

Enforcement of political party funding regulations  
– Lessons from Western Europe

Conference report<sup>1</sup>

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<sup>1</sup> Transparency International’s policy brief on ‘Enforcement of political party finance regulations’ (forthcoming, December 2004) synthesises the main arguments that emerged from this workshop.

## 1. Introduction

All too often political party and campaign finance laws are breached with impunity, in the face of enforcement agencies that are constrained by cumbersome legislation, a lack of independence or insufficient resources. This situation needs remedying, not least because experience shows that fear of judicial investigation can be a more effective deterrent than formal checks on parties' and candidates' finances.

To explore these issues, Transparency International (TI) and Transparence International/France brought together in May 2004 leading academics and representatives of the bodies responsible for enforcing political party and campaign finance regulations from five European democracies: France, Germany, Italy, Portugal and the United Kingdom. The workshop was funded by the Council of Europe with support from Transparence International/France. The questions guiding the debate were: why and where does the chain of enforcement break down, and what can be done to tighten enforcement of political finance regimes?

This following report summarises the main findings, drawing on the five case studies explored in the seminar. In each case study reference was made to the regulations that exist in each country – provision of public funding to parties, caps on expenditure and donations, bans on certain categories of donations and requirements to disclose sources of funding – before honing in on how these regulations are enforced. The main enforcement bodies were analysed in terms of independence, resources and powers to check the balance sheets of parties and candidates and refer irregularities to the criminal justice authorities.

The difficulties of the enforcement task were addressed, for example the funding circuits such as third party contributions that might escape disclosure processes, making regulations difficult to enforce. Shortcomings were also analysed, for example in some countries checks are merely procedural and there is no requirement to ensure that financial statements are accurate reflections of money raised and spent. In others, enforcement bodies are empowered to verify portions of the financing process, but important links of the financing chain are not scrutinised.

The key findings are distilled in a set of recommendations, which the participants and Transparency International suggest could be applied not only in Western Europe, but also around the globe. As global recommendations they are necessarily broad. They serve as an important reminder that the enforceability of regulations needs to be considered from the outset, from their drafting. They also remind us that enforceability depends not only on the specific institutions charged with implementing the respective regulations, but on respect for the rule of law generally and the tradition of an independent judiciary.

## 2. Why is political finance a major source of corruption?<sup>2</sup>

Corruption is usually defined as the abuse of public power for private purposes. Political corruption is at the intersection of the public and the private spheres. When it occurs, both the bribe payer and the bribe taker commit a crime. The recipient of the bribe has particular responsibility since he or she is the one to take the final decision over whether to carry out the corrupt transaction. In the case of political corruption, the bribe taker might be a politician or a political party.

The countries examined in this report have all been affected by political finance scandals in recent years. The reasons for this are probably not specific to Western Europe, but rather are shared by every political system in the world. Three of these reasons are:

1. The effects of economic globalisation and of the facilities offered by technical innovations. Such innovations increase the number of financial channels available for secreting money into and out of political organisations, in particular through the use of tax havens. Given that money can move more freely, these innovations make it harder to secure evidence of corruption.
2. Political counter-powers are weak. Many political parties have been compromised by scandals. The judiciary in certain countries is dependent on the executive, while in others, such as Italy and France, it is in constant conflict with the executive. And in many countries the tradition of investigative journalism is weak, in particular where media ownership is concentrated in the hands of individuals with close ties to the government.
3. Political authorities retain considerable decision-making power, for instance over town planning, health investments, public works, contracts, and agreements for the takeover of strategic companies. Public procurement absorbs an average of 15 per cent of GDP in Western European countries.

Yet despite the high stakes involved, political corruption is difficult to prove, as the Elf case shows. French political parties were said to have received US \$5 million from oil company Elf in the late 1980s, but when the case came to trial in 2003 prosecutors were unable to produce evidence of this allegation. It was easier for the investigating judge to prove misuse of private property by Elf executives than to prove political corruption. The same was true in Germany, where the Christian Democratic Union was involved in a similar case. The Elf case was worsened by two factors, which are also not exclusive to France. One was the existence of a secrecy clause pushed through by the executive to prevent the investigating judge from having access to the case file. The second was the relatively short statute of limitations for corruption cases.

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<sup>2</sup> Based on the conference paper given by Yves-Marie Doublet, Head of the Legal Studies Department of the French National Assembly and senior lecturer at the National School of Administration, Paris, France.

### 3. What are the regulations we are seeking to enforce?<sup>3</sup>

Regulations at a national level focus on prevention and on law enforcement. Preventative regulations on party and political campaign funding (and related measures identifying political corruption) aim to rid parties and candidates of the temptation of corruption. They include the provision of public funding to parties, caps on expenditure and donations, and requirements to disclose amounts and sources of funding. Some sources of funding have also been banned, most commonly foreign sources, but also donations from private companies, such as in France and Portugal.

There are many counter-examples to this trend towards regulation, however. One is Switzerland, where there is no regulation on party funding and where there have been very few scandals. Countries with a high level of public funding, such as Belgium, Spain and France, have all had major scandals. This mixed record suggests that the scope and success of regulations is largely dependent on the way they are scrutinised.

At an international level, there are few regulations governing party financing. The anti-bribery convention of the Organisation for Economic Co-operation and Development, which remains one of the key pieces of anti-corruption law, is flawed by its failure to address party finance. While the convention outlaws bribery of foreign public officials, a number of governments refused to allow bribery of foreign party officials to be included. This problem has plagued subsequent international laws, including the United Nations Convention against Corruption, which is notably weak in this area.

In terms of international laws or standards that have a bearing on domestic party funding regulations, the only convention with a mandatory requirement of transparency in political party funding is the African Union Convention. The Council of Europe's 'Recommendation on Common Rules against Corruption in the Funding of Political Parties', issued in 2003, go some way towards plugging the gap for its member states, but although its recommendations are detailed, they are not binding. Moreover, when it comes to provisions on enforcement, the guidelines are rather weak.

Transparency International has developed standards on party funding from a civil society perspective.<sup>4</sup> These overlap with the Council of Europe's to a great extent, but they also acknowledge a role for civil society in the process of developing and monitoring legal and institutional provisions for political finance.

Policymakers can look to the Council of Europe and TI guidelines when determining how to strengthen the rules and institutions governing the financing of politics, in order to reduce the influence of corrupt sources of financing and provide a more equitable playing field for parties and candidates competing for power. As with any global-level policy document there is a need for subsequent tailoring of the standards to different national realities. Nevertheless regional or global standards can serve as a benchmark for good practice and as a rhetorical aid to national efforts to regulate political finance.

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<sup>3</sup> Based on the conference papers given by Yves-Marie Doublet, Head of the Legal Studies department of the French National Assembly and senior lecturer at the National School of Administration (France); Robin Hodess, Director of Policy and Research, Transparency International; and Roman Chlapac, Council of Europe, and an open discussion.

<sup>4</sup> [www.corisweb.org/article/articlestatic/412/1/263/](http://www.corisweb.org/article/articlestatic/412/1/263/)

This is especially useful since the politicians who pass the laws are the same people who will be affected by them and so might be reluctant to draft clear, functioning rules.

