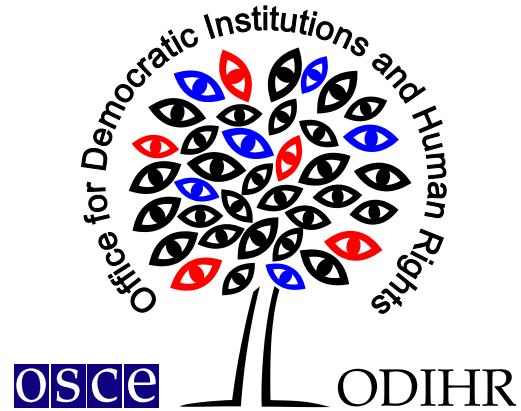


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NOTE

ON

THIRD PARTY REGULATIONS

IN THE OSCE REGION

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I. EXECUTIVE SUMMARY

1. While resources are necessary for vigorous political party activities and election campaigns, money may corrupt the political process and undermine democratic accountability. Consequently, all countries in the OSCE region use at least some regulations, and almost all require financial reporting to further transparency.
2. Most regulatory models are however based on the assumption that money is only used by those who directly participate in elections, especially political parties and candidates. This ignores the fact that organisations and individuals who do not formally run in elections – so called ‘third parties’ – may, and often do, engage in activities that affects the political and electoral processes in the country.
3. Traditionally, such activities were left unregulated, but since the turn of the millennium, a small but growing number of countries in the OSCE region have introduced rules on the financial involvement of third parties in political processes and election campaigns. This has included reporting requirements as in the UK, donation bans and limits as in Ireland, spending limits as in Latvia and bans on purchasing media advertising as in Belgium.
4. This discussion paper analyses existing studies, standards and regulatory approaches regarding third parties. A typology of third parties is provided, and the specific regulations and experiences used in different European countries are highlighted.
5. Based on the analysis, this discussion paper recommends that all countries in the OSCE region should study the involvement of third parties in electoral and political activities, and that such studies should include whether the involvement of third parties may have a negative impact on political finance transparency, or be used to bypass existing political party and campaign finance regulations. Potential negative results of regulating third party involvement should also be carefully considered, such as hampering fundamental freedoms.
6. If it is decided to regulate third party involvement, key issues must be considered, such as the specific activities to be regulated, the expenditure to be covered, reporting requirements, and appropriate anti-circumvention measures. Any regulation of third party involvement must be accompanied by a clear oversight mandate given to an institution with the necessary independence, powers and resources to engage with this issue effectively. Clear guidance must be provided to assist those who may wish to engage in such activity.
7. Further recommendations to be considered are included at the end of this discussion paper.

II. INTRODUCTION

8. Money is a necessary part of the political process, and “political parties need appropriate funding to fulfil their core functions, both during and between election periods”, as stated in the Joint Guidelines on Political Party Regulation issued by ODIHR and the Council of Europe’s European Commission for Democracy through Law (Venice Commission).¹ At the same time, the presence of money in politics always brings the risk of undue influence, corruption and inequality between actors. As a result, all OSCE pSs regulate the finances of political parties and election campaigns, including restrictions on permissible sources of income, financial reporting requirements, and in some countries limitations on the amounts that can be donated to or spent by political parties and candidates.
9. One area that remains unregulated in most OSCE countries is the involvement of entities (organisations or individuals) that through their actions may impact the chances of success of policy options or of individual political parties or candidates, without these entities themselves presenting candidates in elections.²
10. These entities commonly referred to as “third parties” (as they are neither political parties or candidates) contain various forms of organisations, or sometimes individuals, who engage in political processes and electoral campaigns in one form or another.³ The concept of third parties covers a wide range of entities, from those set up by political parties as a way to bypass party finance regulations to entities that are fully independent from political parties, but which wish to ensure that a particular issue (for example health or immigration) is addressed. Different types or categories of third parties are discussed below in the Section ‘A typology of third party involvement in political processes’.
11. Some forms of third party involvement in politics have been in place as long as there have been elections based on universal suffrage. For example, the labour movement in many countries in the OSCE region has for a long time commonly consisted of a number of institutions including trade unions, advocacy groups and institutions to organise labourers. Often contrasting the labour movement have been networks of employers and business interests, again taking various organisational forms such as employer associations and think tanks. The involvement of these organisations in political debate and election campaigns does not result from political party and campaign finance regulation – in many countries, such third party involvement preceded political finance regulations by decades.
12. Other forms of third party involvement may however be the result of more political finance regulations having been introduced over the last few decades. When stricter

¹ OSCE/ODIHR and Venice Commission (2011) Article 159.

² This report does not address the issue of third party involvement in referenda campaigns. It should be noted however that similar problems and underlying considerations addressed in this discussion paper also apply to referenda campaigns.

