

## POLICY AND GOVERNANCE

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hallenges to political  
financing regulation:  
Sound external  
monitoring/enforcement  
and sensible internal  
party accountability

Luís de Sousa

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### **Abstract**

In recent years, governments and legislatures have made an unprecedented effort to improve regulatory systems of political financing which had been perceived by many as fraught with corruption. Some countries have been more sensitive to the problem than others given the nature and extent of occurrences, but the successive waves of reform show how difficult it has been for the political class to arrive at an adequate control response. The reform panorama of the 1990s has been characterised by incremental, short-lived and non-comprehensive articulation of control instruments and monitoring/enforcement shortcomings. The general regulatory context was one of reforming to address scandal and an increasingly discontented public opinion towards parties and their representatives. Despite different national responses and understandings of the major issues of concern, there has equally been a convergence of the type of measures adopted and an increasing cross-country transfer of knowledge about the panoply of instruments available. What this paper will argue, however, is that “similarities” concern more the form rather than the substance of control. The transfer of regulatory instruments has taken place faster than the expected convergence of standards of conduct. Drawing from different regulatory experiences, the article deals with a series of interrelated issues of political financing regulation: liberal versus regulatory approaches to political financing; public versus private modes of political financing; balancing revenue and expenditure; rules of publicity and publication of accounts; making parties accountable internally and externally to monitoring bodies; matching penalties to offences. The aim is to provide a general reflection of the general features of the law and practice of political finance as a preliminary step towards more general conclusions about the challenges facing political financing regulation today. In short, the article attempts to address two overarching questions: Do laws on political financing suffice to constrain party related illegality? Why certain countries do better than others in face of the degree of cross-country transfer of knowledge and regulatory innovation achieved in recent years?

**CHALLENGES TO POLITICAL FINANCING REGULATION:  
SOUND EXTERNAL MONITORING/ENFORCEMENT AND SENSIBLE  
INTERNAL PARTY ACCOUNTABILITY**

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# CHALLENGES TO POLITICAL FINANCING REGULATION: SOUND EXTERNAL MONITORING/ENFORCEMENT AND SENSIBLE INTERNAL PARTY ACCOUNTABILITY

## 1. Introduction

In recent years, governments and legislatures have made an unprecedented effort to improve regulatory systems of political financing which had been perceived by many as fraught with corruption. The list of corrupt practices associated to party and election financing experienced in many countries is widely known to decision-makers and the public at large: favouritism and malpractice in public procurement, distortion of privatisation processes, selective licensing, creation of slush funds in state-owned enterprises and public institutes, abuse of public resources for campaigning, false invoicing to uncover corporate donations, etc.

In Europe, countries like France and Italy have been more sensitive to the problem given the nature and extent of occurrences, but the successive waves of reform show how difficult it has been for the political class to arrive at an adequate control response. Portugal also displays a rather cumbersome reform of political financing regulation, characterised by various incremental changes to the control framework as an attempt to anticipate the worst – i.e. massive scandal and its negative repercussions on the social and institutional tissue. British public opinion, traditionally less sensitive towards political financing issues,<sup>1</sup> could no longer ignore growing public concern about the dubious financial activities and sources of their parties and candidates and to meet the needs of modern democracy by setting national regulation in line with best practice in other neighbouring countries.

In Latin America, the reform panorama of the 1990s has not been substantially different: incremental, short-lived and non-comprehensive articulation of control instruments with similar monitoring and enforcement shortcomings faced by the majority of European countries. The general regulatory context was one of reforming to address scandal and an increasingly discontented public opinion towards parties and, more specifically, their growing unethical reputation, thus forsaking

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<sup>1</sup> The British public has traditionally been indifferent to the threat certain practices of financing of parties or electoral campaigns at the national level represented to standards in public life. This had partly to do with the degree of confidence in standing regulatory frameworks and the absence of major corruption or financial impropriety scandals in this domain. In a survey published by the 1976 *Houghton Report* on party financing, half of the respondents could not think of any problems facing parties (*Houghton Report* 1976, 44). By the 1990s, however, public attitudes towards party financing gradually stiffened, if only as consequence of the issues of contention raised during the successive tentative regulatory efforts and the outbreak of one or two major cases of impropriety relating to campaign financing of the two major parties or their candidates: the sponsoring of Tory candidates by Asil Nadir and Al Fayed and the £1 million donation by the formula one tycoon Bernie Ecclestone to the Labour party during the 1997 elections. A survey conducted by MORI on April 1997 showed that the vast majority of the electorate (71%) agreed that political parties should be required to “publish the identity of those who make large financial donations”.

attempts at introducing certain regulatory measures, such as the introduction of public funding. This hostile trend has prevailed until today<sup>2</sup> and has proved a fertile ground for populist movements and leaders to launch their assault on representative democracy.

Countries have resorted to different strategies and instruments to control corruption deriving from political financing. Their adoption was product of both specific patterns of legal development as well as reactions to emerging challenges. Each case is, in that respect, *sui generis*. Some countries have gradually moved towards the separation of candidates and parties from business money influence, whereas others have continued to display a more liberal conception towards corporate donations. Variations on political financing regulation do not stop at the adoption of public-private modes of funding. A web of interconnected instruments have been put in place, ranging from ceilings to electoral spending, disclosure and monitoring/auditing procedures, sanctions of various sorts. There are important differences which need to be accounted for in terms of the controls adopted, the way these have been framed and how successful or not they have been in shaping the financial conduct of parties and candidates and the dominant attitudes towards illicit party financing in any given society.

However, despite different national responses and understandings of the major issues of concern, there has equally been a convergence of the type of measures adopted and an increasing cross-country transfer of knowledge about the panoply of instruments available. This is not surprising. National legislators and monitoring/enforcement bodies are confronted with similar practices and regulatory problems across different political systems. The knowledge about successes and failures of foreign regulatory experiences and the importation of instruments “experimented” abroad is an important feature of this normative/regulatory process, thus explaining a series of cross-national similarities. What this paper will argue, however, is that “similarities” concern more the form rather than the substance of control. The transfer of regulatory instruments has taken place faster than the expected convergence of standards of conduct, i.e. the impact regulations have in disciplining the financial needs and conducts of parties and candidates and safeguard the underlying principles at stake.<sup>3</sup>

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<sup>2</sup> In July 2002, the Voice of the People survey, a general household survey conducted by Gallup International, included a series of questions on behalf of Transparency International, specifically the TI Global Corruption Barometer survey. Out of the 44 countries surveyed, 33 replied that political parties to be the institution from which citizens would most like to eliminate corruption. Argentina was one of the two countries where such a preference was expressed more vehemently (58.2%).

(Source: [http://www.transparency.org/surveys/barometer/dnld/barometer2003\\_release.en.pdf](http://www.transparency.org/surveys/barometer/dnld/barometer2003_release.en.pdf))

<sup>3</sup> Although these principles have been operationalised differently by national regulatory frameworks, suggesting that their interpretation and revision is always subject to particular tensions and value conflicts, it is still possible to grasp their essence (De Sousa 2004, 143):

- *fairness*, political financing regulation is meant to create the necessary conditions, means and processes for new political formations to emerge and manifest their ideas and to enable all parties to perform effectively their representative/parliamentary duties regardless of their size, age or ideological preferences;

Confucius once wrote that there are three ways through which decision-makers can learn how to address a problem: by reflection, which is noblest; by imitation, which is easiest; by experience, which is the bitterest. In what concerns political financing reforms, there has always been a mixture of the three. The way political financing regulatory traditions have evolved depends on three interrelated policy learning methods: the capacity of legislators in bringing a comprehensive vision of the problem of political financing specific to their own political system and devising new instruments (*knowledge by reflection*); the capacity of legislators in making use of various instruments available and experimented in other legal-cultural contexts (*mimetic knowledge*); the capacity of legislators in learning how to respond to scandal and to address political financing issues in a scandalous context (*knowledge by experience*).

Political financing regulation sets a series of rules and principles to the financial activities of parties and candidates. The immediate question is what can be learnt about ethics in political life by looking comparatively at the way political financing regulatory experiences have evolved across countries? Drawing mainly from the European and Latin American regulatory experiences, the article deals with a series of interrelated issues of political financing regulation: *liberal versus regulatory approaches to political financing; public versus private modes of political financing; balancing revenue and expenditure; rules of publicity and publication of accounts; making parties accountable internally and externally to monitoring bodies; matching penalties to offences*. The aim is to provide a general reflection of the general features of the law and practice of political finance as a preliminary step towards more general conclusions about the challenges facing political financing regulation today. In short, the article attempts to address two overarching questions: *Do laws on political financing suffice to constrain party related illegality? Why certain countries do better than others in face of the degree of cross-country transfer of knowledge and regulatory innovation achieved in recent years?*

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- *transparency*, political financing regulation is meant to ensure clear and comprehensive disclosure of all financial transactions – revenue and expenditure – carried out by parties, their leaders and candidates and to make those accounts available for public consultation. Parties should enable citizens to see through their financial activities at all times and to resolve without delay any situation susceptible of creating public suspicion;
  - *accountability*, political financing regulation is meant to set clear rules on the preparation/presentation of party accounts; to put in place effective and impartial monitoring mechanisms trusted with the regular and effective auditing of party accounts and financial activities; to encourage parties to foster internal financial responsibility and to make their leaders and candidates answerable for their misconduct before their militants and the public at large. Parties must submit themselves to whatever scrutiny is appropriate to their activities;
  - *integrity*, political financing regulation is meant to impose financial standards to parties, their leaders and candidates by precluding and sanctioning any situation in which they place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their representative duties.

## 2. Liberal versus regulatory approaches to political financing

The first issue that has often preceded all considerations on what instruments to adopt and has constituted an important element in the various debates that took place is whether regulating party activities, especially their financing, matters to ethics in political life. For a long period of time, parties have operated, without being subject to any sort of political financing regulation. Is there a need for party and election financing regulation in order to safeguard the principles of fairness, transparency, accountability and integrity at stake? And, if so, is it not contrary to other principles fundamental to party life, such as freedom of association and voluntarism?

Two concurrent traditions have been at the heart of debates about party financing regulatory efforts. There is a *liberal tradition* arguing that parties are essentially civil society born spontaneously from the mobilisation of common interests, feelings, hopes, ideologies, political projects. For this tradition, non-intervention and non-interference with party affairs remained as the core principles of the relationship between parties, society and the State. These principles could be formally guaranteed by the Constitution and/or by a special party law, as in the majority of European and Latin American democracies or simply remain a convention, as in the case of Britain,<sup>4</sup> most Scandinavian countries and Switzerland.

The liberal tradition believes parties should be able to set standards of probity to its members and that their behaviour in political society is constrained by commonly accepted rules of the game. Custom and tradition offer the framework in which parties are born, grow and are extinguished politically. Financial matters were also determined and controlled by these conventional rules, but it is equally true that the liberal tradition has never paid too much attention to the perverse implications of the role money played in political competition and in a party's life.

The *regulatory tradition* has developed in response to the problems raised by the liberal model. The first rules setting some financial standards during campaigns and prohibiting certain practices/conducts during elections go back to the 19<sup>th</sup> century. These rules were primarily concerned with candidates and the constituency level. The regulation on political financing, however, is a more recent effort to address through the passing of legislation with emerging cases of impropriety and corruption relating to party life. The focus moved from local to multiple elections and from candidates to parties.

