CHALLENGES TO POLITICAL FINANCING REGULATION AND MODELS OF SUPERVISION

Luís de Sousa, University of Aveiro (lmsousa@ua.pt)
“Party Finance is among the most important and yet, for obvious reasons, the least transparent chapters of party history”

Weber identified three core dimensions of the problem of political financing in democracies:

- The methods and sources of political financing can influence the way public policies are designed and implemented, hence it can determine the distribution of power in democracy.

- Despite its importance for the functioning of the political system, political funding remains an overall opaque activity.

- The competitive nature of elections drives political parties to intensify their campaigning initiatives in order to mobilize (undecided) voters, causing an escalation of costs disproportionate to their financial capacity and thus forcing them to search for additional resources. This “arms race” creates considerable funding pressure and asymmetries among competitors in terms of their real capacity to attract funding.
Unregulated PF as a threat to democracy

- Contemporary democracy is fundamentally representative hence political parties and elections are quintessential to its functioning and legitimacy.
- The major function of political parties is to formulate policy platforms and compete for power through elections.
- There can be no campaigning without resources: money is at the heart of the representative system.
- There is a real risk that electoral processes can be unduly influenced when sizeable and undisclosed amounts of money are donated to political parties by actors or organizations with their own political agendas.
- The quality of government is seriously compromised when decisions made by elected politicians benefit those who funded their ascent to power and not the broader public interest.
Why regulating political financing? (I)

- To create appropriate conditions for pluralism of ideas and fairness in electoral competition
- To protect political actors from undue corrupt influence linked to undesirable sources of campaign and party financing
- To reduce the overall informality surrounding political financing by setting clear standards of financial propriety to both supply- and demand-side actors
Why regulating political financing? (II)

- To demand parties to be accountable and transparent about how they collect and spend their money
- To prevent the biased and partisan use of enforcement mechanisms against political opponents
- To safeguard the legitimacy and credibility of party life by restoring public trust in the political system, its actors, institutions and processes
Context of reform
A world of opacity...

- Little transparency over real estate and heritage assets of political parties
- Little transparency about party financing practices that fall outside the legal framework: What is the real extension of third party expenditure and donations in kind?
- Little transparency regarding the relationship between parties and a series of other players (PR agencies, banks, support movements outside the scope of regulation)
Patterns of illegal political financing

- Setting up ‘front’ organisations, through which funds can be channelled in excess of legal limitations (think tanks, foundations, research centres, etc.)
- Smuggling hidden ‘slush’ funds into party coffers (in particular from state-owned companies)
- Large corporations and rich individuals are able to buy greater influence through large campaign donations
- False company invoicing to uncover corporate donations
- Use of offshore accounts
- Growing penetration of transnational organized crime and illicit funds into politics
- Abuse of state resources by ruling parties to gain competitive advantage
Most countries have legislated in reaction to scandal and/or in anticipation of elections. This has led to poor quality legislative processes that ended with the adoption of:

- *Imperfect laws* characterised by solid and clear norms of action, but deprived of adequate mechanisms/instruments in grade of guaranteeing their effective application and enforcement; and

- *Simulated laws* characterised by norms with fictitious applicability which do not curtail the improper behaviours or practices at stake.

No regulatory impact assessments have been carried out to evaluate the efficacy of these norms.
Institutional isomorphism

- New state bodies (governmental departments, national electoral commissions, court of accounts specialised units, political financing supervisory bodies) were entrusted or created to monitor and enforce political financing laws.

- Institutional isomorphism (DiMaggio & Powell, 1983: 150-2) is one of the core features of this process:
  - **Mimetic** – by copying measures experienced elsewhere for problems with unclear causes and ambiguous solutions, without taking into consideration the context in which they were conceived.
  - **Coercive** – through formal and informal pressures exercised by external organizations (peers, IGOs, donors) of which governments are parties and that play an important role in setting standards to its members (e.g. Council of Europe).
  - **Normative** – participation in international anticorruption networks and forums is also a source of knowledge transfer across different institutional realities. Professional networks, of a variegated nature, have grown in numbers in recent years. They offer specialized training to anticorruption officials, help their socialization, and promote best practice across the agencies.

