



Greece - OECD Programme:
Provision of Technical Assistance
to Fight Corruption

Training manual on the regulation of political parties & candidate funding



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The Greek government gives priority to the fight against corruption and bribery and, with the assistance of the European institutions, is committed to take immediate action. Under the auspices of the General Secretariat of Anti-Corruption (GEGAD), the National Anti-Corruption Action Plan (NACAP) identifies the key areas in need of reform and provides a detailed action plan to strengthen integrity and fight corruption and bribery. The OECD, in cooperation with Greece and the European Commission, has developed a series of supporting actions for the implementation of the NACAP. This work is scheduled to be completed in January 2018 and is co-funded by the European Commission and Greece. For more information visit the [project website](#).



General Secretariat of Anti-Corruption

Thanks to

This handbook was prepared by the Public Integrity Unit of the Public Governance Division of the OECD's Public Governance Directorate as part of the technical assistance project to Greece on anti-corruption. Under the supervision of Sarah Dix, the project was led by Lisa Klein and Yukihiro Hamada under the guidance of Julio Bacio Terracino. Angelos Binis was substantially involved in this project while Katerina Kanellou facilitated interviews with stakeholders. Laura McDonald handled the editing and communications, with input from Julie Harris and Meral Gedik. Alpha Zambou and Paraskevi Akrivaki provided the necessary administrative support.

The OECD expresses its thanks to the Greek government, and in particular to the General Secretariat of Anti-Corruption (GEGAD), for their support and contribution throughout this project. The OECD also thanks the experts who shared their experience and knowledge, in particular the staff of the Special Service of the Committee for the Asset Declarations's Control of the Hellenic Parliament, the Director of the Political Office of the Minister of Interior, the staff of the relevant organisational units of the Ministry of Interior and the representatives of Vouliwatch (a non-for-profit parliamentary monitoring and democracy watchdog organization).

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1. Introduction

During the last 25 years, there was a steady increase in the interest of international organisations, legislators, civil society and academia in the financing of political parties. At the same time, many countries around the world have introduced regulations in this area¹. Indeed, although the scope and nature of regulation varies from country to country, almost every country has now introduced regulations in this area².

The focus in this area is mostly on legislative framework and some high-level international standards. As a result, a well-developed set of structural elements has emerged that form the foundation of any control system for the financing of political parties, which will be analysed in Chapter 1. Chapter 2 also sets out, in addition to the international and national standards, the principles underlying the objectives to be achieved for the control of political party financing.

Chapter 3 provides practical information on how to develop a strong legislative framework for the political party funding system.

However, the law application on this issue has so far received less attention and empirical research, on the pros and cons of different operational approaches, is lacking. While an effective legislative framework consistent with international standards is central to any strong political party financing system, without effective implementation, the system is doomed to remain incomplete. Chapter 4 examines the major prerequisites for implementing a system of political party financing control, while Chapter 5 outlines some of the challenges that may arise and the tools to address them.

Before going any further, we need to examine the concept of "**political parties' funding**" in its full extent. This term is very broad but in this training manual it is considered to encompass both the financing of political parties and the financing of election campaigns. Political party financing encompasses the "costs of maintaining permanent offices, conducting research into political affairs, participating in political debate, registering on electoral rolls and other established functions of political parties"³. Campaign financing "means all monetary and in-kind contributions and expenditures by and to candidates, their political parties or their supporters for the purposes of election"⁴.

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1. In some countries, such as the United States and the United Kingdom, there were already in place since the 19th century legislative provisions concerning specific dimensions of political party funding, but it was only in 1974 that comprehensive legislative frameworks were introduced in the United States and, respectively, in 2000 in the United Kingdom.
 2. See IDEA database at www.idea.int/data-tools/data/political-finance-database.
 3. IFES, Training in Detection and Enforcement (TIDE) Political Finance Oversight Handbook, edited by Magnus Ohman (2013), p. 8.
 4. Unpublished work by Barbara Jouan Stonestreet.

2. Structural elements of the systems for controlling the funding of political parties

Any system for controlling the funding of political parties consists of four structural elements: the sources of funding, expenditure, transparency and the way the rules are applied.⁵ A series of authoritative publications provides detailed information on each of these structural elements (see Annex B). For the purposes of this manual, the following summary explains the key points of each of these elements.

Controls on the funding provision

There are two distinct sources of funding: funding from the State and revenue from individuals and legal entities.

In many countries, political parties and/or candidates receive state funding. Financial support can take the form of grants (direct state funding) or indirect support, such as access to services/state property at no charge or at a reduced price.⁶ The level of public funding varies from country to country, however, in cases of public funding the eligibility criteria play a key role. If the eligibility criteria are too high, they may hinder the formation of new political parties. On the other hand, particularly low eligibility criteria can act as a “lifeline” for political parties on the verge of disintegration. Low eligibility criteria also encourage the creation of opportunistic political parties whose founders are more interested in securing state support than in participating dynamically in political life. Indicatively, the most common criteria for determining state support are: the number of votes the party received in the previous elections, the degree of representation in the elected body or the number of

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5. In addition to these four structural elements, the regulation controlling the financing of political parties often contains rules governing the financial conditions for running for public office (candidates' deposits and asset declaration) and laws prohibiting vote-buying.
 6. Almost 60% of countries provide some element of public funding. See IFES Brazil 2011 Conference Paper, *Global Trends in the Regulation of Political Finance*, p. 3.

