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(VENICE COMMISSION)

OPINION
ON THE PROHIBITION OF FINANCIAL CONTRIBUTIONS
TO POLITICAL PARTIES FROM FOREIGN SOURCES

Adopted by the Venice Commission
at its 66th Plenary Session
(Venice, 17-18 March 2006)

On the basis of comments by

Mr Kęstutis LAPINSKAS (Member, Lithuania)
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I. Introduction

1. On 13 December 2005 the First Chamber of the European Court on Human rights (ECtHR) requested the Venice Commission to prepare an opinion on the problem of political parties receiving financial contributions from abroad. The request consists of two questions:

1. Is the financing of political parties by foreign political parties commonly prohibited or limited by the member States of the Council of Europe? If this is the case, which countries adopted such a measure?

2. To what extent may the prohibition of a foreign political party financing a political party be considered as “necessary in a democratic society” under Article 11 of the Convention? Is it necessary, in this case, to adopt a specific approach concerning the financing of a political party established in a member country of the EU by a party established in another member state of the EU?

2. The Venice Commission requested Messrs K. Lapinskas and H.-H. Vogel to prepare a reply to the above request.

3. The following opinion is based on national legislation, the previous reports of the Venice Commission on political parties¹ and other research materials focusing on the problem of the financing of political parties. Part of the information is available on the web.

4. The following text was adopted by the Venice Commission at its 66th plenary session (Venice, 17-18 March 2006).

II. Legal regulations on the prohibition of the financing of political parties by foreign political parties in the member States of the Council of Europe

a. National legislation on the financing of political parties

5. The research conducted by the Commission shows that 28 member States of the Council of Europe prohibit or substantially limit foreign donations to political parties and 16 do not impose any such restrictions^{2[1]} (see table below). Annex 1 to this opinion provides more detailed information on this issue.

6. Regulations on political parties differ substantially from one country to another. The legislative framework for parties as a specific type of association is largely based on national history, political tradition and practice and it is very hard to draw unambiguous conclusions on the advantages and disadvantages of each system.

¹ CDL-INF(2000)001 - Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission at its 41st Plenary Session (Venice, 10 – 11 December, 1999), CDL-INF(2001)007 - Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting, (Venice, 9-10 March 2001) and CDL-AD(2004)007rev - Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004).

² ^[1]No reliable data was found on the situation in Liechtenstein and Monaco.

7. For example, in “the old democracies” a wide range of approaches to financing of parties exists: from a total absence of regulations on the financing of political parties (for example, in Switzerland) to a specifically established ban on foreign contributions and donations, as in France (“*Aucun candidat ne peut recevoir, directement ou indirectement, pour quelque dépense que ce soit, des contributions ou aides matérielles d'un Etat étranger ou d'une personne morale de droit étranger*” (Code électoral (2005), Article L52-8)). Some countries, while prohibiting such donations in principle, make specific exceptions, and allow financing from abroad if it comes from member States of the European Union (EU). Such exceptions exist for example in Spanish legislation (*donations to political parties by other states or other public foreign organs are forbidden, with the exception of subsidies given by the European Parliament*), in Germany (“*Parties are not allowed to accept the following donations: <...> 3. Donations from outside the area of application of this Law unless these donations accrue to a party directly from the assets of a German citizen as defined by the Basic Law, a citizen of the European Union or a business enterprise more than 50 per cent of whose shares are owned by Germans as defined by the Basic Law or by a citizen of the European Union or whose principal residence is located in a member state of the European Union; they are donations to parties of national minorities in their ancestral country which are granted to them from states bordering on the Federal Republic of Germany and in which members of their ethnic community live, or they are donations of no more than 1,000 euros from an alien*” (The Law on Political Parties (Party Law) (2002), Article 25), and partly – in the UK (except Northern Ireland)). Sweden has no statutory control over restrictions on party financing and its policy is based on voluntary agreements rather than state legislation. In other countries such as Cyprus, foreign donations are not prohibited.³

8. Legal regulations in Central and Eastern Europe are also very diverse. It can be said that due to their recent history, most of the countries of this geographic area are sensitive to external political influence. For this reason, the process of nation-state building or liberalisation leads to particular regulations concerning the funding of political forces from foreign sources. Regulations concerning foreign contributions are mostly restrictive and prohibitive, i. e. they limit foreign donations in both quantitative and qualitative terms. This is especially true for the new democratic countries, which emerged in the post-soviet space, such as Armenia, Azerbaijan, Georgia, and Moldova. The Russian Federation also prohibits any kind of foreign contributions to its political parties.

9. Nevertheless there are some exceptions, especially in Central Europe: foreign donations are not prohibited in Bosnia and Herzegovina (the important role of international assistance in the post-war restructuring of Bosnia and Herzegovina explains this exception), the Czech Republic and Hungary.

