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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Commission working document prefiguring the proposal for an amendment to
the Financial Regulation introducing a new title on the financing of European
political parties

Delegations will find attached Commission document COM(2012) 500 final.

Encl.: COM(2012) 500 final



EUROPEAN COMMISSION

Brussels, 12.9.2012
COM(2012) 500 final

COMMISSION WORKING DOCUMENT

**prefiguring the proposal for an amendment to the Financial Regulation introducing a
new title on the financing of European political parties**

COMMISSION WORKING DOCUMENT

prefiguring the proposal for an amendment to the Financial Regulation introducing a new title on the financing of European political parties

1. INTRODUCTION

1.1. Presentation as a working document

The present document, which is not a formal proposal of the Commission, presents the changes which would be required to the Financial Regulation (hereinafter FR¹) as revised, following the triennial revision of the FR.

However, since the new FR has not been formally adopted yet, the Commission may only submit its proposal in the form of a working document. This will allow the Commission and the legislative Authority to have an overall vision of the reforms regarding the European political parties and European political foundations. Once the new FR is adopted, the intention of the Commission is to present a formal legislative proposal.

1.2. Justification for amending the FR

It is necessary to amend the FR in order to take account of the changes proposed in the Commission 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 which will replace current Regulation (EC) No 2004/2003². In application of Article 224 of the Treaty on the Functioning of the European Union (TFEU) the latter proposal contains new rules regarding, *inter alia*, the funding of political parties and political foundations at European level. Their effectiveness requires that they are accompanied by a corresponding set of financial rules anchored in the FR.

It is proposed that a new Title "Contributions" be inserted at the end of part two of the revised FR ("special part") just before part three ("transitional and final provisions").

The changes envisaged are shown in Annex.

Last, it is not envisaged at this stage to have any delegated act, based on article 290 TFEU, for this new Title.

¹ Proposal for a regulation of the European Parliament and of the Council on the financial rules applicable to the annual budget of the Union (COD 2010/0395; doc. CS 12250/12 ADD1 of 6 July 2012)

² 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)

2. MODIFICATIONS PROPOSED BY THE COMMISSION SERVICES

2.1. New title in the FR: "Contributions to European political parties"

The proposal follows the EP resolution regarding the financing of the European political parties (*the Giannakou report*)³ which considers that, in light of the experience gained, the financing of European political parties and European political foundations should be improved as regards a number of points. In particular, it calls for an end to the system of grants and the creation of a new financing instrument in the FR 'devoted solely and tailored specifically to the funding of European Parties and foundations'.

After close analysis, it is proposed that Political parties should indeed be financed through a new instrument ("contributions") as illustrated in this draft proposal rather than through an operating grant, as it is currently the case.

As regards European political foundations, it is considered that they should continue to receive an operating grant. The request of the European Parliament to exclude as well European political foundations from the grant system is not justified given that the specificities of European political parties are not present in the European political foundations. In addition, most of the concerns raised by the European Parliament regarding the difficulties encountered by these foundations under the current FR⁴ should disappear with the entry into force of the revised FR, removing the need for specific derogations. This is the case in particular for the possibility for the foundations to receive the entire amount of pre-financing without lodging a guarantee, and to build up financial reserves from their own sources, as the amounts dedicated to these reserves shall not be taken into account for the purpose of verifying compliance with the no-profit rule.

Contributions to European political parties are based on a model similar to the grant system but with the specificities detailed hereunder.

2.2. Major modifications in comparison to the current grant system.

The major differences between the envisaged contribution and grants are the following:

2.2.1. Abolition of the "annual work programme"

The Giannakou report cited above calls in its §18 for the abolition of the annual work programme for European political parties pointing out that this precondition is inappropriate for them and is not required in any Member State legislation.

In particular, the activities of political parties demand a much larger degree of flexibility and reaction to current events than the one imposed by the system of grants, which requires the presentation of an annual work programme and a provisional budget in the request for funding.

For this reason, the contributions should be awarded without annual work programmes or estimated operating budgets.