candidates standing or the number of constituencies won.⁷

Also, the question of whether state funding should be provided before or after the elections must be answered. The OSCE/ODIHR (Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights) and the Venice Commission's guidelines on the rules of political parties' operation refer to this:

*... careful consideration should be given to the systems for providing funding before elections as opposed to the reimbursement of expenditure after elections, which perpetuates the inability of small, start-up or needy parties to compete on equal terms.*⁸

Private funding is recognised as a means for parties and candidates to reach out citizens and seek support either in the form of cash or in-kind contributions.⁹ Therefore, private funding can be seen as a means of involving citizens in political developments. The main forms of private financing are membership fees, contributions, loans and income generating activities. In some countries, there may be restrictions on the sources of private funding. For example, in France, companies are prohibited from making donations and many countries prohibit both foreign financial support and anonymous financial assistance. Apart from the categorical prohibitions, there may be limits on the amount of support allowed from private sources. Some countries set a limit on the amount of funding a donor can raise, while in others, there is a ceiling on the total amount of support that a candidate or a party can raise from private sources.

Controls on expenditure

If we consider funding sources to be the 'supply side' in relation to the funding of political parties, then expenditure controls are the 'demand side'. These controls are usually reflected as limits on campaign spending by political parties, candidates and any third-parties involved in the pre-election campaign (for example, candidates who do not belong to a political party). Countries that impose spending limits use different approaches to calculate the spending limit. Some set a specific absolute

7. OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris, pp. 37-45.

8. OSCE/ODIHR and the Venice Commission guidelines on the control of political parties, paragraph 184.

9. Aid in kind is any form of goods or services provided free of charge or at a price below market value.

amount, others calculate the limit on the basis of average annual salary or minimum daily wage, and others calculate the spending limit in relation to the number of voters or residents in a constituency.

Regardless of the approach, the limit must be reasonable. If it is set too high, it will only be for formal reasons and will have no meaningful content. On the contrary, if the threshold is set too low, it may not allow the campaign to be conducted adequately and may tempt some candidates to circumvent it.

The legislation provides a clear definition of what constitutes campaign expenditure. It is therefore essential that the types of activities covered are clearly defined and that the period of the controlled election campaign is defined in order to ensure that the expenditure limit is effective. It is also important to clarify which parties are subject to the limit - ideally, the limits should apply to all those who incur election expenditure, i.e. political parties, candidates and third party (non-political party) participants in election campaigns, although the limits should not be set at the same level in all cases.

In addition to setting expenditure limits, some countries have implemented bans on specific forms of spending. The most common of these are bans on the misuse of state resources, bans on media advertising and bans on vote-buying activities.

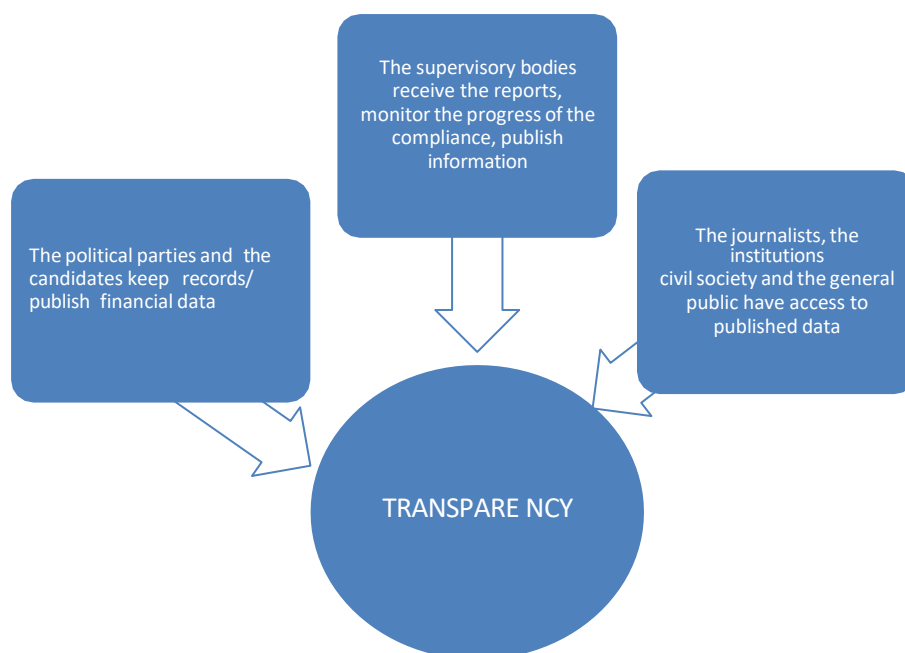
In the majority of countries, there are regulations on the misuse of state resources for political party activities and party election campaigns. In some countries, the prohibition may form part of the legislation regulating the conduct of elections, or, in particular, the financial aspects of elections. In other cases, it may form part of anti-corruption legislation or public administration laws. The rationale behind this argument is that there should be “a distinct and defined separation between the state and political parties”.¹⁰ In the absence of the requisite separation and when the system is abused, the fundamental tenets of democratic governance, namely equal treatment and equal opportunities to participate in the electoral process, are undermined.