10. Very often, countries which prohibit financing from abroad take this measure in order to prevent the influence of other States on their internal political life. There are several examples in the political history of the XXth century, when some States were financially supporting political opponents of governments in other countries. In this context, external funding of political parties draws the most adverse criticism. Following the Russian Revolution in 1917, Lenin established the Communist International (Komintern), to serve, among other functions, as a means of channelling money and other forms of assistance to

³ See also Ingrid van Biezen, Financing political parties and election campaigns guidelines. Integrated project “Making democratic institutions work”, Council of Europe publishing, December 2003.

communist parties throughout the world. In the 1930s, the Hitler regime used party-to-party links to export Nazism and to conduct campaigns of subversion, especially in Central Europe. The Cold War provided an appropriate atmosphere for both the USSR and the US to use funding to export ideological and political influence. Governments were bankrolled and guerrilla movements and political parties of 'suitable' leanings were funded by the then-superpowers. Enormous resources were committed to this cause and money could buy even the most unlikely of ideological 'partners'. After the fall of the Berlin wall, some countries still feared that foreign financing could support, for example, Islamist parties or other political movements threatening their territorial integrity or other constitutional principles. Some of the new democracies in Central and Eastern Europe justify restrictions on foreign financing arguing that it could lead to distortions of the electoral process: for example, due to economic problems, parties receiving support from abroad will have advantages in the pre-election campaign compared to other national parties without such support.

11. In some countries, the situation is currently changing because of integration into the EU. Some new member States of the European Union are reviewing their regulations on political parties in order to fully comply with the requirements of the Treaty of Rome (see part IV of this report). For example, on 23 August 2004 the Lithuanian parliament adopted the new Law on Financing and Financial Control of Political Parties and Political Campaigns, according to which the ban on donations coming from abroad was partially lifted: the private legal entities of NATO or EU member States, which are registered in Lithuania, were provided with the right to finance political parties. According to the new Law, the financial sources of political parties are membership fees, state subsidies, income from other activities of the political party, contributions from international organisations (to which Lithuania or a Lithuanian political party is a member) and donations (Article 7). According to Article 12 the only subjects entitled to provide donations to political parties are natural persons (citizens of Lithuania, citizens of another EU member state permanently residing in Lithuania, other permanent residents of Lithuania and persons without citizenship) and legal entities (private legal entities, which are registered in Lithuania and which do not have state or municipality participation in their capital, or private legal entities of NATO or EU member states registered in Lithuania). There is a similar tendency in a number of other new member States of the EU.

12. The following table illustrates the existence of the formal prohibition of foreign donations (including donations by foreign states, foreign citizens and foreign legal persons).

Member state of CE / Prohibition on foreign donations (including donations by foreign moral and legal persons)

1	Albania	+
2	Andorra	+
3	Armenia	+
4	Austria	-
5	Azerbaijan	+
6	Belgium	-
7	Bosnia and Herzegovina	-
8	Bulgaria	+
9	Croatia	+
		<i>(but it is easy to avoid this ban on foreign donations)</i>
10	Cyprus	-
11	Czech Republic	-
12	Denmark	-
13	Estonia	+
14	Finland	-
15	France	+
16	Georgia	+
17	Germany	+
		<i>(except donations from EU; donations less than 1000 €)</i>
18	Greece	+
19	Hungary	-
20	Iceland	+
21	Ireland	+
22	Italy	-
23	Latvia	+
24	Liechtenstein	n.d.
25	Lithuania	+
		<i>(except legal persons of EU and NATO member states, registered in Lithuania)</i>
26	Luxembourg	-
27	Malta	+
28	Moldova	+
29	Monaco	n.d.
30	Netherlands	-
31	Norway	-
32	Poland	+
33	Portugal	+
34	Romania	+
		<i>(except material goods from umbrella international political organizations)</i>
35	Russian Federation	+
36	San Marino	-
37	Serbia and Montenegro	+
38	Slovakia	+
39	Slovenia	+
40	Spain	-
		<i>(prohibition applies)</i>

		<i>only to foreign states and public foreign organs, except EU institutions)</i>
41	Sweden	-
42	Switzerland	-
		<i>(no regulations at all)</i>
43	The former Yugoslav Republic of Macedonia	+
44	Turkey	+
45	Ukraine	+
46	United Kingdom	+
		<i>(except Northern Ireland)</i>

Ban	Number of states	%
+	28	60,9
-	16	34,8
n.d.	2	4,3

b. Conclusion

13. Having considered the above data, the Commission came to the conclusion that each case of prohibition of financing from foreign sources has to be considered separately. Due consideration must be given to the political system of the country concerned, its relations within neighbours, its Constitution and constitutional values as well as the general system of financing of political parties. Widely accepted international or regional legal texts and standards, such as Article 11 of the European Convention on Human Rights (ECHR) must be respected.

III. Legal analysis of the question of to what extent the prohibition of a foreign political party financing a political party may be considered “necessary in a democratic society” under Article 11 of ECHR

14. Firstly it should be pointed out that at its 46th Plenary Meeting (9-10 March 2001) the Venice Commission adopted the “Guidelines and Report on the Financing of Political Parties” (CDL-INF (2001) 8), according to which political parties may seek out and receive funds by means of public or private financing, thus political parties may receive private financial donations, but “*donations from foreign States or enterprises must however be prohibited*”. This prohibition should not prevent financial donations from nationals living abroad.

15. On 8 April 2003, the Committee of Ministers of the Council of Europe adopted Recommendation Rec (2003) 4 “On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns”; its Article 7 provided that “*states should specifically limit, prohibit or otherwise regulate donations from foreign donors*”.