³ This concept has no connection to the mainly US term of “third parties” as referring to political parties other than the main two.

criteria are introduced – for instance on who can make a donation, how much they are allowed to give and when the identity of donors must be made public, as well as on how much that can be spent on election campaigns –, there is a risk that funds become diverted to such entities that are not covered by these regulations. Commenting on regulations in the UK, Michael Pinto-Duschinsky has argued that “when one channel of funding is banned, money flows into political life through other channels; and restrictions on party funding lead to the growth of lobby groups as offshore islands of parties.”⁴

13. Another aspect of third party involvement in political processes and election campaigns may relate to the decline of political parties as institutions of political mobilisation in countries in the OSCE region over the last few decades. A comparison of party membership figures in 17 European countries in the 1980s and around the year 2000 showed a decline in every country, and this trend has been supported by subsequent studies.⁵ Similarly, Dalton has identified a declining level of party identification in a series of established democracies.⁶ Many scholars have argued that this does not reflect a decline in political interest among the electorate. Instead, “rather than a simple disengagement from politics, new individualised forms of collective participation have become more prevalent”.⁷ While reliable data is unavailable for most countries in the OSCE region, this shift in participation may also account for the perceived increase in third party activity in recent years.
14. The increasing use of new technologies for communication may also have altered the role of political parties in the political discourse. Citizens have means of expressing their political views and communicating with others through social media outlets that were not available a few decades ago. The availability of these communication tools may further have impacted the respective role of political parties and third parties during and in-between elections.⁸
15. Spending by third parties is sometimes at significant levels.⁹ In Sweden for example, non-party organisations often spend significant amounts on election campaigns. One example is the SEK 27 million (around EUR 2.6 million) that one single third party, the *Swedish Trade Union Federation*, spent on the 2010 election campaign according to official figures – the equivalent of 10 per cent of the total amount spent by parliamentary parties during the same election campaign.¹⁰ The involvement of third parties in Swedish election campaigns is not connected to regulations on political finance (there are no limits on donation or spending), but is rather part of the political history of the country.

⁴ Pinto-Duschinsky (2009).

⁵ Scarrow & Gezgor (2010) page 825, van Biezen (2013).

⁶ Dalton (2002) pages 24-28.

⁷ Faucher (2014) page 2. Admittedly, the issue of “rival structures or forms of political organization which encroach upon and even usurp the functions of parties” has been discussed for a long time. See Sainsbury (1983).

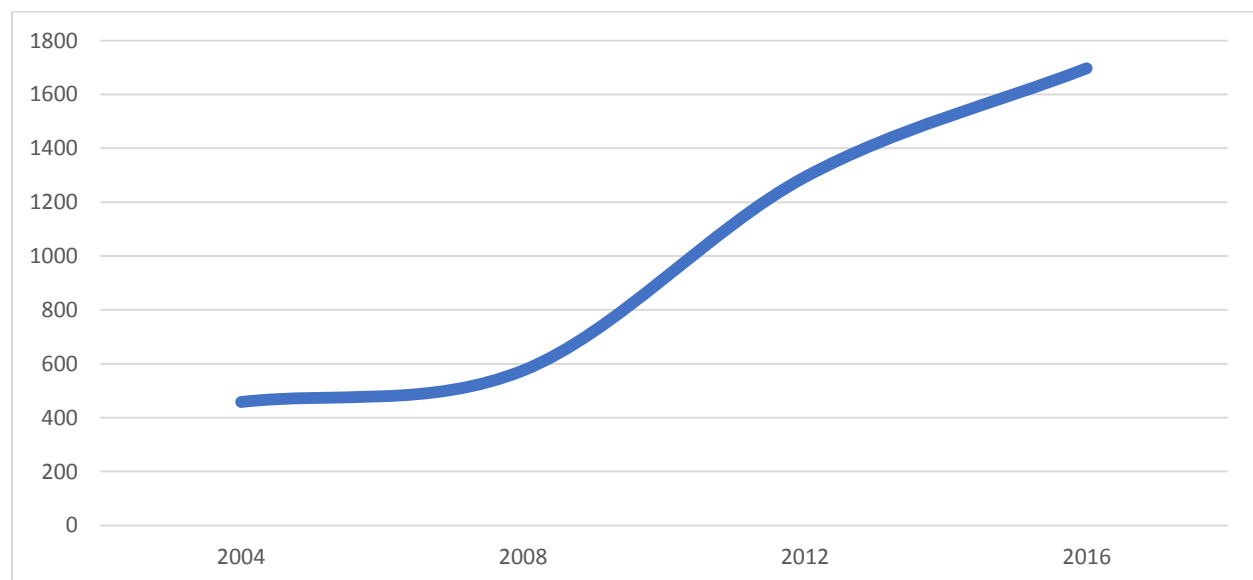
⁸ The role of new technologies has implications far beyond third party involvement, and beyond the scope of this discussion paper. For a recent study on this issue, see Bennett, Segerberg & Knüpfer (2018).

⁹ Information is not available for many European countries as no regulations of third party involvement in election campaigns exist.

¹⁰ Data from Ohman (2016) page 174. On the right of centre side of the Swedish political spectrum, the Confederation of Swedish Enterprise spent over SEK 500 million (around EUR 47 million) on campaigning in relation to the 2004 referendum on introducing the Euro as currency. Ibid.

