

**Draft Final Report:  
The Effectiveness of Legal Framework on Pre-election Campaigning**

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## **I. Introduction to Section 1 of the Report:**

Political finance and access to media have an enormous influence not only on the linkage between voters and elected officials but more broadly on the development of democratic institutions and a participatory political culture. As the cost of campaigns in almost all democratic countries increases (often substantially) and the need for media access becomes paramount for parties and candidates, government agencies are examining possible pre-election and electoral campaign reform and strengthening enforcement procedures for current regulations. Recent scandals in many mature democracies demonstrate that there is no formula, no set of public policies which absolutely provide a level playing field, decrease corruption and strengthen civic participation. Indeed as this report shows, legal frameworks must be developed within a country-specific context in order to provide local ownership of the process and outcomes.

The legislative framework regulating political finance and media access has a profound influence on politicians, parties and the public. One of the debates concerning the public finance of parties involves how state public finance influences the development of parties and shapes the broader party system in which politics operates (as this report shows, this was a major concern in the case of Italy). Provisions of public finance and free media access entail a series of decisions which can have important constitutional ramifications. For example as the case study of the US shows (and to a lesser extent in Britain), the regulation of campaign finance has been hotly debated because of its implication for constitutionally-protected free speech and participation. While the US case in this regards is somewhat unique, the regulation of campaign activity must be thoroughly considered in order to avoid situations in which the legal framework contradicts the spirit if not the intent of other normative legislation and constitutional proscriptions. Often campaign and media reform are considered remedies to corrupt political practices, but while terms such as “corruption” and “illegality” are assumed to be synonymous, there can be situations in which illegal acts are not necessarily corrupt, and corrupt acts are not necessarily illegal. The difficulty is crafting legislation which encourages transparency in accounting and reporting campaign activities. As this report shows, countries with a developed legislative framework continue to struggle with creating a culture of transparency because of the ever increasing need for pre-electoral and electoral campaign finance.

While other aspects of the political system (*e.g.*, type of government and electoral system) are rarely significantly reformed, campaign finance and media access have undergone substantive changes in many democratic countries over the last twenty-five years. Often, these changes are in response to citizen concerns involving the use of money in politics. These reforms demonstrate that simply creating a legislative framework is not enough—there must be constant supervision of the system which is put into place and legislative modifications because of new technologies (*e.g.*, the Internet) as well as forms of funding.

Any system which attempts to control political finance and regulate campaign media activity is based on common objectives including disclosure, enforcement and public funding. “Disclosure requires systematic reporting, auditing, public access to records and publicity. The objective of disclosure of political finances is to make politicians’ accounts a subject of public knowledge and political debate. Enforcement demands an independent agency endowed with the necessary legal powers to supervise,

verify, investigate and if required, institute legal proceedings. Assuming private funding as a constant, regular public funding diversifies the sources of funding.”<sup>1</sup>

Latvia is one of the few European countries which does not have a system of public finance in place either between or during the election cycle (aside from guaranteed air time). Over the last five years, there have been changes to the system regulating party finances; however, some analysts still regard Latvia as a system of “liberal party finance” in which state involvement is minimal.<sup>2</sup> This report highlights issues of concern when designing political finance schemes and regulating media during the pre- and election period that need to be considered as Latvia examines a change in the current system of public finance and media structure.

## **II. Section 1 Report Overview:**

This report examines the political finance and media regulations of four countries including Estonia, Britain, Italy and the US. These countries were chosen in order to reflect the current state of electoral regulations in countries which differ in terms of their legal systems, constitutional provisions, development of party systems as well as membership in the European Union (EU). In terms of the methodology, primary and secondary sources have been utilized including a review of the legislation, press reports as well as reporting of government agencies. Before examining the four country case studies, I begin with an overview of terminology employed in the report as well as a general discussion of campaign election issues which assists in highlighting the specific issues in the country case studies. This terminology and discussion will later be applied in a follow-up report to the case of Latvia. The first section of the report explores the rationale behind party and campaign finance (including provisions regarding access to the media), notes some of the criticisms of public campaign subsidies and addresses how party and campaign finance generally influence the party system. The second section examines the four country case studies and examines the political implications of the electoral regulations in each country, and how these regulations have influenced the development of parties, the party system and electoral corruption. A follow-up report including a draft conceptual guideline for developing either a legal amendment or a new normative act in Latvia will be submitted later.

## **III. General Considerations—Rationale of Party and Campaign Finance:**

While the exact form of party and campaign finance varies among countries, there are some common characteristics associated with the state financing of parties.<sup>3</sup> *Direct* party and campaign finance normally consist of providing cash funds to parties. Party finance is a feature of many European states and consists of party subsidies in-between elections. Campaign finance is also a common feature in many public finance schemes in which state finance is provided to parties and/or candidates for a specific election cycle. As Latvia considers reforming current practices, it needs to be understood that these two forms of finance are complementary but not necessarily linked and can be adopted individually (as many countries have done). *Indirect* party and campaign finance comprises free media

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<sup>1</sup> Marcin Walecki. 2002. “Political Money and Corruption (IFES White Paper III).” International Foundation for Election Systems p. 8.

<sup>2</sup> Janis Ikstens, Daniel Smilov and Marcin Walecki. 2002. “Campaign Finance in Central and Eastern Europe: Lessons Learned and Challenges Ahead.” International Foundation for Election Systems Report.

<sup>3</sup> Khayyam Z. Paltiel. 1980. “Public Financing Abroad: Contrasts and Effects.” In Michael J. Malbin, ed. *Parties, Interest Groups, and Campaign Finance Laws*. Washington, DC: American Enterprise Institute. p. 65.

time and/or a tax holiday on the importation of campaign materials. While party and campaign finance vary from country to country, the general logic behind state subsidies is rather uniform, and there are a number of reasons that have been advanced in favor of party and campaign finance.

First, party and campaign finance are advocated to create a more level playing field among parties both between and during the election cycle. Mendilow notes that the expansion of voting rights and the growing importance of the mass media over the last fifty years have placed financial burdens on parties which results in those parties which have significant financial means having an enormous advantage in mobilizing the electorate.<sup>4</sup> Therefore, party and campaign finance are envisioned as means for creating more open and fair party competition. Second, party and campaign finance are advocated in order to reduce the amount of money in campaigns. It is hoped that the state will enforce financial norms that limit party spending and the general costs of a campaign. Third, party and campaign finance are viewed as remedies to corrupt campaign practices. Properly constructed, legislation can encourage more transparency in the reporting of contributions and reduce the influence of wealthy individuals and corporations and increase public trust in politics.

#### **IV. General Considerations—Criticisms of Party and Campaign Finance:**

Although the use of party and campaign finance has grown considerably in the last few years, the state financing of parties has been criticized for several reasons. First as this report shows, party and campaign finance legislation are often designed with loopholes that provide parties and candidates the ability to evade the intent of the laws. Rose-Ackerman argues that public influence for private gain is quite ordinary in all political systems, and therefore, a legislative framework is often created which provides sufficient ability to either bend or go around the rules.<sup>5</sup> These loopholes not only thwart the spirit of the law but also reduce the role of public scrutiny. Sajo argues that “where such [public] financing is without transparency and without preconditions . . . it is sheltered by the legislative process and is immunized against any public criticism.”<sup>6</sup>

A related argument is that party and campaign finance become a shield for parties in which they extract larger and larger sums of money from the state. For example in Italy in the mid-1970s, public funding nearly doubled and in Israel, the major parties after 1988 passed an amendment to the party and campaign finance legislation to retroactively increase the expenditure ceiling.<sup>7</sup> Heywood concludes that public finance “was seen as a potential solution to the problem of escalating expenditure, [but it] appears to have little impact on the drive to seek extra funds.”<sup>8</sup> This is an important consideration as party finance takes funding away from other budget sectors. The increasing cost of party finance is an issue addressed in the country case studies.

A second criticism is that party and campaign finance discriminate against new parties in favor of parties which hold parliamentary seats. MPs design party and campaign finance legislation that benefit parliamentary parties over extra-parliamentary or out-of-government parties (Britain’s provision for

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<sup>4</sup> Jonathan Mendilow. 1992. “Public Party Funding and Party Transformation in Multiparty Systems.” *Comparative Political Studies* 25: p. 90.

<sup>5</sup> Susan Rose-Ackerman. 1978. *Corruption: A Study in Political Economy*. New York: Academic Press. p. 112.

<sup>6</sup> Andras Sajo. 1998. “Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe.” *East European Constitutional Review* 7: p. 45.

<sup>7</sup> Mendilow, “Public Party Funding and Party Transformation in Multiparty Systems.” p. 102.

<sup>8</sup> Paul Heywood. 1997. “Political Corruption: Problems and Perspectives.” *Political Studies* 45: p. 431.

opposition finance is an exception). Katz and Mair note that there is often a collusion of parliamentary parties to provide state subsidies in order to prevent the establishment of new parties.<sup>9</sup> Part of the problem in designing party finance legislation is that it typically awards a subsidy based on parliamentary representation. In some cases, there is a relatively high threshold level that is established in order to deny new and small parties a subsidy. Therefore, parliamentary parties use the threshold to protect their “market share” of the electorate. Koole argues, however, that campaign finance in Germany and Italy has actually protected smaller parties and has not lead to the “petrification of the party system.”<sup>10</sup> Indeed as this report shows, the threshold can also be established so low as to order to encourage the proliferation of new parties and the fragmentation of existing parties (*e.g.*, Italy). While this approach fragments the party system, it can often be an electoral and ultimately parliamentary advantage for larger parties.

Third, many argue that party and campaign finance tend to concentrate power within the national party headquarters at the expense of local party branches. Because party and campaign finance award the subsidy to the national party, there is a tendency to concentrate finances at the national level (this depends on the finance allocation scheme). The tendency of party centralization is less severe in federal systems, but it is still considered a consequence of party and campaign finance. For example, Mendilow argues that all party national headquarters in Israel were strengthened following the first campaign held under party finance.<sup>11</sup> The introduction of party and campaign finance can lead to a decrease in efforts to recruit new party members and a general decline in grassroots activities. Moreover, the importance of party elites increases at the expense of rank-and-file members since the elites decide how and where the public funds are going to be used.