³ "On the application of Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding of 15 March 2011" –(2010/2201 INI)

⁴ Regulation (EC) No 1605/2002 of 25 June 2002 (OJ L 248, 16.9.2002, p.1)

2.2.2. *Introduction of eligibility criteria*

Eligibility criteria for funding of political parties have been introduced in accordance with the proposal for a Regulation on the statute and funding of European political parties and European political foundations. In practice, the authorising officer should request directly from the Registry of European political parties (set up in the EP) certificates confirming that European political parties are duly registered and are in compliance with relevant obligations (e.g. presentation of accounts) and have not been suspended or subject to any administrative penalty as foreseen in this above proposal for a Regulation.

2.2.3. *Abolition of the selection criteria*

The selection criteria will not be required in the new Title, since there is little value in verifying the financial and operational capacity of European political parties to represent its citizens, *a fortiori* when no annual work programme or estimated budget is submitted.

2.2.4. *Control on their statutory obligations*

A provision has been introduced which will explicitly require that European political parties should not be subject to debarment from the Registry or subject to an administrative penalty during the financial year covered by the contribution. In such cases, their contributions would be reduced or terminated and any pre-financing paid recovered.

The authorising officer should request such confirmation to the EP Registry before making the payment of the balance.

2.2.5. *Controls on expenditure and not on actions*

The departure from the current system of grants, which is subject to the submission of a work programme and of an estimated budget, should not be perceived as a '*carte blanche*' to allow political parties to misuse EU funds. While financial support should be awarded without an annual work programme and estimated operating budget, European political parties should justify *ex post* the sound use of Union funds.

In particular, the authorising officer should verify if the EU funds have been used to pay reimbursable expenditure as established in the call for contributions within the time limits laid down in this Regulation. This solution will simplify the request for contributions as there is no submission of annual work programmes or estimated budgets, and will allow political parties to implement their activities freely and adjust them in the course of the year.

2.2.6. *Time limits to use of EU funds*

The Giannakou report calls in its §24 for the possibility to 'build up reserves and carry-over of funds'. The new Title does not prevent European political parties from building reserves from their own sources. In addition, European political parties should also benefit from a certain flexibility regarding the time limits to use the EU funds awarded. A strict application of the obligation to use these funds within the financial year for which they were awarded would be difficult to reconcile with the need for European political parties to adjust their resources to the electoral cycle.

However, EU funds that have not been spent should be used within a reasonable time. Contributions to European political parties should be spent to cover reimbursable

expenditures within two financial years following the financial year for which they were awarded ($n+2$), after which, any unspent funds should be recovered by the authorising officer.

2.2.7. Co-financing

Financing of European political parties shall follow the principle of co-financing established by Regulation xx/xxxx, without prejudice to the possibility mentioned above to use any unused part of the EU contribution to cover reimbursable expenditure within the following two financial years after its awarding.

2.2.8. Financing methods

As in grants, contributions may be paid either through the reimbursement of a percentage of the expenditures incurred or through a system of predefined lump sum, unit costs, and flat rate (*forfaits*).

2.2.9. 100% pre-financing

Contributions should be paid in one pre-financing payment covering 100% of the sum, unless the authorising officer decides otherwise for duly justified reasons.

2.2.10. Interest on pre-financing

By derogation to Article 5 of the FR, any interest yielded by the pre-financing amounts perceived by the European political parties should be used to pay reimbursable expenditures within the following two financial years.

2.2.11. Penalty and control regime

As it is the case for grants, the new Title should include the standard provisions regarding the control of the EP, OLAF, and the Court of Auditors.

It should also include the same penalty regime (administrative and financial penalties) which is applicable to grant beneficiaries.

