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OPINION ON THE ACT ON POLITICAL PARTIES

POLAND

This Opinion has benefited from contributions by **Mr. Fernando Casal Bértoa**, Associate Professor in Comparative Politics and Member of ODIHR Core Group of Experts on Political Parties; **Ms. Barbara Jouan-Stonestreet**, International Expert in Governance and Political Party Financing and Member of ODIHR Core Group of Experts on Political Parties; and **Ms. Tamara Otiashvili**, Senior Legal Expert in Human Rights and Democratic Governance. It has also been peer reviewed by **Prof. Richard Katz**, Professor of Political Science, John Hopkins University, Chairperson of ODIHR Core Group of Experts on Political Parties.

Based on an unofficial English translation of the Act on Political Parties as last amended in 2023.

OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00, Fax: +48 22 520 0605
www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Overall, the Act on Political Parties (hereinafter the "Act") establishes a comprehensive framework for regulating political parties and their financing, including party membership, registration and dissolution, private and public funding, reporting requirements, as well as oversight and sanctioning. At the same time, certain aspects of the laws such as financing of election campaigns, oversight and sanctions are also regulated by other legislation. Therefore, efforts should be made to ensure that the respective provisions of the Act do not overlap with other legislation, including the Electoral Code, by addressing any inconsistencies through a coordinated approach that upholds the overarching principles of equity, transparency, and fairness.

Some areas of the Act require further improvement to uphold the right to freedom of association and close potential loopholes that could undermine effective political party financing regulation. This includes revisiting provisions on party membership, registration, financing, rules on dissolution and deregistration, and reporting requirements. Notably, the rules on party dissolution or deregistration must meet the proportionality test and should only be used as measures of last resort, while restrictions preventing Polish citizens living abroad from financially supporting political parties should be lifted. Furthermore, it is recommended to reassess the approach to public funding to ensure that the system does not disproportionately benefit larger, established parties at the expense of smaller or newer ones.

Consideration should also be given to integrating gender aspects throughout the public funding mechanisms outlined in the Act and introducing incentives for political parties to promote and enhance women's political participation, thus reflecting the constitutional principle of equality between women and men. It is equally important to consider other measures for inclusion that extend beyond gender, such as youth and persons with disabilities, ensuring diverse and equitable representation across all segments of society.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further strengthen the provisions of the Act in accordance with international standards and good practices:

A. Regarding party membership:

1. to extend eligibility for political party membership to include foreign nationals and stateless persons with legal residency, as well as those having right to vote, for instance in municipal elections; [para. 26]
2. to remove the reference to "full legal capacity" in the Act (Article 11 (3) (2)) and more generally in the legislation related to the enjoyment of political rights [para. 27];

B. Regarding registration of political parties:

1. to specify a clear timeline for the court to complete registration of a political party with the aim to ensure that the registration process is conducted in a timely and predictable manner; [para. 35]

2. to clarify that for the purpose of registration, the court checks compliance with the requirements for registration listed in Article 11 of the Act, except for cases falling within the scope of Article 14 on the constitutionality of the statute and activities of the political party; [para. 37]
3. to provide in the Act or other applicable legislation for a reasonable short deadline for the Constitutional Court to decide cases dealing with the constitutionality of objectives or principles of action of a political party; [para. 39]

C. Regarding de-registration and dissolution of political parties:

1. To reconsider entirely de-registration as the only sanction in case of non-compliance with the requirements provided in Article 19 (lack of notification of change of party statute, registered address or composition of authorized bodies) or in Article 38c (non-timely submission of financial reports), and instead provide for a graduated range of other less restrictive but proportionate and dissuasive sanctions; [para. 46]
2. To reconsider entirely the broad ground of "unconstitutionality" for dissolution of a political party, envisioned in Articles 21 and 44 and instead provide for a more narrow and precise formulation of the exceptional circumstances under which the dissolution of a party may be possible, as a measure of last resort and in line with the strict standards for legality, subsidiarity, proportionality; [para. 47]

D. Regarding private financing of political parties and other kinds of private support:

1. to consider removing the requirement of permanent residence and allow all Polish citizens regardless of their residence to donate to a political party, while acknowledging sate's right to restrict foreign funding, consider legitimate exceptions to the outright prohibition on monetary donations from foreign sources; [para. 55]
2. to further regulate bank loans, including provisions addressing the implications of third-party repayment or loan forgiveness by creditors; [para. 57]
3. to treat membership fees as contributions and to prevent them from being used to circumvent donation limits; [para. 59]

E. To review the current public funding system and consider adopting a more generous and inclusive approach for the determination of eligibility for public funding, by lowering the eligibility threshold to also benefit newly formed parties, in order to better promote political pluralism; [para. 64]

F. Regarding gender and diversity considerations:

1. to include a specific clause on inclusivity and equal participation in the party structure, consider introducing gender parity in decision-making bodies, with mechanisms to address non-compliance, as well as further mechanisms to promote greater political participation of women, including through setting up women's sections of political parties, possible financial and other incentives, providing means of supporting women candidates during the campaign; [para. 22]

2. to consider introducing in the Act effective incentive mechanisms to ensure a gender balanced electoral party lists, for example, by allocation of an additional portion of public funding to political parties having higher number of women on their lists for election campaigns, with a rank-order rule ensuring that women

candidates are not placed too low on the party list, as well as for achieving a minimum level of women in leadership roles; [para. 67]

G. Regarding reporting and transparency:

1. to revise Articles 25 (6) and (10) in order to eliminate conflicting provisions, while considering lowering the threshold for recording and publishing contributions to enhance transparency; [para. 72]
2. to consider merging the two types of reports and require political parties to submit a single unified report that encompasses both the "report" and "information" with a view to optimize costs related to auditing financial reports and reduce the reporting burden; [para. 76]
3. to develop timely, standardized, accessible, detailed and easily searchable formats of reporting; [para. 79]

H. Regarding oversight and sanctions:

1. to further delineate the National Election Commission's (NEC's) investigative and enforcement powers, outline the existing adversarial proceedings and administrative procedures for obtaining additional information during the verification process, and define the NEC's ability to directly access all necessary institutional databases to detect and address illegal sources of funding; [para. 82]
2. to set a clear and reasonable timeframe to allow political parties adequate opportunity to correct errors or effectively defend their position; [para. 84]
3. to ensure that sanctions for political party financing violations are proportionate to the severity of the offense, with minor infractions not resulting in the rejection of annual reports; [para. 86]
4. to ensure that the penal sanctions listed under Chapter 6a are proportional to the violation's committed, considering factors like frequency, scale, and mitigating circumstances, while redesigning fines and other penalties with gradations, ensuring the highest penalties apply only for the most severe offenses. [para. 88]

These and additional recommendations are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 30 December 2024, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) received a request from the Chair of the Justice and Human Rights Committee of the *Sejm* for a legal review of the Act of Poland on Political Parties as of June 2023 (hereinafter "Law").
2. On 10 January 2025, ODIHR responded to this request, confirming its readiness to prepare a legal opinion on the compliance of the Act with international human rights standards and OSCE human dimension commitments.
3. The present Opinion should be read together with the relevant findings and recommendations from the *ODIHR Limited Election Observation Mission Final Report on the Parliamentary Elections of 15 October 2023*,[1] as well as the *2020 ODIHR Opinion on the Legal Framework of Poland Governing Participation of Persons with Disabilities in Political and Public Life*.[2]
4. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its general mandate to assist OSCE participating States in the implementation of their OSCE human dimension commitments.[3]

II. SCOPE OF THE OPINION

5. The scope of this Opinion covers the Act submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the regulation of political parties and their financing in Poland.
6. The Opinion raises key issues and highlights areas of concern. In the interest of conciseness, it focuses on those provisions of the Act that require amendments or improvements rather than on its positive aspects. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments and international good practices, including the ODIHR-Venice Commission Joint Guidelines on Political Party Regulation.[4] Reference is also made to relevant findings and recommendations from ODIHR election observation reports.
7. The Opinion also highlights, as appropriate, good practices from other OSCE participating States. When referring to national legislation, ODIHR does not advocate for any specific country model, but rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in

1 See ODIHR, *Republic of Poland - ODIHR Limited Election Observation Mission Final Report on the Parliamentary Elections of 15 October 2023*, 27 March 2024. See also ODIHR Electoral Recommendations.
2 See ODIHR, *Opinion on the Legal Framework of Poland Governing Participation of Persons with Disabilities in Political and Public Life*, 20 December 2020.
3 See in particular, the *1990 OSCE Copenhagen Document*, para. 7.6., whereby the OSCE participating States committed to "*respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities*."
4 See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020).

light of the broader national institutional and legal framework, as well as country context and political culture.

8. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[5] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[6] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.

9. This Opinion is based on an unofficial English translation of the Act, which is annexed to this document. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

10. In view of the above, ODIHR stresses that this review does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Poland in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

11. Political parties are essential in the democratic process and foundational to a pluralist society. They should be regulated in a manner that supports the rights to freedom of association and expression, as well as genuine and democratic elections. These rights are fundamental to the proper functioning of a democratic society.[7] To fulfil their core functions, political parties need appropriate funding both during and between election periods. At the same time, the regulation of political party funding and its transparency are essential to guarantee political parties' independence from undue influence of private and foreign donors, state and public bodies, as well as to ensure that parties have the opportunity to compete in accordance with the principle of equal opportunity.[8]

12. Fundamental rights afforded to political parties and their members are found principally in Articles 19 and 22 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), which protects the rights to freedom of expression and opinion and the right to freedom of association, respectively. Article 25 ensures the right to participate in public affairs.[9] International standards on financing political parties and election campaigns are found in Article 7 paragraph 3 of the United Nations Convention against Corruption (hereinafter "UNCAC").[10]

13. Furthermore, the CEDAW promotes gender equality and diversity inclusion, in particular, Articles 4 (on temporary special measures to enhance gender equality) and 7 (on eliminating discrimination against women in political and public life). Article 29 of

5 See the *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Poland ratifies the Convention on 30 July 1980.
6 See the *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
7 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 17.
8 *Ibid*.
9 See *International Covenant on Civil and Political Rights* adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Poland ratified the Covenant on 18 March 1977.
10 See *UN Convention against Corruption* (UNCAC), adopted by the General Assembly on 31 October 2003, by resolution 58/4. The Convention entered into effect on 14 December 2005, and Poland ratified it on 15 September 2006. See also the *Additional Protocol to the Criminal Law Convention on Corruption*, adopted on 15 May 2003, ratified by Poland on 30 April 2014.

the UN Convention on the Rights of Persons with Disabilities (hereinafter "CRPD") also focuses on the participation of persons with disabilities in political and public life.[11]

14. At the regional level, Article 11 of the European Convention on Human Rights (hereinafter "ECHR") sets standards regarding the right to freedom of association, protecting political parties and their members as special types of associations.[12] Article 3 of the First Protocol to the ECHR guarantees the right to genuine elections. Case law of the European Court of Human Rights (hereinafter "ECtHR") provides additional guidance for Council of Europe (hereinafter "CoE") Member States on ensuring that laws and policies comply with key aspects of Article 11 (the right to freedom of peaceful assembly and to freedom of association). Furthermore, the right to freedom of opinion and expression under Article 10 of the ECHR and the right to free elections guaranteed by Article 3 of the First Protocol to the ECHR are also relevant when reviewing legislation on political parties. Case law of the European Court of Human Rights (hereinafter "ECtHR") provides additional guidance for CoE Member States on ensuring that laws and policies comply with rights and freedoms guaranteed by the ECHR.