## **V. General Considerations—The Influence of Finance on Party System Development:**

One of the important issues to address in relation to party and campaign finance is how these practices affect the party system. Mulé argues that party and campaign finance laws changed the character of European parties from mass to electioneering (catch-all) parties. Before party and campaign finance, parties relied on individual members to provide financing. This in turn forced parties to develop strong links with local constituencies. However with the advent of party and campaign finance, parties no longer rely on individual financial support in order to be competitive.<sup>12</sup> This change in part explains why several Western parties have transformed from mass to catch-all over the last few decades. Katz and Mair argue that the creation of party and campaign finance transforms parties into cartels which shift their focus from businesses to state patronage. Ultimately cartel parties “rely increasingly for their resources on the subventions and other benefits and privileges afforded by the state.”<sup>13</sup> Moreover, the impact of party and campaign finance on the party system depends on when the system of finance is introduced. If existing parties have a long history, the development of a cartel party system does not necessarily undermine the relationship between voters and the party. Established parties in older party systems may be able to maintain more of a relationship with voters than parties in newer party systems.

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<sup>9</sup> Katz and Mair, “Changing Models of Party Organization and Party Democracy.” pp. 5-28.

<sup>10</sup> Koole, “Cadre, Catch-All or Cartel: A Comment on the Notion of the Cartel Party.” p. 517.

<sup>11</sup> Mendilow, “Public Party Funding and Party Transformation in Multiparty Systems.” p. 101.

<sup>12</sup> Rosa Mulé. 1998. “Financial Uncertainties of Party Formation and Consolidation in Britain, Germany and Italy: The Early Years in Theoretical Perspective.” In Peter Burnell and Alan Ware, eds. *Funding Democratization*. Manchester: Manchester University Press. p. 62.

<sup>13</sup> Katz and Mair, “Changing Models of Party Organization and Party Democracy.” p. 20.

This is an important issue to consider in the Latvian context as many parties are new and the system is still fluid.

Party and campaign finance laws are not panaceas for campaign corruption. Scandals in France, Germany, Italy and other countries demonstrate that no system of party and campaign finance is perfect. The problem when designing political finance laws is how to balance the need for campaign spending with transparency. It is too simplistic to argue that tighter regulations are the key to eliminating corruption. On the other hand, it is equally incorrect to blame episodes of corruption on attempts at creating state financing. For example, Sajo argues that “[e]lections and party financing are increasingly subject to restrictive rules, and the demand for more campaign spending is growing. Hence a turn to illegality becomes almost inevitable.”<sup>14</sup> Finally, party and campaign finance need to be placed within the broader political environment and considered along with party membership requirements, electoral rules and the type of government system (e.g., parliamentary or semi-presidential).

## **VI. General Considerations—The Role and Use of the Media:**

One of the keys to decreasing the costs of campaigns and possibly even the need for political finance involves the use of the media. The typical party spends much of its campaign budget buying media time. Party and campaign finance are advocated in order to reduce the amount of money in campaigns, and in order to achieve this reduction, many countries as part of campaign finance provide free television time as well as regulate the activity of third party advertisements. These regulations not only are designed to reduce the amount of money involved in campaigning but to provide a more level playing field among candidates and parties and decrease so-called “covert advertisements.” However as highlighted in the country case studies, the public financing of media time involves complex issues including public versus private media, new forms of media (e.g., the Internet) and the determining equal media time (see Table 1). Indeed, some argue that the media is both a subject of regulation as well as a watch dog over government agencies and regulations. Colazingari and Rose-Ackerman argue that to support campaign finance laws, there needs to be “private-sector” checks (*i.e.*, enhancing the role of the media) as well as greater prosecutorial and judicial independence.<sup>15</sup>

Most countries make a clear distinction between private and publicly-owned media in their regulatory systems, and in particular in the obligations that are placed upon them in election periods. There are a number of different options the state can impose. One approach is for the private media to operate in elections under completely different rules than public media. This will apply most often in the area of political advertising. For example, when Italy first introduced private broadcasting the state broadcaster, RAI, continued with the existing system of free direct access broadcasting while private broadcasters were allowed to carry paid advertising. Another common approach is to impose certain public service obligations on the private broadcast media as one of the terms of a broadcasting license. This is the system that operates in Great Britain. Thus a system of direct access programming that originated with the public service broadcaster is applied, without modification, to private broadcasters. Finally, a popular approach is one that imposes no public service obligations on the private media. However, if the

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<sup>14</sup> Sajo, “Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe.” p. 44.

<sup>15</sup> Silvia Colazingari and Susan Rose-Ackerman. 1998. “Corruption in a Paternalistic Democracy: Lessons from Italy for Latin America.” *Political Science Quarterly* 113: pp. 447-70.

private broadcasters choose to run direct access slots, paid political advertising or voter education slots, then they must do this on the same terms as the public media

A related issue involves the use of administrative resources whether for the promotion of media material or even the use of other government assets for campaigning purposes. A number of countries including Great Britain, Canada and the United States allow for what is commonly known as a “franking privilege” for members of parliament and other government officials. A franking privileged person adds his or her signature to the letter or parcel in lieu of a postage stamp. Common uses of the franking privilege include replies to letters sent by constituents and brief newsletters intended to keep citizens informed of the member’s activities. In countries in which franking is practiced, the privilege has been considered an important tool by which members of the parliament can keep in touch with their constituents, but its use is also frequently criticized as a way for officials to campaign for re-election by using government resources. Officials are usually not given a blanket right to send mail for free, but instead are subject to oversight and regulation and sometimes must comply with budgetary restrictions and disclosure requirements.

## **VI. Country Case Studies—Estonia:**

### *Party and Campaign Finance Model:*

The restrictions on campaign financing in Estonia come from the legislation regulating parties as there is no specific legislation regarding campaign finance. The accepted sources of funding are limited to membership fees, proceeds from party property and contributions from private persons. There is no system of state campaign finance (no reimbursement of electoral campaign expenditures or indirect support for electoral campaign activities). All anonymous donations are banned, and since 2004 corporate and organization donations have also been banned; however, parties are allowed to borrow money from banks (this opportunity requires the close supervision of banking institutions). There is no restriction regarding the nationality of private persons providing a donation to parties.

In terms of party finance, all parties winning at least 5% of the vote in national elections receive funds from state budget in proportion to the number of seats they received in the parliament. Since 2004, this amount is half of the party subsidy with the other half based on a nationwide showing in local elections (5% threshold). In 2004, financing for extra-parliamentary parties was introduced. At least 1% of the vote for a national election is necessary to receive funding (approximately €10,000). The total amount of public funding for parliamentary parties is decided annually in the state budget while the limited support for extra-parliamentary parties is established in the Political Parties Act. The support for parties is a lump sum payment to the party’s national headquarters. Thus, there are no provisions regarding the distribution of support to sub-national party units. In periods between elections, public funding has accounted for much of the income of parliamentary parties. During campaigns, party expenditures have been remarkably higher than the state subventions and parties have continued to substantially rely on private funding.

### *Disclosure and Reporting:*

All parties and individual candidates running in elections are required to present a report of revenues and expenditures at the latest one month after the elections. The reports are submitted to the National

Electoral Commission (NEC) and made public via the Internet. Since 1999, parties are required to present quarterly and annual reports covering their income and expenditures. Names and identity codes of all donors must be disclosed by parties. In addition, parties are required to keep a public registry of donations on their party web sites. Candidates are not required to present any declarations concerning their income or wealth. Sikk notes that the reports on campaign finance have been submitted virtually without any problems, but other disclosure requirements have been largely overlooked by parties because of the lack of sanctions.<sup>16</sup> Only since 2003 are parties which fail to present declarations facing a fine. However, the declarations for most parliamentary parties have been available since 2002 on their party web site (see Appendix 1).

#### *Enforcement:*

Enforcement of campaign rules in Estonia is the responsibility of NEC. The seven members of NEC are appointed by different institutions. The NEC is not a permanent organization, and members have other full-time employment. The NEC's work and daily management is assisted and organized by the Elections Department of the Chancellery of the parliament. Both the Political Parties Act and the Parliament Elections Act allow a fine for violating the rules on the disclosure of donations and economic activity reports. The standard fine is €1,150, but if a violation is committed by a legal person, the fine is increased to €3,195. No party has faced a fine until 2005, and no government body audits the accuracy of total amounts, sources of income or the reported expenditures. Therefore, many parties have failed to submit their annual financial declarations.

#### *Access to the Media:*

Most of the airtime used by parties in the electronic media is predominantly television (during electoral campaigns paid ads on private channels). Since July 2002, there has been a ban on political ads of any kind on public television. The state-run channels only broadcast pre-election debates where the airtime has usually been distributed equally among the parties represented in the parliament or in exceptional cases including particularly strong extra-parliamentary contenders. Smaller extra-parliamentary parties and individual candidates have received some coverage in these debates, but significantly less than parliamentary parties. In some cases, they have been completely disregarded.

The only media that are strictly regulated during the election campaign are the public broadcast television stations (ETV). The Law on Broadcasting states that the Broadcast Council, the body which oversees Estonian television and radio, must comply with the rules for the election campaign in stations. The rules were in force during the elections and impose the principles of equality and impartiality in the coverage of the election campaign on ETV. According to the rules, special air time slots are allocated to the candidates and are free of charge. The Law on Broadcasting only regulates sponsorship, and it is prohibited to use sponsors for the news, current affairs and political programs. The absence of regulation of private media creates many problems as private channels are much more popular than the state-run media. There is no special election regulation for private media. For both print and electronic media, political advertising is allowed on private channels

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<sup>16</sup> Allan Sikk. 2006. "From Private Organizations to Democratic Infrastructure: Political Parties and the State in Estonia." *The Journal of Communist Studies and Transition Politics* 22: pp. 341-361.

### *Issues of Concern:*

In Estonia, one of the major concerns has been the increasing costs of campaigning and the rise of public financing of parties. Since the introduction of public subsidies in 1996, the total amount of subsidies has increased more than tenfold. The sharpest increase came in 2004 when the public financing of parties increased threefold with the introduction of new restrictions on private financing. Donations from businesses and other organizations were banned, and this led parliamentary parties to become almost exclusively reliant on public subsidies. In 2004, the average share/income ratio for public subsidies for parliamentary parties was 82%.<sup>17</sup>

Given the high level of public funding (almost exclusively targeted to parliamentary parties), the existence of a level playing field for parliamentary and extra-parliamentary and new parties can be questioned. As corporate donations significantly outweighed support from individuals in party incomes until 2003, the ban on all donations from legal persons introduced since 2004 contributes to difficulties in fundraising for extra-parliamentary parties. The effectiveness of that legal provision in restricting political corruption can also be questioned, as illegal transfers of money do not necessarily take place from companies and party bank accounts. Effective supervision of the banking sector is necessary to ensure that party loans are repaid and offered on a competitive basis.