#### 4. The regulatory bodies<sup>5</sup>

Three bodies are involved in regulating campaign finance. They are control bodies for campaign financing, anti-corruption agencies and the judiciary. In terms of control bodies on campaign and party funding, there is a wide range of formulas available. Some countries have political bodies, such as the German parliamentary commission. Others have non-partisan bodies such as the UK Electoral Commission or the French campaign accounts and political funding committee.

The ability of the control body to properly regulate political finance depends on a number of factors. First is independence, for which there are three fundamental preconditions: that appointments be made independently of the government; that those appointed to the regulatory body be given security of tenure; and that the body have secure funding. If the government is able to influence the composition of the body, to dismiss personnel or cut its funding, then its independence is curtailed. The five countries studied present quite different systems.

In addition to differing levels of independence and resources given to the control body, there is a large degree of variation among the five countries when it comes to the scope of enforcement tasks. The scope of enforcement depends first on the regulations and, secondly, on the powers and functions granted to the enforcement body. Very often control is limited to investigating the irregularities in the accounts provided by candidates and parties; investigation does not go beyond the figures that the candidates and parties themselves declare. The subject of scrutiny varies in different system, from candidates, to parties, to campaigns.

**France** has independent and well-resourced supervisory bodies and electoral courts. There are three separate control bodies: the campaign accounts and political funding committee (CAPFC), the constitutional council (which rules on legislative and presidential elections) and the council of state<sup>6</sup> (which rules on local and European parliamentary elections). Parties have to provide statements of accounts each June to the CAPFC, and candidates have to present balance sheets before an election. The CAPFC scrutinises the candidates' statements and can either ratify or reject them. If

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<sup>5</sup> Based on case studies presented by: Mr Jacques Bonnet, Chairman of the French National Committee for Campaign Accounts and Political Funding, Professor Jean-Claude Colliard, member of the Constitutional Council, Yves-Marie Doublet, Head of the Legal Studies department of the French National Assembly and senior lecturer at the National School of Administration (France); Johannes Becher, Head of the Department of the Deutscher Bundestag on party funding and Martin Morlok, Head of the Institute on law on political parties, Düsseldorf University (Germany); Professor Massimo Siclari, Università di Teramo (Italy); Judge Rui Moura Ramos, Vice-President of the Portuguese Constitutional Court and Luis de Souza, Instituto Superior de Ciências do Trabalho e da Empresa (Portugal); and Roger Creedon, CEO of the UK Election Commission and Keith Ewing, Professor of Public Law at the King's College, University of London (United Kingdom).

<sup>6</sup> The Council of State is the highest court of administrative law in France. It rules in final resort on all disputes arising from such law and, as a consultative body, it provides the government with expertise and advice, especially in legal matters. There is no possibility of appeal against rulings handed down by the Council of State.

rejected, the statement is passed to one of the other two judicial bodies.

In terms of the scope of enforcement, France has a very detailed process of producing and evaluating campaign accounts of candidates, but a constitutional guarantee that political parties should be founded and administered freely has been cited by parties as grounds for refusing to have their finances directly monitored by control bodies. (One positive aspect of the law, however, is that it does not distinguish between money spent by the candidate and money spent by the party in favour of the candidates.) The result is a system that requires political parties to submit annual accounts certified by a chartered accountant to the CAPFC, which has no powers to then investigate those accounts. Some progress was made in 1995 when a law prohibiting corporate donations was introduced, as parties agreed to allow the committee to scrutinise not only whether accounts are procedurally correct (i.e. names are provided and accounts are submitted on time), but whether they actually reflect compliance with the law on corporate donations. There remains a need for jurisprudence in some areas that are opaque, for instance whether a political party should be able to lend money to a candidate.

The **Portuguese** system has the opposite focus to the French; it regulates parties, but not candidates. Like the French system, it makes a distinction between financing a party and financing a campaign, though both sides of the equation are regulated, albeit by different control bodies. In the present system, the Portuguese constitutional court oversees political party financing and the national electoral agency regulates campaign funding. Given that political parties run election campaigns, however, the system is flawed since neither agency is given a global overview of money flows into and out of politics. New legislation approved in 2003 and which will enter into force in January 2005 corrects this problem. A new body will be created to evaluate political party and electoral campaign accounts, which will then be verified exclusively by the constitutional court.

Under the existing system, political parties are required to present accounts to the constitutional court, which can then submit them to an auditing firm (paid for by the court) if there are concerns about irregularities. The current system focuses more on whether accounts are procedurally correct than whether they reflect actual spending. This is expected to change from 2005 when suppliers will be required to declare what they have supplied to the party, for instance if they sold the party printing services for campaign literature,<sup>7</sup> which can then be cross-checked against party accounts. This gives enforcement bodies a way to verify whether the accounts are materially accurate, rendering the monitoring process more effective, though more cumbersome for the monitoring bodies and for the parties themselves. Portugal is considering changing the electoral system from proportional representation to majoritarian, which will have an impact on the financing regime since a lot of local-level contributions are made directly to candidates, who are currently not scrutinised.

The **German** system was designed to safeguard the principle of party freedom. Parties, according to the German constitution, are institutions of society with the right to certain arcana from the state. Given these constraints, the legislature designed a system that in the main functions separately from the state – the primary instruments of control are

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<sup>7</sup> This applies only if the cost of the service exceeds one minimum monthly salary.

private auditors, who are paid for by the parties. Receipt of public funding is made contingent upon the political parties presenting annual reports of accounts audited by a certified auditor (or certified accountants in the case of a party that did not win enough votes in the previous election to qualify for public funding) to the president of the *Bundestag* (parliament). The auditor has to testify that the annual report is in compliance with the provisions of the party law. If this testimony is missing, the party is not entitled to public funding. Auditors are criminally liable if they intentionally submit an incorrect audit to the president of the *Bundestag*.

The president of the *Bundestag*'s small team of specialists and lawyers verifies these accounts, but only conducts detailed examinations of individual cases if there is firm evidence of inaccuracies. The president of the *Bundestag* is legally independent and is elected by parliament to serve for an entire electoral term. The federal audit court oversees the president of the *Bundestag* to make sure that laws governing the distribution of public funds are not breached, and that he or she does not favour the parties with which he or she is aligned.

As with France and Portugal, there has been an attempt in Germany to make the monitoring process probing. Prior to the 2002 amendments to the law on political party funding, the statements of accounts only needed to be procedurally correct (with the right dates and names); the new version of the law requires them to be accurate too.

Of the five countries studied, **Italy** is the most problematic in terms of independence because authorities lack security of tenure. Legislation adopted in 1993 created various bodies to monitor campaign expenses, the most important of which are *Il Collegio di controllo sulle spese elettorali presso la Corte dei Conti* (supervisory board for electoral spending) within the audit court, and *I Collegi regionali di garanzia elettorale* (regional electoral boards). The first is created fresh for each election for a period of six months, which can be extended for a further three months. Although the selection of judges has not been criticised to date for being partisan, their status leaves the boards vulnerable to that charge. Moreover, the fact that the body is not permanent means the judges cannot build up expertise. The regional boards are appointed for a four-year term and comprise the president of the court of appeal of the region and another six members of his or her choice. There is no coordination between the two types of body. In the case of concurrent elections, for instance national and European, two temporary supervisory boards for electoral spending would be appointed, compounding the coordination problem.