16. In many countries, political parties suffer from corruption. Therefore, “Transparency International” has also been involved in standard setting and in 2004 it issued the “TI Standards on Political Finance and Favours”. The 4th standard is related to diversity of income and spending limits: “*careful consideration should be given to the benefits of state funding of parties and candidates and to the encouragement of citizens’ participation through small donations and membership fees. Consideration should also be given to limiting corporate and foreign support, as well as large individual donations. To control the demand for political financing, mechanisms such as spending limits and subsidised access to the media should be considered*”.

17. It is widely recognised that human rights and freedoms constitute a single and harmonious system. In the ECHR and the national constitutions the rights and freedoms of any person are interlinked with those of other individuals. When exercising his/her rights and freedoms, any individual must observe the basic legal documents (ECHR, national constitution) and must not impair the rights and freedoms of other people. Tensions and sometimes even conflicts frequently arise between the rights and freedoms of an individual and the interests of society. In a democratic State such conflicts are resolved by striking a balance between the different interests; to this end, the exercise of human rights and freedoms may need to be restricted.

18. The rights to freedom of assembly and freedom of expression guaranteed by Articles 10 and 11 of the ECHR may be restricted in accordance with the law and provided that the restrictions are necessary in a democratic society to pursue one of the legitimate aims which are listed in the ECHR.

19. The notion of “necessary in a democratic society” as interpreted by the European Court of Human Rights is described in its recent judgement of 19 January 2006: *The United Macedonian Organisation Ilinden and others v. Bulgaria* (Application no. 59491/00):

“57. The right to form an association is an inherent part of the right set forth in Article 11. (...) The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association’s aims and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see Sidiropoulos and Others, pp. 1614-15, § 40).

58. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively (see Gorzelik and Others, § 92).

59. Given that the implementation of the principle of pluralism is impossible without an association being able to express freely its ideas and opinions, the Court has also recognised that the protection of opinions and the freedom of expression within the meaning of Article 10 of the Convention is one of the objectives of the freedom of association (see Gorzelik and Others, cited above, § 91). Such a link is particularly relevant where (...) the authorities’ intervention against an association was, at least in part, in reaction to its views and statements (see Stankov and the United Macedonian Organisation Ilinden, § 85 in fine).

60. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no

“democratic society” (*ibid.*, § 86; and *Ceylan v. Turkey [GC]*, no. 23556/94, § 32, *ECHR 1999-IV*, with further references).

61. Consequently, the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see *Sidiropoulos and Others*, cited above, *ibid.*).

62. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (*ibid.*.)”

20. Indeed, the way these general principles are applied in any particular case depends on the national regulations, first of all – on national constitutions, i. e. how these “convincing and compelling reasons” and “relevant and sufficient reasons” are described in the national constitutions and the relevant laws.

21. A closer analysis of the national provisions which are reported in Annex 1 reveals a multitude of reasons, why there are prohibitions on receiving donations from foreign political parties. All these reasons appear to be deeply rooted in the political and constitutional experiences of European countries and in their specific history.

22. One such reason is the experience during the years between the two World Wars of the international policies of extremist parties of the political right and left. A second reason is the similar experience during the Cold War years and the polarisation of the Western World on the one side and the Eastern on the other. A third reason is the existence or fear of separatist movements. A fourth reason – finally and quite differently – is the advancement of public funding of political parties and the wish to keep any provided funds within the country.

23. Annex 1, however, also shows there are many countries which do not prohibit donations from foreign political parties (for example, Austria, Belgium, Denmark, Finland). The reasons for this position are more difficult to identify. In some countries, which entirely lack provisions on prohibition, the explanation for this lack is certainly that there has never been a necessity to introduce such prohibitions. Other countries, however, seem to have deliberately avoided enacting legislation on prohibition in order to politically facilitate their own support of political movements in the Third World. A third group of countries, finally, appear to avoid regulation because of the potential complexities of any such legislation when and if the many forms of entirely legitimate and acceptable co-operation of political parties within the framework of the Parliamentary Assemblies of the Council of Europe and the OSCE, the European Parliament and

regional co-operation organisations such as for example the Nordic Council have to be taken into account.

IV. The adoption of a specific approach concerning the financing of a political party established in a member country of the EU by a party from another member State of the EU

24. As concerns the specific approach towards allowing the financing of a political party established in a member State of the EU by a political party from another member State of the EU, the Commission is of the opinion that such an approach is reasonable and appropriate in the light of the particular and specific nature of the European Union. The fact that the legal system of the European Union differs from international public law, which is created mostly by concluding international agreements, has to be taken into account. For example, in its judgment of 5 February 1963 (26/62, *Van Gend & Loos*) the European Court of Justice concluded that “*the Community constitutes a new legal order ... for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals*”.

25. The Treaty of Rome in its Article 191 provides that:

“Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

The Council, acting in accordance with the procedure referred to in Article 251, shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding”.

26. In this context it has to be observed that quite recently the European Union adopted European Regulation (EC) No 2004/2003 of the European Parliament and of the Council of Europe of 4 November 2003 on the regulations governing political parties at the European level and the rules regarding their funding⁴ together with the Decision of the Bureau of the European Parliament of 29 March 2004 laying down the procedures for implementing Regulation (EC) No 2004/2003.⁵ The road to the adoption of these provisions has been difficult,⁶ the legislation is to a large extent a compromise which may not be easy to handle in the future. Provisions on the interaction of financing at the EU-level on the one hand with financing on the national level on the other hand are few and relatively simple: Article 6 of Regulation No 2004/2003 provides that contributions from political parties which are members of a political party at the European level shall be admissible, but may not exceed 40% of that party’s annual budget. According to Article 7 of the same Regulation the funding of political parties at the European level from the general budget of the EU or from any other source may not be used for the direct or indirect funding of other political parties, and in particular national political parties, which shall continue to be governed by national rules. The “travaux préparatoires” do not go into detail concerning the

⁴ Official Journal of the European Union (OJ) 2003 L 297/1.