3. BUDGETARY IMPLICATIONS

The envisaged modification of the FR should not have any significant budgetary implications.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation [xxxx/2012...] on

the financial rules applicable to the annual budget of the Union as regards Union contributions to European political parties

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the Court of Auditors⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Political parties at European level are important as a factor for integration within the Union.
- (2) Article 10 of the Treaty on European Union and Article 12(2) of the Charter of Fundamental Rights of the European Union state that political parties at European level contribute to forming a European political awareness and to expressing the political will of the citizens of the Union.
- (3) On 4 November 2003 the European Parliament and the Council adopted Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding⁶.
- (4) In its 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 funding⁷, the European Parliament has, in light of experience gained, suggested a number of improvements on the financing of European political parties and European political foundations.
- (5) The Commission has proposed the new Regulation No xxx/xxxx of the European Parliament and of the Council of xx/xx/xxxx on "the statute and funding of European

⁵ OJ [...], [...], p. [...].

⁶ OJ L297 of 15.11.2003, p.1

⁷ 2010/2201(INI)

political parties and European political foundations" which will replace Regulation (EC) No 2004/2003. That proposal lays down new rules or amends existing ones for, inter alia, the funding of political parties and political foundations at European level, in particular with regard to funding conditions, mode and distribution of funding, donations and contributions, financing of campaigns for elections to the European Parliament, reasonable expenditure, prohibition of funding, accounts, implementation and control, penalties, and transparency.

- (6) Regulation [...] of the European Parliament and of the Council of [..2012] on the financial rules applicable to the annual budget of the Union⁸ (hereinafter "the Financial Regulation") should include rules on the contributions by the European Parliament to the European political parties. Those rules should allow political parties at European level to have a broader degree of flexibility as regards the time limits to use those contributions, as the nature of their activities so require.

The system of financial support to European political parties through an operating grant as provided by Article [117(5)] of the Financial Regulation is not suited to their needs, in particular the obligation to submit an annual work programme and an estimated operating budget, a requirement that does not exist in the legislation of Member States.

Therefore, the financial support given to European political parties should take the form of a specific contribution, to match the specific needs of the European political parties.

- (7) While financial support should be awarded without an annual work programme and estimated operating budget, European political parties should justify ex post the sound use of Union funds. In particular, the authorising officer should verify if the funds have been used to pay reimbursable expenditure as established in the call for contributions within the time limits laid down in this Regulation. Contributions to European political parties should be spent within two financial years following the financial year it was awarded, after which, any unspent funds should be recovered by the authorising officer.
- (8) Union funds awarded to finance the operating costs of the European political parties should not be used for other purposes than those established in the Regulation (EU) No [...], in particular to finance directly or indirectly other entities such as national political parties. The European political parties should use the contributions to pay a percentage of current and future expenditures and not expenditures or debts incurred before the submission of their applications for contributions.
- (9) The award of contributions should also be simplified and adapted to the specificities of the European political parties, in particular by the absence of selection criteria, the establishment of 100% pre-financing as a general rule or the possibility to use lump sums, flat-rate and unit cost financing.
- (10) The contributions from the Union budget should be reduced or terminated where the European political parties violate the obligations laid down in Regulation (EU) No [..].

⁸ OJ [...]

(11) Penalties that are based both, on the Financial Regulation and Regulation (EU) No [...], to be imposed by the same institution, should be imposed in a coherent way and respecting the principle of the *non bis in idem*. In accordance with article 22(7) of Regulation (EU) No [...], administrative and/or financial penalties foreseen by article [103] of the Financial Regulation shall not be imposed in one of the cases for which penalties have already been imposed on the basis of articles 22(1) to 22(6) of Regulation (EU) No [....].

(12) The Financial Regulation should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No [...] is amended as follows:

(1) The following Title is inserted in Part Two:

"TITLE VIII CONTRIBUTIONS TO EUROPEAN POLITICAL PARTIES

Article [196a] General provisions

1. For the purposes of this Regulation, European political parties shall mean the entities constituted and registered as such in accordance with Regulation (EU) No [...] of the European Parliament and of the Council⁹.
2. Direct financial contributions from the budget may be awarded to European political parties in view of their contribution to forming European political awareness and to expressing the political will of the citizens of the Union.