The temporary electoral expenses boards check the sums listed in party balance sheets against invoices and bills, but do not verify whether the sums are representative of amounts actually spent on the election campaigns. If the board suspects that there was illegal funding it must inform the judicial authorities who can initiate criminal proceedings. The regional boards carry out a similar process for individual candidates' declarations and accounts. The regional boards have 180 days to notify of irregularities in the declarations. If they do not, the accounts are considered to have been checked and approved. They have the power to request any information deemed necessary for their investigations to any relevant public authority.

The **United Kingdom** did not introduce controls on what political parties, as opposed to candidates, spent on elections or where their funds came from until 2000, in the wake of a series of corruption scandals. An Electoral Commission was created that same year to oversee the new laws. The commission is responsible directly to parliament and receives funding directly from parliament. The commission is headed by six commissioners who are appointed through open competitions, must not have been active members of political parties for the previous 10 years and cannot be removed other than by a vote of parliament. Effectively, they have the security of tenure of high court judges.

Unlike the other four countries studied, there is no public funding in the United Kingdom that can be used as the incentive for political parties to disclose sources of funds and expenditure. Other ways of applying the controls had to be sought. The solution found was to require parties to register with the Electoral Commission in order for the party name to appear on the ballot paper. By registering with the commission, the party comes within the control framework. Following elections, parties are required to submit to the commission detailed accounts of their spending. These accounts have to be accompanied by an independent auditors report if the party spent more than £250,000. Invoices and receipts for every item of expenditure have to be submitted with the accounts, which the Electoral Commission examines to check that they are a true and accurate account of spending. The much older regulations on candidates (dating back to the 19<sup>th</sup> century) require them after each election to submit a statement of expenses to the returning officer. But little use is made of the return and neither the returning officer nor anyone else has a legal duty to check that the returns are complete and accurate.

#### 4.1 Third-party funding

A major concern in all five countries is third-party funding. Political parties are generally formed by a headquarters with cascading levels of local organisations and satellite members such as youth groups. Such organisations can channel money to the party or can carry out services such as research or documentation, which could be conceived as in-kind donations to the party though they remain off of the balance sheet.

In **Portugal**, for example, the courts were deliberating in 2004 over a foundation that carried out activities that normally fall to the political party to conduct. The verdict will be relevant given the increasing importance of foundations as a source of funding for parties now that private company funding is prohibited in Portugal. In **France**, where corporate donations are also banned, there are concerns that such banned sources of funding may find their way to parties via para-party organisations.

Of the five countries studied, the **United Kingdom** has taken the most detailed steps to address the problem, but the Electoral Commission describes the resulting system as imperfect. In order to bring subsidiary bodies within the scope of the electoral authority, parties are required to describe their organisational structure as part of the registration process and nominate satellite bodies as 'accounting units'. The central party submits the main accounts and each accounting unit has to return their own separate accounts if they spend more than £25,000 per year. The difficulties are ensuring that the rules get passed down from the central parties to subsidiary entities and that there are sufficient

resources at local level to satisfactorily meet the administrative effort involved.

All five cases illustrate a conundrum for lawmakers when it comes to regulating the subsidiary bodies of parties. Not doing so provides a route for regulations affecting parties to be circumvented; doing so implies a burden for enforcement bodies and for parties, especially smaller parties. It also forces parties to become more bureaucratic since even small local expressions of support must be accounted for, and party control becomes more centralised.

#### 4.2 Controlling the use of public facilities

Another controversial area in all five cases is how to regulate the use of public funds such as telephone lines, staff time and the prestige of office by individuals seeking re-election or a new elected office. A problem is where to draw the line. A few phone calls from an official phone line in support of an election campaign would probably not result in penalties for the candidate. But should it trigger an investigation given that the small number of calls identified might be just the tip of the iceberg?

In **Portugal**, for example, mayors are allowed to complete their mandate while they run for office. Suspicion that the facilities and status of office were abused by mayors formed a majority of the complaints that went to the national election commission in the aftermath of elections in recent years. The national electoral commission alerted legislators to the problem, but the issue was left out of the 2003 reform.

The **French** political tradition of accumulation of mandates, whereby a mayor might also be councillor general or member of parliament, poses similar problems. The authorities ask candidates in such positions to take care not to use state facilities, for instance by having a dedicated campaign phone line for the campaign, but cannot guarantee that no state resources whatsoever are abused. Case law helps draw some lines over this grey area. For instance jurisprudence generated by the council of state indicates that if the offender pays the public entity the money back the case will be dropped, which provides incentives for greater transparency.

#### 4.3 Defining political parties

Although consideration to the definition given to political parties usually takes place when discussing the content of regulations rather than their application, germane to the arguments here is the impact a broad or unclear definition might have on the enforcement body. In the **United Kingdom**, for example, where it is relatively easy to qualify as a political party, the result is that hundreds of parties are registered and have to be monitored.

In **France**, parties are given constitutional status, but not a specific legal status. There are two legal definitions of a political party in France: the first is 'a body that gets government funding to exercise as a political party', the second, 'a body that is subject to the legislation on political parties'. The dual definition leads to confusion and following the 2002 French elections the electoral authorities asked the legislature for clarification of the conditions under which a body can be declared a political party, and by extension

when a subsidiary body can be considered to form part of a political party and so come under the scope of controls.

#### 4.4. Coordination and internal monitoring mechanisms

A problem perceived in **France**, **Portugal** and **Italy** is that the two or more enforcement bodies responsible for campaign financing tend to operate quite independently of each other, with some aspects of the problem falling through the cracks. Another problem, highlighted by the experts from **Portugal**, is that while enforcement regimes tend to be demanding about external accountability (the party audit presented to the enforcement body) they are less exacting when it comes to a party's internal audit.

### **5. What powers of investigation do control bodies have?**

Control bodies have varying capacities and limitations when it comes to investigating irregularities. The first limitation is practical, due to lack of evidence or time, and the size of the constituency. At one end of the scale is **France**, where the CAPFC hires 170 temporary rapporteurs during the election period (in addition to a permanent staff of 33) to scan newspapers for evidence of campaign spending that is not included in the accounts. In **Germany**, the same task falls to a team of six, though they do not audit accounts as in the French case.<sup>8</sup>

The second depends on the powers granted to the control body. If the control body is not allowed to probe campaign finances or to access accounts, then its effectiveness is limited. Adding to the complexities of the task are the funding circuits that escape the disclosure process, such as in-kind contributions or contributions from third parties. Many scandals have occurred after supervision bodies have scrutinised party accounts, as experiences in France and Italy show.

The **UK** Electoral Commission has unusually broad powers to probe party accounts. According to its regulations, 'the commission may do anything except borrow money, which is calculated to facilitate or is incidental or conducive to the carrying out of any of its functions'. Specific powers allow the commission to require a relevant person from any organisation that falls under its supervision (political party or third-party organisation) to produce documents, books or other records related to the income or expenditure of the organisation. It can also require the individual to provide an explanation of the information in question, and it is a criminal offence to fail to provide this information, even if it is self-incriminating. Furthermore, it can enter the organisation's premises, inspect books and take copies of any documents found there, without any prior judicial authorisation or warrant. These powers have not been used, however, and, given the potential political consequences of such actions, it is inconceivable that the Electoral Commission would do so except in the most egregious case.

