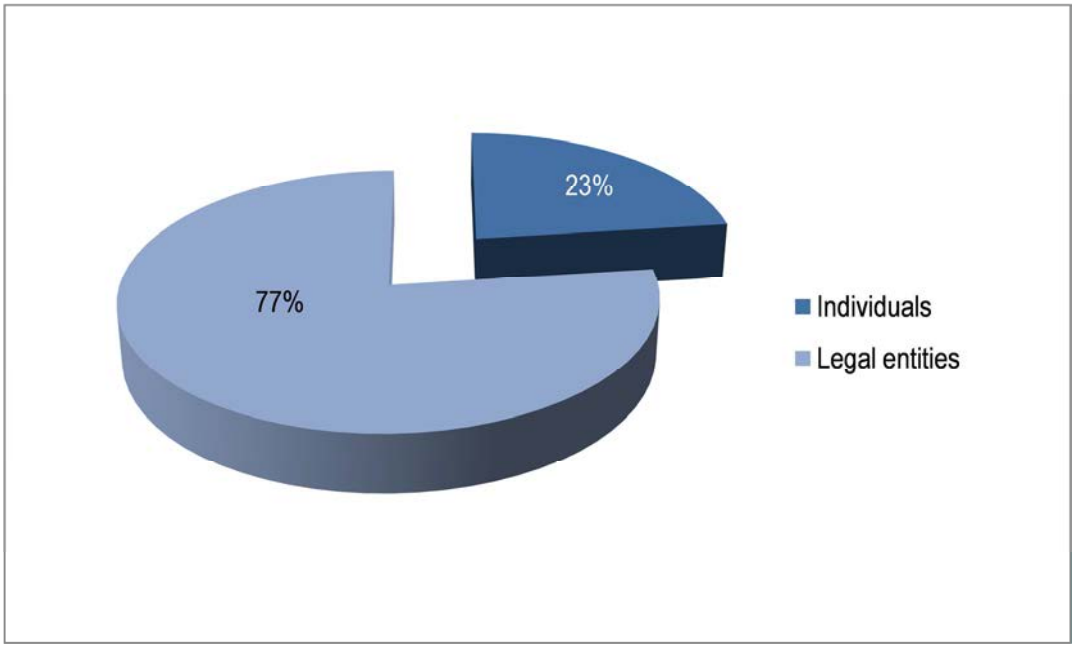


Figure 13.2. **Percentage share of individuals and legal entities with regard to campaign donations, Brazilian general elections, 2014**



Such lack of proportion is even more evident when we analyse electoral campaign data related to the latest presidential race. Regarding the 2014 elections, the donations made by legal entities to all presidential candidates amounted to more than USD 232 million,[5] which represents a share of more than 90% of total resources.

It is also worth noting that the donations made to presidential races by the ten largest corporate donors totalled USD 61 million. Such a figure points to unequal participation during the elections, with special attention to widely known holders of greater economic power. And that is the reason why it seems necessary to establish uniform limits to donations and campaign expenditures, regardless of the income of donors.

During the elections of 2014, the largest campaign donors were companies from sectors that are heavily influenced by government regulation or that maintain contractual relations with the government, such as those representing the food industry, civil construction and the financial sector.

The massive presence of private companies belittles popular participation in the electoral race. The donations made to presidential campaigns by individuals have accounted for only a 2% share of total used resources. This suggests a contradiction, as the central figures in an electoral process should be the citizens, not corporations.

Electoral expenditures

The high cost of electoral campaigns is one of the most significant reasons why parties and candidates seek funding sources that are compatible with increasingly higher spending.

In Brazil, there are no legal limits on expenditures made by political parties and candidates during an election campaign. There are provisions set forth in Brazilian legislation (Article 17-A of Law N. 9,504/97) establishing that the spending limit for

campaigns aimed at filling public elective offices shall be established by law, with observance to local peculiarities, by 10 June of each electoral year. In the event such a law is not edited in time, each party shall be deemed responsible for establishing their own spending limits, being then required to report such figures to the Electoral Court System. Given that no law was ever edited to regulate the matter, political parties have been establishing their own spending limits for each electoral campaign.

Table 13.3 sets out data on political party spending during the presidential races held between 2002 and 2014. Let us examine it carefully.

Table 13.3. **Political party spending during the Brazilian presidential elections, 2002-14**