- Despite the resemblance in terms of format and competences, the levels of performance of these bodies varies from one country to another, yet no institutional capacity assessment has been carried out so far.

- Public opinion is overall negative in regard to the efficacy of PF regulation and supervision.
Public opinion pressure

- Data from the SPECIAL EUROBAROMETER 374 (2011):
  - Just over a third (36%) of Europeans totally disagree, and a third (32%) tend to disagree that transparency and supervision of political party financing in their country is sufficient.
  - Only one in five Europeans (22%) thinks that the financing of political parties is sufficiently transparent and supervised.
  - There is little difference between the views of respondents in NMS12 and those in EU15.
QC7.4. For each of the following statements, could you please tell me whether you totally agree, tend to agree, tend to disagree or totally disagree.

There is sufficient transparency and supervision of the financing of political parties in (OUR COUNTRY)
Poor performers

- In Latvia, Slovakia, the Czech Republic, Slovenia, **Spain**, Bulgaria and Greece, eight in ten respondents disagree that the financing of political parties is sufficiently transparent and supervised.

Good performers

- The countries in which respondents have the most positive perceptions of political financing transparency and supervision are **Sweden (39%), Finland (38%), Denmark (34%)** and the Netherlands (33%).
What issues need to be addressed when setting up a PFSB? (I)

- **Accountability**: To who should political financing supervisory bodies report?

- **Resources**: What are the human, material and financial resources needed to fulfil assigned tasks (mission objectives)?

- **Independence in the pursuit of its mission**: Should these bodies have administrative, financial and operational autonomy? Why is it important that their head officials are immune to political pressure by threat or fear of discharge? Are supervisory bodies allowed/expected to develop their own communication strategy?

- **Regulatory powers**: Do these bodies have a regulatory capacity, i.e. the capacity to interpret the Law, to make jurisprudence and to operationalize regulatory concepts through regulations and recommendations or are they mere depositories of party/candidate accounts with limited administrative/auditing capacity?
What issues need to be addressed when setting up a PFSB? (II)

- **Investigative powers**: Can these bodies carry out on site inspections, inquiries and joint investigations? How are these investigations carried out? With what powers and scope?

- **Inter-institutional cooperation**: Political financing Laws are complex systems of self-regulation that involve various actors other than the supervisory body (such as, the tax office, the auditor general, the ministerial audits, the judiciary police, the attorney-general office, etc). How can that inter-institutional cooperation be framed, in legal and operational terms?

- **International network**: What is the role reserved for supervisory bodies in international forums and networks? How much external reporting is needed?

- **Production of knowledge and information**: What is the degree of transparency that these organizations ought to display? To whom should they make information available and in what format? What should be their relation with experts and academic communities?
Challenges to PF regulation
Challenges to regulation: how to harmonise regulations and level the playing field? (I)

- Democratic systems are different:
  - Different government systems: parliamentary, presidential semi-presidential
  - Different states: unitary, decentralised, federal
  - Different electoral systems: majoritarian, proportional, hybrid
Constitutional frameworks are different:

- Different constitutional status of political parties (in some countries parties are constitutionally recognised/protected)

- Different understandings of rights (e.g. freedom of speech – court rulings on restrictions on political advertising or limits on donations or banning of foreign company donations in the EU context, etc)

- Different format and competences of supervisory bodies

- Different legal basis for sanctions
Political parties are different:

- Different organizational features
- Different levels of institutionalisation
- Different practices of funding their activities
- Different electoral weight
- Different access to minorities (Women candidates in particular suffer disproportionately from lack of access to campaign finance)
What is PF regulation and what are its limitations?

- Political financing regulation is a body of principles, rules and procedures through which parties in a representative democracy attempt to limit the undue influence of money in politics by raising the overall levels of transparency in political life.

