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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS ON
THE DRAFT REPORT¹
prepared by Mr Ángel SANCHEZ NAVARRO
ON THE PARTICIPATION OF POLITICAL PARTIES
IN ELECTIONS

by

Mr Hans-Heinrich VOGEL (Member, Sweden)

¹ See CDL-EL(2005)018.

1. I fully agree with the draft report of Mr Sanchez-Navarro (CDL-EL(2005)018 of 3 June 2005). However, I suggest to add a few words with regard to the Venice Commission Guidelines and Report on the Financing of Political Parties (CDL-INF(2001)8).
2. Both guidelines and report distinguish between regular financing and financing of electoral campaigns. But the practical usefulness of the distinction is limited when political parties receive (public) funds permanently and regularly for both their current operations and their participation in elections. If that is the case, it is underlined in the report, “confining funding to the full or partial coverage of campaign expenses ... merely aims to avoid emptying the parties’ coffers every time an election takes place and to permit the trouble-free functioning of the democratic process through the holding of regular, free elections.” It is also pointed out in the report, that most of the major European democracies have opted for this approach. The situation is similar when political parties acquire (private) donations.
3. Therefore, if and when the distinction is to be used anyhow in regulations for different provisions concerning, on the one hand, electoral campaigns and, on the other, pre- and post-electoral periods, a number of clarifications is desirable. Such clarifications should be considered in order to avoid some of the problems which have been discussed on various occasions in Europe during the last few years and especially during the deliberations which preceded the adoption of the European Union Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding².
4. If public funds are appropriated *with general regard* to an electoral campaign it should be clarified that the funds can be used by the political party for any legitimate party purpose; specific conditions for the use of appropriations should be expressly indicated. If funds are appropriated *strictly for campaign purposes* and for such purposes only, guidance should be provided how to handle expenditure which cannot be classified as exclusively campaign related – as for example expenditure for (rent of) party premises, which are used both for current party business and for campaign activities, or for party employees who are employed by the party for both current and campaign activities. If applicable, guidance should also be provided as to both the span of time before and after an election during which the use of appropriations is legally acceptable and the time at which expenditure is considered to have occurred.
5. If private donations are acquired for campaign purposes by either the party or the candidate guidance should be provided how to handle any conditions or wishes for the use of a donation, which may have been expressed by the donor, how to handle expenditure which cannot be classified as exclusively campaign related and for which time before and after an election the use of campaign donations is acceptable. Further, problems may be caused, if the candidate him- or herself provides own resources. In such cases guidance may be necessary, for example, to which extent the candidate may use own resources or resources of his family, how resources, which are provided in kind, have to be valued and who has to do the valuation.

² Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding, Official Journal of the European Union (OJ) 2003 L 297/1, *together with* the Decision of the Bureau of the European Parliament of 29 March 2004 laying down the procedures for implementing Regulation (EC) No 2004/2003, OJ 2004 C 155/1, *and* Court of Auditors, Special Report No 13/2000 on the expenditure of the European Parliament’s political groups, together with the European Parliament’s replies, OJ 2000 C 181/1, *as well as* the travaux préparatoires to Regulation No 2004/2003.

6. If political parties are or can be liable to income tax it should be clarified to which extent appropriations, donations, membership fees etc. are or can be regarded as taxable income, which expenditure is deductible from taxable income and which information has to be provided by the political party to establish deductibility. Similar clarifications should be considered concerning value added tax and other taxes which may apply to political parties.

7. It should also be clarified according to which set of regulations the party has to keep its books – for example according to provisions for private associations or companies or any other private individuals or according to provisions for public authorities or other public entities (or maybe even both).