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Committee on Political Affairs and Democracy

Transparency and regulation of donations to political parties and electoral campaigns from foreign donors

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Introductory memorandum

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1. Introduction

1.1. Procedure

1. The present report is based on the motion “Transparency and regulation of donations to political parties and electoral campaigns from foreign donors”² which I tabled together with other members of the Parliamentary Assembly in January 2019. I was appointed as rapporteur by the Committee on Political Affairs and Democracy on 26 June 2019.

2. In March 2020 an outline for the report was sent to the committee members for written comments. On 15 October 2020 the committee held an exchange of views with the participation of Mr Yves-Marie Doublet, Deputy Director at the French National Assembly, expert to the Group of States against Corruption (GRECO); Mr Nicolae Eșanu (Republic of Moldova), Substitute member of the Venice Commission, Legal Advisor to the Prime Minister; and Mr Fernando Casal Bértoa, Associate Professor at the University of Nottingham and member of the OSCE/ODIHR Core Group of Political Party Experts. In December 2020 I conducted two bilateral hearings with the journalists and authors Stefano Vergine (Italy) and Anton Shekhovtsov (Ukraine).

1.2. Purpose of the report

3. Political decision-making in Council of Europe member States is increasingly exposed to international influence. Developments like digitization and migration interfere with democratic processes which are designed and regulated on a merely national level.

4. One aspect of regulating political campaigns is the legal framework for financial contributions, i. e. donations or other financial support. Freedom of movement, e. g. between Council of Europe member States which are also European Union member States, migration and the existence of diaspora communities and national minorities cause a situation in which financial contributions may be performed by actors other than national citizens or resident companies of the state in which the contribution is performed.³ In addition to financial contributions by foreign citizens or non-resident private companies, financial contributions to political parties and electoral campaigns in one state may also be performed by public or state-linked entities from another state. Both financial contributions from foreign private and public donors may constitute an inappropriate influence on a state’s political processes.

5. Accordingly, some Council of Europe member States and the Council of Europe itself as well as other international organisations such as the European Union have adopted regulation and have expressed their political proposals concerning financial contributions to political parties and electoral campaigns from foreign donors. The present report shall describe the existing political and legal framework concerning contributions to political parties and campaigns by foreign donors while stressing the strengths and weaknesses of the texts and proposals which have been adopted or discussed so far.⁴

6. Recently, doubts and questions surrounding inappropriate foreign influence on political campaigns have arisen in a number of cases in different Council of Europe member States. The question is whether donations from abroad are performed by foreign private, public or state-linked donors in order to inappropriately interfere in a state’s political process. In addition to that, challenges like the use of digital technologies⁵ change the possibilities of donating to political parties or campaigns. The present report shall describe the recent developments and current challenges with regard to contributions to political parties and campaigns by foreign donors.⁶

7. Furthermore, the present report shall introduce proposals to update the existing political and legal framework concerning contributions to political parties and campaigns by foreign donors considering recent developments and current challenges.⁷ In doing so, the report shall contribute to strengthening citizens’

² [Doc. 14818](#); 24 January 2019.

³ Concerning the participation of immigrants in the political life of Council of Europe member States, see PACE Recommendation 1500 (2001) (Participation of immigrants and foreign residents in political life in the Council of Europe member States) adopted 26 January 2001.

⁴ See chapter 2 of the memorandum.

⁵ Concerning the general challenges for democracy imposed by digitization, see PACE [Resolution 2326 \(2020\)](#) (Democracy hacked? How to respond?) adopted 31 January 2020.

⁶ See chapter 3 of the memorandum.

⁷ See chapter 4 of the memorandum.

confidence in the integrity and independence of the process of public decision-making in Council of Europe member States.

1.3. *Scope of the report and definitions*

8. The present report deals with constellations in which foreign citizens, foreign companies or foreign-state-linked entities perform voluntary financial contributions, i. e. donations or other financial advantages, to political parties or campaigns in Council of Europe member States.

9. The report focusses on constellations in which the recipient political party or electoral campaign resides in one Council of Europe member State while the donating source sits in another Council of Europe member State. However, foreign donations may also be performed by a donating source residing in a non-member State of the Council of Europe.

10. The report focusses on political parties, meaning political organisations which present candidates and ideas to public elections. It deals with the funding of political parties' electoral campaigns as well as their funding which is not related to a particular electoral campaign. Moreover, the report aims to address political campaigns which are not linked to an election, but to a referendum. Due account must, however, be taken of the fact that not all Council of Europe member States possess national instruments of direct democracy. The exact distinction between party and campaign funding is therefore based on the national legal situation. Although some relevant political and legal statements, guidelines or rules which are to be assessed in the report refer either to parties or to campaigns⁸, some general principles governing democratic processes will be drawn from them.

11. The object and purpose of the report is intensely linked to the issue of corruption. Pursuant to the *Transparency International* definition "corruption" means "the abuse of entrusted power for private gain." Accordingly, improper or illicit donations to political parties and electoral campaigns from foreign donors may also constitute an act of corruption, if some financial advantage is directly or indirectly granted to a private recipient. However, an improper or illicit donations to a political party or an electoral campaign in a foreign country does not automatically fulfil the definition of corruption.

12. Despite the scope of the presented definitions, the present report explicitly aims to investigate constellations of circumvention. Hence, an improper or illicit donations to a political party or an electoral campaign may be deliberately performed in a way to avoid the fulfilment of the abovementioned definitions, e. g. by donating to individuals or NGOs and foundations instead of political parties and electoral campaigns. However, such action may under certain circumstances still constitute an act of improper influence in a country's democratic process.

2. **Political parties, electoral campaigns and foreign donors – political and legal framework**

2.1. *Funding of political parties and electoral campaigns as a key challenge in democracies*

13. Political parties and the freedom to organise political campaigns are fundamental elements of the democratic systems in Council of Europe member States. They are essential tools of expression of the political will of citizens and of organising political debates within a society.

14. Citizens' confidence in the integrity and independence of the process of public decision-making are important aspects to ensure acceptance and resilience of democratic systems. In political systems based on political parties, the internal organisation of a political party is subject to the citizens' expectation concerning the integrity of political processes.

15. The role of political parties, in particular the organisation of electoral campaigns and the participation in elections, cannot be carried out without adequate financial resources. In order to ensure the democratic rights of citizens to form political organisations, to protect the equality between parties and to avoid corrupt or undue influence, states typically impose regulation on political parties and electoral campaigns regarding their finances.⁹

⁸ See with respect to campaigns linked to referenda PACE [Resolution 2251 \(2019\)](#) (Updating guidelines to ensure fair referendums in Council of Europe member States), adopted 22 January 2019.

