

Briefing on Reform of Political Party Financing, Czech Republic¹

Summary

On September 19, 2016, the President of the Czech Republic signed into law an amendment to the electoral laws of the Czech Republic, accompanying an amendment to the Assembly in Political Parties and Movements Act No. 424/1991 Coll., signed by him already on September 6, 2016.

After an 18-month period of drafting, re-drafting, voting, and amending, the reform amending bill of Act 424/1991 Coll. and electoral laws was thus finally passed by the Czech legislature and it will come into force on January 1, 2017.

The reform promises to be a significant step towards more transparency in political financing in the Czech Republic; despite its existing weaknesses, which are discussed in more detail further on. The reform covers all elections in the Czech Republic (for the Chamber of Deputies, the Senate, the European Parliament, the Regional Assemblies, and the President) with the exception of elections to Municipal Councils (including the Prague Assembly and other large cities).

The new law to a large extent implements the recommendations of GRECO as well as those of the Czech anti-corruption NGO coalition Reconstruction of the State².

We particularly commend the following **strengths** of the regulation:

- the introduction of an independent supervisory body, overseeing both political parties as well as independent candidates,
- the improved reporting of annual and campaign incomes and expenses in a web-based form,
- the introduction of financial penalties for transgressions against the law which cover a wide range of offences by political parties, candidates, donors, or third persons providing campaigning material,
- the opening of bank accounts of political parties for continuous public inspection, and
- the establishment of the register of third persons that wish to enter political campaigning on behalf of parties or candidates.

However, there are several **weak points** contained in the text of the law, such as

- the lack of regulation and oversight of business corporations connected to political parties,
- insufficient sanctions for violating the campaign and other rules,
- the weak regulation of the newly established, state-funded political foundations,

¹ The briefing is current as of September 20, 2016 and has been prepared in response to the current reform of the Assembly in Political Parties and Movements Act No. 424/1991 Coll., and on amendments of other electoral laws (Election Code), passed by the Czech legislature. In our assessment of the reform presented in this briefing note, we draw on our own research and analysis while also referring to GRECO's recommendations and other member states' experience with political party financing reforms.

² A coalition of 18 anti-corruption NGOs and other partners aiming at the adoption of nine key anti-corruption laws. For more information, see www.rekonstrukcestatu.cz/en. Frank Bold, author of this briefing, is an initiator and a main coordinator of the coalition.

- the weak conditions put on the members of the new supervisory in terms of their non-partisanship.

Therefore, we hope and expect that the discussion on these controversial parts of the new law will be reopened once the reformed regulations are tested sufficiently in practice.

Spending and other limits

The new law establishes spending limits on all types of election with the exception of elections to municipal councils. These limits are

- Chamber of Deputies (200 seats): CZK 90 mil. (€3.3 mil);
- Senate (per one of 81 seats): CZK 2 mil. (€74,000) for the 1st round, additional CZK 500,00 for the 2nd round (top-two runoff);
- European Parliament (21 seats): CZK 50 mil. (€1.85 mil)
- Regional Assemblies (675 seats): CZK 7 mil. (€259,000) for each region in which the party runs (13 regions in total)
- President: CZK 40 mil. (€1.49 mil) for the 1st round, additional CZK 10 mil. for the 2nd round

Apart from these limits, there is also a new limit on donations set at CZK 3 mil. per one donor in a given year (all donations accumulated from one donor over the year). There is no ban on donations from legal persons or limits on the maximum amount of loans. Neither there is a limit on donations to companies or political foundations linked to political parties.

Transparency of political funding

The reform introduces **several important features aimed at enhancing the transparency of political financing**:

- separate transparent bank accounts for all campaign incomes and expenditures³;
- a separate transparent accounts for all donations to political parties;
- it makes mandatory for all financial transfers of political parties and movements above the sum of CZK 5,000 (€185) to be cashless;
- loans to political parties or candidates are permissible only from banking institutions based in the Czech Republic;
- it requires that all non-financial donations and their usual market price be disclosed in the annual financial report;
- all financial reports, both annual and post-campaign, are publicly accessible online;
- all campaign materials must visibly show the logo, brand, or name of the beneficiary of the material, and carry information on its provider;
- it requires that all sources of income for a campaign are mandatorily ascertained before the election and no bill is paid for by a person or a third party previously not listed among the donors;

³ Excluded are operations related to membership fees and salaries of party employees. For more details and our recommendations, see below.

- political parties are to be audited by one company for no more than 5 years in a row.

One of the major problems with the original government draft of the bill was that non-party actors that participate in election campaigns were insufficiently regulated. Subsequently, there existed a real danger that while political parties would be regulated and the amount of their campaign spending strictly limited, political campaigning would be carried out on behalf of political parties by other, non-party actors.