15. According to paragraph 7.6 of the 1990 OSCE Copenhagen Document, OSCE participating States committed to "*respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.*"[13] Other OSCE commitments under the Copenhagen Document include the protection of the freedom of association (paragraph 9.3), of the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and the party (paragraph 5.4). Additionally, Ministerial Council Decision 7/09 on women's participation in political and public life is applicable.[14]

16. These standards and commitments are supplemented by various guidance and recommendations from the UN, the CoE and the OSCE. At the international level, these include General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service interpreting state obligations under Article 25 of the ICCPR,[15] the CEDAW General Recommendation No. 23: Political and Public Life.[16] In addition, the CEDAW General Recommendation No. 40 on the equal and inclusive representation of women in decision-making systems provides specific recommendations with respect to political parties.[17]

17. Furthermore, the CoE Committee of Ministers' Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns (hereinafter "CoE Committee of Ministers' Recommendation Rec(2003)4"), as well as

11 See the *UN Convention on the Rights of Persons with Disabilities*, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Poland ratified the Covenant on 6 September 2012.
12 See the *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) entered into force on 3 September 1953.
13 See the *1990 OSCE Copenhagen Document*.
14 See the *OSCE Ministerial Council Decision 7/09*, 2 December 2009, Women's participation in political and public life.
15 See the *UN Human Rights Committee General Comment 25*: The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7.
16 See the CEDAW Committee, *General Recommendation No. 23*: Political and Public Life.
17 See the CEDAW Committee, *General recommendation No. 40 (2024)* on the equal and inclusive representation of women in decision-making systems, especially: para. 39 (c) ("*Introduce codes of conduct, with an intersectional perspective, in parliament, government, regional and local councils and political parties, public service and private sector companies to eliminate all forms of gender-based violence against women and hate speech, with independent complaint mechanisms and confidential counselling and provide corresponding training to all officials and staff*"); para. 45 (d) ("*Provide equitable financial and other support to women candidates, including spending caps and affordable advertising to ensure a level playing field in political campaigns*"); para. 51 (d) ("*Mandate and enforce parity in decision-making bodies of political parties and trade unions, with penalties for non-compliance and incentives for compliance*"); para. 51 (e) ("*Support the creation and strengthening of women's sections in political parties and trade unions, including through earmarked funds*").

the Parliamentary Assembly of the CoE, Recommendation 1516(2001) on financing of political parties are useful reference.[18]

18. The ensuing recommendations will also refer, as appropriate, to other nonbinding documents that provide further detailed guidance. These include the ODIHR and Venice Commission Joint Guidelines on Political Party Regulation (hereinafter "Guidelines"),[19] ODIHR and Venice Commission Joint Guidelines on Freedom of Association,[20] ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities,[21] and relevant reports of the Council of Europe Group of States against Corruption (GRECO).[22]

2. DEFINITION AND STRUCTURE OF POLITICAL PARTIES

19. Article 1 of the Act defines a political party as *"a voluntary organisation, under a specific name, which aims to participate in public life by exerting an influence by democratic means on the formation of state policy or the exercise of public authority."* Political parties acquire legal personality at the moment of their registration in the Register of Political Parties (Article 1.2). Article 3 highlights the voluntary nature of membership, and Articles 4 and 5 guarantee equal treatment and access to public broadcasting. This definition aligns with the standard concept of 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 governance of a country."*[23] At the same time, according to the Guidelines, the above definition of a political party includes "associations at all levels of governance whose purpose is the presentation of candidates for elections and exercising political authority through elections to governmental institutions". It is advisable to reflect this perspective in the Act too to better distinguish between a political party and an interest group seeking to influence policy without itself presenting candidates for election.

20. Article 8 outlines a political party's structure and rules. Specifically, it gives discretion to a party to *"shape their structures and rules of operation in accordance with the principles of democracy, in particular by ensuring that these structures are open, that party bodies are appointed by election and that resolutions are adopted by a majority vote."* It is commendable that the Act specifically refers to the principles of democracy with respect to its internal structures and rules and that overall, parties are given a rather wide autonomy to decide about its structure as internal functions and processes of political parties should generally be free from state interference.[24] This includes the freedom to determine their organizational structure and establish rules for selecting party leaders and candidates, as these are integral to a party's autonomy as an association. At the same time, it is important that the current provisions, especially on appointment and voting process, are not interpreted or applied in an overly restrictive manner, limiting the parties' ability to choose how to self-regulate.[25] In this respect, some specific cognizance might be taken of the possibility of an elected party leader appointing members of some party boards in certain instances, rather than being elected.

18 See *the Council of Europe Committee of Ministers, Recommendation Rec(2003)4* to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted on 8 April 2003. See also *Parliamentary Assembly of the Council of Europe, Recommendation 1516(2001)* on financing of political parties, adopted by the Standing Committee, acting on behalf of the Assembly, on 22 May 2001.
19 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd edition, 2020).
20 See ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association* (2015).
21 See ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019).
22 Poland is a member of GRECO since 20 May 1999. See GRECO's, *the third evaluation cycle for Poland*.
23 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 64.
24 *Ibid*., para. 151.
25 *Ibid.*, paras. 154 and 155.

21. At the same time, it is legitimate for the states to introduce some legislative requirements for the internal organization of political parties, in the interest of democratic governance and equal treatment and representation of women and political participation of minorities or under-represented or disadvantaged groups, although without overly interfering with the internal matters of political parties. The CEDAW General Recommendation No. 40 specifically recommends to "*Mandate and enforce parity in decision-making bodies of political parties and trade unions, with penalties for non-compliance and incentives for compliance*".[26] Currently, Article 8 does not require gender parity in decision-making bodies nor mandate inclusivity and/or fair representation more generally. While it also mentions "open structures", it does not ensure non-discriminatory or accessible membership processes, leaving room for possible exclusions that may undermine inclusivity. **Thus, it would be advisable to amend Article 8 to include a clause on inclusivity and equal participation in the political party structure, while also supplementing the Act with a specific requirement for gender parity in decision-making bodies, with mechanisms to address non-compliance** (see also Sub-section 6.3. on Gender and Diversity Considerations *infra*).

22. According to Article 9, the statute of a political party must define its objectives, structure, and operational rules, including name, membership processes, members' rights, party organs and their powers, financial management, territorial units, and procedures for amendments, dissolution, or mergers. These statutes must be adopted by the general assembly of members or their democratically elected representatives.

3. MEMBERSHIP OF POLITICAL PARTIES

23. According to Article 2.1 of the Act, *"[c]itizens of the Republic of Poland who have reached the age of 18 may be members of political parties."* The party membership is voluntary (Article 3) as required by Article 20 of the Universal Declaration on Human Rights, while according to Article 10, a member has the right to withdraw from the party. It is also notable that a member has the right to withdraw from the party (). However, the Act does not extend fundamental guarantees the right of association without discrimination, as provided by Article 2 of the ICCPR. Such principles are only provided in Article 4 in relation to the treatment of a political party. While this is also necessary, broader guarantees would be foremost essential for enjoying the right to freedom of association in general. Individuals and groups that seek to establish a political party must be able to do so on the basis of equal treatment before the law.[27]

24. As provided by Principle 9 of the Guidelines, *"[t]he right to freedom of association generally entitles those forming an association or belonging to one to choose with whom they form an association or whom to admit as members.[…] However, this freedom of choice is not unlimited as this aspect of the right to association is also subject to the prohibition on discrimination, so that any differential treatment of persons with respect to the formation or membership of an association that is based on a personal characteristic or status must have a reasonable and objective justification."*[28] In this context, **incorporating in the Act broader guarantees of equal rights would be**

26 See the CEDAW Committee, *General recommendation No. 40 (2024)* on the equal and inclusive representation of women in decision-making systems, para. 51 (d).

27 See *ibid* para. 134. See also Articles 2 and 26 of the *ICCPR*; Article 14 of the *ECHR* and *Protocol No. 12 to the ECHR*. Paragraph 7.6, of the *1990 OSCE Copenhagen Document* also states that *"Participating States will respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities."*

28 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 59.

welcomed. Such measures would promote the full participation and representation of women, persons with disabilities, and minorities in the political process.