Rules on transparency

Transparency is a fundamental aspect of any system of financing political parties. Information about the sources of funding and the intended use of funds for political parties and candidates can help to clarify any potential ambiguity and prevent any suspicion of corrupt transactions. The reporting and disclosure requirements for financial information

10. See paragraph 5 of the Copenhagen Conference Document.

vary from country to country¹¹ as do the approaches to implementing them. The key elements, depending on each country, are illustrated schematically as follows:



The principles of transparency require that reports be timely, detailed, comprehensive and easy to understand. The information provided should be sufficient and presented in a manner that enables meaningful monitoring and control of compliance. At the same time, the needs of those required to comply with the reporting requirements should be considered. For example, deadlines should allow sufficient time for the team responsible for the reports to meet and review the information to be published. Consideration should also be given to how much of the information submitted to the regulator will be made public, when and in what form. The use of digital media to facilitate the collection, transmission and review of information to be made public is permitted.

The socio-political and legal context of each country influences every aspect of the regulations controlling the financing of political parties, but is particularly noticeable in the area of reporting and publication of financial data. There may be institutional restrictions on

11. In 89% of European countries and 86% of Asian countries, political parties are required to publish regular financial reports. And in 90% of European countries and 71% of Asian countries, the reported information must be made public. See, IDEA (International Institute for Democracy and Electoral Assistance), Political Finance Regulations Around the World: An Overview of the International IDEA Database (2012) and Political Finance Database, www.idea.int/data-tools/data/political-finance-database (date accessed: 16 August 2017).

what information is to be submitted to the supervisory body. In France, for example, the interpretation of Article 4 of the Constitution prohibits the mandatory submission of information on a party's general financial operations to the supervisory authority. Other laws, such as those on the protection of personal data, may also apply, prohibiting the publication of specific data relating to the donor. In other countries, electronic signatures may not yet be legal (or may require special permission), which affects the development and use of an electronic database to record the required information. In the UK, the law requires the publication of financial contributions to political parties above a certain threshold. However, particularly in Northern Ireland, financial contributions to political parties are exempt from disclosure for reasons of donor security due to the ongoing conflict in the country.

Supervision and enforcement of sanctions

The final component of any system of financing political parties is the necessity for an effective supervisory mechanism. This entails the establishment of a body or entities whose primary function is to oversee compliance with the law, and the implementation of penalties for non-compliance.

Around the world, different models of supervisory organisations are applied. Some countries have designated the election management body as the supervisory authority, while others have assigned this function to a ministry. Other potential solutions include assigning the oversight function to a judicial body, a state audit body or a specialised public body. As will be analyzed in more detail below, the supervisory body must be impartial, independent and adequately resourced. Regardless of which body assumes responsibility for oversight, it is essential that the oversight body has the appropriate authority, policies, people and procedures to carry out its work effectively. Above all, the organisation must demonstrate a clear commitment to fulfilling its mission.

Sanctions may take a number of forms, including administrative penalties, confiscation, mandatory corrective measures, deprivation of public funding, removal from relevant registers and/or criminal sanctions. The purpose of sanctions is to rectify the infringing behaviour, to penalise the offender so that they do not benefit from the infringement and to deter any future infringements. It is internationally accepted that sanctions should be 'effective, proportionate and dissuasive'. However, it is not sufficient to provide for such sanctions unless they are applied in an objective manner without any partisan considerations.¹² It is important to note that the provision of sanctions is not sufficient unless they are applied in an objective manner, free from any partisan considerations. It is therefore important to ensure that there is

12. Recommendation Rec (2003)4 of Ministers' Committee of Ministers, Article 16.

"an effective means of appealing against administrative decisions" such as the imposition of sanctions.¹³

13. Document of the Copenhagen Conference (1990) of the Organisation for Security and Cooperation in Europe (OSCE), paragraph 5.10.

3. Basic principles and international standards

The regulatory framework governing the funding of political parties is based on the assumption that political parties and candidates play a pivotal role in democratic governance and require adequate funding to be effective. It is also important to recognise that a proper regulatory framework in this sensitive area requires a careful balancing of fundamental rights and freedoms. On the one hand, international agreements not only guarantee the right to participate in public life and the right to vote¹⁴, but also recognise the right to organise and assemble, the right to privacy and the right to freedom of expression¹⁵. These rights and freedoms are fundamental in the context of political discourse and electoral debate. On the other hand, to a certain extent, it is acceptable to control or violate these fundamental rights and freedoms in order to ensure the independence and integrity of the electoral process. For example, freedom of expression could, in theory, not limit the amount of money an individual can contribute to support or reject a particular candidate or party. However, the ability to provide unlimited funds could contribute to the undue influence of wealthy donors and undermine the election campaign itself. The important question is how to delimit these conflicting interests.

In order to achieve the objective of delimitation, it is essential to identify the fundamental principles that govern the political parties' funding. Secondly, the regulation should ensure equality of opportunity for all political parties or candidates, regardless of their financial resources, to compete on a level playing field in the electoral process. Thirdly, transparency is of the utmost importance. This is in line with the quotes of the US Supreme Court. It is often said that "sunlight is the best disinfectant". The fourth principle is accountability, which requires that political players be held accountable for their actions through effective supervision and sanctions.

14. See General Comment 25 of the Human Rights Committee and Article 1 of the Copenhagen Conference Document (1990).

15. Document of the Copenhagen Conference (1990) of the Organisation for Security and Cooperation in Europe (OSCE), paragraphs 9.3 and 10.