⁹ The Assembly has stressed the role of political parties and the importance of their financial transparency on numerous occasions, comp. PACE Resolution 1546 (2007) (The code of good practice for political parties) adopted 17 April 2007; PACE Resolution 1736 (2010) (Code of good practice in the field of political parties) adopted 21 Mai 21 2010; [PACE Resolution 1897 \(2012\)](#) (Ensuring greater democracy in elections) adopted 12 October 2012.

16. There are various possibilities of financing political parties from public and private sources. Council of Europe member States apply a variety of different regulatory and budgetary models in the field of financing political parties. “At present there is no international standard or reference, the question of political party financing being closely linked to the constitutional and electoral systems of each State, which are themselves generally the product of each country’s historical or cultural background.”¹⁰

17. Nevertheless, several Council of Europe institutions have tried to set standards with respect to the financing of political parties and electoral campaigns. In 2001, the Parliamentary Assembly stated general principles with respect to the financing of political parties:¹¹ a reasonable balance between public and private funding, fair criteria for the distribution of state contributions to parties, strict rules concerning private donations, a threshold on parties’ expenditures linked to election campaigns, complete transparency of accounts, the establishment of an independent audit authority and meaningful sanctions for those who violate the rules (Provision Nr. 7). However, the Recommendation did not contain specific reflections with respect to transparency and regulation of donations to political parties and electoral campaigns from foreign donors.

2.2. *The Venice Commission Guidelines on the Financing of Political Parties (2001)*

18. The Venice Commission Guidelines on the Financing of Political Parties (2001) also stress the principles of equality between parties and transparency in the reporting requirements imposed on parties. Concerning donations to political parties and electoral campaigns from foreign donors the Guidelines provide that political parties may receive private financial donations. “Donations from foreign States or enterprises must however be prohibited. This prohibition should not prevent financial donations from nationals living abroad” (Guideline Nr. 6).

19. With regard to electoral campaigns the Guidelines state that “private contributions can be made for campaign expenses, but the total amount of such contributions should not exceed the stated ceiling. Contributions from foreign States or enterprises must be prohibited. This prohibition should not prevent financial contributions from nationals living abroad.” (Guideline Nr. 10). It should be noted that the Guidelines explicitly distinguish between political parties and electoral campaigns whereas many other relevant texts and documents entail a *mutatis mutandis* approach to party and campaign regulation.¹²

2.3. *Committee of Ministers Recommendation Rec(2003)4*

20. In Committee of Ministers Recommendation Rec(2003)4 (On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns)¹³ Article 7 provides that “states should specifically limit, prohibit or otherwise regulate donations from foreign donors”.¹⁴

21. The Recommendation also contains general guidelines with respect to ensuring transparency and regulations of donations to political parties and electoral campaigns. Article 3 states that “measures taken by states governing donations to political parties should provide specific rules to avoid conflicts of interests, ensure transparency of donations and avoid secret donations, avoid prejudice to the activities of political parties and ensure the independence of political parties.” It furthermore provides that “states should (i) provide that donations to political parties are made public, in particular, donations exceeding a fixed ceiling; (ii) consider the possibility of introducing rules limiting the value of donations to political parties; (iii) adopt measures to prevent established ceilings from being circumvented.”

¹⁰ Provision 5 of the revised addendum CM(2001)195 concerning Committee of Ministers [Recommendation Rec\(2003\)4](#) (On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns).

¹¹ [PACE Recommendation 1516 \(2001\)](#) (Financing of political parties), adopted 22 May 2001.

¹² See Article 8 of Committee of Ministers Recommendation Rec(2003)4 (On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns) stating that “[t]he rules regarding funding of political parties should apply *mutatis mutandis* to: the funding of electoral campaigns of candidates for elections; the funding of political activities of elected representatives.”

¹³ In provisions 8-16 of the revised addendum CM(2001)195 concerning Committee of Ministers [Recommendation Rec\(2003\)4](#) (On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns) previous efforts by the Committee of Ministers are summarized.

¹⁴ As stated in provisions 51 and 52 of the revised addendum CM(2001)195 concerning Committee of Ministers [Recommendation Rec\(2003\)4](#) (On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns), Article 7 “enables States to control foreign donations more strictly than domestic donations or even to prohibit them entirely. The rationale for the provision is that foreign donations may exert an improper, interfering influence on the political life of a country. Furthermore, the identity of a foreign donor or the origin of the donation may be more difficult to verify. A donation may be defined as “foreign” if it emanates from abroad or if it is made by a non-citizen. It is for each State to determine the “nationality” status of legal entities and subsidiaries of legal entities.”

2.4. Council of Europe project “Making democratic institutions work” (2002-2004)

22. As part of the integrated Council of Europe project “Making democratic institutions work” (2002-2004) Prof. Ingrid van Biezen published the manual “Financing political parties and election campaigns – guidelines” in 2003. The author further elaborates on the guidelines set up in Committee of Ministers Recommendation Rec (2003) 4 (On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns) by presenting different options, alternatives, legal principles and methods of regulating donations to political parties and electoral campaigns from foreign donors.

23. The author describes different approaches to regulating foreign donations in different regions of Europe. Whereas more recently established democracies in southern, central and eastern Europe tend to be more restrictive with regard to donations of foreign origin, most of the older western European democracies do offer some legal options for foreign donations. The author emphasises that, historically, there have been several cases of substantial foreign financial support to political movements in European states. Communist parties in post-authoritarian southern Europe were known to be financed by the Soviet Union, for example, while other parties received support from their west European and particularly West German sister parties and their associated research institutes. Foreign financial aid to parties in southern Europe significantly diminished after the demise of the communist regimes in eastern Europe and particularly the unification of Germany, after which German financial aid was mostly directed towards the east. The author also delineates the role of the United States in funding political movements abroad, especially during the Cold War.¹⁵

24. In the guidelines several arguments regarding foreign donations are mentioned. The most important principled objection to foreign donations to political parties is said to be the interference with the autonomy and sovereignty of domestic politics. Besides, the difficulties involved with ensuring the accountability of the donor and the fact that they may remove an incentive for parties and politicians to raise money from their own supporters are seen as more pragmatic objections. The author stresses that foreign donations do not always have a subversive intention and may in fact be a welcome contribution to democracy-building efforts. In countries with a poorly developed civil society and weakly organised political parties especially, financial contributions from abroad may, according to the author, play a positive role in helping to create the institutions needed for democracy. Therefore, the author suggests distinguishing between secret and clandestine activities with a political purpose, on the one hand, and, on the other hand, legal activities often explicitly targeted at democracy building. Moreover, the author differentiates between actual funding of political parties or campaigns and the practice of foreign funding through political foundations and research institutes.¹⁶

2.5. European Convention on Human Rights (hereafter the Convention) and EU Law in assessment by the Venice Commission (2006)

25. In 2005 the European Court of Human Rights (hereafter the Court) requested the Venice Commission to prepare an opinion on the problem of political parties receiving financial contributions from abroad. As a result, the “Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources” was adopted by the Venice Commission in 2006 (Opinion no. 366/2006; CDL-AD(2006)014).