⁵ OJ 2004 C 155/1.

⁶ Cf. the discussions of Commission proposals COM(2000) 898 final and COM(2003) 77 as recorded in the PreLex-database of the EU and Special Report No 13/2000 of the EU Court of Auditors on the expenditure of the European Parliament’s political groups, together with the European Parliament’s replies, OJ 2000 C 181/1.

reasons for these provisions, but it seems reasonable to assume that the guiding principle has been to draw a reasonably clear and enforceable line between the budget sphere of the EU on the one hand and the budget spheres of member States and their political parties on the other. There is no indication that the provisions in Articles 6 and 7 of the Regulation were enacted in order to achieve specific political goals. However, the adoption and existence of Regulation No. 2004/2003 underlines that co-operation and to some extent integration of existing financing systems is not only unavoidable but also essentially necessary for the functioning of political parties as democratic institutions on both the national level and the level of the Union when it comes to international co-operation.

27. Another question which arises concerning the financing of political parties from a foreign source is its impact on free movement of capital as enshrined in Articles 56 ff. of the Treaty establishing the European Community (EC). Article 56 states:

1. *Within the framework of the provisions set out in this chapter, all restrictions on the movement of capital between member States and between member States and third countries shall be prohibited.*
2. *Within the framework of the provisions set out in this chapter, all restrictions on payments between member States and between member States and third countries shall be prohibited.*

28. Article 56 EC does not define the terms “movement of capital”, but this notion applies in principle to every transfer of funds between member states. Furthermore, according to established case-law⁷ of the European Court of Justice (ECJ), Council Directive 88/361/EEC⁸ and its Annex 1 may be used to define the term capital movement. Annex 1 provides for a *non-exhaustive* nomenclature of the capital movements covered by the EC Treaty, which includes gifts and endowments (point XI.B) and means of payment of every kind (point XII.B), categories which could apply to the financing of political parties by foreign political parties.

29. The freedom of capital movements is a fundamental Treaty freedom, i.e. it is primary and directly applicable⁹ Treaty law. According to the established case-law of the European Court of Justice, it even applies to issues which are a matter for each member State to regulate according to an explicit rule of the Treaty.¹⁰ This means that the financing of political parties

⁷ See judgments of 4/6/02, *Commission v. Portugal*, C-367/98, ECR 2002, p. I-4731, § 37; *Commission v. France*, C-483/99, ECR 2002, p. I-4781, § 36, and *Commission v. Belgium*, C-503/99, ECR 2002, p. I-4809, § 37, and judgments of 13/5/03, *Commission v. Spain*, C-463/00, ECR 2003, p. I-4581, § 52, and *Commission v. UK*, C-98/01, ECR 2003, p. I-4641, § 39, as well as judgment of 16/3/99, *Trummer & Mayer*, C-222/97, ECR 1999, p. I-1661, §§ 20, 21.

⁸ Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (*OJ L 178, 8.7.1988, p. 5*).

⁹ See judgments of 14/12/95, *Sanz de Lera and others*, joined cases C-163, 165 and 250/94, ECR 1995, p. I-4821; cf. judgments of 23/02/95, *Bordessa*, joined cases C-358 and 416/93, ECR 1995, p. I-361.

¹⁰ See for example the above-mentioned judgments of 4/6/02, *Commission v. Portugal*, C-367/98, § 28, and *Commission v. France*, C-483/99, § 44, and judgment of 1/6/99, *Konle*, C-302/97, ECR 1999, p. I-3099, § 38. This case-law relates to the system of property ownership, which is a matter for the member States according to Article 295 of the EC Treaty, but it should be applicable by analogy to other matters in the competence of the member States.

has to respect this principle, even if the European Community's powers in the field of political parties are limited to regulations governing political parties at the European level.¹¹

30. The free movement of capital, as a fundamental principle of the Treaty, may be restricted in two respects only: by Community or national rules which are justified by exceptions contained expressly in the Treaty (e.g. Article 58 (1) of the EC Treaty including the possibility for member States "to take measures which are justified on grounds of public policy or public security") or by overriding requirements of the general interest developed by the European Court of Justice on the basis of the Treaty.¹²

31. Such measures, however, shall according to Article 58 (3) of the EC Treaty, not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 56. In this context it should be recalled that any exceptions to the EC Treaty right of the free movement of capital must be interpreted restrictively.¹³ Under Community law the prohibition on financing from sources in other member States is therefore acceptable only under these above-mentioned exceptional circumstances.

