OSCE Office for Democratic Institutions and Human Rights

Submission to the European Commission and to the European Parliament

Preliminary Comments on Reforming Regulation 1141/2014 of the European Parliament and of the Council

On the statute and funding of European political parties and European political foundations

Preliminary Comments were prepared on the basis of contributions from Mr Louis Drounau (Founder of European Democracy Consulting), Dr Fernando Casal Bértoa (Director of REPRESENT and member of the ODIHR Core Group of Experts on Political Parties), and Professor Richard Katz (Chair of the Department of Political Science at the Johns Hopkins University and Chair of the ODIHR Core Group of Experts on Political Parties). Dr Wouter Wolfs (Lecturer & Senior Researcher at the KU Leuven Public Governance Institute) and Dr John Morijn (Professor at the University of Groningen and Commissioner at the Netherlands Institute for Human Rights) provided useful input to this submission.
This submission was reviewed by the ODIHR Core Group of Experts on Political Parties.

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I. INTRODUCTION

1. On 10 and 11 May 2021, the OSCE Office for Democratic Institutions and Human Rights (hereinafter, "ODIHR"), the Research Centre for the Study of Parties and Democracy (REPRESENT), and European Democracy Consulting (EDC) discussed with the European Commission and the European Parliament their ongoing revision of Regulation 1141/2014 on the statute and funding of European political parties and European political foundations. The European Parliament is preparing a review of the implementation of Regulation 1141/2014 and the European Commission has opened a public consultation with a view to proposing legislative changes to the framework of European political parties.

2. Following these exchanges, the European Commission and European Parliament confirmed their interest in an ODIHR-led submission detailing policy and legislative proposals for the reform of European political parties, in line with the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation[1] (hereinafter "the OSCE/ODIHR-Venice Commission Guidelines") and supported by available best practices on political party systems.

3. ODIHR prepared this submission in response to the above request, focusing on certain provisions of Regulation 1141/2014 on European political parties and the European party system. This submission was prepared on the basis of comments from Mr Louis Drounau (Founder of European Democracy Consulting), Dr Fernando Casal Bértoa (Director of REPRESENT and member of the ODIHR Core Group of Experts on Political Parties), and Professor Richard Katz (Chair of the Department of Political Science at the Johns Hopkins University and Chair of the ODIHR Core Group of Experts on Political Parties). Dr Wouter Wolfs (Lecturer & Senior Researcher at the KU Leuven Public Governance Institute) and Dr John Morijn (Professor at the University of Groningen and Commissioner at the Netherlands Institute for Human Rights) provided useful input to this submission.

Scope of the analysis

4. While their role, membership and importance vary from country to country and may evolve over time, political parties are essential founding blocks of modern representative democracies. Over the past two centuries, their functions have expanded and now range from structuring the vote and mobilising citizens, to candidate selection, to the drafting of public policy.

5. Since the election of Members of the European Parliament by universal suffrage in the late 1970s, European political parties[2] have progressively emerged from their political groups in the European Parliament. Their existence and role were formally recognised in the 1992 Treaty of Maastricht and a dedicated framework grew over time, which included the provision of European public funding in 2004 and later full legal personality in a landmark Regulation in 2014. As provided for in Regulation 1141/2014, the European Parliament is currently preparing an implementation report of European parties' legal framework and may suggest relevant amendments.

6. Based on the official terminology – *political parties at European level* – and the prescribed role of European political parties, the European constitutional legislator, when drafting EU treaties, clearly provided for the creation of a European party system comprised of parties fulfilling the

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[1] Joint Guidelines of the OSCE/ODIHR and the Venice Commission on Political Party Regulation (2nd edition, 2020), CDL-AD(2020)032, available at https://www.legislationline.org/odihr-documents/page/guidelines and https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)032-e.

[2] In this document, the terms "European political parties" and "European parties" both refer to "political parties at European level" as foreseen in Article 10.4 of the Treaty on European Union and regulated by Regulation 1141/2014.

functions traditionally devolved to political parties.

7. However, in implementing this treaty requirement, the European legislator has opted for a unique form of political parties and party system, unlike any used by countries around the world, even in decentralised multi-level systems. Observations show that this choice has not, in practice, led the European political parties so created to fulfil the functions expected of them from the treaties.

8. This submission aims at drawing from best practices, codified in the *OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation* and taken as examples from specific countries, in order to propose venues for reform for the proper implementation of this treaty requirement.

9. Based on these best practices, this submission recommends the enhancement of European political parties through greater and more direct links to European citizens and stronger ties with their national member parties. Far from replacing national parties, European political parties must work in conjunction with them for the better representation of European citizens and a strengthened European democracy.

10. In practice, this submission proposes 40 recommendations relating to the structure of the European party system – including the definition and registration of parties, their governance, the respect of EU values, and the interplay between European and national political parties –, their financing – including public and private funding, a level playing field for smaller and newer parties, and administrative simplification –, issues of transparency, and oversight and sanctions – including the role of the *Authority for European political parties and European political foundations* (APPF).

11. Each section provides references to the OSCE/ODIHR-Venice Commission Guidelines, a selection of national best practices, and the recommendations themselves, each time linking to the relevant provisions of Regulation 1141/2014; additionally, the final comments will provide a more detailed presentation of the legal framework under Regulation 1141/2014 and an analysis of the consequences of the implementation of this framework.

II. EUROPEAN POLITICAL PARTIES AND THE EUROPEAN PARTY SYSTEM

Legal basis for European political parties

12. While their *de facto* existence dates back to the period leading to the first European parliamentary elections by universal suffrage in 1979, European political parties were not mentioned in European treaties until the 1992 Treaty of Maastricht. This revision created Article 138a, the first so-called "party article", which read:

    "Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union."

13. In the post-Lisbon version of the treaties, European political parties are mentioned twice:
    - In Article 10.4 of the Treaty on European Union (TEU), the new party article, which now reads: "Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union."
    - In Article 224 of the Treaty on the Functioning of the European Union, which states that "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, by means of regulations, shall lay down the regulations governing political parties at European level referred to in Article 10(4) of the Treaty on European Union and in particular the rules regarding their funding."

14. European parties are further mentioned in Article 12.2 of the Charter of Fundamental Rights of the European Union of 2000 in similar terms: "Political parties at Union level contribute to expressing the political will of the citizens of the Union." Since the Treaty of Lisbon, the Charter has "the same legal value as the Treaties" (Art. 6 TEU).

A. Definition, Registration and Membership

OSCE/ODIHR-Venice Commission Guidelines

15. The OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation define a political party as "a free association of individuals, one of the aims of which is to express the political will of the people, by seeking to participate in and influence the governing of a country, inter alia, through the presentation of candidates in elections". This definition may be equally applicable to all levels of governance, including the intra-state level applicable to European political parties.[3]

16. Some OSCE states have established a status of "registered party" or "active party", for which requirements beyond those inherent in the national definition of political party may be imposed. For instance, in a number of European democracies such as Finland, the Netherlands and Norway, political parties are required, before being able to register as parties, to first have obtained association status and/or legal personality.[4]

17. With regard to the *formation* of political parties, the Guidelines recall that the European Court of Human Rights (ECtHR) "has consistently ruled that, due to the important role that political

[3] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 64.

[4] Ibid., par 74.

parties play in the functioning of democracy, limitations should be used with restraint and only where necessary in a democratic society. A state may not hinder the establishment of a political party, […] as long as it seeks to achieve these goals by means that are legal and compatible with fundamental democratic principles. Given the requirements of proportionality, it must further be proven that any limitation is the least restrictive way for achieving a legitimate regulatory aim."[5]

18. With regard to the *registration* of political parties, it is important to recall that "the ECtHR has consistently ruled that registration requirements do not, in themselves, represent a violation of the right to free association. It is reasonable to require the registration of political parties with a state authority for certain purposes, e.g. to acquire legal personality, to allow parties to participate in elections, and to receive certain forms of state funding."[6] However, registration criteria should be reasonable and be carefully drafted to achieve legitimate aims in line with Article 11(2) ECHR – read in the light of Article 3 Protocol 1 ECHR – and Article 22(2) ICCPR.

19. The Guidelines also note that "many states require proof of minimum levels of support, on the basis of the collection of signatures or membership, prior to forming and registering a political party." Thresholds should be outlined clearly in the law and must be proportionate. If thresholds result in an infringement of the principle of political pluralism, they should not be considered justified. In particular, the Guidelines recall a judgment[7] where "the Canadian Supreme Court struck down legislation requiring parties to nominate candidates in 50 electoral districts in order to be registered as political parties. The Supreme Court held that the existing law favoured parties with sufficient resources and decreased the capacity of the members and supporters of the disadvantaged parties to introduce ideas and opinions into the open dialogue and debate related to elections." Similarly, the Romanian Constitutional Court ruled in 2015 that the requested 25,000 signatures necessary to establish a political party violated the principle of freedom of association.[8] The party law was subsequently amended to require only three party members in order to establish a political party.

20. With regard to geographical representation, the OSCE/ODIHR-Venice Commission Guidelines state that "provisions regarding the limitation of political parties purely on the grounds that they represent a limited geographic area should generally be removed from relevant legislation […]. Such provisions may also have discriminatory effects against small parties and parties representing national minorities. […] Geographic considerations should not be included in the requirements for the formation of a political party, nor should a political party based at a regional or local level only be prohibited."[9]

21. With regard to the party membership of MEPs, the Guidelines state that "the associations of individuals with political parties must be voluntary in nature, […] with all individuals free to belong to or abstain from joining associations, as is their preference. Membership should be an expression of an individual's free choice to utilise the collective means of a political party for the full enjoyment of his/her individual right to freedom of expression and opinion."[10] This freedom "also contains the *negative* right, implied in Article 11 ECHR and Article 22 ICCPR and explicitly recognised in Article 20(2) UDHR, not to participate and not to become a member of an association. The case law of the ECtHR concerning the right not to join a trade union is

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[5] Ibid., par 83.

[6] Ibid., par 85.

[7] Figueroa v. Canada, 2003 SCC 37, 27 June 2003

[8] Constitutional Court of Romania, Decision no.75/2015

[9] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 102 and 103.

[10] Ibid., par 141.

equally applicable to the right not to become a member of a political party."[11]

Relevant national practices.

22. Section 2 of the German Act on Political Parties states that "Political parties are associations of citizens which, on a continuing basis or for a longer period of time, wish to influence the development of informed political opinion at the federal level or in any of the Länder and to participate in representing the people in the German Bundestag or a Land parliament (Landtag), provided that they offer a sufficient guarantee of their sincerity in pursuing that aim, as evidenced by their actual overall situation and standing, especially as regards the size and strength of their organisation, their membership numbers, and their visibility in public. Only natural persons may be members of a political party."

23. Most party laws in EU countries do not contain a specific definition of political party. Of those which do, half refer to a political party as a legal person (e.g. Lithuania, Slovakia) or organisation (e.g. Latvia), while the other half define parties as "associations" of citizens (e.g. Finland, Romania, Slovenia). One of the most complete definitions is that of the 1994 Estonian party law, whose Article 1.1 states that: "A political party is a voluntary political association of Estonian citizens, and which is registered pursuant to the procedure provided for in this Act and the objective of which is to express the political interests of its members and supporters and to exercise state and local government authority".[12]

24. Most EU countries (e.g. Austria, France, Germany, or Malta) do not establish special registration requirements. Some (e.g. Denmark, Italy, Luxembourg, or the Netherlands) do not even oblige parties to register. Most, however, require parties to collect a minimum number of signatures (from 3 in Spain to 10,000 in Slovakia) or members (from 3 in Romania to 100 in Bulgaria). Looking at the registration requirements from a comparative perspective, i.e. as a percentage of the voting population, EU countries require the initial support of, on average, 0.03 percent of the voting population, while 20 out of 27 Members States set this requirement at 0.01 percent or lower. Some countries (the Netherlands, Slovakia and Slovenia) require also the payment of a registration fee; however, this remains the exception. Geographical requirements (e.g. distribution of members, regional branches) are totally absent in EU national legislations (Romania being the last country to abolish them). Conversely, the failure to maintain a required level of membership, breaches of administrative requirements, or the failure to present any candidates over a specified period may be grounds for the loss of registered party status, but only in cases in which denial of party registration is not tantamount to dissolution.

25. In general, EU legislations require party members to be adult (i.e. at least 18 years old) citizens. Some are stricter (e.g. Slovakia also requires permanent residency), while others are more lenient (e.g. Slovenia allows membership for minors over 15 with the authorisation of their legal representatives). Foreigners are usually excluded from party membership, but not in Estonia, Germany, Latvia, Portugal or Slovenia. In most cases, EU citizenship or permanent residence is enough. Article 26.1 of the 2006 Latvian party law provides the best example: "Persons who have reached the age of 18 years, who are citizens of Latvia, non-citizens of Latvia and citizens of the European Union, who are not citizens of Latvia but are residing in the Republic of Latvia, may be party members." In Slovenia, even foreigners that are neither Slovenian nor EU citizens can become "honorary members".

26. Most EU countries leave to parties' internal rules the decision of whether to allow citizens to have multiple party membership or not. Others, like Bulgaria, Czech Republic, Estonia, Latvia,

[11] Ibid., par 142.

[12] However, Article 5.1 of the Estonian party law explicitly "a citizen of the European Union who is not an Estonian citizen, but has permanent residence in Estonia, has active legal capacity and has attained 18 years of age" to be a member of a political party.

Portugal and Romania explicitly ban membership in more than one political party.

Recommendation 1. Define European political parties as associations of individuals

27. Article 2 of Regulation 1141/2014 defines the main terms used in the Regulation. A *political alliance* is a "structured cooperation between [national] political parties and/or citizens". A *European political party* is a "political alliance pursuing political objectives" that is registered with the APPF; it has *member parties* and/or *individual members*. In practice, European political parties are therefore either "confederations of political parties" or coalitions of citizens. However, the near impossibility for individual citizens to meet the registration criteria of Article 3(1)(b) (i.e. to receive at least 3 percent of the votes in European elections in at least a quarter of the Member States), without organising as political parties in these Member States, has led to a situation where all European political parties are, first and foremost, political alliances of pre-existing and established national political parties.[13] So far, no political alliance of citizens has ever registered as a European political party.[14]

28. **In order to ensure pluralism and the rights of individuals to establish political parties to represent them, it is therefore recommended to revise Article 2 to define a European political party along the lines suggested in the Guidelines and the description provided in Article 10.4 of the Treaty on European Union. For instance, the definition may refer to:**[15]

    "a free association of individuals seeking to participate in and influence the governance of the European Union and to express the will of the people of the Union, and registered with the Authority."[16]

29. In line with this definition, Regulation 1141/2014, and in particular Articles 2, 3 and 4, should be amended. The individuals referred to in this proposed definition may be EU citizens or aliens residing in the EU. Finally, national political parties may be "affiliated" to European political parties in various capacities.