For this reason, **the Reconstruction of the State initiated an amendment to the reform bill** that establishes that **all non-party actors (“third persons”) who wish to enter the political campaign with their own advertisements or events are obliged to register** with the Office of Oversight of the Economic Management of Political Parties and Political Movements (*Úřad pro dohled nad hospodařením politických stran a politických hnutí*). The registered persons will have their own spending cap set at 5 per cent of the cap for the party/candidate at the given election. Non-registered campaign providers or campaigners will be fined. **This amendment was accepted by the Parliament and is now a part of the new law.**

Unfortunately, **another proposed amendment, aimed at improving the insufficient regulation of companies and cooperatives owned by political parties, was not accepted.** In the past, these companies served as channels for undisclosed donations and non-transparent financial dealings. The Reconstruction of the State recommended that also these companies would fall under the supervision of the new Office, but this amendment was defeated already at the Committees stage.

Furthermore, **the new law contains a controversial article (Art 17(4)) establishing political foundations.** We do not recommend and have repeatedly warned the government representatives against the establishment of political foundations as it is introduced in the law. The foundations are modelled after the German example and are to carry out educational and promotional activities related to the improvement of democracy, civil society, civic engagement, political culture, and international cooperation. However, we believe that the vague definition of educational activities in the law together with weak requirements for control over the political foundations' financial dealings will lead to hidden unrestricted campaigning by the foundations on behalf of political parties.

We therefore recommend the future introduction of the following conditions on the activities of political foundations: (a) members of statutory organs of political parties are prohibited from holding any position in statutory organs of political foundations; and (b) the range of permitted types of donors to political foundations shall be the same as the range of permitted types of donors to political parties.⁴

GRECO recommends:

- *to take measures to ensure that donations by party members are adequately reflected in the financial reports of political parties and movements (recommendation i);*

Not implemented. The new law introduces transparent bank accounts for all banking operations with the exception of operations related to membership fees and salaries of party employees. Therefore, the amount of membership fees paid by individual party members will be exempt from public oversight.

⁴ In its current form, the law allows political foundations to accept donations from donors that are specifically prohibited to donate to political parties and movements (such as foreign donors or companies with state or municipal stakeholders).

The Reconstruction of the State coalition would recommend removing these exceptions from the bill and introducing a system of identification numbers for each party member and party employee, which would allow for their presence in the transparent banking operations while fulfilling the legal requirement for privacy at the same time.

- *to establish precise rules for the valuation and reporting of in kind donations, including loans (whenever their terms or conditions deviate from customary market conditions or they are cancelled) and other goods and services (other than voluntary work by non-professionals) provided below market value (recommendation ii);*

Implemented.

- *to seek ways to consolidate the books and accounts of political parties and movements to include the accounts of entities related, directly or indirectly, to a political party or movement or otherwise under its control (recommendation iii);*

Partially implemented. The new law requires political parties to submit as a part of their annual financial report a list of companies and cooperatives in which they are shareholders, together with the total annual profit derived from these companies and cooperatives. The companies and cooperatives are, however, still exempt from transparent accounting, the oversight of the independent supervisory body, as well as the rules on donations, in kind donations and loans that apply to political parties.

To fully implement the GRECO's recommendations, we would recommend that all companies which are partially or fully owned by political parties are required to (a) submit annual financial reports parallel to those submitted by political parties themselves; (b) have all financial dealings and economic activities subject to the same rules of audits as are political parties; and (c) be subject to control by the new supervisory body that oversees political parties, political foundations and the conduct of elections campaigns.

- *to ensure that the financial reports of political parties and movements are published in a way that provides for easy access by the public (recommendation iv);*

Implemented.

- *to require (i) more detailed disclosure of campaign expenditure in the annual financial reports and (ii) more frequent reporting on and disclosure of donations above a certain value received by political parties and movements, in connection with election campaigns (recommendation v);*

Implemented.⁵

- *to subject, to the greatest extent possible, election candidates campaigning separately from political parties/movements to transparency standards, which are comparable to those applying to the political parties/movements themselves (recommendation vi);*

Implemented.

⁵ It is, however, important to remember that the reform does not in any way change the conduct of elections to local councils (municipal elections). This concerns also the elections to the Prague City Assembly and the financing of its campaigns, which will consequently remain non-transparent and below the standards of, for instance, elections to regional councils.

- *to consider taking further measures to strengthen the independence of auditors who are to certify the accounts of parties and movements (recommendation vii);*

Partially implemented. The new law requires that political parties are to be audited by one auditing company for no more than 5 years in a row. Political parties, however, are free to choose any auditor they wish, including those with controversial history or personal ties to politicians.

