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FINANCING DEMOCRACY OR CORRUPTION? POLITICAL PARTY FINANCING IN THE EU'S SOUTHEASTERN AND EASTERN MEMBER STATES

Ada-Iuliana POPESCU*

Abstract: *Fighting public-sector corruption has become a priority for most governments and international organizations. The public sector is the source of many benefits. Realizing improper private gains from these benefits has long been the core definition of corruption. As the public sector grows and expands its activities, the complexity of its activities also increases. The opportunities for improper private gains grow, too. Therefore, not surprisingly, the EU admits that the public sector, including political parties and public administrations, are especially vulnerable to corruption. Political parties, for instance, depend on the funding destined for their capability to win elections and otherwise to influence public policies. In turn, this dependency creates opportunities for a variety of corrupt activities. Ensuring that campaign funding promotes democracy and not corruption requires well-crafted, vigorously enforced laws. This article analyzes the legal framework of political party financing in the Eastern and South-eastern European EU member states, in order to assess how well it works in preventing political party corruption.*

Keywords: public-sector corruption; political party; corrupt practices; anti-corruption initiatives

JEL Classification: D73; H83; K42

Introduction

Fighting public-sector corruption is a challenge for any government or international or regional organization that has joined the fight. Often, the public sector is a source of improper private gains. The fight against public sector corruption is difficult and discouraging, due to the complexity and the diversity of the activities taking place in the public sector. The European Union (EU) admits that the public sector, including political parties and public administrations are the most vulnerable to corruption.

Any democratic system is supported by political pluralism. Political parties and alliances depend on financing their capacity to win elections and otherwise influence public policies. However, paradoxically, this dependency creates opportunities for a variety of corrupt activities ranging from the conversion of campaign funds to private use, to rewarding donors by improperly diverting public benefits to them, through “pay to play” and other schemes. Commonly, politicians abuse their positions by taking bribes, fostering nepotism, money laundering and channelling public financial resources to party leaders and supporters. This means that political parties fail to perform two of their

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fundamental functions: representing and informing their citizens. In the long run, political party corruption destroys public trust, the legitimacy of government, and, ultimately, democracy.

This is the reason why it is vital for any country to have a well-crafted and vigorously enforced legal framework addressing political party funding.

Around the world, including in the European Union countries, the behaviour of the political parties' members varies according to economic, social, political and cultural realities. Nevertheless, there are some similarities regarding their corrupt behaviour. For example, political parties in power often take control over public institutions and their activities, giving them monopoly over the distribution and management of public resources. Also, vote buying is a common practice during electoral campaigns. As a result, national laws dealing with political party funding share some common features such as regulating private funding, increasing public funding, setting spending limits and requiring the disclosure of the sources of party funding (OECD, 2011). The goal is to increase transparency and fair political competition between parties, to increase public awareness and to reduce opportunities for corruption.

The European Union has moved in the right direction on political party funding, but its progress has been slow. All European Union members have legal frameworks dealing with political party and campaign funding. However, positive results are scarce, due to the lacunas in the law or/and its inconstant enforcement; essentially, the lack of political will is the main cause.

Among all of the EU members, the South-Eastern and Eastern European states have to make extra efforts to tackle political party corruption, due to their Communist heritage, which left corruption long-embedded in their national political culture.

2. Political party law and enforcement in the EU's South Eastern and Eastern member states

Statistics show that most Europeans perceive politicians as being corrupt. Eurobarometer reports that only one in five Europeans (22%) considers that political party financing is sufficiently transparent and supervised, while only one in twenty 'totally' agree (5%). Two thirds of Europeans think the opposite, and over a third of them 'totally' disagree (Eurobarometer, 2014).

In 2003, the Council of Europe made extensive recommendations on political party's legal framework to the European countries. The aim was to provide some common rules against corruption, generated by the funding of political parties and electoral campaigns. The main issues are public and private funding of political parties; general principles of donations, tax deduction and records for

donations; donation limits and disclosure; electoral campaign expenditures and their limits and records; and supervision and sanctions for infringement of these rules (Council of Europe, 2003).