V. Conclusion

32. With regard to the different approaches in member States to the problem of the financing of political parties in general, there cannot be only one answer to the question to what extent the prohibition of a foreign political party financing a political party may be considered "necessary in a democratic society". Old legislative decisions imposing too many restrictions on political parties – taken between the World Wars and during the Cold War – have to be reconsidered in the light of the situation in Europe as it has developed over the last 15 years. One argument for a much less restrictive approach is the experience of the co-operation of political parties within the many supranational organisations and institutions of Europe today. Co-operation of this kind is "necessary in a democratic society". It is not obvious that the same can be said about the raising of obstacles to co-operation by restricting or prohibiting reasonable financial relations between political parties in different countries or at the national level on the one hand and at the European or a regional level on the other. With regard to the European Convention on Human Rights the mere fact that there are financial relations between political parties cannot as such, justify a reduction of human rights protection.

33. There could be a number of reasons for the prohibition of contributions from foreign political parties. Such prohibition may be considered necessary in a democratic society, for example, if financing from foreign sources:

- is used to pursue aims not compatible with the Constitution and the laws of the country (for example, the foreign political party advocates discrimination and violations of human rights);

¹¹ Article 191 of the EC Treaty.

¹² The ECJ ruled in the above-mentioned joined cases C-358/93 and C-416/93 *Bordessa*, § 21, that restrictive measures could be admitted if aimed at preventing 'illegal activities ... such as money laundering, drug trafficking or terrorism'.

¹³ See judgment in *Commission v. Belgium*, C-503/99, § 47, with respect to the requirement of public security as a derogation from the fundamental principle of free movement of capital.

- undermines the fairness or integrity of political competition or leads to distortions of the electoral process or poses a threat to national territorial integrity;
- is part of international obligations of the State;
- inhibits responsive democratic development.

34. In order to establish whether the prohibition of financing from abroad is problematic in the light of Article 11 of the European Convention on Human Rights every individual case has to be considered separately in the context of the general legislation on financing of parties as well as of the international obligations of a State and among these the obligations emanating from membership of the European Union.

ANNEX

**THE PROHIBITION OF DONATIONS FROM FOREIGN SOURCES
IN THE MEMBER STATES OF THE COUNCIL OF EUROPE**

NO.	THE COUNCIL OF EUROPE'S MEMBER STATES	PROHIBITION TO RECEIVE DONATION FROM FOREIGN COUNTRIES (+)	LEGAL SOURCE (date of last amendment found)
1	<u>Albania</u>	+	Law on Political Parties (2002) Financial aid from foreign countries granted either by public or private entities is prohibited. Donations must be registered. The State Audit Department is appointed as the body responsible for financial investigation of political parties (Chapter III).
2	Andorra	+	Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p. (indicated source: Law No. 2/2001 of 15 December 2000 on Electoral Finance)
3	Armenia	+	Law on Parties (2002) 1. Parties have the right to receive donations in the form of property and cash means from physical persons, public unions and foundations, and other legal entities. 2. It is not allowed to receive donations from: <...> 7) foreign states, foreign citizens and legal entities, as well as legal entities with foreign participation, if the share of the foreign participant in the statutory (share, paid in) capital of the given legal entity is more than 25 per cent; 8) international organizations and international public movements; <...> (Article 25)
4	Austria	-	Bundesgesetz über die Aufgaben, Finanzierung und Wahlwerbung politischer Parteien (Parteiengesetz - Part G) BGBl. Nr. 404/1975 idF BGBl. I Nr. 71/2003
5	Azerbaijan	+	Law on Political Parties Financing of the activities of political parties by foreign States as well as by legal and natural persons of foreign States shall be prohibited (Article 17).
6	Belgium	-	La loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales engagées pour les élections des Chambres fédérales ainsi qu'au financement et à la comptabilité ouverte des partis politiques
7	<u>Bosnia and Herzegovina</u>	-	Law on party Financing Article 4 (Contributions) Legal and natural persons and private businesses may give contributions to the political parties. For the purpose of this Law, a contribution for the party shall also be any gifts given to the political party, free service for the party or rendering of a service for the party or selling of products to the party under the conditions which provide a preferential treatment for the party in relation to other beneficiaries of the services of legal and natural persons and private businesses or buyers of the products of such persons. A legal or natural person or a private business that render a service to the party or sell it a product must deliver a receipt to the party, irrespective of who the payer of