26. It has to be noted that the 2006 opinion focusses on the financing of a political party by another political party. The focus of the study did not lie in the financing of a political party, movement or campaign by a foreign state. When assessing the different regulations in Council of Europe member States the Venice Commission included regulations concerning the donations by foreign states, foreign citizens and foreign legal persons. Also, the financing of a political party by a foreign political party may constitute an indirect financing by a foreign state as the donor organisation may have received state funding in its country of origin. However, the legal aspect of the financing of a political party, movement or campaign by a foreign state was not the core aspect of the study.

27. The Commission conducted an analysis of the legal situation in 44 Council of Europe member States. It concluded, that, at the time, 28 member States of the Council of Europe prohibited or substantially limited foreign donations to political parties and 16 did not impose any such restrictions. The Commission held that regulations on political parties differed substantially from one country to another. The legislative framework for parties as a specific type of association is, according to the Commission, 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. The Commission considers several historical and politico-cultural factors, like

¹⁵ van Biezen, p. 27/28

¹⁶ van Biezen, p. 27

for example attempts to exert influence during the Cold War, geographical affiliation to the post-Soviet area and membership in the European Union.

28. The Commission came to the overall 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 Convention must be respected.¹⁷

29. Article 11 of the Convention provides that:

- *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
- *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

30. In the eyes of the Commission, regulation of foreign donations may constitute a restriction in the meaning of the Convention's Article 11 (2). Hence, it can only be imposed on an organisation by law and it has to be carried by a substantial reason. The assessment of national regulation in several Council of Europe member States reveals a multitude of possible reasons: the international policies of extremist parties of the political right and left during the years between the two World Wars; similar experience during the Cold War years and the polarisation between the West and the East; fear of separatist movements; the advancement of public funding of political parties.¹⁸ States without any regulation in the field do not want to complicate political cooperation with organisations in other states or they have merely not seen any of the abovementioned reasons to introduce legislation.

31. With regard to donations from one political party to another political party in the specific constellation that both the donor and the recipient organisation reside in a state which is part of the European Union, the Commission stresses the importance of EU regulation concerning political parties on the European level.¹⁹

32. The Treaty²⁰ on European Union in its Article 10 (4) provides that:²¹

- *(4) Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.*

33. The Treaty on the Functioning of the European Union in its Article 224 provides that:

- *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, by means of regulations, shall lay down the regulations governing political parties at European level*

¹⁷ The Commission cites the European Court of Human Rights judgement of 19 January 2006 (*The United Macedonian Organisation Ilinden and others v. Bulgaria* (Application no. 59491/00)) which established that "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 [...]" (paragraph 61). "[The court] 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." (paragraph 62).

¹⁸ The Venice Commission also mentions the "wish to keep any provided funds within the country." This finding has to be seen in connection with the narrow aim of the opinion to only assess donations from one party to another party without considering donations to parties from foreign states or state-linked entities.

¹⁹ The history and legal development of EU law governing the funding of European political parties is described by *Schweitzer, Tobias: Die europäischen Parteien und ihre Finanzierung durch die Europäische Union.*

²⁰ See also Article 12(2) of the Charter of Fundamental Rights of the European Union which states that „Political parties at Union level contribute to expressing the political will of the citizens of the Union.“

²¹ The Venice Commission quotes the predecessor provision to both Article 10 (4) TEU and Article 224 TFEU in Article 191 of the Treaty of Rome; see *Schweitzer*, p. 38.

referred to in Article 10(4) of the Treaty on European Union and in particular the rules regarding their funding.

34. Pursuant to the provision in Article 224 the regulations governing political parties at European level and the rules regarding their funding are laid down in Regulation (EU, Euratom) No. 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations.²²

35. In the eyes of the Venice Commission, the existence of EU law²³ regarding the funding of European political parties “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.”

36. However, the most striking EU law provisions regulating European political parties in the context of the present report are Article 20 (5)(c) and (d) of Regulation (EU, Euratom) No. 1141/2014. They state that:

- *European political parties and European political foundations shall not accept any*
- *(c) donations from any public authority from a Member State or a third country, or from any undertaking over which such a public authority may exercise, directly or indirectly, a dominant influence by virtue of its ownership of it, its financial participation therein, or the rules which govern it; or*
- *(d) donations from any private entities based in a third country or from individuals from a third country who are not entitled to vote in elections to the European Parliament.*

37. The Venice Commission could not consider this clear provision as its report was adopted in 2006 whereas Regulation (EU, Euratom) No. 1141/2014 replaced Regulation (EC) No. 2004/2003 only in 2014.²⁴

38. In the context of EU law, besides the abovementioned provisions, the Venice Commission stresses the meaning of the principle of free movement of capital as enshrined in Article 63 TFEU²⁵ which states that:

- *(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.*

39. The Commission delineates that a financial contribution to a political party from one EU member State to another member State generally falls into the scope of Article 63 TFEU and that any regulation prohibiting or limiting such contribution can be justified²⁶ under the provision of Article 65 (1) (a) and (b)²⁷ that state that:

- *(1) The provisions of Article 63 shall be without prejudice to the right of Member States:*

²² The Venice Commission quotes the predecessoring Regulation (EC) No. 2004/2003.

²³ The Venice Commission refers to the predecessoring Regulation (EC) No. 2004/2003.

²⁴ The Venice Commission especially took into consideration Article 6 of Regulation (EC) No. 2004/2003 which allows contributions from parties in EU member States to European parties whereas such contributions may not exceed 40% of the European party’s annual budget. Moreover, the Commission points out that, 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 political parties, which shall continue to be governed by national rules. The Commission argues that „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.” The new Regulation (EU, Euratom) No. 1141/2014 contains similar provisions.

²⁵ The Venice Commission quotes the predecessoring provision in Article 56 of the Treaty establishing the European Community.

²⁶ Besides the possibilities to restrict the free movement of capital by reasons referred to in Art. 65(1) TFEU, the European Court of Justice has established the possibility of restriction based on “overriding requirements of the general interest.” On top of that, both the written and the unwritten reasons to restrict the free movement of capital must comply with the criterion of proportionality; comp. ECJ Judgement of 13 May 2003 – Case C-463/00.

²⁷ The Venice Commission quotes the predecessoring provision in Article 58 of the Treaty establishing the European Community.

- (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
- (b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

40. As seen, the Venice Commission did not only assess the legal situation regarding donations from political parties to political parties in other states. Instead, it provided an in-depth analysis concerning the legal situation of foreign funding, especially also by states or state-linked entities, in 44 Council of Europe member States. Nevertheless, when concluding its report, the Commission narrows its findings to the original question of whether a prohibition of donations from political parties to political parties in other states is compatible with Article 11 of the Convention.