Several international organizations, such as the Organization of Security and Cooperation in Europe (OSCE), the Organization for Economic Co-operation and Development (OECD), the International Institute for Democracy and Electoral Assistance (IDEA) and Transparency International (TI) joined forces in providing information on the progress of European countries on these recommendations.

All European Union members have developed national laws addressing political party registration, funding and operation. However, reality proves that, often, the law itself and its poor enforcement generate disparities between the 28 members in their anti-corruption fight. Political party corruption thrives, especially in South Eastern and Eastern European member states. These members have to make meaningful changes concerning either their legal framework or its enforcement, or both.

In this respect, the law has to target political parties and also candidates for elections. However, this is not always the case. For example, in the newest EU member, Croatia, the law makes no reference to individual donations given to party candidates, but only to political parties.

At the same time, most European countries opted for defining the term “political party” in their legislation. However, the definition is not always complete or it does not exist in countries such as Greece.

Also, one of the key elements that have to be addressed by law is transparency in party funding and party accounts. In general, in Europe, political parties are financed from public and private sources. Public funding usually comes as a fixed percentage stated by law. Private funding refers to donations, sponsorships, loans, and rewards assimilated to donations.

2.1. Donations and loans

The law should address different aspects regarding donations. Specifically, it should define “donation” as a legal term, precisely state the types of donations allowed (money or in-kind), and require the disclosure of donors’ identity and the amounts donated, their maximum limits, and the timeframe for disclosure.

Article 12 of Council of Europe Recommendations draws attention to the rules regarding anonymous donations and their rigorous registration, due to their potential corruption risk. There are a few European countries, including EU members such as Greece and Romania, that allow anonymous donations if they do not exceed a certain amount. For example, in Greece, anonymous

donations are possible in coupons if the amount of money does not exceed 600 Euros donated to political parties and coalitions, or 200 Euros for regional and local candidates. In Romania, disclosure of donors is not required if the amount is at maximum 0.006% of the total amount of the state subsidy provided in the state budget. Such donations could be in cash. However, if donations are greater than this threshold, they have to be made via bank accounts. Also, in countries such as Bulgaria and Greece, the law does not require using banking system transfers for donations, thus encouraging anonymous donations that can be made in cash.

The public disclosure of donors has been extensively debated. The main argument against it has been the confidentiality of private data (GRECO, 2014). We believe that this problem can be avoided by limiting the disclosure of donors' information only to independent control authorities, where the public servants are bound by the confidentiality clauses written in their employment contracts. At present, in Romania, the donors can request non-disclosure in writing if the amount donated stays under 10 minimum gross salaries (GRECO, 2014). However, the identity of donors and the amount donated which exceeds a certain threshold are published in Bulgaria and Hungary. Also, the timeframe of publication is also vital for ensuring transparency of political party funding schemes. Thus, we believe that political party's financial statement should present a detailed list of all donors and amounts donated at the end of every fiscal year.

At the same time, the rules regarding donation's threshold have to be carefully drafted if coupled with rules addressing anonymous donations. The higher the threshold for anonymous donations, the greater is the danger for corruption. South Eastern and Eastern EU member states maintain reasonable thresholds for political party donations, unlike some of the Western EU members. It is the case of Germany, where the threshold level is 10.000 Euros.

Beside financial donations, some national laws allow donations in-kind made by private or public entities. However, the rules on this matter vary greatly. Thus, in Romania, discounts above 20% of products and services provided by companies to parties or independent candidates are also listed as in-kind donations. Donations made by companies are primarily considered contributions in-kind. In Slovenia, the labor of employees for a political party or the direct payment of its bills falls under this category (GRECO, 2014). Donations in-kind from public entities are sometimes permitted by law or not explicitly dealt with. For instance, Bulgarian legislation does not clearly state how public facilities can be used by the candidates during electoral campaigns. Also, in Greece, donations in-kind are permitted, but they are not considered sources of income for political parties and candidates. For example, Greek public administrators worked for their national and EU parliament representatives, yet, indirectly, they also worked for the benefit of political parties and alliances to

which they belonged. Their work was labelled as voluntary and it was assimilated to in-kind donations from public sources, a practice not favored by the Council of Europe.

