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from:	Mr Vítor CALDEIRA, President of the European Court of Auditors
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to:	Mr Eamon GILMORE, President of the Council of the European Union
Subject:	Opinion No 1/2013 (pursuant to Articles 287 and 322 TFEU) concerning the proposal for a regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations and concerning the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 966/2012 as regards the financing of European political parties

Delegations will find attached Opinion 1/2013 of the Court of Auditors.

Encl.: Opinion 1/2013 of the Court of Auditors

ΕΒΡΟΠΕΪΣΚΑ ΣΜΕΤΗΑ ΠΑΛΑΤΑ
TRIBUNAL DE CUENTAS EUROPEO
EVROPSKÝ ÚČETNÍ DVŮR
DEN EUROPÆISKE REVISIONSRET
EUROPÄISCHER RECHNUNGSHOF
EUROOPA KONTROLLIKODA
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ
EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
CÚIRT INIÚCHÓIRÍ NA HEORPA



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EUROOPAN TILINTARKASTUSTUOMIOISTUIN
EUROPEISKA REVISIONSRÄTTEN

Opinion No 1/2013

(pursuant to Articles 287 and 322 TFEU)

concerning the proposal for a regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations and concerning the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 966/2012 as regards the financing of European political parties

THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 287 and 322 thereof,

Having regard to the Commission's proposals¹,

Having regard to the European Parliament's requests for opinions, received by the Court on 5 November 2012 and on 25 January 2013,

Having regard to the Council's request for an opinion, received by the Court on 11 October 2012,

Whereas:

- (1) The Commission's proposals aim to increase the visibility, recognition, effectiveness, transparency and accountability of European political parties and foundations.
- (2) In 2012, a total of 13 political parties and 12 political foundations at European level received funding from the general budget of the European Union (hereinafter 'the EU budget')². Funding has been provided to

¹ The proposal for a Regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (COM(2012) 499 final of 12 September 2012); and the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 966/2012 as regards the financing of European political parties (COM(2012) 712 final of 29 November 2012).

² See Section I: Parliament/Expenditure/Articles 402 and 403 of the European Union's general budget for the financial year 2012 (OJ L 56, 29.2.2012, p. 1).

political parties since 2004³ and the funding of political foundations started in 2007⁴. The funds are administered by the European Parliament.

- (3) Currently, funding from the EU budget is by far the main source of revenue for the European political parties and foundations. Other possible sources of finance are contributions from their members, donations, loans and earnings from economic activities.
- (4) Under the legislation currently in force⁵, European political parties and their affiliated foundations do not have a uniform legal status under EU law; a number of different legal forms exist, depending on the country where the party or foundation is based.
- (5) The proposal for a regulation on the statute and funding of European political parties and European political foundations (hereinafter 'the draft regulation on the statute') gives these bodies a European legal personality. In future, being registered with such a status by the European Parliament will be a precondition for receiving funds from the EU budget.
- (6) Furthermore, the draft regulation on the statute provides rules on governance and internal democracy, funding from the EU budget, donations and contributions, accounting and control arrangements and reporting obligations and penalties.

³ According to data of March 2012 published by the European Parliament, the amounts awarded to European political parties increased from 4,65 million euro in 2004 to 18,90 million euro in 2012.

⁴ For the period from October 2007 to August 2008, the European Commission awarded grants for European political foundations under a pilot project. According to data from March 2012 published by the European Parliament, the amounts awarded increased from 6,69 million euro in 2009 to 11,96 million euro in 2012.

⁵ Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (OJ L 297, 15.11.2003, p. 1), as amended by Regulation (EC) No 1524/2007 (OJ L 343, 27.12.2007, p. 5).

