

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

ACCESS TO INFORMATION AND POLITICAL PARTIES

QUERY

Can you provide an overview of the main international and European Union instruments and principles or best practices related to access to information on political party operations (in particular, financial operations and donations)? Are political parties covered by access to information laws? And what are the principles or best practices regarding the failure by political parties to provide such information?

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SUMMARY

Political parties play an important role in the democratic process, and access to information regarding their activities, particularly their finances, is key to ensure control over money in politics.

In the majority of countries across the world, political parties, due to their legal status, do not feature among the institutions required to respond to citizens' access to information requests, but this does not mean that political parties should not report and disclose information related to their activities. Political funding rules often include provisions requiring political parties to disclose such information.

International standards put forward by intergovernmental and non-governmental organisations have called on countries to establish clear rules requiring political parties to regularly disclose information about their operations, in particular about their finances. Such information should be made available to the public either by the political parties themselves or by the responsible oversight agency. In addition, to ensure that the information disclosed reflects reality, political parties should be obliged to keep proper books and accounts containing detailed information on all sources of income, donations and expenditures during the financial year and elections.

Countries should also provide for effective, proportionate and dissuasive sanctions to ensure compliance with the law.

1. ARE POLITICAL PARTIES COVERED BY ACCESS TO INFORMATION LAWS?

Political parties play a key role in democratic processes and therefore it is fundamental that citizens have access to information related to their activities, particularly with regards to their financial operations.

Nevertheless, international standards and best practices on access to information regulations have not explicitly recommended that countries include political parties among the institutions required to respond to citizens' requests to access to information. For instance, the standards put forward by the non-governmental organisation Article 19 recommend that freedom of information laws should be guided by the principle of maximum disclosure but only cover "public bodies", such as bodies from the three branches of government, public enterprises, as well as private bodies which carry out public functions (Article 19 1999).

At the national level, the scope of access to information legislation adopted varies across countries, with some countries opting to include only federal entities and others also covering the legislature and the judiciary. The general trend, however, is towards increasing the scope of the entities covered, and the most progressive legislations already include legal entities that perform public functions or receive a significant share of government funding for their operations (Chêne 2012), which could potentially cover political parties.

Nonetheless, in most countries, political parties are not yet covered by access to information laws (Right2Info, no year) due to their legal status, with a few exceptions, such as Nepal where political parties are covered under the definition of "public bodies", according to the [2007 Right to Information Act](#) (Our Right to Know 2011) and Macedonia. In Macedonia, political parties were originally not amongst the information holders as stated in the Freedom of Information Law (FOI). Only after an NGO had its request for accessing party information denied by a political party, and then challenged it, did the National FOI Commission pass a bylaw including political parties as information holders in terms of their financing (Right2Info, no year).

Some scholars have underscored the fact that legislation on access to information regarding political parties is still far from a normative ideal, and that political parties, either because they act in the public interest or because they receive significant amounts of public funding, should be obliged to respond to citizens' requests (Nunez & Alegria, no year).

While freedom of information laws still fail to guarantee the disclosure of information of political parties' activities, access to such information is recommended and guaranteed through a set of other international principles and domestic legislations, which establish requirements for political parties to report on and disclose the utilisation of public resources, donations, public documents, as well as information on expenditures with staff and real estate properties, among others.

This answer thus provides an overview of the international principles and good practices regarding reporting and disclosure requirements for political parties.

2. REGULATING ACCESS TO INFORMATION AND POLITICAL PARTIES' OPERATIONS

International standards

Access to information regarding political parties' activities will firstly depend on an effective legal framework that requires political parties to keep proper books and accounts, including on electoral campaigns, as well as on the establishment of effective rules regarding the disclosure of this information by political parties and/or by the responsible oversight agency.

There are several recommendations put forward by intergovernmental and non-governmental organisations regarding political party financing that underscore the importance of proper accounting rules, as well as the disclosure of information to the public.

For instance, the *Council of Europe Guidelines on*

Transparency of Party Funding (2000) and the *Recommendation on the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns* (2003) have called on countries to oblige political parties to keep proper and detailed accounts, as well as to make these accounts available to the wider public and present them to an independent oversight agency on a regular basis.

Transparency International's policy position on political financing (2009) also states that accountability within political parties, meaning the requirement to use proper bookkeeping and accounting systems, together with requirements of reporting the party's income and expenditures to an oversight agency and disclosing this information to the public, are seen as key steps to reducing corruption risks related to political finance. Other organisations such as the OECD (2012) and International IDEA (2006) share the same recommendations regarding transparency in political party and election financing.