Recommendation 2. Lower the Member State registration requirement

30. Article 3(1)(b) contains a geographical requirement for applicant political alliances to be represented by members of the European Parliament, members of parliament or members of regional parliaments *in a quarter of the Member States*, or to have received over 3 percent of the votes cast at the most recent European Parliament elections *in a quarter of the Member States.*

31. **The current geographical requirement in Article 3(1)(b) appears to be overly restrictive of the right of individuals to form a political association, and may be discriminatory. It is**

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[13] There are no European political parties registered as political alliances of national political parties with member parties set up specifically for the purpose of registering as a European political party. The political movement *Volt* has set up a political alliance called *Volt Europa*, registered in Belgium, with individual members and national member parties, which were set up with the explicit purpose of establishing a European political party. Thus far, *Volt* has not reached the representation thresholds required by Article 3(1)(b).

[14] Since its inception, the APPF has only registered 13 European political parties (and another 7 have, at some point since 2004, received European public funding). Meanwhile, several political alliances have not been able to register as European political parties, because they failed to obtain the necessary legislative representation or because they did not reach the 3 percent threshold, despite having gathered substantial electoral support across the European Union. For the results of the 2019 European parliamentary elections by European political parties and other political alliances, see European Democracy Consulting, *2019 European elections as you've never see them before*, March 2020.

[15] This recommendation aims at ensuring pluralism and the development of political party system in line with the requirements of Article 10.4 TEU, and neither intends, nor should be understood as, an opinion regarding the nature of the political system of the European Union.

[16] This definition may be extended to include European political parties' role in influencing European policy-making, forming political awareness, and running for European Parliament elections.

thus recommended to revise this part of Article 3(1)(b).

32. As stated in the Guidelines, one of the guiding principles in this respect is the need to avoid geographical requirements for political parties wishing to register. However, in case a threshold on geographical requirement is retained – in order to avoid an undue fragmentation or to ensure the viability of the European party system, in the specific context of the European Union (which is substantially different from that of nation states) – this threshold can be set at the lowest values strictly above presence in a single Member State (i.e. two or three Member States).

Recommendation 3. Request a minimum number of party members instead of a minimum number of votes

33. Beyond its geographical aspect, Article 3(1)(b) makes electoral success, in the form of legislative representation or of an electoral threshold, a pre-requisite for registration as a European political party.

34. **Article 3(1)(b) could be revised to require applicants, in a certain number of Member States (in line with Recommendation 2), to attest to a number of members, which could, for instance, be established between 0.01 percent of the voting population of a Member State (as applied in most EU Member States) and 0.03 percent of the voting population (the EU-27 average requirement for national political parties). Furthermore, floor and ceiling values may be considered to balance the demographic disparities between Member States.**

35. The risk of abuse (e.g. in cases where the registration as European political party is sought by groups primarily interested in benefiting from public funding) is often presented as an argument for the current stringent registration criteria. In response to these concerns, it should be noted, firstly, the proposed registration criteria are based on national practices, and such behaviour has not been observed at the national level. Secondly, not only is the proposed level of required citizen support quite high, but members, in order to be counted, may need to have already paid their membership fee in full and to have been members for a given duration (such as three to six months). Finally, acceptable requirements on the internal organisation and processes of European political parties may successfully contribute to discouraging fake applicants.

Recommendation 4. Clarify the membership situation of MEPs.

36. Article 19(2) indicates that the distribution of European public funding to European political parties "shall be based on the number of elected members of the European Parliament *who are members* of the applicant European political party" (emphasis added) — and not merely MEPs who are members of a national political party affiliated to the applicant European political party. Likewise, Article 32(1)(k) requests the European Parliament to publish "an updated list of Members of the European Parliament who are members of a European political party." However, in its calls for public funding, the European Parliament has been using a concept of "indirect membership" which considers Members of the European Parliament as belonging to a European political party if they belong to a national party that is a member of a European political party. According to Article 17, MEPs with double membership are considered, for the purpose of funding, as affiliated to the European political party to which their national party is affiliated. As a result, some MEPs have been considered members of a European political party merely by virtue of their national party membership and at the expense of their own membership of another European political party.

37. **In order to ensure the rights of MEPs to be members of a European political party of their choice, Regulation 1141/2014 could be revised to ensure that MEPs are only considered as members of a European political party when they have applied for and obtained individual membership from this European party, and not merely by virtue of their election to the European Parliament via a national political party affiliated to a European party.**

European political parties and national parties remain free to only choose as candidates individuals who have agreed to become individual members of the relevant European party.[17]

B. Governance and internal democracy

OSCE/ODIHR-Venice Commission Guidelines.

38. It follows from the jurisprudence of the ECtHR and from the OSCE/ODIHR-Venice Commission Guidelines that state interference in parties' internal organisation should remain at a minimum, and that the principle of party autonomy should be respected. However, it is essential that party statutes and amendments to those rules of association be made publicly available after being approved in a participatory process by party members after sufficient internal debates. When possible, parties should establish internal procedures for the resolution of internal party conflicts.

39. The Guidelines add that "as parties contribute to the expression of political opinion and are vital for political participation, some regulation of internal party activities and governance may be appropriate to ensure the proper functioning of a democratic society. […] If imposed, such measures should be proportionate, and states should choose those measures which place the least burden on political parties' freedom while effectively reflecting democratic principles. […] Generally, it is important to strike a balance between transparency and participation on the one hand, and to ensure party autonomy and effective decision-making powers on the other."[18]

40. Party laws might therefore require that internal party regulations respect the principles of democracy, transparency and equality, with particular attention and incentives directed at promoting the participation of women, national and ethnic minorities and people with disabilities. At any rate, excessive state control over the internal activities of political parties should be avoided.

41. The Guidelines note that "many parties have moved to using more transparent selection processes and other proactive measures to ensure equal opportunities in the selection of candidates. Often, they have increased direct member participation in the selection of leaders and candidates by introducing one-member-one-vote selection processes, while often requiring either pre-vote selection or approval by party leaders of those who will appear on the member ballot or requiring post-vote ratification by the party's leadership."[19]

Relevant national practices.

42. With a few exceptions (i.e. Germany, Latvia, Portugal, Romania and Spain), party laws in EU Member States tend to adopt a liberal approach to the internal regulation of political party organisations. The Austrian party law is perhaps the most lenient, as it simply requires parties to regulate rights and duties of party members in their by-laws (i.e. statutes). Such rights and duties should, according to most party laws, be regulated in parties' statutes, together with procedures for (1) the creation/dissolution of party structures, although some countries require the creation of an arbitration body to resolve internal conflicts (e.g. Czech Republic, Portugal,

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[17] While this submission advocates for a change in the distribution mechanism of European public funding to European political parties, this point is of importance for the current distribution mechanism, which often relies on a so-called "indirect membership" of MEPs (or "affiliated MEPs") which has no basis in Regulation 1141/2014.

[18] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 152 and 153.

[19] Ibid., par 162.

Romania), (2) the election of party bodies, and (3) the cancelation of party memberships.[20] Statutes should also mention the party organs, their powers and competences. The least regulated aspects of parties' internal organisation are the composition of internal organs, disciplinary and accountability measures, internal incompatibilities for party offices, and procedures for candidate selection. However, as observed in the Guidelines, "in the last decades many countries have increasingly shifted towards the imposition of requirements concerning the internal structures and functioning of political parties."[21]

National party laws in Member States are also not restrictive in terms of the duration of terms of party offices and the frequency of meetings of party bodies, leaving parties' articles of association to determine such matters. Although some party laws require party congresses to be announced well in advance (Spain), or take place periodically (Lithuania), every 5 years (Bulgaria), every 4 years (Romania), or on a yearly basis (Latvia). Only a handful of party laws (e.g. Czech Republic, Finland, Latvia, Poland) require parties to be internally democratic. In addition to these, the Portuguese and Spanish regulations, together with the German party law, are perhaps the most detailed in terms of the regulation of the internal organisation of political parties, with specific disposition in terms of voting procedures and internal elections. The Portuguese party law even provides for the holding of "internal referenda".

Recommendation 5. Encourage a more participatory process of internal decision-making

43. In its definition of European political parties, Article 2 does not require the presence of individual members. Article 4(1) on the governance of European political parties requires detailed information on European parties' internal organisation, including modalities for admission, resignation and exclusion of members, and the rights and duties of the various types of members, but includes no requirement with regard to European parties' internal democracy.

44. **The Regulation could encourage and provide concrete incentives for a more participatory process of internal decision-making, respecting the principles of democracy, transparency and equality, with particular attention direct at promoting the participation of women, national and ethnic minorities and people with disabilities. For instance, a European party may be required to seek input from its individual membership when determining party constitutions[22] or to democratically elect the party's top leadership[23] through a party-wide election.[24]**

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[20] Ibid., par 153: The most commonly accepted regulations are rules pertaining to: membership (essentially the right to join or leave a party, including appeals mechanisms); the body nominating candidates; the freedom to select candidates; transparency requirements for parties' decision-making and recording of actions; and the roles played by their members when determining party constitutions.

[21] Ibid. In the same paragraph, the Guidelines have also noted that, with regard to the freedom to select candidates, a growing number of states require parties to introduce special measures with respect to the candidate lists or in the form of reserved seats.

[22] Ibid., par 155.

[23] Depending on the structure of the party, the top leadership position(s) may have different names and different prerogatives; it may also be one or more people. However, the exact position(s) that are voted for may be less important than the process of organising an EU-wide, party-wide election. Since a European party facing this requirement may choose to willingly limit its own individual membership, it may be important to extend the voting pool to individual members of a European party's national members parties from EU Member States.

[24] Ibid., par 162.

C. Respect for EU values

OSCE/ODIHR-Venice Commission Guidelines.

45. As stated in the OSCE/ODIHR-Venice Commission Guidelines, the competence to prevent a party from registering "should concern exceptional circumstances, must be narrowly tailored and should be applied only in extreme cases", always following "strict standards of legality, subsidiarity and proportionality". According to the jurisprudence of the ECtHR, a party may be banned if it fails "to respect democracy or is aimed at the destruction of democracy and the flouting of rights and freedoms recognised in a democracy", even when it uses legal means to accomplish its objectives. However, if a party does not "use or call for violence and does not threaten civil peace or fundamental democratic principles", then prohibition is not justified.[25]

46. The Guidelines add that the overall examination of whether prohibition or dissolution of a political party is justified 'must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently imminent; (ii) whether the act and speeches of the leaders and members of the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of "a democratic society".[26] In any case, prohibition "should always be based on a court order".[27]

47. In particular, when considering whether the prohibition or dissolution of a party is justified, the Guidelines insist that strict considerations of proportionality be applied. As the Parliamentary Assembly of the Council of Europe (PACE) has noted, "as far as possible, less radical measures than dissolution should be used" and it must be shown by the state that no less restrictive means would suffice. The Guidelines add that "scrutiny is all the more necessary where an entire political party is dissolved."[28]

48. Finally, under the principle of effective remedy, the Guidelines underline that, "given the importance of political parties as vital instruments of the freedom of association and expression, which are fundamental for the democratic process, as well as the important consequences that the restrictions imposed on political parties may have, any restriction on political party freedoms must be capable of being submitted to review by an independent and impartial court, at least in the final instance."[29] They add that parties should have the right to appeal decisions by relevant state bodies to a competent, independent and impartial tribunal.[30]

Relevant national practices.

49. While a few EU countries adopt a total *laissez-faire* approach (e.g. Greece, Ireland and Luxembourg), most EU countries require political parties to respect democratic values, either in their programmes (e.g. Austria, Belgium, Cyprus, and Germany) or with their actions (e.g. Bulgaria, Denmark, Latvia, and Spain) or both (e.g. Croatia, Estonia, France, Poland, Portugal, Romania, and Sweden). Some go so far as to require parties' internal organisation to also be democratic (e.g. Czech Republic, Germany, Poland, Portugal, and Spain), or to ban parties that threaten the state's existence (e.g. Bulgaria, Croatia, Czech Republic, Estonia, France, Hungary, Latvia, Lithuania, Portugal, Romania and Slovakia).

50. With very few exceptions (e.g. Germany and the Netherlands), judicial authorities have

[25] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 106-116.

[26] Ibid., par 120.

[27] Ibid., par 109.

[28] Ibid., par 110. See also PACE Resolution 1308 (2002), para. 11.

[29] Ibid., par 53.

[30] Ibid., par 267.

refrained from banning parties on the account of anti-democratic ideology, and have instead only resorted to bans following the use of violence or other anti-democratic means by political parties in the pursuit of their objectives.

Recommendation 6. Improve the values compliance mechanism

51. Article 3(1)(c) requires political alliances applying for registration as European political parties to observe the values on which the Union is founded.[31] In line with Article 8(2), applicants are simply required to fill in a declaration (annexed to the Regulation) indicating their support for EU values. According to Article 10(4), the de-registration of a European political party is the only available sanction for a failure to comply with Article 3(1)(c). Such a decision "may only be adopted in the event of manifest and serious breach of those conditions" (Article 10(3)) and verification is not extended to applicants (only to registered European parties), nor to member parties of European political parties.

