

Briefing on Reform of Political Party Financing, Czech Republic¹

Money in politics is a matter of topical interest—globally² as much as at the national and EU level. While the EU is currently preparing new regulations on campaign funding and supervision to guide the 2019 elections; a lot remains to be achieved at national levels, too.

The Czech Republic is one of the few member states which has not carried out a reform of political party financing to date, despite repeated criticism by GRECO. Most recently, in its Second Interim Compliance Report³, GRECO concludes that the country's level of compliance remains—for the third time since 2011—“globally unsatisfactory”, with none of the nine previously issued recommendations being implemented. The Czech Republic is to provide a report regarding the action taken to implement the pending recommendations by September 30, 2015.⁴ As this briefing shows, little tangible progress has been made so far. The Czech authorities must therefore accelerate the legislative process in order for the new regulations to become effective before the 2017 elections.

Summary and main recommendations

On July 29, 2015, the Government of the Czech Republic passed draft amendments to the Assembly in Political Parties and Movements Act No. 424/1991 Coll. (Submission Number MV-76110-15/LG-2014), and accompanying amendments of the electoral laws (“Election Code”). After a 7-month period of drafting and re-drafting, the amending bill of Act 424/1991 Coll. and electoral laws was thus finally green-lighted by the Czech Coalition Government and passed onto the Chamber of Deputies, where the next stage in the adoption process will take place. The current draft promises to be a significant step towards more transparency in political financing in the Czech Republic; despite its existing weaknesses, which are discussed in more detail further on.

The draft amendment to a large extent implements the recommendations of GRECO as well as those of the Czech anti-corruption NGO coalition Reconstruction of the State⁵. We particularly

¹ The briefing is current as of September 29, 2015 and has been prepared in response to the current draft reform of the Assembly in Political Parties and Movements Act No. 424/1991 Coll., and on amendments of other electoral laws (“Election Code”), prepared by the Czech government. In our assessment of the drafts presented in this briefing note, we draw on our own research and analysis while also referring to GRECO's recommendations and other member states' experience with political party financing reforms.

² Refer, for example, to the recent Global Conference on Money in Politics that took place in Mexico City, September 3–5, 2015: <http://www.moneyinpolitics.info/>.

³ Published on February 5, 2015. Available at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282014%2928_2nd_Interim_CzechRep_EN.pdf.

⁴ Note that GRECO already terminated the 3rd Evaluation Procedure in the neighboring Poland and Slovakia. The Czech regulation of political party financing thus remains the weakest in the region, despite the fact that the costs of running election campaigns and political parties in the Czech Republic are substantially higher than in Poland and Slovakia (see our analysis here: <http://rekonstrukcestatu.cz/publikace/the-funding-and-oversight-of-political-parties-and-election-campaigns-in-east-central-europe.pdf>).

⁵ A coalition of 18 anti-corruption NGOs and other partners aiming at the adoption of nine key anti-corruption laws. For more information see www.rekonstrukcestatu.cz/en. Frank Bold, author of this briefing, is an initiator and a main coordinator of the coalition.

commend the introduction of an independent supervisory body in the new draft bill and the effort to make bank accounts of political parties open for continuous public inspection. However, there are several controversial parts contained in the current text, such as the lack of regulation and oversight of non-party actors and insufficient sanctions for violating the campaign and other rules. Therefore, we call on the Members of the Parliament to open a discussion about these issues during the parliamentary stage of the adoption of the bill and, if possible, redraft the text so it would raise the overall quality level of the reform and the chances of its ultimate success.

In order to fulfill GRECO's recommendations, using experience and examples of good practice from other member states, we strongly recommend that the Czech Parliament improve the current draft by:

- **ensuring sufficient regulation of non-party actors** participating in election campaigns, particularly applying the same rules as there are for political parties and movements to companies owned by the parties;
- **removing the controversial establishment of political foundations** from the bill, or adopting measures that will ensure their independence from the political parties;
- **increasing financial sanctions** for violating campaign and other rules;
- and—**immediately speeding up the process of adopting the reform** so that the bill is passed by both chambers of the Parliament by June 2016 at the latest and the new provisions are fully implemented before the next elections.