Financing is not the only issue relating to party life subject to regulation. In some cases, the internal democratic organisation of parties, symbols and ideologies used, and rules of membership and voice, are also addressed by law. The regulatory approach perceives parties as centrepieces to

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<sup>4</sup> In Britain, the existence/functioning of parties has never been formally recognised, yet this has not impeded them from becoming fully-fledged territorial mass representation organisations and playing a crucial constitutional role.

democratic life and expects them to act and behave in accordance to its founding principles, in terms of their internal organisation and functioning, vis-à-vis other parties/movements (especially during elections) and in relation to public entities and private interests in society. This means that the State should lay down to all parties some basic rules governing their organisation, activity and interaction. Controls to the way parties are financed and spend their money are put in place so to enhance and safeguard the principles of fairness/equality, transparency, accountability and integrity in democratic life. Party financing regulation is not meant to be an obstacle to the aforementioned principles of freedom of association and voluntarism. It is essentially an attempt to fill in the gap left by the absence of collective ethical standards amongst parties and prevent certain manifestation from becoming pervasive and discredit their role and legitimacy in political society.

It is difficult to ascertain whether there is more party related corruption under the present regulatory regimes than there was a century ago and this is often an argument raised by those who believe that regulation has gone too far with little results. British parties have performed hitherto without any sort of party financing regulation, except that applying during electoral periods at the constituency level. The same is valid for Sweden (and most Scandinavian countries to that regards), which has operated throughout the years without any sort of regulation other than a few general principles on transparency of party accounts.<sup>5</sup> Yet, Britain and Sweden are often considered as having experienced less party-related corruption than Italy, France or Portugal during the last two decades. The alleged success of the British or Swedish unregulated regime is not an indisputable fact, since party financing remained for so long a peripheral issue to the media or a taboo in the public debate even in those countries. Most claims and debates raised about the (in)efficacy of the law in addressing party related corruption and impropriety are in themselves a by-product of the visibility brought about by regulation.

What we do know is that consolidated European democracies with old institutionalised parties and low levels of corruption, such as Britain, Switzerland and the Scandinavian countries, have been more reluctant to move from a liberal, voluntary regime to a regulated one than new consolidating democracies with fragile parties and likelier to be more exposed to electoral fraud and/or party-related corruption. Since the early days, new democracies saw some basic political financing rules imprinted into their constitutions and electoral/party laws.<sup>6</sup> Only recently, has

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<sup>5</sup> In practice, political parties represented in the Swedish parliament have since the 1950s respected a mutual agreement to openly share their financial information, but the practice has never been passed into law. Voters have access to party accounts, but there is no monitoring and enforcement body, rules of disclosure of donations, ceiling on contributions and expenditure, etc...

<sup>6</sup> Parties were regarded as quintessential to democracy. However, more often than, these countries lacked a strong tradition of party democracy and could only relate to some vague party examples and ephemeral democratic experiences in the past. For that reason, constitution-makers have tried to protect political parties from the outset by creating an appropriate legal context in which they could perform their most important activity (i.e. running for elections) whilst respecting a key number of principles (fairness, parity of candidatures, respect for minority ideas,



Britain moved from informal rules and conventions to a statutory regime (2000)<sup>7</sup> in response to growing public concern about the threat certain forms of party financing represented to standards of probity in public life. In Sweden, the traditional voluntary publication of party accounts has always overlooked some areas or dimensions of control, for instance, local elections. On March 2004, a report was presented to the Swedish government advocating the need to adopt a regulatory framework, which is now considering framing some of the report proposals into law in time for the 2006 general elections.

Regulation is not and has never been a sufficient condition for “good” behaviour. The success of political financing regulation depends instead upon the way its underpinning principles have been safeguarded and/or enhanced by the controls put in place and how the public has taken part in scrutinising its application and observance. Balancing incentives and costs to political actors adds to efficiency, but is not a sufficient condition to ensure proper conduct and make legal frameworks workable. Political commitment to the contents and principles underpinning political financing regulation and the pressure put from actors outside the legislative process (such as the media, NGOs, civil society manifestations) are also fundamental ingredients towards an effective control framework. The efficacy of party financing regulations, their failure and reform, are as much to do with the technical weakness of the legal/formal provisions (deliberate or circumstantial) as with political commitment to ensure their viability and the public’s scrutiny of their application.

The weakness of the regulatory approach is its incapacity to control *all* opportunity structures for illicit behaviour related to political financing. The regulatory approach is always a limited solution to an imperfect and complex reality. Regulating party financing is not the panacea to ethical standards in political life, but it has the advantage of helping to build a relationship of transparency and trust between the representatives and the represented. Similar to arms control, no one can seriously believe that a multilateral agreement on nuclear non-proliferation, setting some basic monitoring rules and bodies, can really ensure citizens that a given country will be precluded from becoming a nuclear power or will refrain from using its nuclear arsenal. Nonetheless, for the majority of citizens, these control efforts are an ingredient of security and trust, even if, ideally, they would like to live in a world free of nuclear weapons (or any weaponry for that matter). It helps them to get on with their lives normally without having to fear every second that a nuclear assault could be inflicted upon them.

The regulatory approach has always countered two extreme views, which tend to obstruct its effective application:

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etc...). Nevertheless, electoral legality and litigation stood a priority in relation to financing issues to these new democracies.

<sup>7</sup> The 2000 *Political Parties, Elections and Referendums Act* (hereafter PPER Act 2000).

- *defeatism* – saying that the existence or not of party financing regulation is indifferent to the ethical behaviour of parties and candidates in political life, given that, more often than not, such rules are disregarded or even built in such a way as to jeopardise their effective application and enforcement, is the same as saying that there should be no law since it frequently gets violated. The ultimate value of party financing regulation cannot be assessed solely through “a half-empty glass” perspective of its application;
- and *complacency* – the belief that any regulation is better than no regulation has equally been an obstacle to the improvement of controls and, more importantly, the move from an incremental to a comprehensive vision of party financing regulation. Complacency has often turned into inaction and, in some cases, into impunity. A “half-full glass” perspective of the application of party financing regulation can equally be an obstacle to its improvement.

To conclude the argument, the advantage of having in place a political financing regulation is that rules and principles governing the financial activities of parties and candidates are made clear to all players and the public at large. Different candidates and parties have different understandings of what fairness, transparency, accountability or integrity mean. For that reason, it is necessary to agree on a set of legal parameters to the interpretation of those standards. Despite any reasonable relativist criticism on the cultural looseness of ethical standards and scepticism on the enforcement of “ethics laws” in political life, a comprehensive legal framework is still the most appropriate way for communicating the minimum obligatory standards of conduct to any candidate or party running for office. Laws and regulations must state what are the fundamental values expected from the addressees and put in place a workable framework for guidance, monitoring, inquiry, and sanctioning.

### 2.1. *No longer a national business: international pressure for standardisation*

Today, the regulatory approach stands victorious. Most European and Latin American democracies now display a regulatory framework for political financing (Table 1):

**Table 1. Is there a system of regulation for the financing of political parties?**

	<b>Europe (EU plus accession countries)<sup>8</sup></b>	<b>Latin America (Parlatino democracies)</b>
<b>Yes</b>	Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, <sup>9</sup> The Netherlands, Poland, Portugal, Romania, Spain, Slovakia, Slovenia, United Kingdom	Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Venezuela <sup>10</sup>

<sup>8</sup> Other Scandinavian democracies such as Iceland and Norway do not have a system of political financing regulation. Switzerland has no national regulation, but allows each Canton to develop its own rules.

<sup>9</sup> Introduced in 1999 only.

<sup>10</sup> Under review.

No	Cyprus (?), Latvia (?), Malta (?), Sweden	Aruba (?), Netherlands Antilles (?), El Salvador, <sup>11</sup> Suriname (?), Uruguay <sup>12</sup>
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Source: Karl-Heinz Nassmacher et al. (2003) *Funding of Political Parties and Elections Campaigns*. Stockholm: International IDEA Handbook Series; USAID/Office of Democracy and Governance (2003) *Money in Politics Handbook: a guide to increasing transparency in emerging democracies*. Washington: USAID Technical Publication Series; Open Society Institute (2002) *EU Accession Monitoring Program (EUMAP): Corruption and Anti-corruption Policy* (<http://www.eumap.org/reports/2002/corruption/>).

To this general trend towards regulation contributed both internal dynamics as well as external pressure. As mentioned above, although regulations are shaped by national legal traditions and reactions to specific challenges, the law-making process of political financing regulations, or any ethics law to that matter, is no longer solely confined to national understandings of the problems and principles at stake. International governmental organizations (IGOs),<sup>13</sup> foreign donor agencies,<sup>14</sup> or international non-governmental organizations (INGOs)<sup>15</sup> have contributed to the broader regulatory debate and paved the way to a cross-country transfer of knowledge on the various options available and their shortcomings.

Although there are no universal standards on political financing – there is no such thing as an international convention banning corporate donations or setting general regulatory guidelines (Ewing 2001) – there is, nevertheless, a great deal of institutional consensus on the dimensions of control that need to be addressed. Out of this single-tone voice, expressed in expert reports, recommendations and general statements derives a standardised set of instruments and principles, which have been taken into consideration, transposed or simply copied by national governments and legislatures when introducing or reviewing their legal frameworks (Table 2).

International actors and fora have been successful in raising awareness about party financing practices, fostering the transfer of knowledge on the general format of legislations and highlighting best practices through comparability of results achieved; but have been less successful in going beyond the law into the sociological and organisational reasons for expensive campaigning and party-related corruption. Issues such as guidance and training of party officials, modes of selection

<sup>11</sup> Article 210 of the Constitution establishes the provision of public funding (“Political Debt”). Rules of disbursement/distribution are regulated under the Electoral Code. There are no barriers to access funding, no disclosure requirements on donations, no limits on expenditure, and no publication and publicity of accounts.

<sup>12</sup> No system of regulation. Prior to every election, Congress passes a public funding law on electoral expenditure, which also states distributive rules and procedures by means of the Central Bank.

<sup>13</sup> Such as the World Bank (<http://www.worldbank.org/>); the OECD (<http://www.oecd.org/home/>); the Council of Europe (<http://www.coe.int/DefaultEN.asp>); and IDEA (<http://www.idea.int/>)

<sup>14</sup> For instance, the US Agency for International Development (USAID): <http://www.usaid.gov/>

<sup>15</sup> Such as The Centre for Free Election and Democracy in Belgrade, which has produced a model law (<http://www.cesid.org/english/index.thtml>) or TI – Transparency International (<http://www.transparency.org/>). In the early days of TI, reducing political corruption was secondary to administrative corruption and bribery in international business transactions. Today, reducing corruption in politics is one of the four *Key Global Priorities* of this INGO. However, apart from a short *Statement on Political Corruption* following the TI Western Europe group meeting in Athens (13-15 September 2002) and a few references in its *Sourcebook*, TI has not yet published any regulatory guidelines or principles on political financing regulation. Most TI references to this theme relate both to activities developed by some National Chapters and articles by individual authors (case studies and/or entries to the *Global Corruption Report*). For a more detailed account of TI agenda on political financing, refer to Council of Europe report, available online:

[http://www.coe.int/t/e/integrated\\_projects/democracy/02\\_Activities/08\\_Political\\_parties/04IP1\(2002\)28\\_report.asp#ToPOfPage](http://www.coe.int/t/e/integrated_projects/democracy/02_Activities/08_Political_parties/04IP1(2002)28_report.asp#ToPOfPage)

of candidates, internal party governance and accountability, which have clear implications to the effectiveness of monitoring and enforcement of political financing regulations, have had less attention.