52. **The criteria for de-registration should be clarified and more narrowly formulated, describing specific cases in which de-registration is allowed, and more precisely defining terminology including the values listed in Article 2 TEU, that may otherwise lead to overbroad restrictions. At the same. At the same time, grounds for de-registration may be revised to address a "clear and imminent risk" of a breach of democracy and fundamental rights, and not merely the breach itself. A decision on de-registration should only be made by a judicial authority.**

53. The principle of proportionality should also apply, both with regard to the level of the sanction, as well as to the question of whom the sanction applies to. The current limited range of sanctions makes it unfit for the respect of political pluralism and, in practice, too harsh to be truly effective. **Gradual and proportional sanctions, including financial sanctions and temporary suspensions, could be imposed by the APPF on a European political party or on one or more of its member parties before (or instead of) resorting to de-registration, depending on the nature and gravity of the breach. These sanctions should be subject to judicial review in a timely manner.**

54. **Furthermore, the APPF may be empowered to verify all registration requirements, including compliance with Article 3(1)(c), by parties applying for registration. The result of this verification should be taken into account in its decision concerning the registration of the applicant.**

55. Finally, Article 11 creates a Committee of independent eminent persons nominated by the European Commission, Council and Parliament to provide an opinion on non-compliance with EU values when a request for verification is lodged directly by one of the three EU institutions (Article 10(3)) or by a Member State (Article 16(3)).[32] Since the Director of the APPF is nominated by the same institutions that nominate the Committee, and given the provisions aimed at ensuring the impartiality of the APPF and its staff, its expertise should not be doubted. **In order to rationalise the values compliance mechanism and avoid redundancy, the legislator may therefore consider revising or terminating the Committee of independent**

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[31] European political parties must observe, in particular in their programmes and in their activities, the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

[32] The Committee of independent eminent persons set up by Article 11 consists of six persons, with two nominated by each of the three main EU institutions. The members are experts, act independently, and cannot be members of the European Parliament, the Council or the Commission. They may also not hold an electoral mandate, be EU officials or other servants, or be current or former employees of a European political party or foundations. Members are appointed for a five-year, non-renewable mandate. The only role of this committee is to provide an opinion on non-compliance with EU values when a request for verification is lodged directly by one of the three EU institutions (Article 10(3)) or by a Member State (Article 16(3)).

eminent persons, given the limited added value that this structure brings compared to the expertise gathered by the APPF itself.

Recommendation 7. Ensuring judicial, and not political, oversight of the values compliance mechanism

56. While Articles 6(3) and 6(5) contain specific provisions to ensure the impartiality of the APPF, its role in the sensitive decision on the compliance of European political parties with EU values is severely curtailed: according to Article 10(3), the initiative to launch a verification is instead given to three political institutions and the APPF can only share doubts with the main institutions. Consequently, even if sanctions were proportional and could affect only a member party of a European political party (see **Recommendation 6**), it is highly unlikely that any sanction could be applied to a European political party (or one of its member parties) without the prior approval of this European party. Additionally, Article 10(4) gives the European Parliament and Council a veto power over a decision by the APPF to de-register a European political party for failure to comply with Article 3(1c).

57. **The Regulation could be revised to allow the APPF to independently launch a verification procedure, and to avoid granting a veto power to political players with respect to lawful sanctions imposed by the APPF. The European Parliament and Council may instead be empowered to bring a judicial challenge against such a decision. Beyond the provisions of Article 6(11), Article 27 should explicitly state that European political parties are entitled to appeal sanctions decided by the APPF to the Court of Justice of the European Union. A decision on de-registration should only be made by the judicial authority.**

D. Interplay of European and national political parties

OSCE/ODIHR-Venice Commission Guidelines.

58. The OSCE/ODIHR-Venice Commission Guidelines highlight three vital functions in a democracy that political parties contribute to: “First, they facilitate the cooperation and coordination of individuals in the exercise of their fundamental rights of association and expression. Second, they further the cooperation and coordination amongst the holders of public office, both within parliaments and across levels and institutions of government, thus facilitating the coherence and effective making and implementation of policy. Third, they provide a means to connect the organisations of citizens to officeholders through the formulation of political programs and the nomination of candidates in elections.”[33] The Guidelines add that a political party system “must also be workable and serve effective government. Accordingly, party regulation is also a legitimate means to support effective democratic government and should not lessen that capacity.” Reasonable restrictions, for instance on political fragmentation, may be introduced in order to assure some coherence in the political space.[34]

59. With regard to interactions between political parties at various levels, the matter is seldom mentioned in the Guidelines, given that interactions between national political parties and their regional or local branches are usually hardly an issue. However, the topic is approached from another angle, as the issue of limitations imposed on interactions between national and inter-state level parties. The Guidelines find these unjustifiable and make clear such limitations should be avoided in all relevant legislation. The OSCE Copenhagen Document (1990, par 10.4) clearly requires that associations, including political parties, should be able to communicate freely and co-operate with similar associations at the international level. This open

[33] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 18.

[34] Ibid., par 34.

communication and relationship between parties at an inter-state level is further supported by the Venice Commission, which has stated that "the practice of international co-operation among parties sharing the same ideology is a widespread one. Some parties have projected further their international dimension by assisting sister parties in third countries. In the past, these practices assisted, for instance, the democratic consolidation in a number of European countries. Whenever this assistance is compatible with national legislation and in line with ECHR principles and European standards, it must be welcomed as a good practice, since it contributes to creating solid democratic party systems."[35] The Guidelines add that "political parties should be free to enjoy communication with others who share their ideals at the national and international levels. Thus, this type of support between political parties should be permissible and should not fall under otherwise legitimate potential restrictions or bans on the receipt of foreign funding."[36]

60. As regards the regulation of party and electoral finance, the Guidelines consider it "necessary to protect the democratic process where appropriate", in particular through transparency measures, in order to "protect the rights of voters, prevent corruption, and keep the wider public informed. […] One way to enhance transparency is to require all support and expenditures to pass through election agents in charge of receiving donations for political parties and candidates and paying election expenses or to have in place provisions requiring all financial transactions to go through a single bank account."[37]

61. Additionally, "it is reasonable for a state to determine the criteria for electoral spending and a maximum spending limit for participants in elections. Parties will also need to distinguish between electoral expenses and other party expenditures. Spending limits should be carefully constructed so that they are not overly burdensome and to ensure that all parties are able to run an effective campaign, recognizing the high expense of today's electoral campaigns. The maximum spending limit usually consists of an absolute or relative sum determined by factors such as the voting population in a particular constituency and the costs for campaign materials and services."[38]

Relevant national practices.

62. Party funding regulations in EU Member States allow national political parties to fund federal, regional and local branches, as well as, with few exceptions (e.g. Croatia, Ireland, and Poland), referenda – this is even explicitly stated in the relevant laws in Denmark, Lithuania, Poland and Spain.[39] While some countries do not ban foreign funding altogether (e.g. Austria, Belgium, Denmark, Germany, Luxembourg, the Netherlands and Sweden), there are countries (e.g. Czech Republic, Estonia, Finland, and Romania) that establish exceptions to such prohibitions. Perhaps the Finnish and Romanian cases are the best examples of this. Thus, section 8b of the Finnish Party Finance Law allows international corporations of foundations that represent the same ideology to fund Finnish political parties. In a similar vein, Article 15 of the Romanian Party Finance Law allows for "donations consisting of assets necessary for the political activity, but which are not materials of electoral propaganda, received from international political organisations of which that political party is an affiliate or from political parties or political formations which have relations of political collaboration. Propaganda materials can also be

[35] See Venice Commission, CDL-AD(2009)021, Code of Good Practice in the Field of Political Parties and Explanatory Report.

[36] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 106.

[37] Ibid., par 246 and 247.

[38] Ibid., par 248.

[39] Article 22(3) of Regulation 1141/2014 prohibits European political parties and European political foundations from using any of their funding to finance referendum campaigns.

received when used solely in the election campaign for the election of Romania's representatives at the European Parliament".

Recommendation 8. *Allow European political parties to finance affiliated national parties and candidates*

63. Articles 21 and 22 offer a complex picture of the role granted to European political parties at the national level. On the one hand, Article 21 on the *financing of campaigns in the context of elections to the European Parliament* states that "the funding of European political parties […] may be used to finance campaigns conducted by the European political parties in the context of elections to the European Parliament in which they or their members participate". However, this is subject to national regulations, since Article 21 adds that "the funding and possible limitation of election expenses for all political parties, candidates and third parties in, in addition to their participation in, elections to the European Parliament is governed in each Member State by national provisions." On the other hand, Article 22 sets out limitations of funding, indicating that "the funding of European political parties […] shall not be used for the direct or indirect funding of other political parties, and in particular national parties or candidates. Those national political parties and candidates shall continue to be governed by national rules." Likewise, "the funding of European political parties […] shall not be used to finance referendum campaigns."

64. The decision to prohibit the use of European political parties' funds to support national parties and candidates has been one of the most consequential elements of the structure of the European party system, and the most detrimental to the integration of national and European political spheres. A truly integrated political sphere would mean a multi-level space for political action, where actors across various levels collaborate both for their own and for their common political purposes. By placing a financial firewall between the European and national levels, the legislator has not only limited the interactions of national and European political actors, but virtually prevented any possibility for European parties to engage where voters live.

65. While this decision was made "for reasons of legitimacy, transparency and Member States' political integrity"[40], its consequences have run directly counter to the goal set in the "party article" to see "political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union." Given the importance of national political parties in the EU, this normative role of European political parties may benefit from creating interlinkages with national parties. As the current status quo reveals, these links cannot merely involve the control of European parties by national parties, but must instead comprise joint activities, debates, and actions, during and away from electoral campaigns. This is in line with observations from multi-level systems where, regardless of the respective competences of the federal, state and local levels, the creation of an integrated political sphere has translated into political interactions between party structures at the various levels. Even in looser models, such as Switzerland, or where a strict separation of federal and state competencies is in effect, such as in the United States, nation-wide political parties work in conjunction with the state and local levels to find common positions on both federal and sub-federal matters. Finally, giving national political parties a financial stake in their relationship with European parties may ensure the effectiveness of conditionality provisions, which currently impose requirements on national parties but only impose financial sanctions on European political parties, such as Article 18(2a). Short of this financial incentive for national parties, the failure to comply will continue to penalise European parties, which national parties may be perfectly willing to do, at no or little cost to themselves.

66. **In order to enable European political parties to fully fulfil the role attributed to them in the treaties and to enhance the effectiveness of the sanction regime, Articles 21 and 22**

[40] Explanations by Jo Leinen, rapporteur on Regulation 2004/2003.

could be revised to explicitly allow European political parties to finance events, congresses, publications, communications, and campaign activities (for European as well as national, regional and local elections and referenda)[41] either organised independently or in conjunction with national political parties. Any attempt to restrict these events, congresses, publications, communications or campaign activities benefiting from European party funding to European topics does not seem justified.

67. **Regulation 1141/2014 should provide clear requirements for the use of these funds, which may include provisions aimed at ensuring the visibility of the European political party. Furthermore, restrictions may be imposed on the use of resources of European political parties to cover regular administrative expenses of national political parties or for events, congresses, publications, communications or campaign activities solely under the banner of one or more national political parties.** The APPF should be empowered to assess whether these criteria are fairly met. At any rate, the use of European party resources should remain in line with ceilings on regular political expenses and electoral expenditure found in the national law of the Member State concerned.

III. FINANCING

E. Level playing field for smaller/newer parties

OSCE/ODIHR-Venice Commission Guidelines.

68. Legislation regulating political parties should aim to ensure a level playing field to facilitate a pluralistic political environment. The ability of individuals to seek, obtain and promote a variety of political viewpoints, including via political party platforms, is commonly recognised as a critical element of a robust democratic society. As evidenced by ECtHR judgments as well as the Copenhagen Document and other OSCE commitments, "pluralism […] is necessary to ensure that individuals are offered a real choice among political parties. Regulations on political parties should be carefully considered to ensure that they do not impinge upon the principle of political pluralism and allow all parties."[42]

69. The Guidelines also highlight that public funding "should also aim to ensure that all parties, including opposition parties, small parties and new parties, are able to compete in elections in accordance with the principle of equal opportunities, thereby strengthening political pluralism and helping to ensure the proper functioning of democratic institutions."[43] ODIHR and the Venice Commission consider that "legislation should ensure that the formula for the allocation of public funding does not provide one political party with a monopoly position, or with a disproportionately high amount of funding."[44] They further reiterate that, in order to "promote political pluralism, some funding should also be extended beyond those parties represented in parliament, to include all parties putting forth candidates for an election and enjoying a

[41] The involvement of European political parties in electoral activities should be accompanied by the necessary electoral finance regulations, for instance in the EU Electoral Act. These regulations should ensure the necessary level of transparency, for instance requiring election-related income and expenditures to pass through an election agent or requiring all transactions to go through a single bank account. In addition to limits imposed by the national law of Member States, which European political parties should respect in their support of their national member parties, reasonable limits on electoral spending may be provided. Such limits should be clearly defined and provide clear indications as to how those provisions will be interpreted and applied.

[42] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 46.

[43] Ibid., par 232.

[44] Ibid., par 241.

minimum level of citizen support. This is particularly important in the case of new parties, which must be given a fair opportunity to compete with existing parties. It is good practice to enact clear guidelines on how new parties may become eligible for funding and to extend public funding beyond parties represented in parliament. A generous system for the determination of eligibility should be considered, to ensure that voters are given the political alternatives necessary for a real choice. Limiting public funding to a high threshold of votes, and to political parties represented in parliament would hinder the free flow of ideas and opinions."[45]

70. Good practice notes that, "when developing allocation systems, careful consideration should be given to pre-election funding systems, as opposed to post-election reimbursement, as the latter can perpetuate the inability of small, new or less wealthy parties to compete effectively. A post-election funding system may not provide the minimum initial financial resources necessary to fund a political campaign."[46]

71. Finally, the Guidelines consider that, "where minimum thresholds of support are required for funding, an unreasonably high threshold may be detrimental to political pluralism and the opportunities of small political parties. It is in the interest of political pluralism to condition the provision of public support on attaining a lower threshold than the electoral threshold for the allocation of a mandate in parliament."[47]

Relevant national practices.

72. Currently, all EU countries, with the exception of Malta and Italy (but only from 2017), provide public funding to political parties. In some cases (e.g. Austria, Belgium, and Sweden), they do so only for the financing of ordinary activities; in others (e.g. Croatia, Czech Republic, Germany, Hungary, Ireland, Luxembourg, Poland, Portugal, Slovakia, Slovenia and Spain), parties also receive public financial help with their electoral campaign expenses.

73. Parties receive financial help from the state once they have obtained a certain percentage of votes, which in most cases tends to be two points below a country's electoral threshold. Only in four EU countries (Belgium, Croatia, Finland and Spain), public funding is limited to parliamentary parties. Effective pay-out thresholds tend to go from as low as 0.3 percent of the votes in Denmark to as high as 5 percent in Belgium and Croatia. Still, the most common pay-out threshold is 1 percent (e.g. Bulgaria, Estonia, France, Hungary, and Slovenia).

Recommendation 9. Remove the requirement for EP representation for public funding

74. Article 17(1) requires European political parties to have representation in the European Parliament in order to be eligible for European public funding, which severely limits small and new parties' ability to receive public funding and effectively compete despite proven levels of popular support.

75. **In accordance with the OSCE/ODIHR-Venice Commission Guidelines and good practices of the OSCE participating States, it is recommended to remove the requirement for European political parties to require representation by elected MEPs in order to access European public funding, and to allow for a lower threshold in order to obtain support for funding.** Using the current funding systems, registered European political parties without EP representation would be eligible to the lump sum.