- Unless political parties accept the rules of the game and play a proactive role in creating the conditions for its effective enforcement, the regulatory framework adopted will remain wishful thinking.
PF regulation guidelines (I)

- **Private Funding**
  - Membership Fees
  - Intra-Party Contributions and Income
  - Candidate’s Personal Resources
  - Private Contributions
  - Contribution Limits

- **Public Funding**
  - Importance of Public Funding
  - Financial Support
  - Other Forms of Indirect Public Support
  - Allocation of Funding
  - Requirements to Receive Public Funding
PF regulation guidelines (II)

- **Illicit/prohibited sources:**
  - Abuse of State resources
  - Donations from organized crime
  - Donations from foreign entities
  - Corporate donations

- **Spending Limits**
  - How much is needed to convince voters or to dissuade them from voting in the other competing parties?
  - How to change a deeply ingrained culture of informality and "the sky is the limit" spending culture?
PF regulation guidelines (III)

- **Reporting Requirements**
  - Budgeting
  - Financial treasurer – shared legal liability
  - Accounting guidelines

- **Establishment of Regulatory Bodies**
  - Impartiality and Neutrality in Regulation
  - Scope and Mandate of Regulatory Bodies
PF regulation guidelines (IV)

- **Sanctions for Non-compliance with Law**
  - Administrative
    - Financial sanctions
  - Electoral
    - Disqualification
  - Penal
    - Imprisonment
  - Rights to an Effective Remedy and Fair Hearing by an Impartial Tribunal
# PF regulation: a complex mix of incentives and restraints

<table>
<thead>
<tr>
<th>Approach/Instruments</th>
<th>Standards at stake</th>
<th>Expected results</th>
<th>Unintended consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution limits</td>
<td>Fairness</td>
<td>Level playing field; less funding</td>
<td>Increase in levels of informality (third party expenditure)</td>
</tr>
<tr>
<td>Contribution bans</td>
<td>Integrity</td>
<td>Reduce risk sources</td>
<td>Increase in complexity of sources and mechanisms of financing</td>
</tr>
<tr>
<td>Spending limits</td>
<td>Fairness</td>
<td>Curb excessive spending culture</td>
<td>Unaccountable/parallel over-spending</td>
</tr>
<tr>
<td>Public disclosure</td>
<td>Transparency/Accountability</td>
<td>Public scrutiny and honest timely reporting</td>
<td>Limited access to information; dishonest and untimely reporting</td>
</tr>
<tr>
<td>Public funding</td>
<td>Fairness/Accountability/Integrity</td>
<td>Less corruption; better control; pluralism and innovation</td>
<td>Does not eradicate company donations; reliance on individual large donors; self-promotion candidacies (especially during presidential campaigns)</td>
</tr>
<tr>
<td>Independent monitoring and enforcement</td>
<td>Fairness/Accountability/Integrity</td>
<td>Regular and effective auditing of party accounts and proactive monitoring of financial activities by independent Political Financing Supervisory Body</td>
<td>Crystallise formality, ignore informality</td>
</tr>
<tr>
<td>Sanctions</td>
<td>Integrity</td>
<td>Impose standards of financial propriety in political life to both supply and demand</td>
<td>Financial sanctions have low deterrent effect; criminal sanctions difficult to apply; sanctions heavier on small parties hinders credibility of PF law</td>
</tr>
</tbody>
</table>
## Rules & Ethics

<table>
<thead>
<tr>
<th><strong>RULES</strong> Transparency and Supervision</th>
<th><strong>ETHICAL CULTURE</strong> Self-containment and social condemnation</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>UK, Germany (?)</td>
<td>Portugal, France (?)</td>
</tr>
<tr>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Sweden, Finland, Switzerland, Netherlands (?)</td>
<td>Italy, Greece, Bulgaria, Romania (?)</td>
</tr>
</tbody>
</table>
Challenges to PF supervision and enforcement

- Supervisory bodies have **different formats with varying capacities and competences**...
- **... but display common challenges:**
  - Cumbersome legislation (unbalanced principles, unclear operational concepts)
  - Insufficient independence
  - Lack of resources (understaffed and underfinanced to fulfill designated duties and reach decisions in a timely manner)
  - Low security of tenure and non-specialized recruitment of staff
Challenges to PF supervision and enforcement