The role of international actors goes beyond indirect pressure or influence through awareness-raising, transfer of knowledge and passive “best practice” recommendations. Pressure has taken a new persuasive form with direct implications to the ongoing processes of democratic consolidation (Krastev 2004). Although IGOs have always been cautious in prescribing uniform recipes, INGOs, such as TI<sup>16</sup> have put pressure on donor agencies to include political financing regulations on their agenda as part of the national anti-corruption strategies, which recipient democracies “are invited” (read persuaded) to fulfil in order to qualify for aid or other financial programmes. For the first time, ethics laws, such as political financing regulations are being considered as part of the general reform criteria associated with aid allocation or borrowing conditionality. Although this pressure has been more constraining and stressful to transition and consolidating democracies,<sup>17</sup> old democracies have not been completely impermeable to the effects of this “moral imperative of standardisation”.<sup>18</sup> The pressure, however, was not financial, but of a symbolic nature. The decision of the Swedish government to consider the adoption of a regulatory framework for political financing came also as a result of the measure being recently put in place by other 14 EU member-states. “Best practice” is a strong means of standardisation in the context of European integration: no member-state wishes to be labelled the odd-one out unless their institutional specificity proves to be more successful and demanding than the effort of adjusting to

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<sup>16</sup> ‘The establishment of political corruption on the donor agenda. International financial institutions and bilateral donor agencies must consider more carefully political corruption in countries to which they lend or grant money, yet establish sensitive evaluation criteria regarding corruption levels [...] Recipients of international aid need incentives to improve their records on transparency and enforcement of political finance rules, conflict of interest legislation and the granting of immunity (Robin Hoodess in *Global Corruption Report 2004*, 17). TI has been particularly active in advocating for this donor conditionality. TI departs from the untested presumption that consolidated democracies have suffered less party-related corruption than consolidating ones (Marcin Walecki in *Global Corruption Report 2004*, 23) because they had in place political financing regulations, something that is not necessarily corroborated by evidence (it suffices to look at the political financing scandals in the US, France, Italy, Germany, Japan where these rules and regulations were in place and yet produced little results).

<sup>17</sup> This conditionality raises unnecessary stresses to already fragile democratic regimes. To mention a few: it makes new governments operate under unsustainable expectations and in a context where morality in politics precedes and relegates to a secondary level the core economic, social and institutional problems of the country; it feeds anti-democratic feelings and/or populist movements, since the capacity of response of new democratic governments is bound to be frustrated by meagre results; it may lead to abuses of human rights as new governments press down for a unilateral anti-corruption agenda at all costs in order “to keep donor happy”; etc...

<sup>18</sup> The term standardisation is preferred to that of harmonisation or uniformisation, even though the definitional boundaries are thin. Standardisation is here understood as the process of setting general formal standards across different legislative responses, independently of variations on the substance of the law. What distinguishes standardisation from harmonisation is the fact that the first aims at bringing national laws into line with one another, without raising any cross-country mutual advantage or obligation for doing so, except that of achieving and maintaining a certain level of commonality of procedures in the field of political financing. Uniformisation would mean total standardisation both in form and substance, i.e. the suppression of all national regulatory particularities, something that IGOs and INGOs have never advocated.

common standards. In other words, singularity is tolerated if higher than the common dominator adopted by most member states.

Under this general trend towards regulation, lays a multifaceted reality. Having laid down a few basic rules on political financing or a fully-fledge regulatory framework is not the same thing. The following chapters will address the major challenges to political financing regulation, by looking at five dimensions of control: the sources (public versus private modes of political financing); the amounts (balancing revenue and expenditure); transparency (rules of publicity and publication of accounts); the oversight (making parties accountable internally and externally to monitoring bodies); the enforcement (matching penalties to offences).

### **3. Public versus private modes of political financing**

One issue that has dominated most debates and reforms on political financing regulation has to do with the option between public or private modes of funding. Although anonymous donations, personal loans or third party expenditure during campaigns are generally perceived as a means of undue influence in democracy (Heidenheimer & Langdon 1968; Alexander 1984), there has been less consensus regarding corporate donations to parties or candidates.

For a long time, corporate donations were regarded as an important element of interest representation and to no extent perceived as being more threatening to ethical standards in political life than other institutional political contributions from organised interest groups or trade unions. Following some earlier scandals relating to the payment of corporate donations to parties and their senior leaders in exchange of favours (e.g. the Lockheed affair in the mid-1970s),<sup>19</sup> the system of public aid started to consolidate as the only possible solution to corruption related to political financing.

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<sup>19</sup> The Lockheed scandal starts with an investigation launched by the Securities and Exchange Commission (SEC) following the Watergate scandal in the 1970s, in which it was discovered that American companies were resorting to large-scale slush funds to pay bribes and make political donations overseas as a means to secure contracts. According to the SEC report, by 1976 'over 400 American companies eventually admitted to making irregular or questionable payments totalling more than \$300 million' (Cragg and Woof 2002, 105). In February 1976, a Lockheed CEO revealed in a hearing of the Multinational Corporations Subcommittee of the Senate Foreign Relations Committee that the company had paid bribes and political donations to Japanese government officials (from the ruling Liberal-Democrat Party) in return for securing the sale of airplanes to Japanese airlines. The scandal forced the then-prime minister, Tanaka Kakuei, to resign. Japan was one amongst various countries in which Lockheed had secured contracts through bribery and political donations (totalling \$22 million). The case had an impact on US public opinion not only due to the direct negative consequences on the country's foreign policy (i.e. bribing of allied countries and endangering the higher moral ground which the US claimed in relation to the USSR in their *dollar versus rublo* economic persuasion strategy), but also due to the fact that the company had received \$250 million emergency loan guarantee from the US government just before the unveiling of this series of events (Maki Hishikawa "The FCPA: An Outgrowth of Corporate Scandals", Japan Commerce Association of Washington, DC, March 2003. Available on the web: [http://www.dbtrade.com/publications/the\\_fcpa.htm](http://www.dbtrade.com/publications/the_fcpa.htm)).

The reasons for introducing annual public subventions to parties and reimbursements of election expenditure are twofold:

- the need to guarantee money to all political formations in fair/equal terms;
- the perception that the principles of transparency and integrity at the heart of party financing regulation could be better safeguarded and enhanced if company donations are excluded and replaced by public subventions.

### 3.1. *Fairness/equality in electoral competition through the granting of public aid*

Regulation of party financing starts from the assumption that democratic regimes are founded upon a major principle: *equality*. Race, religion, money, all these factors may constitute important social cleavages which will be reflected in one way or another in the way political society is organised and operates. But the overlapping principle of equality remains the cement of a collective imaginary to be realised in society. *Ideal democracy* is based upon the rule “one man, one vote”, which confirms the principle of equality amongst citizens and precludes any selective or distinctive elements, such as money, from becoming requisites to the expression of opinions and beliefs or a guarantee to have access to power (Mény 1993, 72). *Real democracy*, on the other hand, has not entirely eliminated the importance of money in politics. Money is central to political competition. As Rose-Ackerman put it,

‘Elections must be financed and wealthy interests concerned with legislative outcomes and government policy may be willing to foot the bill’ (1999, 133).

The concept of equality in electoral competition is understood by most regulatory frameworks as the need to provide all contenders equal conditions/opportunities to run for office and perform properly their representative function, i.e. *fairness*. The adoption of public aid has gradually been perceived a fairer system of political funding and an important step towards guaranteeing pluralism of opinions, beliefs and interests and the creation of new political formations in political society.

Today, the majority of European and Latin American democracies<sup>20</sup> receive some direct or indirect public support. Direct financial support takes the form of public subventions to parties and campaigns. Indirect public support concerns, for instance, tax incentives, free or discounted use of public facilities for campaigning (poster sites, meeting rooms, or candidate/party campaign offices), free or discounted postage, free or discounted broadcast media.

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<sup>20</sup> ‘Venezuela is the only Latin American country to have revoked public financing of parties. President Hugo Chávez withdrew funding in 1997 to cut down the privileges of what he considered a corrupt political class.’ (Bruno Wilhelm Speck in *Global Corruption Report 2004*, p. 33).

Differences between the two regions result from the nature of the regimes, although they should not be overemphasised. Most European countries are parliamentary democracies, hence party driven, whereas most Latin American democracies (out of the 21 Parlatino democracies, only the two Dutch colonies, Aruba and the Netherlands Antilles plus the ex-Dutch colony, Suriname, display parliamentary regimes) are presidential, hence candidate driven. In Latin American presidential democracies, direct financing is primarily concerned with the distribution of campaigning funds to candidates prior to elections or the reimbursement of their electoral expenses. There is also public aid to parties, but it is often destined to their campaigning activity. In European parliamentary democracies, parties rather than candidates are the key actors of the system of representation. Overall, their organisational structures tend to be more bureaucratised and their activities more diversified and enduring than those of presidential regimes. Public funding to parties is dealt separately from campaign financing, which often takes the form of flat-rate reimbursement of electoral expenses.<sup>21</sup> This means that even unsuccessful parties at the ballot box can receive state aid to perform their daily operational, educational and representative activities other than preparing and running for office. In some parliamentary democracies, small disbursements to parliamentary groups (e.g. the Westminster *Short Money*) are also provided.

In most cases, however, the disparity of resources between parties and/or candidates remains a constant feature of electoral competition, despite the levelling intentions of public funding. To some parties, public aid has become one amongst various resources available and it is not even said to be the most important. Moreover, public funding has not always been introduced in a fair way, that is, with the intent of providing all contenders equal conditions/opportunities to run for office and perform properly their representative function. Major party(ies) in the system have often colluded to introduce rules of allocation of public aid to their advantage, for instance: the introduction of unattainable voting thresholds to qualify for the flat-rate reimbursements of electoral expenses or public subventions, which clearly deprive minor opposition parties from any possibility of long-term growth and survival.

The adoption of public aid may not be the ultimate condition to level out the financial capacities amongst parties and candidates, but at least it has the credit of being a better solution to fairness and parity in political competition than the exclusive reliance on private sources of funding.

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<sup>21</sup> The reimbursement of electoral expenses can be candidate oriented, depending on the electoral system (e.g. FPTP) and type of election (local or presidential in semi-presidential regimes).

### 3.2. *Reducing the likelihood of collusion between public and private interests through company donations*

In principle, the advantage of public funding was that it was perceived ‘an alternative to special interest money that is susceptible to regulation and control’ (Rhodes 1997, 54). Although fairness is better safeguarded by the introduction of public funding, it is difficult to know if it is the ultimate solution for the promotion of financial *transparency* and curtailment of undue money influence in politics, that is, if it will safeguard the *integrity* and *impartiality* of candidates once elected.