41. In doing so, the Commission finds that 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. Generally, according to the Commission, 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” in the meaning of Article 11 of the Convention, for example, if financing from foreign sources is used to pursue aims not compatible with the Constitution and the laws of the country or if it undermines the fairness or integrity of political competition or leads to distortions of the electoral process or poses a threat to national territorial integrity.²⁸

2.6. Guidelines on political party regulation by OSCE/ODIHR and Venice Commission (2010)

42. In 2010, the Venice Commission and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE published joined Guidelines on political party regulation.²⁹ Referring to Committee of Ministers Recommendation Rec(2003)4 (On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns), the Guidelines state in their paragraph 172 that “Contributions from foreign sources should generally be prohibited”. Nevertheless, such regulation shall not undermine the international cooperation of political parties.³⁰

2.7. Parliamentary Assembly

43. In 2001, the Parliamentary Assembly stated general principles with respect to the financing of political parties without explicitly mentioning the issue of transparency and regulation of donations to political parties and electoral campaigns from foreign donors.³¹ Since then, the assembly has repeatedly reaffirmed its call for transparency of the financing of political parties.³² In 2019, the Assembly voted in favour of a resolution proposing a prohibition of foreign donations to political campaigns with respect to referenda.³³

44. It should be noted that the Assembly has set a specific focus on the situation of NGOs after restrictive laws and regulations had been adopted in several Council of Europe member States.³⁴ In Resolution 2362 (2021) “Restrictions on NGO activities in Council of Europe member States”³⁵ it is stated in Article 10. 7. that member States are urged to “ensure that NGOs can seek, secure and use financial and material resources of both domestic and foreign origin, without suffering discrimination or encountering unjustified obstacles, in line

²⁸ The Venice Commission “Code of good practice in the field of political parties”, adopted by the Commission 12/13 December 2008, does not exceed the findings of the opinion published in 2006.

²⁹ [CDL-AD\(2010\)024](#); adopted 15/16 October 2010.

³⁰ „It should be recognized that the implementation of this nuanced approach to foreign funding may be difficult, and legislation should carefully weigh the protection of national interests against rights of individuals, groups, and associations to cooperate and share information.“

³¹ [PACE Recommendation 1516 \(2001\)](#) (Financing of political parties), adopted 22 May 2001.

³² [PACE Resolution 1546 \(2007\)](#) (The code of good practice for political parties) adopted 17 April 2007; [PACE Resolution 1736 \(2010\)](#) (Code of good practice in the field of political parties) adopted 21 Mai 2010; Paragraphs 8.1.4. and 8.2.2. of [PACE Resolution 1897 \(2012\)](#) (Ensuring greater democracy in elections) adopted 12 October 2012.

³³ See Paragraph 4.12. of [PACE Resolution 2251 \(2019\)](#) (Updating guidelines to ensure fair referendums in Council of Europe member States), adopted 22 January, 2019.

³⁴ See [PACE Resolution 2096 \(2016\)](#) (How to prevent inappropriate restrictions of NGO activities in Europe?) adopted 28 January 2016.

³⁵ [PACE Resolution 2362 \(2021\)](#) (Restrictions on NGO activities in Council of Europe member States), adopted 27 January 2021.

with the recommendations included in the Venice Commission “Report on the funding of associations” (Article 10.7.)” Accordingly, regulations governing donations to political parties and electoral campaigns from foreign donors should not impose inappropriate restrictions on NGOs.

2.8. GRECO

45. The Council of Europe’s “Group of States against Corruption” (GRECO) focussed on the transparency of party funding as part of its third evaluation round. In doing so, GRECO referred to the abovementioned Recommendation of the Committee of Ministers to member States on “common rules against corruption in the funding of political parties and electoral campaigns (Rec (2003) 4)”.

46. Despite the fact that member States were invited to elaborate on their regulation regarding donations from foreign donors in the questionnaire circulated among member States,³⁶ Article 7 of the Council of Ministers Recommendation (“states should specifically limit, prohibit or otherwise regulate donations from foreign donors”) is not explicitly part of the Country-specific Evaluation Reports.³⁷ Also, the issue of foreign funding of political parties and political campaigns does not play a role in the overall thematic review of GRECO’s third evaluation round.³⁸

2.9. European Union³⁹

47. In the aftermath to the European Parliament election of 2019, the European Parliament adopted a resolution “on foreign electoral interference and disinformation in national and European democratic processes.”⁴⁰ In doing so, the European Parliament recognises that „foreign interference can take a myriad of forms, including disinformation campaigns on social media to shape public opinion, cyber-attacks targeting critical infrastructure related to elections, and direct and indirect financial support of political actors.” On top of that, the European Parliament states that “several investigations have shown that crucial electoral rules have been breached or circumvented, in particular the existing provisions on the transparency of campaign financing, with allegations of political spending by non-profit organisations from third-country sources, notably from Russia.” Furthermore, the European Parliament “acknowledges that the overwhelming majority of Member States have full or partial bans on foreign donations to political parties and candidates; recalls with concern that even where laws place restrictions on the sources of political funding, foreign actors have found ways to circumvent them and have offered support to their allies by taking out loans with foreign banks, as in the case of the Front National in 2016, through purchase and commercial agreements, as in the case of the allegations reported by Der Spiegel and Süddeutsche Zeitung on 17 May 2019 against the Freedom Party of Austria and by Buzzfeed and L’Espresso on 10 July 2019 against Lega per Salvini Premier, and the facilitation of financial activities, as reported by the British press in relation to the Leave.eu campaign;”⁴¹ As a result, the European Parliament “calls on the Commission to address the question of foreign funding of European political parties and foundations without impeding the creation of a European public space going beyond the European Union, and to launch a discussion with the Member States to address these issues in relation to their domestic political parties and foundations.”

48. In 2020, the European Commission presented its “Democracy Action Plan” in order to strengthen the resilience of EU democracies.⁴² The Commission warns that “Digitalisation enabled new ways to finance political actors from uncontrolled sources.”⁴³ It announces that it will “propose a review of the legislation on the funding of European political parties with a view to addressing the financing of European political parties from outside the EU, revising the audit requirements, strengthening the links between European financing and national campaigns, and facilitating transparency and auditing. The goal is to have the new rules in place in

³⁶ See Question N° 7 in GRECO Third Evaluation Round, Questionnaire on Transparency of Party Funding, Adopted by GRECO at its 29th Plenary Meeting (Strasbourg, 19-23 June 2006).

³⁷ At the beginning of each country report the „Theme II – Transparency of party funding“ is narrowed to Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns). The reports, however, do contain observations regarding foreign donations.