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<sup>8</sup> The German division had a backlog of some 200 cases in mid-2004. It has the authority to re-audit any party accounts for a time span of 10 years after a particular report was filed with the president of the Bundestag if there is a strong suspicion of mistakes.

In practice, opposition parties tend to be the most interested observers of party funding and many investigations begin with their complaints. In the most recent legislative elections in **France**, about half of all requests to cancel elections were by candidates questioning the financing of the opponent's campaign. Voters may also be able to file complaints. In **Italy**, for example, they are given 120 days from the date of elections to file complaints with regional oversight bodies.

## **6. What should happen if campaign or party finance laws are breached?**

When it comes to sanctioning, two questions must be asked. Firstly, is the sanction appropriate? If the sanction is too harsh, the judicial authorities will err on the side of caution; if it is too weak, then it will not act as a deterrent. Secondly, whom should the sanction apply to? Many jurisdictions have chosen to attach liability not just to the organisation but also to an individual officer within the organisation who has to take responsibility for financing. This tends to work better than relying on sanctions for the party, since the fear of criminal proceedings tends to act as a more effective restraint on party officials than penalties for the party.

In countries with public funding, **forfeiture of subsidies** is a common penalty for failing to submit audited accounts (e.g. **France** and **Germany**) or breaching spending limits (**Italy**). What happens in **France** is that in practice large political parties do not fail to submit their audited accounts; it is small parties who are affected (parties need only 1 per cent of the vote in legislative elections to qualify for public funding). When small parties fail to fulfil this obligation, they simply change their statutes and name, and reapply. Countries with more stringent requirements for parties to qualify for subsidies, such as Portugal, where 50,000 votes are needed, avoid this problem.

**Fines** are another common form of sanction. In **Italy** they apply to parties for failure to provide information about sources of donations, and to candidates for breaches of expenditure limits and reporting requirements. In **Germany** any misrepresentation in a party's annual account statement can result in a fine proportionate to the misrepresentation. Illegal donations result in fines of double the donated sum. If the party voluntarily owns up to the mistake and shows willingness to cooperate with the authorities, it can avoid the fine.

**Criminal penalties** apply in certain situations, for instance when a party or candidate accepts an inadmissible donation, which it fails to return. **Germany** was last of the five countries to introduce personal criminal liability, in 2002, since when party officials who intentionally present false information in their annual report to auditors face punishment of up to three years' imprisonment. Although this change in the law implied a limitation of the principle of party freedom by opening the door for public prosecutors to investigate party finances and reports, it was deemed acceptable because of the constitutional rank given to the public nature of party funds.

**Political disabilities** also apply in four of the jurisdictions studied; though not in **Germany** where the suggestion to introduce this sanction when the party finance legislation was most recently amended was rejected by politicians. The **United Kingdom** and **France** have struggled to apply the sanction in recent cases. In France,

disqualification is automatic in legislative elections since the constitutional court does not have the power to declare that the mistake was made in good faith (a power that is granted to the council of state). Since 1990 some 2,200 candidates have been declared ineligible in France and two elected MPs were removed from office for relatively minor infractions of campaign finance regulations at the last parliamentary elections. The constitutional council is pushing for the authority not to ban parliamentary candidates from competing if a minor technical accounting mistake was made in good faith.

In the **United Kingdom** political disabilities arise under the election law, rather than the political party law, and apply to candidates and to their agents. If the spending limit is exceeded or false reports are submitted, these acts may be considered corrupt or illegal and the election may be challenged and criminal charges filed. If anyone is found guilty of a corrupt practice, which happened in 1997 when a candidate was prosecuted for submitting a false election return and was found guilty at first instance, the sanctions are not only criminal, but – under rules introduced in 1883 and last applied in 1923 – the seat falls vacant and fresh elections have to be called. In 1997 the candidate appealed to a higher court of criminal appeal, which reversed the conviction. This provides an example that when sanctions appear harsh and if the law is unclear, the benefit of the doubt will usually be given to the candidate or the agent.

The **timing** of court rulings has a bearing on the efficacy of sanctions. The 2002 presidential election in France shows that while electoral sanctions might exist on the books, they may not always be applied in practice. This is both for political reasons, especially if the win was by a comfortable lead since it would be difficult to overturn for reasons of funding irregularities; and for legal reasons, since once the constitutional council declares the results of a presidential election – before accounts have been scrutinised – the declaration has the force of a judicial decision which cannot be challenged.

## 7. The role of the judiciary

To be effective, enforcement bodies need to be backed up by functioning courts staffed with independent judges who have the means to conduct proper investigations. In **France** and **Italy** to cite but two examples, politicians seem to fear judicial power more than they fear the controls on campaign accounts, not least because of the negative publicity associated with prosecution. Similarly, in the **United Kingdom**, the Electoral Commission, for example, has encountered a few cases of the acceptance (inadvertently) of impermissible donations, but in all cases has opted not to refer the matter to the criminal prosecutor, insisting instead on the return of those impermissible funds to their source. Parties are willing to comply for fear of negative publicity affecting their electoral chances.

Care needs to be taken to delineate the scope of judicial action in the sphere of political financing. A false declaration in a campaign account is not necessarily an act of corruption, and political corruption offences are generally prosecuted under the criminal code, not under electoral or party funding laws.

In **Germany** if there is evidence that donations have been accepted that were ‘clearly made to the party in the expectation of or in return for a specific economic or political advantage’ and whose acceptance violates the law on political parties, criminal corruption is usually also suspected and must be officially investigated by the public prosecutions office. Given the public prosecutions office’s greater resources to investigate the matter thoroughly, the *Bundestag*’s Party Financing and Land Parliaments Division usually awaits the results of the public prosecutions office’s investigations and draws on the results when coming to a judgement on the case pursuant to the law on political parties.

In **Portugal** party financing irregularities are rarely the subject of corruption investigations, unless accompanied by allegations of embezzlement or illicit enrichment. A recent case involving a local authority in northern Portugal included a dozen possible allegations that contributions to the mayoral campaign were inducements of corruption, but these allegations were discarded when no evidence was produced. Accompanying allegations of abuse of state resources were prosecuted.

A further consideration when it comes to pursuing corruption in the financing of campaigns concerns obstacles to international cooperation, since to trace money flows national borders may need to be crossed. Although a detailed discussion is beyond the scope of this report, it is worth noting that there has been some improvement in international cooperation, for instance by Switzerland, while in other countries such as the United Kingdom the record is poor.

## **8. Are international recommendations on enforcement desirable?<sup>9</sup>**

The five countries studied are all well-established democracies from Western Europe and yet present wide variations in terms of enforcement. Telescoping out from this small pool of examples to the other countries that are also the subject of the Council of Europe guidelines presents even greater differences. Does it make sense then to develop standards for enforcement intended to apply across the European Union, let alone globally?

A review of six of the eight Central European accession countries shows a large variety of agencies responsible for compliance and enforcement: the legislature (two countries), the tax authority (two countries), electoral commission, ministry of justice, finance ministry, ministry of the interior, accounting court, the anti-corruption agency and the state audit office. The review also shows that if the regulatory burden increases with the growth in laws on political financing, then this burden is rather high in the EU accession countries of Central Eastern Europe.