Article [196b] Principles

1. Contributions shall only be used to reimburse a percentage of the operating costs of European political parties directly linked to objectives of those parties. Contributions shall not be used to grant directly or indirectly any personal advantage, in cash or in kind, to any individual member or staff of a European political party.
2. Contributions shall not be used to fund activities of third parties, in particular national political parties or political foundations at European or national level, whether in the form of grants, donations, loans or any other similar agreements.
3. Contributions shall be subject to the principles of transparency and equal treatment, in accordance with the criteria laid down in Regulation (EU) No [...].
4. Contributions shall be awarded by the European Parliament on an annual basis and shall be published in accordance with Article [31(2)].
5. European political parties receiving a contribution shall not receive other funds from the budget for the same purposes. In any case, no cost item may be financed twice by the budget.

Article [196c] Budgetary aspects

Contributions shall be paid from the European Parliament section of the budget.

⁹ OJ [...]

Article [196c]
Call for contributions

1. Contributions shall be awarded through a call for contributions published each year, at least on the website of the European Parliament.
2. A European political party may only be awarded one contribution per year.
3. A European political party may only receive a contribution if it applies for funding on the terms and conditions laid down in the call for contributions.
4. The call for contributions shall determine the eligibility criteria to be met by the applicant as well as the exclusion criteria.
5. The call for contributions shall determine, at least, the nature of the expenditure that may be reimbursed by the contribution.

Article [196d]
Award procedure

1. Applications for contribution shall be submitted in writing, including, where appropriate, in a secure electronic format.
2. Contributions may not be awarded to applicants who are, at the time of a contribution award procedure, in one of the situations referred to in Articles [100(1)], [101] and [103(1)(a)] and those who are registered in the Central exclusion database based on Article [102].
3. Applicants must certify that they are not in one of the situations referred to in the paragraph 2.
4. Contributions shall be awarded through a contribution agreement or decision as specified in the call for contributions.
5. The authorising officer may be assisted by a committee to evaluate and establish the award decision. The authorising officer shall specify the rules regarding the composition, appointment and functioning of such committee, and the rules to prevent any conflict of interests.

Article [196e]
Evaluation procedure

1. Applications shall be selected on the basis of the award criteria set out in Regulation xxx/xx among applications respecting the eligibility and exclusion criteria.
2. The eligibility criteria shall determine the conditions for an applicant to be able to receive a contribution according to the rules laid down in Regulation (EU) No [...].
3. The decision of the authorising officer responsible on the applications shall state at least:

- (a) the subject and the overall amount of the contribution;
 - (b) the name of the selected applicants and the amounts accepted;
 - (c) the names of any applicants rejected and the reasons for that rejection.
4. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the contribution request is rejected or the amounts requested are not awarded in part or in full, the authorising officer shall give the reasons for either the rejection of the application or the non-award of the amounts requested, with reference in particular to the eligibility and award criteria referred to in paragraphs 1 and 2.

*Article [196f]
Form of contributions*

1. Contributions may take any of the following forms:
 - (a) reimbursement of a percentage of the expenditures actually incurred;
 - (b) reimbursement on the basis of unit costs;
 - (c) lump sums;
 - (d) flat-rate financing;
 - (e) a combination of the forms referred to in points (a) to (d).
2. Only the expenditure which meets the criteria established in the calls for contributions, and which has not been incurred prior to the date of submission of the application, may be reimbursed.

*Article [196g]
Rules for contribution*

1. Lump sums shall cover in global terms certain expenditures necessary for carrying out a specific activity of the European political party. Where used, lump sums shall be used in combination with other forms of contributions.
2. Unit cost shall cover all or certain specific categories of reimbursable expenditure which are clearly identified in advance by reference to an amount per unit.
3. Flat-rate financing shall cover specific categories of reimbursable expenditure which are clearly identified in advance by applying a percentage.
4. Where lump sums, flat-rate financing and unit costs are used, they shall be defined in the call for contributions. The contribution agreement or decision shall include provisions that allow verifying that the conditions for the award of lump sums, flat-rate financing or unit costs have been respected.

Article [196h]

Pre-financing

The contributions shall be paid in the form of one pre-financing of 100%, except if in duly justified cases, the authorising officer decides otherwise.