### **VIII. Country Case Studies—Britain:**

#### *Party and Campaign Finance Model:*

Britain's system of state finance has traditionally been relatively liberal. While individual candidates have had spending limits, parties did not have any mandatory limits. Moreover, candidates and parties were not required to disclose contributions and expenditures. In terms of the public funding of parties, legislation allowing for party finance was only passed in 1975.<sup>18</sup> There are currently two sources of party finance (almost exclusively available to opposition parties). First, so-called "short money" is available solely to opposition parties. It was introduced in 1975 and has three components: (1) Funding to assist an opposition party in carrying out its parliamentary duties, (2) funding for opposition party travel and associated expenses and (3) funding for the costs of the leader of the opposition's office. The first two elements are available to all opposition parties with two or more MPs (a party with a single MP that secured more than 150,000 votes in a general election is also eligible). Different formulae are used to allocate the three different elements. Under the first element, parties receive funds based on the number of seats won and the number of votes received. The second element is a finite budget allocated in proportion to the first element. The third element is payable only to the main opposition party. The second source of public funding is the Policy Development Grant which was introduced in 2000. Under the 2000 legislation, £2 million is allocated among all parties with more than two MPs. The funds are made available to assist parties with the development of policies for inclusion in any party manifesto. £1 million is shared equally among the eligible parties. The different nature of party politics in England, Wales, Scotland and Northern Ireland and the size of the electorate in the four countries are reflected in

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<sup>17</sup> Sikk, "From Private Organizations to Democratic Infrastructure: Political Parties and the State in Estonia." p. 352.

<sup>18</sup> Nevil Johnson. 1997. "Opposition in the British Political System." *Government and Opposition* 24: pp. 488-489.

the formulae used to allocate the remaining £1 million. Policy Development Grants are available to the governing party as well as to opposition parties.

Reforms enacted by the government in the late 1990s fundamentally changed the campaign finance model in Britain as well as more specifically addressed the role of free media. The general election of 2001 was the first in which party and campaign expenditures were more regulated following the passage of the Political Parties, Elections and Referendums Act (PPERA). PERA introduced limits on expenditures incurred by parties in the “regulated period” before an election in response to concerns about the escalating costs of campaign spending between the major parties and subsequent pressure for fundraising. It also more fully established campaign limits for candidates. Under PERA, sums of more than £200, whether given to a party in-cash or in-kind, are regarded as a donation.

#### *Disclosure and Reporting:*

PPERA introduced spending limits and restricted the number of people within a party who could authorize campaign expenditures. Reports of campaign spending have to be made to the Electoral Commission which is an independent, non-partisan body established by the parliament to collect and analyze campaign spending by parties and candidates. Generally, all registered parties are required to submit donation reports to the Election Commission on a quarterly basis. These reports must disclose donations of more than £5,000 made to the party headquarters, and donations of more than £1,000 made to accounting units. In addition in 2001 for the first time, spending by third party organizations on advertising and other forms of campaigning was regulated. However, only ten organizations registered as recognized third parties. This number was far fewer than had been expected to register.<sup>19</sup> A number of organizations took the view that they were not distributing material which fell within the scope of the legislation.

Parties are also responsible for reporting details of campaign spending to the Electoral Commission within a set period. In order to ensure that parties comply with these spending limits, campaign expenditures can only be approved and incurred by individuals authorized to do so, and invoices of campaign expenditures have to be received and paid within a specified time limit. Following an election, parties are required to submit a report detailing all campaign expenditures incurred by the party to the Electoral Commission. Reports submitted by parties that spent more than £250,000 must be accompanied by a report prepared by an independent auditor. PERA defines a campaign expenditure as expenses incurred in respect of the following: party political broadcasts, advertising, unsolicited material, manifestos and other documents, market research, press conferences and dealings with the media, transport and rallies.

As reported for the 2001 general election, most parties felt that the categories of expenditure specified in the return were limited and somewhat ambiguous and created difficulties for parties in accurately categorizing expenditures incurred. Several parties felt that the categories did not accurately reflect costs such as increased overhead and administrative costs incurred during the campaign and that it was unclear in which category certain items should be placed which led to inconsistencies in how parties reported similar items of expenditure.

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<sup>19</sup> The Electoral Commission. 2002. “Election 2001 Campaign Spending.” pp. 1-157.

### *Enforcement:*

PPERA specifies a number of criminal offenses imposed under each part of the act. It also creates a sliding scale of fines that can be imposed on organizations which fail to submit a return (however incomplete) to the Commission. While a criminal prosecution with a penalty of imprisonment should be reserved for the most serious offenses, this is the only criminal penalty available to the Commission as the legislation currently stands. The enforcement mechanism of PPERA demonstrates that penalties need to be sufficiently high but also realistic in order to be successfully implemented.

### *Access to Media:*

The need of candidates and parties for large sums of money has been somewhat lessened by the requirement that the broadcast media provide free airtime for political advertising. In Britain, the influence of money on politics has been somewhat lessened by the provision of free airtime on television to parties. Under the law, programs of state broadcasting media and private commercial television and radio stations must be politically neutral. Private television channels are forbidden to charge money for advertising parties and other political organizations. In addition to this, there are other forms of indirect public funding for election campaigns (e.g., free provision of premises for election meetings).

Broadcasters utilize a system of self-enforcement in covering elections. The Committee on Party Political Broadcasting is made up of broadcasters and parties. They decide the allocation of time to each party and the broadcasters by and large reflect this through their media coverage. Coverage is free and on the “stop watch” method where all coverage is timed to ensure it is consistent with the allocation of time agreed to by the Committee on Party Political Broadcasting. Rules regarding the media coverage of elections are explicitly laid out by the BBC Producer’s Guidelines of 1993 (see Appendix 2). Most action taken to make elections fair in regard to media coverage is done voluntarily by the BBC. To assist the BBC, the Board appoints a chief political adviser who is the central figure within the BBC for advising producers concerning issues on impartiality, political and parliamentary coverage, elections, opinion polls on voting intentions and all other issues concerning politics and elections contained within the BBC Editorial Guidelines.

### *Issues of Concern:*

One weakness of the British system of election campaign funding involves the participation of the private print media in electoral campaigns.<sup>20</sup> It has been suggested that restrictions be imposed on how the newspapers report election campaigns. However, such suggestions receive a very cautious response because they infringe on the recognized freedom of the press. Another problem highlighted earlier was the difficulty of registering third-party organizations that are often very active in election campaigns. Moreover, the PPERA legislation points to the difficulty of harmonizing categories of expenditures among parties. Without proper guidelines, parties may unintentionally subvert the law because of different interpretation of activities expenditures.

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<sup>20</sup> Michael Pinto-Duschinsky and Alexander Postnikov. 1999. “Campaign Finance in Foreign Countries: Legal Regulation and Political Practices (A Comparative Legal Survey and Analysis).” International Foundation for Election Systems.

## **IX. Country Case Studies—Italy:**

### *Party and Campaign Finance Model:*

During the 1970s and 1980s, Italy used a party and campaign finance model which was designed to provide state funding to parties. Starting in the mid-1970s, state subsidies were provided to all Italian parties which received more than 2% of the vote in general elections. Public funding was also provided for election campaigns (e.g., general, local and European). The law banned contributions to parties from public sector companies and required the declaration of all private contributions exceeding €16 (in today's Euros). However, no limits were placed on the size of private contributions. The law introduced sanctions against illegal funding and violations of the rules for reporting. In the mid-1980s, a law was passed which required MPs and local councilors to provide their annual income tax returns and details of election campaign spending. Another law passed in 1985 required parties to publish an account for party expenditures for electoral campaigns with a detailed description of costs (e.g., expenses for media, publications and posters). Moreover, the law established that state subsidies should be redistributed between the party's central organization and its local groups.

However, the collapse of the Italian party system (known as the "Italian Watergate") due to corrupt political practices forced significant electoral system and party and campaign finance changes. In a referendum in 1993, over 90% of voters expressed their disapproval for public financing (this was one of ten proposals put to the public). As a result, state contributions to party finance were drastically reduced, and the need for private contributions increased. New legislation passed in 1993 introduced important rules for campaign spending, campaign contributions and the transparency of party balance sheets. Provisions for annual public funding for political activities were stopped, and campaign subsidies were replaced by campaign reimbursement. State finance was distributed among parties according to the percentage of votes they obtain. Candidates and parties were entitled to special discounts on postal spending concerning the electoral campaign and reduced IVA (VAT) rates on typographic materials.

In 1997 the law was again changed so that all parties or political movements that had at least one MP elected in one of the two chambers were entitled to a share of a public fund. In 1999, Italy re-introduced the public financing of parties under the label of an "electoral reimbursement" which is allocated to parties in proportion to their electoral results. This established €2 per vote for the funding of each electoral campaign (lower house, Senate, regional elections and European elections). All parties that obtain more than 4% of the vote or win at least one parliamentary seat are entitled to a share of this fund. In addition, the law abolishes reduced postage fees in the last month of the campaign. The maximum spending for each candidate is now limited to approximately €41 plus €0.05 per citizen in a single seat constituency and €0.04 per citizen in a multiple seat constituency. No single contribution can exceed €1,182. Contributions to each candidate must not exceed €3,000. Companies that have securities listed on the Stock Exchange cannot make donations to parties.

### *Disclosure and Reporting:*

Campaign contributions above €5,000 have to be disclosed. Representatives of parties are required to present an account of spending and sources of funds to the presidents of the parliamentary chambers later sent to the National Auditing Office where the documents are examined. In addition, there is the *Collegio di Garanzia Elettorale* which is a regional committee that monitors campaign expenses and

party finance. Each *Collegio* also reports to the National Audit Office. A standard form is provided for party accounts. This form includes all the items that should be included in the account (e.g., costs for press activities, debt to banks, state subsidies, membership contributions, private contributions and corporate contributions). The legal representative (or treasurer) of the party must account for all activities and expenditures. In addition, an account of the economic assets of the party must be included. The report must be sent by each 31 July to the president of the lower chamber who sends the report to the National Auditing Office. In terms of candidates, they are required to disclose all electoral contributions and expenses to the competent regional authority within 120 days after the election. The 1997 law also established that parties by 30 June each year must publish a complete finance report both in the official gazette and in two newspapers, one of which should be available nationally. Party balance sheets are now public, and they are accessible through the official gazette.