Reporting requirements for political parties

As previously mentioned, access to information regarding political party operations will depend on an effective legal framework that requires political parties to keep proper accounts, also spelling out what needs to be reported, to whom and when.

Regulations regarding political parties' bookkeeping and annual accounts obligations vary significantly across countries. While in some countries political parties are not required by law to keep proper books and accounts, in others they have to report detailed information to an independent oversight body, as well as submit their accounts to an external audit and disclose such information to the public (Doublet 2011; Transparency International EU 2012).

According to the Council of Europe (Guidelines 2001 and Recommendations 2003), Transparency International's policy positions and other organisations mentioned above, access to information regarding political parties' activities will only be effectively reached if the information provided by political parties is comprehensive, detailed and reliable; timely and legible; accessible; and verified

by an independent institution and/or independent auditor.

Comprehensive, detailed and reliable

Political parties' annual statement of accounts should be as detailed and comprehensive as possible, identifying all relevant sources of funding, income and expenditures (Article 11 and 12 Council of Europe Recommendation 2003).

In addition, political parties should be required to report on donations (including information on the name and address of the contributor and the amount donated) and expenditures during election campaigns. Such a requirement enhances transparency and accountability and it is a prerequisite for the enforcement of other rules such as spending ceilings, contribution limits and the allocation of public subsidies. Reporting during election campaigns should happen more frequently to allow voters to make an informed decision (Transparency International 2009).

While international standards and recommendations underscore the importance of detailed and comprehensive reporting, they do not specify which items should be reported. However, the Group of States against corruption (GRECO), when assessing countries' compliance with the Council of Europe recommendation, has identified good practices with regards to what should be included in the party's annual statement of accounts (Doublet 2011). For instance, in the United Kingdom, which was assessed by GRECO as having fairly comprehensive rules regarding the content of annual statements of accounts, political parties are obliged to provide for (GRECO 2007):

- An overview of the political and financial activities conducted that year, which should include a short summary of the party's political activities (for example, elections contested), as well as an overview of the financial activities (income, expenditures and balance sheet)..
- An income and expenditure account, including information on membership fees; money received from affiliated organisations

such as trade unions; donations¹ (money and in-kind, including the name of the donor and the amount); branch income (donations or any income received from other branches of the party); fundraising income; and investment income (for example, interest from bank accounts and ownership of properties), among others.

Political parties are also obliged to report on their expenditure account, including information on staff costs; office costs, such as mailing and electricity; campaigning and fundraising costs; rents; and loan interests, among others.

- An assets and loans statement, which should include information on the purchase of assets, sale of assets, repayment of existing loan capital and additional loan undertakings.

Moreover, political parties in the UK have three other reporting obligations to the Election Commission, including: quarterly donations return (weekly during elections); quarterly return of loans; and returns concerning campaign spending.

Timely and legible

The information provided by political parties should also be presented in a standardised, readable and searchable format. The itemisation of the reports, for example, makes it easier to monitor compliance with legal provisions as well as to facilitate comparison over the years and across political parties (Doublet 2011).

Likewise, it is instrumental to have clear and specified timeframes within which political parties should present their annual accounts.

¹ *Political Parties must make sure that their records comply with the legal obligation on handling donations. According to the law, parties must record the donation's value, the donor's name and address. Moreover, all permissible donations over £7,500 must be reported to the Electoral Commission every quarter and disclosed to the public (besides the statement of accounts). For more information on the reporting of donations see the [UK Electoral Commission website](#).*

Verified by an independent oversight body

Regulations are unlikely to be respected unless an independent body has the responsibility to oversee them. Political parties thus should be required to submit their accounts and election campaign expenditure returns to an independent oversight body.

However, having a mandate to receive financial reports and annual accounts does not necessarily mean that the institution is also required to review these reports, nor to investigate possible breaches (International IDEA 2012). Against this backdrop, states should provide for a single, independent monitoring body, and include among its tasks the supervision of the accounts of political parties and the expenses involved in election campaigns, as well as their presentation and publication (Article 14 Council of Europe Recommendation 2003). These reports have to be scrutinised beyond formalities, and sanctions for wrongdoings should be applied in a timely manner (Transparency International 2009).