There is no simple answer to the question of which type of body is likely to be the most suited to enforcing political finance laws. There are different stages of the enforcement process – from compliance to investigation prosecution and trial and different stages are suited to different bodies. For any one stage of the process, the choice of the most

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<sup>9</sup> Based on the conference paper presented by Michael Pinto-Duchinsky, International Foundation for Election Systems.

suitable agency will depend on a number of factors: independence of the body, technical capacity, and interest in taking the job seriously.

But without being prescriptive about the type of institution, there are commonalities that can be usefully explored. For example one argument for delimiting regulations in Central European accession countries is that if enforced by partisan bodies, they might be used against opposition parties. An independent supervision body is therefore desirable in countries where pressure might be put on enforcement bodies not to exercise their powers rigorously, as it is also in the five Western European examples. That the body be empowered to impose sanctions and that these sanctions be adequate and proportionate is also true across countries.

## **9. The wider context to enforcement<sup>10</sup>**

While each state has to choose an appropriate mix of political party and campaign finance regulations, depending on its particular constitutional, legal and political tradition and in the context of public and private resources available, methods of enforcement might have a great deal in common.

In broad terms, enforcement is dependent upon well-resourced and independent control bodies, detailed in the above five case studies. But other considerations are important in determining whether a law will be applied and enforced.

The first of these considerations is the political culture within any particular society or country. Is it the practice for the law to be followed and enforced? Do people feel a sense of obligation to comply with the law? Do people feel that they are bound by the rules that are being used to regulate their activities?

Also relevant is whether a strong rights culture operates within a particular country, since there might be a clash between the aspirations of election law and the fundamental rights that are protected in a particular society. For instance in the United States the Supreme Court upheld third-party spending limits from a constitutional challenge on the grounds that the challenge violated freedom of expression. When there are doubts about the constitutionality of campaign funding regulations, in particular whether they violate fundamental rights provisions, there is often a temptation of cautiousness on the part of the enforcer.

The second issue is whether there is a political consensus about the law in question. Are the laws or rules governing political parties fair between the parties? And are they perceived to apply in an even-handed way between the parties, rather than as a means of giving one party an advantage over another? A related issue is whether the legislation is relevant to the circumstances of the country in question and gives the party a fair opportunity to conduct their relevant activities. This question arose in the United Kingdom when a spending limit for political parties was being discussed. One party

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<sup>10</sup> Based on the conference paper given by Keith Ewing, Professor of Public Law at the King's College, University of London (United Kingdom). The points that some regulations are especially difficult to enforce and that constant reforms lead to enforcement problems were made by Michael Pinto-Duchinsky, International Foundation for Election Systems.

proposed a limit of £15 million, but the independent committee responsible opted for a higher limit of £20 million in 2001 on the grounds that that it would be unrealistic to expect parties that were spending £27 million four years earlier to reduce their expenditure so sharply.

The third background issue is the quality of the legislation itself. Rules should be clear and effective. Loopholes should not be tailored into the legislation to minimise its impact. Sanctions must be realistic. If the sanctions are too harsh then what is likely to happen, particularly with the growing influence of human rights ideas, is that courts will be defensive, favouring the defendant in criminal proceedings because the cost of a wrongful ruling is high.

If laws are too difficult to enforce, then public authorities will be determined to avoid what they will see as the thankless task of trying in vain to implement them. Some types of political finance regulations and bans are especially prone to evasion. An example is laws banning corporate donations (in force in France and Portugal of the countries studied in this report), which some governments have considered but opted not to enact on the grounds that money flows from corporations might simply find alternative channels, for instance through third-party foundations.

Another problem, particularly notable when the subject area was extended beyond the five case studies to the recently enlarged European Union, is the tendency to alter laws on political financing very frequently. Constant 'reforms of reforms' may introduce improvements. On the other hand, they also may make it hard to create a stable enforcement regime.

## **10. Recommendations**

The following framework of principles reflects the discussions and is intended to provide a model of aspiration for countries looking to improve the enforcement of political party and campaign finance regulations. It does not comment on the substance of laws chosen by each country – TI's Standards on Political Party Finance and Favours, and the CoE's guidelines on the funding of political parties provide information on the substance of regulations. The recommendations do, however, highlight the importance when drafting legislation of considering how the laws can be effectively enforced.

1. Effective enforcement depends on respect for the rule of law generally.
2. Effective enforcement depends upon clear, realistic and accessible rules, regularly updated.
3. There is a need for effective and independent internal auditing by the parties.
4. Regulatory agencies must be independent in terms of appointments, security and funding, and should themselves be independently supervised.
5. The regulatory authority must have adequate powers to supervise and investigate accounts and to refer irregularities to the criminal justice authorities.
6. The regulatory body must respect human rights, particularly the rights to due process and rights to be found in international and regional human rights conventions.
7. There must be effective sanctions against the violation of party finance regulations.

8. Regulation must not be disproportionate in the sense that it discourages ordinary activities; a balance should be struck between the need to regulate and the need of effective supervision.
9. The regulatory body itself should be subject to legal accountability, whether through administrative law or other means.
10. The regulatory body should provide transparent accessible information, produced in a timely manner and published on the internet.

## 11. Agenda

Day One:

Chaired by **Michael Pinto-Duschinsky** (International Foundation for Election Systems)

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| 09:00 – 9:30  | Welcome<br><b>M. Jacques Terray, Vice-President of Transparency-International (France)</b>  |
| 09:30 – 10:00 | <b>Introduction: Why is political finance a major source of corruption?</b> <ol style="list-style-type: none"><li>1. Defining and evaluating corruption in political finance</li><li>2. What party and campaign finance regulations are currently in place to curb corruption in politics and where should they be moving?</li></ol> <p>Speaker:<br/><b>Yves-Marie Doublet</b>, Head of the Legal Studies department of the French National Assembly and senior lecturer at the National School of Administration, Paris, France</p>                                      |
| 10:00 – 11:30 | <b>The case for standards</b> <p>Presentation of the Council of Europe's guidelines and TI standards on political party finance.</p> <p>This session will address the following questions:<br/>How useful are general standards?<br/>How can they be applied and used?<br/>What next?</p> <p>Speakers:<br/><b>Roman Chlapak</b>, Council of Europe<br/><b>Robin Hodess</b>, Director of Policy and Research, Transparency International</p>   |
| 11:30 – 11:45 | Coffee/tea  |
| 11:45 – 13:30 | <b>Good laws on paper, but do they work in practice?</b> <p>Brief presentations (15 minutes) will address this question in connection with the legal framework and experiences in a number of European countries. Presentations will be made by leading academics and practitioners. The presentations will form the basis of a discussion on how to improve enforcement of political finance laws and standards.</p> <p>Speakers will be asked to address the following points:<br/>a) What control bodies exist and are these independent and adequately resourced?</p> |