25. In addition, by mentioning only citizens, membership excludes foreign nationals or stateless persons. A blanket exclusion of foreign nationals and stateless persons from membership in political parties is unwarranted. To some extent, such individuals should be allowed to engage in the political life of their country of residence, particularly in areas where they are permitted to participate in certain types of elections, such as local.[29]

26. As stated in the Guidelines on Political Party Regulation, "*only the possibility of aliens to establish political parties could be restricted under Article 16 of the ECHR*", while it cannot be applied to restrict membership.[30] In addition, Recommendation 1500 (2001) on Participation of Immigrants and Foreign Residents in Political Life in the CoE Member States, notes that democratic legitimacy requires equal participation by all groups of society in the political process, and that the contribution of legally resident non-citizens to a country's prosperity further justifies their right to influence political decisions in the country concerned (para 4). As also previously noted by ODIHR and the Venice Commission, *"the regulation in this area is not completely uniform across Europe and Article 16 of the ECHR expressly recognises the right of states to impose restrictions on the political activity of aliens. Yet, the ECtHR has held that this provision should be construed as only allowing restrictions on "activities" that directly affect the political process."*[31] While recognizing the right of States to link certain modes of public office and political participation to a citizenship requirement, in line with previous recommendations, **it is recommended to extend eligibility for political party membership to include foreign nationals and stateless persons, at least those with legal residency, as well as those having right to vote, for example, in municipal elections.** Specifically, EU citizens residing in Poland who have voting rights in municipal elections, should be able to join and contribute to political parties.

27. Additionally, while not explicitly prohibited in the Act, the Electoral Code stipulates that individuals who have been incapacitated by a final court decision, including on the basis of mental disability, forfeit their right to participate in elections. Article 11 (3) (2) of the Act explicitly refers to the requirement of having "full legal capacity" with reference to the 1,000 members required to show public support. Read in conjunction with Article 11 of the Act, these provisions would imply that party membership is subject to the condition of "full legal capacity".[32] Article 29 of the CRPD requires states to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and Article 12 of the CRPD requires that States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. At the regional level, CoE Recommendation (2011)14 invites Member States to enable persons with disabilities freely and without discrimination, particularly of a legal, environmental and/or financial nature, to meet, join or found political parties.[33] Freedom of association, including forming and supporting political parties, is crucial for protecting freedom of expression and political participation and must be upheld without

29 See ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties in Azerbaijan, CDL-AD(2023)007, para. 86. Also ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, para 48; ODIHR-Venice Commission, *Joint Opinion* on draft amendments to the legislation concerning political parties of Armenia, CDL-AD(2020)004, para 23.

30 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para 149.

31 See ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties in Azerbaijan, CDL-AD(2023)007, para. 87. See also ECtHR, *Perinçek v. Switzerland [GC], no. 27510/08*, 15 October 2015, para. 121.

32 ODIHR *Final Report* on 2023 parliamentary election noted that *"Restrictions on candidacy based on mental and intellectual disability are at odds with the principles of non-discrimination and proportionality provided by OSCE commitments and international standards."*

33 See Council of Europe, *Recommendation CM/Rec(2011)14* of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, point 1.

discrimination[34]. State regulations must not discriminate based on characteristics such as disability. **It is recommended to remove the reference to "full legal capacity" in the Act and more generally in the legislation related to the enjoyment of political rights.**

RECOMMENDATION A.

1. To extend eligibility for political party membership to include foreign nationals and stateless persons with legal residency, as well as those having right to vote, for instance in municipal elections.

2. To remove the reference to "full legal capacity" in the Act (Article 11 (3) (2)) and more generally in the legislation related to the enjoyment of political rights.

4. REGISTRATION OF POLITICAL PARTIES

28. A political party attains legal personality only upon its registration (Article 16). Political parties are registered in the "register" maintained by the District Court in Warsaw (Article 11). Applications must include certain party information: name, abbreviation, address, and details of representatives authorized to act externally and manage finances, along with an optional declaration of a symbol. They must also be accompanied by the party's statutes and a list of at least 1,000 Polish citizens (aged 18 or older with full legal capacity) supporting the application, with their details and signatures annotated with the party name. Signature collection must comply with the Act on Assemblies, and party names, abbreviations, and symbols must be distinct from those of existing parties.

29. It is to be noted that not all OSCE participating States require the registration of political parties; however, it is also acknowledged that political parties may obtain certain legal privileges (such as public funding), based on their legal status, that are not available to other associations; hence it is reasonable to require the registration of political parties with a state authority.[35] Where registration as a political party is required to take part in elections or to obtain certain benefits, substantive registration requirements and procedural steps for registration should be reasonable. Such registration requirements should be carefully drafted to achieve legitimate aims, but not overly restrictive, in line with Article 11(2) ECHR and Article 22(2) ICCPR, read in the light of Article 3 of Protocol No. 1 to the ECHR.[36]

30. The registration requirements outlined in Article 11 are generally balanced. As provided by the Guidelines on Political Party Regulation, registration requirements *"cannot be used to discriminate against the formation of parties that espouse unpopular ideas. In Refah Partisi the ECtHR noted that Article 10 of the ECHR extends protection "not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb."*[37] This is of importance because the submission of a party statute is a prerequisite for registration (Article 11(3)). Therefore, a party's application for registration should not be rejected

34 See OSCE/ODIHR, *Opinion on the Legal Framework of Poland Governing Participation of Persons with Disabilities in Political and Public Life*, paras. 37-51.

35 See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 85.

36 *Ibid*, para. 86.

37 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 90. See also ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey [GC]*, nos. 41340/98 and 3 others, 13 February 2003, para. 89

simply because its statute contains ideas that may be unpopular or offensive, as long as it promotes democratic and peaceful procedures and means.[38]

31. A requirement based on minimum support established through the collection of signatures is also legitimate; however, the state must ensure that requirements are reasonable and not so burdensome as to restrict the political activities of small parties or to discriminate against parties representing minorities. As also provided by the Guidelines, *"[g]iven variances in the size and nature of states throughout the OSCE region, it is generally preferable that the minimum number of persons required to establish support be determined, at least at the local and regional level, not as an absolute number, but rather as a reasonable percentage of the total voting population within a particular constituency."*[39] The rather low threshold of 1,000 signatures compared to Poland's large population is overall welcome as it is accessible enough to ensure political inclusivity.

32. Requiring details like the unique 11-digit identification number (PESEL) may enhance the accuracy of signatures, ensuring only eligible individuals are included[40]. However, a requirement to provide a PESEL number could deter some individuals from signing due to privacy concerns, as they may feel uncomfortable sharing such personal information. **It is recommended to balance the need for accurate registration with privacy rights. If the collection of PESEL is required for solely verification purposes, such information should not be published.**

33. It is also noted that the automatic processing of personal data revealing political opinions of individuals, as is the case here, is especially sensitive[41]. Hence, the processing of such special categories of personal data needs to be accompanied by specific safeguards beyond those normally applicable to personal data in general, and appropriate to the risks at stake of voter discrimination and of the interests, rights and freedoms protected.[42] The compliance of the existing framework with these standards goes beyond the scope of this Opinion.

38 In the case of ECtHR, *Linkov v. the Czech Republic*, no. 10504/03, 7 December 2006, concerning the refusal to register a political party on the ground that one of its aims was anti-constitutional, the ECtHR held that as the PL had not advocated any policy that could have undermined the democratic regime in the country and had not urged or sought to justify the use of force for political ends, the refusal to register it had not been necessary in a democratic society (violation of Article 11 ECHR). See also ECtHR, *Herri Batasuna and Batasuna v. Spain*, nos. 25803/04 and 25817/04, 30 June 2009;

39 ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 95. In the *Opinion* on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan (CDL-AD(2011)046), the Venice Commission has stated that, in a country of eight million inhabitants, a minimum requirement of 1,000 party members is reasonable, whereas 5,000 party members would be a disproportionate requirement which is not necessary in a democratic society and therefore a violation of Article 11 of the ECHR; see, Venice Commission, para. 18.

40 In Polish: Powszechny Elektroniczny System Ewidencji Ludności, the Polish Universal Electronic System for Registration of the Population.

41 See Council of Europe, *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 108), 28 January 1981, which entered into force in Polad on 1 January 2002, especially Article 6; and *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223) ratified by Poland on 10 June 2020. See also Committee of the Convention for the protection of individuals with regard to the automatic processing of personal data (Convention 108), *Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns* (2021), para. 4.2.4.

42 *Ibid.* The Protocol (CETS: 223) specifies that the automatic processing of such sensitive data "*shall only be allowed where appropriate safeguards are enshrined in law, complementing those of [the] Convention*", which shall "*guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination*" (new Article 6(1) and (2) of the Convention). The Explanatory Report to the Protocol further provides examples of the types of additional safeguards that could be considered alone or in combination regarding the handling of such sensitive data, including the data subject's explicit consent, a law covering the intended purpose and means of the processing or indicating the exceptional cases where processing such data would be permitted, a professional secrecy obligation, measures following a risk analysis; a particular and qualified organisational or technical security measure, see *Explanatory Report – CETS 223 – Automatic Processing of Personal Data (Amending Protocol)*, 10 October 2018, para. 56. Risk assessment prior to processing should assess whether data are protected against unauthorised access, modification and removal/ destruction and should seek to embed high standards of security throughout the processing; such an assessment should be informed by considerations of necessity and proportionality, and the fundamental data protection principles across the range of risks including physical accessibility, networked access to devices and data, and the backup and archiving of data; see Convention 108), *Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns* (2021), para. 4.3.5.

34. In addition, the demonstration of public support is only contemplated for Polish citizens, disregarding foreign nationals or stateless persons residing in Poland as valid support to register a political party. **As in the case of party membership, the general exclusion of foreign citizens and stateless persons, who are legal and permanent residents, from support to political parties is not justified** (see also Sub-Sections 3 on Membership and 6.1 on Private Funding).

35. Article 12.3 of the Act stipulates that the court shall consider party registration cases in closed session, with the discretion to schedule a hearing. It is commendable that the court is required to register a party without delay. However, to fully uphold this principle, it would be helpful to specify a clear timeline for the court to follow. This would eliminate any subjective interpretation of "no delay" and ensure that the registration process is completed in a timely and predictable manner. **It is recommended that a clear timeline be specified for the court to register a political party.**

36. Article 12.5 allows for appeals against registration decisions, *"unless otherwise provided in this Act"*. If an application procedure is violated, the court will instruct applicants to correct deficiencies within a maximum of three months. Failure to comply will result in refusing registration, which can be appealed within 14 days of notification (Article 13). If doubts arise about the constitutionality of a political party's objectives or principles, the court will suspend proceedings and refer the matter to the Constitutional Tribunal. If the Tribunal deems the statutes unconstitutional, registration is denied, and neither the referral decision nor the denial can be appealed (Article 14). Article 22 specifies that cases related to the registration of political parties are governed "by the Code of Civil Procedure on non-procedural proceedings", alongside this Act. It also states that appeals are permitted only against decisions of the second-instance court regarding the entry or deletion of a party from the register.