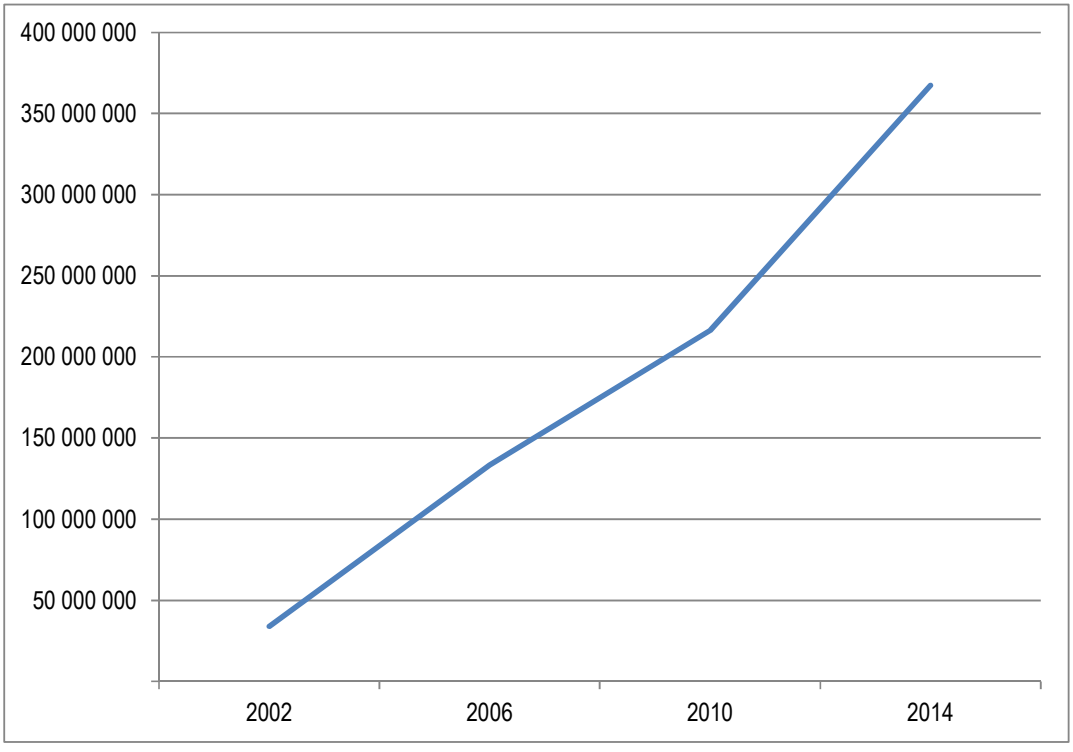
Election year	Expenditures related to presidential campaigns, per election (in USD)[1]
2002	33 985 632.95
2006	133 387 582.29
2010	216 467 881.16
2014	367 288 491.75
Overall total	751 129 588.15

1. In US dollars, according to the currency exchange rate of 3 October 2014 (BRL 2.4926).

It is worth noting that Brazil's 2014 presidential elections were the most expensive in the country's history (Figure 13.3). Candidates and financial committees spent more than USD 259 million. The presidential candidates who participated in the runoff, Dilma Rousseff (PT) and Aécio Neves (PSDB), spent USD 140 and USD 89 million, respectively.

Figure 13.3. **Total spending of Brazil's presidential candidates, 2002-14**

In USD



As a consequence of the lack of legal limits to campaign spending, we find increasingly higher campaign costs. Unsurprisingly, both parties and candidates depend immensely on contributions and campaign donors, which, as we noted earlier, are often represented by large corporations.

Mechanisms designed to regulate campaign advertising and the access of political parties and candidates to free airtime on radio and television

With regard to free campaign advertising (which starts 45 days before the eve of election day), free airtime is distributed among parties and coalitions that have running candidates, provided the following conditions are observed: *i)* two-thirds distributed in proportion to the number of representatives in the Chamber of Deputies (House of Representatives), considering in cases of coalitions, the total number of representatives of all parties that form such coalitions; *ii)* out of the remaining amount (of free airtime), one-third is to be equally distributed (among all parties) and two-thirds to be distributed in proportion to the number of representatives elected in the immediately preceding election to the Chamber of Deputies (House of Representatives), considering in cases of coalitions, the total number of representatives of parties that form such coalitions. The number of seats of each party in the Chamber of Deputies (House of Representatives) shall be determined by election results.

Regardless of the broadcasting of free airtime, radio and television stations may also transmit debates on majority and proportional elections, provided they ensure the participation of candidates of parties that have seats in the Chamber of Deputies, being also entitled to invite candidates from other parties.

Political parties are also eligible for free airtime in radio and television stations during non-election years so as to disseminate party-related information, which, as established in local legislation, consists of: reporting to party affiliates on the execution of a political party programme, related events and activities; disclosing the views of the party on political and community issues; promoting and disseminating greater participation of women in politics, making sure to allot women a share of airtime that is to be established by the party's national steering body, provided a minimum share of 10% is observed.

The granting of free airtime for the dissemination of party advertising shall meet the following criteria: *i)* to parties that have duly registered their articles of incorporation before the Superior Electoral Court, and have participated or are able to participate in general elections for the Chamber of Deputies (House of Representatives), electing, in two consecutive elections, representatives in at least five different states, obtaining also 1% of the total votes counted across the country, disregarding all blank and spoiled ballots, it will be ensured: *a)* nationwide broadcasting of a 10-minute programme per semester; *b)* the allotment of a total of 20 minutes (of free airtime) per semester, divided in 30-second or 1-minute inserts; *ii)* to parties that have elected and maintained as affiliates at least three representatives from different states it is ensured an annual nationwide broadcasting of a 10-minute programme; *iii)* to parties that do not meet the conditions established in the previous items, it is ensured a semi-annual nationwide broadcasting of a 5-minute programme, noting that such minutes are not to be combined with the amount of free airtime provided for in the items above (TSE Resolution N. 20,034/97, as amended by TSE Resolution N. 22,503/06).