			the service is or the price of the product, or, irrespective of the whether the service has been rendered or the product given free of charge. Party work done by citizens shall as a matter of principle be unpaid work. Payments in kind and services provided by party members on a non-commercial basis and usually free of charge shall not be counted as income.
8	Bulgaria	+	Political Parties Act (1998) (2) The political parties may not receive aid, donations and testaments from foreign states and organizations, as well as from anonymous sources. They may receive donations from foreign citizens up to 500 US dollars, when donated by single persons, and up to 2000 US dollars, when donated by a group of persons. No more than one donation may be received from the same person or the same group of persons within a calendar year. (3) The political parties may not be financed by enterprises, offices and organizations. (Article 17)
9	Croatia	+ <i>(but it is easy to avoid this ban on foreign donations)</i>	http://www.gong.hr/eng/gong.asp?cat=1&subcat=6&cl=670
10	Cyprus	-	Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.
11	Czech Republic	-	Law on Political Parties and Political Movements Party or movement cannot receive any free performance or donation from <...> foreign legal entity <u>except political parties and foundations</u> (Article 19 (h)).
12	Denmark	-	Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.
13	Estonia	+	Political Parties Act (2003) Only membership fees established by the articles of association of a political party, allocations from the state budget received pursuant to this Act, donations of natural persons and income earned on the assets of the political party are the source of the assets and funds of the political party (Article 12 ¹ (1)); political parties shall not accept anonymous or concealed donations (Article 12 ¹ (2)); political parties <u>shall not accept anonymous donations or donations from legal persons</u> . If possible, political parties shall return such donations to the donor. In the absence of the possibility, political parties shall transfer the donations into the state budget within ten days where it is added to the funds to be allocated to political parties from the state budget in the following budgetary year (Article 12 ³ (4)).
14	Finland	-	Act on Political Parties (1969, with amendments, not available in English); Act on the Disclosure of Election Financing (414/2000); Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.
15	France	+	Code électoral (2005) (Article L52-8) 4. Aucun candidat ne peut recevoir, directement ou indirectement, pour quelque dépense que ce soit, des contributions ou aides matérielles d'un Etat étranger ou d'une personne morale de droit étranger. Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique (Art. 11-4 (5)).
16	Georgia	+	Law on Political Parties (Articles 25, 29, 31, 32, 33, 34) and Unified Election Code (Article 47) (2002) It is inadmissible to accept the following contributions to the election campaign fund: a) from other States; b) from persons or legal entities from other States; c) from persons with no citizenship; d) from international organizations and movements; e) from non-entrepreneurial legal entities and religious organizations; f) from a Georgian entrepreneurial legal entity, in which there is a State share.
17	Germany	+ <i>(except donations from EU; donations less than 1000 €)</i>	The Law on Political Parties (Party Law) (2002) Article 25 Donations <...> (2) Parties are not allowed to accept the following donations: 1. Donations from public corporations, parliamentary factions and groups as

			<p>well as fractions and groups of municipal agencies;</p> <p>2. Donations from political foundations, incorporated bodies, associations of individuals and funds which, under the statutes, the foundation charter or other rules and regulations and by virtue of the actual business, are intended exclusively and directly for non-profit-making, charitable or church purposes (Paragraphs 51 to 68 of the tax law)</p> <p>3. <u>Donations from outside the area of application of this Law unless</u></p> <p>a. these donations accrue to a party directly from the assets of a <u>German citizen</u> as defined by the Basic Law, a <u>citizen of the European Union</u> or a business enterprise more than 50 per cent of whose shares are owned by Germans as defined by the Basic Law or by a citizen of the European Union or whose principal residence is located in a member state of the European Union;</p> <p>b. they are donations to parties of national minorities in their ancestral country which are granted to them from states bordering on the Federal Republic of Germany and in which members of their ethnic community live, or</p> <p>c. they are donations of <u>no more than 1.000 euros from an alien</u>.</p> <p>4. Donations from professional associations which were bestowed on them with the proviso that they be forwarded to a political party.</p> <p>5. Donations from enterprises that are fully or partly under state ownership or are administrated or managed publicly if the state has more than a 25 per cent holding.</p> <p>6. Donations which exceed 500 euros and whose donors cannot be determined, or donations from an anonymous third party which have evidently been forwarded.</p> <p>7. Donations that are clearly made to the party in the expectation of or in return for a specific economic or political advantage.</p> <p>8. Donations solicited by a third party against a payment from the party if the payment exceeds 25 per cent of the value of the solicited donation.</p> <p><...></p>
18	Greece	+	<p>Law No. 3023/2002</p> <p>1. Donations</p> <p>a) Limits on individual donations to candidates or political parties</p> <p>The limits are the following:</p> <ul style="list-style-type: none"> - 15,000 euros per year for political parties. - 3,000 euros per electoral period for candidates. <p>Donor who exceed this amount may face imprisonment of up to one year and a penalty of up to 15,000 euros.</p> <p><u>Non-Greek citizens, state enterprises, private companies, local government authorities and owners of media are forbidden to offer donations to the parties.</u></p> <p>b) Limits on corporate donations to candidates or political parties</p> <p>The legislation does not allow corporate donations, with the exception of companies that are totally owned by political parties.</p> <p>(Source: http://www1.transparency.org/in_focus_archive/policy/download/case%20studies/political_corruption_party_financing_greece.pdf)</p>
19	Hungary	-	<p>Campaign Finance in Central and Eastern Europe: Lessons Learned and Challenges Ahead, Jānis Ikstens, Ph.D.; Daniel Smilov, Ph.D.; Marcin Walecki, M.A. (2002))</p> <p>The 1990 Law on the Operation and Financial Functioning of Political Parties</p> <p>No contribution limits apply to the donations of foreign nationals, or non-profit organizations.</p> <p>A party may not accept property or funds from the government of another country, or any donations from anonymous sources.</p>