37. The wording of Article 12 suggests that the court would merely check compliance with the law, allegedly with the requirements for registration listed in Article 11. **If this is the case, this should be clarified.** At the same time, if there are grounds other than the unconstitutionality of the party statute or activities that could be used to deny registration as per Article 14, beyond the non-compliance with Article 11 requirements, having closed sessions would not be justifiable.

38. As mentioned, under Article 14, if questions about the compatibility of the objectives or principles of action of a political party with the Constitution arise, the court shall transfer the case to the Constitutional Court. If the Constitutional Court deems the statutes unconstitutional, registration is denied, and neither the referral decision nor the denial can be appealed.

39. While assessment of the constitutionality of political parties frequently falls under the jurisdiction of the constitutional courts, transferring the case to the Constitutional Court would inevitably delay the registration process, potentially jeopardizing the party's ability to participate in elections, unless the timeline for assessing the issue is clearly regulated in the law. Hence, unless provided in other legislation, **it is fundamental to provide for a reasonable short deadline for the Constitutional Court to decide such cases**.[43]

40. Article 17 and Article 17a of the Act lists the information published in the register which does not include personal data apart from those related to the authorized representatives of the party. Article 18 further stipulates that the register of political parties, including their statutes, is public except for residential addresses of individuals, which are

43 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 88.

excluded. Additionally, anyone may request certified copies or extracts of party records and statutes from the court.

41. Removing residential addresses from the public register is commendable. It is also welcome that the public register does not include the list of names of all party members since as indicated above, membership information reveals political opinions and are considered sensitive information for the purpose of personal data protection standards.[44] Hence, requiring political parties to submit a minimal membership list solely for registration purposes in order to demonstrate public support is justifiable, while making such a list public would be unnecessary.[45]

RECOMMENDATION B.

1. To specify in the Act a clear timeline for the court to complete registration of a political party with the aim to ensure that the registration process is conducted in a timely and predictable manner.
2. To clarify that for the purpose of registration, the court checks compliance with the requirements for registration listed in Article 11, except for cases falling within the scope of Article 14 on the constitutionality of the statute and activities of the political party.
3. To provide in the Act or other applicable legislation for a reasonable short deadline for the Constitutional Court to decide cases dealing with the constitutionality of objectives or principles of action of a political party.

5. DISSOLUTION OF POLITICAL PARTIES

42. A political party can be dissolved by its own resolution or by a court order based on specific grounds (Article 45). If a party resolves to dissolve itself, it must immediately notify the court and appoint a liquidator (Article 46 (1)). If the party fails to appoint a liquidator, the court will appoint one (Article 46 (2)). After completing the liquidation, the Court will delete the party's entry from the register, and the decision is final (Article 46.3). Once a court order for liquidation becomes final, the court will appoint a liquidator (Article 47). The costs of liquidation are covered by the party's assets, and if insufficient, the remainder is covered by the State Treasury (Article 48).

43. Grounds for dissolution of a party by a court are elaborated in Articles 20, 21 and 44. If a political party fails to notify the court of certain changes such as amendments to the party statute, change of registered address or change in the composition of authorized bodies (Article 19), the court will ask the party's competent organ to provide explanations or missing data within at least three months (Article 20 (1)). If the deadline passes without a response, the court will issue an order to remove the party from the register (Article 20 (2)). If the court has doubts about the constitutional compatibility of a political party's objectives or principles, it will suspend proceedings and request the Constitutional Court to review the amendments to the statute (Article 21 (1)), similar to what is provided in Article 14 when checking the constitutionality at the time of registration. If the

44 See Council of Europe, *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 108), 28 January 1981, Article 6; and *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223). See also ODIHR-Venice Commission, *Joint Opinion* on the draft law on political parties of Ukraine, CDLAD(2021)003, para. 77, which refers in this context to ECtHR, *Catt v. the United Kingdom*, no. 43514/15, 24 January 2019, para. 112, stressing that personal data revealing political opinion falls among the special categories of sensitive data attracting a heightened level of protection.

45 See Venice Commission and ODIHR, *Joint Opinion* on the Draft Law on Political Parties in Azerbaijan, CDL-AD(2023)007, para. 99.

Constitutional Court finds the amendments to the statute unconstitutional, the court will reject the amendments' registration (Article 21 (2)). Finally, if the Constitutional Court finds a political party's objectives or activities unconstitutional, the court will immediately order its removal from the register (Article 44).

44. According to a good practice, the formation and functioning of a political party should not be limited, nor their dissolution allowed, except as a last resort measure in extreme cases as prescribed by law and considered necessary in a democratic society.[46] The Guidelines state that political parties should never be dissolved for minor administrative or operational breaches, in the absence of other relevant and sufficient circumstances.[47] It is *"of the essence of democracy to allow diverse political programmes to be proposed and debated, (...) provided that they do not harm democracy itself."*[48] Dissolution can only be justified in the case of parties which advocate the use of violence as a political means to overthrow the democratic constitutional order, thereby abolishing the rights and freedoms guaranteed by the constitution.[49] It should be used with utmost restraint, when it is clear that the party really represents a danger to the free and democratic political order or to the rights of individuals and where other, less radical measures could not prevent the said danger.[50]

45. Deregistering a party solely for failing to update the court on a change in statute or address, even if notified to do so and even if a deadline passes without the party rectifying the issue, is excessive and insufficient to justify such de-registration. **De-registration in this case should be reconsidered and other less restrictive measures could be contemplated after the initial deadline of three months passes**, such as the suspension of payment of public funding or other benefits, ineligibility for state funding for a set period of time, administrative fine, or other less restrictive sanctions.[51]

46. In addition, Article 38c specifies that if a political party fails to submit the required financial report within the time frame established by Article 38 (1), the National Election Commission (hereinafter "NEC") must request the court to remove the party's entry from the register. Following a hearing, the court will issue an order to delete the political party's registration and there is no possibility to appeal such a decision. Again, providing for de-registration for the mere failure to submit the required report within the required time frame is disproportionate, as this means that the political party loses its legal personality (Article 16). As mentioned above, more proportionate measures may be applied instead, such as a temporary suspension of public funding (until the report is submitted). **It is recommended to amend Article 38c of the Act and consider other types of less restrictive sanctions to ensure that such a sanction, albeit effective and dissuasive, is proportionate and allows for flexibility based on the severity of the offense.**

47. Similarly, Articles 44 and 21 include broad grounds for dissolving a political party, as Article 44 mandates immediate dissolution if a party's objectives or activities are deemed unconstitutional, while Article 21 (1) allows suspension of proceedings and referral to the Constitutional Court over doubts about a party's constitutional compatibility, a criteria, which is too broad to justify party dissolution. According to Article 13 of the Constitution of Poland, "*political parties and other organizations whose programmes*

46 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 50.
47 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 113.
48 See ECtHR, *Socialist Party and others v Turkey*, , no. 21237/93, 25 May 1998.
49 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*. See also ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties in Azerbaijan, CDL-AD(2023)007, para. 94.
50 See Venice Commission, *Guidelines on Prohibition and Dissolution of political parties and analogous measures*, CDLINF(99)15, pp. 3-4; Venice Commission, *Opinion* on the proposed Amendment to the Law on Parties and other SocioPolitical Organisations of the Republic of Moldova, CDL-AD(2003)008, para. 10.
51 For an overview of possible sanctions, see ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 274.

are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited". The law should define narrowly formulated criteria specifying the exceptional circumstances under which the dissolution of political parties is permitted,[52] such as in case of use or call for violence, which constitute a serious and imminent threat to civil peace or fundamental democratic principles.[53] Dissolution is justified only if it adheres to strict standards of legality, subsidiarity, proportionality and non-discrimination.[54] It is recommended **to more precisely define general unconstitutionality of a party's objectives or activities for dissolution envisioned in Articles 21 and 44 and instead formulate more narrowly and precisely the exceptional circumstances under which the dissolution of a party may be possible, as a measure of last resort and in line with the strict standards for legality, subsidiarity and proportionality**. Moreover, in case when as a result of the amendment only certain provisions of a statute would appear to be contrary to the Constitution, while primary objectives or principles would be still compatible, consideration could be given to allow parties to bring the relevant provisions in compliance with the Constitution, rather than immediately removing the party from the register.

RECOMMENDATION C.

1. To reconsider entirely de-registration as the only sanction in case of non-compliance with the requirements provided in Article 19 (lack of notification of change of party statute, registered address or composition of authorized bodies) or in Article 38c (non-timely submission of financial reports), and instead provide for a graduated range of other less restrictive but proportionate and dissuasive sanctions.
2. To reconsider entirely the broad ground of "unconstitutionality" for dissolution of a political party envisioned in Articles 21 and 44 and instead provide for a more narrow and precise formulation of the exceptional circumstances under which the dissolution of a party may be possible, as a measure of last resort and in line with the strict standards for legality, subsidiarity and proportionality.

6. FINANCING OF POLITICAL PARTIES

48. The Act provides for a mixed funding system. There are two distinct sources of financing: funds allocated by the state (state or public funding) and contributions from individuals and legal entities (private funding). Private funding is a form of citizen participation, enabling individuals to freely express support for a political party through financial or in-kind contributions[55]. Public funding mechanisms are often established to counteract the influence of private money on political and electoral processes. Such funding aims to level the playing field and promote political pluralism by providing newly formed or smaller political forces with easier access to the electoral arena. Furthermore, public funding, that can be either direct or indirect (e.g., free or subsidized access to broadcast

52 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 109.
53 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 114 and 120. See also ODIHR-Venice Commission *Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols*, adopted by the Venice Commission at its 105th Plenary Session Venice (18-19 December 2015.
54 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 109.
55 *Ibid*, para. 204.

media, use of public buildings or spaces for campaign activities) can support greater equality.