The composition of these principles varies¹⁶ and is the subject of an otherwise endless academic debate, but all are accepted to a greater or lesser degree. In fact, they constitute the cornerstone of international standards for the political parties' financing. The table below illustrates the context and background of these basic principles. It highlights relevant issues in the regulatory framework related to each of the above principles, identifies international standards or other documented reference, and provides examples of common approaches to addressing these issues.

16. For example, some experts/organisations refer to 'equal treatment' rather than equality of opportunity. See e.g. OECD (2016) Financing Democracy. Others argue that it is impossible to achieve equal treatment in politics and opt for 'equality of opportunity'. See e.g. Ewing, The Cost of Democracy Party Funding in Modern British Politics, Hart Publishing 2007.

| Authority | Related regulatory framework problem | Key international/European standards | Approaches to address the challenge |
|--|--|--|---|
| Equality Sources of funding | State funding | <p>Article 1 of Recommendation Rec (2003)4 of the Committee of Ministers of the Council of Europe: "The State should provide support to political parties. State support should be limited to reasonable financial support. State support may be financial. With regard to the distribution of State support, objective, equitable and reasonable criteria should be imposed".</p> <p>Paragraph XX (Venice Commission) Council of Europe guidelines on the financing of political parties: "However, to ensure equal opportunities for different political forces, state funding could be extended to political institutions that represent a significant share of the electorate. The level of funding could be set by the legislature on a periodic basis, according to objective criteria".</p> | <ul style="list-style-type: none"> Establishing fair criteria for the calculation and distribution of public funding Adopting regulations on gender equality Adoption of a regulation on minorities |
| | Private funding | <p>Articles 3, 5 and 7 of Recommendation Rec (2003)4 of the Ministers Committee: "States should [...] consider introducing rules limiting the value of financial support to political parties [...] take measures aimed at limiting, prohibiting or otherwise strictly controlling financial support from legal persons providing goods or services by any public administration [...] prohibit legal persons under the control of the State or other public authorities from providing financial support to political parties [...] limit, prohibit or otherwise strictly controlling financial support to political parties [...] limit, prohibit or otherwise strictly control financial aid from foreign donors".</p> | <ul style="list-style-type: none"> Establishment of regulations with quality criteria (ban on anonymous, financial aid from foreigners or companies) Establishing regulations with quantitative criteria (limiting the amount of money allocated to candidates/political parties) |
| IMPORTANCE Restrictions and prohibitions on expenditure | Limits of expenditure and campaign spending bans | <p>General Comment 25 (1996) of the UN Human Rights Committee: "Reasonable restrictions on campaign spending may be justified where they are necessary to ensure that the free choice of voters is not affected or the democratic process is not undermined by disproportionate spending by a candidate or political party".</p> <p>Article 9 of Recommendation Rec (2003)4 of the Ministers Committee of the Council of Europe: "States should consider adopting</p> | <ul style="list-style-type: none"> Establishment of a specific threshold for Expenditure on election campaigns, parties, candidates and third parties involved in election campaigns Imposing restrictions on Media Spending |

| Authority | Related regulatory framework problem | Key international/European standards | Approaches to address the challenge |
|--------------|--------------------------------------|---|---|
| | Misuse of State resources | <p>measures to prevent the excessive financing needs of political parties, such as setting limits on campaign spending”.</p> <p>Articles 2-3 of Recommendation Rec (2003) 4 of the Ministers Committee of the Council of Europe: "Equality of opportunity must be guaranteed for both political parties and candidates. This requires a neutral attitude on the part of the public authorities, in particular as regards election campaigning, media coverage, especially by the private media, and state funding of parties and election campaigns”.</p> | <ul style="list-style-type: none"> Prohibition of some forms of campaign expenditure Prohibiting the use of state/administrative resources during election campaigns (e.g. requiring staff to attend political concentrations, to use state buildings for the purposes of the campaign, to distribute the news airtime equally) |
| TRANSPARENCY | Archiving and reporting | <p>Recommendation Rec 1561(2001) of the Parliamentary Assembly of the Council of Europe: "The funding of political parties should be characterised by full transparency, which implies that, especially political parties, should keep records of all income and expenditure, which should be submitted at least once a year to an independent audit authority and be made public”.</p> <p>Article 12 of Recommendation Rec (2003)4 of the Committee of Ministers of the Council of Europe: "States should require political parties and their affiliated legal entities to keep proper records and books”.</p> <p>Article 12 of Recommendation Rec (2003)4 of the Committee of Ministers of the Council of Europe: "States should oblige political parties to submit accounts [...] to the independent authority”.</p> | <ul style="list-style-type: none"> Development or availability of accounting guidelines and standards Appointment of a specific person to be responsible for its finances party/candidate (opening bank account, account maintenance, reporting, etc) Meeting deadlines |
| | Share | <p>Article 7.3.19 of the UN Convention against Corruption: “Each state is committed to take appropriate legislative and administrative measures [...] to improve transparency in the funding of candidates for elected public offices and, where appropriate, in the financing of political parties”.</p> | <ul style="list-style-type: none"> Enforcement of the duty to disclose information Setting deadlines for publication |