The need to control sources of financing results from the concern that certain contributions may influence not only the way parties or candidates place themselves in the competitive electoral game but also their objectivity/impartiality once in office (Rose-Ackerman 1999, 134). The fact that certain individuals, interest groups, lobbyists, companies or even foreign entities make political contributions towards a given party or candidate with the expectation of some sort of payback or input in the legislative and decision-making processes is known to the public at large. Certain contributions, especially those kept secret can be regarded as being long-term investments in developing mutual trust relationships.

If, for instance, contributions from foreign public entities were a source of concern during the Cold War years, the donations made by companies and unscrupulous businessmen to parties and candidates seem a more threatening reality of today’s political financing. Undue influence of private donations/contributions would be of little importance to legislators, judicial authorities, opinion leaders and academics, had party financing resulted irrelevant to electoral success. Private donations matter as much to the selection of parties and candidates in the electoral process as to their standards of probity in office. For that reason, national regulations distinguish between desirable/fair and illicit/unfair sources of political funding.

In most cases, however, the banning of company donations and the introduction of public subventions was not the product of a proactive decision to secure standards of financial propriety in political life, but a consequence of the political class’ inability to handle with honesty and distance the role money plays in politics. Legislators have often opted for a radical separation of parties from business money as a reaction or an anticipation of scandal. Yet, in most cases, the expectations raised with the introduction of public funding have not been matched by an equal care about the persistent monitoring and enforcement shortfalls. The concentration of regulatory efforts in the adoption of a single measure has proved an insufficient elixir to prevent the outbreak of new scandals. Problems of corruption and financial impropriety resulting from political financing are not



exclusively related to the model of funding in place, public mixed or private, but also product of the difficult relationship parties, candidates and the political class in general celebrate with money.

To what extent the replacement of company donations by public subventions to parties or candidacies fosters transparency and safeguards the integrity of parties and candidates?

Separating parties from company donations reduces an important incentive to enter illicit exchanges, but it does not make parties and candidates automatically more “clean” and “transparent”. Companies will continue to finance parties, if they feel that the costs of being caught and punished are acceptable or if they feel that by not doing so they may be at a relative disadvantage to competitors. Parties can continue to conceal company donations for similar reasons, i.e. low costs and the need to keep up with their opponents’ fighting capabilities even if through illicit means.

If a degree of transparency and integrity has been reached at the national level following the ban on company donations, this has been mainly because disclosure rules and monitoring mechanisms have been more effective in certifying that parties/candidates have ceased to receive these contributions. However, the attempt to separate actors on both sides of the fence is often not effectively guaranteed by the monitoring and enforcement framework in place. A major handicap to enforcing the ban on company donations at the local level is the degree of complacency towards these exchanges. Where public-private business relations are characterised essentially by clientelism and favouritism, local party branches and candidates are likelier to continue receiving illicit inducements from companies with little resistance and condemnation from local populations.

Prohibiting company donations can lead them to resort to more sophisticated arrangements in order to extract that amount of illicit revenue which can give them a competitive edge over their competitors, especially when parties still feel short of financial resources. The ban on company donations has often been compensated for by the emergence of new illicit sources of financing. Closing the front door to company donations does not prevent “big business money” from entering the backstage of politics and electoral competition. There are myriad of ways in which companies can still finance a political formation or candidacy, for instance, through the recruitment of candidates as consultants,<sup>22</sup> their direct sponsoring or, alternatively, the sponsoring of faked studies/projects by research centres directly linked to parties, the granting of soft loans or payments made through offshore bank accounts.

Moreover, it is not that the collusion between public and private interests can only take place through company donations. For a small party the individual contribution of ten important

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<sup>22</sup> In this regard, political financing is not the only way in which market forces and political elites can establish illicit contractual relations. The lobbying industry has also proved a crucial mechanism for those entrepreneurs who seek, through paid inducements, to obtain the mediation or influence of some MPs upon their Ministers and members of the cabinet. There are different ways through which private money can make dice roll in politics.

businessmen can be more crucial to their survival and more threatening to transparency and integrity in political life than ten company donations to a major party.

There is equally the business side of the story. How far are companies constrained by the banning of corporate donations? At a first glance and taking into consideration the very few studies made on the subject, the answer seems: not much. The position of companies with regard to political financing is, broadly speaking, ambivalent: on the one hand they are aware that political financing is an issue of concern; on the other, few have openly discussed the issue internally with its shareholders and refrained from making donations to parties, regardless of prohibitions set by the political financing regimes in place.

A recent study on how non-financial multinational enterprises address corruption as well as internal anti-corruption management and reporting practices in their websites,<sup>23</sup> concluded the following (Gordon and Wynhoven 2003, 5-6, 10):

- companies are reluctant to publish material that deals explicitly with corrupt business practices (43 per cent) or political financing (only 27 per cent of the companies make publicly available on their websites their policies on political contributions to persons holding office, candidates or political parties and/or the company's involvement in political activities.);
- companies show great unease to refer specifically to terms such as bribery, corruption and prefer to make general statements about ethics and integrity;
- the problem of corruption, anticorruption and political financing is not a priority to companies and remains secondary to other policy issues, such as environment, labour relations and health and safety;
- companies have different approaches to political activities and donations, but few have clear statements or policies of refraining from participating in political activities and not making contributions to political parties
- 10 per cent admit that political contributions would be admissible if they were meant to protect or advance legitimate company interests.

The practice of contributing to electoral campaigns is still interpreted by many businesses as an effective and fairly common mechanism to gain influence over decision-makers and buyoff special advantages over their competitors.

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<sup>23</sup> The study is based on content analysis of the websites of top 100 non-financial multinational enterprises as listed by UNCTAD. See Kathryn Gordon and Ursula Wynhoven (2003) 'Business Approaches to Combating Corrupt Practices', *Working Papers on International Investment*, No. 2003/2, Paris: OECD/Directorate for Financial, Fiscal and Enterprise Affairs.

In October 2003, the World Economic Forum (WEF) published the results of its 2003 Executive Opinion Survey in the *Global Competitiveness Report*. The survey, which aims to obtain information about the economic environment in which firms operate, carried out interviews to business leaders in 102 countries (7,741 firms worldwide were surveyed). Business leaders were asked to assess how common illegal donations to political parties are in their countries: only 18 per cent of the countries do business leaders claim that illegal donations are rare or fairly rare, and these countries include some – such as China and Vietnam – where the rating may reflect not so much the extent of corruption as the nature of the regimes and of political parties in particular. Business leaders in 41 per cent of the countries regard illegal donations as common or fairly common. More worrying is the widespread belief amongst businessmen that the illegality pays off. Business leaders were also asked to estimate the extent of the direct influence of legal political donations on policy outcomes in their country. In 89 per cent of the countries, businesses regard the impact as either moderate or high (Global Corruption Report 2004, 30-31).

The ban on company donations constitutes an important step to constrain the triangular relationship business money (income) / political financing (expenditure) / corruption (rewarding), but it does not stop money from playing a central role in the electoral process and the functioning of political parties. As Mény put it, ‘L’argent est au cœur du système’ (1993, 72-73) and will continue to be regardless of the regulatory environment in place.

#### 3.4. *After public funding where do we go?*

Adopting public aid to parties and candidates and banning company donations are not sufficient measures to guarantee the exemption and probity of elective officials, to mould the financial conduct of parties, their candidates and leaders and to prevent businesses from disrespecting the law when their interests stand higher. On the one hand, there is only a certain level of illegality that can be constrained by writing off company donations from the list of licit donors. The law is rigid and, more often than not, mined with loopholes, whereas the ways in which companies can get their interests forwarded in political life are flexible. On the other hand, the adoption of public aid to parties is unlikely to become an incentive to “good behaviour” and a more transparent and accountable means of financing, if not complemented with appropriate disclosure and accountability rules and sanctions to guarantee an effective application and enforcement of the law.

The lack of appropriate control explains most of the impropriety and corruption witnessed in countries where company donations to parties and candidates were permitted or inadvertently

ignored by regulation. The imbalance created between the money available to parties and candidates (*incentives*) - public, private or both - and the low enforcement of rules of transparency and accountability (*restraints*) has largely contributed to the discrediting of regulatory frameworks. The lack of political commitment to uphold the principles underpinning this body of regulation and the overall indifference of public opinion towards these matters had also damaged its effective application for most of the 1970s and 1980s.

Today, political financing regulation re-emerges disassociated from the lively debates on models of funding. In one way or another, public funding has won the symbolic battle,<sup>24</sup> even if, in practice, most regulatory frameworks are about nuances between public and private modes. The matter is no longer the ideological debate which dominated most tentative legislative interventions or reforms from the 1970s until the 1990s, between centre-right parties traditionally in favour of private (company) donations and centre-left ones pushing for the adoption of State aid. Political financing regulation is not only about what sources of funding are prohibited or adopted, but also a complex mixture of restraints and incentives to party (and candidate) financial behaviour.

The aim of this sort of regulation is primarily preventive, that is, to reduce the likelihood of corruption by curtailing sensitive opportunity structures emerging from forms of party and electoral financing. To prevent corruption it is necessary to deter actors from engaging in these exchanges by threat of punishment as well as creating appropriate incentives to foster financial probity and create an ethical framework which can be regularly observed and appropriated collectively. The “carrot-and-stick” approach to control is common to most political financing regulations, but some have been more successful than others through the mixture of instruments put in place. Where strict limitations on sources or amounts have been imposed without a proper system of aid or where public aid and facilities have been granted, without effective disclosure and accountability rules and precarious sanctions, control has been, more often than not, illusory and inviting parties to illegality. The fact that parties often perceive rules of political financing as “lions without teeth” has partly to do with the imbalance created between incentives and restraints to their financial conduct.

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<sup>24</sup> In Britain, during the passing of the PPER Act 2000, the Labour majority radically changed its traditional support for the adoption of State aid, which had held since the mid-1970s. In accordance with a dominant attitude in parliament contrary to public funding, but also as a result of short-term strategic considerations – i.e. the likelihood that Labour would attract a good deal of funding from business sectors sympathetic to its performance in government – the Labour majority decided not to ban company donations. Although the PPER Act 2000 is not completely deprived of public aid to parties, given that some contributions in kind are envisaged – such as, free broadcasting time - the British response to party financing regulation remains “the odd one out”, contrasting with the trend of reform across most European democracies.

#### **4. Controlling amounts: setting ceilings to revenue and expenditure**

In those regulatory frameworks that allow company political contributions, limiting amounts donated is often considered a middle term to avoiding the introduction of a purely public funding regime. In most regulations, however, setting ceilings to revenue and election expenditure is regarded as a means to reduce the likelihood of “too much” money influencing the integrity and objectivity of parties and candidates once in office. This balance between the financial means available to parties and candidates and the amounts that can be spent during elections has not been treated in a similar way across national political financing regulations.

Some regulations have restricted expenditure, especially during elections, without considering limits on amounts raised. Letting parties and candidates arm themselves to their teeth and then telling them to use only a limited amount of that financial capability, is likely to result into non-compliance with ceilings set by law or, more worryingly, financial impropriety.

Setting unrealistic ceilings to contributions may also encourage illegality. The stringent amounts set under the Portuguese 1979 Electoral law only meant that most contributions went systematically undisclosed and unreported. Unrealistic figures will not be respected, transforming irregularity into a regular attitude of non-compliance with the law. In the long-term, this leads to the creation of an outlaw environment in which parties and candidates perceive political financing legislation as an “idealistic framework” which unfortunately does not correspond to the financial demands of “real competitive politics”. In such a climate, infringement becomes generalised and expands into other domains where controls are equally unsound or weak.