As established in Brazilian legislation, political parties and candidates are prohibited from making use of paid publicity on radio and television networks, and on the Internet,

with advertising allowed only in the printed press, provided certain conditions are met (Articles 36, 43 and 57-C of Law N. 9,504/97).

Transparency of parties' and candidates' accounts: On the requirement to render accounts and sanctions in the event of failing to meet said requirement

The requirement to submit accounts to Electoral Courts is expressly provided for in the Federal Constitution and its purpose is to ensure transparency regarding the origin and destination of all financial resources used by political parties and candidates, thus adding to the integrity of the political system as a whole.

The processes related to the rendering of accounts are regulated by principles of morality, honesty and transparency. The mechanisms were designed to ensure the enforcement of these principles: *i)* monetary donations shall be made via crossed cheques payable to the chosen political party or via direct bank deposits credited in the political party account; *ii)* all donations must be reported to Electoral Courts, along with a statement featuring their receipt and respective destination, and the related financial statement; *iii)* political parties and candidates are required to open a bank account for the sole purpose of registering all financial transactions related to their respective campaigns; *iv)* political parties must submit the financial statement of the previous fiscal year to Electoral Courts on an annual basis, by 30 April of the following year; *v)* political party leaders and committees, including the treasurer, are held subject to civil and criminal liability for any irregularities or mistakes they may commit; *vi)* political parties are required to keep supporting documentation of their respective accounts for at least five years; *vii)* during an election campaign, political parties, coalitions and candidates are required to post on the Internet, on a specific website developed by Electoral Courts, a report detailing all cash resources and assets easily convertible to cash that they received for campaign-funding purposes as well as all expenditures made during said period.

Omissions regarding the rendering of accounts or irregularities identified in any financial transaction performed by political parties and candidates may result in different sanctions, ranging from the application of fines and suspension of the transfer of party fund shares to the cancellation of a party registration. The applicable penalties may reach candidates, who can be denied the issuance of a voting release certificate, have their certification cancelled or be impeached, or be rendered ineligible in the event of conviction for the perpetration of unlawful acts, including illegal capture of votes and abuse of economic power.

Within the criminal sphere, it is worth noting that electoral bribery (vote buying) and misrepresentation on a public or private document consist of conduct provided for in Articles 299 and 350 of the Brazilian Electoral Code, subject to punishment by imprisonment and fines, suspension of political rights and restrictions on the passive electoral capacity of citizens (ineligibility).

Integrity in the political funding process; the support rendered to parties and candidates, enabling them to comply with legal standards; and the bills drafted to promote the reform of political funding

The integrity of political funding processes requires Electoral Courts to remain continuously active and, as seen in many other democratic countries, Brazil is

encouraging the debate and promoting reforms targeted at ensuring greater transparency and morality of electoral and political financing mechanisms.

In addition to bearing jurisdiction to regulate and examine the matter, Electoral Courts also offer political parties the benefits detailed below, which add to the continuous improvement of processes designed to review and appraise the rendering of accounts:

- Organisation of public hearings with the purpose of gathering proposals on how to prepare a draft of campaign accounts.
- Organisation of technical meetings with representatives of national steering bodies of local political parties in order to discuss the rules, regulations and systems to be used during elections.
- Training events for representatives of regional courts, organised with the purpose of discussing the rules, regulations and systems to be used during elections.
- Publishing of the Handbook on Electoral Campaign revenues, expenditures and rendering of accounts, to be made available on the website of the Superior Electoral Court (TSE).
- Open access online course on the rendering of campaign accounts, accessible on the website of the Superior Electoral Court (TSE). The course covers rules, regulations and systems applicable to the rendering of election accounts (it is worth noting that more than 1 500 people registered for this course in 2014, having successfully completed the programme on the rendering of campaign accounts).
- Operational support to electronic systems that integrate the processes of rendering of accounts, with the aim of assisting internal and external audiences.

Finally, it should be noted that regardless of the many different control mechanisms already provided for in Brazilian laws, there are many bills being presently examined at the National Congress that are related to political financing, including, but not limited to, the following proposals: exclusively public campaign financing; criminalisation of the lack of registration of electoral donations; prohibition preventing legal entities from making campaign donations; reduction of campaign time and costs, and increase in the magnitude of sanctions to accounting and financial irregularities; the Superior Electoral Court (TSE) to be considered the competent jurisdiction to set the spending limits in electoral campaigns in the event the existing legislation fails to establish them; political parties to be required to post periodic reports on the Internet, detailing funds raised and expenditures made during electoral campaigns, etc.

In Brazil, however, the discussions about electoral financing have been occasionally reduced to a dichotomy between exclusive public financing and private financing of campaigns by individuals and legal entities without distinction.

And that is why I have already expressed my views on this matter at the Federal Supreme Court (STF). As I see it, our Constitution does not admit the prohibition of citizens' participation in the maintenance and financial support of their preferred political parties and candidates. As holders of popular sovereignty, citizens have the right to financially contribute to democracy, provided such contributions are made within legal limits.