| Authority | Related regulatory framework problem | Key international/European standards | Approaches to address the challenge |
|-----------------------|--------------------------------------|--|---|
| | | Paragraph XX of the OSCE/ODIHR (Venice Commission), Council of Europe guidelines on the financing of political parties: "Transparency of election expenditure should be achieved through the publication of campaign accounts". | <ul style="list-style-type: none"> Determination of the means of publicity |
| Accountability | Supervision | <p>Article 14 of Recommendation Rec (2003)4 of the Ministers Committee of the Council of Europe: "States should provide independent oversight with regard to the financing of political parties and election campaigns".</p> <p>Paragraph 212 of the OSCE/ODIHR (Venice Commission), Council of Europe Guidelines on the financing of political parties: It is appropriate to take effective measures [...] to ensure the independence of the body from political pressure and impartiality.</p> | <ul style="list-style-type: none"> Establishment of provisions guaranteeing the independence of the supervisory body Establishment of an appointment procedure Definition of professional qualifications/restrictions Ensuring adequate resources |
| | Sanctions | Article 16 of Recommendation Rec (2003) 4 of the Committee of Ministers of the Council of Europe: "States should provide that the violation of the rules [...] shall be subject to effective, proportionate and dissuasive sanctions". | <ul style="list-style-type: none"> Delegation of powers to the supervisory body Adoption of a set of sanctions Establishment of procedures for the penalties' imposition Ensuring the right of appeal against decisions imposing sanctions |

4. Developing a stable legislative framework

Very often, an upcoming election or a major political scandal acts as a catalyst for the implementation of reforms in the political parties' financing. On their own, neither of these two elements has a negative impact, but together they can easily overshadow and undermine the adoption of a more methodical approach to the creation/modification of a political party financing system. However, a methodical approach is precisely what is needed to create a strong and operational regulatory framework. This is particularly true in the case of the political party funding regulatory framework because, unlike social programmes or other forms of economic regulation, party and campaign finance legislation sets the rules for access to power. There are several factors to be considered when drafting legislation.

Objectives' Clarity

It is essential to have a clear understanding of the legislation's objectives. If the objective is to ensure that political parties have sufficient resources, it would be appropriate to allow donors to contribute large amount of money to the party and to set a high limit for the publicity of relevant information. This is because, in theory, donors are more likely to contribute if their identity is protected from public scrutiny. On the contrary, if the objective is to enhance transparency, establishing a higher limit for information publicity would not be an effective strategy. In short, objectives' clarity enables legislators to select the most suitable objective from a set of competing priorities. It also provides guidance to those who will be responsible for understanding and implementing the law, including political parties, supervisory bodies, and the judiciary.

Enforceability

It is essential to assess the enforceability of any legislative proposal in the context of the drafting process. It is important to consider the enforceability of the relevant provisions in order to identify any potential issues. The first issue to be addressed is whether there are any **legal loopholes** that could be exploited to circumvent the legislation and/or its intended purpose. Suppose, for example, that the aim of the legislation is to limit the influence

associated with large financial support. In order to achieve this objective, it would not be enough to impose a limit on financial support to political parties without imposing a limit on financial support to candidates. Any donor could offer unlimited financial support - legally - to party candidates and thereby circumvent the meaning of the law. Another potential loophole with contribution limits arises when the law does not include a broad definition of what constitutes a contribution. For instance, in the absence of a definition of loans within the legislation, there would be no impediment to donors making substantial, undisclosed loans to their preferred political party. Furthermore, a financier who has contributed the maximum permitted under the Act may seek to provide financial support to friends and relatives, with the understanding that they will make a financial contribution to the intended recipient. To prevent this potential loophole, the legislation should explicitly prohibit third-party financial assistance.

The second issue related to the enforcement of the regulatory framework is whether the legal framework provides the necessary means to detect law violations. For example, if there are limits on financial support or expenditure, then the personal details of donors and suppliers should be easily identifiable. The law should provide for the information that needs to be recorded and reported. The level of detail required should be sufficient to allow the supervisory body to verify the identity and amounts involved in the transactions. For suppliers, it would be reasonable to know the identity, address, nature and quantity of the goods supplied and their cost. For financial aid, the law could require, as in the U.S., the declaration of the profession and employer of the sponsors. Publication of such information has proven to be a constructive evidence base for detecting law circumvention mechanisms.

A third question regarding enforcement is whether the supervisory body has the appropriate legal powers to properly identify/investigate allegations of non-compliance. In countries where the supervisory body/authority has the responsibility for detecting and/or investigating cases of law circumvention, it must be properly empowered to request information from those who know what happened. The law should also provide the supervisory body/authority with an enforcement tool for cases where there is a refusal to respond to information requests. In some countries, refusal to comply with information requests is treated as a criminal offence and handled by prosecutors. An alternative and perhaps more effective solution is to empower the supervisory body/authority itself to demand compliance through the courts.

Level of burden imposed by legislation

The main reason for the existence of political parties and candidates is to participate in political life and electoral processes. Therefore, the

regulatory framework should impose the least burden on them while achieving the objectives set. The level of detail on the financial support to be declared is a good example. In some countries, any financial support of any size must be recorded in the party's books and then declared to the supervisory body. In other countries, small financial contributions are exempt from such requirements. This means that the identity of the individuals making small party contributions is not disclosed, which may provide incentives to make financial contributions. In addition, the administrative burden on parties is reduced as they do not have to keep detailed records of micro- contributions. Similarly, some states exempt parties with minimal financial transactions from the obligation to submit annual accounts or to submit their accounts to an independent auditor.

The issue of burden is also manifested in the case of submission deadlines. Some campaign finance groups argue that parties must disclose their finances throughout the campaign. Others argue that such a requirement would not make sense, given that invoices for services cannot be issued until after the election is over and because partial declaration during this burdensome period would be disproportionately burdensome.