#### *Enforcement:*

Until 1993, MPs held the privilege of parliamentary immunity against prosecution for illegal party and campaign finance reporting, but this changed after the 1993 law. Fines between €25,822 and €103,291 can be issued for breaking the law on campaign spending. If there are irregularities in the account, the Ministry of Finance can also refuse a party reimbursement. Moreover, the state can suspend the license of a radio or television station for violation of the rules regarding an electoral campaign.

#### *Access to Media:*

The 1993 law requires the media to guarantee equal access to broadcasting time for all candidates and parties and to abstain from publishing poll results fifteen days before the election date. According to a new media law passed in 2000, all programs on political communication (e.g., comparative presentation of electoral programs, roundtables, debates and interviews) should give equal space to all political subjects so as to guarantee fairness and equal access to media. All those political entities that are represented in the Italian parliament or have at least two representatives elected to the European Parliament are entitled to this access. From the presentation of candidates until the conclusion of the elections, all political subjects running for elections are entitled to equal opportunity of media access. Expressions of voting preferences are forbidden on all broadcast stations during electoral campaigns. During electoral campaigns, newspaper and magazine editors intending to give space to political communication should provide prior information about this so as to guarantee equal opportunity of participation to all political subjects. However, official party newspapers and magazines are exempted from this requirement. The public broadcaster, RAI, is responsible to the parliament for ensuring the fair coverage of all parties and candidates.

Participation in programs of political communication is free. The regulation of telecommunications, radio and television broadcasting are supervised by two bodies which are fully autonomous and independent in their judgments and evaluations (the Parliamentary Committee for the General Supervision of Broadcasting Services which is known as “*Commissione*” and the Authority for Equal Protection of Communications known as “*Autorita*”). National television and radio channels must offer free airtime for campaign activities to all parties as well as the technical means for producing broadcasts. Private television and radio stations may give airtime to political messages for free or for half the price of other advertisements. No political entity is allowed to broadcast more than two messages a day on the same broadcasting unit.

### *Issues of Concern:*

The case of former Prime Minister Silvio Berlusconi shows the importance of regulating public and private media as well as ensuring that individuals that enter politics divest themselves of control and interest in media outlets. As Prime Minister, Berlusconi indirectly controlled Italy's three public television stations through his control of the public RAI entity. Including his control of the private media market, Berlusconi controlled 90% of Italy's television market. A number of reports have showed a significant bias in favor of reporting on his activities during various campaigns. Media regulation must ensure that this type of candidate and party domination does not occur. The case of Berlusconi shows that there are programs that cannot be defined strictly as programs of political communication which are often used for a more understated form of political propaganda. News programs are a good example, as are commercials that broadcast politicians to advertise general consumer goods. This is to say that although rules might not be formally violated, it is possible and easy to violate their spirit by giving greater media exposure to some candidates.

Despite the good intention of fostering freedom of speech, public subsidies have created a new form of party economic dependence on the state. The criteria of access to state subsidies have been very easy for even small parties to meet. This has encouraged the multiplication of parties which has been viewed by the public as a drain of money from the state budget. Statistics for the period 1995–1997 show that state subsidies amount to 50–80% of party funding, peaking in 1997.<sup>21</sup>

### **X. Country Case Studies—US:**

#### *Party and Campaign Finance Model:*

There is no system of party finance and campaign finance is limited only to presidential candidates. In addition, the regulation of the media is more limited because there is virtually no state-sponsored media. Thus, the US represents a very liberal form of finance in which there is limited state support. The system of campaign finance regulation in the US is focused primarily on seeking the full public disclosure of funds raised and spent by candidates for political office and their campaign committees, parties and political action committees (PACs). However, numerous problems with this system have surfaced during the last ten years, mostly having to do with “soft money” campaign contributions and issue advocacy advertising.<sup>22</sup> These problems have prompted a series of investigations into the activities of the two major parties and new reform legislation in the Congress and at the state level.

In the US, there is a fairly well-developed system of control of funding of federal election campaigns. Election campaigns in various states and at the local level are conducted in accordance with state laws, and the approaches to legislative regulation vary widely by state. The basic legislative act that regulates federal (national) election campaign finance in the US is the *Law on Federal Election Campaigns of*

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<sup>21</sup> Martin Rhodes. 1997. “Financing Party Politics in Italy: A Case of Systematic Corruption.” *West European Politics* 20: pp. 54-80.

<sup>22</sup> Stephen Ansolabehere and James M. Snyder, Jr. 2000. “Soft Money, Hard Money, Strong Parties.” *Columbia Law Review* 100: pp. 598-619.

1972. In accordance with the 1974 amendments to this law, an independent body was established known as the Federal Election Commission (FEC).<sup>23</sup>

Limitations on the amount of donations are established separately for private persons, political committees and party committees. Donations from private persons cannot exceed \$1,000 for a given candidate or the candidate's committee for an election campaign. In addition, private persons are limited to donating \$20,000 during a calendar year given to political committees that were established and are being maintained by a national party and are not affiliated to a candidate. Finally, private persons are limited to donating \$5,000 during a calendar year given to any other political committee. A private person cannot donate more than \$25,000 for election campaigns during a calendar year. Corporations, trade unions, federal government contractors and foreign citizens are not allowed to make donations or payments to candidates. No private person can make a donation in cash money in an amount exceeding \$100. The law also states that during election campaigns, a private person or a group of persons can make "independent payments" without limitations. Independent payments include payments made for the support of a candidate or in order to defeat a candidate. Such payments must be made *independently* from the campaign in support of the candidate.

In 2002, the law was amended by the Bipartisan Campaign Reform Act (the BCRA or more commonly known as "McCain-Feingold"). The BCRA was intended to provide bipartisan campaign reform. It was considered bipartisan because it targeted liberal issue-based interest groups as well as business groups. The US Supreme Court in a very divided decision upheld most of the BCRA including the ban on soft money contributions to parties and candidates and the restriction of television and radio issue ads by corporations and unions before elections.

#### *Disclosure and Reporting:*

The role of the FEC is to enforce the observance of federal election law and to render assistance in financial reporting and administration of the state financing program. The law provides for the publication of reports on income and costs associated with federal election campaigns. In accordance with the law, candidate committees, party committees and PACs are obliged to submit periodical reports about received and spent finances. For example, candidates are obliged to disclose all PACs and party committees that provided financial support, and all private persons that gave them more than \$200 per year. Additionally, they are obliged to disclose all payments made to private persons or organizations which exceed \$200 per year.

#### *Enforcement:*

A wide range of civil-law, administrative-law and criminal-law measures are used to enforce restrictions imposed on election participants in respect of federal election campaign funding. These measures are applied by the FEC and the Justice Department. Enforcement mechanisms and penalties are generally regarded as robust. The problem in the US is not the enforcement agency or penalties which it can invoke but rather the significant loopholes in the legislation.

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<sup>23</sup> Richard Briffault. 2000. "The Political Parties and Campaign Finance Reform." *Columbia Law Review* 100: pp. 620-666.

### *Access to Media:*

According to the FEC, the definition of electioneering communications includes any broadcast, cable or satellite communication that fulfills each of the following conditions: (1) The communication refers to a clearly identified candidate. (2) The communication is publicly distributed shortly before an election for the office that a candidate is seeking, and (3) the communication is targeted to a relevant electorate (see Appendix 3). Under the BCRA, if a person pays more than \$10,000 towards electioneering communications during a calendar year, he/she is required to follow certain guidelines (basic reporting requirement). There are also distinctions made as to what is exempt from being considered electioneering communications. This includes news or views expressed through broadcasting companies not controlled by a party and a debate or forum. While corporations, unions and other organizations are not allowed to engage in electioneering communication on behalf of a candidate, electioneering communication regulations are not applicable to political organizations as long as the communication is paid for exclusively by funds provided directly by individuals who are US citizens or nationals.

### *Issues of Concern:*

In the US, a large role is played in federal election campaigns by soft money funds raised and spent outside the framework of bans imposed by the federal election law. As a rule, this money is given to party national committees established at the state level. The funds are not directly intended for campaign funding but are used for party needs so that indirectly it could produce a marked effect on the election campaign. Soft money can be used, for example to promote the advantages of the party rather than support for a specific party candidate.

Another problem has been the widespread practice of issue advocacy advertising. In accordance with this practice individuals and independent groups which take a definite stand on some political issue may, quite legitimately, spend money on the propaganda of their views on television and in the press, issue printed material and generally use whatever means necessary to publicize their views. This money is not given to parties and is not subject to restrictions established by federal laws. In the case of issue advocacy advertising, legal restrictions imposed by the federal regulation come into conflict with guarantees of political freedoms provided by the US constitution. These guarantees have been expressed in more concrete terms by several precedents formulated by the US Supreme Court. The key provisions of the relevant judicial doctrine were set forth in the decision of the Supreme Court in the case *Buckley v. Valeo*. The Supreme Court ruled that there should be no restrictions on political statements, including political advertising which mention candidates in the context of presentation of viewpoints on a definite issue. Advertising activities are subject to regulation by the FEC only if they clearly call for the election or the defeat of a candidate.

Another problem concerns “527” organizations which can use funding for covert advertising. The 2002 act states that corporations and unions may not make direct or indirect contributions to communications. However, 527 organizations can be created which can purchase airtime. The question in the US legislation concerns who organizes these 527s. Because of the reliance of on these organizations, one of the main impacts of the BCRA has been the shift of soft money towards protected 527s which can use issue advocacy which while not directed at a specific candidate can have an enormous influence on the outcome of an election.

## **XI. Conclusions to Section 1 of the Report:**

There a number of issues which the four case studies raise which are vital to successfully designing public finance and media regulations. First as the case of Italy shows, public involvement and awareness of public finance is crucial for the long-term success of the financing of parties. Generally, the public has little knowledge of party and campaign finance schemes. Therefore, governments must engage the citizenry in public discourse concerning the strengths, intended consequences and costs of regulating party finance and the media. If citizens believe that these regulations are a panacea for political corruption and unfair political party advantage, then there will be great dissatisfaction because no system of public finance completely prevents corruption and provides a level playing field for parties.

Second if state finance is to be successful, it must provide significant funds for parties so that other forms of financing are no longer as necessary (in other words eliminate the need for illegal contributions). As a government considers the financing of parties, it needs to calculate the amount of the party subvention or party campaign costs which are realistic given the size and number of parties. As the country case studies show, the amount of public finance often dramatically increases over time. This needs to be considered not only for parties but also as a public issue. Third even with significant state resources, parties and candidates will always be tempted to find increasing amounts of funding. Therefore, disclosure and enforcement with significant penalties are paramount. A legislative framework without transparent disclosure and significant penalties will be unable to prevent corrupt political practices.