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|               | <p>b) What are the means of investigation of the control body?<br/> c) What kind of sanctions can be imposed either by the control body or by a judge?<br/> d) Evaluate the infractions and sanctions provided for in national legislation in relation to the Council of Europe and TI standards dictate?</p> <p><b>Case study 1: France</b></p> <p>Speakers:<br/> <b>Yves-Marie Doublet</b>, Head of the Legal Studies department of the French National Assembly and senior lecturer at the National School of Administration, Paris, France<br/> <b>Professor Jean-Claude Colliard</b>, member of the Constitutional Council<br/> <b>Mr Jacques Bonnet</b>, Chairman of the French National Committee for Campaign Accounts and Political Funding</p> |
| 13:30 – 14:30 | Lunch  |
| 14:30 – 16:15 | <p><b>Case study 2: Portugal</b></p> <p><b>Judge Rui Moura Ramos</b>, Vice-President of the Portuguese Constitutional Court<br/> <b>Luis de Souza</b>, Instituto Superior de Ciencias do Trabalho e da Empresa, Portugal</p> <p><b>Case study 3: Italy</b></p> <p><b>Professor Massimo Siclari</b>, Università di Teramo, Italy</p>  |
| 16:30 – 17:30 | <p><b>Enforcement: the view from the EU accession countries</b></p> <p>Many of the ten states joining the European Union this year have very good political finance regulations on paper, but enforcement bodies are weak and, crucially in many countries, lack independence. This brings with it the risk of them being used politically to target opposition parties and candidates.</p> <p>Speaker:<br/> <b>Professor Pinto-Duschinsky</b>, International Federation of Election Systems</p>   |

Day Two:

Chaired by **Massimo Siclari**, Università di Teramo, Italy

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|---------------|---|
| 09:30 – 11:30 | <p><b>Case study 4: United Kingdom</b></p> <p>Speakers:<br/> <b>Keith Ewing</b>, Professor of Public Law at the King's College,</p> |
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|               | <p>University of London, UK<br/> <b>Roger Creedon</b>, CEO of the UK Election Commission</p> <p><b>Case study 5: Germany</b></p> <p><b>Martin Morlok</b>, Head of the Institute on law on political parties, Düsseldorf University<br/> <b>Johannes Becher</b>, Head of the Department of the Deutscher Bundestag on party funding</p>   |
| 11:30 – 11:45 | Coffee/tea   |
| 11:45 – 13:15 | <p><b>From theory to practice</b><br/> Roundtable discussion facilitated by <b>Keith Ewing</b> and <b>Yves-Marie Doublet</b> assessing steps needed to strengthen enforcement.</p> <p>The discussion will be guided by the following questions:</p> <ul style="list-style-type: none"> <li>- Where does the chain of enforcement break down?</li> <li>- How can enforcement agencies be strengthened?</li> <li>- How can civil society organisations work more effectively with governmental and inter-governmental bodies to ensure that party funding regulations are enforced?</li> </ul> |
| 13:15 – 15.00 | Closing lunch with <b>Mr. Daniel Lebegue, President of TI (France)</b>   |

## 12. Participants

**Johannes Becher**, Head of the Department of the Deutscher Bundestag on party funding

**Mr Jacques Bonnet**, Chairman of the French National Committee for Campaign Accounts and Political Funding

**Professor Jean-Claude Colliard**, member of the Constitutional Council

**Yves-Marie Doublet**, Head of the Legal Studies department of the French National Assembly and senior lecturer at the National School of Administration, Paris, France

**Roman Chlapak**, Council of Europe

**Roger Creedon**, CEO of the UK Election Commission

**Keith Ewing**, Professor of Public Law at the King's College, University of London, UK

**Robin Hodess**, Director of Policy and Research, Transparency International

**Mr. Daniel Lebegue, President of TI (France)**

**Martin Morlok**, Head of the Institute on law on political parties, Düsseldorf University

**Judge Rui Moura Ramos**, Vice-President of the Portuguese Constitutional Court

**Professor Pinto-Duschinsky**, International Federation of Election Systems

**Diana Rodriguez**, Programme manager for political corruption, Transparency International

**Professor Massimo Siclari**, Università di Teramo, Italy

**Luis de Souza**, Instituto Superior de Ciencias do Trabalho e da Empresa, Portugal

## **Appendix 1: Full transcripts of presentations**

(Available at [www.transparency.org](http://www.transparency.org)).

### **Why is political finance a major source of corruption?**

*Yves-Marie Doublet, Head of the Legal Studies department of the French National Assembly and senior lecturer at the National School of Administration, Paris, France*

Three questions that are important to provide the context for a discussion on how to enforce rules that are aimed at curbing political corruption are: What is political corruption? Why has political corruption developed in Europe? Why is it difficult to prove?

#### What is political corruption?

Corruption is usually defined as the abuse of public power for private purposes, and political corruption is the intersection of the public and the private sectors. When it occurs, both the bribe payer and the bribe taker commit a crime that must be punished. The bribe taker has particular responsibility since he or she is the one to take the final decision over whether to carry out the corrupt transaction. In the case of political corruption, the bribe taker might be a politician or a political party.

Is it possible to evaluate corruption in political finance? There is a United Nations global programme against corruption which looks at three levels of corruption: the street level, where citizens come face to face with corruption, for instance when they come across the police in certain countries; the business level, which concerns the public decision-makers; and the political and financial level, which concerns all of the state apparatus. I think we can say that Western European countries are more affected by the second kind of corruption than by the third. The third level seems to affect to a greater degree countries in Central Asia, for example.

#### Why has political corruption developed in Europe?

I am not sure that there are reasons that are specific to Western Europe. Rather, the reasons are shared by every political system in the world. Three of these reasons are:

1. The effects of economic globalisation and of the facilities offered by technical innovations. Economic globalisation increases the number of financial channels and goes hand in hand with the growing technicality of financing, in particular when it comes to tax havens. At the same time, technological progress allows capital to move very freely and means that evidence of corruption is more difficult to secure.
2. Political authorities retain considerable decision-making power, for instance over town planning, health investments, public works, contracts, and agreements for the takeover of strategic companies. Public procurement absorbs an average of 15 per cent of GDP in Western European countries.
3. Political counter-powers are weak. All political parties have been compromised in one respect or another in political scandals. The judiciary is also weak: in certain countries

the judiciary may be very dependent of the executive, while in others, such as Italy and France, it is in constant conflict with the executive. Investigative journalism might also be weak, in particular when the influence of media tycoons.

#### Why is political corruption difficult to prove?

I will refer to one case, the Elf case. During the proceedings in 2003 it was said that US \$5 million was given to French political parties in the late 1980s, but no evidence of this assumption was produced during the proceedings. It was easier for the investigating judge to supply evidence of misuse of private property by the top management of the Elf company than to prove corruption that favoured the parties. In other words, it is easier for an investigating judge to prove a case of personal enrichment by a company executive than of political corruption. The same is true of Germany, where the CDU was involved in a similar case.

The situation in France was worsened by two factors. One was the existence of a secrecy clause pushed through by the executive to prevent the investigating judge from having access to the case file. The second obstacle was the statute of limitations. The time period for a case misuse of property begins from the date of publication of the financial statements of the companies involved, whereas the statute of limitations for corruption cases starts from the date of the offence and runs for three years in France, five years in Germany. As long as we do not have any clear information on the economic beneficiaries of financial movements, and as long as financial flows continue to remain anonymous over the other countries involved, progress in cases of political corruption is likely to be disappointing.

#### What regulations exist to curb corruption in politics and where should they be going?

At a national level, regulations focus on two main aspects: prevention and law enforcement. Prevention has been promoted by passing legislation on party and political campaign funding, and introducing measures to identify political corruption. The introduction of regulations on political finance stems from the idea that we have to allocate public funding to parties and candidates in order to rid them of the temptation of corruption. Thus the virtues of transparency and fairness are attached to public financing. At the same time, some countries such as France, Belgium and Portugal banned donations to parties and candidates from legal entities, i.e. companies.