5. Effective supervision: Implementing the regulations on the funding of political parties

The challenges that arise in implementing the legislation on the political parties' financing are numerous and their relative importance will depend on the objectives of the regulatory framework adopted, the country's electoral and governmental systems and its political context. However, there are good regulatory practices that apply or can be adapted to match in most cases.

Definition of general principles and objectives

The legislation provides a comprehensive outline of the procedure for the composition and appointment of members to the supervisory body, as well as defining its mission and responsibilities. Such legislation usually does not indicate **how** the supervisory body/authority will approach its task. It is beneficial for both internal and external stakeholders for the supervisory body to define its guiding principles and objectives. From an internal perspective, the principles and objectives inform decision-making at all levels, including internal management decisions regarding the allocation of resources and the prioritisation of activities. They also provide a frame of reference that supports the organisation in taking a view on substantive issues. Externally, a well-articulated set of principles and objectives helps to set expectations and provides a basis for holding the organisation accountable for its actions.

Although it may appear straightforward, in practice this can be a challenging task. The UK Electoral Commission was established to take on the role of regulator of political parties' funding in the country, with the main responsibility of setting standards for the conduct of elections (as opposed to assuming direct control over the electoral process). Following extensive deliberations, the Council of Commissioners reached a consensus and published the following principles for free and fair elections, which are designed to foster a healthy democratic system:

- **Trust:** citizens should have confidence in the way elections are conducted and the way the political party funding system works
- **Participation:** citizens' participation in elections and in the system of financing political parties, whether they vote or participate in election campaigns, should be a simple process, and citizens should be confident that their vote counts

- **Absence of undue influence:** it is imperative that the electoral process and the political party funding system are not unduly influenced.¹⁷

The Council of the Commission then set the following objective in relation to the funding of political parties: 'transparency in the funding of parties and election campaigns, with high levels of compliance' and further defined it as follows:

We want UK citizens to be confident that:

- there is transparency about the funding of political parties and elections, so that citizens know where the money comes from and how it is spent.
- those wishing to stand for election and citizens and organisations wishing to campaign can easily find out how to get involved, what the rules are and what they need to do to comply with them.
- the rules on party and campaign financing are respected and those who do not follow them are dealt with in an appropriate and effective way.¹⁸
- political parties, candidates and campaign participants can participate in elections without unnecessary obstacles.

Operational policy documents

One tool that contributes to achieving consistency and impartiality is the existence of specific and published policies to which the supervisory body will adhere in the performance of its tasks. Indicatively, operational policies may include:

- Document retention policy - which documents the regulator will keep on file and for how long.
- Disclosure policy - what information the regulator will make public, when and who the recipients will be.
- Sanction policy - guidance on how the regulator fulfils its role and exercises its powers.

These policies, which should be developed in consultation with stakeholders, help to define the "rules of the game" for both the supervisory body and the regulated community. They also provide

17. Program of Electoral Commission 2016-17 to 2020-21, pp. 5-6. www.electoralcommission.org.uk/data/assets/pdf_file/0011/205688/electoral-commission-corporate-plan-2016-17-to-2020-21.pdf (accessed 20 August 2017).

18. Ibid. on page 6.

guidelines that can be used by civil society organisations and parliamentary scrutiny committees to monitor the work and hold the regulator to account for its actions.

For example, a sanctioning policy should set out the criteria for how cases of non-compliance will be handled by the supervisory body. In Canada, published policy documents explain that certain cases are best handled through administrative action and describe the "guiding principles" and criteria for handling cases in this light. Among the factors listed are the following: no negative impact on the integrity and sound management of the political party funding system, no public censure, lack of intent on the part of the party committing the violation and no pending prior referral of the party for other violations.¹⁹

The same principle applies to the sanctioning phase. Again, drawing on the Canadian approach, referral to trial is usually reserved for the most serious cases. According to the published policy paper, the Commissioner is considering whether the administration of justice is best served by committing the level of resources required for prosecutions. The decision to prosecute also depends on the particular characteristics of the case, including:

- Due to the seriousness of the alleged offense and/or the conduct of the subject of the investigation, prosecution would enhance public confidence in the electoral system.
- The person against whom the complaint is directed has relevant experience in electoral matters.
- The categories indicate the existence of a deliberate plan rather than a single event.
- The person against whom the complaint is made has a history of non-compliance with the provisions of the law.
- There is a need for deterrence, specifically or in general.²⁰

The existence of well-designed operational policies contributes to the exercise - from the outset - of discretion by the supervisory body in an organised manner. And where the supervisory body takes decisions that are in line with the established policy, it has a means of defending itself against allegations of discriminatory application of the law.

19. www.elections.ca/content.aspx?section=pol&dir=acp&document=index&lang=e (date accessed: 26 August 2017).

20. See Elections Commissioner of Canada's Compliance and Enforcement Policy, Chapter VII, paragraph 39 at: www.ccf-cce.gc.ca/content.asp?section=abo&dir=bul&document=p2&lang=e (accessed August 20, 2017).

Writing of procedures

In addition to the broad operational policies mentioned above, supervisory bodies should have detailed procedures in order to guide staff in the way they perform their work. The procedures should specify the steps to be followed, by whom, when and how. Compliance with the procedures should be monitored internally.