- (7) The proposal for amending Regulation (EU, Euratom) No 966/2012 as regards the financing of European political parties (hereinafter ‘the proposal amending the Financial Regulation’) aims to discontinue the current system of financial support for European political parties via grants from the EU budget⁶. The European Parliament has made a number of recommendations for changes to this system⁷. The Commission proposes that, in future, European political parties should receive support in the form of ‘contributions’. It would no longer be a requirement to submit annual work programmes and estimated operating budgets. European political parties would need to justify the sound use of Union funds ex post,

HAS ADOPTED THE FOLLOWING OPINION:

Background

1. European political parties and foundations are not bodies set up by the Union within the meaning of Article 287(1) TFEU and are not, as such, subject to the Court’s audit⁸. However, to the extent they receive funding from the EU budget, the Court is competent to carry out audits based on the examination of records and on-the-spot visits to their premises.
2. Funds which European political parties and foundations receive from sources other than the EU budget are not automatically subject to the Court’s audit. However, because of the interaction between EU funding and funding

⁶ See Article 125 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (JO L 298, 26.10.2012, p. 1).

⁷ See the European Parliament resolution of 6 April 2011 on the application of Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding, in particular paragraphs 15, 16 and 20 (OJ C 296E, 2.10.2012, p. 46).

⁸ In particular, the Court does not draw up specific annual reports about European political parties and foundations.

from other sources, the Court may also need to examine the latter in the course of its audit work.

There are some significant gaps in the proposed legal framework

3. The Court acknowledges that the Commission's proposals address a number of shortfalls in the provisions currently in force. However, some further issues need to be addressed in order to encourage a European political culture of independence, accountability and responsibility, to strengthen scrutiny and avoid the potential abuse of the funding rules.

Donations

4. The Court notes that the definition proposed for the term 'donation'⁹ is too narrowly worded. As a consequence, it does not cover all types of transaction that can provide economic advantages to European political parties and foundations, leaving room for them to circumvent transparency requirements and maximum thresholds¹⁰.

5. As it stands, the draft regulation on the statute does not specifically regulate donations from natural or legal persons who provide goods and services for EU institutions or for other public authorities involved in the management of EU funds.

6. The draft regulation on the statute regulates donations to European political parties and their affiliated European political foundations. However, no rules are proposed on donations to entities which are related, directly or

⁹ Article 2(7) of the draft regulation on the statute reads as follows: '[...] "donation" means cash offerings and other donations in kind (goods and services) that constitute an economic advantage for the European political party or the European political foundation concerned'.

¹⁰ For example through service contracts given to an entity under the control of a political party, where the amount paid is out of proportion to the service rendered.

indirectly, to European political parties or foundations or are otherwise under their effective control¹¹.

7. The draft regulation on the statute does not specifically regulate donations from private entities¹² based in non-member countries or from international organisations. It only prohibits donations from public authorities in non-member countries and undertakings controlled by these public authorities¹³.

8. According to the Commission's proposal, donations from the public authorities of EU Member States to European political parties and European political foundations are not excluded¹⁴. If there is a need to maintain this option, clear rules should be set in this respect.

Contributions

9. Rules on contributions to political parties and foundations from its members¹⁵ are not fully consistent with the principles that apply to donations. Whilst the draft regulation on the statute limits donations to a value of 25 000 euro per year and per donor, no ceilings are set for individual contributions from members of political parties and foundations.

Loans

10. The Commission does not propose any rules concerning loans, their sources and their terms and conditions. Without such provisions, there is a risk of rules on donations and contributions being circumvented by receiving loans at particularly advantageous conditions.

¹¹ For example research institutes or publishing houses.

¹² Including non-governmental organisations.

¹³ See Article 15(5)(d) of the draft regulation on the statute.

¹⁴ See Article 15(5) of the draft regulation on the statute.

¹⁵ See Article 15(7) and (8) and Article 24(1)(f) of the draft regulation on the statute.

Sanctions

11. The infringement of rules should lead to effective, proportionate and dissuasive sanctions. Under the proposed regulation¹⁶, the maximum amount for fines is limited to 10 % of the annual budget of the party or foundation in question corresponding to the year in which the sanction is imposed. Fines would be decided by Parliament, taking into account a number of parameters¹⁷. For irregularities related to donations and contributions, the Court recommends a less discretionary approach. The amount of a fine should be a multiple of the irregular amounts involved, without a maximum ceiling.

12. No penalties are provided for people or bodies that have made irregular payments to a party or foundation. Indeed, according to the draft regulation on the statute, any irregularly paid amounts must be returned to those who made such payments.