16. A 2018 report by the Atlantic Council argues that a German organisation known as the “Rights and Freedom Club” spent between EUR 20 million and EUR 30 million on campaign activities supporting the political party Alternative für Deutschland (AfD) between 2016 and 2018.¹¹ This should be compared to the reported AfD income in 2016 of EUR 16 million. These activities are fully legal under German law. Since German organisations engaging in campaigning, other than political parties, are not required to reveal their funding sources, no information is available on who has funded a significant part of the campaigning in favour of AfD in recent years.¹²
17. There is also evidence that third party spending as part of overall spending is increasing in US elections. The graph below shows how outside spending during general elections has increased from around USD 460 million in 2004 to nearly USD 1,700 million in 2016.¹³

Figure 1, Spending by outside groups in US (presidential and parliamentary) elections (USD million)



18. A comparison of third party and candidate spending highlights the substantial involvement of third parties in electoral contests. For example, the third party funds supporting the electoral campaign of Hillary Clinton was the equivalent of 41% of the candidate committee funding (for Donald Trump the same figure was 22%).¹⁴
19. Third party involvement has sometimes had an important impact on electoral processes. In the 2005 elections in New Zealand, the *Exclusive Brethren Church* engaged in a large-scale third party campaign in favour of the largest opposition party (largely through negative campaigning against other parties). Though it was not argued that any laws were

¹¹ Atlantic Council (2018), pages 2, 6-9.

¹² Ibid.

¹³ Calculated from OpenSecret (2018a).

¹⁴ Calculated from OpenSecrets (2018b). These figures only cover third party funding that is reported officially, not the so-called “dark money” that is not reported to the federal authorities. See further OpenSecrets(2018c).

violated, the substantial third party campaign may have had a role in the party more than doubling its number of seats in the election.¹⁵

20. This discussion paper analyses the regulatory practice primarily in different European countries of the OSCE, including countries where no such regulations have been introduced. It shows that while most countries do not regulate this area, a growing number have introduced at least some regulations on third party financial involvement in politics in recent years. Drawing mainly from an analysis of the experience of these countries in the OSCE region, recommendations are presented for consideration in relation to third party regulation.

III. THE CONCEPT OF THIRD PARTIES

21. The concept of third party in electoral politics is intended to capture those involved in political processes and election campaigns without being an entity that presents candidates in an election. Political parties, (partisan or independent) candidates, coalitions, citizen groups or lists that present lists or individual candidates for inclusion on the ballot in an election are therefore excluded from this definition. These entities will be known in this report as “direct contestants”.

22. The OSCE/ODIHR Handbook for the Observation of Campaign Finance describes the phenomenon this way:

Legislation in some states covers campaigning, fundraising and spending by individuals and organizations that are not legally tied to any candidate or party but campaign for or against candidates or parties, or on specific issues. Instead of giving donations, these persons and entities, usually known as “third parties” or “non-party campaigners”, spread information to the public directly.¹⁶

23. Similarly, the International IDEA *Funding of Political Parties and Election Campaigns* publication defines third party campaigning as “electoral campaigning undertaken by individuals and/or organizations other than political parties or candidates. These third parties may campaign for or against specific parties, candidates or issues”.¹⁷ In line with these definitions, the concept of third party in this report also excludes entities that *fundraise* in favour of a direct contestant and gives funds to this contestant, but which *do not spend* any funds themselves on campaign activities.

24. However, the term “third parties” unfortunately is sometimes used with different meanings in discussions about political finance. In the Council of Europe Group of States Against Corruption (GRECO) reviews of political party finance, as part of its third round of evaluations, the definition of third party involvement varied between countries.¹⁸ In some cases, the GRECO report analysed the presence or absence of direct regulations of

¹⁵ See for example NZHerald (2006) and TVNZ (2005).

¹⁶ OSCE/ODIHR (2015a) page 37.

¹⁷ Falguera, Jones & Ohman (2014) page 395.

¹⁸ See <https://www.coe.int/en/web/greco/evaluations/round-3>

activity undertaken by non-direct contestants. In other cases, however, the concept of “third parties” is used in GRECO country reports in relation to *donations* to political parties. As an example, GRECO recommended in its report on Armenia that the authorities should “find ways to increase the transparency of contributions by third parties in the financing of political parties and election campaigns”, and later declared this recommendation as “implemented satisfactorily” as legal changes “provide for contributions to political parties and election candidates to be channelled through the relevant accounts and to be reported accordingly”.¹⁹ In the GRECO evaluation reports on Georgia and Norway, a discussion about reporting requirements for donors is headed “third parties”.²⁰ While transparency in party and campaign income is certainly positive, it does not relate to third party involvement in the sense the concept is used in this report.

25. To avoid confusion, the below table defines the key terms used in this report. While some countries have a well-developed terminology for third parties and their regulation, for example the UK and the US, it has been decided to not use the formal terminology from any particular country here, to avoid confusion between the general discussion in this report and the regulatory approach in any particular country.

Table 1, Concepts used in this document

Terms	Meaning in this report	Comment
Direct contestant	An entity that presents candidates in elections	May include political parties (partisan and independent) candidates, coalitions, citizen groups and lists
Third party	An entity not presenting candidates in elections, but engaging financially in election campaigns, for example by purchasing advertising or printing posters or other information materials	Various types can be considered, see the discussion in this report. Making a donation to a direct contestant does not transform the donor into a third party.
Independent spending (or uncoordinated activity)	Third party activity that is not undertaken in concert, agreement, coordination or pursuant to a common plan with any direct participant	When third party spending is not undertaken independently of a direct participant, some jurisdictions attribute the expenditure to the direct participant for reporting and spending limit purposes.

¹⁹ GRECO (2010a) page 16, GRECO (2012) page 9. A similar discussion is for example included in the GRECO evaluation and compliance reports relating to political party finance in Lithuania.

²⁰ GRECO (2008a) page 13 and GRECO (2011f) page 13.