Transparency of political funding

The draft introduces separate transparent bank accounts for all campaign incomes and expenditures⁶; makes it mandatory for all financial transfers of political parties and movements above the sum of CZK 5,000 to be cashless; requires that all non-financial donations and their usual market price be disclosed in the annual financial report; and that all financial reports are publicly accessible online. Furthermore, according to the draft, all campaign materials must visibly show the logo, brand, or name of the beneficiary of the material, and carry information on its provider. To strengthen the independence of the auditors, the draft stipulates that political parties are to be audited by one company for no more than 5 years in a row.

However, one of the major problems with the current draft of the bill is that non-party actors that participate in election campaigns are insufficiently regulated. Subsequently, there exists a real danger that while political parties will be regulated and the amount of their campaign spending strictly limited, political campaigning will be carried out on behalf of political parties by other, non-party actors. For this reason, we also feel ambivalent about the introduction of campaign spending caps—a measure which has not proven particularly effective in other member states. In fact, the combination of spending caps together with insufficient regulation of non-party actors often leads to a situation, where rules are habitually circumvented by conducting election campaigns via informally or formally affiliated civic associations or “service companies”.

⁶ With the exception of operations related to membership fees and salaries of party employees. For more details and our recommendations, see below.

In addition to the insufficient regulation of companies and cooperatives owned by political parties, the draft bill further contains a controversial article (Art 17(4)) establishing political foundations. We do not recommend and have repeatedly warned the government representatives against the establishment of political foundations as it is introduced in the current draft of the bill. The foundations are modelled after the German example and are to carry out educational and promotional activities related to the improvement of democracy, civil society, civic engagement, political culture, and international cooperation. However, we believe that the vague definition of educational activities in the bill together with weak requirements for control over the political foundations' financial dealings will lead to hidden, unrestricted campaigning by the foundations on behalf of political parties. We therefore recommend either removing the establishment of political foundations from the bill or introducing the following conditions on their activities: (a) members of statutory organs of political parties are prohibited from holding any position in statutory organs of political foundations; and (b) the range of permitted types of donors to political foundations will be the same as the range of permitted types of donors to political parties.⁷

GRECO recommends:

- *to take measures to ensure that donations by party members are adequately reflected in the financial reports of political parties and movements (recommendation i);*

Not implemented. The draft bill introduces transparent bank accounts for all banking operations with the exception of operations related to membership fees and salaries of party employees. Therefore, the amount of membership fees paid by individual party members will be exempt from public oversight.

The Reconstruction of the State coalition recommends removing these exceptions from the bill and introducing a system of identification numbers for each party member and party employee, which would allow for their presence in the transparent banking operations while fulfilling the legal requirement for privacy at the same time.

- *to establish precise rules for the valuation and reporting of in kind donations, including loans (whenever their terms or conditions deviate from customary market conditions or they are cancelled) and other goods and services (other than voluntary work by non-professionals) provided below market value (recommendation ii);*

Implemented.

- *to seek ways to consolidate the books and accounts of political parties and movements to include the accounts of entities related, directly or indirectly, to a political party or movement or otherwise under its control (recommendation iii);*

Partially implemented. The draft bill newly requires political parties to submit as a part of their annual financial report a list of companies and cooperatives in which they are shareholders, together with the total annual profit derived from these companies and cooperatives. The companies and cooperatives are, however, still exempt from transparent accounting, the oversight of the independent supervisory body, as well as the rules on donations, in kind donations and loans that apply to political parties.

⁷ In its current form, the bill allows political foundations to accept donations from donors that are specifically prohibited to donate to political parties and movements.

To fully implement the GRECO's recommendations, we therefore recommend that all companies which are partially or fully owned by political parties are required to (a) submit annual financial reports parallel to those submitted by political parties themselves; (b) have all financial dealings and economic activities subject to the same rules of audits as are political parties; and (c) be subject to control by the new supervisory body that oversees political parties, political foundations and the conduct of elections campaigns.

- *to ensure that the financial reports of political parties and movements are published in a way that provides for easy access by the public (recommendation iv);*

Implemented.