49. At the outset, it is important to note that the financing of election campaigns is also regulated by other legislation, such as the Electoral Code, so it is not address here in detail. The present Opinion hereby refers to some key findings and recommendations from the *ODIHR Limited Election Observation Mission Final Report on the Parliamentary Elections of 15 October 2023* in this respect.[56] Efforts should be made to ensure that these laws complement one another, addressing any inconsistencies and harmonizing all active provisions within the broader legislative framework governing political parties and election financing. Any overlap between these laws should be addressed through a coordinated approach that upholds the overarching principles of equity, transparency, and fairness.

6.1. Private Funding

50. As noted by the Guidelines, the "*funding of political parties is a form of political participation, and it is appropriate for parties to seek private financial contributions, i.e., donations (…). With the exception of sources of funding that are banned by relevant legislation, all individuals should have the right to freely express their support for a political party of their choice through financial and in-kind contributions. However, reasonable limits on the total amount of contributions may be imposed and the receipt of donations should be transparent" (…) Legislation mandating donation limits should be carefully balanced between, on the one hand, ensuring that there is no distortion in the political process in favour of wealthy interests and, on the other hand, encouraging political participation, including by allowing individuals to contribute to the parties of their choice."*[57]

51. According to Article 24 (1), the assets of a political party are formed from membership fees, donations, property income, and grants loans, as well as public subsidies, and may only be used for statutory or charitable purposes. Political parties may earn income through 1) interest on funds held in bank accounts and deposits; 2) trading in Treasury bonds and Treasury bills; and 3) the disposal of assets belonging to it. Political parties are prohibited from carrying out business activities, holding public collections, and using assets for purposes other than statutory or charitable activities. According to Article 27, the sale of party statutes, programmes, symbolic items, publications promoting the party's aims, and minor paid services for third parties using party office equipment is not included in business activities.

52. In order to ensure integrity in the financing of political parties and election campaigns and limit undue influence, it is common to set donation limits for contributions given by natural (and legal) persons, personal contributions to candidates' personal campaigns and to ban or very strictly regulate certain types of donations depending on the country context (e.g., foreign or anonymous sources, legal entities, and corporations with government contracts or partial government ownership).[58]

53. While it is possible and perhaps desirable to curb the commercial activities of political parties, a balance needs to be struck between allowing individuals to finance electoral and political activities, in line with international standards and good practice, and avoiding electoral/political actors' over-dependence on a small number of large donors, which is unhealthy for political parties and democracy. The wording oa Article 24.4 (3)

56 See ODIHR, *Republic of Poland - ODIHR Limited Election Observation Mission Final Report on the Parliamentary Elections of 15 October 2023*, 27 March 2024, Chapter IX. See also ODIHR Electoral Recommendations.
57 See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 209-213.
58 See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 2010-2015.

– the disposal of assets – could be clarified in this respect. If the "asset" envisages property and respectively the generated income from the lease of such property (also as envisaged by Article 24 (1)), then this should be supplemented to indicate that such lease cannot be significantly or disproportionately higher than the current market prices. In addition, to avoid that lease of property is used to circumvent restrictions of donations from legal entities, it should be reflected in the financial documentations subject to the same limitations or bans as other contributions. The principle of equality of opportunity could also justify that the amount of income political parties garner from lease could be factored in and affect the amount of public funding political parties receive.[59] **Political parties that have income from lease over a certain threshold could receive fewer or no public funding to further a level playing field.** At the same time, further elaboration in the Act on property income and including provisions addressing gains from real estate and potential re-investing schemes (if any) would be benefitial.

54. Article 25 allows funds only from Polish citizens with permanent residence in the country. The strict restriction on foreign funding, including from Polish citizens without permanent residence in the country, is problematic. While it is a political choice of each State, such a prohibition should not prevent financial donations from Polish nationals living abroad. As provided by the Guidelines *"donations from citizens, regardless of their place of residence, should not be restricted if they are allowed to [vote]."*[60] Since Poland grants citizens residing abroad the right to vote in all elections, **is recommended to remove the requirement of permanent residence and allow all Polish citizens regardless of their residence to donate to a political party.**

55. While the ban on foreign sources of funding falls within the residual margin of appreciation of states, the proportionality of such a measure needs to be assessed in every specific cases, taking into account the country context and concrete aim pursued.[61] It is noted that many states allow for some exceptions to such an outright prohibition of foreign donations, and it is generally recommended that this should be regulated carefully to avoid an infringement with the right to freedom of association of parties active at the international level.[62] The Guidelines note that *"[s]uch careful regulation may be particularly important in light of the growing role of European Union Political parties, as set out in the Charter of Fundamental Rights of the European Union, Article 12(2)."*[63] Additionally, this type of regulation might permit some support from a foreign chapter of a political party, in line with the intent of paragraphs 10.4 and 26 of the OSCE Copenhagen Document, which envision external co-operation and support for individuals, groups and organizations promoting human rights and fundamental freedoms. This may be of particular importance for the purposes of party-building and education, as long as it is ensured that these contributions are not used to fund electoral campaigns or to advantage some parties at the expense of others. At the same time, the Guidelines also underline that the implementation of a nuanced approach to foreign funding may be difficult, and legislation should carefully weigh the protection of national interests against the rights of individuals, groups and associations to co-operate and share information, and the principles of party autonomy and political pluralism in general.[64] **Drafters could reassess whether the outright prohibition on monetary donations**

59 See *Joint Opinion* of the ODIHR-Venice Commission on draft amendments to the legislation concerning political parties, CDL-AD(2020)004, paras. 31-32.
60 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 230.
61 *Ibid.* para. 229 and footnote 221. See also ECtHR, *Parti Nationaliste Basque – Organisation Régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007.
62 See *Recommendation Rec(2003)4* of the Committee of Ministers of the Council of Europe on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, which states that "states should specifically limit, prohibit or otherwise regulate donations from foreign donors. See the *Venice Commission Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources* CDL-AD(2006)014.
63 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 231.
64 *Ibid.*

from foreign sources remains justified and proportionate in light of the evolving country context. Some reasonable and balanced exceptions could for instance be envisaged to allow donations from international political organizations/associations to support their national branches in party-building and education, as long as it is ensured that these contributions are not used to fund electoral campaigns or to advantage some parties at the expense of others.

56. According to Article 25 (4) of the Act, the total value of financial contributions made by an individual to a single political party, excluding membership fees that do not exceed the equivalent of one minimum monthly wage per year, may not exceed 15 times the minimum monthly wage in a calendar year. Furthermore, the Act states that a single transfer exceeding the minimum monthly wage may only be made to a political party via cheque, bank transfer, or bank card. Cash donations to political parties are allowed, provided that a single transfer does not exceed the threshold and is paid into the party's designated bank account (Article 25 (4)). Depending on the country, the total donation can be a set figure (France, North Macedonia, Slovakia)[65] or determined by using an external measure, such as the average monthly salary (Romania)[66] or by a variable measure, such as a percentage of the donor's income -e.g., in Lithuania, donations may not exceed 10 per cent of the donor's income during the previous year or 10 average monthly salaries). The determination of a maximum amount that may be contributed by a single donor, should normally contribute to reducing the possibility of corruption or the purchase of political influence.

57. Loans are a common practice and source of financing political parties. Many OSCE participating States allow parties to take out loans for election campaigns from financial institutions.[67] However, if left unregulated, loans may be used by impermissible donors to circumvent donation limits and bans. Under Article 24 (7) of the Act, political parties are permitted to obtain loans only from banks for statutory purposes. These loans are limited to the amount specified in Article 25 (4) as the annual donation cap, and the guarantor must be a Polish citizen (Article 25a). **Consideration could be given to further regulating bank loans, including provisions addressing the implications of third-party repayment or loan forgiveness by creditors.**

58. According to Article 24 (8) of the Act, all financing sources received by political parties must be accrued only in bank accounts, except for those deriving from membership fees. This provision is in line with good practice, which recommends donations to be made via bank transfer.[68] In certain countries, all donations, irrespective of their amount, must be transferred to a designated bank account established by a party, as is the case in Lithuania and Serbia. In other jurisdictions, however, bank transfers are mandated only for donations exceeding a specified threshold, such as EUR 500 in Albania, Greece, and Latvia. The existence of such provision is commendable. However, defining what constitutes making a donation on behalf of another (so called straw donor) and prohibiting this practice is an important anti-circumvention measure. It aims to help the oversight body verify the legitimacy of donors if illegal financing schemes are

65 In France, individuals can donate a total of EUR 7,500 to political parties, per year and a total of EUR 4,600 per election to one or more candidates. In North Macedonia, individuals and legal entities can donate up to EUR 3,000 and EUR 30,000, respectively to political parties and candidates. In Slovakia, both individuals and legal entities can donate up to EUR 300,000 to political parties.

66 In Romania, parties may receive donations from individuals and legal entities up to an annual limit set at 200 and 500 minimum gross salaries respectively.

67 International IDEA Political Finance Database, *Question 25*.

68 Paragraph 212 of the ODIHR-Venice Commission, *Guidelines on Political Party Regulation* states that *"another means to avoid undue influence from unknown sources is to state in relevant legislation that donations above a certain (low) amount shall be made through bank transfer, bank check or bank credit card, to ensure their traceability in terms of amount and sources".*

suspected.[69] **It is recommended to adopt rules that prevent making a donation on behalf of another, ensuring that donation caps are not easily circumvented.**

59. Membership fees are distinguished from contributions, the amount of which is not determined by the Act. Since the limit to the amount of membership fees can be set at a different level by each political party (albeit not exceeding in a single year the minimum remuneration as per Article 25 (4)), and political parties are not required to deposit such membership fees on bank accounts there (Article 26), nor record them in the register of contributions (Article 25 (10)), there is a theoretical risk that the donations can be framed as membership fees in order to circumvent the legal limits on donations.[70] **It is recommended that membership fees be treated as contributions and be recorded to prevent them from being used to circumvent donation limits.**

60. Lastly, Article 25 (4a) specifies that the same limitations and donation caps apply to non-monetary values, which clarifies the status of in-kind donations by private individuals or entities, which is welcome and in line with international recommendations.[71]

RECOMMENDATION D.