³⁸ Doublet, Yves-Marie, Political Funding – thematic review of GRECO’s third evaluation round.

³⁹ Several EU law aspects were already mentioned in the context of their assessment by the Venice Commission, see chapter 2.5.

⁴⁰ “European Parliament resolution of 10 October 2019 on foreign electoral interference and disinformation in national and European democratic processes (2019/2810(RRSP))”⁴⁰

⁴¹ See chapter 3 of the memorandum.

⁴² European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan (COM(2020) 790 final).

⁴³ p. 2

sufficient time ahead of the May 2024 European Parliament elections. The Commission will also consider developing web-based software tools to assist the work of civil society in the area of political financing and financial transparency, for example in detecting and exposing possible fraud and irregularities in political parties' published accounts."⁴⁴

49. In 2020, the European Parliament decided to create a "special committee on foreign interference in all democratic processes in the European Union, including disinformation"⁴⁵ (INGE). The committee has the explicit responsibility to "conduct a thorough analysis of the investigations showing that crucial electoral rules have been breached or circumvented, in particular the existing provisions on the transparency of campaign financing, with allegations of political spending by various legal and illegal forms of conduits and straw donors from third-country sources".

50. As seen, both the European Parliament and the European Commission see the problem of illicit foreign funding in the broader context of democratic resilience against several dangerous phenomena. Being one key development in the current political culture in Europe, both institutions emphasise the challenge of paid political online advertising, especially via social media. In this context, the Parliamentary Assembly has welcomed "the European Union's action to counter disinformation, address the threats of external intervention in European elections and ensure greater transparency on paid political advertising and clearer rules on the financing of European political parties, as part of the forthcoming European Democracy Action Plan for 2019-2024." The Assembly has called "on the European Union to ensure synergy with the Council of Europe's action in those areas and promote further co-operation with all 47 member States of the Council of Europe."⁴⁶

2.10. Scientific assessments of foreign donations

51. Besides the Venice Commission, several other scholars have repeatedly assessed the regulation of various countries regarding transparency and regulation of donations to political parties and electoral campaigns from foreign donors. As an example, the International Institute for Democracy and Electoral Assistance (IDEA) shall be mentioned.⁴⁷ The institution publishes the current legal situation in its online database.⁴⁸

52. According to the database,⁴⁹ 68.3 % of countries prohibit donations from foreign interests to political parties whereas 30.6 % of countries do not. Moreover, 57.5 % of countries prohibit donations from foreign interests to candidates whereas 39.7 % do not. Both the fact that a majority of jurisdictions entails a respective ban on donations and the fact that IDEA differentiates between donations to parties and donations to candidates should be noted.

2.11. Preliminary conclusions and outlook

53. The texts and sources cited above show that the Council of Europe and its institutions have issued numerous political or legal statements, guidelines or rules governing foreign donations to political parties and campaigns. They also show that the distinct historic, social, cultural and political characteristics of member States heavily influence their respective rules on party funding.⁵⁰

54. In spite of these differences, the importance of regulating the funding of political parties or making it transparent is recognised by various Council of Europe institutions. To that end, principles and rules were established in the past which should now be evaluated and discussed by both the Committee of Ministers and

⁴⁴ p. 5/6

⁴⁵ European Parliament decision of 18 June 2020 on setting up a special committee on foreign interference in all democratic processes in the European Union, including disinformation, and defining its responsibilities, numerical strength and term of office (2020/2683(RSO)).

⁴⁶ See [PACE Resolution 2326 \(2020\)](#) (Democracy hacked? How to respond?) adopted 31 January 2020.

⁴⁴ The data provided by IDEA were also referred to by Mr Fernando Casal Bértoa in the exchange of views with experts conducted by the Committee on Political Affairs and Democracy on 15 October 2020.

⁴⁸ <https://www.idea.int/data-tools/data/political-finance-database>

⁴⁹ Accessed 5 January 2021.

⁵⁰ I want to thank the members of the Parliamentary Assembly Mr Sergey KISLYAK and Mr Sergey FABRICHNYY who contributed a written comment to the outline of the present report pointing out that "there is no single model for donations to political parties and individual candidates in European countries, because political and cultural traditions in the member-countries are mostly different. An ideal solution for some will be unacceptable for the others so there is no single correct method of the election campaign funding regulation." Among other suggestions, both colleagues propose that "that a key role should be given to improving national regulations on the principles of national sovereignty and the constitutional and legal relationship between the citizen and the state in the process of legislative reforming."

the Parliamentary Assembly. The evaluation and discussion of those rules and principles, moreover, should be carried out in the light of current developments and, if necessary, revised.

55. The assessment of the legal and political statements, guidelines or rules, issued by Council of Europe institutions shows that the Committee of Ministers Recommendation Rec(2003)4 (On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns) which provides in its Article 7 that “states should specifically limit, prohibit or otherwise regulate donations from foreign donors” remains an important guideline for further considerations.

56. The important work of the Venice Commission needs to be updated in light of recent developments. Since the Commission assessed the Convention and EU law in 2006, both EU treaties and EU secondary law have changed, the latter proving an explicit prohibition of foreign donations to European political parties. Also, the focus of the Venice Commission study laid in the assessment of the possibility of donations from a party to a party in another country. After all, the national legislation assessed by the Commission may have changed since 2006.

57. As the issue of donations to political parties and electoral campaigns from foreign donors has not been a focus of GRECO so far, the institution should be invited to update its evaluations taking into account the findings of the present report.

58. An updated resolution and recommendation adopted by the Parliamentary Assembly would also be helpful to accompany the current political and legal development in EU institutions with regard to the topic.

3. Recent developments and current challenges⁵¹

3.1. Circumventions and loopholes

59. In August 2020, scholars Josh Rudolph and Thomas Morley of the Alliance for Securing Democracy, an initiative housed at the German Marshall Fund of the United States (GMF), published the study “Covert Foreign Money: Financial loopholes exploited by authoritarians to fund political interference in democracies”.⁵² Although their elaborations are to a large extent focussed on the legal situation in the United States, several observations and examples from the context of Council of Europe member States are mentioned. The present report seeks to compare their findings with the outcome of discussions and hearings in the Committee on Political Affairs and Democracy, with open-source media reports and with scientific sources regarding recent developments and current challenges.

60. The authors point out that foreign interference in democratic processes through financial contributions⁵³ has to be seen in the context of further tools of interference like cyberattacks and disinformation.