But we have many counter-examples to this trend towards regulation, for instance Switzerland, where there is no regulation on party funding but where there have been very few scandals. The UK had no tight regulations until the end of 2000 and there have been relatively fewer scandals in the UK than in other countries with robust regulation. Countries with a high level of public funding, such as Belgium, Spain and France, have all had major scandals. This mixed record suggests that the scope and success of regulations is largely dependent on the way they are scrutinised.

Turning to enforcement, we have to differentiate between three bodies:

1. Control bodies on campaign financing
2. Anti-corruption agencies
3. The judiciary

Concerning the first, control bodies on campaign and party funding, we have a wide range of formulas available to us. We have political bodies, for instance the Belgian parliamentary commission, or the German equivalent. We have bodies that are closely linked to the authorities, such as the Spanish *tribunal de cuentas* (accounts tribunal). Lastly, we have non-partisan bodies such as the UK Elections Commission or the French campaign accounts and political funding committee, and the French electoral court. But control is not just a matter of independence of the body. We need also to ask: what is the scope of their control; what means of investigation does the control body have at its disposal; and what sanctions can be imposed?

#### What is the area under control?

We know transparency mechanisms can be mere whitewash and there are many ways to circumvent regulations on disclosure. Campaign accounting forms are not necessarily comprehensive and there are secret funding circuits that escape any disclosure process, such as in-kind contributions or contributions from third parties. All of the different loopholes and shortcomings weaken the role of spending limits. Many scandals occur after supervision bodies have scrutinised party accounts, for instance in Belgium, France, Italy and Spain.

#### What are the means of control?

With the exception of Spain, where the accounts court directly supervises party accounts, control takes place on two levels, first by chartered accountants and then by the supervision body. Very often, however, control is limited to investigating the irregularities in the accounts provided by candidates and parties; investigation does not go beyond the figures that the candidates and parties themselves declare. There are several reasons for this: first, the legal reason, which applies for instance in France and Spain where the supervisory bodies are not entitled to investigate party accounts; second, for practical reasons such as lack of evidence or time and the size of the constituency.

#### What are the sanctions?

Very often – though with notable exceptions such as Germany – the sanctions may be financial, penal or electoral. When it comes to sanctioning, two questions must be asked: is the sanction appropriate and whom should it apply to? This second point is not easy when it is the party as a whole that is involved.

Before concluding, it is important to look briefly at the judiciary. We cannot restrict our attention to the control bodies that are in charge of the supervision of the rules on party and campaign funding – the prosecuting and investigating judges also have a role to play against political corruption. In France and Italy politicians seem to fear judicial power more than they fear the control over campaign accounts. We need to take care to define what we are addressing. A false declaration in a campaign account is not necessarily related to corruption. Offences such as political corruption are prosecuted under the criminal code, not under electoral or party funding laws, and therefore it is the penal judge, rather than an electoral supervision body or electoral court that is the appropriate authority to investigate allegations of corruption.

There are several prerequisites for a functioning judiciary. First, judges must be

independent and must have the means to conduct proper investigations, and in that sense an inquisitorial procedure in the hands of the investigating judge is more dissuasive than the US system of plea-bargaining. Second, account should be taken of the obstacles in international cooperation. There has been some improvement in international cooperation, for instance by Switzerland, but in the UK, for example, the record is poor. When judges make procedural errors, take on premature investigations or dismiss too readily charges of political corruption, credibility of the judiciary is eroded.

### Conclusions

Rules on campaign funding, such as disclosure regulations, are of little value if the powers of the supervision body are weak and offences are not sanctioned. Therefore we have to look at how we can promote the strengthening of the control body.

The fight against political corruption is not just about the enforcement of campaign funding regulations but also about the role of the judiciary.

## **The Council of Europe's involvement tackling political corruption**

*Roman Chlapak, Council of Europe*

The Council of Europe is the first organisation to come up with detailed international instrument on political party financing, the 'Recommendation on Common rules against Corruption in the Funding of Political Parties and Electoral Campaigns'. The Council of Europe offers technical assistance with the anti-corruption efforts of member states, and the Group of States against Corruption (GRECO) monitors compliance with the guidelines.

The Council of Europe already had two important legal instruments dealing with corruption, the Civil Law Convention on Corruption and the Criminal Law Convention on Corruption. The decision to delve into the issue of money in politics responds to the importance of the issue to broader democratic processes. The confidence that citizens have in democracy depends on standards being upheld in public life; a concomitant of the scandals resulting from money in politics is a lack of interest in participation in local and national political life.

The Council of Europe began to address the issue of money in politics from the start of its work in the anti-corruption field. Its first Programme of Action against Corruption highlighted the links between the illegal financing of political parties and corruption. A conference on 'Trading Influence and Illegal Financing of Political Parties' followed in 1998. Subsequently, the committee of ministers adopted a resolution called 'Guiding Principles in the Fight against Corruption' which included the principle that states should promote rules for the financing of political parties and election campaigns that deter corruption. The parliamentary assembly also adopted a recommendation on this issue, and the Venice Commission, another Council of Europe body, too, began looking at this issue.

### The Common Rules: a compromise approach

The 'Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns', adopted in April 2003, represents a compromise between different approaches to the regulation of political funding. There is no ideal system of regulation; guidelines have to be flexible to accord with national political, constitutional and electoral systems. Guidelines were produced outlining the principles and a series of seminars was organised in different countries to discuss them.

The recommendations establish quite a low standard for the degree to which member countries had to regulate. There were countries that were extremely reluctant to establish any rules in this field and the negotiations lasted several years. The basic principles are:

- A reasonable balance between public and private funding should exist. Private financing is legitimate and desirable; the idea of limiting it lies in the argument that interested money should be restricted. Dependence by political parties or candidates on the state is, of course, also problematic.
- Fair criteria should be used for the distribution of state contributions to parties
- Private donations should be regulated

- There should be a threshold for party expenditure on election campaigns
- Accounts should be transparent
- Independent monitoring of accounts should be established
- Infractions of regulations should incur sanctions

Turning to enforcement, as a starting point it is important to note that, as with regulations, there is no ideal system of enforcement. What can be stated is that in order to ensure that any particular system is functioning, sanctions and monitoring are of crucial importance. The recent case of Lithuania demonstrates the importance of monitoring to the task of rooting out political corruption. The Lithuanian president in 2004 ran into problems for allegedly receiving donations from Russian companies. These were posted on the supervisory body's website, where information about who gave donations to whom is made publicly available. The system had just been established and was therefore fully functioning; in time, however, there is a risk that political parties and politicians will learn to by-pass this layer of control and that it will not be so easy to identify such donations.

## **TI's Minimum Standards on Political Party Finance and Favours**

*Robin Hodess, Director of Policy and Research, Transparency International*

I'm here representing TI and its efforts to engage in the field of corruption in political finance and political corruption more generally, congratulating the Council of Europe for its work in this field. Obviously the fact that it is the first international standard indicates that it is not an easy thing to do, nevertheless there is a lot of new work to be done and that is why we are involved.