1. To consider removing the requirement of permanent residence and allow all Polish citizens regardless of their residence to donate to a political party, while acknowledging sate's right to restrict foreign funding, consider legitimate exceptions to the outright prohibition on monetary donations from foreign sources.

2. To further regulate bank loans, including provisions addressing the implications of third-party repayment or loan forgiveness by creditors.

3. To treat membership fees as contributions and to prevent them from being used to circumvent donation limits.

6.2. Public Funding

61. Allocating public funding in a clear, objective and equitable manner is essential to fight corruption and reduces the dependency of political parties on wealthy individuals. As underlined in the Guidelines, the level of available public funding should be clearly defined in the relevant legislation and the rights and duties of the body with legal authority to set and revise the maximum level of financial support should also be clearly set out.[72] Such systems of funding should aim at ensuring that all parties, including opposition parties, small parties and newly established parties, are able to compete in elections in accordance with the principle of equal opportunities, thereby strengthening political pluralism and helping ensure the proper functioning of democratic institutions.[73] In no case should the allocation of public funding limit or interfere with a political party's independence.[74]

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69 For example, in Armenia, the Criminal Code and the Code of Administrative Offences both have provisions that penalize making a donation on behalf of a legal person. In the United States a law prohibits a donor to give money to others to donate using their own names and requires parties to report the identity of the donor's employer and the donor's occupation, which are then publicly disclosed. This allows the oversight body (and ultimately the public) to spot suspicious trends or potential irregularities, such as (low-level) employees of the same company all making (maximum) donations on or around the same day.

70 See also ODIHR and Venice Commission *Joint Opinion* on the draft law on financing political activities of the Republic of Serbia, 20 December 2010, para. 15. And ODIHR *Final Opinion* on the Law of Montenegro on Financing of Political Entities and Election Campaigns, para. 55. See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 207.

71 See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 216, which provides that: "*In addition to regulating financial donations, legislation should regulate in-kind support by private donors, both by individuals and by legal persons. […] Generally, this type of support should follow the same rules and be subject to the same restrictions as financial donations. For that purpose, the monetary value of in-kind donations should be determined based on market price and should be listed in funding reports*."

72 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para 243.

73 *Ibid.*, para. 232

74 Article 1 of the Appendix to *Recommendation Rec(2003)4* of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.

62. Articles 28 (1) and 29 (1) of the Act set out the eligibility and allocation criteria for the disbursement of public funds. Parties that receive more than three per cent of the votes cast (six per cent for coalitions) in the *Sejm* election are entitled to an annual state funds allocation, called the "subsidy". Eligible political parties are required to submit an application for the subsidy payment using a form provided by the NEC by 31 March each year. Subsidies are disbursed annually starting the year after the election and continue until the end of the year in which the next election occurs.

63. The annual subsidy for a political party or electoral coalition is calculated progressively based on the total number of valid votes cast nationwide for its district lists of parliamentary candidates.[75] Subsidy funds are maintained in a separate bank sub-account managed by the Ministry of Finance. There is no universally prescribed system for determining the distribution of public funding, and each legislature may choose to set minimum thresholds of support for political parties to qualify for such funding.

64. In this respect, the provision in the Act that restricts public funding to parties that participated in the last national elections could be reviewed. This approach will especially undermine newly founded political parties or parties that missed out on one national election, as they would then not be eligible for state funding, even though they might be the ones who need it most or participated in local elections[76]. Moreover, it is recommended to give careful consideration 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[77]. In addition, based on the information published by the NEC on its website, the allocation criteria for public funding appear to favor larger parties, as only the nine political parties represented in parliament are eligible for such funding.[78] While 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.[79] In order to promote political pluralism and ensure that voters are given the political alternatives necessary for a real choice, consideration could be given to establish even a lower level of minimum citizen support required to receive a public funding which will allow including smaller and newly established parties putting forth candidates for an election[80]. It is a good practice to enact clear guidelines on how new parties may become eligible for funding (including a specific mechanism to prove that they have a sufficient support to justify funding), while providing safeguards to ensure that this provision is not abused by political parties to register affiliated parties and benefit from public funding. Therefore, **it is recommended to review the current public funding system and consider adopting a more generous and inclusive system for the determination of eligibility for public funding, by**

75 The formula uses specific brackets, with votes allocated to each bracket multiplied by designated amounts per vote: up to 5 per cent (PLN 5.77), above 5 to 10 per cent (PLN 4.61), above 10 to 20 per cent (PLN 4.04), above 20 to 30 per cent (PLN 2.31), and above 30 per cent (PLN 0.87). The subsidy is paid quarterly during the *Sejm*'s term, provided the party submits an annual application by 31 March, verified by the NEC.

76 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation, para. 242: "*At a minimum, some degree of public funding should be available to all parties represented in parliament. However, 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 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"

77 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para 238. See also Venice Commission, *Opinion* on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 43; ODIHR and Venice Commission *Joint Opinion* the law on political parties of the Republic of Azerbaijan, CDL-AD(2023)007, para. 108; ODIHR-Venice Commission, *Joint Opinion* on the draft law on political parties of Ukraine, CDL-AD(2021)003, para 105.

78 Based on the *NEC's projections* regarding the anticipated annual subsidies for political parties following the elections to the *Sejm* on October 15, 2023, the total annual allocation to eligible political parties for the 2023–2027 period amounts to PLN 84,246,147.77 (approximately EUR 19.8 million).

79 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 239.

80 *Ibid.*, para. 242.

lowering the eligibility threshold to benefit smaller political parties. This would ensure that newly established parties also become eligible when they enjoy a minimum level of citizen support to better promote political pluralism.

> **RECOMMENDATION E.**
>
> To review the current public funding system and consider adopting a more generous and inclusive approach for the determination of eligibility for public funding, by lowering the eligibility threshold to also benefit newly formed parties, in order to better promote political pluralism.

6.3. Gender and Diversity Considerations

65. In many countries, public funding can be earmarked or targeted to encourage political parties to adopt more inclusive and diverse practices, as well as to promote specific policies. The few OSCE participating States that have enacted legislation connecting gender equality with political finance have implemented various strategies to address the gender-targeted funding gap. These strategies include financial incentives (Croatia, Moldova, Romania), sanctions (Armenia, France), and the earmarking of public funds specifically to support gender equality (Finland, Moldova). According to International IDEA's political finance database, only 17 percent of countries globally provide some form of gender-targeted public funding.[81]

66. The Act does not contain provisions on the promotion of gender equality within internal party structures (see para. 22 supra), nor provide for any conditions to access public financing. While, by law, *Sejm* lists have to include at least 35 per cent of candidates of each gender, there are no requirements on their ordering on the lists. ODIHR's latest election observation mission report also stressed the need to *"make comprehensive efforts to increase women representation in politics and effectively address existing gender-based barriers"* to enhance women's participation in public life.[82]

67. Public funding could be utilized as a tool to promote women's participation in politics, offering financial incentives tied to meaningful representation and equality initiatives.[83] **In light of the international good practices mentioned above, portion of public funding could be allocated to political parties having higher number of women on their lists for election campaigns, with a rank-order rule ensuring that women candidates are not placed too low on the party list. Further provisions could require that if a woman candidate withdraws, she is replaced by another woman. Additional incentives could also be tied to political parties that achieve a minimum level of women in leadership positions or adopt other measures to combat discrimination and violence against women in politics, etc.**[84]

68. Moreover, public funding could support programmes such as training for female politicians, women's empowerment initiatives, and the functioning of women's sections, as interest representation bodies within party structure taking the lead on the advancement of gender equality. For example, in Sweden funds are earmarked for party activities that promote gender equality. In Canada, fees are reduced or waved for women candidates. Funds could also be allocated to awareness-raising and educational

81 International IDEA Political Finance Database, *Question 36*.
82 See ODIHR Limited Election Observation Mission *Final Report*, Republic of Poland, Parliamentary Elections 15 October 2023, p. 5. The report notes that "The newly elected Sejm saw an increase in the number of elected women, from 132 to 135 (29.3 per cent), while the number of elected women in the *Senat* decreased from 24 to 19 (19 per cent). The low representation of women confirmed the need for political parties and authorities to accelerate efforts to increase women's participation in politics."
83 See, for example, ODIHR *Final Opinion* on the Law of Montenegro on Financing of Political Entities and Election Campaigns, para. 50; ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, para. 26.
84 See *ODIHR Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016).

campaigns targeting politicians, the media, and the public to emphasize the importance of full, free, and equal democratic participation for women. Regarding women's sections of political parties in particular, it is noted that CEDAW General Recommendation No. 40 specifically calls upon states to support the creation and strengthening of women's sections in political parties, including through earmarked funds.[85]

69. It is also equally important to consider other measures for inclusion that extend beyond gender, ensuring diverse and equitable representation across all segments of society. In this respect it would also be beneficial to mention funds to support specific youth organizations, persons with disabilities, minorities within parties, including for awareness-raising and educational campaigns among politicians, in the media and among the general public, about the need for the full, free and equal democratic participation in political and public life.[86] The above initiatives would align with international standards aimed at promoting gender equality and diversity in political participation.[87] Specifically with respect youth, it would be beneficial to explore additional mechanisms that enhance youth political participation, including potential financial and other incentives for political parties that actively promote young people's advancement in leadership and decision-making roles. This could involve the adoption of youth action plans, the establishment of dedicated youth wings within parties, structured mentorship and capacity-building initiatives, as well as financial and logistical support for young candidates during election campaigns.

RECOMMENDATION F.

1. To include a specific clause on inclusivity and equal participation in the party structure, consider introducing gender parity in decision-making bodies, with mechanisms to address non-compliance, as well as further mechanisms to promote greater political participation of women, including through setting up women's sections of political parties, possible financial and other incentives, providing means of supporting women candidates during the campaign.
2. To consider introducing in the Act effective incentive mechanisms to ensure a gender balanced electoral party lists, for example, by allocation of an additional portion of public funding to political parties having higher number of women on their lists for election campaigns, with a rank-order rule ensuring that women candidates are not placed too low on the party list, as well as for achieving a minimum level of women in leadership roles.