Stringent expenditure ceilings will not have a corrective impact on irresponsible spending and will little change the financial habits of parties if no appropriate enforcement of disclosure and accountability rules is put in place. For more than two decades, parties have had a “life style” which was beyond their legal financial means. Parties are likely to continue resorting to illicit financing, whenever the disclosure and monitoring arrangements of party accounts are precarious and the sanctions to excess expenditure are soft and rarely applied. The tendency is that parties will always “feel” short of financial resources independently of the limitations set to expenditure and the availability of public money, and the reality of their expenditure will always lie outside the official figures disclosed.

#### 4.1. *Money grabs votes: the arms race culture*

In recent years, the problem of illicit party financing has evolved around a blatant paradox: whilst party coffers were increasingly in dire straits, electoral costs continued to rise. Parties preferred illegality to self-containment of their electoral expenses. Not surprisingly, the Neill Committee, which had been entrusted to inquiry about the state of party funding in British politics, equated the unleashed escalation of campaigning costs between the two major parties – Tories and Labour – to the Cold War “arms race”. In other words, a material and psychological struggle between two opposing parties or blocs gravitating around a centre of shifting voters where the race is decided and whose main strategy is that of maximising income for electoral purposes so as to conquer their vote through massive campaigning. The political financing panorama was not substantially different in other party systems.

By the late 1980s, most European parties were feeling short of financial resources: campaigning costs had increased disproportionately to the legal resources available.<sup>25</sup> The increased American-style campaigning, with a ferocious and extensive use of television broadcasts<sup>26</sup> and political marketing firms, stood as the major cause for the abnormal rise in costs, creating important financial strains to parties and making them more prone to seek illicit means of financing. The growing number and relevance of electoral consultations (local, regional, national, European referenda) sometimes aggravated by the type of electoral system in place; the payment of office rents and paid party officials; and the maintenance information/propaganda mechanisms added to the indebted finances of parties.

In Latin America, the presidential type of campaigning is more propitious to disproportionate cost escalation given the bipolar nature of electoral competition and the low institutionalisation of most parties, which makes the importance of electoral boosting comparatively higher. The vast territory and large electorates adds up to campaigning efforts making costs soar.

The escalation of campaigning costs is, to a large extent, product of a series of reactions and strategic considerations. The attempt to measure the means against the ends and to know how much is needed to convince the electorate to vote, to decide their vote favourably or not to vote for other competing party(ies) have been one of the major party concerns during the period which immediately precedes the official (pre)campaigning period. Just how successful or rational these strategic considerations have been?

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<sup>25</sup> Membership fees decreased dramatically in recent years, even if parties have tended to hide exact figures. In some cases, parties tended to inflate membership revenue to conceal a heavy decline in militancy figures, which could both raise doubts about a party’s tractability to address the demands and concerns of its traditional electorate and lead to a possible disclosure/investigation into their “alternative” mechanisms of financing.

<sup>26</sup> Where parties enjoyed free access to public television and radio channels their indebteding situation was less dramatic. However, this incentive did not deter escalating campaigning costs in the long run.

- *Electoral competition is transformed into a “gold run” where everything is up for grabs* – Party leaders have often behaved as if the electorate was merchandise and elections the market place where money, more than programmes and beliefs, decides a party’s success. The mobilisation of voters at all costs during electoral periods has gradually become an alternative to the parties’ inability to attract militants<sup>27</sup> and ensure continuous engagement into party life between elections. Campaigning costs inevitably soared as parties are forced to rely more on paid external services by political advertising firms than on their in-house human resources, which they no longer have or produce;
- *Every time elections take place, parties have to double their campaigning efforts as if they were starting from “ground zero” in terms of voting preferences*<sup>28</sup> – From one election to another, parties make repeated and substantial financial efforts to catch that large slice of the electorate which does not feel attached or sympathetic to a single party and shift their vote preferences from one election to another. But these strategic calculations have also been made with regard to voters whose voting intentions and alignments are fairly certain and known before the race begins. Elections are always a game with risks attached. Whilst the development of polling techniques and the regularity of intermediate electoral consultations seemed to have reduced risks of unexpected results, the looseness and lack of differentiation of party programmes and shifts of an organisational nature have distanced parties from their grassroots support making leaders always pre-emptive about the results announced by the polls. Voters’ perception of no longer being represented by the party they traditionally voted for broke down party identification and allegiance, which, in its turn, raised miscalculation by party leaders on the voting preferences of their traditional electorate and made campaigning efforts and costs escalate. Although party affiliation has gradually been a less relevant source of financing, the number of votes rather than a lump sum cheque still places parties in power. Where party identification is still high, maintaining traditional voters from one election to another should be a relatively easy task for parties. Yet, party leaders seem increasingly unable to anticipate their intentions at the polls: growing discontent in party politics means that successful campaigning has to be made both to undecided and abstention voters and in order to regain “the vote of confidence” of traditional electorates;
- *The risk of miscalculation is likely to be higher for an incumbent party* – uncertainty on the voting preferences of their traditional electorate adds to the fear of not being re-elected. The perception that a large part of the electorate votes on a basis of retrospective evaluations, forces the incumbent to clear negative assessments on its past governmental performance by promoting a prospective image of its new “would be government” through massive campaigning. This, in its turn, places the stakes higher and instigates other competitors to react by increasing its electoral efforts;
- *Parties have also been prepared to leapfrog other parties’ electoral strongholds*, even when these seem secured. This often leads to a “duel of pride” between the challenger and the challenged that makes them gear disproportionate financial efforts into a single battle without considering its implications upon the whole electoral competition.

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<sup>27</sup> The lack of militancy or dedicated party sympathisers may not be a problem to parties that do not aspire to governmental office or subsist on single private contributions by a few “wealthy barons” who wish to see their interests pressed in parliament and in the ministerial corridors. Instead, it represents a major financial drawback to parties that seek desperately to win elections but lack territorial representation and mass organisation or have gradually become unrepresentative of their bases of support.

<sup>28</sup> Even if pre-campaigning polls may show a large number of voters who have already made their alignment clear with one or another political formation before the race begins.

The material consequence of the political financing “arms race” is that of rallying the greatest amount of means possible to compete without often measuring its “utility return”. An enormous amount of time and energy is devoted by party-leaders to fund-raising activities. Another undesirable consequence of the “arms race” culture is the psychological effect it has upon the competing parties or coalitions. The exacerbated competition and the cost escalation effect often lead them to ignore ethical standards in so far as the ends are justified. The uncontrolled race for electoral fighting funds creates amongst parties a habit of illegality before containment. The fear that “if we do not spend they will”, raises suspicions and leads parties to anticipatory action, intensifying the search for funding and, consequently, opening the door to illegality.

#### 4.2. *The legitimisation of parties and their spending culture*

The low *moral costs* associated to excessive campaign expenditure stand as another possible explanation for the excessive campaign spending. On the one hand, the low efficacy of monitoring procedures and the lack of credible sanctions allowed for a great degree of indulgence in relation to those who did not respect expenditure ceilings set by law. On the other hand, the political class and public opinion had overall remained indifferent towards these “excesses” of political competition.

The lowering of moral costs towards excess campaign expenditure must be understood together with the legitimisation of parties. As Della Porta and Vannucci observed, ‘Il tipo di legittimazione dei partiti è una delle caratteristiche del sistema politico che più influenza i costi della politica.’ (1999, 164). Citizens and political elites in consolidating democracies tend to remain more complacent towards parties’ unrestrained fund raising and election spending. The role parties played in the consolidation of democracy often confers them the reputation of creators and guardians of that process.<sup>29</sup> Parties gradually assume a central position in political society and that leads them to behave as if they were both the means and the end of democracy. The perception that campaigning and rallying is part of a continuous celebration and a revival of the change to democracy has often served as an excuse to ostentatious and illicit aspects of electoral competition and the breeding of a spending culture amongst parties/candidates.

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<sup>29</sup> From the outset, constitutional provisions were very protective of the revolution-born political creatures. Parties were viewed as permanent mechanisms for “the formulation and expression of *the people’s political will*” (art. 10 of the Constitution, later “popular will”), hence exempt of any rules that could encroach upon their popular legitimacy.



#### 4.3. *The failure of self-containment before legal limitations: from ceilings on expenditure to outright bans on activities*

The inability to produce a culture of self-containment in the short- and medium-term leaves legislators no choice other than that of moving from restrictions on amounts to the banning of expenditure items. If parties cannot abdicate from excess expenditure, despite the improvements made on monitoring and sanctioning procedures, the next step is to prohibit certain types of expenditure or campaign activities. For instance, banning political advertising on TV which is responsible for a large slice of campaign expenditure. Here too, the regulatory options are varied. Some countries, have introduced more comprehensive laws on media access for political purposes beyond the allocation of free time slots or the limitation of types of media access and broadcast by also taking into consideration media ownership laws and the enforcement of standards of impartiality on TV broadcast – which are often perverted in favour of the incumbent party – through the oversight of regulatory mass media entities.

Another structural reform of this sort is to reduce campaign expenditure by shortening the length of time for campaigning and the advertising materials used (Rose-Ackerman 1999, 140). Limiting the time for campaigning can only be taken as a serious instrument to deter excess expenditure, if strict penalties are imposed on expenditure incurred by elective officials prior to these election periods – institutional campaigning. The reality is that most of these solutions are difficult to make operational in juridical terms.

## **5. Rules of publicity and publication of accounts**

*Transparency* on sources of financing and amounts received and spent is undoubtedly the most salient, battled and contradictory principle of party financing regulation. Much of the recent concern about political financing has to do with the opacity and secrecy surrounding the financial life of parties for more than two decades. Transparency has been addressed directly, through the disclosure of party and candidates accounts (all sources and amounts received and spent) and indirectly, through the exhaustive and extensive disclosure of party patrimony, investments and assets. Information about the way parties/candidates have raised and spent their money has become more complex, detailed and updated across the various regulatory frameworks. Yet, the degree to which transparency has been successfully guaranteed through rules of disclosure and publicity varies greatly from one regulatory tradition to another. Although regulations have tried to harmonise accounting procedures, the diversity of party organisational structures and election

campaigns can make balance sheets difficult to interpret and validate. The only data available for public consultation is often a short version or summary of the accounts deposited with the monitoring bodies.

Transparency does not finish with the disclosure of accounts, even if most parties tend to interpret it that way. The good faith of parties and candidates in disclosing their accounts must be matched with the monitoring bodies' trust in their efforts, but this is not a sufficient condition to guarantee transparency. The monitoring body cannot simply take for granted the innocence of parties and accept the contents of their accounts as valid and truthful. Only part of the figures disclosed are in fact representative of the resources parties have at their disposal and the amount and type of expenditure incurred. There is a whole "parallel economy" in what concerns campaign financing. The USAID *Money in Politics Handbook: A Guide to Increasing transparency in Emerging Democracies* (2003) is peremptory in concluding that, in most countries surveyed,

'expenditure data are often readily disclosed, but are in such aggregated form that they are rather meaningless. Expenditures are usually reported in gross figures, and rarely reveal a vendor's identity. If disclosure requires only expenditure summaries rather than itemized lists, there is no way to check the accuracy of the information' (2003, 23).