20	Iceland	+	<p><i>Country Reports on Political Corruption and Party Financing- ICELAND (by Kristján Guð Burgess, TI Contact in Iceland/Journalist Ágúst Þór Arnason) (2002)</i> (http://www1.transparency.org/in_focus_archive/policy/download/case%20studies/political_corruption_party_financing_iceland.pdf)</p> <p>The only limits are that, according to law No.62/1978, foreign individuals, institutions and embassies are not allowed to support political parties in Iceland, to support any publication published by them or to give presents or goods to Icelandic parties.</p> <p><i>Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.</i></p>
21	Ireland	+	<p>A political party must not accept a foreign donation. A foreign donation is a donation from:</p> <p>(i) an individual (other than an Irish citizen) who resides outside the island of Ireland, or</p> <p>(ii) a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland from which one or more of its principal activities is directed (Section 23A(2))</p>
22	Italy	-	<p><i>Country Reports on Political Corruption and Party Financing-ITALY (by Maria Paola Ferretti) (2002)</i> (http://www1.transparency.org/in_focus_archive/policy/download/case%20studies/political_corruption_party_financing_italy.pdf)</p> <p><i>Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.</i></p>
23	Latvia	+	<p><i>Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.; Campaign Finance in Central and Eastern Europe: Lessons Learned and Challenges Ahead, Jānis Ikstens, Ph.D.; Daniel Smilov, Ph.D.; Marcin Walecki, M.A. (2002)</i></p> <p>Law on Party Financing, 2004.</p> <p>Parties are prohibited from receiving donations from stateless persons, foreign or anonymous sources, religious organizations, state or municipal institutions, or from enterprises with 50% or more of state shares.</p>
24	Liechtenstein	?	
25	Lithuania	+	<p><i>(except legal persons of EU and NATO member states, registered in Lithuania)</i></p> <p>Law on Financing and Financing Control of Political Parties and Political Campaigns (2004)</p> <p>The financing sources of political parties are membership fees; state subsidies; income from other activities of political party; contributions from international organizations, the member of which is Lithuania or Lithuanian political party; donations (Article 7).</p> <p>According to Article 12 the only subjects entitled to provide donations to political parties are natural persons (citizens of Lithuania, permanent inhabitants of Lithuania, who are citizens of another EU member state, another permanent inhabitant of Lithuania and persons without citizenship) and legal entities (private legal entities, which are registered in Lithuania and which do not have state or municipality shares in their share capital and the part of voting rights, allowing to control the activity of legal entity, belongs only to the above mentioned natural persons or legal entities, registered in Lithuania, or private legal entities of NATO or EU member states).</p>
26	Luxembourg	-	
27	Malta	+	<p>Foreign Interference Act (1 September 1982).</p> <p>Article 3. ... It shall not be lawful for an alien to perform, do, hold, take part in, aid or abet, or allow any restricted activity in Malta. For the purposes of the Act “a restricted activity” means – [...] (b) the provision at any time to or for the benefit of a political party, person, club or similar institution, whether directly or through an intermediary agent, of any money, equipment or other material, by way of gift or otherwise not against equivalent valuable consideration, excluding books and other publications intended for sale or distribution not exclusively or mainly for Malta, unless such provision is authorised by the Monitoring Committee in accordance with this Act[...].</p>

28	Moldova	+	Elections Code The direct or indirect financing, material support in any form of electoral campaigns of candidates to elections as well as the support of electoral competitors by other states, foreign enterprises, institutions and organizations, international and mixed as well as by natural persons who are not citizens of the Republic of Moldova (Article 36 (1)).
29	Monaco	?	
30	Netherlands	-	<i>Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.</i>
31	Norway	-	<i>Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.</i>
32	Poland	+	Act on Political Parties (Article 25 (1)) A political party may collect financial resources exclusively from individuals, with regard to the provisions of para. 2 (political party may not receive any financial resources from individuals with no place of residence (excluding polish citizens living abroad) and foreign nationals) (Article 25 (2)) and political party may get state subventions (if certain conditions are fulfilled) (Article 28).
33	Portugal	+	Parliament Electoral Law (2002) Political parties, candidates and representatives of the lists may not accept any cash contribution for the electoral campaign coming from national companies or foreign individual organisations (Article 76). Financing of Political Parties and Election Campaigns (2003) 1 – Political parties may not receive monetary or in-kind donations or loans from national or foreign legal persons, except for the provisions of the following number. 2 – Parties may obtain loans from credit and financial institutions. 3 – Parties may not acquire goods or services from national or foreign individual and legal persons at prices below market prices. 4 – Political parties are also prohibited from receiving or accepting any indirect contributions or donations involving payment by third parties of any expenses incurred by the political parties in excess of the limits set forth in article 4. (Article 5)
34	Romania	+	Law on the Funding of Activities of Political Parties and of Electoral Campaigns (1996) Donations from foreign states and organizations as well as from foreign natural and legal persons are forbidden, except donations consisting in material goods necessary for the political activity, which are not electoral propaganda literature, received from international political organizations to which the respective political party is affiliated, or from parties in political collaboration. These donations shall be published in the "Monitorul Oficial" (Official Gazette of Romania) (Article 6 (2)).
35	Russian Federation	+	Federal Law No175-FZ of December 20, 2002 «On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation» Article 66. Electoral Funds of Candidates, Political Parties, Electoral Blocs <...> 7. No donations to electoral funds of candidates, political parties, electoral blocs shall be allowed from: (1) foreign states and foreign legal entities; (2) foreign nationals;
36	San Marino	-	<i>Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.</i>
37	Serbia and Montenegro	+	http://www.transparentnost.org.yu/english/MEDIA/1708-e01.html The Political Party Financing Act of 1997 ensures government funding for parties and <u>bans foreign donations</u> . The law also restricts donations from companies, groups of companies, and other organizations to 50 average salaries, but doesn't regulate donations from individuals. Anonymous donations are allowed but can't amount to more than three percent of what a party earned the previous year. If a party does break the law, the punishment is little more than a slap on the wrist. Many public debates have come to the conclusion that these provisions are