IV. REASONS FOR REGULATING THIRD PARTY INVOLVEMENT

26. Various reasons have been provided in the debate about money in politics for regulating third parties, and the ones discussed below are those raised most frequently. It is valuable for countries in the OSCE region to consider these, though it may decide that regulations in this area are not desired in particular countries at this point in time.

1. Increasing transparency

27. One central argument for political finance regulations generally is to increase transparency regarding where those wishing to represent the people and govern a country get their money, and how they use it. The principle of transparency in political finance is established in the United Nations Convention Against Corruption (UNCAC); it is one of the core principles in the Council of Europe recommendation on political finance, and a main pillar in the OECD Framework on Financing Democracy Supporting Better Public Policies and Averting Policy Capture.²¹
28. If a lot of campaign finance goes through third parties rather than through political parties and candidates, the financial reporting by the direct contestants that is required by law in almost all countries in the OSCE region will only to a limited extent lead to transparency. Introducing reporting requirements for third parties may increase the information available to the electorate, and give a more complete picture of the funds flowing through the political process. Transparency International has identified as a good practice “ensuring that political campaigns run by third parties are also subject to regulations that reveal the identities of their donors”.²²

2. Ensuring that regulatory objectives are not undermined

29. Most countries in the OSCE region have some restrictions on permitted sources of campaign income, or on the amounts that can be donated or spent on election campaigns. These regulations are often intended to reduce dependency of political actors on wealthy interests, and sometimes to reduce the overall role of money in the electoral process.
30. If anyone can make unlimited donations to third parties, who can then spend unlimited amounts on campaigning in favour or against a particular political party or candidate, the political finance regulations are undermined, and their intention often ignored. Where spending limits do exist for direct contestants, introducing similar restrictions for third parties can help to close a loophole reducing the efficacy of such limits. This has been recognised by international bodies, political finance experts and national legislatures.
31. The OSCE/ODIHR, for example, has acknowledged that:

²¹ UNCAC Article 7.3, Council of Europe (2003) Article 3.A and OECD (2016) page 30.

²² Transparency International (2018) page 6.

*When third parties spend considerable amounts of funds on an election campaign, this may raise concern about the applicability and efficacy of spending limits, and reporting and disclosure requirements for those entities. Indeed, depending on legislation, third parties can be used as a way to circumvent contribution and spending limits, especially when limits do not apply to expenses incurred by those entities.*²³

32. To give a practical example, the OSCE/ODIHR Election Assessment Mission to the 2017 early parliamentary elections in Austria noted that:

*...the campaign expenditure ceiling could be circumvented through third parties engaging in campaign activities for or against a contestant. The fact that third parties are not obliged to file financial reports or disclose sources of funding and expenditures undermines the transparency of campaign finance and the effectiveness of ceilings.*²⁴

33. Political finance expert Yves-Marie Doublet has argued that:

*It seems likely that there will be a correlation between the maximum laid down for election expenses and the existence of third parties. Setting a ceiling for party spending on election campaigns is not likely to be effective if, at the same time, other groups such as interest groups, trade unions and associations can spend unlimited amounts of money on behalf of or to oppose a particular political cause.*²⁵

34. Equally, a House of Commons report noted that the third party regulations in the UK are “...intended to prevent those with vested interests from having an undue effect on elections by by-passing rules relating to donations and loans to political parties”.²⁶ Ensuring compliance is another of the pillars in the OECD Framework on Financing Democracy Supporting Better Public Policies and Averting Policy Capture.²⁷
35. Expanding existing regulations to also cover third parties can close the loopholes that third party involvement can otherwise create, and thus be a way of combatting corruption in the political process.

3. Increasing equality of opportunity and protecting the role of political parties

36. The final rationale for regulating third party involvement in election campaigns relates to political equality. Equality in this context means allowing for third party involvement whilst ensuring that the voices of direct-contestants are not drowned out. In its ruling on the *Libman vs. Quebec* case, the Canadian Supreme Court argued that the objective of Canadian legislation on political finance was:

²³ OSCE/ODIHR (2015a) page 37. See also Pinto-Duschinsky (2013) page 27.

²⁴ OSCE/ODIHR (2017b) page 11.

²⁵ Doublet (2011) page 26.

²⁶ Uberoi (2016) page 14.

²⁷ OECD (2016) page 31.

*...egalitarian in that it is intended to prevent the most affluent members of society from exerting a disproportionate influence by dominating the referendum debate through access to greater resources. What is sought is in a sense an equality of participation and influence between the proponents of each option.*²⁸

37. Political equality is also one of the pillars in the OECD Framework on Financing Democracy Supporting Better Public Policies and Averting Policy Capture, and in analysing the Council of Europe recommendations on political finance, van Biezen emphasised the importance of “democratic participation and competition between parties”.²⁹
38. In short, although the voice of non-contestants should be heard, “unrestrained third party election activities have the potential to threaten the place of political parties as the primary political organizations.”³⁰ This issue is increasingly important as the fall in political party membership and trust in most parts of the OSCE region has reduced the ability of political parties to credibly present themselves as representatives of the electorate. No other organisational form has however emerged as an alternative to political parties, and as OSCE/ODIHR has stated, “political parties play a key role in realizing [the]... encouragement and promotion of equal opportunity for full participation of women and men in all aspects of political and public life...”³¹
39. The Canadian Lortie Commission stressed this argument by concluding that:
- Parties remain the primary political organizations for recruiting and selecting candidates for election to the House of Commons, for organizing the processes of responsible parliamentary government, and for formulating policy that accommodates and reconciles competing regional and socioeconomic interests. As legitimate as interest groups are in a free and democratic society, by their nature they cannot perform these crucial functions.... It is therefore imperative that electoral reform address the fundamental objective of strengthening political parties as primary political organizations.*³²
40. It is important that the role of third party involvement in the political and electoral process in any country is analysed carefully, and that it is considered whether introducing regulations on third party involvement may enhance the identified goals in the country regarding the control of money in politics. If the decision is taken to regulate third party