- *to require (i) more detailed disclosure of campaign expenditure in the annual financial reports and (ii) more frequent reporting on and disclosure of donations above a certain value received by political parties and movements, in connection with election campaigns (recommendation v);*

Implemented.⁸

- *to subject, to the greatest extent possible, election candidates campaigning separately from political parties/movements to transparency standards, which are comparable to those applying to the political parties/movements themselves (recommendation vi);*

Implemented.

- *to consider taking further measures to strengthen the independence of auditors who are to certify the accounts of parties and movements (recommendation vii);*

Partially implemented. The new draft bill requires that political parties are to be audited by one auditing company for no more than 5 years in a row. Political parties, however, are free to choose any auditor they wish, including those with controversial history or personal ties to politicians.

Supervision

According to the draft bill, a new independent supervisory body will oversee the financial dealings of political parties and the conduct of election campaigns, and will have the tools for proactive supervision.

GRECO recommends:

- *to (i) ensure that an independent mechanism is in place for the monitoring of the funding of political parties/movements and election campaigns (including those of candidates), in line with Article 14 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) provide this mechanism with the mandate, the authority, as well as adequate resources to effectively and proactively supervise*

⁸ It is, however, important to note that the new "Election Code" as proposed by the Government of the Czech Republic does not in any way change the conduct of elections to local councils (municipal elections). This concerns also the elections to the Prague City Assembly and the financing of its campaigns, which will consequently remain non-transparent and below the standards of, for instance, elections to regional councils.

the funding of political parties/movements and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions, and (iii) establish a clear process for the submission (and subsequent) investigation of citizens' and media complaints as regards the funding of political parties/movements and election campaigns (recommendation viii);

Partially implemented.

To ensure that the new supervisory body will achieve real independency on political parties, we further recommend that the mandate of the chairperson of the supervisory body is limited to one non-renewable term, instead of the currently proposed two terms. The length of the term may be extended to 7 years. To ensure impartiality of the members of the management of the new supervisory body, we recommend extending the requirement of not being a member or an employee of a political party or a member of a representative body from the currently proposed 3 to 5 years and more.

Sanctions

Insufficient financial sanctions for violating campaign and other rules constitute one of the major drawbacks of the current draft of the bill. With very low financial sanctions, it may be advantageous for the beneficiary of a political advertisement *not* to disclose their logo or ID on the advertisement. The maximum financial penalty proposed in the bill for non-disclosure of such information is 100,000 CZK (approx. €3,700), which amounts to 0.11 per cent of the largest campaign spending cap. Similarly, the maximum penalty for failing to open a transparent bank account or to return a donation from a non-permissible donor is 200,000 CZK (approx. €7,400), i.e., 0.01 per cent of a large party's annual budget. Such low sanctions may seriously reduce the chances that the political parties will follow the rules and regulations stipulated by the draft bill.

GRECO recommends:

- *to (i) introduce appropriate (flexible) sanctions for all infractions of the Political Parties Law, in addition to the current range of sanctions and (ii) provide for the possibility to impose sanctions for violations of Law No. 424/1991 Coll. on the Association in Political Parties and Movements on candidates on an electoral list (recommendation ix).*

Not implemented.

References

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Background

Frank Bold is a European public-interest law organization and a purpose-driven law firm using the power of business and non-profit approaches to solve social and environmental problems. We have four offices in the Czech Republic as well as offices in Krakow, Poland and Brussels, Belgium. At the EU-level, we are a steering group member of the European Coalition for Corporate Justice, which promotes corporate responsibility within the EU; a member of ALTER-EU, promoting lobby transparency across Europe; and a founding member of the Justice & Environment network. In the Czech Republic, Frank Bold is a main coordinator and a steering committee member of the anti-corruption NGO coalition Reconstruction of the State.

Reconstruction of the State is a joint national programme of Czech anti-corruption organizations, politicians, independent experts, business partners, and active citizens, aiming at the adoption of transparency and anti-corruption legislation. Reform of political party financing is one of the nine issues the initiative monitors and advocates. More information is available upon request and at www.rekonstrukcestatu.cz/en.



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