Article [196i]

Guarantees

The authorising officer responsible may, if he deems it appropriate and proportionate, on a case-by-case basis and subject to risk analysis, require the European political party to lodge a guarantee in advance in order to limit the financial risks related to the payment of pre-financing only when, in the light of his risk assessment, the political party is at an imminent risk of being in one of the situations described in Article [100(1)(a)] and [(d)] or when the European Parliament has formally initiated an administrative procedure that could lead to a debarment and/or revocation of its contribution.

Article [125] on the pre-financing guarantee for grants shall apply *mutatis mutandis*.

Article [196j]

Use of contributions

1. Contributions shall be spent in accordance with Article [196b].
2. Any part of the contribution not used within the financial year covered by this contribution shall be spent on any reimbursable expenditure incurred by 31st of December of year $n+2$. The remaining part of the contribution that is not spent within the $n+2$ time limit shall be recovered in accordance with Chapter 5 of Part One.
3. European political parties shall respect the maximum co-financing rate established in Regulation xx/xxxx. Remaining amounts of the previous two years' contributions may not be used to finance the part which European political parties must provide from their own resources.
4. European political parties shall first use the funds that have not been used within the financial year covered by the contribution before using the contributions awarded after that year.
5. Any interests yielded by the pre-financing payments shall be considered as part of the Union contribution.

Article [196k]

Report on the use of the contributions

The European political party shall, in accordance with the conditions and time limits laid down in the call for contributions, submit to the authorising officer for approval a final report on the use of the contribution and its accounts.

The authorising officer shall draft his annual activity report referred to in Article [63(9)] on the basis of the final report and accounts referred to in the first paragraph. He may use other supporting documents for the purposes of his report.

*Article [196l]
Payment of the balance*

1. The amount of the contribution shall not become final until after the authorising officer has accepted the final report and accounts referred to in Article [196k]. Acceptance of the report and accounts shall be without prejudice to subsequent checks by the European Parliament.
2. Any unspent amount of pre-financing shall not become final until it has been used by the European political party to pay reimbursable expenditures which meet the criteria defined in the call for contributions.
3. Where the European political party fails to comply with its obligations related to the use of contribution, the contributions shall be suspended, reduced or terminated after the European political party has been given the opportunity to present its observations.
4. The authorising officer shall verify before making the payment of the balance that the European political party is still registered in the registry referred to in Article 6 of Regulation (EU) No [...] and has not been the subject of any of the penalties provided for in Article 22 of that Regulation between the date of its application and the end of the financial year covered by the contribution.
5. Where the European political party is no longer registered in the Registry referred to in Article 6 of Regulation (EU) No [...] or has been the subject of any of the penalties provided for in Article 22 of that Regulation, the authorising officer responsible may suspend, reduce or terminate the contribution and recover amounts unduly paid under the contribution agreement or decision, in proportion to the seriousness of the errors, irregularities, fraud or other breach of obligations related to the use of contribution, after the political party has been given the opportunity to present its observations.

*Article [196m]
Control and penalties*

1. Each contribution agreement or decision shall provide expressly for the European Parliament, European Anti-Fraud Office and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all European political parties, contractors and subcontractors who have received Union funds.
2. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article [103], without prejudice to Article 22(7) of Regulation (EU) No [...].
3. Penalties referred to in paragraph 2 may also be imposed on European political parties which, at the moment of the submission of the application for contribution or

after having received the contribution, have made false declarations in supplying the information requested by the authorising officer or fail to supply such information.

*Article [196n]
Record keeping*

1. European political parties shall keep records, supporting documents, and other records pertinent to the contribution for five years following the submission of the final report and accounts referred to in Article [196k].
2. Records related to audits, appeals, litigation or the settlement of claims arising out of the use of the contribution shall be retained until the end of such audits, appeals, litigation or settlement of claims."

(2) The following point [(j)] is added in Article [115(2)]:

"...[(j)] contributions to European political parties referred to in title VIII of Part Two."

(3) Article [117(5)] and Article [117(3)] second subparagraph are deleted.

Article 2

This Regulation shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President