Other means of financing political party and independent candidates besides donations are loans. South Eastern and Eastern EU members do not have explicit legal rules regarding loans. Within the European Union, the most advanced in this respect is the United Kingdom.

Presently, in Slovenia loans are covered only by the law on election campaigns, while the law on political parties is silent about them. In Greece, loans that are written off by the lender do not have to be included in the financial statement. Romania is in the process of changing some of the provisions of its political party funding law to impose new, clear rules regarding loans made to political parties by natural or legal persons. Loans made to political parties will have to be made public if their amount will be more than a hundred minimum gross national salaries. Also, the value of the loans in one fiscal year cannot be more than 0.025% from the amount allocated from the state budget for political parties every year. The loans will also have different caps depending on whether the creditor is a natural person or a legal person.

2.2. Political party accounts

Political party funding provisions should also refer to party accounts. The accuracy of political party financial books and records is essential for preventing corruption. Thus, legislation should cover standardized maintenance, presentation, content and publicity of political party accounts. However, few EU members are meeting the standards. In Bulgaria and Greece, due to the absence of specific rules governing pre-election accounts, parties can avoid the caps on electoral expenses by spending more before the election period itself. Similarly, Hungarian legislation does not require political parties to keep specific books and accounts and also it fails to state the precise duration of an electoral campaign, making the monitoring of campaign accounts' situation difficult.

A widespread problem among all EU members concerning political party accounts is the lack of a standardized format for their presentation and publicity. A single computerized format is a must for EU countries, ensuring transparency, comprehensibility and ease in monitoring the financial situation of political parties and alliances. Only in 2014, the Council of Europe recommendations become part of European Union Council proposal for new rules concerning EU political parties.

A standardized format should present a sufficient amount of detail relating to political party assets, income sources and expenditures in order to obtain a consolidated form of political party accounts. The Council of Europe recommendation concerning this issue has constantly been ignored

by European countries, as well as by most of the EU's members. A consolidated regime of political party accounts cannot be obtained if there is no accounting information regarding the income sources and expenditures of entities related to political party, as it is the case for Slovenia, Romania, and Hungary. For example, in Romania, local foundations of political parties are not subject to any special financial or fiscal control. Their supervision relies solely on their yearly financial statement.

Also, some European countries do not have provisions referring to the accounts of local branches of political parties or the law allows for parties to decide for themselves whether their local branches accounts will be kept in a consolidated or in a simple form. For instance, Romania's local branches have occasionally opted to keep their accounts in a simplified form. This, however, is not acceptable when local branches are located in highly populated areas, where public funding is substantial.

Political party finances have to be made public within certain timeframes, in order to maintain transparency and public trust. Many EU members do not impose a rigorous publication requirement; among them are states such as: Cyprus, Greece, Slovenia, Bulgaria, and Romania. In Cyprus and Slovenia, the law does not impose a deadline for publication nor for the amount of financial information that has to be made public by the political parties. Greece requires the publication of financial statements detailing income and expenditures only for local and regional electoral campaigns. In Romania, the financial statement has to comprise all electoral income and expenditures and be presented to the Permanent Electoral Authority (PEA), but the law does not explicitly require submitting a consolidated statement of accounts to this authority. In Bulgaria, independent candidates are not required to publish their financial statements (GRECO, 2014).

2.3. Enforcement

Despite all of these legal imperfections, the biggest challenge for most EU members, especially for South Eastern and Eastern ones, remains the enforcement of the law. Of course, enforcement relies on the institutional system. Specialists in sufficient numbers and quality, simple and transparent procedures complemented by a reasonable bureaucracy are key requirements for an efficient enforcement. European Union members respond differently to these requirements.