Considering the aforementioned assumptions, as President of the Superior Electoral Court, I have filed proposals before the National Congress and other institutions involved

with the promotion of political reforms in our country. The purpose of such recommendations was to prohibit private companies from engaging in political financing, and to establish uniform spending and donations limits.

Another proposal that should be taken into consideration provides for the reduction of campaign periods from 90 to 45 days, with an additional two weeks in the event of a runoff. In addition to the obvious advantage of reducing campaign costs, I believe the suggested regulation could encourage electoral campaigns – which are presently extravagant, diffuse, and gruelling - to address issues of substantial interest to the population. That would certainly prevent the country from grinding to a halt for months, as it currently occurs, because of the reduction of activities performed by the Legislative and Executive Branches. In line with such a statement, I find it also relevant to reduce the free airtime on radio and TV from six to three weeks, so that campaign programmes could be improved, focusing more on the platforms of the running candidates and their respective government plans, and refraining from making use of special effects and related pyrotechnics, which presently constitute the most significant expenditure in electoral campaigns.

Finally, it is worth pointing to the relevance of having campaign accounts instantly disclosed on the Internet, as that provides for greater transparency and increased awareness of voters regarding the financers of their candidates. Furthermore, that adds to the continuous and appropriate monitoring exercised by the press. Free and well-informed voting encourages reciprocal control among political parties, which tends to adjust their conduct in order to meet the legal requirements in place.

A relevant and recurrent topic that appears in all proposals for political reform is not focused on rules for campaign funding, but on who is entitled to finance democracy: the people or corporations with private economic power? To make sure that popular will is respected, electoral campaigns must be free and fair, immune to the influence of large economic groups. This is what I call democratic financing of elections: the private funding of political parties and candidates, within isonomic limits, by voters, combined with the maintenance of the Party Fund, with monies from the national treasury, as established in Brazil's legislation, in conformity with the proportionality of the political representativeness expressed in the polls by popular will.

Notes

1. It is worth noting that although campaign donors are not eligible for tax incentives when making donations to political parties, according to Article 150, item VI, sub-item c of the Federal Constitution of 1988 (CF/88), the property, revenues or services provided by political parties, including their foundations, are granted with tax immunity. As established in Article 99 of Law N. 9,504/97 and in the sole paragraph of Article 52 of Law N. 9,096/95, radio and television stations are also eligible to the offsetting of taxes because of the allotment of free airtime.
2. In US dollars, according to the currency exchange rate of 2 January 2015 (BRL 2.6923).
3. In Brazil, there are presently 32 political parties that have registered before the Superior Electoral Court, and 28 parties with seats in the National Congress.
4. In 2004, 2008, and 2012, municipal elections were held to elect Mayors, Vice-Mayors and City Councilors; and in 2006, 2010, and 2014, general elections were held to elect the President and Vice-President of the Republic, State Governors and Lieutenant Governors, Senators, Congressmen and women, and State Representatives. In the municipal elections of 2012, for example, there were 482 000 candidates running for the different elective offices; and in the general elections of 2014, there were approximately 22 000 candidates.
5. In US dollars, according to the currency exchange rate of 3 October 2014 (BRL 2.4926).

Chapter 14

India

By Dr. S.Y. Quraishi

Former Chief Election Commissioner of India

This case study presents the current system of public funding of political parties and campaigns in India. It also discusses the major challenges to electoral and financial transparency.

Introduction

India follows a multi-party democracy. There are some political parties active in the entire country, whereas most of the parties operate only at the regional or state level. While all the political parties are registered with the Election Commission of India (ECI), a few of them are "recognised" as National or State parties on the basis of their electoral performance. This "recognition" entitles them to certain benefits (described later in this chapter).

High election spending and the potential for corruption go hand in hand. When the parties spend a lot of money, they need to collect a lot of money, by all possible means, fair or foul. Besides, large sums of money in politics undermine the level playing field, as all candidates or parties do not have equal access to funds. The ECI is seriously concerned about the growing influence of money in elections. "Big money" used in a non-transparent manner undermines the rule of law and vitiates the electoral process.

Vote buying is the biggest mode of such non-transparent use of money in elections. The excessive use of money much beyond the legal limits has been reported by many parties, candidates, media and civil society organisations. Several parliamentarians have also raised concerns in the House about the use of excessive money in election campaigns and have asked the Commission to take urgent steps to curb such malaise.

In the recent elections, particularly in the 2014 elections to the House of the People (the lower house of Parliament), the ECI took several steps to curb the misuse of money. However, the absence of express legal provisions for enforcement hinders these efforts. The Ministry of Law and Justice, in association with the Election Commission, organised a nationwide consultation on electoral reforms, including reform of political finance rules and transparency norms, but the recommendations have not yet converted into the desired amendment of electoral law.

Political finance and disclosure norms in India

Funding of political parties

There is no state funding of parties in India. However the parties enjoy certain indirect benefits, which include:

- free copies of electoral rolls for candidates and recognised political parties
- free airtime on state-owned radio and television for recognised political parties
- free use of space in state capitals for the offices of recognised political parties (these three limited only to the recognised parties)
- tax exemption on the income of the political parties
- tax exemption on donations to the political parties and electoral trusts, subject to certain restrictions, including prohibitions on donations from foreign sources and state-owned enterprises.