²⁸ Cited in Feasby (2003) page 17. In its ruling the Supreme Court further argued that ““the basic objective of the Act at issue is to guarantee the democratic nature of referendums by promoting equality between the options submitted by the government and seeking to promote free and informed voting. In its egalitarian aspect, the Act is intended to prevent the referendum debate being dominated by the most affluent members of society. At the same time, the Act promotes an informed vote by ensuring that some points of view are not buried by others. This highly laudable objective, intended to ensure the fairness of a referendum on a question of public interest, is of pressing and substantial importance in a democratic society.” Supreme Court of Canada (1997) page 571.

²⁹ OECD (2016) page 30. The remaining OECD pillar is “fostering a culture of integrity”. van Biezen (2003) page 14.

³⁰ Feasby (2003) page 19.

³¹ OSCE/ODIHR (2011) page 5, quotations in reverse order. See also van Biezen (2003) page 11.

³² Cited in Reid (2018) pages 1088-1089.

involvement, the intention and goals of such regulations should be clearly stated. This allows oversight institutions and other actors to judge whether the goals/intentions are met once the regulations have been implemented. In addition, the rules will need to be carefully drafted as restrictive regulation of third party involvement may encroach on fundamental freedoms of citizens and organisations.

V. INTERNATIONAL STANDARDS ON THIRD PARTY INVOLVEMENT

41. There are more regional documents focused on political finance standards in the OSCE region than in any other region. Key documents include the 1990 OSCE Copenhagen document, the 2003 Council of Europe recommendations on *Common rules against corruption in the funding of political parties and electoral campaigns* and the OSCE/ODIHR and Venice Commission 2010 *Guidelines on political party regulation*.³³ Rulings by the European Court of Human Rights (ECHR) in cases such as *Bowman vs. United Kingdom* and *Animal Defenders International vs. United Kingdom*.³⁴
42. The OSCE Copenhagen document does not explicitly refer to third parties, but does address principles related to third party involvement. For example, the document establishes that;

*...everyone will have the right to freedom of expression including the right to communication... The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.*³⁵
43. The standards focusing directly on elections largely focus on direct contestants, however. For example, the right to “freely present[ing] their views and qualifications” is mentioned in relation to political parties and candidates, while “unimpeded access to the media” should be provided to “all political groupings and individuals wishing to participate in the electoral process” (the latter could be interpreted to also include third parties).³⁶
44. The Council of Europe recommendations also do not mention third parties directly, though they do argue (in Article 6) that “Rules concerning donations to political parties, with the exception of those concerning tax deductibility referred to in Article 4, should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party.”³⁷ In calling for the extension of donation regulations to third parties, the Council of Europe emphasises the principle of transparency. The focus of transparency is repeated in Article 11, which states that;

States should require political parties and the entities connected with political parties mentioned in Article 6 to keep proper books and accounts. The accounts

³³ CSCE/OSCE (1990), Council of Europe (2003) and OSCE/ODIHR and Venice Commission (2010).

³⁴ European Court of Human Rights (1988) and European Court of Human Rights (2013).

³⁵ CSCE/OSCE (1990) Article 9.1.

³⁶ CSCE/OSCE (1990) Articles 7.7 and 7.8.

³⁷ Council of Europe (2003) Article 6.

*of political parties should be consolidated to include, as appropriate, the accounts of the entities mentioned in Article 6.*³⁸

45. Article 13 then states that political parties should report and publish information relating to these accounts “at least annually”.³⁹ Interestingly, the recommendation that states should consider “establishing limits on expenditure on electoral campaigns” does not include a reference to party-related entities.⁴⁰
46. The OSCE/ODIHR and Venice Commission Joint Guidelines on Political Party Regulation does directly refer to third parties. The article in question reads in full:
- A party might attempt to circumvent campaign finance requirements by conducting activities during a “pre-electoral” period or through use of others as conduits for funds or services. The use of others as conduits is known in some countries as the use of “third parties”. To limit this abuse, strong systems of political party financial reporting outside of elections must be enacted. Legislation should provide clear guidelines regarding which activities are not allowable during the pre-election campaign, and income and expenditures used for such activities during this time should be subject to proper review and sanction. Legislation should clearly state to whom political party funds may be released in the pre-election period and the limitations upon their use by third parties not directly associated with the party.*⁴¹
47. The OSCE/ODIHR and Venice Commission reference to third parties focuses on entities formally unrelated to direct contestants but acting in coordination with such actors. By focusing on third party involvement as a way of bypassing regulations on political party and campaign finance, the OSCE/ODIHR and Venice Commission recommendations take an overall negative view of this phenomenon. The explanation provided within the Article for regulating third parties focuses largely on the rationale discussed above under the heading “Ensuring that regulatory objectives are not undermined.”
48. Taken together, the standards in the OSCE region emphasise the right to freedom of expression and association without undue limitations, that entities related to direct contestants should be bound by similar regulations as the direct contestants themselves, especially when it comes to regulations on donations, record keeping and reporting. They also stress that ways should be sought to avoid direct contestants using third parties to bypass existing regulations. The implication of these standards supports the above statement that the actual role of third parties in the political and electoral process should be studied carefully, and that regulations should be considered, bearing in mind potentially negative consequences on the fundamental freedoms if done in a disproportionate manner.
49. The impact of third party regulation on *gender equality* is complicated. Increased gender equality is central to OSCE standards and political goals, and it is generally held that enforcement of political finance regulations benefits gender equality by reducing the

³⁸ Ibid Article 11.