It may not be clear to all of you why an NGO is involved in this area and what our aims are. You may know TI's name, or our league table of corrupt countries, but there are many other areas of work that you may not be familiar about. The Secretariat is based in Berlin, but our national chapters are quite independent and set their own priorities. We do try to coordinate and strategise about our global priorities such as this area of political corruption.

One of the very early successes of our international movement to fight corruption and promote transparency was our involvement in the passage of the OECD anti-bribery convention. Of course it was important to get many of your governments on board as far as getting the legislation in place. The OECD convention prohibited bribery of foreign public officials. But what was an important missing element of this convention was not to outlaw bribery of foreign party officials. This continues to be a hole in the legislation and continues to plague other convention work in this area. If you look at other conventions and international instruments, including the UN Convention against Corruption, which was just adopted in December, there is absolutely no mention of the issue of political corruption in party finance. There were several governments who refused to allow the issue to be included. We think this is a problem in terms of setting an international platform for dealing with corruption. We cannot ignore the issue of political finance. TI has been involved in promoting the OECD convention and has considered working to extend the convention to the area of parties and party officials.

At the same time, at country level, our national chapters were consistently getting involved in how elections were being run in their countries. As you can imagine this is the essence of democratic politics in transition countries, in developing countries. To promote an agenda of transparency, many of our chapters got involved in monitoring electoral spending, donations and so on. This is one of the most accessible tools for an NGO to try to assess what is going on in terms of income and spending in the political arena. It allowed our national chapters to gain public attention and public support for their work at home and to gain a broader mandate for promoting transparency at the global level. Again, this is an important element to why TI is getting involved; it is not just that at the global level we see this as part of conventions work, but that at national level this is part and parcel of what our chapters do and what they ranked as one of the most important areas that they are involved with on an ongoing basis. We have created a new position in Berlin to coordinate this work.

In 2000/2001 we started work on our flagship publication, The Global Corruption Report. We focused an essay in that report, by Keith Ewing, on the need for global standards. There had been a lot of discussion but this put a seed in place and put things on paper

to look at the case for global standards in political finance, why these were relevant, why this was a good opportunity - at the time Keith was pushing for a role of the UN in all of this though, as we have seen, we had a disappointment with the UN Convention – but he also pointed out many of the challenges in coming up with global standards.

We proceeded to work with our national chapters to come up with an audit of what was happening in political finance regulations in Western Europe and in Latin America. We now have regional reports on what is happening in these two regions. This documenting of the status quo gave us the basis for starting to think about what we can recommend as a basis for change. We also began collaborating with others, for instance IFES and others such as The Carter Center, International IDEA and so on. We are aware and familiar with the Council of Europe's work as well.

Last year we decided to put a whole section in the Global Corruption Report on political corruption. This goes beyond party finance and enforcement of party finance, but was nevertheless an important opportunity for us to highlight this issue and provide impetus for future work in this area.

We'd like to use both this report and these standards, which were launched with the report, as a tool that can be used for benchmarking, for providing rules on political finance.

Why have we developed global standards? First and foremost we wanted to continue to show our commitment as an NGO to this issue. Second, we wanted to take a moment to provide an opinion and a position on this subject. It is one thing to work on an area, it is another to say, these things have to be in place at a certain level. This was our way to take a stance, though when you have to work with a lot of constituencies there is always a risk that you come up with the minimum as opposed to the maximum, but the hard work comes at national level. We can raise the bar and the normative process but we can't dictate what needs to be in place in any country, or indeed in any institution because one could argue that several institutions need to start looking at these standards as well.

This allows us to emphasize our values of transparency, accountability, disclosure. These were the emphases that we wanted to give to our work and our of course inimical to our work as Transparency International.

Finally, we wanted to take the opportunity of developing standards on political finance to acknowledge a role for civil society in the process of developing and monitoring legal and institutional provisions for political finance. We want nongovernmental voices to be heard and we feel that there has to be a provision for that both in the development and monitoring. This is particularly important in the South where democracy is fragile and where the ruling powers don't always represent society.

Turning briefly to the standards themselves. We call them the TI Standards on Political Finance and Favours. The first is about curbing influence peddling and conflicts of interest. This speaks to the issue of favours, mentioned in the title. What we're saying here is that favours need to be limited. We realise that it is problematic to think that by

limiting or controlling funding in some way you can necessarily limit the access and the favours that are made, but we feel we need to draw attention to where these kinds of conflicts occur and to what kind of representation there is of the broader public in the political process and to at least shine a spot light on the political process in so far as we can lay bare what kind of interests there are at stake.

We also call on parties to demonstrate probity. It can't just be up to the system to work well. Parties themselves as constitutional units need to take it upon themselves to be transparent.

Finally we look at the issue of conflicts of interests, looking at revolving door issues between the public and private sector.

The second standard, transparency through disclosure and publication. This is about shining the spotlight, of course recognising that in some areas there are threats to individual and personal security. We call for maximum disclosure, of assets, of income, of expenditure, for parties, for candidates, for elected politicians in terms of disclosure of assets, and in terms of the private sector disclosure of contributions to the political process.

The third standard is about effectiveness in the enforcement and supervision of regulatory measures. We talk about enforcement agencies, electoral institutes and commissions and their need for adequate powers to do the work that is required of them, the need to work with courts and the sanctions available. Here we come down with a more firm position which is that the funding of political parties with illegal sources should be criminalised.

In the fourth standard, diversity of income and spending limits, we return to the debate about state versus private funding. As we know, not one system works, but we do think nevertheless that the evidence shows that some public funding is probably the way forward. We need to think about corporate support, foreign support, spending limits and also providing political parties access to media.

The fifth and sixth standards have less to do with the official framework and more to do with the context. The fifth is fairness and integrity in the media. Another element of the political finance regime that needs to be transparent is that coverage is balanced, free and independent. We need to look at media ownership and the way it influences representation of politics.

Finally, and this where we hope we have made a great contribution to the standards debate, is civil society contribution, both in advocacy and monitoring roles. We should be calling for probity and transparency of political finance, we should also be exercising our capacity to monitor this, because we have been given access to information, because society is provided information about political finance and there needs to be strong legal provision for this role so that it is not just left up to government but that there is public capacity to watch these processes.

Going back to the third standard on enforcement, I refer to some of the questions that

Keith Ewing raised a few years ago when he wrote for us on this issue of standards. He said, "Without an independent regulatory body with strong powers and a proper budget to monitor standards, backed by sanctions, the utility of standards becomes dubious". "In many countries of the world there is no tradition of an independent judiciary". That shouldn't be the case here, but we need to think about how independent the judiciary is. "In others the regimes in which the law enforcement agencies are part of the problem of corruption," I think that this might possibly apply here. "How realistic is it to look for genuinely independent electoral commissions in these regimes" Keith Ewing asks? These are questions to ask as we move forward. We need also to question what kind of awareness we need to create to ensure that extant rules actually work. How can we make the system make better where there are rules but they are broken. We want to create an environment through our work where compliance is not just minimal. After all minimal compliance led to soft money in the US. We want to move the bar up, create an atmosphere of probity. Our challenge as TI is to work globally, and to look at how to push these rules at national level.

I want to end with a question. What would happen if the TI chapter in your country lobbied your government and said "these are the kinds of standards we want to adopt"? What kind of support would we get? Where would support come from? What should we be doing to make the standards a vibrant part of your work?