6.4. Transparency and Reporting Requirements

70. International and regional standards stress the importance of transparency, underscoring its pivotal role in political finance regulation. The disclosure of funding sources and spending practices aims to ensure the legality of fundraising and expenditure activities, aligning with the principles of the UNCAC and the CoE Committee of Ministers'

85 See the CEDAW Committee, *General recommendation No. 40 (2024)* on the equal and inclusive representation of women in decision-making systems, para. 51 (e).

86 See ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019); *Addressing Violence against Women in Politics In the OSCE Region: Toolkit* (especially Tool 3 for Political Parties) (2022); *Handbook on Promoting Women's Participation in Political Parties* (2014); OSCE High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).

87 As embedded in the CEDAW, the CRPD, the Beijing Declaration and Platform for Action (United Nations, Beijing Declaration and Platform for Action), CoE Recommendation Rec(2003)3 of the Committee of Ministers to member states on Balanced Participation of Women and Men in Political and Public Decision Making (adopted on 12 March 2003), and *OSCE Ministerial Council Decision No. 7/09 on Women's Participation in Political and Public Life*, 4 December 2009. See also *International IDEA Funding of Political Parties and Election Campaigns*, p. 354. See also *ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain*, para. 70.

Recommendation Rec(2003)4.[88] The Guidelines also emphasize that transparency of party financing is essential to public trust in parties as institutions and democratic processes at large, to safeguard voters' rights and prevent corruption.[89] Given the pivotal role political parties play in the functioning of democracies, the public has a legitimate interest in being informed about their activities and funding, as well as ensuring that irregular expenditures are monitored and sanctioned.[90] Citizens need access to relevant financial information about political parties to hold them accountable. However, regulations should avoid imposing excessive burdens on political parties. Reporting rules are equally vital for ensuring compliance with political finance laws.

71. The NEC exercises oversight of party and campaign finance. The Act incorporates several measures designed to enhance transparency and accountability in the financial activities of political parties, in line with Article 11 of the Polish Constitution[91]. These provisions aim to ensure proper oversight, prevent misuse of funds, and promote public trust in political financing. The register of contributions is a key financial requirement for political parties to record income for statutory party activities. Each political party must maintain an up-to-date register of contributions, which serves as a detailed record of all financial contributions received by the party. This register must include private contributions exceeding PLN 10,000 annually (Article 25 (6)) and must be updated without undue delay but not later than 14 days after receipt of a contribution ((Article 25 (8)). The register of contributions must be kept in electronic form (Article 25 (7)), and must be made publicly accessible (and searchable) on the party's Public Information Bulletin page, ensuring transparency (Article 25 (7)). These measures enhance transparency.

72. However, Article 25 (10) of the Act specifies that *"[t]he Register of Contributions shall record contributions from a contributor to a political party, excluding membership fees, in excess of PLN 10,000 in any one year."* This provision appears to conflict with paragraph 6 of the same article, which requires the recording of all contributions. Moreover, the threshold for recording donations, set at PLN 10,000 (approximately EUR 2,367), is high. This implies that contributions below this threshold will neither be recorded nor published, undermining the transparency of political party financing. If not recorded as a part of the donation, a contribution would not be counted towards the donation cap per individual, thus representing a loophole allowing to potentially circumvent any cap. **It is recommended that all contributions, irrespective of an amount, should be recorded. To avoid any ambiguity or limitations on the scope of what is reported and recorded, Articles 25 (6) and (10) should be revised to eliminate conflicting provisions. If a threshold for recording and publishing contributions is retained, it should be lowered to enhance transparency[92]**.

73. Funds originating from state subsidies are accumulated in a separate sub-account of the party's bank account (Article 29 (4)). Parties receiving subsidies are required to allocate between 5 and 15 per cent of these funds to an Expert Fund. (Article 30 (3)). The Expert Fund is used to finance legal, political, sociological, and socio-economic expertise and for educational and publishing activities related to the party's statutory activities (Article 30(4)). The funds of the Expert Fund must also be held in a separate sub-account of the

88 See Article 7.3 of the *UN Convention Against Corruption*. See also, *Recommendation Rec(2003)4* of the Council of Europe Committee of Ministers to member states on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, Appendix, Article 3.

89 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 247

90 See ECtHR, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016.

91 Article 11 of the Constitution of Poland stays that "*The Republic of Poland shall ensure freedom for the creation and functioning of political parties. Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means*".

92 It is to be noted that in the 27 EU member states, the average reporting threshold for donations is at EUR 385.

party's main bank account. (Article 30 (5)). Information related to the Expert Fund is included in the annual report on the use of public subsidies, referred to as the "information", which political parties are required to submit to the NEC by 31 March each year (see para. 74 *infra*). The earmarking of party funds typically pertains to the prescribed use of public subsidies for specific purposes, often to ensure the proper utilization of public grants. However, under the Act, earmarked funds do not necessarily involve public funds, as the Expert Fund consists of the party's own contributions. **Leveraging this mechanism, and to promote women's participation and support gender equality, it could be considered to create a similar earmarking for activities related to the training of women candidates and programmes related to women's empowerment and promoting the political participation of women** (see also Sub-section 6.3. on Gender and Diversity Considerations *supra*).

74. According to Article 34 (1) political parties shall draw up annual financial information on the subsidy received and expenditure incurred from the subsidy. They are further required to submit "information for the calendar year" to the NEC by 31 March of the following year (Article 34 (2)).

75. A political party is required to establish an Election Fund to finance participation in elections to the president, *Sejm, Senate*, European Parliament, and local government bodies. Funds from this account are strictly for election-related expenditures (Article 35 (1)). The Election Fund must be maintained as a separate bank account, with all election related payments made through this account (Article 36 (3)). The Election Fund is managed by a financial proxy who cannot be a candidate for the positions of President of the Republic of Poland, Member of Parliament, Senator, or a public official. The incompatibility regime applicable to financial proxies prohibits them from serving as the financial proxy for more than one Election Fund. According to Article 38, expenditures made from the funds of the Election Fund must be included in the financial report on the sources of financing, referred to as the "report". This report, covering the previous calendar year, must be submitted to the NEC by 31 March.

76. Political parties are thus required to submit two financial reports to the NEC by 31 March each year: a financial report on state funding received and expenditures charged to state funding, including the Expert Fund and a report on sources of funds and expenses charged to the Election Fund. **To optimize costs related to auditing financial reports and reduce the reporting burden, consideration could be given to merging the two types of reports and require political parties to submit a single unified report that encompasses both the "report" and "information".**

77. In addition, it is not entirely clear whether only political parties which receive the state subsidy are required to submit an annual financial report detailing their income and expenditures (Article 34 (1) and 34 (3)). For legal clarity, it could be more precisely specified. Generally, the legislation may exempt political parties from audit obligations if they do not receive public funding and are not engaged in significant finanical activities.[93]

78. Both financial reports, namely the "information" and the "report", must be accompanied by an auditor's report, the cost of which is covered by the NEC. The NEC must publish both types of reports in the Public Information Bulletin within 30 days of the submission deadline for financial reports (Articles 34 (5) and 38 (4)). It might be worth recalling that

93 See *Joint Opinion* on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, CDL(2015)035, para 46. See also *Joint Opinion* on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, CDL-AD(2014)035, para.64. See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 278, and ODIHR *Final Opinion* on the Law of Montenegro on Financing of Political Entities and Election Campaigns, para 108.

the register (a requirement for political parties to publish registers of donations and contracts (Article 25 (9)) must include the name, surname, father's name, and place of residence of the contributor, as well as the date and amount of the contribution. While the publication of financial reports is crucial to establishing public confidence in the functions of a party, reporting requirements must also strike a balance between necessary disclosure and exceptionally pressing privacy concerns of individual donors in cases of a reasonable probability of threats, harassment or reprisals, or where disclosure could result in serious political repercussions.[94] **For privacy reasons, consideration should be given to excluding place of residence, especially if this would mean publishing private data, including addresses of donors, from this information provided in the register.**

79. For both types of reports, the Minister of Finance, in consultation with the NEC, must determine the reporting template, the scope and presentation of the data, the method of preparation, the submission process (including electronic submission), and the list of required supporting documents (Article 34 (3)) and Article 38 (2)). While the detail of such reporting is crucial for transparency and accountability, for the sake of public information and trust it is essential to ensure that the reporting guidelines and templates are clear, comprehensive, user-friendly and inclusive. At the same time, these guidelines should not impose excessive burdens on political parties, striking a balance between thoroughness and practicality.[95] **Consideration could be given to timely developing standardized, accessible, detailed and easily searchable formats, preferably in consultation with political parties.** Furthermore, 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[96]**.**

RECOMMENDATION G.

1. To revise Articles 25 (6) and (10) in order to eliminate conflicting provisions, while considering lowering the threshold for recording and publishing contributions to enhance transparency.

2. To consider merging the two types of reports and require political parties to submit a single unified report that encompasses both the "report" and "information" with a view to optimize costs related to auditing financial reports and reduce the reporting burden.

3. To develop timely, standardized, accessible, detailed and easily searchable formats of reporting.

6.5. Oversight and Sanctions

80. According to the Guidelines, *"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."*[97] They further stress that *"[g]enerally, legislation should grant oversight agencies the ability to investigate and pursue potential violations.*

95 A noted by ODIHR *final report* on 2023 parliamentary elections: "The lack of comprehensive, detailed, user friendly and timely disclosure of campaign donations and expenditures detracted from the transparency of campaign finance and meant that voters may not have been aware of the potential financial influences on various parties and candidates."

96 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 259.

97 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 276.

Without such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate. Adequate financing and resources are also necessary to ensure the proper functioning and operation of the oversight body."[98] Similarly, the Committee of Ministers Recommendation' Rec2003 (4) requires that: "*independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication*."[99] Article 16 requires that "*States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to proportionate, effective and dissuasive sanctions*." When determining sanctions, all violations should uniformly incur proportionate, effective, and dissuasive penalties[100] with the proposed sanctions/fines being designed in a way to ensure their proportionality with the seriousness of a violation, for instance considering the frequency/recidivism, size/scale, mitigating circumstances or not, etc.

