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Session 3: Enhancing Transparency in political party financing and electoral processes

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Funding of political finance

I'd like to make three points.

Firstly, we must recognize that citizens in our democracies are showing a growing concern with the improper influence of financial means on political decisions and with corrupt practices linked to political parties and candidates. This feeds the erosion of their legitimacy. National Legal frameworks, codes of conduct are a way to assure public integrity and mitigate the risks of money on politics. On an international level, the Council of Europe reached in 2003 a consensus in a recommendation on common rules for the fight against corruption in the funding of political parties and electoral campaigns. It set up a system of supervision of regulations on Political Finance by member states. These rules have been evaluated and two thirds of them have been afterwards reviewed. This is the most comprehensive soft law to date on these topics. In 2004, each State Party to the United Nations Convention against Corruption was invited too to enhance transparency in the funding of candidacies for elected public office and in the funding of political parties.²¹ Executive summaries of the implementation of these regulations have been published until now.

Secondly, these different evaluations all around the world face recurrent issues. I will focus my attention on private funding, providing examples of good practices and bad practices mainly in Europe. These examples fueled the proposals of common standards which have been considered by the Experts group in Prague on May the 21st.

For instance, cash donations are a blind spot in the legal framework of Political Finance. Anonymous donations are often prohibited but cash donations are not always banned. Cash donations should not be conflated with anonymous donations because cash donations may be made by an identified donor who expects benefits in return for his donation.

Good practice in that field is provided by the United Kingdom. If the donation comes from an unidentified source- an anonymous cash donation-, it must be given back to the person who transferred the donation.

Prohibition of these donations is usually considered to prevent undue influence of business on politics.

There are more and more countries inside the Council of Europe which ban corporate donations to political parties: Belgium, Bulgaria, Estonia, France, Latvia, Lithuania, Poland, Portugal, Spain for instance. And for reasons linked to the Dieselgate, Daimler Benz announced recently, it will no longer make donations to German political parties. The same rules apply in South Korea.

But there are other forms of corporate funding. Sponsoring may apply for tax reasons beside corporate donations like in Austria and Germany. In Belgium sponsoring is admitted while corporate donations are banned.

Another way of circumnavigation with prohibition of corporate donations to political parties is to fund foundations close to political parties like in Spain. So, when corporate donations are forbidden, special attention has to be paid on effective implementation of this prohibition in connection with possible donations to entities related to political parties.

Donations should be transparent to prevent any risk of influencing the Political decision-making process. Donations from physical persons are a way for political parties and candidates to take roots in the public opinion. But splitting of donations and channeling donations through a great number of donors is a traditional way to circumnavigate rules on donations transparency.

Donations from foreign sources is a complex issue.

Foreign funding is permitted in Denmark and Luxembourg but it may exert an influence on elections and should be banned. Such a practice may be attractive for non-democratic countries which may interfere with the sovereignty of domestic politics in democratic countries.

With the Brexit campaign a person has, allegedly, made the most important donation for political purposes that has ever existed in the United Kingdom. This donation was reported to be £ 8,4 million. The National Crime Agency is currently investigating the source of the donation.

For four years in Italy after the removal of public funding in 2013, we noted a decrease of 61 % in the income of political parties. But there was the loophole concerning funding from foreign sources which was permitted. Things changed this year. However, such a form of foreign income when it is legal, is not liable to investigation.

But the prohibition of foreign funding faces several obstacles.

When a donation is made through a national subsidiary of a foreign parenting firm, it is not easy to assert that this subsidiary is completely independent from the foreign parenting firm. Under Indian Law, foreign company includes an Indian subsidiary of a foreign company.

Prohibition should not ban just overseas donations but foreign spending too. Indeed, what would the impact of a ban on foreign donation be, if at the same time foreign electoral campaign expenditure is permitted? We can endorse the position of the British Electoral Commission which advocates for a ban of foreign electoral expenditure regarding spending on digital electoral campaigns, in its last June report.

Loans are an important source of income for political parties or candidates in different countries such as in France, Poland, Spain for instance. But loans must not be hidden, disguised donations if their rates of interest are under market conditions or if they may be cancelled.

In Germany the amount of the loans but neither the name of the lender nor its location has to be disclosed in the annual party financial statements. Good practices may remedy this risk.

Some steps concerning loans may be considered as a progress. Three issues have now been regulated in France since 2017: the length of the loan, the identity of the lender and the transparency of the loan. Spanish political parties are liable to an obligation of information on the amount, the rate of interest and the repayment. Debt cancellation which would be a donation is prohibited.

The funding of electoral campaigns on one's own, personal funds of candidates is very questionable also. In Germany they use the word "dowry" to designate the personal funds of the direct candidates to parliamentary elections. In Ukraine for the presidential election for instance, there is no limit for personal funds. It is a way to circumvent the transparency of donations. A good practice would be to admit loans as personal funds and to regulate them.

Finally in-kind donations have to be regulated too. There are two ways for such measures.

-To declare them at their market value.

No rules for instance have been provided for an evaluation of in-kind donations in Hungary. But the assessment of the value of these donations raises questions when immaterial services are provided. For example, at the last French presidential election in 2017, Emmanuel Macron received 36 % of discount for a meeting in the same place where the meeting of another candidate was held. Justification for this discount accepted by the monitoring body was the different periods where these meetings took place. In the United Kingdom, if a political party is given property, goods or services free of charge, or at a non-commercial discount, it must value it at the market rate. If it exceeds 10% of this rate, it is considered as a donation.

-To declare them quickly. For instance, in Latvia all donations have to be declared within 15 days of the receipt given to a political party. They have to be declared online in Norway. In Mexico political parties have three days to register each operation on the integral oversight system.

Forms of private funding may be prohibited, regulated or permitted. Because challenges of political finance are the same, whatever the political systems and their background are, there is a common approach which has emerged in Europe to ban foreign corporate donations, to regulate in-kind, anonymous and cash donations, to disclose donations over a certain threshold. The debate on the legitimacy of corporate donations has been opened.

Thirdly, as I mentioned before, international standards on these matters were adopted in 2003 and 2004. But the globalization of large firms' organizational structure to influence elections, the interference of Third parties' campaigners in the electoral process, the increasing use of digital platforms during electoral campaigns with a small budget and a big impact are new challenges for supervision bodies. These new trends highlight the shortcomings of the current regulations and call for strengthening national and international standards on political finance.

Two lessons have emerged from the work of the Council of Europe to define common standards regarding Political Finance and could inspire our work during this session.

The transparency of resources, efficient supervision and sanctions of infringements of the rules are clearly connected. Persistent loopholes, shortcomings and circumvention possibilities of the law make it difficult for monitoring to be performed and sanctions to be imposed. Transparency is a condition for effective monitoring and sanctions.

Responsibility for improvement to legislation depends on the governments but this improvement requires an input too from all stakeholders including political parties, candidates, supervision bodies, Third parties, media and civil society.