Recommendation 10. Reassess the amount of the lump sum

76. Smaller parties are structurally vulnerable to rising costs and other financial risks. Given their

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[45] Ibid., par 242.

[46] Ibid., par 238.

[47] Ibid., par 239.

limited electoral support, they are particularly dependent on the lump sum to cover their regular expenditure. Discussions with representatives of smaller parties have highlighted their continued difficulties to finance their activities.

77. **In order to provide smaller parties with a real opportunity to support their ideas and to ensure continued political pluralism, it is recommended to reassess the amount of the lump sum provided to them.** Increasing the percentage of the lump sum from its current 10 percent of the total funding allocated to European political parties may be considered.[48] Should public funding be instead based on fixed amounts, the calculation of the lump sum should seek to ensure that smaller parties are provided with the minimal support necessary to ensure their proper functioning, prevent corruption, and allow them to compete in elections in accordance with the principle of equal opportunities.[49]

Recommendation 11. Create special, time-limited rules for new parties to facilitate the emergence of newcomers

78. New European political parties, especially when not composed of established national parties, are unlikely to have many MEPs. Under the current public funding system, they would receive very limited funding or may not be eligible at all. They are also not likely to receive a large number of votes, meaning that even using vote-based funding, as proposed above, their funding would remain very limited. Additionally, should their creation fall far from the next European Parliament elections, they would remain ineligible for vote-based funding for several years. Newer parties are also less likely to receive large amounts of private funding.

79. **In order to support political pluralism and provide new European political parties with a fair chance to compete, special public funding rules may be designed. These rules would make it easier for new parties to access public funding, with the downside of providing a more limited amount of funding.[50] Upon registration, new parties could be given the choice to be placed under these special funding rules or to follow the general system.** At any rate, these rules are not meant to provide extra support for *small* parties, but specifically support *new* parties; access to this special regime should therefore be time limited.[51]

Recommendation 12. Introduce an "electoral kit" for European elections

80. Electoral expenses have a disproportionately more significant impact on smaller political parties than on established and larger ones. However, the EU's current public funding regime makes no provisions for electoral expenses. Furthermore, while regular public funding must be commensurate to political parties' size and reward a strong electoral performance or a large party membership, elections are the moment when all parties must be given, if not a strictly equal, at least a fair and proper chance to introduce their political offer to voters. This is why many countries ensure, during electoral campaigns, an equal speaking time in the media or other

[48] Smaller European political parties were already experiencing financial difficulties prior to the 2018 decision to bring this percentage down from 15 percent to 10 percent.

[49] OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 232

[50] For instance, new parties could be provided with 1) an increased lump sum, and no supplementary funding; 2) an increased public-to-private funding ratio, but with more limited funding rates; 3) an increased *amount per vote*, but applicable to a lower number of votes; an increased *amount per member*, as an incentive to broaden their individual membership, but applicable to a lower number of members; or 4) an increased *matching of their private funding,* but applicable to a lower cumulated amount of donations. Similarly, the publication *Reconnecting European Political Parties with European Union Citizens* (IDEA 2018) suggests "increasing public funding for Europarties from 85 percent to 95 percent of their total income" for newly established European political parties "and only for a limited period of time (one or two electoral cycles), to encourage them to continue to seek alternative funding".

[51] For instance, new parties could be given access to this special funding regime for a given number of years or of EP terms.

similar equal services, regardless of parties' size.

81. **It is therefore proposed to create an "electoral kit" for European elections, combining monetary[52] and non-monetary services,[53] which would be provided to all registered parties ahead of the electoral period, as well as to European lists attesting of sufficient popular support.**

Recommendation 13. Replace MEP-based funding with vote-based funding to reward electoral performance

82. While European elections are by and large proportional, Member States often implement electoral thresholds, and assigning public funding based on elected MEPs directly applies these thresholds to public funding for European political parties. Additionally, the limited number of MEPs in smaller Member States creates a natural threshold; smaller parties unable to reach these thresholds are therefore deprived of substantial European public funding despite proven electoral support. Currently, the number of MEPs of a European political party accounts for 90percent of the total amount of European public funding.

83. Alternatively, assessing European parties' electoral success based on the votes that they have received would increase parties' financial stability (since this funding would remain fixed between elections), limit the ability of MEPs and national parties to leverage their European party membership (since they would no longer bring funding with them), and encourage all parties to perform well even where their chances to win seats in the European Parliament are limited.

84. **In order to more accurately link European political parties' public funding to their level of electoral support, and therefore more faithfully reward this support, the current MEP-based funding system could be replaced with one based the number of votes received by each party.[54]** Should the split-envelope mechanism remain in place, this vote-based funding would be a given percentage of the total funding allocated to European political parties. Should public funding instead be based on fixed amounts, a price per vote could be agreed upon, either with a fixed rate or using regressive brackets.[55]

F. Structure of the public funding regime

OSCE/ODIHR-Venice Commission Guidelines.

85. Public funding and its requisite regulations, including those related to spending limits, disclosure, and impartial enforcement, have been designed and adopted in many states as a potential means to support political parties in the important role they play, prevent corruption, and remove undue reliance on private donors. […] Generally, legislation should attempt to create a balance between public and private contributions as sources of funding for political

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[52] For example, in some states, monetary services include a pre-electoral grant dedicated to electoral campaign expenses or a matching fund focusing on private donations and matching them at a higher rate during the six months before an election. Similar monetary services could also be given to European political parties and European lists running, as well as to European political foundations for activities directly relating to elections and voter mobilisation organised ahead of the elections.

[53] For example, in some states, non-monetary services include vouchers for the printing and delivery of electoral material and access to a common online platform.

[54] A low threshold, for instance of 100,000 votes across Europe, may still be considered.

[55] In Germany, the first 4 million votes entitle a party to receive EUR 1 for each vote; after that, parties receive EUR 0.83 per vote. In the case of European Parliament elections, the first ten million votes could provide European political parties with EUR 0.5 per vote, and EUR 0.25 per vote after that; more brackets could be used to make this funding more regressive.

parties.[56]

86. The amount of public funding awarded to parties must be carefully designed to guarantee the utility of such funding, while at the same time ensuring that private contributions are not made superfluous or their impact nullified. […] Legislation should also put in place effective review mechanisms aimed at periodically determining the impact of current public financing and, as needed, altering the amount of funding allocated.[57]

87. The timing for allocating public support to political parties should be determined by relevant legislation. Some systems allocate money prior to an election, based on the results of the previous election (including seats gained in parliament) or proof of minimum levels of support. Others provide payment after an election, based on the final results or as partial reimbursement for actual expenses incurred.[58]

88. The allocation of funding may either be fully equal ("absolute equality") or proportionate in nature based on a party's election results or proven level of support ("equitable"). There is no universally prescribed system for determining the distribution of public funding. Legislation governing public funding that calls for distribution based on a combination of absolute equality and equitability approaches might be most effective at achieving political pluralism and equal opportunity.[59]

89. Legislation determining allocation systems may also include incentives to foster political participation. For instance, matching grants, in which the state provides an equal amount of funding to that donated to the party by supporters, may foster increased political engagement by the public. In order for these schemes not to disadvantage parties whose supporters predominantly belong to less wealthy segments of the population, legislators could introduce matching grants for small donations up to a certain maximum.[60]

90. Allocation of public funds based on party support for women candidates may not be considered discriminatory and should be considered in light of "special measures" as defined by Article 4 of the CEDAW. As articulated in CoE Committee of Ministers Recommendation (2003)3 on balanced participation of women and men in political and public decision making, allocation of public funds can be contingent on compliance with requirements for women's participation. While it is important to respect the free internal functioning of parties in candidacy selection and platform choices, public funding may reasonably be restricted based on compliance with a set of basic obligations.[61]

Relevant national practices.

91. When allocating public funds, most EU countries prefer to do this in a proportional way. In Bulgaria, Denmark, Ireland, Latvia, Lithuania and Portugal, parties receive state subsidies on the basis of their electoral support (i.e. percentage of votes) in the previous legislative elections. At the same time, in Romania, for instance, 25 percent of the funds are distributed according to results in local elections. By contrast, in some countries, funding allocation takes place using the percentage of seats gained, but they tend to be a minority within the EU (e.g. Croatia, Finland, and Sweden). Some countries combine both methods (e.g. France and Spain). Others prefer to give an annual lump sum equally to all eligible parties on top of another variable amount proportional to their percentage of votes (e.g. Belgium and Cyprus). The Czech

[56] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 232.

[57] Ibid., par 233.

[58] Ibid., par 237.

[59] Ibid., par 239.

[60] Ibid., par 240.

[61] Ibid., par 244.

Republic and Luxembourg, however, limit the latter amount to five percent of the votes and 75 percent of a party's global revenue, respectively. Austria, Czech Republic and Slovakia tend to favour parliamentary parties in their distribution, while Estonia allocates a flat rate specifically for non-parliamentary parties on the basis of the number of votes. In other countries, a part of the funds (e.g. 20 percent in Greece and 25 percent in Hungary and Slovenia) is allocated on an equal basis, and the rest on the basis of votes. Notably, Poland is the only EU country to have adopted a regressive formula of distribution according to which eligible parties are annually guaranteed a so-called statutory subvention calculated on the principle of gradual reduction, in proportion to the quota of valid votes gained during the general election.

92. Another model of allocation ("matching funds") is used where the distribution of part of the state subsidies is conditional on the attraction of donations (e.g. in Germany, where parties are required to generate at least half of their income from private sources) or members (the Netherlands). In this latter case, the minimum number of party members in order to qualify for this type of subsidies is 1,000.

93. With regard to earmarking, many EU legislations earmark the use of public funds beyond the traditional campaign and ordinary activities with an aim to support a higher involvement by traditionally less politically active sectors of society. Thus, for example, Ireland, Latvia and the Netherlands contain dispositions requiring parties to use public subsidies for promoting the participation of young people. Similarly, up to 6 EU countries reserve parts of the funding that parties are to receive from the state to the promotion of women's engagement in politics. They differ, however, in their earmarking criteria. Thus, while in both Croatia and Romania parties receive extra funds for each female MP, France and Portugal impose the loss of a certain percentage of public funds on parties whose female candidates do not reach a certain minimum threshold. Portugal, where parties can lose up to 80 percent of public funds if their lists are formed by less than one-third of female candidates, has managed to increase female representation in elected positions by more than 10 percent. Still other countries require that a certain percentage of public funding (e.g. no less than 5 percent in Finland) is set aside for gender-related activities. The same is the case in Ireland, where parties are also punished with a loss of 50 percent of their funding if the number of female candidates is inferior to 30 percent. Finally, in countries like Finland, Sweden and Slovenia, there is a separate fund specifically devoted to the promotion of women, and especially women's political organisations. Public funds for political parties could be earmarked for other activities, such as research initiatives and policy-scientific activities (e.g. in Greece, Ireland, Latvia, the Netherlands, Poland, and Slovakia) or for education and training of their members and supporters (e.g. the Netherlands).

Recommendation 14. Make the funding of the European party system independent from partisan pressure

94. A core element for the creation of a democratic and fair political party system is its impartial, and non-partisan management, from the registration and de-registration of parties to the allocation of funding, to oversight and control functions, to sanctions. In particular, the sensitive handling of the financing of political parties – by nature, extra-parliamentary entities – should be carried out by an authority that is free from partisan influence, and not by a parliament or government (or an officer thereof). Currently, public funding for European political parties (Article 223 of the Financial Regulation)[62] and for the APPF (Article 6(7)) stems from the budget of the European Parliament,[63] alongside other sources of expenditure of the European

[62] Regulation 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (the 'Financial Regulation'), Title XI Contribution to European Political Parties, Article 223 Budgetary aspects.

[63] Article 6(7): The appropriations for the expenditure of the Authority shall be provided under a separate Title in the Section for the European Parliament in the general budget of the European Union. The appropriations shall be sufficient

Parliament and the funding of European parliamentary groups.[64]

95. **Appropriations for the funding of European political parties should not be included in the budget of the European Parliament, but instead in the budget of the APPF.[65] In turn, the budget of the APPF should not be included in the budget of the European Parliament. Rather, the APPF should have its own independent section in the budget of the European Union, in the same manner as the European Ombudsman and the European Data-protection Supervisor.[66]**

Recommendation 15. Review the amount of public funding available to European political parties and review the co-financing requirement

96. A delicate element of a public funding regime is ensuring that political parties receive enough public funding to carry out their activities without being overly dependent on private interests, while at the same time not making private donations superfluous, which would remove an important link between parties and their base. An review of public funding for leading parties in Europe shows that, regardless of a party's exact size or of the funding choices that countries have made, European parties receive far less funding than their national counterparts. Per capita public funding for national parties ranges from EUR 0.05 to EUR 0.62 per year per citizen; by contrast, in 2018, European political parties averaged at EUR 0.004 per year per citizen.[67] Even with a narrow view of the role of European political parties, the current level of public funding is believed to be insufficient for European parties to "contribute to forming European political awareness and to expressing the will" of 447 million European citizens. However, European political parties' financial dependence on public funding is noticeably higher.

97. **In order to ensure that European political parties are effectively able to carry out their activities, it is proposed to consider reviewing the overall amount of public funding available to European political parties.[68] In parallel, in order to limit European political parties' financial dependence on public funding,[69] in line with current practices in Member States, it may be useful to consider progressively decreasing the maximum ratio of public-to-private funding.[70]**

Recommendation 16. Use amounts instead of percentages for the distribution of funding

98. According to Article 19(1), European political parties share an annual funding envelope: 10

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to ensure the full and independent operation of the Authority. A draft budgetary plan for the Authority shall be submitted to the European Parliament by the Director, and shall be made public. The European Parliament shall delegate the duties of Authorising Officer with respect to those appropriations to the Director of the Authority.

[64] https://eur-lex.europa.eu/budget/data/LBL/2021/en/SEC01.pdf#page=23

[65] Placing funding-related functions under the mandate of the APPF would also contribute to streamlining and simplifying the European party system, by providing European parties with a single point of contact for all their operations.

[66] https://eur-lex.europa.eu/budget/www/index-en.htm

[67] Data source: European Parliament.

[68] In the EU's 2020 draft budget, administrative costs amounted to 7 percent, or just over EUR 10 billion; the European Parliament's share was 20 percent of that amount, around EUR 2 billion, and 1.32 percent of the total budget. With EUR 42 million allocated to them, European political parties received around 2 percent of the EP's budget and 0.03 percent of the EU's total budget.