The adoption of such a system serves several purposes. First, all employees are clearly aware of the expectations that exist of them. Second, continuous improvement is encouraged as it provides a means of systematically identifying and monitoring proposed changes to current processes. Thirdly, such a system can reinforce stakeholders' confidence that the regulator is operating in a coherent and impartial manner.

Defined workflows and qualified staff

There are many activities or work streams that any regulator of political party funding should undertake as part of its duties. These include advisory services, publication of party financial data, monitoring or oversight activities, sanctioning and policy drafting work. For each relevant work stream, the Supervisory Body will need to consider the number, experience and qualifications of staff needed.²¹

Advisory services

Detecting and addressing legislative violations can be considered a primary function of a regulator. However, emphasis must be placed from the outset on ensuring compliance with the law. This requires providing assistance to those who wish to comply with the law and that those who do not comply be held accountable. Targeted and user- friendly guidance, training seminars and hotlines are types of advisory services that serve to inform and educate subjects in the regulatory framework, as well as other stakeholders such as the media, NGOs and the general public. Indicatively, the required qualifications are:

- The ability to adapt legal requirements into layman's language (both orally and in writing)
- Good interpersonal skills in order to give the right response to the different levels of complexity of stakeholders' questions
- Technical expertise in the field of political party financing

21. In addition to the specific skills highlighted here, a successful supervisor should have developed strong planning and communication strategies.

- Skill in developing guidance manuals
- Experience and competence in teaching.

Publication of financial information

Since transparency is a major element of almost any system of regulating the funding of political parties, the way in which financial data is made available is of great importance. Thanks to advances in information technology, better technical options are available for reporting and publishing information on the funding of political parties. Although some countries have electronic reporting systems and/or fully computerised systems for internal purposes, there is a general lack of electronically submitted and published data in a format that allows the user to systematically search the published information. This lack undermines the ability of the public, the media and civil society to analyse the functioning of the legislation, monitor compliance and/or hold the regulator to account.

A well-designed computerised system can make reporting and publication easier for political parties, candidates, supervisors and prosecuting authorities. The development and maintenance of such a system requires:

- Computer skills
- Knowledge of the legal framework and requirements
- Ability to engage in consultations with all users (e.g. political parties, media, civil society organisations and agency staff) to identify/cover their needs
- Ability to write instructions for users
- Full understanding of the expected results
- Experience in project management.

Monitoring of compliance progress

Monitoring compliance progress can involve various activities. For example, reminding political parties of the reporting deadline, checking the submitted reports for accuracy and reporting on problems faced by the parties. Data could also be collected during the election campaign. The benefits of real-time monitoring include providing incentives for good behaviour (political entities know they are being monitored and thus may be discouraged from reporting less spending), enabling the regulator to identify

potentially inappropriate behaviour by bringing the fact to the attention of the political entity before the infringement has even taken place, and the establishment of a benchmark against which reports submitted will be assessed.

The way the "real-time" monitoring is structured and implemented is important. One approach is to cover all these activities on an equal basis, which requires significant resources. The costs may outweigh the benefits. The most appropriate practice would be to undertake monitoring activity based on risk assessment. Such an approach would require the regulator to develop and implement a risk assessment policy, through which it would identify areas requiring greater attention. These may be 'substantive' areas (e.g. the potential for under-reporting of certain expenditures or potential misuse of government funds) or the policy may be oriented towards those parties that need more support. For example, some parties may be assessed as needing more support and attention because of factors such as their size, the importance of their resources or the length of time their key staff members have been in office.

The skills required to monitor compliance include, but are not limited to:

- Ability to communicate with political parties to address questions about compliance with the rules
- Ability to check the accuracy of reports and prepare them for publication
- Financial control.

Imposition of sanctions

Where non-compliance issues are identified through the supervisory body's monitoring programme and/or refer to complaints lodged with the organisation, they should be assessed and, where appropriate, investigated. In some countries, the oversight body may have the power to investigate matters thoroughly, while in other countries it will only conduct a preliminary examination and then refer the matters to another agency (e.g. prosecution, administrative agency or judicial authorities). Depending on the legal framework, the supervisory body may also have the power to sanction those who do not comply with the law. In order to carry out this task, staff must have:

- Knowledge of the legislation
- Understanding of the procedures and practices of the regulatory framework
- Investigation skills, including the ability to submit requests for documents and conduct interviews
- Ability to analyse and apply the law to various factual situations

- Ability to write reports and conclusions.

Development of policies

Policy activities include, among other things, developing operational policies and internal procedures and reviewing the legal framework with a view to proposing improvements. They also include the evaluation of statistical data to identify trends in party and campaign financing. Those working in this area will need skills and experience in:

- Data analysis
- Predictive analysis
- Understanding the political-social context
- Possibility tracking, correlation and communication with stakeholders.

Involvement of stakeholders

Supervisory bodies should have the competence, capacity and willingness to engage with external stakeholders. These include political parties, candidates and campaign organisations, government officials, voters, the media and civil society organisations. And, contact with stakeholders must be meaningful. For example, consultations on a disclosure or enforcement policy must begin at the beginning of the process and be ongoing.

Some countries have set up working groups with stakeholder representatives. If well organised (e.g. with agreed terms of reference, regular meetings and planned agendas), these working groups can be an excellent means of exchanging views and information. A working group composed of representatives of political parties, for example, can provide the supervisory body with a clearer picture of the practical impact of rules and procedures, which could then be adapted to the needs of the regulated community, while achieving the objective of regulation. Similarly, these meetings are a means for the oversight body to communicate expectations of the system, a means of reminding the parties of upcoming deadlines for submission or addressing issues that have arisen.