Supervision

According to the new law, a new independent supervisory body (Office of Oversight of the Economic Management of Political Parties and Political Movements) will oversee the financial dealings of political parties and the conduct of election campaigns, and will have the tools for proactive supervision and the power to fine offences against the law. The Office will be comprised of 1 chairperson and 4 members. The Chair will be appointed by the President from two candidates proposed by the Chamber of Deputies and the Senate. The Members will be elected by the Senate from candidates proposed by the President (one member), the President of the Supreme Audit Office (one candidate), the Chamber of Deputies (one member), and individual senators (one member).

GRECO recommends:

- *to (i) ensure that an independent mechanism is in place for the monitoring of the funding of political parties/movements and election campaigns (including those of candidates), in line with Article 14 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) provide this mechanism with the mandate, the authority, as well as adequate resources to effectively and proactively supervise the funding of political parties/movements and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions, and (iii) establish a clear process for the submission (and subsequent) investigation of citizens' and media complaints as regards the funding of political parties/movements and election campaigns (recommendation viii);*

Partially implemented.

To ensure that the new supervisory body will achieve real independency on political parties, the Reconstruction of the State recommended that the mandate of the chairperson of the supervisory body was limited to one non-renewable term, instead of the proposed two terms. The length of the term would be extended to 7 years instead of 5. To ensure impartiality of the members of the management of the new supervisory body, we also recommended extending the requirement of not being a member or an employee of a political party or a member of a representative body from the currently proposed 3 to 5 years (chairperson) and 2 to 3 year (4 members). Neither proposal passed the final reading of the reform bill in the Chamber of Deputies.

Sanctions

Insufficient financial sanctions for violating campaign and other rules constitute one of the major drawbacks of the reform. With very low financial sanctions, it may be advantageous for the beneficiary of a political advertisement *not* to disclose their logo or ID on the advertisement. The maximum financial penalty included in the law for non-disclosure of such information is CZK 100,000 (approx. €3,700), which amounts to 0.11 per cent of the largest campaign spending cap. Similarly, the maximum penalty for

failing to open a transparent bank account or to return a donation from a non-permissible donor is CZK 200,000 (approx. €7,400), i.e., 0.01 per cent of a large party's annual budget. Such low sanctions may seriously reduce the chances that the political parties will follow the rules and regulations stipulated by the new law.

GRECO recommends:

- to (i) introduce appropriate (flexible) sanctions for all infractions of the Political Parties Law, in addition to the current range of sanctions and (ii) provide for the possibility to impose sanctions for violations of Law No. 424/1991 Coll. on the Association in Political Parties and Movements on candidates on an electoral list (recommendation ix).

Not implemented. See above

References

GRECO (2015): *Third Evaluation Round. Second Interim Compliance Report on the Czech Republic*. Adopted by GRECO at its 66th Plenary Meeting (Strasbourg, 8-12 December 2014). Available at:

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282014%2928_2nd_Interim_CzechRep_EN.pdf.

Reconstruction of the State (2015): Position paper on the draft amendment to the Assembly in Political Parties and Movements Act No. 424/1991 Coll., and accompanying amendments of the electoral laws ("Election Code"). Available (in Czech) at:

http://www.rekonstrukcestatu.cz/na-stazeni/stanovisko-z-fin-pol-stran-a-volebni-zakony_rest-27072015.pdf.

Simral, Vit (ed.) (2015): *The Funding and Oversight of Political Parties and Election Campaigns in East Central Europe*. Prague: Frank Bold. Available at:

<http://www.rekonstrukcestatu.cz/publikace/the-funding-and-oversight-of-political-parties-and-election-campaigns-in-east-central-europe.pdf>.

Background

Frank Bold is a European public-interest law organization and a purpose-driven law firm using the power of business and non-profit approaches to solve social and environmental problems. We have four offices in the Czech Republic as well as offices in Krakow, Poland and Brussels, Belgium. At the EU-level, we are a steering group member of the European Coalition for Corporate Justice, which promotes corporate responsibility within the EU; a member of ALTER-EU, promoting lobby transparency across Europe; and a founding member of the Justice & Environment network. In the Czech Republic, Frank Bold is a main coordinator and a steering committee member of the anti-corruption NGO coalition Reconstruction of the State.

Reconstruction of the State is a joint national programme of Czech anti-corruption organizations, politicians, independent experts, business partners, and active citizens, aiming at the adoption of transparency and anti-corruption legislation. Reform of political party financing is one of the nine issues the initiative monitors and advocates. More information is available upon request and at www.rekonstrukcestatu.cz/en.