[69] In this sense, "private funding" shall include membership fees and other membership-based compulsory contributions, as well as donations, income from sales, investments or any other income-yielding activities, and grants derived from any source.

[70] Currently, European public funding is allowed to reach 90 percent of a European party's reimbursable expenditure. While this rate could be temporarily maintained for financial stability, it could progressively and gradually decrease to around two-thirds, in line with current practices in Member States (source: GRECO, Third Evaluation Round).

percent is distributed equally among eligible parties (the "lump sum"), and the remaining 90 percent is distributed in proportion to European political parties' number of MEPs. As a result of this "split-envelope" system, a European party's funding is not directly tied to its own performance in an objective manner, but is noticeably affected by the yearly negotiations leading to the amount in the envelope,[71] as well as by the number of parties eligible for funding every given year. This is especially problematic given the volatility of the European party system.[72]

99. **In order to better tie a European political party's amount of public funding to its own performance, to increase parties' financial stability and long-term budgeting, and to give European parties a direct incentive to increase voter turnout,[73] the system of split-envelope funding could be replaced with fixed amounts.** The lump sum would become an amount in euros, while the MEP-based funding would be calculated based on an *amount per MEP* in euros. A planned re-evaluation mechanism, based on a consumer price index using Eurostat figures, could prevent the need to manually re-assess these amounts every year.[74]

Recommendation 17. Introduce individual member-based funding to increase political participation

100. The distance between citizens and parties is a crucial element limiting the credibility of a party system, and, consequently, its ability to shape the political agenda. The current framework creates no incentive for European political parties to broaden their appeal to citizens: citizens vote for national parties and national candidates, campaigning is done at the national and local levels through national parties, and their smaller membership even makes organisational processes easier.

101. **In order to incentivise European political parties to develop their individual membership and to encourage political participation, a member-based allocation can be created, in addition to the lump sum and the vote-based funding.[75]** This allocation could be designed with a fixed *price per member* or using brackets for regressive distribution. This may also be used as a means to lower the cost of party membership, by using this allocation to offset a decrease in membership fees.

Recommendation 18. Use a matching fund to strengthen private funding

102. While public funding of political parties is important to ensure that parties are sufficiently funded and not captured by private interests, it remains essential for parties to have an incentive to reach out to citizens and raise private donations, in particular small donations. In practice, private donations currently account for around 1 percent of European parties' public and private income.[76]

103. **In order to incentivise European political parties to reach out to citizens and reward the**

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[71] This envelope is negotiated on a yearly basis and agreed by the Bureau of the European Parliament, following a suggestion from the Secretary-General of the European Parliament.

[72] This includes a doubling of the number of parties over ten years, and the disappearance of 6 out of 16 parties between 2017 and 2018.

[73] Awarding European political parties a fixed *price per vote* encourages them not only to seek a high *share* of the vote, but also a high *number* of votes, thereby giving a direct incentive to raise voter turnout.

[74] In order to avoid skyrocketing costs, an absolute upper value could be set: unlike the current envelope, it may not be reached, but serves as a safeguard mechanism; should European political parties' funding go beyond this absolute limit, amounts would be calculated pro-rata, with the lump sum as a minimum value guaranteed to all parties.

[75] Safeguards should be put in place to avoid fake or abusive registrations. In the Netherlands, parties are required to have at least 1,000 members paying a membership fee of at least EUR 12. A similar system could be used for European parties, in addition to periodic controls of members' actual membership status. In order to be valid, members should have already paid their membership fee in full.

[76] Here "private income" is limited to donations and contributions.

raising of private funding, a dedicated stream of funding matching private donations with public funding could be created. Under this stream, each euro of private donations received from individuals – therefore excluding membership fees – would be matched with a fixed sum.[77]

Recommendation 19. Use funding conditionality to support specific policy goals and values

104. According to Article 17(2), reimbursable expenditure includes administrative expenditure and expenditure linked to technical assistance, meetings, research, cross-border events, studies, information and publications, as well as expenditure linked to campaigns. These are very broad categories and more specific language may be used to promote specific goals and values.

105. **In order to increase diversity and inclusiveness, a share of European public funding could be clearly earmarked for the organisation of political activities promoting the participation of women, youths, people with disabilities, and minorities in European politics. In addition to earmarking the *use* of funds provided, conditionality can be applied to the *amount* of funds provided – either by providing more funding or by restricting funding based on specific conditions, such as the promotion of diversity. European political parties could lose part of their European public funding or receive supplementary funding.**[78]

G. Donations and contributions

OSCE/ODIHR-Venice Commission Guidelines.

106. There are two main types of private financial contributions: membership fees and donations. The former should be counted in a way that ensures that they are not used to circumvent donations caps for natural persons.[79] This also applies to voluntary contributions made by elected officials.

107. Certain types of donations (e.g. foreign, anonymous, or corporate) should be strictly limited. In order to avoid undue influence, donations caps adapted to the passage of time (e.g. inflation) should be established. Where allowed, loans to political parties should be strictly regulated in order to guarantee the maximum transparency and avoid undue influence and the circumvention of donation limits. Legislation concerning donations bans and limits should also apply to third-

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[77] As with previous recommendations, a regressive system would provide a greater reward for a first bracket, and a cap on the amount of donations per natural person would prevent this subsidy from being skewed in favour of high-earners. A number of mathematical formulas can be used to compute the proposed coefficient to provide incentives to generate private funding across several Member States.

[78] For instance, in the absence of sufficient reforms of the European electoral law, conditionality on European public funding could be used to enhance the gender balance among candidates at European Parliament elections by restricting funding, should European parties fail to present sufficiently balanced lists of candidates. However, candidate selection for European Parliament elections remains the prerogative of national political parties, while the proposed financial sanction would affect European parties. Given the loose links between national and European political parties, it is likely that national parties would let European parties bear the sanctions so as to retain their discretionary candidate selection. This is a further argument for the creation of stronger ties, including clear financial linkages, between national and European political parties (see **Recommendation 8**). Conditionality could be used more successfully to promote gender balance in the leadership of European political parties. Despite differences in structures, European parties have in common the presence of senior leadership (a president, usually more than one vice-president, a secretary-general, and a treasurer), as well as a collegial body gathering representatives of member parties. Provisions could require the former, the latter, or both to be gender-balanced under penalty of sanctions. Sanctions could range from a simple flat cut in public funding (for instance, a 20 percent cut in the final amount), or a progressive system where the rate increases with gender disparity.

[79] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 207.

party and in-kind donations, the latter being determined on the basis of market prices (to be included in financial reports). Similarly, party funding legislation should be extended to political party foundations.[80]

108. Limits have historically been placed on funding, in an attempt to limit the ability of particular categories of persons or groups to gain political influence and influence the decision-making process through financial advantages. It is a central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry at large, not to wealthy special-interest groups in particular. As such, a number of reasonable limitations on funding have been developed. These include limitations on donations from businesses and private organizations, including state-owned/controlled companies and anonymous donors.[81] Often, laws have different donation limits in place for individuals on the one hand, and legal persons on the other. Increasingly, states ban donations from companies to political parties and election candidates and campaigns.

Relevant national practices.

109. Although foreign and anonymous donations are banned in the majority of EU countries, many Western European democracies allow for the former (Greece), restrict them (e.g. Italy, Ireland, and Romania), or do both (e.g. Austria, Belgium, Germany, and the Netherlands). Denmark is the only country to allow those foreign and anonymous donations without restrictions. Corporate donations are also banned altogether in the majority of countries. But even where allowed, donations from public corporations tend to be prohibited (e.g. Austria, Czech Republic, Malta, Slovakia, Croatia, Finland, and Romania). The latter three countries go so far as to ban donations from private corporations with public contracts for a certain "cooling-off" period (e.g. 12 months). Donations from trade unions are banned in 14 of the 27 EU Member States. Some EU countries go a step further and ban donations from specific organisations: e.g. religious (Bulgaria, Croatia, Germany, Poland and Romania), charities (Bulgaria and Romania), organisations in debt (Croatia), gambling as well as recently created organisations (both in Poland).

110. A second variety of restrictions on private contributions to political parties are so-called "donations caps". Although some EU states (Austria, Bulgaria, Denmark, Germany, Luxembourg, and Sweden) do not include any form of quantitative limitations on donations, either monetary or in-kind, made to a political party, most (19 Member States) do. Hungary and the Netherlands establish limits, but only for non-anonymous in-kind donations (EUR 1,450 and EUR 1,000, respectively).

111. Donation limits are fixed in some states, going from as little as EUR 500 in Belgium[82] to EUR 300,000 in Slovakia. In other countries, the limits are dependent on the average salary, sometimes gross (e.g. Romania), sometimes on a monthly basis (e.g. Latvia). Donations caps for contributions made by corporations are sometimes higher than those made by individuals (e.g. EUR 27,000 vs. EUR 2 4,000 in Croatia).

112. In most countries, in-kind donations are required to be assessed according to their market value. The Maltese legislation contains detailed provisions on how such calculations should be done. In most cases, in-kind donations are capped as monetary donations, although Greece and Lithuania apply lower caps (EUR 500 and 10 times the average monthly salary, respectively). In some cases, such as Croatia and Romania, in-kind donations are included in the general donation limit. In Cyprus, in-kind donations are banned.

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[80] Ibid., par 209-222.

[81] Ibid., par 211.

[82] Although any individual is allowed to donate up to EUR 2,000 to different parties during one year.

113. While few countries completely ban loans to political parties (e.g. Latvia), in some Member States they are limited to certain amounts (e.g. in Bulgaria, Malta, Romania, Slovakia, and Slovenia), can only be taken up for statutory purposes (e.g. Poland), can only be made by individuals (e.g. France),[83] or by financial institutions (e.g. Estonia),[84] or should not be agreed on more favourable terms than ordinary commercial ones (e.g. Ireland and Malta).[85]

Recommendation 20. Rephrase the provision on ceilings for contributions from member parties

114. Article 20(7) indicates that "the value of [contributions] shall not exceed 40 percent of the annual budget of that European political party." This phrasing makes it unclear whether the 40 percent limitation applies to individual contributions (most likely understood as "contributions per donor and per year") or to the total sum of contributions from all party members.

115. **Given the current weight of European public funding in European parties' budget, it is unclear whether either interpretation has already been applied. However, in order to increase legal certainty, the phrasing of Article 20(7) could be revised, by clearly stating whether the 40 percent limit applies to individual contributions or to their cumulated value.**

Recommendation 21. Clarify the scope of donations and contributions

116. Article 2(7) defines a "donation" as "any cash offering, any offering in kind, the provision below market value of any goods, services (including loans) or works, and/or any other transaction which constitutes an economic advantage for the European political party […] concerned, with the exception of contributions from members and of usual political activities carried out on a voluntary basis by individuals." Article 2(8) further defines a "contribution from members" as any payment in cash, including membership fees, or any contribution in kind, or the provision below market value of any goods, services (including loans) or works, and/or any other transaction which constitutes an economic advantage for the European political party.

117. The above definitions do not clearly address the issue of sponsorship, which may be provided to meet the costs of events such as congresses, rallies, etc. According to the Guidelines, the use of sponsorships "can become a channel for political funding intended to evade contribution limits"[86] and "all sponsorships be counted as private financial contributions (i.e. *donations*) and subject to the same limitations or bans." Divergences have already occurred between European political parties and the APPF on whether sponsorships ought to be considered donations or contributions.[87]

118. **While the definition of a donation given in Article 2(7) aims at remaining broad in scope, it would benefit from a revision that would clearly indicate that sponsorships are considered as donations and will be treated as such. Likewise, in the current framework, a revision of the definition of a contribution, in Article 2(8), should clearly indicate that sponsorships provided by members will be considered as contributions and treated as such.**

Recommendation 22. Redefine categories of private funding

119. Article 2 of Regulation 1141/2014 establishes a difference in nature and treatment between "donations" and "contributions". The core difference resides in the provider: contributions are

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[83] With the exception of other political parties/banks within the EU.

[84] The obligations arising from loans have an upper limit of 25 percent the sum allocated to parties from state subsidies.

[85] Those received by individuals are subject to general contribution limits.

[86] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 215.

[87] Correspondence with a senior policy advisor of a European political party, March 2021.

provided by members (whether natural or legal persons), while donations are provided by non-members. This distinction does not seem to exist at the national level and is not found in the OSCE/ODIHR-Venice Commission Guidelines, which equate "private financial contributions" (including any form of in-kind support) with "donations". Operationally, the distinction between donations and contributions does not appear to have had significant benefits and, instead, rather led to confusion and gaps in reporting (see **Recommendation 30**).

120. **Should categories be introduced for types of private funding, a more useful distinction than one based on the *provider* would be one based on the *compulsory nature* of the act. As such, all "private financial contributions" could be divided into fixed *compulsory* contributions ("membership fees") and *voluntary* contributions ("donations").**[88] This new distinction would lead to an easier control of private financing since, on the one hand, membership fees can easily be linked to the types of memberships indicated in European parties' statutes (as required under Article 4(2)(b)), and, on the other hand, it would create a clear separation between amounts paid by members as a result of their membership and amounts paid by the same out of their own willingness. Under this distinction, all sponsorships, preferential loans, and in-kind contributions provided by members will be considered as donations and treated as such, subject to the same limitations or bans as other donations.

Recommendation 23. Revise donations from legal persons

121. Article 20(1) allows European political parties to accept donations from natural and legal persons of up to EUR18,000 per year and per donor. Historically, legal persons have greatly contributed to the financing of political parties. However, states have increasingly acted to ban donations from legal persons to political parties; this has primarily affected private companies and other for-profit structure and, to a lesser degree, unions and NGOs. In 2018-2019, out of ten registered European political parties, five received no (or no significant) amount of private donations and two received limited amounts.[89] The remaining three parties received substantial amounts of private donations, ranging from EUR150,000 to EUR 300,000. For these parties, reliance on donations from legal persons ranged from 83 percent to 99 percent. Therefore, out of the ten registered European political parties, six may remain unaffected by a revision of the regulation of donations from legal persons.

122. **While the OSCE/ODIHR-Venice Commission Guidelines do not advocate for the outright prohibition of donations from legal persons, in order to avoid undue influence on European political parties by private interests, more stringent regulations are required.[90] While legal entities under the control of the European Union, Member States, or any other public authority should be prohibited from making donations, gradually phasing out donation from legal persons to political parties and election candidates, in line with a general trend, may also be considered.[91] Given current practices, and in order not to unduly penalise European parties having capitalised on private donations from legal**

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[88] A revision of Article 2 could amend the definition of "donation", add a definition for "membership fee" and remove the definition of "contribution". A similar revision of Article 20 could remove references to contributions, and instead allow and limit membership fees. In the case of individual members, the membership fee could be capped via a fixed amount or an external point of reference, such as the EU's average minimum wage. Alternatively, individual membership fees could be capped by indicating that individual members' membership fee will be included in their *per year* limitation on donations.