13. The Court welcomes the fact that the draft regulation on the statute provides for mandatory fines where any of the bodies authorised to audit or conduct checks on the beneficiaries of funding from the EU budget detect inaccuracies in the annual financial statements¹⁸. The Court recommends that mandatory administrative and financial penalties should also apply where the European Parliament or the Court are prevented from exercising their audit powers.

Direct donations to candidates or elected representatives

14. Finally, the Court draws attention to the need for rules regarding the funding of political parties to apply *mutatis mutandis* to the funding of

¹⁶ See Article 22 of the draft regulation on the statute.

¹⁷ Notably the gravity, duration, and recurrence of the infringement, the time that has elapsed, and the degree of negligence or intention.

¹⁸ See Article 22(2)(c) of the draft regulation on the statute.

campaigns of individual candidates for European elections or elected representatives. This would mitigate the risk of the provisions on the funding of political parties being circumvented by direct donations to candidates or elected representatives.

15. For legal reasons, it will not be possible to submit such rules by means of a Commission legislative proposal based on Article 224 TFEU. Issues related to European elections and to the performance of the duties of Members of the European Parliament are governed by Article 223 TFEU. On the basis of the latter, the European Parliament has the power to draw up a legislative proposal with the necessary provisions, for example for inclusion in the Act concerning the election of the Members of the European Parliament by direct universal suffrage¹⁹. Currently Article 4 of this Act only provides for an option that each Member State may set a ceiling for the candidates' campaign expenses.

Eligibility conditions for EU funding and some other key concepts should be defined in greater detail

16. Article 8 of the regulation currently in force defines the nature of the expenditure of European political parties which may be funded from the EU budget. Such expenditure includes 'administrative expenditure and expenditure linked to technical assistance, meetings, research, cross-border events, studies, information and publications'. Such a definition is no longer included in the Commission proposals, although it would provide useful guidance for the calls for contributions to be issued by the European Parliament. Provisions in this respect in the proposal amending the financial regulation are not precise enough²⁰. The proposal amending the financial regulation should also make it

¹⁹ OJ L 278, 8.10.1976, p. 5.

²⁰ See Articles 204b and 204d of the proposal amending the Financial Regulation. Article 204b(1) stipulates that contributions 'shall only be used to reimburse a percentage of the operating costs of European political parties directly linked to objectives of those parties'.

clear that European political parties receiving a contribution from the general budget shall not receive other funds from the budget.

17. Article 2 of the draft regulation on the statute only provides a limited number of definitions for the terms used throughout the text. In the interest of clarity and legal certainty, further definitions should be included²¹ for the following terms: ‘authorising officer’, ‘annual budget’ of political parties and foundations²², ‘annual reimbursable expenditure’, ‘annual eligible cost’, ‘competent national authorities’, and ‘contributions’ from members of political parties and foundations.

Strong accountability is needed

Accounts and reporting obligations

18. Article 19 of the draft regulation on the statute requires political parties and foundations to submit annual financial statements according to the law applicable in the Member State in which they have their seat²³. In order to enhance comparability and transparency, it would be preferable to have a standardised, accruals-based, presentation of accounts and detailed reporting obligations, using a compulsory model, which would apply to all political parties and foundations independently of the law applicable in the Member State in which they have their seat.

19. Furthermore, Article 19 should provide that those in charge of external audit are selected, mandated and paid by the European Parliament. This would

²¹ Where appropriate, by means of references to other relevant legal acts.

²² In the absence of a definition of ‘annual budget’, it will be impossible to check compliance with the rule that members’ contributions to European political parties and foundations must not exceed 40 % of their annual budgets.

²³ The annual financial statements are to be submitted to the European Parliament’s Registry and to the competent national authorities in the Member States.

help to ensure consistency in the performance of the external audit function and facilitate the monitoring of this activity²⁴.

Provision regarding the Court's audit powers

20. The Court's audit powers stem directly from primary law, in particular Article 287 TFEU, and cannot be changed or restricted by secondary law. In order to clarify that the audit arrangements laid down in the draft regulation on the statute apply without prejudice to these powers, the Court takes the view that there should be a general reference to them in Article 20 of the draft regulation.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 7 February 2013.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President

²⁴ The Court notes that, in 2012, the European Parliament issued a call for tenders to select the same external auditor for all European political parties and foundations.