- Lack of political support or undesirable political interference (threats of budget cuts or removal of head officials)
- Precarious complaints systems
- Dispersion of efforts and uncoordinated actions between different agencies
- Limited investigative powers and/or backing from public prosecutors and other investigative bodies
- Precarious vertical and horizontal accountability arrangements
- Lack of PR & communication strategy (information disclosed is limited and not ready-to-use, hence low outreach)
PORTUGUESE SUPERVISORY MODEL
From an unregulated to a regulated context: the first 20 years

- **1974/79 – 1993**: “Unregulated period”. Minimal voluntary guidelines of political financing laid down under the Law of Political Parties and the Electoral Law; no auditing and sanctioning procedures were adopted; **no compliance and breeding culture of illegality**

- **1993**: “First” political financing regulation. Mixed funding system. TC monitoring party financing and CNE monitoring elections financing. TC auditing resources strengthened and outsourcing permitted. Loose internal party controls. Weak sanctions. Unaccountable business contributions (shareholders’ consent... a legal metaphor); **rubber stamp auditing of accounts**

- **1995**: Transparency package: **Clean-up act** by declining ruling single-party majority (Social-democrats); **no major changes introduced**
From mixed funding to ban on corporate donations


- **2000** – **Ban on company donations**. Composition of CNE broadened and opened to outsiders. Accounting requisites more exhaustive and introduction of **compulsory campaign budget**. **Third party expenditure ignored**. Same monitoring philosophy: *rubber stamp auditing of accounts*
From dual monitoring to single supervisory body

- **2003** – New Law of Political Parties and new Law of Political Financing. **Dual monitoring abolished.** New Political Financing Supervisory Body created: Entity for Political Financing Accounts under the tutelage of TC monitors both party and elections financing. **Anonymous donations banned.** Checking market prices for campaigning against costs declared. **Sanctions stiffened**, but not diversified: from minor financial penalties to improbable penal sanctions. **Proactive supervision: monitoring campaign expenditure.** **Regulatory complexity increased**

- **2010** – Amnesty for illicit party subventions received from regional *parliaments*. New sources of income. Spending limits reduced 10% over one electoral cycle. No changes to the supervisory model
Portuguese supervisory model 2005-2009

- Improving the quality of the accounting system
- Harmonizing financial reporting rules and procedures
- Regular auditing and enforcement
- Strengthening Transparency and Supervision
- Cost monitoring & evidence studies
- www
- Reducing the informality gap

Data base

- WWW
Enforcement figures on party financing, Portugal (1994-2007)
Party financing infractions per year 1994-2007
Party financing infractions by party (1994-2007)
Types of Party financing infractions per year (1994-2007)
## Types of party financing infractions by party (1994-2007)

<table>
<thead>
<tr>
<th>Type of Infraction</th>
<th>PPD/PSD</th>
<th>PS</th>
<th>CDS/PP</th>
<th>BE</th>
<th>PCP</th>
<th>Outros</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irregularidades referentes a donativos</td>
<td>4</td>
<td>7</td>
<td>10</td>
<td>5</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>Ausência/insuficiência de suporte documental</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Deficientes procedimentos contabilísticos</td>
<td>36</td>
<td>26</td>
<td>25</td>
<td>27</td>
<td>31</td>
<td>69</td>
</tr>
<tr>
<td>Irregularidades no inventário do património do partido</td>
<td>7</td>
<td>10</td>
<td>8</td>
<td>3</td>
<td>16</td>
<td>47</td>
</tr>
<tr>
<td>Irregularidades no tratamento de receitas e despesas</td>
<td>8</td>
<td>5</td>
<td>8</td>
<td>5</td>
<td>3</td>
<td>34</td>
</tr>
<tr>
<td>Apresentação de contas fora do prazo</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
</tbody>
</table>
Volume of party financing fines per year (1994-2007)
Volume of party financing fines by party yearly (1994-2007)
Overall volume of party financing fines by party (1994-2007)

- PPD/PSD: 537,551.22 €
- PS: 502,681.10 €
- CDS/PP: 530,006.00 €
- BE: 85,196.95 €
- PCP: 222,754.19 €
THANK YOU!