Auditors and public supervisory bodies have to exercise their powers independently. They should not be members of political parties or independent representatives in Parliament or Government members, and they should not be under the control of such political institutions, for this

would raise the risk of conflicts of interest. However, this happens in Greece, where members of Parliament represent the majority of the Control Committee.

At the same time, too many supervisory bodies could alter the accuracy of the control itself, favoring a poor exchange of information and, ultimately, corruption. This is the case in Romania and Greece. For example, in Romania, although the financial statements on campaign funding, comprising all income and expenditure, must be provided to the Permanent Electoral Authority, parties are not explicitly required to submit their overall consolidated accounts to this authority. At the same time, monitoring of public funds is assigned to the Court of Accounts, whereas monitoring of private funds falls to the Permanent Electoral Authority. However, the law does not provide for the exchange of information between the two institutions, preventing a general overview of political party financing. In practice, all European countries, including EU members, have to improve the efficiency of monitoring political party funding, whether it refers to independence, scope or practice (Popescu, 2015).

In Greece, various bodies with electoral competencies exist at regional level (54) and at local level (67), maximizing the risk of corruption due to the closeness of these bodies to candidates and political parties at sub-national level.

The supervisory bodies do not always verify the accuracy of information provided by political parties or candidates in the most rigorous manner, due to their lack of investigatory resources. For example, in Bulgaria the auditors accept a margin of tolerance between the political parties' financial statements and their actual situation of up to 70%. In Croatia, the auditors do not verify if an electoral campaign might be financed with money that was not declared. In Cyprus, the auditors are monitoring only the political parties' regular accounts. In Greece, the national supervision body relies mostly on reports of auditors that are working for private auditing companies, making its control one of pro-forma nature. In Slovenia, the auditors are legally constricted to only check if political parties' financial reports are complete and submitted on time (GRECO, 2014).

Unfortunately, there are also some cases where the control is limited to: political party regular accounts, excluding presidential campaign funding (Croatia); campaign income only and not to expenses (Cyprus); or to entities that are directly or indirectly linked to the political parties (Hungary). Sometimes, the law differentiates the scope of supervision between the financing of political parties and their electoral campaigns, making control look superficial (Bulgaria).

The lack of human resources is also an impediment for timely and accurate supervision in Romania, Bulgaria, and Hungary.

The infringement of the political party funding rules should be sanctioned. Supervisory bodies should enforce administrative, criminal, and electoral sanctions. However, in the European Union, sanctions regarding political party funding do not exist (Malta) or they exist on paper but not in practice. At the same time, sanctions are sometimes weak (Belgium, France, and Romania), inappropriate, inflexible (United Kingdom, Sweden, Denmark, Czech Republic, Croatia, Bulgaria, and Romania) and disproportionate to the offence, having a too-short statute of limitation (Romania, Bulgaria, and Latvia) or not even enforced. Moreover, criminal sanctions are rarely applied.

In Romania, for example, the failure to submit a financial statement or refusal to provide documents is subject to a maximum fine of €6,000. Administrative sanctions are favored over criminal ones. The statute of limitation for imposing an administrative sanction is too short, of only 6 months.

In the light of all these problems, and taking into account the Council of Europe Recommendations, as well as the electorate's revolt often manifested in the streets, the European Union decided to amend its regulations regarding the statute and funding of European political parties. The deadline for implementing the new rules by EU members is the first of January, 2017. At the same time, the EU Commission admits there is an acute "need for a clear harmonization of criminal liability of elected officials for corruption offenses", but there is no political will to do so (EU Commission, 2014, p.9).

Conclusion

Political party and political leader corruption is a major threat to democracy and to the respect for human rights. Thus, since it affects us all, the fight against this type of corruption has to be well planned, consistent, and merciless.

The European space, including the European Union, is one of the most difficult anti-corruption fronts, one difficult to conquer due to the diversity of its many nations.

The EU legislative anti-corruption framework has to ensure integrity, transparency and accountability of party members, candidates and leaders. Under the European Union's close supervision, its members have to improve their legal framework and their practices regarding political party funding, in order to minimize, if not eradicate, corruption in this field and to regain the trust of millions of Europeans.

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