61. They identify seven legal loopholes which are exploited by foreign donors to perform improper or illicit donations to political parties and electoral campaigns.⁵⁴

62. The authors consider it a first loophole that “legal definitions of political donations are too narrowly scoped in many countries, effectively legalizing some foreign in-kind contributions.” According to the authors, examples include loans to the French party Rassemblement National from banks linked to the Russian government as well as luxurious gifts and trips for individuals.⁵⁵ The study contains several other examples of

⁵¹ Many of the cases mentioned in this chapter became known thanks to the work of journalists and scientists. Although I am relying on their publicly available work in order to propose a political position for the Parliamentary Assembly, it is not my intention to prejudge the respective facts. Especially in the field of possible violations of party and campaign law or even criminal law provisions, it is up to national law enforcement and supervisory authorities to investigate and assess the facts. However, political conclusions can be drawn from the used media and science sources. In the present report I focused on recent developments and current challenges in Council of Europe member States. Nevertheless, inappropriate or illicit financial interference by non-member States towards political parties in Council of Europe member States does also occur.

⁵² Rudolph/Morley; [Covert Foreign Money: Financial loopholes exploited by authoritarians to fund political interference in democracies](#); August 2020.

⁵³ Rudolph/Morley, p. 7, use the concept of “malign finance”, i. e. “tool of foreign interference. The funding of foreign political parties, candidates, campaigns, well-connected elites, or politically influential groups, often through non-transparent structures designed to obfuscate ties to a nation state or its proxies.”

⁵⁴ Rudolph/Morley, p. 1.

⁵⁵ Rudolph/Morley, p. 1. By pointing out this loophole, the authors effectively mention two relevant constellations of circumvention: (1) a direct loan by a bank linked with a foreign state in order to circumvent the prohibition of a donation;

potential in-kind contributions from foreign nationals to political parties or politicians.⁵⁶ The present report shall further elaborate on the example of France.⁵⁷

63. As a second loophole, the authors identify the use of intermediaries who enrich favoured donors, politicians or parties.⁵⁸ As an example, donations to the British Conservative Party by several Russian nationals are mentioned.⁵⁹

64. As a third loophole, the authors identify the use of corporate entities as footholds to establish a legal presence, and thus the ability to donate, within target countries.⁶⁰ As an example, donations to several British politicians by Ukrainian businessman Dmytro Firtash are mentioned.⁶¹

65. According to the authors, the fourth loophole lies in the use of “foundations, associations, charities, religious organisations, and other non-profits” as they “are handy vehicles for malign finance because Western legal systems treat them as third parties permitted to spend on politics without meaningfully disclosing the identities of their donors.” In the eyes of the authors one example lies in a German association supporting the party Alternative für Deutschland (AfD) which the present report shall further elaborate on.⁶² Further examples of interference are mentioned in the study.⁶³

66. The fifth loophole is considered to be the purchase of “political ads on social media platforms in order to covertly influence elections and public opinion in democratic societies.”⁶⁴ The “intersection of malign finance and information manipulation, including covert funding of online media outlets” is seen as the sixth loophole.⁶⁵ The present report does not seek to focus on the fifth and sixth loophole as the issues of paid political ads and the challenges of a changing media landscape for democracy were recently discussed in the Parliamentary Assembly.⁶⁶ However, the possible intersections of financial interference with cyberattacks and disinformation campaigns have to be taken into consideration.⁶⁷

67. Finally, the study mentions the use of emerging technologies providing anonymity, such as political spending in the form of cryptocurrencies, as well as the use of donor bots capable of automating thousands of political contributions in the names of stolen identities, keeping such operations under disclosure thresholds.⁶⁸ The present report shall further elaborate on the issue of cryptocurrency use.⁶⁹

68. Besides the abovementioned abuse of legal loopholes, the study by Rudolph and Morley also mentions examples of possibly illegal activities. As an example, negotiations of the Italian party La Lega with Russian state-linked entities about financial aid in 2019 are mentioned.⁷⁰ Examples for possibly illegal activities also involve reports about financial aids for the Italian party M5S by the Venezuelan government in 2010.⁷¹

3.2. France: Rassemblement/Front National

69. In September 2014, the French political party Front National (now: Rassemblement National) received a loan of 9 million euros from the “First Czech Russian Bank” (FCRB) – an institution whose ownership is said

(2) a contribution to individual politicians which may not be subject to strict rules applying to the entire party or political campaign.

⁵⁶ Rudolph/Morley, pp. 74-79.

⁵⁷ See chapter 3. 2. of the memorandum.

⁵⁸ Rudolph/Morley, p. 1/2.

⁵⁹ Comp. Harper; [Russian Tory donors named in secret report which was 'blocked by government'](#); 10 November 2019; see chapter 3. 6. of the memorandum.

⁶⁰ Rudolph/Morley, p. 2.

⁶¹ Faucon/Mason; Ukrainian Billionaire, Wanted by U.S., Builds Ties in Britain; 2 December 2014.

⁶² See chapter 3.4 of the memorandum.

⁶³ Rudolph/Morley, p. 2.

⁶⁴ Rudolph/Morley, p. 3.

⁶⁵ Rudolph/Morley, p. 3.

⁶⁶ [PACE Resolution 2326 \(2020\)](#) (Democracy hacked? How to respond?) adopted 31 January 2020.

⁶⁷ Rudolph/Morley, p. 54, refer to the combination of utilizing legal loopholes together with non-financial tools of interference as “multi-vector campaigns”.

⁶⁸ Rudolph/Morley, p. 3.

⁶⁹ See chapter 3.7 of the memorandum.

⁷⁰ Rudolph/Morley, p. 99; see chapter 3.3 of the memorandum.

⁷¹ Rudolph/Morley, p. 100; García Rey, [El chavismo financió el Movimiento 5 Estrellas que hoy gobierna en Italia](#), 16 June 2020.

to have had close connections to the Russian government.⁷² While the FCRB approached insolvency and had its banking license revoked in 2016, the loan was transferred to another Russian company which has filed a claim against the party demanding the repayment of the loan. Until now there has been no repayment of the loan.⁷³ The 2014 loan is only one example of extensive financial negotiations and relations between the Front/Rassemblement National and Russian state-linked entities or Russian banks.⁷⁴

70. The Case of the Rassemblement/Front National is an example for the phenomenon that a mere prohibition of a foreign donation may not be sufficient regulation to avoid any financial advantage or in-kind contribution to a political party from abroad.

71. It has to be elaborated to what extent French law prohibited loans to political parties by foreign banks at the time of the events, to what extent the question of the legal residence of a bank inside or outside the EU has any significance and to what extent legislation has changed since the events, i. e. if a potential loophole persists.

3.3. Italy: Lega

72. In February 2019, two Italian investigative journalists revealed that in connection with the campaign for the European Parliament election of 2019 the Italian party La Lega had sought financing from Russian authorities or Russian state-linked companies to the tune of millions of euros, a support that was to be hidden behind a resource deal.⁷⁵ In July 2019, journalists published an article referring to an audio recording containing the explicit negotiations concerning financial contributions on behalf of a Russian state-linked company that should have covertly channelled the financial resources for La Lega to an Italian company via intermediate companies.⁷⁶

73. When reports of these negotiations emerged, an Italian public prosecution authority opened investigations into representatives of La Lega.⁷⁷ These investigations have not yet been completed. As far as known, a payment has not materialised.