More often than not, rules of disclosure are not accompanied by proper internal as well as external auditing procedures, thus leaving various financial transactions and commercial operations undisclosed to the wider public.

In countries, such as Portugal, where lists are closed and parties are the sole players and organisers of the electoral game, transparency can also be seriously damaged by not addressing the candidate resources with the same degree as party transfers. Ignoring candidates as centrepieces to the funding of political activities constitutes a major blow to transparency. An important part of the reality of political financing in Portugal remains undisclosed and unaccountable to the public, especially during local elections, where power competition and the post-election rewarding system tend to be more personalised.

Another obstacle to transparency concerns the double-standard application of disclosure rules between local and national political financing activities. Most regulatory frameworks have tended to focus on the national level, partly as a response to the nature of scandals unveiled, partly as an attempt to address the new realities of political financing. It is true that campaigns are increasingly fought at a national level and that most party spending goes on national campaigning, but it is also the case that political financing controls have tended to be absent or weaker at the local level where the bulk of public investments takes place and political contributions can easily become an inducement to corruption. Even in Britain, where campaign financing at the local level has been subject to stringent controls for more than a century, it has always been difficult to obtain

comprehensive information about local party finance. Constituency branches and associations have often failed to deposit copies of their accounts with their national party headquarters, despite their important role in funding local government campaigns for the election of district and county councillors (Pinto-Duschinsky 1981, 11-12). It means little to transparency to place rules of disclosure at the national level, without adopting (enforcing) similar arrangements at the local level, where citizens are likely to remain more complacent or indifferent to political financing matters.

There is also a more serious repercussion of the lack of appropriate system of disclosure. This sort of regulatory frameworks aimed at regulating the conduct of political actors, are designed to interlock with public scrutiny and to empower voters, the media, opinion makers in the process of oversight and enforcement. Without a proper system of disclosure, there can be no direct involvement or engagement of civil society, thus reducing the whole regulatory effort to a cosy arrangement whereby parties are scrutinised by external regulatory entities which they have created or empowered, but lacking citizens' support or interest for their control activity.

## **6. Making parties accountable to monitoring bodies**

The monitoring mechanisms and procedures put in place to make parties accountable concerning the way money has been raised and spent is perhaps the area of political financing regulation that has shown little or no improvement.

Creating specific bodies to monitor party and/or election accounts and defining their competencies has not been an easy task, since a series of constitutional arguments about the rights and freedoms of parties were raised against the auditing of their financial and commercial operations. In most regulatory frameworks, the monitoring function of these bodies tends to be depository (auditing confined to accounts deposited). Only in a few exemplary cases are these bodies entrusted with investigative competencies. Moreover, in some countries there is only one single body overseeing party and electoral accounts, whereas in others, the two dimensions of political financing are treated separately.<sup>30</sup> It is not understandable what degree of accountability can be envisaged and guaranteed, if these two dimensions of political financing are monitored separately, bearing in mind that the major function of parties is to run for office and the bulk of their expenditure is largely related to the running of election campaigning.

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<sup>30</sup> In Portugal, until the 2003 reform setting a single Entity for Accounts and Political Financing under the Constitutional Court's tutelage (*Entidade das Contas e Financiamentos Políticos*) the Constitutional Court held competencies over party accounts, whereas the National Elections Commission was responsible for the monitoring of election accounts.

Monitoring procedures tend to concern the demand-side of political financing only, i.e. parties. This constitutes a major limitation to accountability, which has been partially solved by banning certain types of contributions (for instance, company donations). In those regulatory frameworks which allow for company donations, parallel accountability measures have often been adopted, for instance, through the introduction of shareholders' consent to company donations and the creation of separate political funds. However, the enforcement of these accountability procedures to the supply-side of political financing has been precarious and often discriminatory (between large and small companies, between companies and trade unions). In most cases, however, the competencies of monitoring bodies are not extended to the supply-side of political finance, thus greatly reducing the possibility of ensuring a comprehensive control.

The impartiality of the monitoring bodies is also a source of concern when setting up or designating bodies to monitor political financing: "*Who guards the guardians?*". The possibility that monitoring bodies may apply differing standards when monitoring party/election accounts or when sanctioning wrongdoers has been dealt with ambivalence by legislators. Efforts made to guarantee the impartiality of these bodies, by opting for bodies external to the political sphere or setting composition rules, has often not been matched by making them more efficient. In the case of Portugal, until the 2003 law revision, designating the Constitutional Court (TC) as responsible for the monitoring of party accounts has reassured parties about the problem of impartiality, but it has equally exempted them from any serious monitoring. At first, the TC exercised only a depository role. Later, the TC was empowered to audit party accounts by resorting to the services of private auditing firms. One remarkable feature was that only one auditing firm (Price Waterhouse) has taken up the task hitherto. In the case of France, the senior composition of the *Commission nationale des comptes de campagne et des financements politiques*<sup>31</sup> has also created a degree of seriousness and impartiality which could never be reached if it was composed by appointed members from the various political formations.<sup>32</sup> The autonomy of this monitoring body, enhanced through the recruitment of senior officials and magistrates, has not necessarily made it more effective. In fact, the commission's decision to investigate into party financial affairs has always been in response to another scandal advertised in the newspapers rather than from its own initiative. The PPER Act 2000 has also attempted to give a response to the impartiality of the newly created Electoral Commission. The British regulatory framework has opted for a composition made of

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<sup>31</sup> Three members or honorary members of the *Conseil d'Etat*, three members or honorary members of the *Cour de cassation* and three members or honorary members of the *Cour des comptes*.

<sup>32</sup> The balance-of-power approach to the composition and hence impartiality of monitoring bodies is only viable if the party members appointed have adequate expertise on political financing matters and if there is a certain degree of politicisation over party financing issues. Otherwise, there is risk of *omertà* amongst all major political formations. In such case, even if parity rules are put in place concerning the composition of the monitoring body, its independence could still be compromised and its monitoring function doomed to failure by an informal agreement amongst all parties not to interfere with each other's financial affairs.

neutral/independent figures with no strings attached to a party formation (i.e. who have not within the past 10 years held senior office in a party, been elected or been a major contributor to a party). The side effect of this measure is that it reduces the first-hand expertise and experience to deal with political financing matters.

### 6.1. *The need for internal party accountability*

Recent developments on political financing regulation have tended to focus on those procedures that can make parties more accountable externally to the existing monitoring bodies, but very few legislative or procedural efforts have been made to promote internal accountability. If the introduction of public aid, detailed patrimonial lists, resort to auditing firms and penalties to non-compliance with the accounting requisites have made party finances more accountable to external monitoring bodies, or at least more willing to observe the formality of auditing rules, these measures have had a limited impact on parties' internal accountability mechanisms.

In Portugal, during the evaluation of annual party accounts, which have taken place regularly and through a private auditing firm since 1994, the Constitutional Court has constantly referred to the precariousness of accounting and financial reporting procedures of local branches and availability of original supporting documents and invoices. With the exception of the Communist party (PCP),<sup>33</sup> most large party formations (PPD/PSD, PS and CDS/PP) lack a single consolidated account from where all financial transactions flow and are accounted for (Table 3), thus making it virtually impossible for the monitoring body to know the real dimension of the financial activity of parties and to check if revenue and spending limits have been regularly observed.

**Table 3. Consolidation of local accounts (district, council, autonomous regions)**

	1994	1995	1996	1997	1998	1999	2000	2001	2002
	<i>Acórdão 979/96</i>	<i>Acórdão 531/97</i>	<i>Acórdão 682/98</i>	<i>Acórdão 453/99</i>	<i>Acórdão 578/00</i>	<i>Acórdão 371/2001</i>	<i>Acórdão 357/2002</i>	<i>Acórdão 8/2004</i>	<i>Acórdão 647/2004</i>
<b>PSD/PPD</b>	No	No	No	No	No	No	No	No	No
<b>PS</b>	No	No	No	No	No	No	No	No	No
<b>PCP</b>	Yes <sup>34</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>CDS-PP</b>	No	No	No	No	No	No	No	No	No

<sup>33</sup> One curious aspect of the regulatory period which started in 1993 is that the party which had been more severely criticized under the 1993 *Report on the Financial Regime of Political Parties*, for receiving money from East European countries and other illicit sources for most of the 1970s and 1980s, namely the Communist party (PCP), was the only one to comply with the legal requisite of presenting comprehensive and consolidated accounts of all decentralised and para-party structures to the monitoring body.

<sup>34</sup> Some accounting errors due to the introduction of digital accounting systems and related to the *Festa do Avante*.

Parties have not denied the observations made by the Constitutional Court, but have justified the continuous failure to consolidate their accounts with the difficulty to revert two decades of reigning informality, unaccountable local structures, messy accounts and lack of financial organisation, reporting and disciplining. According to them, the reorganisation of accounts in a comprehensive and global manner, i.e. by centralising all financial information pertaining to their decentralised structures and associated entities, is a lengthy and costly process. This does not explain, however, why the PCP has been able to achieve it within a short period.

Not only has the Constitutional Court regularly complained about the lack of consolidated accounts, original invoices and supporting documents, there has also been little improvement on the financial reporting procedures internal to parties. Internal financial controls between party headquarters and their local branches and associated bodies continue to be precarious. Party financial discipline only goes as far as centralising the collection of party quotas and donations and has not yet been extended to making local structures regularly observe spending limits set by law. The number of party recriminations or sanctions applied to local branches or candidates as a response to public allegations of financial impropriety during elections has been minimal to none.

Countries have put in place detailed regulatory frameworks, but the degree of compliance and the informality that reign political financing has proved difficult to curb. It is necessary to look at alternative solutions that go beyond external monitoring/sanctioning and make parties share the responsibility for the running of their affairs before voters and their militants in particular.

Some political financing regimes have now been adopted along with party laws stipulating a basic organisation structure or requisites for the validation and acceptance of political parties into the electoral game. The requirement of registration introduced by the British *Registration of Political Parties Act 1998* goes in that direction and it is perhaps the regime of political financing which has attempted further at improving internal accountability mechanisms. In addition to registering a treasurer responsible for the party's finances, British parties are required to adopt a scheme of organisation (comprehensive and exhaustive organisational chart) and to submit it to the Electoral Commission for approval. However, the risk is great that these legal arrangements transform internal accountability mechanisms into mere formal structures which guarantee compliance with the accounting and disclosure requirements set by law and enforced externally by monitoring bodies, but without necessarily making parties improve standards of financial probity of its members and structures. Again, the legislative solution has preceded party efforts towards reform and appropriation of the financial standards at stake.

## 7. Sanctioning wrongdoers

The sanctions adopted are meant to ensure a proper enforcement of *transparency* and *accountability* rules enacted by law and to guarantee the *objectivity* and *integrity* of parties and candidates once in office. Sanctions are corrective instruments in as much as they try to force parties to adopt or deter them from adopting a certain conduct or, in other words, to make parties regulate their activities through certain principles by threat of punishment.

The repressive framework of political financing regulation is often a mixture of different types of sanctions - *criminal*, *electoral*, *financial* and *administrative*.