[89] ID Party received EUR 250 and the PEL received EUR 123 – in both cases from minor donations.

[90] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 214

[91] Should the categories of private funding be revised in line with **Recommendation 22**, an exception would need to be made to allow donations from certain legal entities which are members of European political parties (their national member parties). Additionally, in case a ban is imposed, the types of companies falling under such bans need to be delineated clearly, e.g., whether they cover all companies regardless of size and whether a legal person made up of a single self-employed individual is also covered.

persons, increasingly stringent ceilings could be applied to donations from legal persons.

Recommendation 24. Improve the regulation of loans

123. In order to finance their regular activities and electoral campaigns, political parties may borrow money. Taking out a loan normally requires that steps be taken by the creditor and debtor well in advance, which may be before the beginning of a campaign. Likewise, repayment takes some time, and may likely continue after the end of a campaign. There is a risk, therefore, that the value of loans might not be reflected properly in the financial reports of European parties, especially in cases of electoral reporting. Loans that are granted at advantageous conditions or even written off by the creditor must be treated as a donation, which is already specified in the definition of donations and contributions in Article 2. However, this must be closely monitored in case donations from legal (or even simply commercial) entities are phased out (see **Recommendation 23**).[92]

124. **In order to better control the use of loans, Regulation 1141/2014 could set out clear rules on the nature of the permissible lenders, the maximum value of loans, the conditions for the registration of the loans, the timeframe for contracting loans, the terms of repayment, and disclosure requirements (at least, lender, value, interest rate, and period of repayment). Specific measures may be taken to ensure that the reimbursement of loans complies with the terms to which they have been granted.**[93]

H. Administrative and accounting simplification

OSCE/ODIHR-Venice Commission Guidelines.

125. In general, all political parties should be required to file relevant basic information; the requested information should be detailed enough for proper transparency and monitoring. However, special attention should be paid to small parties, for which reporting requirements should not be too demanding. Any obligation imposed on political parties should be directly related and proportional to their special privileges.

126. In order to ensure the timeliness and transparency of accounting and reporting, procedures should be simplified (e.g. by the use of a single bank account), and should always strike a balance between necessary disclosure and privacy concerns.

127. Whenever possible, reporting should be made electronically. Digitalisation should be supported, minimising the need for paper-based procedures and simplifying oversight. Overall, political parties should comply with all relevant accounting and auditing standards.

128. With regard to expenditure, the Guidelines do not mention limitations imposed on the types of party expenditure. They do however state that “the regulation of party and campaign finance, including spending limits, is necessary to protect the democratic process where appropriate”[94] but focus on limits on spending amounts (not types of spending), mostly in the context of electoral spending. Therefore, reverting to a more general principle, “any limitation imposed on the rights of political parties must be necessary in a democratic society, proportionate in nature and time, and effective in achieving its specified purpose. The need for restrictions shall be carefully weighed. The limitation chosen shall be proportionate and the least intrusive means to

[92] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 210.

[93] Ibid., par 260.

[94] Ibid., par 246.

achieve the respective objective."[95]

129. In terms of control and oversight, the Guidelines do not request that there be only a single oversight entity. Indeed, they state, using the plural form, that "there should be a clear delineation of which bodies are responsible for different aspects of implementing regulations on political parties, as well as clear guidelines establishing their functions and the limits of their authority."[96] However, they also indicate that "legislation should grant oversight agencies the ability to investigate and pursue potential violations" and "it is generally good practice for the competent officials conducting financial oversight to be appointed for a single term free from political influence."[97]

Relevant national practices.

130. More than half of the EU Member States centralise the control and oversight of funding of political parties in a single institution, be it the State Audit Office (e.g. Austria, Bulgaria, Cyprus, and Spain), the Electoral Management Body (e.g. Malta, Poland, and Sweden), or a special institution created for this purpose (e.g. Czech Republic, Estonia, France, Ireland, Italy, and Latvia).

131. In Croatia, Luxembourg and Portugal, oversight is also centralised (in the State Electoral Commission in the first case, and in the Court in the latter two), but other institutions (e.g. the State Audit Office, various government authorities, and the National Electoral Commission, respectively) also play a role. However, this role is limited to receiving parties' financial reports, which they later forward to the oversight authorities mentioned above.

Recommendation 25. Lighten administrative requirements on European parties

132. The administrative burden for European political parties should be limited to the strict minimum of information requested of them at various steps, in particular for applications for funding. Among others, the European Parliament's call for contributions for public funding requests:

    1. A list of the persons having powers of representation, decision-making or control over the applicant organisation (cf. President, members of the Board, Secretary-general, Treasurer);
    2. Proof of registration by the Authority at the date of funding application (only for applicants for which the decision for registration is not yet published on the website of the Authority or in the Official Journal);
    3. A list of MEPs, with an up-to-date proof of membership and setting out name, country of origin, direct or indirect affiliation to the European political party and name of the relevant national or regional party (if applicable);
    4. Evidence demonstrating that its EU member parties have published on their websites, in a clearly visible and user-friendly manner, the political programme and logo of the European political party between 1 October 2019 and 30 September 2020;

133. Item 1 is already requested by Article 1(4)(m) of Commission Delegated Regulation 2015/2401, involving the request to be kept up-to-date in the Register, and can therefore either be accessed by the European Parliament or be provided by the APPF through standard extracts of the Register (CDR 2015/2401, Article 3(1)). Likewise, the APPF can provide information for item 2 (CDR 2015/2401, Article 1(4)(b)) and item 3 (Article 32(1)(k) of Regulation 1141/2014).

134. With regard to item 4, since national member parties are required to publish the logo

[95] Ibid., par 50.

[96] Ibid., par 267.

[97] Ibid., par 270.

continuously (the request is made every year for the 12 months prior), requesting European parties to send screen captures at a fixed point in time is a poor way to ensure compliance. This submission also argues in Errore. L'origine riferimento non è stata trovata. that including this p rovision as part of the funding application has actually led to its lack of enforcement, since the only possible sanction would be to refuse the application and thereby deprive the European party of the entirety of its funding. A more constructive way would be to request the APPF to carry out random controls throughout the year, and to provide for sanctions that are varied and more proportionate to a lack of compliance.

135. Similarly, the requirement under Article 1 of CDR 2015/2401 obliging European political parties to provide the APPF with the official results of the most recent European elections makes little sense. In practice, many European parties simply send the entire results provided by electoral commissions (or similar relevant bodies) of the Member States or screen captures from their websites, without singling out the results of their own national member parties. Since the APPF already has an up-to-date list of national parties which are members of European political parties (CDR 2015/2401, Article 1(2)(e)), it would be more efficient for it to liaise directly with the electoral commissions (or similar relevant bodies) of the Member States to obtain this information.

136. **In line with the above and in order to simplify administrative procedures, Regulation 1141/2014 could clearly indicate the list of information requested from European political parties for the purpose of their application for European public funding.[98] Information already acquired by monitoring entities should not be requested from European parties again. The use of templates and online platform can facilitate the provision of information.**

Recommendation 26. End double accounting requirements and simplify and clarify requirements

137. Article 23(1)(a) requires European political parties to submit their annual financial statements both "in accordance with the law applicable in the Member State in which they have their seat" and "on the basis of the international accounting standards" of the EU. This double requirement has created an extra and undue burden for European parties. Notably, the 2012 Regulation proposal of the European Commission did not contain this double accounting requirement and instead only required financial reporting in line with the law applicable in the Member States of registration. Political finance and accounting systems should encourage political parties to comply with requirements for professional and accurate bookkeeping. However, it is important that the accounting requirements reflect the size of the political parties and remain flexible.

138. **In order to simplify accounting requirements and match them with the size of political parties, the reporting structure should be prepared by the oversight authority following consultations with political parties, as well as with accounting oversight bodies, accounting firms and relevant civil society groups. In particular, key terms should be clearly defined in order to increase legal certainty. More limited requirements can be imposed on parties with limited funding or assets; this would make financial reporting easier for smaller parties, thereby supporting pluralism, and analysis easier for the oversight body, in line with the principles of a risk-based approach. This issue is a consequence of the registration of European political parties and their continued co-regulation by the Member State where they are registered (see Recommendation 1).**

Recommendation 27. Review the notion of "reimbursable expenditure"

139. Article 17(5) states that "within the limits set out in Articles 21 and 22, the expenditure reimbursable through a financial contribution shall include administrative expenditure and

[98] In line with the funding regime proposed in the submission, the required information could include the number of members of European political parties and the amount of private donations raised.

expenditure linked to technical assistance, meetings, research, cross-border events, studies, information and publications, as well as expenditure linked to campaigns.”. The European Parliament’s DG FINS, in its Guide for European political parties, provides a list of non-reimbursable/ineligible expenditure.[99]

140. **Beyond the review of Articles 21 and 22 proposed in Recommendation 8, and in line with the Guidelines’ general principle on restrictions, the notion of “reimbursable expenditure” could be reviewed. On the one hand, this notion could be clarified in order to provide European political parties with increased legal certainty about the reimbursable nature of the expenditure that they undertake.[100] Additionally, the nature of non-reimbursable items could be reviewed in order to provide greater flexibility for European political parties’ cooperation with their national member parties.[101]**

Recommendation 28. Make the APPF the single monitoring entity for European political parties

141. Article 24 states that control of compliance is exercised, in cooperation, by the APPF, the Authorising Officer of the European Parliament, and the competent Member States. The APPF is responsible for compliance with obligations under the Regulation, in particular in relation to registration (Article 3), governance of European parties and foundations (Article 4(1) (a), (b), and (d) to (f), and Article 5(1) (a) to (e) and (g)), the notification of changes to statues and member parties (Article 9(5) and (6)), donations and contributions (Article 20), and authorised and prohibited expenditure (Articles 21 and 22). Meanwhile, the Authorising Officer of the European Parliament is responsible for compliance with obligations relating to Union funding. This control does not extend to compliance with obligations under applicable national law (Article 14). Given the crucial role of political parties in a representative democracy and the potential influence and power conferred upon them, it is essential for political parties to be subjected to a thorough, rigorous and impartial system of oversight and sanctions.

142. **In order to simplify and rationalise the controlling and sanctioning mechanism overseeing European political parties, all controlling and sanctioning functions could be placed under the mandate of the APPF, which is specifically set up to be free from partisan pressure, and to ensure the APPF’s ability to control all relevant aspects of the framework of European parties. This proposal must be read in conjunction with the proposal to entrust the APPF with the funding of European parties (see Recommendation 14) and to review the registration of European political parties (see Recommendation 1).**

IV. TRANSPARENCY

I. Transparency of European political parties and the European party system

[99] European Parliament, *Guide – Funding awarded by the European Parliament to European political parties and foundations*, July 2020

[100] For instance, the enumeration provided in Article 17(5) could be changed from a positive list to a negative list, meaning an enumeration of expenses that are *not* reimbursable, with the understanding that any other expenses should be reimbursable. This list could be provided in more detailed form in an annex, in a Delegated Regulation, or in guidelines provided by the APPF.

[101] In particular, even in the absence of a review of Articles 21 and 22, the mere participation of leaders or representatives of European political parties in events, meetings, congresses and other activities of their national member parties should not be construed as “indirect funding of other political parties” in the current phrasing of Article 22(1). Such activities of leaders or representatives of European political parties should not be required to fill a “cross-border” or similar criterion. At any rate, the use of funds of European political parties should continue to comply with the relevant laws of the Member State where such events and activities are organised, in line with Article 14(2).

OSCE/ODIHR-Venice Commission Guidelines.

143. The OSCE/ODIHR-Venice Commission Guidelines focus on transparency from the perspective of party financing. In particular, they state that "all systems for financial allocation and reporting, both during and outside of official campaign periods, should be designed to ensure transparency."[102] Additionally, "in an effort to support transparency and provide civil society and other interested stakeholders with the possibility of reviewing parties' campaign finances, it is good practice for such financial reports to be made available on publicly available resources in a coherent, comprehensive and timely manner over an extended period of time."[103] This can be facilitated through digitalisation of the process, including the electronic submission and processing of information. Given the lack of information on European political parties available to citizens, the above principles can be extended to other relevant information on European parties, with due concern for the protection of personal information.

Relevant national practices.

144. National entities in charge of controlling political parties and electoral results, by and large, all provide ample data on political parties, with the aim of ensuring the needed transparency. For instance, in France, the Commission Nationale des Comptes de Campagne et des Financements Politiques (CNCCFP) provides legal and administrative information on political parties and displays a list of all 675 structures registered as political parties, while all financial information is available on the Government's data portal. In Germany, the website of the Bundestag provides extensive legal information on political parties, and lists the audits of all parties, the detailed calculations leading to the distribution of public funding, and donations above a certain threshold (within a few days). In the UK, the website of the Electoral Commission has a fully searchable database of 555 parties and other relevant political actors, including comprehensive information on donations, loans, registration information, addresses, and the identity of leading officers.

Recommendation 29. Rephrase the "single website" requirement

145. Article 32 on transparency measures states that "the European Parliament shall make public, under the authority of its Authorising Officer or under that of the Authority, [the following information] on a website created for that purpose."[104] Despite this requirement for information to be published on a single website, practice has shown that neither the European Parliament nor the APPF feel responsible for the implemtation of this provision – leading to separate information being published on separate websites, with the subsequent loss of visibility and transparency for citizens and other individuals.

146. **In order to adequately meet the goal of gathering all relevant information concerning European political parties on a single website, Article 32(1) could be revised to ensure the accessibility of all required information on a single website (such as, for example, the website of the APPF).[105] This is another argument in favour of the rationalisation of controlling functions concerning European political parties; oversight would be enhanced if it were entrusted to a single actor (see Recommendation 14 and Recommendation 28).**

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[102] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 246.

[103] Ibid., par 259.

[104] Regulation 1141/2014 of the European Parliament and the Council, Article 32(1).

[105] Of course, redundancy is not an issue, and the European Parliament may provide such information on European parties as it deems useful on its own website.