The issue of public funding to political parties has been debated, but political consensus around possible measures to address this has yet to materialise.

Private funding

Individuals or companies can make donations to political parties, subject to certain restrictions:

- Corporate donations are capped at 7.5% of average net profits of three financial years (Section 182 Companies Act, 2013).
- Donations by foreign companies and government companies are prohibited (Section 29B of RP Act 1951). A foreign company is defined in Section 3 of the Foreign Contributions Regulation Act 2010 (FCRA)and includes:
    1. a foreign company under S. 182 of Companies Act, 2013 (a company or body corporate incorporated outside India having a place of business in India, whether by itself or through an agent, physically or through electronic means and conducting any business activity in India in any other manner)
    2. an Indian subsidiary of a foreign company
    3. a multi-national corporation.

Corporate donations

In 1968, the Government banned corporate donations to political parties. However, an amendment to the Companies Act in 1985 allowed corporate donations to political parties under certain conditions. Corporations may contribute up to 7.5% of their average net profit over the previous three years to political parties, subject to approval by the Board of Directors and disclosure in the profit and loss account statement in the audited annual accounts of the company. Further:

- Income tax laws in India allow deductions for donors to political parties (if paid through bank cheque), and the receipts in the hands of the political parties are not taxable.
- Recently, the income tax law was amended, allowing the creation of Electoral Trusts as pass-through entities for the funding of political parties. The receipts of the Electoral Trusts and contributions made to them are exempt from tax. However, corresponding changes have yet to be made in the Representation of the People Act of 1951 (RPA), which governs as the electoral law of India.

Expenditures

At present, there is a statutory limit on the amount that can be spent on a candidate's election campaigns. Recently, the ceiling of the expenditure incurred by a candidate on a campaign was increased from EUR 22 400 to EUR 39 200 for elections to the State Assembly, and from EUR 56 000 to EUR 98 000 for elections to Lok Sabha (Lower House of Parliament). Further:

- There is no ceiling, however, on election expenditures by political parties. The expenditures made by political parties in favour of their candidates do not count in election expenses incurred by a candidate for the purpose of the ceiling. This effectively renders the limit on expenditures irrelevant.
- The candidates are also not required to disclose their pre-nomination campaign expenditures, nor are those expenditures considered within the ceilings.

The electoral expenditures reported by major national political parties in India in the 2014 general elections are set out in Table 14.1.

Table 14.1. **Electoral expenditures, by category and party, in the 2014 Indian general elections**

In EUR thousands

Political party	Travel expenses on star campaigners	Travel expenditure on leaders other than star campaigners	Expenditure on media advertisements	Expenditure on publicity material	Expenditure on public meetings	Any other expenditure	Total
BahujanSamaj Party	2 423	0	546	923	315	0	4 207
Bharatiya Janata Party	19 761	2 520	47 931	4 389	12 524	12 621	99 746
Communist Party of India	8	13	.8	54	21	216	312.8
Communist Party of India (Marxist)	47	209	124	351	166	205	1 102
Indian National Congress	17 559	570	40 490	3 376	4 631	1 442	68 068
Nationalist Congress party	465	57	3 479	766	92	50	4 909

Source: Election Commission of India.

Public funding contributed to political parties and candidates

1. Indirect funding by way of tax exemption on the donations made by individual or companies to political parties above EUR 280 from a single entity (on disclosure of the contributions in a prescribed format to the Commission [ECI]).
2. The national political parties have submitted to the Commission their Annual Contribution reports regarding receipt of donations in excess of EUR 280 in a financial year under Sec 29C of the RPA (Table 14.2).

Table 14.2. **Donations received in excess of EUR 280 by political parties in India, 2010-14**

In crore rupees

	2010-11	2011-12	2012-13	2013-14
Bahujan Samaj Party	0	0	0	0
Bhartiya Janata Party	14.51	37.33	83	166.77
Communist Party of India	1.18	0.60	0.34	1.28
Communist Party of India (Marxist)	1.566	2.26	4	2.09
Indian National Congress	7.41	10.93	101.75	66.47
Nationalist Congress Party	0.14	2.55	0.05	14.02

Source: Election Commission of India.

The above reports are uploaded to the Commission website for public viewing. It is important to note that in reality there is a lot of under-reporting, and the contributions disclosed to the Commission are reported to be only a small fraction of the actual total contributions received by some of the parties.

Mechanism to regulate media spending by political parties and candidates

More than one-third of campaign expenditure is generally incurred on media and is increasing with its vast expansion. However, the Election Commission of India has no regulatory power over the media. Nevertheless, Media Certification and Monitoring Committees (MCMC) are established in each district per instructions from the Election Commission to monitor the content of political advertising and to keep a watch on suspected paid news, whereby media does surrogate publicity for a party or candidate in the guise of news – a new scourge.