Working groups involving representatives of civil society organisations can also be beneficial. Some Civil Society Organisations have experience in monitoring electoral activity and can

provide valuable information to the supervisory body.²² The supervisory body may also use these working groups to pass on information on the operation of the law and to seek informal information on the policies and approach taken. However, it would not be appropriate to exchange information on ongoing cases or to involve Civil Society Organisations in the decision-making processes on specific cases.

The supervisory body as a model of transparency

The universal principle governing the control of party funding is transparency. Party funding supervisory bodies can serve as models of transparency by establishing mechanisms that promote transparency in the performance of their role and in the decision-making of the supervisory body. However, from a brief review of the relevant websites it is clear that many regulators controlling the funding of political parties around the world do not yet have this knowledge.

The supervisory body shall include on its website at least the following information:

- Information on the role, principles and objectives of the
- Written guidance to those subject to the regulatory framework
- Key policies
- A list of the decisions taken, including the subject matter, results and reasons for those decisions
- Information on how to access additional information and who to contact
- Directly and easily accessible financial data of the parties.

22. Civil Society Organisations differ in their objective, their effectiveness and their degree of impartiality and the supervisory body will have to judge which are the most reliable.

6. Implementation challenges and tools to address them

The role of the party funding regulator is difficult given the political impact its decisions may have. Even if many of the allegations against supervisors cannot be avoided altogether, many can be averted or minimised if action is taken in time. In addition to external accusations, there are challenges arising from the nature of the project itself, its repetitive-cyclical nature, staffing needs and limited funding. The table below highlights some of the most common challenges as well as tools used to address them.

| INVITATION | TOOLS TO MEET THE CHALLENGE |
|--|---|
| Accusations of political bias | <ul style="list-style-type: none"> • Drafting written policies that define how the supervisory body will approach issues • Adopting clear procedures to guide staff in carrying out their work • Writing appropriate documentation for decisions on cases • Quality assurance reports to record that procedures have been followed • Adopting a proactive communication strategy |
| Delay in the performance of institutional tasks | <ul style="list-style-type: none"> • All procedures should have defined deadlines for each stage of the process • Monitoring compliance with deadlines • Forecasting and planning for workload peaks (e.g. around filing deadlines) • Risk assessment analysis |
| Accusations that the supervisory body is completely ineffective in the absence of significant cases of imposition of sanctions | <ul style="list-style-type: none"> • Definition of success (e.g. increased compliance) • Keeping statistics on actions taken (e.g. helpline responses, training seminars, number of complaints handled, e t c .) • Adopting a good communication strategy • Information to stakeholders |

| INVITATION | TOOLS TO MEET THE CHALLENGE |
|--|--|
| <p>Low compliance rate by the community covered by the regulatory framework</p> | <ul style="list-style-type: none"> • Solving common mistakes made in targeted guidance • Preventive information and education • Warnings for new infringers of minor infringements with the threat of sanctions if the infringement is repeated. Implementation of the threat |
| <p>Gaps or problems with the law</p> | <ul style="list-style-type: none"> • Carrying out a periodic review of the implementation and impact of the law • Informing officials (state/legislative) about the problem and presenting proposed solutions |
| <p>Formulation of the claim that complaints submitted to the Supervisory Body are lost in the 'black hole'</p> | <ul style="list-style-type: none"> • The complaint handling procedure should consider the form of communication with complainants and the stage of the procedure at which the communication will take place • Establishment of a timeframe for the completion of actions on complaints • Establish a policy on what information will be published about the complaint and implement it. |
| <p>Complaint of obstruction or acceleration of a law enforcement matter due to elections</p> | <ul style="list-style-type: none"> • Drafting a policy on how to deal with cases during sensitive periods. |
| <p>Lack of resources for the supervisory body to complete its work</p> | <ul style="list-style-type: none"> • Risk analysis and prioritisation of tasks |
| <p>Recruitment issues</p> | <ul style="list-style-type: none"> • Ensuring staff neutrality policy • Strengthening skills through internal training and development programmes • Strengthen staffing during periods of high workload through temporary recruitment (university-educated and experienced) and/or redeployment of staff. |

Annex A. Supplementary sources of information

References for Political Finance Website Information

1. Reporting templates
 - a. UK: forms and explanatory material can be found at:
<https://www.electoralcommission.org.uk/our-work/publications/forms>.
 - b. USA: <https://www.fec.gov/help-candidates-and-committees/forms/>.
2. Political finance database:
 - a. UK:
<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&optCols=CampaigningName&optCols=AccountingUntingAsCentralParty&optCols=IsSponsorship&optCols=RegulatedDonorType&optCols=CompanyRegistrationNumber&optCols=Postcode&optCols=NatureOfDonation&optCols=PurposeOfVisit&optCols=DonationAction&optCols=ReportedDate&optCols=IsReportedPrePoll&optCols=ReportingPeriodName&optCols=IsBequest&optCols=IsAggregation>.
 - b. USA: <https://www.fec.gov/data/>.
 - c. Georgia: <http://monitoring.sao.ge/en>.
3. Guidance:
 - a. UK Guidance for political parties at:
<https://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/guidance-for-political-parties>.
 - b. USA: <https://www.fec.gov/help-candidates-and-committees/>.

oecd.org/corruption