Recommendation 30. Clarify and expand the information to be published under Article 32

147. Article 32 requests the publication, among others, of:

- the amounts paid to each European political party for each financial year;
- European parties' annual financial statements and external audit reports;
- the names of donors and their corresponding donations reported in accordance with Article 20(2), (3) and (4); for donations from natural persons, donations under EUR 1,5000 shall be grouped as "minor donations", while donations between EUR 1,500 and EUR 3,000 shall be reported by name only with the consent of the donor, and as "minor donations" otherwise; the total value and the number of "minor donations" is also reported;
- the contributions referred to in Article 20(7) and (8) and reported in accordance with Article 20(2), including the identity of the member parties or organisations which made those contributions;
- decisions and sanctions pursuant to Article 27 and their justification, as well as opinions adopted by the committee of independent eminent persons;
- an updated list of MEPs who are members of a European political party.

Additionally, the European Parliament is to make public the list of legal persons who are members of a European political party, as well as the total number of individual members.

148. **With regard to amounts paid to each European political party (Article 32(1)(c)), financial information could be disaggregated and should provide a detailed calculation of these amounts.** Under the current funding system, this information would include the amount of the lump sum, the number of MEPs who are members of each European political party (as well as the list of these MEPs and their party of membership[106]), the amount of MEP-based funding, the amount of reimbursable expenditure, the amount requested in European parties' applications, and the maximum contribution awarded.

149. **With regard to contributions, given the importance of transparency regarding financial flows, Article 32(1)(f) could be reviewed to clearly indicate that each contribution, from individual members *and* member parties, should be listed, indicating the identity of the contributor and the value of the contribution.** This recommendation should be read in conjunction with **Section G** on donations and contributions.

150. As for donations, their number and amount remain limited. A review of donations from 2018 and 2019 show less than 100 "non-minor" donations (donations from legal persons and donations from natural persons above EUR 3,000), accounting for 90 percent of the total value of donations, while close to 1,600 minor donations provide the remaining 10 percent. In the current situation, it is therefore debatable whether lowering or removing the threshold for minor donations would help provide useful transparency. However, in light of the proposed effort to strengthen the link between citizens and their European political parties, including by incentivising small donations (see **Recommendation 18**), it is sensible to expect an increase in small donations. **In order to increase transparency, the threshold for donations to be considered minor donations could be lowered.** [107]

151. With regard to the Committee of independent eminent persons (Article 11), no information is

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[106] In line with **Recommendation 4**, MEPs counted for the calculation of MEP-based funding should be officially and formally members of European political parties, not merely "indirect members" or "affiliated MEPs".

[107] For instance, the threshold could be lowered to EUR 100 and, for simplification purposes, the provision relying on donors' consent for the disclosure of their identity could be removed. In the meantime, and in line with Article 6(3) §8 (authorising the main institutions which may assign to the Director of the APPF other tasks provided that they be compatible with his workload and do not create conflicts of interest), the APPF could be requested to disclose the number of donations from natural persons above EUR 1,500 and until EUR 3,000 in order to assess whether donors have made use of their right not to disclose their identity.

currently provided beyond links to press releases on legal decisions on EUR-Lex. **Should this committee remain operational (see Recommendation 6), steps could be taken to increase transparency vis-à-vis this committee. More specifically, Article 32 could clearly request the APPF to directly publish the identity, occupation, biography, and appointing entity, and mandate dates of the current and past members of this committee.**

152. In terms of electoral results, Commission Delegated Regulation 2015/2401, in its Article 1(2) requests that "with regard to European political parties the Register shall contain […] a copy of the official results after each election to the European Parliament." These are not mentioned in Article 32, according to which the APPF is to make information from the Register public. Nevertheless, the APPF has provided this information, albeit only as provided by European parties and with no regards for its visibility. **Given the usefulness of this information for an understanding of European political parties, Article 32 could clearly request the publication of electoral results per European party and state the modalities for this reporting. This data should include, at a minimum, information at the European and national levels for each European party on the total number of votes, the share of the vote, number of MEPs, share of MEPs, voter turnout, gender balance, and the link between national and European parties. Similar information is already provided by the European Parliament from the perspective of parliamentary groups.**

153. More generally, with regard to the publication of past information, the Director of the APPF has argued that it "was operationally set up on 1 January 2017 and was mandated to check donations and contributions […] from budget year 2018 onwards." He added that the APPF "does not possess information about donations prior to 2018", all the while indicating that this information could be found in audit reports on the website of the European Parliament. **In order to provide important contextual information on the financing of European parties, the APPF could be requested to publish financial information made available by the European Parliament starting with the creation of the European public funding scheme in 2004.**

154. Finally, the APPF published very limited information about its own operations – mostly limited to draft budgetary plans and its first annual report, for the year 2019. **For the benefit of citizens, supplementary information (for instance, in an "about" section of the website) should include details about its leadership, organisation chart, funding, and main activities.**

Recommendation 31. Require information to be published in open and machine-readable formats

155. With the exception of a recently added list of MEPs, the APPF has consistently published information in PDF format – some converted from word-processed documents, others merely scanned documents – making this published information difficult to read. Indeed, as stated by Regulation 1049/2001 and the EP Resolution of 28 April 2016, the mere online publication of files does not ensure the true transparency of information; the Ombudsman has supported this view in her call for the APPF to provide its information in an open format. This availability is essential in order to allow interested parties — most prominently the press and social scientists — to carry out their work of analysis and vigilance and hold political stakeholders accountable.

156. **Since Directive 2019/1024 of 20 June 2019 on open data and the re-use of public sector information does not apply to EU institutions, and in order to strengthen accountability, Article 32 could be reviewed and revised to include a specific requirement to provide data — including, but not limited to, all donations and contributions, public funding, and electoral results — in open and machine-readable formats (CSV, XML, JSON, XLS, XLSX, ODF, etc.).** [108] The use of these formats for reporting templates created by the APPF for

[108] The European Parliament itself has applied this principle to electoral results (which it aggregates per parliamentary group), for which it provides open and machine-readable data sheets going back to 1979 (JSON, XML and CSV, and images in JPG and PNG). With regard to text documents, some (such as statutes, manifestos, audit reports, etc.) may

European parties would also go a long way in harmonising the information received by the APPF, and in automating and simplifying its analysis and re-publication. These templates should be designed and provided to European parties as early as possible, with accompanying manuals, and preferably before the beginning of the reporting period, so that parties may be fully prepared for their use.

Recommendation 32. Carry out a yearly review of the implementation of transparency requirements and visibility measures

157. Given the limited amount of information received by European citizens on European political parties, it is important to ensure that relevant provisions and measures bear fruit. Currently, Regulation 1141/2014 only provides, in Article 38, that the "European Parliament shall [every five years] report on the application of this Regulation." While a five-year review of the entire Regulation itself is sufficient to analyse the consequences of the framework created by the Regulation, a more frequent appraisal should be conducted for the specific purpose of assessing compliance with and the usefulness of transparency requirements. This would naturally be extended to other activities of public information, should this become part of the APPF's mandate (see **Recommendation 38**).

158. **In order to ensure that transparency and visibility requirements are properly implemented, Article 38 could be reviewed and revised to include a yearly review of the implementation of the Regulation's transparency requirements and visibility measures.** This short assessment by the European Parliament would help ensure that sufficient and timely information is provided to citizens, without the need to wait until the end of the next five-year cycle.

J. Financial transparency by European political parties

OSCE/ODIHR-Venice Commission Guidelines.

159. According to the OSCE/ODIHR-Venice Commission Guidelines[109] and the OECD,[110] reporting should be timely (at least once a year), public (for an extended period of time), easily accessible and reusable (if possible digitalised), user-friendly (to facilitate public scrutiny) and itemised, with a clear distinction between income and expenditures. These, together with any assets and debts parties might have, should be reported in a comprehensive manner. Loans should be explicitly identified, and expenditures made using public funds should be properly explained, while donations should be itemised in a standard format, all this with the adequate respect to privacy principles. In order to ensure that essential information is disclosed, relevant legislation should define not just the timing, which should be sufficient although not too long, but also the format and content of the reports. Ideally, reporting should take place (1) well before the electoral campaign begins, (2) various days before the elections, and (3) after the elections.

Relevant national practices.

160. All EU countries require political parties to, at least formally, report on their finances regularly (at least once year). However, this does not mean reports have to be itemised. Thus, some

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understandably be provided in PDF format, but the APPF should ensure that they be easily convertible to machine-readable formats and, therefore, should request European political parties to provide them as such, and not as scanned documents.

[109] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, pars 258-263.

[110] OECD, *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*. Paris: OECD Publishing, 2016

Member States do not require spending (e.g. the Netherlands and Sweden), or both income and spending (e.g. Austria, Denmark, Ireland, and Slovenia) itemisation. In others, only certain types of income (e.g. in Hungary only individual donations over HUF 500,000 - i.e. EUR 1,150) or spending (e.g. advertisement in Bulgaria, Hungary, Italy, and Poland) must be itemised.

161. Importantly, all parties have to make the information included in their funding reports public. The way in which that is done differs from country to country. The Baltic states are perhaps the best example of how comprehensive information on several political financial aspects (e.g. income, expenses, donors' identity) is offered in a timely manner and online. The Estonian agency (EPFSC) even makes a searchable database available with all correspondence related to its monitoring work. Other examples on how to make party funding information available to the public in a friendly and timely manner can be found in Finland, France, and Ireland, but also Norway and the UK.[111] There, political parties' financial statements as well as summaries of control agencies' main findings are easily accessible to citizens, journalists and/or researchers in a standardised and comprehensive manner. Finland even publishes immediate information about donations and incomes, and also suggests voluntary advance disclosure prior to Election Day.

Recommendation 33. Provide a financial summary

162. Article 23 details financial reporting requirements. Within six months of the end of the financial year, European political parties must submit their annual financial statements and accompanying notes, an external audit report on the annual financial statements, and the list of donors and contributors and their corresponding donations or contributions. However, while detailed financial reporting is essential for proper financial accountability, more detailed financial reports do not necessarily translate into more transparency.

163. **In order to facilitate the visibility of the "big picture" of European parties' financial situation, for the benefit of experts and non-experts alike, financial statements could be preceded by a summary listing the following elements:[112]**

1. **Income, listing the overall amount of membership fees; contributions by elected office-holders; contributions by member parties; donations from natural persons; donations from legal persons; income from business activities; income from other assets; income derived from events, the distribution of printed material and publications, and other income-yielding activities; public funding; and any other income.**
2. **Expenditure, listing personnel-related expenditure; operating expenditure relating to day-to-day business, general political work, electoral campaigns, asset management, and other expenses; and expenditure payable to party branches.**
3. **The number of natural and legal persons who are members, split in their relevant membership categories, as provided for in the statute.**

Recommendation 34. Improve the timing and modalities of financial reporting

164. The timing of donations and contributions reporting must find an appropriate balance. Shorter periods enhance transparency and, provided that they are not overly short, spread the workload of reporting for parties without making it overly burdensome. According to Articles 20 and 23, donations and contributions are reported on an annual basis, and on a weekly basis during the

[111] British Electoral Commission, Norwegian central register of Statistics Norway French CNCCFP and the Irish Standards in Public Office Commission publish party annual accounts, political finance statistics and analytical reports on their respective websites (Casal Bértoa and Rodríguez Teruel, 2017).

[112] In addition to absolute figures, the summary should indicate the percentage of total income of total expenditure of each item, as well as total values. Similar figures for the preceding year should be indicated in a side column.

six-months period leading to European elections. The deadline for annual financial reporting is currently set to six months following the end of the financial year. Combined with the APPF's own reporting durations (see **Recommendation 34**), this has led to considerable delays for the publication of financial information. For national parties, annual financial reports are normally submitted within one or two months of the end of each financial year.

165. **In order to improve transparency, more frequent reporting on donations and contributions could be considered, for instance on a quarterly or semi-annual basis (in addition to accelerated reporting during electoral periods). Additionally, financial reporting for European political parties could be requested within two or three months following the end of the financial year.**

166. Conversely, financial reporting should be made as easy as possible on European political parties. The use of readily-available and well-documented template spreadsheets can facilitate the reporting process. Likewise, online financial reporting platforms, such as the UK's PEF Online or the database of the Latvian KNAB, can greatly enhance reporting (Australia's eReturns may also serve as an example). It is important for these dedicated platforms to be conceived in partnership with the reporting actors, in order to ensure that they are fit-for-purpose and ensure ownership for those in charge of reporting.

Recommendation 35. Improve electoral financial reporting

167. In order to improve transparency and controlling processes, financial reporting can be split for the two main categories of party expenses: regular party activities and electoral activities. By requesting that European political parties report donations on a weekly basis ahead of European elections, and by requesting electoral expenditure to be clearly identified as such, Regulation 1141/2014 has partly integrated this idea of separate reporting. However, Article 23 does not request a separate electoral financial report, nor does it require this pre- and post-electoral reporting. Pre-electoral reporting creates a useful baseline against which the income and spending figures included in post-election reporting can be compared.

168. **In order to increase transparency, regular and electoral reporting could be done in a completely separate manner. To ease this distinction, relevant provisions could request that electoral income and expenditure be managed from a bank account separate from the one used for regular party activities. Additionally, European political parties could be requested to provide both pre-electoral and post-electoral financial reporting.** [113]

V. OVERSIGHT, CONTROL AND SANCTIONS

K. Role of the Authority for European political parties

OSCE/ODIHR-Venice Commission Guidelines.

169. Any oversight agency should not only be independent and non-partisan, but should also act in an objective, non-discriminatory, impartial and transparent manner, with clear rules delineating its functions, activities and competences. In this context, it is essential that the appointment of the members of such bodies and their decision-making processes be regulated in a clear and transparent manner. Such appointments should be made on "a staggered basis and separate from the electoral cycle", and ideally for a single term.[114]

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[113] Pre-electoral reporting could be requested six months ahead of the European elections, which would match the existing increased donations reporting.

[114] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 61 and

170. It is equally important that oversight authorities are not only granted adequate control (i.e. investigative and sanctioning) powers, including the effective monitoring of accounts and the conduct of thorough audits of financial reports, but that they are also sufficiently financed and staffed in order to help not just the quality, but also the timing of decisions.[115]

171. Moreover, parties should not only be given the right to resubmit and correct minor deficiencies, but also to appeal oversight authorities' decisions to an independent, impartial and competent tribunal.[116]

172. According to the Guidelines, while "monitoring can be undertaken by a variety of different bodies and may include an internal independent auditing of party accounts by certified experts or a single public supervision body with a clear mandate, appropriate authority and adequate resources […], it is essential that the funding of campaign and party finances is overseen by the same body, to ensure consistency". In any case, oversight deadlines and regulations should always be complementary and harmonised.[117]

Relevant national practices.