The Election Commission does not have sufficient capacity to undertake pre-censorship of all advertisements on the various cable networks and television channels. Instead, it has delegated its powers to the respective District Magistrates (DMs) of the States or Union Territories by a general order.

These officers act under the supervision of the Election Commission. Appeals against DM orders can be made to the Chief Electoral Officer of each State. The Chief Electoral Officer may appoint a committee for hearing the complaints or grievances of any political party, candidate or any other person in regard to the decision to grant or to refuse certification of an advertisement. Decisions of the committee are binding. Orders for modification or deletion of the advertisements must be complied with within 24 hours of receipt of the decision, and the modified advertisement may then be resubmitted for re-evaluation. The committee also communicates its decision to the Election Commission.

Provisions of Section 126 of RPA apply allowing any political party, candidate or any other person to appeal a decision of the committee, the Designated Officer or Election Commission. The appeal may be heard by the court for clarification or appropriate orders. No other court, tribunal or authority may hear any petitions in regard to a complaint against such advertisement.

Under Section 127A of the RPA no person shall print, publish, or cause to be printed or published any election pamphlet or poster, handbill or other document without mentioning the name and address of the printer and the publisher. It is the responsibility of such press to deliver a copy of the declaration along with a copy of the document to the DEO/CEO within a reasonable time after printing the document.

Transparency and accountability

Funding disclosure

With regard to the funding of parties:

- Political parties are required to disclose to the Commission annually, prior to the income tax return filing date, the names and addresses of persons donating more than INR 20 000 (or EUR 280) (Sec 29C of the RPA) at a time. If they fail to submit the report to the Commission in time, the tax exemption on the contributions will not be allowed by the Income Tax Department, as per provisions of the RPA. The Commission forwards these reports to the Income Tax Department for necessary action, and to the Ministry of Home Affairs for verification of contributions from foreign sources, and to the Ministry of Corporate Affairs for verification of the corporate donations under the Companies Law.

- However, the parties are neither required to maintain the details, nor required to disclose to the Commission, if the one time contribution made by a person is not more than EUR 280. They are also not required to disclose total contributions received, and, therefore, anonymous donations are not restricted or prohibited. Similarly, there is no penal provision if political parties accept or receive donations from prohibited companies or sources, in violation of Section 29B of the RPA. The parties exploit this – over 75% of the total funds received do not disclose the source.

With regard to funds received by candidates:

- Candidates may raise funds from any source, as there are no restrictions on fundraising by candidates, nor is there any requirement to maintain and disclose the names and addresses of the persons from whom they receive the funds.
- On the direction of the Election Commission, the Institute of Chartered Accountants of India (ICAI) has issued guidelines prescribing accounting and audit standard for the parties. However, there is no penal provision for the violation of such guidelines by the candidate or the party. Theoretically though, the ICAI can revoke the licence of the chartered accountant.
- During the election period, the Commission appoints independent Expenditure Observers, who work as the eyes and ears of the Commission. During the election campaign period, the candidates are required to submit their day-to-day election expenditure statements three times to the Expenditure Observer for inspection. The final accounts with bills and vouchers must be submitted to the Designated Election Officer within 30 days of the end of elections. Failure to submit this statement to the DEO within the timeframe and manner prescribed may result in the candidate's disqualification by the Commission for a period of three years.
- The Commission has issued instructions that each candidate should open a separate bank account for election expenses, and incur all expenses from that account by cheque, excluding small payments below INR 20 000 (or EUR 280). But there is no penal provision to enforce this.

Disclosure of election expenditures by candidates

Disclosures measures are designed to make political parties and candidates observe the campaign expenditure ceilings, as well as prevent illegal, prohibited or otherwise restricted expenditures. Candidates must also file an affidavit providing details of their assets, liabilities and any pending criminal cases against them.

Accounting and reporting procedures

With regard to maintenance of day-to-day accounts of election expenses, cash and bank registers:

- Candidates are required to maintain books and registers of their election expenditures, e.g. register of day-to-day accounts, cash register and bank register.
- Every candidate may appoint an additional agent for assisting the candidate in various expenditure-related matters.
- The candidate is required to submit the register to the Expenditure Observer/designated officer for inspection at least three times during the

campaign period, as per the schedule of inspection prepared by the Returning Officer.

- In the case of non-production of the election expenditure register for inspection on the day fixed for this purpose, a notice is issued by the Returning Officer.
- If the candidate does not produce the register within three days of service of the notice, the candidate's permission for use of vehicles during election may be withdrawn, The withdrawal of permission for use of vehicles is made known to all Surveillance Teams and Flying Squads deployed in the constituency, and vehicles may be impounded. If the candidate still does not produce the register of election expenditures for inspection, a complaint under Section 171-I of the IPC shall be filed in the competent court.

Disclosure of expenditures by political parties

Political parties are required to disclose a partial statement to the Commission within 30 days of the declaration of election results detailing funding given to candidates, as well as a full disclosure within 75 days of the state assembly elections, and 90 days of Parliament (*Lok Sabha*) elections, the total amount of election expenses incurred. But there is no penal provision should the parties decline to submit the report or submit an incomplete or incorrect report. The Commission has issued instruction in its transparency guidelines for the political parties that the report should be verified by a chartered accountant, but there is no penal provision to ensure this. The Commission makes these reports publicly available on its website. The contribution reports and the annual audit reports submitted by the political parties are also posted on the Commission's website for public viewing.