			precisely the reason why new legislation has yet to be passed. No party, the ruling parties included, wants to have to publicize information on its income, let alone reveal its benefactors.
38	Slovakia	+	<i>Ikstens J., Smilov D., Walecki M. Party and Campaign Funding in Eastern Europe: A Study of 18 Member Countries of the ACEEEO (paper, presented at the ACEEEO annual conference "Transparent Election Campaign Financing in the 21st Century"). Brijuni, 2001.</i> Only donations from the individuals with permanent residence within the territory of Slovakia, from legal entities based within the territory of Slovakia, or from political parties or movements registered in Slovakia are allowed.
39	Slovenia	+	<i>Campaign Finance in Central and Eastern Europe: Lessons Learned and Challenges Ahead</i> , Jānis Ikstens, Ph.D.; Daniel Smilov, Ph.D.; Marcin Walecki, M.A. (2002))
40	Spain	- <i>(prohibition applies only to foreign states and public foreign organs, except EU inst.)</i>	Donations to political parties by other states or other public foreign organs are forbidden, with the exception of subsidies given by the European Parliament. Ley orgánica 3/1987, de 2 de julio, sobre financiación de los partidos políticos (2003) Artículo 6 1. Los partidos políticos <u>podrán recibir</u> aportaciones no finalistas, <u>procedentes de personas extranjeras</u> , con los límites, requisitos y condiciones establecidas en la presente Ley, y siempre que se cumplan, además los requisitos de la normativa vigente sobre control de cambios y movimiento de capitales. 2. No obstante lo anterior, los partidos <u>no podrán aceptar cualquier forma de financiación por parte de Gobiernos y organismos públicos extranjeros</u> , sin perjuicio de las subvenciones de funcionamiento establecidas por el Parlamento Europeo. Ley orgánica 5/1985, de 19 de junio, de régimen electoral general (2003) Artículo 128 1. Queda prohibida la aportación a las cuentas electorales de fondos provenientes de cualquier Administración o Corporación Pública, Organismo Autónomo o Entidad Paraestatal, de las empresas del sector público cuya titularidad corresponde al Estado, a las Comunidades Autónomas, a las Provincias o a los Municipios y de las empresas de economía mixta, así como de las empresas que, mediante contrato vigente, prestan servicios o realizan suministros u obras para alguna de las Administraciones Públicas. 2. Queda igualmente <u>prohibida</u> la aportación a estas cuentas de fondos procedentes de <u>Entidades o personas extranjeras</u> , excepto los otorgados en el Presupuesto de los órganos de las Comunidades Europeas para la financiación de las elecciones al Parlamento Europeo, y, en el supuesto de elecciones municipales, únicamente con relación a las personas para quienes sea aplicable lo dispuesto en el artículo 13.2 de la Constitución.
41	Sweden	-	<i>Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.</i>
42	Switzerland	- <i>(no regulations at all)</i>	<i>Country Reports on Political Corruption and Party Financing- SWITZERLAND (by Michael Brändle) (2002)</i> (http://ww1.transparency.org/in_focus_archive/policy/download/case%20studies/political_corruption_party_financing_switzerland.pdf) <i>Funding of Parties and Election Campaigns, Stockholm: IDEA, 2003, 246 p.</i>
43	<u>The former Yugoslav Republic of Macedonia</u>	+	Law on Election of Members of Parliament of the Republic of Macedonia The election campaigns shall not be financed from <...> funds from foreign governments, international institutions, bodies, and organizations of foreign states and other foreigners; and funds from enterprises with mixed capital, where the dominant owner is a foreign investor (Article 62).

44	Turkey	+	<p><i>Ikstens J., Smilov D., Walecki M. Party and Campaign Funding in Eastern Europe: A Study of 18 Member Countries of the ACEEEO (paper, presented at the ACEEEO annual conference "Transparent Election Campaign Financing in the 21st Century"). Brijuni, 2001.</i></p> <p>Parties cannot accept money, property, or donations from foreign states; international organizations; citizens of another country; or associations, groups, or institutions located in another country (Law on Political Parties; Law on the Main Rules of Election).</p>
45	Ukraine	+	<p>Financing of political parties is forbidden from foreign countries and their citizens, companies, institutions and organizations; from political parties that are not members of the same electoral bloc of political parties (Law on Political Parties); from foreign countries and their organizations, international organizations, foreign citizens and persons without citizenship (Law on Associations of Citizens).</p>
46	United Kingdom	+ <i>(except Northern Ireland)</i>	<p>Registered political parties are only legally allowed to accept donations of more than £200 from 'permissible donors'. Permissible donors are defined by the Political Parties, Elections and Referendums Act (PPERA) as:</p> <ul style="list-style-type: none"> • an individual registered on a UK electoral register; • a UK registered political party; • a UK registered company; • a UK registered trade union; • a UK registered building society; • a UK registered limited liability partnership; • a UK registered friendly/building society; • a UK based unincorporated association. <p>Political parties are prohibited from accepting donations of more than £200 other than from the above sources. Any donations of more than £200 from impermissible sources must be returned, and donations from unidentifiable sources cannot be accepted.</p> <p>The Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties, etc) Order 2001 (which, for Northern Ireland parties disapplies the rules on the identity of donors and foreign funding) was extended in January 2005 for a further two years, i.e. until February 2007.</p>