74. According to scholars from the GMF's Alliance for Securing Democracy, the Moscow meeting occurred on 18 October 2018. At the time, the only limit on foreign funding in Italian elections was that all donations were capped at 100.000 euros. At the time, a new anti-corruption law was prepared in the Italian government coalition that completely forbade foreign funding of Italian parties and candidates. In the weeks following the Moscow meeting, representatives of La Lega proposed an amendment that would have removed the ban. The amendment was eventually withdrawn and the anti-corruption law containing the ban on foreign funding was passed in December 2018. According to media reports,⁷⁸ La Lega eventually managed to weaken the restrictions in April 2019. On that occasion, it added a provision in an unrelated economic bill that amended the law so as to exclude "foundations, association and committees" from its scope.⁷⁹

75. It has to be elaborated which exact Italian criminal law provision was allegedly violated by La Lega and its representatives. It has to be elaborated to what extent Italian criminal or administrative law forbade the constellation performed by La Lega at the time of the events, to what extent regulation has been amended and if such changes interfere with a potential criminal prosecution or administrative sanctions.

3.4. Germany: AfD

76. In December 2020, the President of the German Bundestag, acting as the competent supervisory authority in the field of campaign and party financing, enacted two penalties against the Alternative für Deutschland (AfD) party for having accepted donations from Switzerland. The President of the Bundestag had already issued penalties in similar cases against the party before.⁸⁰ In Germany, donations to political parties

⁷² Comp. Shekhovtsov; [Russia and the Western Far Right](#); 2018; p. 196; Turchi; [How a Russian bank gave France's far-right Front National party 9mln euros](#); 24 November 2014; Alliance for Securing Democracy, German Marshal Fund; [Illicit Influence – Part One: A Case study of the First Czech Russian Bank \(FCRB case study\)](#); Rudolph/Morley, p. 74.

⁷³ Comp. [Russian company demands that Le Pen's party repay loan](#); 4 February 2020.

⁷⁴ Oliveira; [National Front seeks Russian cash for election fight](#); 19 February 2016; Shekhovtsov, pp. 189-203.

⁷⁵ Tizian/Vergine; [Esclusivo - La trattativa segreta per finanziare con soldi russi la Lega di Matteo Salvini](#); 21 February 2019; Rudolph/Morley, pp. 99/100.

⁷⁶ Nardelli, [Revealed: The Explosive Secret Recording That Shows How Russia Tried To Funnel Millions To The "European Trump"](#), 10 July 2019.

⁷⁷ dos Santos, [Investigation into a possible scheme between Russia and Italian political party](#), 11 July 2019.

⁷⁸ Giacobini, [La Lega ha tentato di rimuovere il divieto ai partiti di ricevere finanziamenti esteri](#), 12 July 2019.

⁷⁹ Morley/Soula; [Caught Red Handed: Russian Financing Scheme in Italy Highlights Europe's Vulnerabilities](#), 12 July 2019.

⁸⁰ Müller, [Spendenskandal: Weitere Strafen für die AfD](#), 9 December 2020.

from EU-countries are legal under certain circumstances whereas donations from non-EU-countries are forbidden.⁸¹

77. Another penalty was enacted against the party in December 2020 with regard to a case illustrating the overall tendency of campaigning by third-parties.⁸² In the official OSCE/ODIHR report concerning the German parliamentary election of 2017, it is pointed out that a private association (Association for the Preservation of the Rule of Law and Civic Freedoms) produced and distributed about 600,000 copies of the weekly newspaper "Deutschland-Kurier", billboards, posters and online advertisements specially designed for the Bundestag election, effectively campaigning on behalf of the AfD. As a result, OSCE/ODIHR suggested that "consideration could be given to providing a regulation of any campaigning by third-parties to ensure transparency and accountability of the electoral process."⁸³

3.5. *United Kingdom: alleged Russian interference*

78. The Intelligence and Security Committee of the British Parliament (ISC) conducted a report investigating allegations of Russian interference in British politics, including alleged Russian interference in the 2016 Brexit referendum and the 2014 Scottish independence referendum. The committee completed the report in March 2019 and it was published in July 2020.⁸⁴

79. The report states that "there has been credible open source commentary suggesting that Russia undertook influence campaigns in relation to the Scottish independence referendum in 2014."⁸⁵ However, the report does not mention any direct donations or circumventing constellations in order to provide financial assistance to the campaigns related with the Scottish independence referendum in 2014.

80. The report states that "there have been widespread public allegations that Russia sought to influence the 2016 referendum on the UK's membership of the EU. The impact of any such attempts would be difficult – if not impossible – to assess, and we have not sought to do so."⁸⁶ However, the report expresses its discontent with the fact that neither the British intelligence community nor the British Government have provided sufficient evidence to investigate a possible interference.⁸⁷

81. It has to be noted that the issue of foreign financial contributions is not a specific chapter of the report. Instead, a potential interference with regard to the 2014 Scottish independence referendum and the 2016 Brexit referendum is discussed in the chapter dealing with "disinformation". Nevertheless, financial aspects are mentioned in the chapter dealing with "Russian expatriates" in the UK: "Whilst the Russian elite have developed ties with a number of countries in recent years, it would appear that the UK has been viewed as a particularly favourable destination for Russian oligarchs and their money."⁸⁸ The classified annex of the ISC report is said to name nine elite Russian expatriates who donated to the Conservative Party.⁸⁹

82. Concerning the Leave.EU Campaign, the report notes "that Arron Banks became the biggest donor in British political history when he gave £8m to the Leave.EU campaign. In October 2018, the Electoral Commission – which had been investigating the source of this donation – referred the case to the National Crime Agency, which investigated it. In September 2019, the National Crime Agency announced that it had concluded the investigation, having found no evidence that any criminal offences had been committed under the Political Parties, Elections and Referendums Act 2000 or company law by any of the individuals or

⁸¹ See Article 25 (3) of the Act on Political Parties (Parteiengesetz).

⁸² See Hobusch, Politische Parallelaktionen – Entfesselung der Parteienfinanzierung, Die Öffentliche Verwaltung 2020, pp. 548. The so called Ibiza affair caused a similar discussion about third-party campaigning in Austria, see Stelzer/Radatz, Österreichische Parteienfinanzierung nach "Ibiza": Transparenz oder Kartell?, MIP 2020, pp. 10. In May 2019, the governing coalition collapsed after Vice Chancellor and leader of the party Freiheitliche Partei Österreichs (FPÖ) Heinz-Christian Strache was caught on camera soliciting support from a woman posing as the niece of a Russian oligarch. Although, the material contains relevant aspects of a possible financial cooperation, the "Ibiza affair" was a sting operation and is therefore not included in the present report as a special chapter.