In the Election Expenditure Statements, political parties are required to provide details of expenditures made under different categories (e.g. travel expenses, expenditures on media advertisements, expenditures on publicity materials, lump sum amounts paid to each candidate for campaigning purposes, etc.). These statements filed by political parties are made publicly available on the Commission website.

The Commission has issued transparency guidelines directing the parties to file the Annual Audited Accounts with the Commission within seven months of the end of financial year. It has also issued guidelines that the parties should not incur any expenditure above INR 20 000 in cash to a single person in a day (excluding the transactions in areas not having banking facilities). In the absence of penal provisions, some parties do not comply with these requirements.

Scrutiny/audit of the information submitted by political parties and candidates

According to the transparency guidelines of the Commission, accounts maintained by political parties should conform to the guidance note on Accounting and Auditing of political parties circulated by the Institute of Chartered Accountants of India. Annual accounts are required to be audited and certified by qualified practising Chartered Accountants. In addition, all political parties are expected to submit to the Commission copies of their audited annual accounts, along with the Auditor's report for each financial year (i.e. April to March), before 31 October of each year. Annual audit reports submitted by the political parties are sent to ICAI for further examination. Apart from posting the contribution reports on the website for public scrutiny, the reports submitted by the

political parties are also sent to the Income Tax Department, the Ministry of Corporate Affairs and the Ministry of Home Affairs for further scrutiny.

Format in which the information is made available to the public

Scanned copies of all financial reports of the political parties (contribution reports, annual audit reports and election expenditure reports) are made publicly available on the Commission's website within seven days of submission.

Transparency guidelines

In the interest of conducting free and fair elections, maintaining the purity of the election process, and providing guidelines to encourage transparency and accountability with regard to political party funds, the Commission has issued transparency guidelines that apply to all political parties. The main features of the transparency guidelines are as follows.

To maintain such books of accounts and other documents that conform to the guidance note on Accounting and Auditing of political parties, issued by the Institute of Chartered Accountants of India. The Annual Accounts shall be audited and certified by qualified, practicing Chartered Accountants.

Political parties are required to submit to the Commission a copy of the audited Annual Accounts with the Auditor's report for each financial year, before 31 October of each year.

For this, they shall maintain the names and addresses of all individuals, companies or entities making a donation, except petty sums, donated by the public only during its public rallies. Further, any amounts/donations received in cash shall be duly accounted for in relevant account books, and deposited in the party's bank account within a week of its receipt. However, the party can retain a reasonable amount of cash required for the day-to-day functioning of the party and for defraying cash expenses.

If a party incurs any expenditure, it shall ensure that no payment in excess of INR 20 000 is made in a day to any person or company or entity in cash, except where: *i)* the payment is made in a village or town, which is not served by a bank; or *ii)* the payment is made to any employee or party functionary towards salary, pension or for reimbursement of his/her expenses; or *iii)* cash payment is required under any statute.

Section 77(3) of the RPA provides a ceiling of election expenditure for a candidate irrespective of the source of the funds. Therefore, if the party desires to provide any financial assistance to its candidates for their election expenses, such assistance shall not exceed the prescribed ceiling. Any payment in this regard by the party shall be made only through crossed account payee cheque or draft or through bank account transfer, and not in cash.

Integrity

During the last elections, a 24/7 call centre was set up in each district, allowing voters to make toll-free calls to register complaints of any suspected violations or other corrupt practices. All complaints received were recorded and forwarded to the relevant "flying squad" (mobile enforcement team). Phone numbers of the local expenditure observers were also made public with invitations to the public to register any complaints of electoral code violations. Complainants were informed of follow-up action taken. In

addition, between 1 March (announcement of elections) and 15 May, the Election Commission received 3 159 calls from voters to report suspected misconduct.

Fostering a culture of integrity within the public sector, among political parties and private donors

The Election Commission supports campaigns propagating ethical voting, engaging non-governmental organisations (NGOs), village level/ward level awareness groups (VAGs/WAGs), civil societies, and by announcements on legal provisions, uploading facility of photo/audio/video of corrupt practices. It has also begun engaging in booth-level awareness groups (BAGs).

Compliance and oversight

In India various measures are taken to ensure effective compliance, as described below.

For effective compliance of the Commission's instructions in connection with the expenditure by candidates and political parties, various teams are formed:

1. **Flying Squad:** Dedicated Flying Squads under each Assembly Constituency/Segment for tracking illegal cash transactions or any distribution of liquor or any other items suspected of being used for bribing the voters.
2. **Static Surveillance Team (SST)**: These teams put check posts and watch for movement of large quantities of cash, illegal liquor, any suspicious item or arms being carried in their area. The entire process of checking is video-recorded to prevent harassment or bribery.
3. **Video Surveillance Teams:** Capture all the expenditure-related events and evidence for any future reference as proof. Expenditure-related events and evidence are reviewed by the Video Viewing Teams and Accounting Teams to prepare Shadow Observation Registers for each candidate.
4. **Media Certification and Monitoring Committee (MCMC):** This district-level committee is set up for the certification of campaign advertisements, and to also monitor both print and electronic media including cable networks, and record either in CD or DVD. They maintain photocopies of all advertisements/paid news/election-related news of the contesting candidates/political parties.