173. Within EU countries, different types of oversight authorities can be found: parliamentary (e.g. Germany), governmental (e.g. Finland and the Netherlands), judicial (e.g. Portugal) and administrative (most EU countries). Among the latter, electoral commissions (e.g. Ireland, Poland, and Sweden), state audit offices (e.g. Austria, Bulgaria, Cyprus, Luxembourg, Slovenia, and Spain), or both (e.g. Lithuania and Romania) are the most popular. Still in others, in order to increase their level of independence and prevent problems of cooperation among state authorities, special single monitoring agencies have been created. The main examples for these can be found in France (National Commission for Campaign Accounts and Political Funding) and Latvia (Corruption Prevention and Combating Bureau or KNAB). The latter is one of the most effective and powerful oversight institutions in the EU. Among its multiple powers, the KNAB has the capacity to undertake "on-site" inspections, initiate judicial procedures (e.g. instruct the process), make regulations (mandatory for both parties and candidates), impose sanctions (not just on parties and candidates, but also on third parties), hold meetings and hearings with relevant stakeholders (e.g. magistrates, public officials, NGOs, experts, journalists) and even organise training courses and facilitate research and educational programmes (including academic collaborations). The KNAB even benefits from the obligation of private entities to report any potentially relevant information about illegal funding. The investigative and enforcement powers of the KNAB go so far as to request from (1) donors any information regarding income, savings and property as well as any documents proving the legality of the sources of donations; and (2) parties any additional income reports. KNAB's website publishes information on donations, which must be disclosed by political parties within 15 days of receipt, on an ongoing basis.

174. Another good example of an oversight authority is the independent Standards in Public Office Commission (SIPO) in Ireland. Composed of six members (a judge or former judge of the Supreme Court, four ex-officio members and one former member of the Dáil, but not MEPs) and assisted by a Secretariat of nine people (with a civil servant status), the SIPO has the power to carry out investigations not only following complaints, but also *ex officio*. It has also the authority to make enquiries or request relevant information/documents from anyone. Like the KNAB, it also plays an advisory and educative role, publishing guidelines and providing advice.

175. Outside the EU, the British Electoral Commission, politically independent and funded directly

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[115] Ibid., par 268.

[116] Ibid., par 267.

[117] Ibid., par 271.

by the Parliament with an annual plan, has similar powers to the KNAB, although it cannot initiate judicial procedures.

Recommendation 36. Include time limits for the publication of information by the APPF

176. Following the end of the financial year, European political parties are given six months to submit to the APPF their annual financial statements and accompanying notes, an external audit report on the annual financial statements, and the list of donors and contributors and their corresponding donations or contributions (Article 23(1)). However, no time constraints are placed on the APPF. For the financial year 2019, information on donations was supposed to be provided by European parties and foundations by the end of June 2020 at the latest. Yet, it was not until late February 2021 that the list of donations and contributions provided by the ten European parties — virtually information that was merely copy-pasted into a single file — was published by the APPF. For 2018, the PDF files of donations for European parties and foundations are dated 26 and 25 May 2020, which means it took the APPF almost an entire year to re-publish this information provided by European parties and foundations.

177. **In order to ensure the timely publication of information by the APPF, Article 32(1) and (2) could, at a minimum, include the goal to make public the listed information "at the earliest opportunity" or "in a timely manner". More specifically, Article 32 could be reviewed and amended to ascribe a deadline for the publication of information or data that does not require a specific intervention by the APPF (data that is to be published as it is reported to the APPF).[118] Article 23 could also be changed so as to differentiate between the reporting deadlines given to European parties based on the type of information sought.[119]**

178. Likewise, Article 6(10) requires the APPF to "submit annually a report to the European Parliament, the Council and the Commission on the activities of the Authority." However, no deadlines are foreseen. As a result, the APPF's report on its 2019 activities was not published until 7 December 2020. While this point may be less of a priority than the publication of European parties' donations and contributions, it is not conducive to ensuring transparency of the APPF and its work. **Article 6(10) could therefore be made more specific by providing a time limit for the publication of the APPF's activity report, which could, for instance, be 31 March of the following year.[120]**

Recommendation 37. Entrust the APPF with a clear mission of public information

179. Beyond the need to clarify and expand on the information to be made public – which necessarily targets specific pieces of information – the APPF should internalise a more general requirement to strengthen European citizens' knowledge of European parties and of the European party system, including through the provision of general information, past and present data, evolutions, trends, etc. By contrast, the APPF has consistently sought to limit its role in the provision of information.

180. **In order to remedy this situation and provide the necessary impetus for the APPF to**

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[118] For instance, the APPF could be given one month from the deadline of submissions to make this data public. In order to ease this process, the APPF should provide a clear, open-format reporting template to European parties, which would help ensure that the data extraction process is harmonised and automated.

[119] For instance, while a duration of six months is welcome for annual financial statements and an external audit report, the list of donors and the value of donations can be transmitted to the APPF much more quickly. Furthermore, providing for staggered reporting (first, information on donations and contributions, and, later, financial reports and external audits) would allow the APPF to quickly process and publish information on donations and contributions before receiving an extra workload.

[120] For such time limits, the presence of a sanction is less important than the clear presence of a deadline that the APPF is requested to abide by.

provide contextual and historical information on European parties, Article 6 could be reviewed and revised to include, for instance in paragraphs (1) or (2), an explicit mission to provide public information on European parties and the European party system. This provision would legally empower and require the APPF to provide supplementary information useful to citizens for the proper understanding of their European parties. Best practices can be drawn from information published by similar bodies at the national level. In particular, the APPF could be mandated to hold public and recorded events contributing to the visibility of European parties.[121]

181. While this proposal may go beyond the traditional functions of oversight agencies, it relates to the Guidelines' position that "the allocation of media airtime is integral to ensuring that all political parties, including small parties, are able to present their programmes to the electorate, both before and in between elections. While the allocation of free airtime on public media is not mandated through international law, such a provision can be a critical means of ensuring an informed electorate."[122] In the absence of a European public media and given the lack of coverage of European political parties by national public and private media, it is sensible to request that the public entity most closely associated to European political parties contribute to their visibility and citizens' awareness.

Recommendation 38. Enhancing the oversight functions of the APPF

182. Among its tasks, the APPF:

- decides on the registration and de-registration of European political parties and European political foundations;
- verifies that the registration conditions continue to be complied with;
- establishes and manages a Register of European political parties and European political foundations;
- exercises control of compliance by European political parties and European political foundations with specific obligations (in cooperation with the European Parliament and by the competent Member States);
- imposes financial sanctions; and
- publishes specific information on its website, in line with Article 32.

183. **In line with national best practices and in order to strengthen the controlling regime of European political parties, the APPF could therefore be endowed with legal enforcement powers with the capacity to oblige European political parties and other relevant stakeholders to observe the legislation. For this reason, and in addition to the power to monitor accounts and conduct audits of financial reports, the APPF should, at a minimum, also have the ability to investigate and pursue potential violations.[123] Other legal enforcement stakeholders, such as the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO) should also be endowed with the relevant prerogatives and Regulation 1141/2014 should include necessary provisions for judicial oversight.**

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[121] These could include interviews, panels, round table, debates, etc. Close attention would be paid to ensure a fair treatment of parties. With time, these public events would contribute to a better visibility of European parties and allow a stronger media presence of party leaders, on par with the leaders of parliamentary groups and of national political parties.

[122] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 199.

[123] In particular, it should be empowered to request relevant information and documentation from any stakeholder, carry out investigations of its own initiative (following risk assessments), as well as on the basis of external complains or when requested by other relevant bodies (European Parliament, Court of Auditors, etc.), undertake on-site inspections, and make decisions binding through a variety of sanctions (see **Recommendation 38**).

Recommendation 39. Increase the budget of the APPF

184. The recommendations above highlight the need to increase the mandate of the APPF in several areas. It is well understood that this increase in responsibilities, activities, and output are bound to require supplementary funding. This is particularly evident when comparing the funds available to the APPF with funds available to other similar organisations. Of course, the comparison is not always straightforward, since the exact attributions and scope of work of these entities varies. However, France's *Commission nationale des comptes de campagne et des financements politiques* comes close to the work conducted by the APPF. In 2020, its budget line reached EUR 16.9 million. Endowed with larger powers and responsibilities, the *UK Electoral Commission*'s budget, for the year 2020-21, amounted to GBP 22.3 million.

185. By comparison, the APPF's draft budget for 2021 indicated EUR 1.2m in direct support from the European Parliament (including staff, language services, training, building and IT costs, missions, and documentation services) and EUR 300,000 as a separate appropriation for "professional trainings, purchase of software and hardware, acquisition of expertise and advice, legal costs and damages, documentation and outreach activities, as well as other costs, including administrative costs." Considering the breadth of its mandate, the APPF can be considered drastically underfunded.

186. **In order to ensure its full ability to implement its mandate thoroughly and consistently, the budget of the APPF should be made commensurate with its functions.**

L. Sanctions

OSCE/ODIHR-Venice Commission Guidelines.

187. It follows from the OSCE/ODIHR-Venice Commission Guidelines[124] that sanctions should always be objective, dissuasive, enforceable, flexible and proportionate in order to be effective. The number of sanctions can vary, but there should always be a variety of them: from administrative fines, whose amount should be adapted over time, to criminal sanctions, which should be reserved only for serious violations (e.g. foreign funding threating national security). Sanctions should be imposed not just on parties but also in cases of individual wrongdoing. In this context, it is important that the nature of the violation (e.g. amount of violations, repetition, concealment) is also taken into consideration. De-registration should constitute sanction of last resort, to be imposed only in extreme circumstances, including repetitive behaviour. Suspension and/or loss of public funds, either partially or in its totality, could also be imposed for parties that fail to fulfil their financial reporting obligations, commit serious irregularities when reporting or use state subsidies in an improper manner.

Relevant national practices.

188. Pecuniary fines are the most common type of sanctions for party funding regulation violations, to the point that they are present in all EU countries. For example, in Belgium, such fines can range from as little as EUR 26 to a maximum of EUR 100,000. On average, the minimum and the maximum tend to be around EUR 1,000 and EUR 20,000, respectively (IDEA, 2020).

189. Another very popular, and also extremely effective, type of monetary sanction is the suspension and/or loss of part or all of the public funds received – to the point that only a couple of countries (e.g. Austria and Sweden) do not make use of it. Sanctions such as the suspension/loss of public funding can be imposed to parties that delay and/or fail to fulfil their reporting obligations, as is the case, for instance, in Bulgaria, Denmark, Finland, France, Germany, Slovenia and Spain).

[124] See OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, CDL-AD(2020)032, par 272-275.

In Greece, Ireland or Latvia, the failure to undertake mandatory audits can also lead to the loss of state subsidies. Belgium even doubles the amount of public funding lost to that of the illegal donation perceived. Polish legislation goes even further by withdrawing public subsidies from parties whose financial report is rejected by the competent oversight authority.

190. Criminal sanctions (e.g. imprisonment) for false statements (e.g. in Denmark and Germany), the illegal use of public funds (e.g. in Lithuania) or for not rendering public accounts (e.g. in Poland), are also available, but only in less than half of the EU countries. Although rarely fully implemented, the average prison sentence tends to be around 3 years, with a maximum of 8 years in Spain.

Recommendation 40. Strengthen the sanctions regime

191. Article 27 foresees three types of sanctions in case of legal violations committed by a European political party or foundation: de-registration, loss of public funding and fines.

- De-registration is reserved to cases when the party or foundation (1) has stopped fulfilling the requirements (e.g. membership, geographical distribution) initially imposed for registration, (2) violates EU values and/or relevant obligations under national law, (3) initially obtained the registration illegally, or (4) engages in illegal activities detrimental to the financial interests of the EU.
- Loss of public funding for up to 5 years (10 in case of recidivism) is foreseen for cases where a party or foundation has (1) engaged in illegal activities detrimental to the financial interests of the EU, or (2) intentionally failed to inform or provide accurate information (also in their financial reports).
- Fines of a fixed percentage of (1) a party's/foundation's annual budget for non-quantifiable infringements (e.g. inaccurate donation reporting, failure to report membership or changes in the statutes) or (2) the irregular sums received or not reported (up to a maximum of 10 percent of the annual budget) for quantifiable infringements (e.g. unauthorised use of public funding, illegal funding) are also imposed. If the party or foundation reports the infringement before it has been investigated or adopts the necessary preventive measures, pecuniary sanctions are reduced by two/thirds.

192. Additionally, Article 27(6) establishes a limitation period of 5 years from the moment when the infraction was committed or, in case of recidivism, when it was ceased. Since 2018, Article 27a provides, in certain cases of financial sanctions, for the individual responsibility of natural persons with relevant administrative, management, supervisory or representative functions for the purposes of recovery.

193. **Based on national best practices, and in order to make the sanction regime more dissuasive, the loss of party public funding should become a central part of the sanction regime and be extended beyond quantifiable infringements to non-quantifiable violations under Article 27(2) (iii) through (vi).[125] Fines for quantifiable infringements could also be made stricter.[126] Party de-registration in case of funding violations should be possible, but**

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[125] In each of these cases, European political parties or foundations should be sanctioned, in addition to the foreseen pecuniary violations, with the loss of public funding for as many days as the duration of the infringement. Furthermore, loss of public funding could also be linked to the obligation of European political parties to promote the political participation of women/youth and the establishment of gender quotas (see **Recommendation 19**).

[126] In particular, the current scale only provides for a fine of 100 percent of the amount of the irregular sums received or not reported – meaning the sum itself – for sums under EUR 50,000. However, with the exception of contributions from member parties (which are unlikely to be received irregularly, since their only ceiling is 40 percent of the total budget of the European political party), contributions from legal and natural persons are limited to EUR 18,000. It is therefore more than likely that sums received irregularly would remain under this limit, hoping not to attract attention. In practice, donations and contributions are noticeably lower. The current scale should therefore begin at a noticeably lower level

should always be reserved as the last option and only in case of recidivism.

194. **Additionally, for specific infringements, including embezzlement, false statements, money laundering or corruption, the individual responsibility of key party officials could be extended to criminal charges. In this light, Article 25 on implementation and control in respect of Union funding should provide for the involvement of the European Public Prosecutor's Office.**

195. **Finally, the limitation period provided for in Article 27(6) could be extended to 10 years, or to two mandates of the European Parliament.**

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than EUR 50,000. Additionally, in order to be dissuasive, the scale could start at 200 percent or 300 percent of the irregular sums received or not reported. For the sake of simplification, fewer brackets or a flat rate could be used.