⁸³ Organization for Security and Co-operation in Europe (OSCE), Germany, Parliamentary Elections, 24 September 2017: Final Report, November 27, 2017, p. 6.

⁸⁴ Intelligence and Security Committee of the British Parliament (ISC); Russia report; published 21 July 2020.

⁸⁵ ISC Report, p. 13.

⁸⁶ ISC Report, p. 12.

⁸⁷ Comp. ISC Report, p. 13: "We repeat that this attitude is illogical; this is about the protection of the process and mechanism from hostile state interference, which should fall to our intelligence and security Agencies."; comp. p. 14.

⁸⁸ ISC Report, p. 15.

⁸⁹ Rudolph/Morley, pp. 19, 80.

organisations referred to it by the Electoral Commission.”⁹⁰ Nevertheless, it has to be noted that Banks has several business connections with Russia.⁹¹

3.6. *Donations to political organisations of national minorities*

83. In Germany, it is legally permitted to perform donations from abroad to parties representing a national minority, if these donations originate from a bordering country inhabited by members of the respective ethnicity.⁹² In practise, the provision is applied for the Party Südschleswigscher Wählerverband/Sydslesvigsk Vælgerforening (SSW) representing the Danish minority in the north of Germany. The SSW currently receives an annual funding of approximately 500.000 euros from the Danish Ministry of Culture. The party fulfils all transparency requirements imposed by German law.⁹³

84. It has to be elaborated to what extent other parties representing national minorities are supported financially by member States inhabited by members of the respective ethnicity.

3.7. *Cryptocurrencies*

85. As stated above, digitization opens new ways of political funding, including threads for inappropriate or illicit financing.⁹⁴ Catalina Uribe Burcher of the International Institute for Democracy and Electoral Assistance (IDEA) published a discussion paper in 2019 referring to the issue of “Cryptocurrencies and Political Finance”.⁹⁵ She states that as cryptocurrencies are currently relatively unregulated, it is often unclear whether political finance transactions using cryptocurrencies are allowed. According to her it is also often unclear “whether they should be considered a currency like the dollar or euro, or if they should be treated as an asset, or something else altogether. This is an important distinction for political finance purposes, since regulations often differ for in-cash vs. in-kind donations. Furthermore, cryptocurrencies can facilitate the violation of political finance regulations, for example by channelling foreign or anonymous donations to countries where these are banned.”⁹⁶

86. The author delineates the role of cryptocurrencies providing anonymity and recalls that virtual currency exchangers can play a role in effectively enforcing political finance reporting requirements since, as financial intermediaries, they provide a location data point for campaigns to identify foreign donors.⁹⁷ As a result of her observations, the author suggests that the use of cryptocurrencies should be limited or forbidden for political parties and candidates.

3.8. *Anonymous, small and cash donations*

87. As anonymous donations constitute a potential source of circumventing financial rules, they should also be considered. According to IDEA’s database,⁹⁸ 56.7 % of countries prohibit anonymous donations to political parties whereas 30.0 % of countries do not and 11.1 % of countries set a specific limit. Moreover, 43.0 % of countries prohibit anonymous donations to candidates whereas 30.7 % do not and 8.9 % of countries set a specific limit.

88. Moreover, the use of small financial quantities may constitute a source of circumventing financial rules as some jurisdictions generally have higher transparency requirements with larger sums of political donations. This issue can also be related to the regulation governing cash donations.

4. **Preliminary conclusions and recommendations**

89. Council of Europe statements, guidelines or rules tend to underestimate current developments in the field of financial contributions from foreign sources to political parties and electoral campaigns. The mere existence of rules is not sufficient. Besides reinforcing the existing legal and political framework, the Assembly

⁹⁰ ISC Report, p. 13.

⁹¹ Rudolph/Morley, pp. 80/81.

⁹² See Article 25 (3) of the Act on Political Parties (Parteiengesetz).

⁹³ Any donation exceeding 50.000 euros must be published on [the website of the German Bundestag](#).

⁹⁴ „Digitalisation enabled new ways to finance political actors from uncontrolled sources.”, European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan (COM(2020) 790 final), p. 2.

⁹⁵ Uribe Burcher, [Cryptocurrencies and Political Finance, International IDEA Discussion Paper 2/2019](#).

⁹⁶ Uribe Burcher, p. 7.

⁹⁷ Uribe Burcher, p. 13, 16.

⁹⁸ <https://www.idea.int/data-tools/data/political-finance-database>; accessed 5 January 2021.

should explicitly name legal loopholes, problematic constellations of circumvention and a lack of enforcement. It should provide criteria for transparency and comprehensive regulation.⁹⁹

90. The Assembly should express its understanding of a growing interdependence between European societies, e. g. by migration and digitization, of European cooperation of political organisations, e. g. parties, NGOs and foundations, and of the development of a common European public space as desirable developments. However, the greater the degrees of interdependence between European states in the political, social, cultural and media domains, the less feasible it is for member States' governments and legislatures to oppose harmonisation of the rules governing financial contributions to political parties and electoral campaigns from foreign sources by invoking unique historical, cultural, social or political characteristics of their respective countries. The legal framework governing party finances will remain in the hands of sovereign states. Nevertheless, the Assembly should promote the states' interest in harmonizing their regulation.

91. The Assembly should put foreign interference into context with further tools of interference such as cyberattacks and disinformation. It should condemn all attempts of inappropriate or illicit foreign interference. I suggest future reports and resolutions concerning specific campaigns of foreign interference in which financial interference is combined with tools of interference like cyberattacks and disinformation.

⁹⁹ Mr Fernando Casal Bértoa in the exchange of views with experts conducted by the Committee on Political Affairs and Democracy on 15 October 2020 proposed (1) with regard to private funding: a general ban of foreign donations, except those from international organisations, international unions of parties or foreign political foundations; a ban of anonymous donations; a ban of corporate donations altogether (but certainly those with government contracts), an establishment of reasonable and clear donations ceilings; a promotion of bank transfers and limitation of cash donations; (2) with regard to electoral spending: an establishment of reasonable and clear limits; (3) Foundations and "third parties" should be subject to a similar regime than political parties/candidates; (4) with regard to control mechanisms: itemized regular financial reports; timely and easily accessible public disclosure (for an extended period of time); (5) with regard to the oversight authority: independence; sufficient financial and human resources; clearly defined competences (initiate investigations, coordinate with other authorities and impose sanctions) and (6) with regard to sanctions: clear, realistic, effective, dissuasive and proportional sanctions; variety of sanctions (i. e. financial, administrative and criminal) of harder sanctions both for parties and individuals.