³⁹ Ibid Article 13.

⁴⁰ Ibid Article 9.

⁴¹ OSCE/ODIHR and Venice Commission (2011) Article 205.

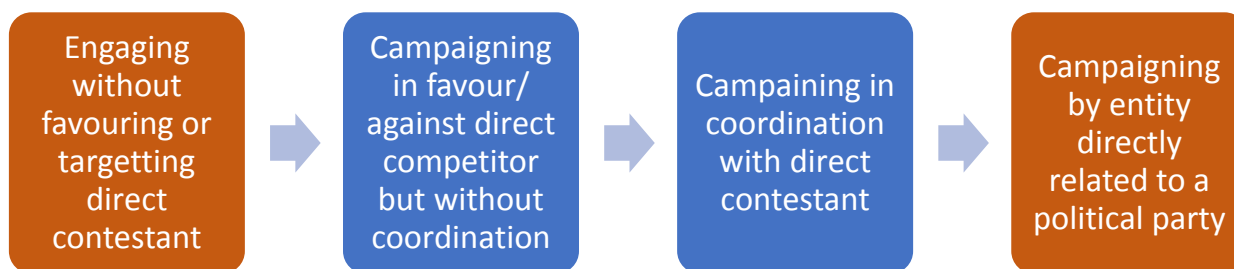
advantages of those, more commonly men, with access to wealthy interests.⁴² In the same vein, enforced political finance regulations may assist in supporting a more equal participation of vulnerable groups. Regulations of third party involvement of political finance could assist in increasing compliance with regulations and their intention, such as disclosure requirements and spending limits.⁴³ Third party regulations can also increase the available information regarding money in the electoral and political process, and assist research and action against inequalities.⁴⁴

50. On the other hand, third party regulations undoubtedly place a certain burden on organisations involved in the electoral process by requiring them to comply with regulations that may in some cases be significantly restrictive. These rules will in most cases also apply to groups that support women candidates and candidates from vulnerable groups, and in some cases also to organisations that wish to raise increases equality as an issue in electoral campaigns.⁴⁵
51. More research is required regarding the relationship between third party regulation and gender equality. There is no reason to believe that the introduction of such regulations would in itself solve gender inequalities in the political process, but it is possible that such regulations could form part of a larger package of reform aimed at favouring increased gender equality.⁴⁶

VI. A TYPOLOGY OF THIRD PARTY INVOLVEMENT IN POLITICAL PROCESSES

52. Third party involvement can be categorised in different ways. For the purposes of this discussion paper, four categories are employed, based on the connection to direct contestants and the intention/nature of the activity undertaken (other typologies are of course possible). As will be discussed below, the legislation in some countries only regulates the activities of one or some of these categories. A typology of this kind typology can serve as a starting point to assess which type of third party involvement that may benefit from regulation in individual countries.

Figure 2, Types of third party campaigning



⁴² Ballington & Keohane (2014) page 334, OSCE/ODIHR (2014) page 48 & 76.

⁴³ See the discussion on formal political finance regulations in and gender equality in Ballington & Keohane (2014) page 316.

⁴⁴ OSCE/ODIHR (2014) page 87.

⁴⁵ This would include organisations such as EMILY's LIST in the US. Ballington & Keohane (2014) page 328-330.

⁴⁶ Among other regulations to be considered are gender-targeted public funding. See Ohman (2018).

1. Engaging independently without favouring or targeting any direct contestant

53. The first category to consider focuses on entities engaging in electoral campaigns that do not seek to favour or target a particular direct contestant, aiming rather to have contestants address a particular issue that the third party feels strongly about – sometimes referred to as “issue advocacy”.
54. Cases of this kind of activity are very common. The targeted issues can range from protecting a local health service institution from closure to getting political parties to commit to drastically alter public policy in a key area. Often, an issue advocacy campaign will ask political parties or contestants to give their view of a particular issue, publishing their responses jointly, or asking politicians to commit to certain legislative action if elected. A recent review of third party regulation in the UK addressed the forms of engagements discussed here by arguing that:
- Advocacy of an issue is an important way for charities, trade unions, companies and others to influence public debate. Political campaigning contributes to a healthy democracy, whether it is seeking to influence the legislative programme of the Government or the content of a political party’s manifesto.*⁴⁷
55. There are only a couple of countries in the OSCE region that regulate issue advocacy in a political finance context, even if the activity has no component of favouring or disfavouring a particular direct contestant. One such exception may be Ireland, where the concept of “political purpose” may be taken to include activities not focused on supporting or disfavouring a direct contestant; see the case study on Ireland below. A second exception is the UK, which bans all paid political broadcast advertising. The ban was upheld by the ECHR in *Animal Defenders International vs. United Kingdom*.⁴⁸
56. The difficult challenge, however, is to separate “pure issue advocacy”, to use a concept from Colin Feasby, from efforts that may impact how people vote, as part of what Feasby calls “shame issue advocacy... thinly veiled election advertising”, or as attempts to encourage the electorate to vote for contestants that support the same policy agenda as the third party.⁴⁹ As noted below regarding the *Bowman vs. United Kingdom* case, publishing the views of direct contestants regarding a particular policy issue in the midst of an electoral campaign can be seen as favouring a particular direct contestant.
57. There are cases where groups conducting issue advocacy have chosen to register as a third party, even though they did not consider themselves as campaigning in favour of or against any direct contestant. The Czech coalition of civil society groups advocating for legal reforms against corruption in the country, including the adoption of a political finance act also covering third party involvement, decided to register as the first such third party to show their commitment to transparency (see further below in the case study on the Czech Republic).