In addition, to ensure their independence and effectiveness, oversight bodies need to be adequately resourced, trained and legally empowered to monitor the operations (Transparency International EU 2012).

Accessible

The information compiled by political parties should be accessible to the wider public in a timely manner. The next session looks at international standards and recommendations with regard to disclosure requirements

Disclosure requirements

Disclosure of the information compiled by political parties is crucial so that citizens and the media can monitor both party activities and their relationship with contributors. For this, it is instrumental that the information made available is done in a timely manner and that the data provided is comprehensive and detailed.

The onus of publication may lie with political parties and/or with the responsible oversight body, depending on the country's legal framework. The

level of detail of information made available will also vary, with some countries publicising all information online and others providing only a summary of total income and expenditures (Transparency International 2009).

The Council of Europe recommends states to oblige political parties to make their accounts public on a regular basis (at least annually) and to report on election campaign expenses more frequently (Council of Europe 2001; Article 13 Council of Europe Recommendation 2003).

In addition, in countries where political parties are only obliged to submit detailed reports to an oversight body, the latter should be required to make the information available to the public in a timely and user-friendly manner (Council of Europe 2003; Transparency International 2009; Transparency International EU 2012). In this case, if the public body responsible for oversight fails to disclose such information, citizens may make use of freedom of information laws to access the data (ACE Electoral Network, no year).

Latvia's law on political financing with regard to disclosure rules is considered a good practice (Transparency International 2012). The law envisages timely disclosure procedures for declaration of both election-related revenues and expenditures from political parties' annual accounts. The oversight agency is obliged to publish the declarations and the annual accounts within ten days of their receipt. The information is made available to the public through a searchable database, making it easy to both access the data and to compare it across years and political parties. In addition, the information published is comprehensive, including, for example, information on the recipient, sources and values of the donations, as well as on membership dues paid to parties (Transparency International 2012).

3. SANCTIONS FOR NON-

COMPLIANCE

Standards

To ensure that political parties comply with the rules and that information about their activities is disclosed, political finance regulations must be accompanied by sanctions against breaches.

Neither the Council of Europe nor the recommendations put forward by GRECO concerning monitoring states' compliance with its guidelines specify the type of sanctions to be applied (that is, financial, administrative or criminal). It is important nevertheless that the principles of effectiveness, proportionality and dissuasiveness are met through whichever sanction is chosen. The Council of Europe recommendation provides that "states should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subjected to effective, proportionate and dissuasive sanctions."

The timely application of sanctions will also be key to guarantee a sufficiently dissuasive effect. If political parties or candidates are just punished after their mandate is finished, for example, this could have little dissuasive implication (Transparency International 2009). On the other hand, states should guarantee an adequate statute of limitation for imposing sanctions. Too short statute of limitations could hinder the investigations and fuel impunity (Doublet 2011).

In practice, however, the analysis of the sanctions established by Council of Europe member countries with regard to political parties' failure to report and/or disclose information regarding their finances show that, in the great majority of them, sanctions are inappropriate or not applied (Doublet 2011).

Types of infringement

In order to ensure that political parties comply with the law, and that the information disclosed is accurate and provided in a timely manner, it is critical to establish sanctions for a wide variety of infringements. Political party financing laws across European countries, however, do not often provide for a significant range of sanctions (GRECO 2011).

Within this framework, all potential infringements should be covered, including, when relevant, the failure to disclose information to the public; the failure to submit annual and election campaign reports to the required oversight agency; the failure to declare contributions or to identify donors; the provision of incorrect or false information; and the failure to report on expenditures related to public funds, among others.

Range of sanctions

A range of administrative, civil and criminal sanctions can be applied to political parties and candidates who fail to comply with rules relating to the disclosure of information regarding their operations.

Sanctions should be proportionate to the seriousness of the offence and caution should be taken so that they are not abused for political purposes. Also, as previously mentioned, a description of the sanctions to be applied in relation to different breaches of the law may be helpful to ensure adequate and effective enforcement.

There is no consensus on what type of sanctions work best as it will depend on the country's own context and mostly on their effective implementation. Countries have made use of different types of sanctions – administrative, civil and criminal – and they often include: fines; dissolution of the political party; disqualification from participation in elections; criminal sanctions such as imprisonment; and loss of all or part of public financing, among others.

Transparency International has underscored the importance of holding political parties liable but also those individual officers responsible for financial matters within the party (Transparency International 2009).

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