Finally as many of the cases demonstrate, even highly detailed regulations will not eliminate all possible loopholes. Indeed, one issue governments must consider is balancing the need for highly regulating finance and media outlets with providing clear and simple guidelines. Regulations that are too complex create the potential for unintentional illegality on the part of parties, candidates and media outlets. The four case studies illustrate many of the concerns, problems and potential strengths in the regulation of state party finance and the media.

## **XII. Introduction to Section 2 of the Report:**

The second section of this report outlines a draft conceptual guideline which can serve as the basis for the development of an amendment to the Organizations draft law currently before the Saeima. The conceptual guideline which follows covers the participation, funding and regulation of third party organizations during the pre-election campaign including the concept of election advertising. The second section of this report concludes with an analysis of the advantages and the possible disadvantages of the guidelines as well as other possible modifications which might be considered in the draft law.

In many countries, the regulation of third party campaign activity is one of the most difficult issues to regulate. Many European countries have not created regulatory frameworks which limit independent groups from spending money on behalf of a party and/or candidate. In order for the spirit of finance regulation to be effective, third party organizations need to be regulated. Therefore, Latvia has embarked on an important aspect of campaign finance regulation. As the 2006 Saeima elections demonstrated, third party front organizations can be effectively used by parties to circumvent donation and spending

ceilings which undermine the overall effectiveness of the legal framework. In this section, I outline changes to the two draft laws currently under review at the Saeima.

### **XIII. Controls Related to Third Party Organizations:**

I propose the following draft conceptual guideline to regulate third party organizations and election advertising:

#### **Article 1. Terms Used in the Law:**

(1) Election advertising is defined for purposes of this Act as the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a party, including one that takes a position on an issue with which a registered party is associated. For greater clarity, it does not include:

(a) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news;

(b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election;

(c) the transmission of a document directly by a person or a group to their members, employees or shareholders, as the case may be; or

(d) the transmission by an individual, on a non-commercial basis on what is commonly known as the Internet, of his or her personal political views.

(2) An election advertising expense is defined for purposes of this Act as an expense incurred in relation to:

(a) the production of an election advertising message; and

(b) the acquisition of the means of transmission to the public of an election advertising message.

(3) A third party is defined for purposes of this Act as a group of persons acting together by mutual consent for a common purpose. A third party means a person or a group, other than a registered party.

#### **Article 2. Contributions (Donations) to Third Party Organizations:**

(1) A third party may receive financing from the following:

(a) Citizens of Latvia;

(b) Individuals who, under the law, have the right to hold a non-citizen's passport from the Republic of Latvia.

(2) A natural person may offer contributions (donations) of no more than LVL 10,000 to a third party during the course of a calendar year.

(3) Within 10 days' time after the contribution (donation) has been received, the third party shall, in accordance with procedures defined by the Cabinet of Ministers, publish, on a separate Internet page, information about the said contribution (donation), stating its type, sum, date of receipt, and the natural person who provided the contribution (donation).

(4) A contribution (donation) shall be considered as accepted if, within 30 days' time after receiving the contribution (donation), the relevant third party has not transferred it (returned it) to the contributor (donor). Information about rejected contributions (donations) shall be published on the Internet.

### **Article 3. Spending limit for Third Party Organizations:**

(1) A third party shall not incur election advertising expenses of a total amount of more than LVL 100,000 during an election period in relation to a general election. This amount shall be multiplied by the inflation adjustment factor. Before 1 April in each year, the Central Elections Commission of Latvia shall cause to be published in the *Latvijas Vēstnesis* an inflation adjustment factor that shall be in effect for a period of one year beginning on that date.

(2) A third party shall not circumvent, or attempt to circumvent, the limit set out in Article 3(1) in any manner, including by splitting itself into two or more third parties for the purpose of circumventing the limit or acting in collusion with another third party so that their combined election advertising expenses exceed the limit.

### **Article 4. Registration Requirements for Third Party Organizations:**

(1) A third party shall register immediately after having incurred election advertising expenses of a total amount of LVL 500.

(2) An application for registration shall be sent to the Central Elections Commission of Latvia in the prescribed form and shall include:

(a) the name, address and telephone number of

(i) if the third party is an individual, the individual,

(ii) if the third party is a group, the group and a person who is responsible for the group;

(b) the signature of the individual, officer or person referred to in subparagraph (a)(i), (ii), respectively, as the case may be;

(c) the address and telephone number of the office of the third party where its books and records are kept and of the office to which communications may be addressed; and

(d) the name, address and telephone number of the third party's financial agent.

(3) An application under subsection (2) must be accompanied by a declaration signed by the financial agent accepting the appointment.

(4) If a third party's financial agent is replaced, it shall, without delay, provide the Central Elections Commission of Latvia with the new financial agent's name, address and telephone number and a declaration signed by the new financial agent accepting the appointment.

(5) The Central Elections Commission of Latvia shall, without delay after receiving an application, determine whether the requirements set out in subsections (1) through (4) are met and shall then notify the person who signed the application whether the third party is registered. In the case of a refusal to register, the Central Elections Commission of Latvia shall give reasons for the refusal.

(6) A third party may not be registered under a name that, in the opinion of the Central Elections Commission of Latvia, is likely to be confused with the name of a registered party.

(7) The registration of a third party is valid only for the election period during which the application is made, but the third party continues to be subject to the requirement to file an election advertising report.

#### **Article 5. Appointment of Financial Agent:**

(1) A third party that is required to register under Article 4 shall appoint a financial agent who may be a person who is authorized to sign an application for registration made under that subsection.

(2) The following persons are not eligible to be a financial agent of a third party:

(a) a person who is the chief agent, or a registered agent, of a registered party;

(b) an election officer or an employee of a returning officer; and

(c) a person who is not a Latvian citizen or an individual who holds a non-citizen's passport from the Republic of Latvia.

#### **Article 6. Requirement to Appoint Auditor:**

(1) A third party that incurs election advertising expenses in an aggregate amount of LVL 1,000 or more must appoint an auditor without delay.

(2) The following are eligible to be an auditor for a third party:

(a) a person who is a member in good standing of a corporation, an association or an institute of professional accountants; or

(b) a partnership every partner of which is a member in good standing of a corporation, an association or an institute of professional accountants.

(3) The following persons are not eligible to be an auditor for a third party:

(a) the third party's financial agent;

(b) a person who signed the application made under Article 4(2b)

(c) an election officer;

(d) a candidate of a registered party;

(e) the chief agent of a registered party or an eligible party; and

(f) a registered agent of a registered party.

(4) Every third party, without delay after an auditor is appointed, must provide the Central Elections Commission of Latvia with the auditor's name, address, telephone number and occupation and a signed declaration accepting the appointment.

(5) If a third party's auditor is replaced, it must, without delay, provide the Central Elections Commission of Latvia with the new auditor's name, address, telephone number and occupation and a signed declaration accepting the appointment.

#### **Article 7. Third Party Contribution (Donations) Obligations:**

(1) Every contribution (donation) made during an election period to a registered third party for election advertising purposes must be accepted by, and every election advertising expense incurred on behalf of a third party must be authorized by, its financial agent.

(2) A financial agent may authorize a person to accept contributions (donations) or incur election advertising expenses, but that authorization does not limit the responsibility of the financial agent.

(3) No third party shall use a contribution (donation) for election advertising if the third party does not know the name and address of the contributor (donor).

#### **Article 8. Liability for Failing to Observe the Requirement of this Law:**

(1) Every person is guilty of an offense who, being a third party, contravenes

(a) any of Article 3(1), (2) (exceeding election advertising expense limits);

- (b) Article 4(1) (failure to register);
- (c) Article 5 (failure to appoint financial agent);
- (d) Article 6 (failure to appoint auditor);
- (e) Article 7(3) (use of anonymous contributions); or
- (f) Article 2(1), (4) (failure to publish contributions (donations)).

(2) If a third party that is a group commits an offense under Article 8(1), the person who is responsible for the group or its financial agent commits the offense if the person or financial agent authorized, consented to or participated in the act or omission that constitutes the offense.

(3) For the purpose of a prosecution brought against a third party under Article 8(1), the third party is deemed to be a person and any act or omission of the person who signed an application made under Article 4(2) in respect of the third party or, in the absence of an application, the person who would have signed it, or their financial agent, within the scope of that person's or financial agent's authority, is deemed to be an act or omission of the third party.

#### **Article 9. Prosecution of Third Party Organizations:**

(1) If a third party commits an offense under Article 8(1) the person who is responsible for the group or its financial agent commits the offense if the person or financial agent authorized, consented to or participated in the act or omission that constitutes the offense.

(2) For the purpose of a prosecution brought against a third party under Article 8(1), the third party is deemed to be a person and any act or omission of the person who signed an application made under Article 4 in respect of the third party or, in the absence of an application, the person who would have signed it, or their financial agent, within the scope of that person's or financial agent's authority, is deemed to be an act or omission of the third party.

(3) A third party that commits an offence under paragraph Article 8(1) is liable on conviction to a fine of not more than LVL 25,000.

#### **XIV. Advantages and Disadvantages of the Proposed Legislation:**

There are a number of issues that need to be considered within the terms of this proposed draft conceptual guideline. One of the most basic issues to be addressed is how to define a third party organization. There are two basic options: One option would be to allow parties to register as third party organizations as is done in countries such as Canada and Britain. The other option is to exclude parties as legal entities for purposes of registering as a third party organization. The proposed guideline chooses the second option and excludes parties as legal entities which can register as third party organizations under Article 1(3). Another definitional issue related to whether only natural persons can contribute to third party organizations or whether the list of legal contributors should include legal persons. In many countries, legal persons such as corporations which may be banned from giving money directly to

parties are allowed to provide contributions to third party organizations. However since the 2004 amended Law on Financing of Political Organizations (Parties) specifically banned legal persons from donating to parties, the proposed conceptual guideline also only allows natural persons to contribute to third party organizations.

In terms of the financing mechanism for third party organizations, one issue to consider is whether contributions to parties and third party organizations should be linked or viewed as completely separate contributions. In some countries, for example Canada, the amount that persons (both natural and legal) can give to parties and third party organizations is linked so that the overall amount of money which can be contributed is limited. As Latvia in the 2004 amended Law on Financing of Political Organizations (Parties) specifically created a ceiling for party spending, it might be considered whether this ceiling amount should be linked between parties and third party organizations. In the proposed conceptual guideline, I have not linked the amounts. This was done because of the recognition in Latvia that the current ceiling is too low. By allowing natural persons to contribute to parties and third party organizations individually, the overall amount of money in the system will increase and thus alleviate some of the problems of the current ceiling. In addition unlike the party contribution ceiling, I have indexed the contribution amount to third party organizations to inflation. I recommend that this also be done for parties in the same method.