⁴⁷ Lord Hodgson of Astley Abbots (2016) page 25.

⁴⁸ European Court of Human Rights (2013).

⁴⁹ Feasby (2003) page 13.

58. A larger issue is to what extent actors really need to spend money to participate in electoral dialogues. Sirota has stressed that;

*Lack of financial resources is no longer an insuperable obstacle to citizens, NGOs, or social movements seeking to inject their views in election campaigns. All they need is a free Facebook page or Twitter account—and a message that will catch on.*⁵⁰

2. Involvement independently in favour or against a direct contestant

59. A second category of third party involvement consists of election campaign activity that favours or targets a direct contestant, but where the campaigning is not done in coordination with any direct contestant. In the US context, such activities are known as “independent spending”.
60. In countries where the objective in regulating political finance focuses on anti-corruption and not political equality, they may be less imperative in regulating third party activity that is not coordinated with direct contestants. This point is well illustrated by the US legal framework, which has been heavily impacted by Supreme Court rulings rejecting the notion of equality as a legitimate basis for regulating election finance. It is perhaps not surprising that there is a significant number of third parties in the US that play a very significant role in electoral campaigns.⁵¹
61. However, as discussed more fully below, many countries still impose some level of regulation on third parties that engage in election activity independently of direct contestants. For example, there may be registration requirements, reporting obligations as well as restrictions imposed on sources of funding and types of expenditures.

3. Involvement in coordination with a direct contestant

62. The third category covers entities that formally have no connection to a political party or other direct contestant, but which in practice conduct election campaigning in coordination with such a contestant. This group is the focus of the OSCE/ODIHR and Venice Commission recommendations regarding third parties discussed above.
63. From this perspective, third party involvement in election campaigns is seen as attempts by political parties to bypass existing political party and campaign finance regulations. The third party will often be registered as a legal entity without any organisational or financial connections to a direct contestant (most commonly a political party), but engage in electoral campaigning in coordination with a particular contestant to support this

⁵⁰ Sirota (2015) page 287. Further research is needed about the use of social media in election campaigns, both by direct contestants and by third parties.

⁵¹ Third parties at the national level are often registered as non-connected political action committees (PAC) and many of those that only engage in independent spending, are commonly known as Super PACs. For further information, see Gerdes (2014) and information about their finances is available at OpenSecrets (2018d). The latter source indicates that as of October 24, 2018, 2,217 groups organized as super PACs had reported total receipts of \$1,090,583,148 and total independent expenditures of \$526,565,771 in the 2018 election cycle.

contestant or to attack the electoral opponents of the contestant in question. Such activity can therefore be considered as “coordinated third party activity”.

64. The key motivation for using a third party will often be connected to the regulations imposed on direct contestants. There may be, for example, restrictions on the direct contestants’ funding sources, limits on how much they can spend or mandatory reporting obligations. If third parties are not bound by similar rules, they can become an attractive vehicle for circumventing the regulatory framework. Regulating third party involvement can therefore be essential in deterring circumvention.
65. The exact definition of “coordination” varies, and in some countries such as the US, much time is spent distinguishing between coordinated and “independent” campaigning and campaign spending.⁵² The background to this emphasis is largely that the US Supreme Court sees the exclusive justification for regulating political finance to be anti-corruption, and argues that independent spending cannot create undue influence over direct contestants in the way that direct donations may.⁵³ Putting it differently:

*The U.S. Supreme Court has held that independent expenditures do not pose a corruptive threat because there is no coordination with the candidates and cannot be limited in the manner that contributions to candidates and campaign-related expenditures can be, irrespective of who is making the independent expenditure.*⁵⁴
66. The regulatory systems in countries in the OSCE region that have rules on third parties generally do not expressly address the issue of coordination. There are a couple of notable exceptions. In the UK, an activity is coordinated if “done pursuant to a common plan” with a direct contestant. A 2008 ruling by the Constitutional Council in France is also relevant in this regard. The council ruled that a candidate had conducted a campaign event in coordination with a legal entity, and that the candidate had through this benefitted from assistance from a legal entity, which is prohibited in the French system. The ruling meant that the candidate lost her seat.⁵⁵
67. In each of these countries, ‘coordination’ has regulatory consequences. In the US, where there are virtually no campaign spending limits, the expenses incurred for the coordinated activity will be treated as a contribution to the direct contestant. Contributions to direct contestants are capped in the US and if the value of the coordinated activity exceeds the permissible limit, it will be treated as an illegal donation.
68. In the UK, the cost of the activity will count against the direct contestant’s spending limit, which may expose them to having made excessive expenditures. For candidates, this would be a criminal offense. Exceeding the spending limit constitutes an illegal

⁵² In US federal regulations, “independent expenditure” is defined in the US Law (2018), 11 CFR 100.16(a), as “expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents.” The spending should not be considered independent if “the person making the expenditure allows a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents to become materially involved in decisions”, 11 CFR 100.16(c).