81. The NEC, as the oversight body, can accept or reject reports, note deficiencies, and request corrections. If discrepancies occur, the NEC may refer cases to higher courts or impose sanctions. More specifically, according to Articles 34a and 38a, at the end of the verification process, which concludes six months after the submission deadline for both the "report" and "information", the NEC may accept the information/report without reservation, accept the information/report with an indication of shortcomings, or reject the information/report.

82. The verification process may be rendered ineffective if the oversight body relies solely on the information submitted to it, without the ability to assess whether that information is realistic, accurate, and presents a complete picture of a political party's income and expenditures. During the 6-month verification period, the NEC may request the political party to correct any deficiencies in the information or provide explanations within a specified time frame. The NEC may also commission expert reports or opinions and seek assistance from public administration bodies in gathering the necessary information. Within the first 30 days after the submission deadline for both the "report" and the "information", political parties, associations, and foundations with statutes related to analyzing political party financing may submit written objections to the NEC regarding the "information" or the "report". The NEC has then 60 days to address and respond to written objections. **The Act should be amended to further delineate the NEC's investigative and enforcement powers, outline the existing adversarial proceedings and administrative procedures for obtaining additional information during the verification process, and define the NEC's ability to directly access all necessary institutional databases to detect and address illegal sources of funding.**

83. For certain minor violations, the NEC can accept the "report" and the "information" while acknowledging deficiencies without imposing major sanctions. Regarding the "report", and in accordance with Article 38a, deficiencies that do not result in major sanctions are defined as falling below a specific percentage of the party's total income or revenue. Article 38a(2) outlines various grounds for rejection, including: conducting business as a political party; fundraising through public collections; collecting funds outside a bank account in violation of Article 24 (8); accepting or raising funds from impermissible sources; accumulating or making campaign expenditures bypassing the Election Fund; accumulating Electoral Fund resources outside a separate bank account in violation of Article 36 (3); accepting non-monetary contributions in breach of Article

98 *Ibid*, para. 278.
99 See the CoE Committee of Ministers' Recommendation Rec2003(4).
100 See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 272, which requires that sanctions should be applied against political parties found to be in violation of relevant laws and regulations and should be dissuasive in nature. Moreover, in addition to being enforceable, sanctions must at all times be objective, effective, and proportionate to the specific violation. See also ODIHR *Opinion* on Laws Regulating the Funding of Political Parties in Spain (30 October 2017), para. 67.

25 (4a); or guaranteeing a loan in contravention of Article 25a. Non-compliance, such as failing to maintain, update, or make the registers publicly available, can result in fines ranging from 50 per cent of the unrecorded amounts to as much as PLN 30,000 (Article 27c). These fines may be re-imposed if the error repeats.

84. While sanctions are the primary tools for oversight bodies to enforce political finance regulations effectively, it is equally important for the oversight body to provide guidance to political parties to help them comply with their legal obligations.[101] Good practice recommends a wide range of gradually escalating sanctions that are effective, proportionate, and dissuasive. Legislation may include measures as administrative warnings (for example, naming and shaming), fines, forfeiture, suspension or loss of public funding, compliance notices, deregistration, and/or criminal penalties. A political party has the opportunity to remedy defects in its submitted information or provide explanations within a timeframe specified by the NEC. A party also retains the right to legal redress. However, the term "specified period" (Article 34a (2)) is vague, granting the NEC significant discretion in determining the timeframe. This could lead to subjective decisions and inconsistencies, which is particularly concerning since timely submission of accurate information is a prerequisite for maintaining subsidies (Article 34c (1) and 38c (1)). **It is recommended that the Act set a clear and reasonable timeframe to allow parties adequate opportunity to correct errors or effectively defend their position.**

85. Pursuant to OSCE commitments and international obligations, everyone has the right to "*effective means of redress against administrative decisions so as to guarantee respect for fundamental rights and ensure legal integrity*"[102] and legislation needs to provide for "*the possibility for judicial review of such regulations and decisions*".[103] Positively, rejections of the "report" can be appealed to the Supreme Court within seven days by the parties. The Supreme Court has 60 days to rule on the complaint, and its decision is final. A rejection results in the loss of the right to public funding for the next three years (Article 38d). Failure to submit the "report" within the legal deadline leads to deregistration of the party (Article 38c), leading to the loss of public funding. Regarding the "information", a political party loses its right to receive public subsidies if it fails to submit the information within the legal deadline or if the NEC rejects it (Article 34c).

86. As stressed by the ODIHR Limited Election Observation Mission in its final report on the 2023 parliamentary elections, *"For certain minor violations, the NEC can accept the reports in a way that acknowledges shortcomings without imposing major sanctions but sanctions for rejected reports are neither graduated nor proportional, contrary to international standards and previous ODIHR recommendations"*.[104] **The Act should be amended to ensure that sanctions for political party financing violations are proportionate to the severity of the offense, with minor infractions not resulting in the rejection of annual reports. Additionally, sanctions for the non-submission of "reports" or "information" should be reviewed, harmonized, and aligned to maintain consistency within the sanctions regime. Furthermore, it is advisable that the penalties are established based on an indexation to avoid having them quickly becoming obsolete.**

87. The Act also includes a separate Chapter 6a, which lists various irregularities related to political parties that are punishable by fines or imprisonment. These include violations

101 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras.272-275.
102 See Paragraph 5.10 of the *1990 OSCE Copenhagen Document*.
103 Under Article 2.3(a) of the *ICCPR* States obligated themselves "[t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."
104 See ODIHR Limited Election Observation Mission Final Report, Republic of Poland, Parliamentary Elections 15 October 2023, p. 18.

such as conducting public collections without proper authorization (Article 49a), improper use of party property or funds (Article 49b, Article 49c), failing to submit accurate financial reports (Article 49d), and mismanagement of the Electoral Fund (Article 49e, Article 49f). Additionally, breaches of rules regarding electoral fund collection and payment limits also incur fines (Article 49g). Penalties range from fines to imprisonment, depending on the severity of the violation. While some fines are clearly specified in Article 49, the penalties for violations outlined in Articles 49a, 49b and 49g remain undetermined. The absence of specified fines for violations under Articles 49b and 49g creates uncertainty regarding the consequences of these breaches, which may result in inconsistent and ineffective enforcement, as well as or bias when applied. **For legal certainty, it is recommended to amend these articles to include clear and proportional fines.**

88. Moreover, the proposed sanctions and fines do not adequately reflect the proportionality of the violations committed.[105] Factors such as the frequency of the offense, scale, and any mitigating circumstances should be considered to ensure that the penalties are fair and proportionate to the specific circumstances of each case. For example, for the same violation under Articles 49d and 49f sanctions vary from undetermined fine to two years of imprisonment. Criminal sanctions should be reserved for serious violations of financial regulations that threaten public integrity or the democratic order. Sanctions must be proportionate and flexible, reflecting the severity of the offense. To avoid over-penalization, the simultaneous imposition of both administrative and criminal sanctions for the same violation should be avoided. **To improve transparency and fairness, sanctions listed in Chapter 6a should be proportional to the violations committed, considering factors like frequency, scale, and mitigating circumstances. It is recommended to redesign fines with gradations, ensuring the highest penalties apply only for the most severe offenses.**

89. Lastly, two separate sanctions are envisaged under Chapter 4 pertaining to financing of political parties. For clarity of the Act, all penal provisions could be listed under the Chapter on Criminal Provisions.

RECOMMENDATION H.

1. To further delineate the National Election Commission's (NEC) investigative and enforcement powers, outline the existing adversarial proceedings and administrative procedures for obtaining additional information during the verification process, and define the NEC's ability to directly access all necessary institutional databases to detect and address illegal sources of funding.

2. To set a clear and reasonable timeframe to allow parties adequate opportunity to correct errors or effectively defend their position.

3. To ensure that sanctions for political party financing violations are proportionate to the severity of the offense, with minor infractions not resulting in the rejection of annual reports.

4. To ensure that the penal sanctions listed under Chapter 6a are proportional to the violations committed, considering factors like frequency, scale, and mitigating circumstances, while redesigning fines and other penalties with gradations, ensuring the highest penalties apply only for the most severe offenses.

105 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para.274.

7. PROCEDURE FOR AMENDING THE ACT

90. The importance of inclusive and open lawmaking process should be highlighted. . In paragraph 5.8 of the 1990 OSCE Copenhagen Document, OSCE participating States have committed to ensure that legislation will be adopted at the end of a public procedure[106]. Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*"[107]. The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input at all its stages[108].

91. Effective consultations in the drafting of laws, as outlined in the relevant OSCE commitments, need to be inclusive, involving both the general public and stakeholders with a particular interest in the subject matter of the draft legislation, in this case all political parties as well as civil society organizations. Sufficient time should also be provided to ensure that the consultation process is meaningful, allowing adequate time to stakeholders to prepare and submit recommendations on draft legislation throughout the legislative process.[109]

92. It is welcome in this respect that the Justice and Human Rights Committee of the *Sejm* is undertaking consultations in order to inform a possible future reform of the Act.

93. In light of the above, **the public authorities are encouraged to ensure that any future amendments to the Act and electoral legal framework in general are preceded by a proper impact assessment and subjected to inclusive, extensive, effective and meaningful consultations throughout the legislative process, including with representatives of various political parties, academia, civil society organizations, which should enable equal opportunities for women and men to participate**. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the lawmaking process, including before Parliament. As a principle, accelerated legislative procedure should not be used to pass such types of legislation. As an important element of good lawmaking, a consistent monitoring and evaluation system on the implementation of legislation should also be put in place that would efficiently evaluate the operation and effectiveness of the draft laws, once adopted.[110]

106 See *1990 OSCE Copenhagen Document*, para. 5.8.
107 See 1991 *OSCE Moscow Document*, para. 18.1.
108 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular Principles 5, 6, 7 and 12. See also *Venice Commission, Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.
109 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), paras. 169-170. See also ODIHR, *Assessment of the Legislative Process in Georgia* (30 January 2015), paras. 33-34. See also ODIHR, *Guidelines on the Protection of Human Rights Defenders (2014)*, Section II, Sub-Section G on the Right to Participate in Public Affairs.
110 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), para. 23. See e.g., OECD, International Practices on Ex Post Evaluation (2010).