Political elites have always considered disqualification rules and criminal penalties too severe for the violation of political financing rules. Where adopted, criminal rules have proved emptied of any deterrent effect and ineligibility has only been applied to a very limited number of cases and its time scope often reduced to a minimum.

Financial penalties, such as fines, state appropriation of values received illicitly, the withdrawal of public subventions or flat-rate reimbursements of electoral expenses are more consensual, less worrying and by far the most commonly applied penalties. However, fines cannot seriously impose standards of financial probity to parties or candidates on its own. Small fines can work as deadline penalties to those parties or candidates who fail to submit/deposit accounts in due time, but has little effect with regard to non-compliance with disclosure and accountability rules or excess expenditure. In these cases, small fines are often an invitation to widespread disrespect for the law, but making them heavier does not necessarily add to their credibility. Heavy fines can put serious constraints on small and new parties, but not necessarily on larger and old parties. The principle of fairness/equality is not necessarily safeguarded. On the one hand, larger and old parties are likelier to have more financial means available, hence better prepared to pay these fines without risking their existence. On the other hand, they are more familiar with the accountability and disclosure requisites set by law, hence less prone to disrespect them by error or difficulty in adapting to a regulated environment.

The principles of transparency, accountability and integrity are equally difficult to guarantee through financial penalties to wrongdoers. If parties are accustomed or prepared to pay regularly fines as a trade-off for non-interference and non-intervention into their financial affairs, increasing these financial penalties will have little impact in making them law abiding. The same goes in relation to excess expenditure. Fines are not sufficient repressive instruments to make parties opt for containment, even if their deterrent effect can be tentatively maximised by extending their application to the supply-side of political financing for non-compliance with caps set to contributions.

Withdrawing public subventions and other benefits has a higher moral claim than fines in the sense that these constitute the bulk of incentives attributed to parties for their compliance with disclosure and accountability rules. However, if parties opt for illegality and/or to maintain most of their financing activities undisclosed, the normative/corrective effect of these sanctions is, similar to fines, null.

Administrative sanctions are more rarely adopted and contrary to criminal and electoral sanctions apply mainly to collective actors, i.e. parties and companies (or other collective contributors). The French regime provides for the withdrawal of the legal status given to parties' fund-raising associations if these have not respected the formal accounting obligations imposed on them or have accepted prohibited donations. It also sets penalties to the supply-side of political financing, i.e. a five-year exclusion from public tendering and procurement competitions to companies who insist on making financial contributions, but its applicability has been far from being optimal.

A proper repressive framework must put in place a balanced combination of these types of sanctions. Instead, most regulatory frameworks do not display such equilibrium.

Although financial conduct of parties, in particular during elections has been a major reason of concern in recent years, one of the paradoxes of political financing regulation, however, is that sanctions tend to be heavier on single individuals (party leaders, election agents, treasurers, candidates) than on parties as collective political entities. Whereas financial and administrative sanctions have a limited impact in setting standards of financial probity to parties, criminal sanctions are difficult to apply and electoral sanctions not applicable. In principle, criminal sanctions try to individualise responsibility in order to address punishment and this explains the creation of election agents and party treasurers.<sup>35</sup> In practice, few party leaders or treasurers have faced criminal sanctions for violating party financing regulations and very few sanctions are effectively applicable to parties as collective political actors. Other than receiving fines or being excluded from receiving public subventions, no one could naïvely suggest disqualifying parties from participating in the next elections for having violated party financing laws. Electoral penalties are only applicable to individual misconduct and have not been designed to consider collective political actors and it is highly unlikely that they could be extended to parties in the future. The fact is that in most regulatory frameworks, financial incentives to good conduct have grown disproportionately to sanctions applicable to parties. Public money has become available in large amounts and easy to claim, tax benefits have been introduced, little or no restrictions on commercial

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<sup>35</sup> There are qualitative differences as to the responsibility of candidates and parties vis-à-vis their accounting experts. In Britain, the creation of election agents was not regarded as a means to detract responsibility from candidates and party leaders, who have an interest in regularly checking upon their "men of trust" on election accounting matters. In Portugal and France, the introduction of individual and/or collective election agents and party treasurers other than individualising financial responsibilities, was meant to further distance party leaders and candidates from money affairs.



activities have been set, while sanctions to illicit behaviour have remained essentially financial and, where regularly applied, their corrective or deterrent effect has been minimal to nil.

There are also imbalances in relation to the sanctions applicable to the various irregularities envisaged by political financing laws, such as, no submission of accounts, non-compliance with formal accounting rules, non-compliance with ceilings to revenue and expenditure, non compliance with sources and expenditure prohibited by law. In the case of Portugal, for instance, only financial penalties are applicable to these violations, which means that parties may find it more advantageous to keep their accounts undisclosed and pay a fine. In the case of France, disclosure, no matter of what kind and extent, is often preferred to non-disclosure. The “good faith” rule, which is nothing less than a sort of amnesty, works in that sense. The regime exchanges the principles of fairness, transparency, accountability and integrity underpinning political financing regulation for the parties’ predisposition to comply with expenditure ceilings set by law for them.

Finally, there is also an imbalance between sanctions applicable to the demand-side and the supply-side of political financing. If enforcement is already difficult in relation to irregularities by political parties and candidates, it is even more difficult in relation to illegal contributions or contributions in excess made by private actors. It is enough to say that the rule of shareholders’ consent on company donations to parties has never been properly applied. Moreover, most monitoring bodies have no power to enforce rules of disclosure to companies or to make the submission of relevant material evidence compulsory. Without access to such material, it becomes almost impossible for monitoring bodies to corroborate the contents of accounts submitted.

The feebleness of sanctions to illicit party and election financing is not particularly different from that verified in relation to other repressive instruments. There is a clear problem of enforcement. The feeling of impunity that is often associated with the low enforcement of political financing rules threatens the credibility of the whole regulatory framework, but cannot be easily constrained by setting further restrictions or stiffening sanctions. As mentioned before, restraints have to be balanced with incentives. A workable sanction framework depends also on a balance reached between the different types of penalties adopted and the efficacy of disclosure and accountability instruments in place. The guarantee of success, however, is always unpredictable and largely dependent upon the willingness of parties to comply with these (self-tailored) rules and the voters’ interest and responsibility in ensuring that their political leaders comply with the principles underpinning political financing regulation at all times.

## 8. Do laws on political financing suffice to constrain party related illegality?

In as much as party financing regulation may try to constrain the illicit behaviour of parties by reducing the likelihood of contributions becoming inducements to corrupt behaviour, little can be guaranteed if standards of probity are only imposed externally through the threat of punishment. Further to the corrective effect of legal standards imposed by these regulations, parties need to improve their internal accountability and modes of political recruitment.

Part of the unpopularity parties have come to enjoy in recent years is in fact related to their acquired reputation of mechanisms allowing “gain politicians” to accede to office and subsequent wealth. ‘If the membership of an institution does not collectively enforce rectitude standards, conclude Rogow and Lasswell, the tendency toward individual corruption is increased’ (1977, 58-59).

Most recent party financing scandals have shown a close relationship between the proliferation of a new breed of rapacious politicians inside party organisations, often operating close to their financial offices and PR/propaganda services and the looseness of standards of financial probity imposed through membership. Their primary task was to take care of fundraising and, when required, constitute secret illicit mechanisms of financing. Such jobs required unscrupulous people. The ultimate goal of party life is to run for and win elections and, for a while, that seemed to justify all means to achieve it.

This “business politician”, as termed by Pizzorno (1992),<sup>36</sup> is essentially a type of politician with very few personal capacities/qualities before entering the political game (*capitale iniziale*) such as wealth, social prestige, first-hand and professional experience or intellectual qualities. They are recruited by party organisations for their despicable distaste for *gentlemen rules* (with which they do not identify themselves) and their lack of fear in using whatever means available to success (even if that requires engaging in illicit or improper exchanges with private actors). Given their lack of solid qualities justifying their recruitment and presence in politics, business politicians rely on a series of appearances (*sicurezze di superficie*) through which they are able to impose their personality vis-à-vis traditional politicians, whose careers may actually depend on the “dirty” tricks and malfeasance of the former. Their “strong” personality is shaped by arrogance, exhibitionism, daring, the ability to take arbitrary decisions “in the name of the cause” and, more importantly, the ability to establish improper relationships with whatever political, social or market actors and to cross the line of legality whenever the occasion requires (Pizzorno 1992, 21-26).

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<sup>36</sup> When referring to the Italian case, Pizzorno identified two types of business politicians, *il faccenderi*, a middleman or political broker with an acute competence for illegality and *il politico d'affari*. It is the second type that proliferated in party organisations and representative institutions throughout the 1980s.

In Britain, during the 1980s, few people and party leaders had commented or urged against a new breed of politicians who were proliferating in the national party headquarters and in parliament. They had little to do with the traditional career or militant party members who had gradually worked their way up to Westminster. In his work, *The structure of politics at the accession of George III*, Namier (1929) set four dominant categories of politicians based on the fact that practically all men who sought a seat in the House of Commons had ulterior aims in mind: “The eldest sons of politically active peers, and the Country Gentlemen” whose motivation to enter politics was mainly one of duty; the “Social Climbers” whose aim is self-explanatory; and the “office-seekers” prompted by ambition. According to Berrington (1995, 440) this latter category has increased considerably in recent years thanks to the lowering of standards of financial probity imposed by parties to its candidates and members of the House of Commons. Throughout the 1980s, the Conservative party had positively encouraged its MPs to make money in the City. The Conservative motto “Enrich yourselves!”, during the Thatcherite years, was a clear invitation to lowering standards of financial probity to its members (Leigh & Vulliamy 1988, 37). Parties needed as much those permanent hard working candidates to sit their parliamentary/legislative commissions as the “jackals of politics”, astute, unscrupulous and entrepreneurial members always prepared to cross the line in situations that might have been regarded by others as improper conduct (Leigh & Vulliamy 1988, 47). These party elements, who wandered from the corridors of Westminster to those of the City were trusted by party leaderships to invite a battalion of rich individuals to fundraising receptions,<sup>37</sup> to assist loyal clienteles and conquer the allegiance of new ones. Little room was left to ethics and proper financial conduct since these did not stand as a priority to party leaders at the time.

In France, the organisational and programmatic transformation of the small centre-left political formation (SFIO) into a catchall Socialist Party under Mitterrand’s leadership was also accompanied with a loosening of ethical standards imposed to its members and elective officials. From the condemnation of “big business” money in politics and the belief in restoring the republican virtue, once in office, the Socialists gradually became flexible regarding the financial conduct of its members and elective officials, opening the door to a series of actors commendable for their “entrepreneurial capacity”. The most clamorous example of this indulgence towards the new “*arrivistes*” came at the time of Tapie’s ministerial appointment.<sup>38</sup> A similar ethical

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<sup>37</sup> Fundraising events constitute an ideal opportunity for businessmen to mingle with national political figures and press their personal concerns in exchange for an envelope with cash for the party’s fighting funds. The juicy sums these entrepreneurial party members were able to extract, in some cases from wealthy foreign donators or lobbying firms, were sent to party coffers after some personal gratification fee being deducted beforehand. These funds were then redistributed as fighting funds for individual MPs in their local campaigns.