#### **XV. Appendix 1. Estonian Legislation Concerning Election Expenditures:**

Riigikogu Election Act of 2002. Chapter 11 (Election Expenditure) § 67. Expenditure Relating to Election Campaign:

A political party or an independent candidate shall set out the following in a report  
the date on which the expenditure is incurred

the name and personal identification code or registry code of the beneficiary;

the number of the invoice which is the basis of payment;

the type of expenditure

the size of the payment in kroons

The type of expenditures are:

advertising expenses (expenses for publications, television advertising, radio advertising and advertising in newspapers and magazines shall be set out separately);

public relations expenses;

publication expenses;

transportation expenses;

rent expenses;

expenses for the organization of public events;

communication expenses;

postal expenses;

other expenses;

#### **XVI. Appendix 2. BBC Producer's Guidelines of 1993:**

Chapter 17: Broadcasting during the Elections:

## 1. Introduction

Broadcasting during elections is specifically governed by Section 93 of the Representation of the People Act, 1984 (the “RPA”). In addition, the BBC has a body of editorial policy which, though not as a result of any legal obligation, has been developed to help ensure that we remain fair in our coverage of the elections.

## 2. The Law

The law is designed to prevent “personal electioneering” on the air, and it is important that programmes observe it carefully. If the law is broken the candidate taking part in the programme may be prosecuted, and so may the BBC. This is what the RPA says, together with a guide to what the key words in it are held to mean.

(a) “Pending such an election it shall not be lawful for an item about the constituency or electoral area to be broadcast from a television or other wireless transmitting station in the United Kingdom if any of the persons who are for the time being candidate at the election takes part in the item and the broadcast is not made with his consent; and

(b) where an item about a constituency or electoral area is so broadcast pending such an election there, then if they broadcast either is made before the latest time for delivery of nomination papers, or is made after that time but without the consent of any candidate remaining validly nominated, any person taking part in the item for the purpose of promoting or procuring his election shall be guilty of an illegal practice, unless the broadcast is so made without his consent.”

“Pending”

The pending period always ends with the close of the polls, but when it begins varies according to the type of election:

*General Election:* from when the Queen announces the intention to dissolve Parliament or, if there is no such announcement, from the date of dissolution.

*By-election:* from the date of the issue of the writ for the election, or from any earlier date on which a certificate of the vacancy is notified in the Gazette.

*Local Government Election:* from the 25<sup>th</sup> day before the day of the election. To calculate the period you must exclude all intervening Saturdays, Sundays and Bank Holidays. In addition the following area also excluded, where relevant: Christmas Eve, Christmas Day, Maundy Thursday and Good Friday.

*Local Government Election to fill a Casual Vacancy:* from the date of publishing the notice of election.

*European Assembly Election:* the pending period is the same as for a local government election.

“Candidates”

A candidate is anyone who has declared an intention to stand in a specified constituency or electoral area. Candidates may not have been formally adopted but if by any common sense standards they have emerged as candidates, then their participation in a broadcast is restricted either by the law or by your own guidelines.

“Taking Part”

“Taking part” in a broadcast has been legally defined as involving active and conscious participation by the candidate. A news item or a report presented by BBC journalists about a candidate’s activities does not constitute “taking part”, nor does news film of a candidate making a speech addressed to his constituents. A candidate does not “take part” simply by conducting normal electioneering activities, such as addressing a public meeting, even though we may record them, provided that the meeting has

not been arranged mainly with a view to its being broadcast. Similarly, a candidate does not “take part” in a broadcast of a news conference open to the media at large.

A candidate does not “take part” when specifically addressing a television or radio audience. A candidate who is interviewed by a reporter with a microphone or camera must be deemed to be “taking part”. If a question is put to a candidate by a BBC reporter while the candidate is conducting normal electioneering activities, that may not constitute “taking part” although a full interview in such circumstances would. Careful judgment is required, and advice should be sought from the Chief Political Adviser.

A constituency profile is not affected by the restriction on a candidate “taking part” when it uses film of candidates without sound of their voices, filmed extracts from speeches addressed to their constituents, or film of candidates’ “walkabouts”. A studio discussion about a specific constituency or electoral area between the candidates in the constituency or electoral area requires the consent of all the candidates since they would be “taking part”.

### 3. The Rules

3.1 Between the start of the pending period and the close of nominations, no candidate may take part in any broadcast about the constituency or electoral area.

Legally speaking, candidates may “take part” in programmes so long as they do not speak about constituency matters and are also in no way identified with their constituency and the programmes is not about the constituency.

The BBC’s policy is to avoid giving advantage to a particular candidate at a time (namely, between the start of the pending period and the close of nominations) when we simply do not know for certain who the other candidates will be and we cannot therefore treat them all fairly.

Candidates who were due to appear in programmes scheduled before the election was announced may do so but they must not be linked to the election or constituency, nor should they be allowed to talk about constituency issues. After the election is announced, no candidate must enter into a news programme commitment for transmission before polling day.

We make an exception for candidates involved in a significant news story. Candidates who find themselves involved (e.g. through being sent a letter bomb) may be interviewed in that connection, and if their candidacy is part of a story it may be referred to. But we would not apply this “news priority” exemption to stories which were themselves merely political: we would not interview a candidate in a news programme simply because the candidate has made some newsworthy electoral pledge.

Other cases not specifically covered here must be referred to Chief Political adviser if there is any doubt about what to do.

3.2 After nomination day and up to the declaration of the poll, no candidate may “take part” in a broadcast about a constituency or electoral area without the consent of all candidates.

The RPA says that a candidate who takes part in a broadcast contrary to the above rules, “shall be guilty of an illegal practice” if he does so for the purpose of promoting or procuring his election. In practice the BBC might also find itself subject to proceedings. Care must therefore be taken to ensure that from nomination day until the close of poll a candidate takes part in a broadcast about the constituency or electoral area only with the consent of all other candidates.

### 4. Making programmes in which the candidates take part

4.1 We must secure consent of all the candidates. When they all agree to take part in a broadcast an oral agreement is sufficient. If a candidate declines to take part but agrees nonetheless that the other candidates can take part, a written consent is required. The form of consent is shown at the end of this section. It is the producer's responsibility to ensure that the form has been completed before the broadcast and to keep it on file.

It is sometimes difficult to contact a candidate who is not active in the election. Several attempts should be made by all practicable means and records kept of these approaches. If all efforts fail, references should be made to Chief Political Adviser or The Legal Adviser before the broadcast goes ahead.

4.2 Programme repeats. If we know, at the time we are gathering consents from candidates who decide not to take part, that a programme is likely to be repeated, the consent form should include an acknowledgement of this. If no such plans exist but there is a subsequent decision to repeat the programme in full or in part it may be necessary to secure additional written waivers and the Chief Political Adviser must be consulted.

We should not base an entire programme or magazine item on edited extracts of a previously recorded programme unless all of those who took part in the original programme also take part in the edited version, and unless the necessary additional waivers have been obtained.

4.3 Fair treatment. The law makes no requirement about the way time is allocated between candidates in a programme. But BBC policy requires fair treatment for all concerned and rough parity of treatment for all the major candidates. We recognise that many modern elections feature a range of fringe candidates who are certain to attract only marginal support, and such candidates may be treated by programmes in a way which recognises the differences between them and the principal contenders. The Chief Political Adviser can help programmes determine these decisions.

## 5. Other questions answered

### 5.1 Do we have to name all the candidates?

As a general BBC rule whenever we broadcast a constituency or campaign report we should mention all the candidates if we mention any. We should ensure that the terms in which we mention them maintain rough parity between the major candidates, but it may be appropriate to list the fringe candidates together in some other terms (such as a graphic in television). We recognize that, particularly at by-elections, the number of candidates may make it impractical to mention them all by name or every occasion, especially on radio. Chief Political Adviser will give guidance on the best practical way of approaching this problem as and when each election is called.

### 5.2 Can candidates appear as party spokesmen?

Candidates may appear in broadcasts in their role as party spokesmen, provided the programme is not about their constituency or electoral area and that they are not identified as candidates or allowed to talk about issues directly connected with the constituency or electoral area in which they are standing.

5.3 What is meant by broadcasts by candidates which are not "about" the constituency or electoral area? These would include broadcasts during an election campaign in which neither the candidates nor the broadcast refers to specific constituency issues or their own candidature. Such broadcasts are not legally restricted under the RPA, even if they are made in the speaker's own constituency. The decision whether to use them must therefore be based on editorial judgments.

#### 5.4 What is an “electoral area”?

“Electoral area” is defined in the RPA as “any electoral division or ward or, in the case of a parish or community in which there are no wards, the parish or community for which the election of a councillor is held under the Local Government Act”. If, pending a district council election, we want to interview a candidate the restrictions apply only if the interview, item or programme is “about” the specific electoral area in which the candidate is standing. Note, however, that nothing should be broadcast which is for the purpose of promoting or procuring the election of any single candidate, the consent or participation of all the competing candidates in the same electoral area is required. In the case of a ward candidate in a district council election it would be necessary to approach all the candidates in the relevant ward, but not those in other wards.

#### 5.5 Must all candidates be given exactly equal treatment?

There is no legal requirement by the BBC tries to preserve approximate parity at elections between the main parties contesting a given seat. Fringe candidates cannot necessarily expect parity, especially if they are absentee candidates or do not appear to be campaigning with any diligence.

#### 5.6 Unlike Parliament, local councils do not “dissolve” before an election. During the six weeks prior to an election, may Councililors be interviewed about continuing council business?

The legal position is not straightforward and particular care is needed. The RPA would seem to suggest Councillors could be interviewed after the latest time for the delivery of nomination papers only if all the competing candidates either take part or sign waivers. However, the RPA says that an offence is committed only where the candidate takes part “for the purpose of promoting or procuring his selection”. Although that seems to relate to the state of the interviewee’s mind, the effect of the words used must also be taken into consideration.

From the available case law, it would appear that if the candidate’s dominant intention in agreeing to be interviewed was to promote his or her election, the interview would be subject to the rules contained in the RPA. On the other hand, if the candidate could establish the predominant intention was to make available information which it was in the public interest for the citizen to know (even if the interview had the side effect of promoting the candidate’s election the rules in the RPA would not apply and it would not be necessary to obtain the consent of other candidates. These are difficult judgments and the Chief Political Adviser needs to be consulted.