A scanned copy of the Abstract of expenditure statements of all the candidates along with copies of all notices issued by the RO, and the replies thereto must be posted on the website of the CEO within three days of lodging the account of election expenses by the candidate.

Accounts maintained by the candidates are scrutinised by the Observers and other district-level teams during the election process, as elaborated above.

Most of the information in connection with the funding and expenditure of the political parties and candidates are posted on line for public scrutiny. Anyone can also ask for the information under Right to Information Act 2005. There are many NGOs like the Association of Democratic Reforms (ADR), National Election Watch, etc., who are doing commendable jobs by doing research on electoral reforms and even filing Public Interest Litigations (PILs)s to cleanse the political system in India.

Conducting investigations, referral of cases for prosecution

In addition to the district authorities, the ECI takes assistance from various law enforcement agencies like state excises, the Income Tax Department, the Central Police Force, etc. to conduct investigations.

Sanctions applied following the breach of political finance regulations - disqualification

Candidates are issued notices to date for failure to submit election expenditure accounts within the prescribed time limit. Out of the five returned candidates who were issued notice, one was unseated and disqualified.

The list of other persons (non-returned candidates) disqualified for three years under Section 10A of the RPA is posted on the Commission's website (www.eci.nic.in).[1]

Helping political parties and candidates comply with regulations

The Commission has introduced e-filing of certain forms and statements, by candidates and political parties and launched a new "Election Commission Return Preparer (ECRP) Scheme" to assist them in online filing of the forms, affidavits, etc.

The Election Commission of India set up the India International Institute of Democracy and Election Management in 2011 in order to provide training on electoral practices to meet domestic and international requirements of election managers. The institute also organises training and orientation programmes for political parties.

Challenges

Challenges and emerging risks in relation to a level playing field

1. In view of the high costs of election campaigning in terms of media advertisements and public rallies, use of "big money" in politics is a major concern today. The Commission is open to the idea of expanding the in-kind subsidy for election campaigns, with simultaneous reforms for transparency and accountability of parties and candidates.
2. Vote buying is another challenge. Political parties often indulges in distributing cash, liquor and gifts to buy the support of voters.
3. The policy of financing of political campaigns but not political parties results in continued distrust of government and major economic actors. Political parties' main source of fundraising, namely donations from undisclosed sources, perpetuates the idea that these donations result in crony capitalism – that is preferential policies, favours, or other rewards to criminals, corporations, and government contractors. State funding for political parties could help resolve this problem. One possible way to implement this would be through a party funding system which allocates funding to parties according the number of votes received. This system would be further complemented by a ban on corporate and anonymous donations, thereby minimising the appearance of *quid pro quo* arrangements.

Challenges and emerging risks in relation to transparency and accountability

1. There is no uniform method of accounting by the political parties and no ceiling for expenditure by political parties.
2. There is no requirement of disclosure of campaign-expenditure by a third-party campaigner, i.e. a person not authorised to campaign by either the party or the candidate.
3. The cash economy in India encourages the use of black money and vote buying.
4. There is a new phenomenon of "paid news" – advertisements masquerading as news and hence expenditure not accounted for.

Challenges and emerging risks in relation to compliance and oversight

1. There is no penalty for non-compliance by parties. The Commission has recommended having legislation authorising sanctions for non-compliance.
2. There is no law regulating the parties, as the Election Commission of India is not a regulator of political parties under current law. In addition, the Commission does not have the authority to deregister or impose civil penalty on political parties.

Plans to reform political finance regulations

1. The Law Commission in its 255th Report has dealt with electoral reforms and made detailed recommendations.
2. The Election Commission held a national consultation to discuss the issues in context with the Law Commission's report, which was attended by various recognised political parties, senior election officials, journalists, academics, NGOs, students, legal experts, etc. The outcome of the consultation has been forwarded to the Government for consideration.
3. The Commission has made various recommendations on electoral reforms in the past as well.

Conclusion

The money power in elections continues to evade solutions. While India is not the only country grappling with the problem, it is no consolation. It underlines the need for the world community to put their heads together to come up with workable solutions. Without further delay, OECD and International IDEA can lead this effort as they have indeed begun to do. Let 2016 be the year for clinching the issue at last.

Note

1. See http://eci.nic.in/eci_main/ElectoralLaws/disqualified-person-list-13012015.pdf.

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OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(42 2015 26 1 P) ISBN 978-92-64-24944-8 – 2015

OECD Public Governance Reviews

Financing Democracy

FUNDING OF POLITICAL PARTIES AND ELECTION CAMPAIGNS AND THE RISK OF POLICY CAPTURE

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Consult this publication on line at ***http://dx.doi.org/10.1787/9789264249455-en.***

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ISBN 978-92-64-24944-8
42 2015 26 1 P