<sup>38</sup> ‘Haine et mépris de l’argent, dénonciation du grand capital, ont laissé la place dans les années 1980 au ralliement au marché, à la défense du modèle entrepreneurial. [...] président Mitterrand donne en exemple un Bernard Tapie qu’il fait ministre, participant ainsi à la sacralisation et à la généralisation du modèle du “gagneur”. [...] Si les années 1980 furent

transformation was also felt in centre-right political formations, but the moral implications concerning the recruitment of and trust deposited in these “political entrepreneurs” was more damaging to the Socialist party, since the financial probity of these elements contrasted greatly with the moral discourse of party leaders.

In Portugal, with the exception of the Communists, who have traditionally recruited their *cadres* from dedicated militants, parties remain different arrangements of personalities attracting a multitude of interests and clientele important to electoral success (Lopes 1997, 30). Parties and their leaders have accommodated these party barons (local or national) to an attitude of laxity towards standards of financial probity which has proved difficult to overcome by externally imposed standards of financial probity.

Future revisions of national political financing regulations should be made in the light of the way parties have developed or try to develop *internal* instruments of accountability, such as militants’ consent of the size and kind of donations received (individual or collective); regular accounting and reporting of the party’s commercial activities to the general assembly; regular reporting of the decisions taken by internal sanctioning committees concerning party/candidate financial behaviour during elections or in relation to compliance of local branches with political financing regulation. Unilateral proactive initiatives by parties to reinforce internal accountability mechanisms and impose standards of financial probity to members should be rewarded, instead of considering only the gratification of parties for complying with requisites that they must comply with because of their binding nature.

## **9. Conclusion: why certain countries do better than others?**

Despite different regulatory traditions and cross-national variations in terms of the instruments adopted, there has been a tendency towards standardisation. One important element contributing to this phenomenon has been the transfer of knowledge and instruments from foreign regulatory experiences. This process has not been confined only to democracies sharing similar political institutions, culture and juridical traditions. The importation of instruments has also taken place between less homogeneous countries, but, more often than not, without considering additional adjustments to make them operational and effective to their own settings. For example, rules of shareholders’ consent have often been imported as a solution to make company donations safer and accountable, but without taking into consideration the nature of the supply-side actors in question,

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pour toutes les sociétés européennes et donc l’ensemble des classes politiques des “années-fric”, ce qui fut particulier aux socialistes, ce fut, véritable choc, le comblement par le culte de la réussite du vide idéologique né de l’abandon des principes politiques et moraux’ (Dereymez 1997, 318-319).

i.e. SMEs with weak internal accountability mechanisms, and the lack of parallel criminal provisions under company law.

This leads to an important observation concerning political financing regulation: similar sets of instruments have produced different results across the various political systems in question. There are two possible and interconnected explanations for this cross-country variation:

- *the efficacy of instruments is largely dependent upon the regulatory traditions of each country* – For example, Britain has a long standing tradition in containing successfully campaign cost escalation at the constituency level by placing bans on certain sources and strictly limiting amounts.<sup>39</sup> For that reason, it is likely to produce positive results at the national level where such measures have only been recently applied. This means that the law has been able to create a negative culture against ostentatious campaigning which is shared by both party elites and the public at large, thus welcoming any regulatory initiative in that direction and making it workable;
- *the efficacy of instruments is largely dependent upon cultural attitudes towards political financing* - The absence of clear rules constraining the behaviour of parties and that of their leaders favours the expansion of a series of illicit behaviours, but it is not a sufficient condition to explain why parties have preferred illegality to revising and/or complying with those minimal legal constraints as it happened in the Scandinavian countries which relied almost exclusively on a few disclosure rules. The persistence of party corruption remains in various cultural settings an attitudinal problem. Toleration and indifference to party-related corruption explains, to an extent, the insufficiency of regulation. Where the majority of the population has never envisaged certain party behaviours, such as patronage, treating or institutional campaigning as morally wrong, and even less punishable by law or have simply remained ignorant or unmoved on matters concerning illicit party financing, the positivism of regulations find an unfertile ground to operate on. Part of the success of political financing regulation is largely dependent upon the pressure voters put on their leaders and parties to safeguard at all times the principles of fairness/equality, transparency, accountability and integrity.

In conclusion, rules of political financing remain a very experimental type of regulation, counting more failures than successes. Very often, legislators have rushed to another legislative reform without necessarily evaluating what went wrong with the previous one or what they can expect from the new one. Incremental reforms to regulation do not necessarily add to its credibility, instead it may give the impression that legislators are desperately trying to address *a posteriori* and by

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<sup>39</sup> Since the 19<sup>th</sup> century, the British regulatory tradition on political financing has been successful in shaping candidates' financial conduct in creating an habit for containment of campaign expenditure throughout the years by placing credible and enforceable limits on election expenditure at the constituency level. By 1885, 979 electoral seats had been contested on the ground of excess expenditure; between 1885 and 1910 the volume of petitions reduced to 74; whereas only 10 cases have been registered since 1910 (Rush & Cromwell 2000, 470-1). Although election expenditure ceilings have been reviewed on various occasions by the Secretary of State to address the growing costs of campaigning and candidates have continued to contain campaign expenses at the constituency level that did not stop British parties from engaging in an "arms-race" at the national level. The PPER Act 2000 has finally embodied the British tradition on containment of electoral expenditure at the constituency level by extending it to parties and campaigning at the national level and, in a very innovative way, to third parties. The belief that parties will keep their expenditure within the ceilings set by law is largely related to the public's severe condemnation of unwise and ostentatious campaigning. Public opinion pressure is likely to be even more constraining, if State aid to parties is finally introduced in a future revision of the PPER Act 2000.

legislative means what their standards of probity cannot or have not been able to prevent. Very few legislatures have opened the various discussions preceding the adoption/revision of political financing regulation to input from non-political experts on the field (such as public officials, magistrates, academics, journalists and NGOs). Outside interpretations of what financial standards should apply to parties, their leaders and candidates and what mechanisms should be put in place to guarantee those standards may help to improve control. External actors can also play an important role in deterring unethical conduct through the creation of observatories to monitor the implementation of these measures and assess results.

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**Table 2. Standard instruments of political financing deriving from expert comparative assessments by IGOs**

	World Bank <sup>40</sup>	USAID <sup>41</sup>	Council of Europe <sup>42</sup>	EU (Euro-parties) <sup>43</sup>	Values at stake
<b>Sources</b>	<p>Ban the use of state resources for political purposes</p> <p>Build public service neutrality</p> <p>Limit types of donors</p> <p>Consider public funding</p> <p>Allocating free TV and radio broadcast to qualifying political parties, with no additional time allocation permitted</p>	<p>Law excluding certain contributions</p> <p>Various forms of public financing (money to parties and candidates, tax incentives, free or discounted broadcast media, in-kind products and services)</p>	<p>Public funding to parties with or without parliamentary representation (minimal qualifying thresholds)</p> <p>Partial public reimbursement of electoral expenses (minimal qualifying threshold)</p> <p>Public funding conditioned to publication and control of accounts</p> <p>Tax exemptions strictly to party activities</p> <p>Individual private donations</p> <p>No corporate, industrial or religious donations</p>	<p>Community authorisation/registration to qualify as parties</p> <p>Public funding from the Community's budget to parties with or without parliamentary representation (minimal qualifying thresholds)</p> <p>No anonymous donations allowed</p>	<p>Fairness</p> <p>Neutrality of public entities</p> <p>Impartiality,</p> <p>Meritocracy in civil service</p> <p>Freedom of expression</p> <p>Equal opportunities</p> <p>Pluralism of ideas</p> <p>Integrity</p> <p>Legality</p> <p>Sovereignty/ Independence</p>
<b>Amounts</b>	<p>Limit expenditures</p>	<p>Legal cap on contributions</p> <p>Legal cap on spending</p>	<p>Limit private contributions to parties and candidates</p> <p>Limit electoral</p>	<p>Limit private contributions to Euro-parties</p> <p>Public funding allocated on</p>	<p>Fairness</p> <p>Equal opportunities</p>

<sup>40</sup> <http://www1.worldbank.org/publicsector/anticorrupt/politicalaccountability.htm#financing>; World Bank (2000) *Anticorruption in Transition: A Contribution to the Policy Debate*, Washington, D.C.: The World Bank.

<sup>41</sup> USAID/Office of Democracy and Governance (2003) *Money in Politics Handbook: a guide to increasing transparency in emerging democracies*. Washington: USAID Technical Publication Series.

<sup>42</sup> Project Group "Human Rights and Genuine Democracy", Report on the Financing of Political Parties (CM (96) 12); Recommendation (2000) 86 on the Financial Transparency of Political Parties and their Democratic Functioning at Regional Level; European Commission for Democracy Through Law (Venice Commission), *Guidelines for Financing of Political Parties*, Strasbourg, 6 December 2000, CDL-PP (2000)6 and CDL-INF (2001)008; PACE Recommendation 1516 (2002); see also Principle 15 of the Resolution (97) 24 on the 20 Guiding Principles for the fight against Corruption.

<sup>43</sup> EP/Directorate General for Research, 1991 Report on the Funding of Political Parties in European Community Member States; Ursula Schleier Report on the *Statute and Financing of European Political Parties*; EP Resolution on the proposal for a Council regulation on the Statute and Financing of European Political Parties [COM(2000) 898 - C5-0081/2001 - 2001/0011(CNS)].



		Legal cap on campaign period	expenditure (per candidate) Periodic assessment of amounts	basis of last electoral results and	
<b>Publicity</b>	<p>Leave a paper trail (public record available for consultation)</p> <p>Publicity of revenue: sources and amounts</p> <p>Publicity of expenditures: amounts and purposes</p> <p>Disclosure of interests by candidates (links to lobbyists &amp; sponsoring)</p>	Law requiring timely financial reporting	<p>Annual publication of party accounts</p> <p>Post-election publication of accounts</p> <p>All contributions higher than subscription fee must be disclosed</p>		Transparency
<b>Monitoring</b>	<p>Ensure oversight by an authoritative and independent Electoral Commission or Court</p> <p>Expenditures subject to audit</p>	<p>Independent or politically balanced organisation created and funded by the government as part of executive branch or justice sector</p> <p>Competencies: investigative (based on complaints), issue subpoenas, collect information, audit reports, impose sanctions</p>	Control of party and electoral accounts by specialised public body	Court of Auditors and EP	<p>Impartiality</p> <p>Accountability</p> <p>Legality</p> <p>Integrity</p>
<b>Enforcement</b>	Expenditures subject to effective sanctions in the case of breaches of the limits	<p>Sanctions to those failing to comply with the law and its requirements (penal, electoral, financial/fines)</p> <p>Sanctions proportional to</p>	<p>Public funding loss in case of wrongdoing</p> <p>Sanction regime should also envisage fines to parties and loss of mandate to candidates</p>	<p>Court of Auditors and EP (Court supremacy)</p> <p>Fines and suspension of public funding to Euro-parties failing to comply with the statutes</p>	<p>Integrity</p> <p>Legality</p> <p>Justice</p> <p>Proportionality</p> <p>Human rights</p>

		nature of breaches	Sanctions proportional to nature of breaches Enforcement by electoral judge/court or similar constitutional entity	and its requirements No penal sanctions envisaged	
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