#### 5.7 Does a local station have to suspend broadcasting the proceedings of Council and Committee meetings during the six week pending period if sitting members are also candidates?

No.

#### 5.8 To what extent is a local station able to use speakers who are candidates in local or parliamentary elections outside the station’s area?

In those circumstances it would be difficult to argue that the candidate is taking part in the programme for the purpose of securing his election. So we have decided to allow programmes to use candidates from electoral areas clearly outside their transmission range and to let them to talk about election issues – but the programme items must not be repeated on network broadcasts. For example, Radio London could not use a candidate from Merseyside.

#### 5.9 What other BBC rules govern news coverage of the campaign?

Candidates' speeches and news about candidates in any election may be reported up to midnight before polling day if they have genuine news value. This is legitimate, even if the effect might be to help one candidate more than others on any one day, if the motive is demonstrably the reporting of significant news. Although it is not a legal requirement, it is BBC policy that in national bulletins reporting the general election, all the main parties should be reflected fairly and fully over the election period. Account should be taken of the electoral position of the SNP and Plaid Cymru in their respective areas. Chief Political Adviser will advise network programmes on appropriate coverage of the nationalist parties.

5.10 May candidates appear in the election editions of Any Questions and similar national, regional, or local programmes?

Yes. So long as their candidature is not mentioned, nor their constituencies. The panel should always represent the main parties, and also offer appearances to prominent minor parties. No party fighting a substantial proportion of seats, nationally or locally, should be able to claim that its case has been unfairly neglected in such programmes.

5.11 May an actor, musician or singer who is a candidate appear during the "pending period"? Many an author-candidate have his works broadcast or discussed?

Yes, if the broadcast was scheduled before the "pending period". Professional broadcasters who are candidates should not be used after the start of the pending period unless they are the natural persons for the job and there are not good alternatives.

5.12 What is the position of a candidate's spouse, spouse-to-be or other close relative?

There is no legal inhibition on broadcasts by relatives of candidates but the BBC is opposed to any interviews with spouses or other relations which might gain electoral advantage for candidates. There is no prohibition but the circumstances in which they are invited to broadcast during such periods must be editorially justifiable and reference made to Chief Political Adviser.

5.13 Election publicity, posters, etc.

Nothing that might inadvertently help a candidate should be seen or heard in our output unless all candidates are treated equally. It is especially important not to place interviewees in front of candidates' posters when we are recording them for television. BBC people should have the confidence in asking for posters to be removed from platforms if it proves impossible to record a speech without the poster being visible.

5.14 What happens on polling day itself?

Polling day reporting at all elections must avoid any references to election issues and, until the close of poll, we restrict ourselves to factual news about the election. Public opinion polls and reviews of the morning papers may be included. So too may statements of news importance by the parties, but we must ensure that counter-statements by opposing parties are broadcast as well.

5.15 Can we use candidates between elections?

It is BBC policy that between elections care must be taken not to build up the "image" of a prospective candidate. Prospective candidates who depend wholly or partly for their livelihood on broadcasting in news and current affairs programmes present a special problem. The BBC should try to avoid penalizing such a candidate's livelihood, but we have to be fair to all prospective candidates. Each case

should be considered on its merits. Relevant factors are nearness to an election, the nature of the programme, and the prospective candidate's role in it.

In other programmes the BBC should try not to increase or lessen the prospective candidate's earnings or reputation in the time before the "pending period". If possible, the candidate should continue to be used to the same extent as previously. There should be no reference to the prospective candidature.

Consent Form:

The following form of consent should be used when a candidate declines to take part in a broadcast but agrees to rivals taking part:

The BBC is organising a radio/television programme to be broadcast on or about (date) concerning the \_\_\_\_\_ constituency or electoral area where I am. The (party) on (date). I understand that under Section 93 of the Representation of the People Act 1983 the consent of all candidates in the constituency or electoral area is required for the broadcast to take place. I consent to the other candidates taking part in the broadcast without me. (I understand that the broadcast may be repeated in whole or in part).

Signed

Address

Date

## Chapter 15 – Politics and Politicians

3. Elections. Broadcasting during elections and by-elections, whether European, national or local, has to have a regard to the provisions of Section 93 of the Representation of the People Act, 1983.

3.1 Party Election Broadcasts. There is a separate series of broadcasts before a general election. When an election is imminent the broadcasters make a proposal to the Committee on Party Political Broadcasting on the allocation of party election broadcasts. If the Committee fails to reach an agreement the broadcasters make a proposal to the Committee on Political Broadcasting on the allocation of party election broadcasts. If the Committee fails to reach an agreement the broadcasters impose the allocation. There is no precise mathematical formula for the allocation of time for party election broadcasts. But the judgment is made on the basis of votes cases at intervening by-elections, local government elections and European elections. This allows significant political change to be taken into account. There is also a provision that any party contesting 50 seats should be entitled to a five minute broadcast on television and radio.

3.2 Balance in Coverage. Over the period of a campaign, coverage of each of the parties in news and current affairs programmes reflects broadly the allocation of party election broadcasts to the major parties. In accordance with this principle the BBC undertakes to maintain balance, over the period of campaign, in its recorded actuality of political speeches and in film, videotape, and studio contributions from politicians. Editors requiring advice on this should refer to the Chief Political Adviser.

Editors must also be aware that the voices of the Nationalist parties fighting in Scotland and in Wales should be represented in UK coverage.

News values continue to apply in covering election stories whether national or local.

## 4. Appearances by Politicians

### 4.1 – Position of candidates

Parliamentary candidatures are often announced well in advance of formal adoption procedures by a constituency party. Adoption before such an announcement ought not to affect invitations to prospective candidates to take part in programmes, though they should not be given the opportunity to advance their own candidacy.

Once an election or by-election is imminent the BBC may decide that fair play dictates that programmes behave as though the Representation of the People Act applied, and appearances by candidates or prospective candidates may be restricted accordingly to avoid giving one an unfair advantage over the others. The BBC's Chief Political Adviser will rule on this and can advise programmes accordingly.

### Appendix 3. Bipartisan Campaign Reform Act (Section Dealing with Electioneering Communication):

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Ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of \$1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

#### (3) ELECTIONEERING COMMUNICATION.—For purposes of this subsection—

(A) IN GENERAL.—(i) The term ‘electioneering communication’ means any broadcast, cable, or satellite communication which—

(I) refers to a clearly identified candidate for Federal office;

(II) is made within—

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term ‘electioneering communication’ means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

(B) EXCEPTIONS.—The term ‘electioneering communication’ does not include—

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section

(C) TARGETING TO RELEVANT ELECTORATE.—For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is ‘targeted to the relevant electorate’ if the communication can be received by 50,000 or more persons—

(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

(4) DISCLOSURE DATE.—For purposes of this subsection, the term ‘disclosure date’ means—

(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000; and

(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000 since the most recent disclosure date for such calendar year.

(5) CONTRACTS TO DISBURSE.—For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(6) COORDINATION WITH OTHER REQUIREMENTS.—Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(7) COORDINATION WITH INTERNAL REVENUE CODE.— Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986. USC 434 note. (b) RESPONSIBILITIES OF FEDERAL COMMUNICATIONS COMMISSION.—The Federal Communications Commission shall compile and maintain any information the Federal Election Commission may require to carry out section 304(f) of the Federal Election Campaign Act of 1971 (as added by subsection (a)), and shall make such information available to the public on the Federal Communication Commission’s website.

## SEC. 202. COORDINATED COMMUNICATIONS AS CONTRIBUTIONS.

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(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

(C) if—

- (i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 304(f)(3)); and
- (ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee; such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate’s party and as an expenditure by that candidate or that candidate’s party; and”.

**SEC. 203. PROHIBITION OF CORPORATE AND LABOR DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS.**

(a) **IN GENERAL.**—Section 316(b)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(2)) is amended by inserting “or for any applicable electioneering communication” before “, but shall not include”.

(b) **APPLICABLE ELECTIONEERING COMMUNICATION.**—Section 316 of such Act is amended by adding at the end the following:

(c) **RULES RELATING TO ELECTIONEERING COMMUNICATIONS.**—

(1) **APPLICABLE ELECTIONEERING COMMUNICATION.**—For purposes of this section, the term ‘applicable electioneering communication’ means an electioneering communication (within the meaning of section 304(f)(3)) which is made by any entity described in subsection (a) of this section or by any other person using funds donated by an entity described in subsection

(a) of this section. “(2) **EXCEPTION.**—Notwithstanding paragraph (1), the term ‘applicable electioneering communication’ does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) made under section 304(f)(2)(E) or (F) of this Act if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))). For purposes of the preceding sentence, the term ‘provided directly by individuals’ does not include funds the source of which is an entity described in subsection (a) of this section.

(3) **SPECIAL OPERATING RULES.**—

(A) **DEFINITION UNDER PARAGRAPH (1).**—An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity described in subsection (a) directly or indirectly disburses any amount for any of the costs of the communication.

(B) **EXCEPTION UNDER PARAGRAPH (2).**—A section 501(c)(4) organization that derives amounts from business activities or receives funds from any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the

communication out of a segregated account to which only individuals can contribute, as described in section 304(f)(2)(E).

(4) DEFINITIONS AND RULES.—For purposes of this subsection—

(A) the term ‘section 501(c)(4) organization’ means—

(i) an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

(ii) an organization which has submitted an application to the Internal Revenue Service for determination of its status as an organization described in clause (i); and

(B) a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(5) COORDINATION WITH INTERNAL REVENUE CODE.—Nothing in this subsection shall be construed to authorize an organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 to carry out any activity which is prohibited under such Code.’’

#### SEC. 204. RULES RELATING TO CERTAIN TARGETED ELECTIONEERING COMMUNICATIONS.

Section 316(c) of the Federal Election Campaign Act of 1971

(2 U.S.C. 441b), as added by section 203, is amended by adding at the end the following:

(6) SPECIAL RULES FOR TARGETED COMMUNICATIONS.—

(A) EXCEPTION DOES NOT APPLY.—Paragraph (2) shall not apply in the case of a targeted communication that is made by an organization described in such paragraph.

(B) TARGETED COMMUNICATION.—For purposes of subparagraph (A), the term ‘targeted communication’ means an electioneering communication (as defined in section 304(f)(3)) that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(C) DEFINITION.—For purposes of this paragraph, a communication is ‘targeted to the relevant electorate’ if it meets the requirements described in section 304(f)(3)(C).’’

**XVII. Table Summary of Media Regulations**

	<b>UNITED STATES</b>	<b>ESTONIA</b>	<b>UNITED KINGDOM</b>	<b>ITALY</b>
<b>MEDIA MAKE-UP</b>	<p align="center"><b>Television</b></p> <ul style="list-style-type: none"> <li>- Private channels (e.g., ABC, CBS, NBC) dominate airwaves.</li> <li>- Public Broadcast Station (PBS) receives money from the government, but also has to rely on contributions and advertising to keep it afloat.</li> </ul> <p align="center"><b>Radio</b></p> <ul style="list-style-type: none"> <li>- Largely same set-up as television with a domination of private broadcasting.</li> </ul> <p align="center"><b>Newspaper</b></p> <ul style="list-style-type: none"> <li>- Declining in popularity.</li> </ul> <p align="center"><b>Internet</b></p> <ul style="list-style-type: none"> <li>- Exploding in popularity. Mostly commercial and largely unregulated.</li> </ul>	<p align="center"><b>Television</b></p> <ul style="list-style-type: none"> <li>- Public/State-run:</li> <li>- Largest Broadcaster is <i>Eesti</i> television</li> <li>- Private/Commercial:</li> <li>- 3 main commercial television channels: TV1, Kanal 2, and TV3</li> </ul>	<ul style="list-style-type: none"> <li>- Largest Broadcaster in Britain is the British Broadcasting Corporation (BBC)</li> <li>- Television Viewership Percentages as of 2005: <ul style="list-style-type: none"> <li>- BBC1 - 23.3%</li> <li>- BBC2 - 9.4%</li> <li>- ITV 1 - 21.5%</li> <li>- C4 - 9.7%</li> <li>- Five - 6.4%</li> <li>- Others - 29.6%</li> </ul> </li> </ul> <p>During a year, the BBC claims to reach more than 94% of the UK population. In television, in 2000-2001 BBC1 (26.8%) and BBC2 (11%) combined for nearly a 40% share of the total television audience. BBC Radio had 52% of the radio audience at the beginning of 2001. Nevertheless, Britain also has a large, and expanding, commercial audio-visual sector</p>	<p align="center"><b>Television</b></p> <p>Public – RAI</p> <p>Private – Mediaset (primarily owned by Berlusconi)</p> <p>There are other minor private channels, but Berlusconi and RAI create a “duopoly” and dominate the television market.</p>
<b>CHIEF LEGISLATION</b>	Bipartisan Campaign Reform Act of 2002	Riigikogu Election Act of 2002  The Law on Broadcasting (1994)  Political Parties Act (2002)	Was Section 93 of the Representation of the People Act. This has seen been repealed and now it is left up to “broadcasters’ codes.”	Law no 515  Gasparri Law  Law no. 28 of 2000 Law no. 29 of 2000

				<p>The main rule provides for granting equal access to programs on radio and television broadcasting containing political opinions, such as party political broadcasts, debates, round tables and other programs where the expression of political views appears to be relevant to all parties involved in the elections (as well as those involved in the popular referendum). The transmission of such programs is compulsory for the public service (RAI) and for private national concessionaires transmitting free on air. Detailed provisions establish the criteria relating to the presence (on screen or on radio) of political subjects (<i>i.e.</i>, proportionate to the degree of representation of the political party), the duration of political advertisements and the transmission of news.</p>
<p><b>COURT CHALLENGES</b></p>	<p><i>McConnell v. Federal Election Commission</i> (Supreme Court case, October 2003)</p> <p>Decision: 5-4 in favor of FEC (very divided and opinionated Court)</p> <p>Upheld: (1) Ban on "soft money" contributions to political parties and federal candidates and (2) restriction of television and radio "issue ads" by corporations and</p>	<p>Not Available</p>	<p>Not Available</p>	<p>Not Available</p>

	<p>unions right before elections.</p> <p>Repealed: Restricting minors from making contributions</p> <p>Unintended Result/Loophole: Money has been shifted to 527s.</p>			
<b>PRECEDENT:</b>	<p><i>Buckley v. Valeo</i> (1976)</p> <p>Question Presented: Did the limits placed on electoral expenditures by the Federal Election Campaign Act of 1971, and related provisions of the Internal Revenue Code of 1954, violate the First Amendment's freedom of speech and association clauses?</p> <p>Conclusion: It is constitutional to restrict the amount a person may contribute to a campaign, but not to restrict individual expenditures by a candidate.</p>	Not Available	Not Available	Not Available
<b>PREVIOUS LEGISLATION</b>	Federal Election Campaign Act of 1971	Not Available	Section 93 of the Representation of the People Act	Not Available
<b>ELECTION COVERAGE TERMINOLOGY</b>	<p>Electioneering Communication is defined as any broadcast, cable, or satellite communication that fulfills each of the following conditions: refers to a clearly identified candidate, is publicly distributed shortly before an election for the office that candidate is seeking; and is targeted to the</p>		<p>Public Election Broadcasts (PEBs) are broadcast opportunities given to parties which allow them five minutes to convey their election message. These are independent of journalists and the parties may pretty much say what they wish.</p>	

	relevant electorate (U.S. House and Senate only)			
<b>OVERSIGHT</b>	Federal Election Commission	The National Electoral Commission is in charge of enforcement.	Broadcasters utilize a system of self broadcasting in covering elections. The Committee on Party Political Broadcasting is made up of broadcasters and political parties. They dictate the allocation of time to each party and the broadcasters by and large reflect this through their media coverage. Coverage is free and on the “stop watch” method where all coverage is timed to ensure it is cohesive with the allocation of time agreed to by the Committee on Party Political Broadcasting.	<p>Public Broadcasters:</p> <p>The regulations for telecommunications, radio and television broadcasting are supervised by two bodies, which are fully autonomous and independent in their judgments and evaluations.</p> <p>Two bodies: Parliamentary Committee for the general supervision of broadcasting services (<i>Commissione</i>) and Authority for equal protection of communications (<i>Autorita</i>).</p> <p>Private Broadcasters:</p> <p>A regulatory body known as the Guarantor for Radio, Television and the Press was created by Italian press law. Its mandate was extended to radio and television in 1990. The Guarantor is appointed by the president on the basis of parliamentary recommendations. Law No 515 gave the Guarantor additional powers in relation to elections. In summary these are to: ensure equal access by political parties to the press and private broadcasters and to determine the maximum and minimum fees for political advertising.</p> <p>The Guarantor is assisted by</p>

				Regional Committees for Radio and Television. Again, these are pre-existing regulatory bodies. They play essentially a monitoring role, informing the Guarantor where the regulations and Law No 515 have been complied with.
<b>PUBLIC COVERAGE</b>	Must fall within guidelines set by BCRA. No distinction between public and private.	Only pre-election debates are allowable	There is no legal distinction between the period before close of nominations and the period after it.	There is direct access election coverage given to parties.
<b>PRIVATE COVERAGE</b>	Must fall within guidelines set by BCRA. No distinction between public and private.	Parties may buy “slots.” Only limited by the amount they are willing to pay.	There is no legal distinction between the period before close of nominations and the period after it.	Standard of equal access to parties.
<b>COOLING OFF PERIOD</b>	Under Title II (Sec 201) of BCRA Electioneering Communication refers to "any broadcast cable, or satellite communication which is made within 60 days before a general special or run-off election for the office sought by the candidate or 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate for the office sought by the candidate."	There is a complete ban on outdoors advertising in the six weeks before elections, but this is in a legal dispute.	BBC Editorial Policy:  5.14 – What happens on polling day itself?  Polling day reporting at all elections must avoid any references to election issues and, until the close of poll, restrict to factual news about the election. Public opinion polls and reviews of the morning papers may be included as well as statements of news importance by the parties, but counter-statements by opposing parties are broadcast as well.	Law No. 28 of 2000 says that no political poll results may be reported 15 days up to an election.  In the 30 days prior to a general election, local administrations, public institutions and their representatives are not allowed to promote debates or publish material in support of a political party or its candidates (Law no. 515/99 and no. 28/2000). However, it is particularly difficult to control and prevent the presence of institutions and their representatives in an electoral campaign. This is especially evident in local elections when the party that rules a municipality attempts to be re-elected.

<p><b>DEFINITION OF COVERT ADVERTISING</b></p>	<p>In the U.S., the Federal Elections Commission does not define covert advertising, <i>per se</i>. Instead, it uses the term “electioneering communications” as the area of regulation which is any broadcast, cable or satellite communication that fulfills each of the following conditions: The communication refers to a clearly identified candidate for federal office. The communication is publicly distributed shortly before an election for the office that candidate is seeking, and the communication is targeted to the relevant electorate (U.S. House and Senate candidates only).</p>	<p>In Estonia, advertising during the Election period is regulated by the 1994 Law on Broadcasting. However, the only area in Estonian media that is strictly regulated during the election campaign is Public Broadcast (ETV). The Law on Broadcasting imposes the principles of equality and impartiality in the coverage of election campaign on ETV. The rules also regulate the amount and price of advertising. Importantly, there is no special election regulation for private media, both print and audiovisual so that all forms of political advertising are allowed. The Law on Broadcasting regulates only sponsorship—it is prohibited to use sponsors for the news, current affairs and political programs. Like other countries, the Estonian legislation does not define for the election period sources of covert advertising.</p>	<p>The regulation of advertising in Britain is a sensitive issue as it deals with fundamental freedom of speech issues. While the BBC bans paid political advertising, the question remains how to deal with covert advertising. The BBC uses a “stopwatch rule” in which the corporation keeps a record of the time allocated in news bulletins to the different political parties with the aim of keeping the balance in conformity with the proportional allocation of time for party election broadcasts. The principle of record-keeping is an important one—the broadcaster must know exactly what it has broadcast in order to be able to answer any subsequent complaints.</p>	<p>Perhaps no issue in Italian elections has received criticism as the use of covert advertising by the then Prime Minister Silvio Berlusconi. While both Italian public and private media are regulated during the election cycle (by different institutions), Law 28/2000 is supposed to regulate covert advertising. According to 28/2000, communication (comparative presentation of electoral programs, roundtables, debates, interviews) should give equal space to all political subjects, so as to guarantee fairness and equal access to media. Participation in programs of political communication is free. However, Law 28/2000 suffers from the problem of strictly defining programs of political communication which are often used for more understated propaganda. News programs and commercials are examples in which politicians have been known to advertise general consumer goods.</p>
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