⁵³ Feasby (2003) page 16.

⁵⁴ National Conference of State Legislatures (2017).

⁵⁵ Conseil Constitutionnel (2008), OSCE/ODIHR (2012) page 16.

practice, for which a fine may be imposed upon conviction. If the candidate submitted a false declaration (e.g. one that omitted the costs of the coordinated activity), it could constitute a corrupt practice. Upon conviction of a corrupt practice, the candidate could be liable to pay a fine and/or possible imprisonment. In addition, conviction for a corrupt practice could result in the candidate being barred from holding public office.⁵⁶

69. The issue of coordination may take on more significance in other countries in the OSCE region, should direct contestants increasingly use third party involvement to bypass existing regulations on political party and campaign finance.
70. The third parties in this category may be considered “indirectly related” to a political party within the meaning of the Council of Europe recommendation mentioned in the previous section, though it is not clear what constitutes an indirectly related entity, nor how political parties would report coordinated activities.

4. Involvement by entities formally connected to a political party

71. The final category to be considered are entities with a formal relationship to a political party, such as women’s wings, youth wings and think tanks that are directly related to a party.⁵⁷ These entities do not themselves present candidates in elections, but do normally actively engage in election campaigns.
72. The regulatory framework in most countries would not consider entities of this kind as third parties, and no cases are known in the OSCE region where they have to submit financial reports separate from the political party to which they are connected in a political finance context.⁵⁸
73. In some countries in the OSCE region, political parties must include information about connected entities in their financial reporting. For example, the 2018 Swedish law on political party finance requires parties to also include income received through “side-organisations”, and if several organisations are connected to the party, each such organisation should report about its income separately (through the political party in question).⁵⁹ The GRECO report on political party finance in Belgium also noted that it was unclear if entities “such as youth or women's associations... should be treated as third parties within the meaning” of existing legislation.⁶⁰ GRECO also discussed potential challenges connected to the absence of transparency regarding Finnish party-related institutions, noting that various GRECO interlocutors raised concerns that “the risk of circumvention of transparency rules governing political party funding by funnelling ‘interested money’ through associations/foundations connected with political

⁵⁶ UK law (1983) Sections 76, 8f2 and 173.

⁵⁷ In some cases, sub-national party structures have a legal identify separate from the political party at a national level. Such cases are however not discussed in this paper.

⁵⁸ Such entities may have to submit financial reports in other contexts, such as in relation to being registered as civil organisations or being recipient of state support, but not through their connection to a political party or their involvement in political or electoral processes.

⁵⁹ Sweden law (2018) Article 3, translation by author.

⁶⁰ GRECO (2009) page 19.

parties.”⁶¹ Finland subsequently changed its legislation so that party-related entities would be covered by the financial reporting requirements.⁶²

74. This category of third parties is arguably the main focus of the Council of Europe recommendation discussed above – organisations that are “directly related” or “under the control” of political parties.⁶³ GRECO evaluations of political party financing also frequently use the term “third party” to refer to organisational structures of this kind.⁶⁴ The regulatory focus for these types of organisations is that their financial activities should be reported by the political party as part of the party finances, and that restrictions on party financing, such as prohibited donations and caps on donations, do also apply to these entities.
75. This document will primarily focus on entities involved in election campaigning that are *not* directly related or under the control of political parties.

5. Summarising the typology

76. To summarise the above discussion, there are four categories of third party involvement relevant to the discussions here, as summarised in the figure on page 12. However, the involvement of that do not favour or target a direct contestant is not normally considered as part of third party campaigning, although the legal definitions used in some countries mean that many forms of issue advocacy might be considered as favouring or disfavouring a particular direct contestant. Entities formally connected to a political party are normally seen as part of political parties in a political finance context rather than as third parties, including in some cases requirements for political parties to report on the finances of organisations that are separate from the party, but which have a formal connection to the party. The majority of this report will therefore focus on the two middle categories – the involvement of stakeholders in favour or against a direct contestant, with or without coordination with a direct stakeholder.
77. Regulations of third party involvement can be worded in various ways. Georgian legislation for example extends the reporting requirement and donation limits that apply to political parties to “individuals with declared electoral goals who are using corresponding financial and other material resources to achieve these goals”.⁶⁵ This provision is intended to cover activities by third parties as well as by candidates or political party officials, but it has been argued that it is “...unclear about who is subject to the provisions of this law”.⁶⁶

⁶¹ GRECO (2007a) page 15-16.

⁶² GRECO (2011d) page 10.

⁶³ Council of Europe (2003) Article 6.

⁶⁴ As examples, see GRECO (2011a) page 11,

⁶⁵ Ohman & Klein (2012) page 12. The current wording is an amendment of a wording introduced into the law in 2011 that also extended these requirements to persons related to or with a business relation to anyone with declared political or electoral goals. This provision was considered too broad and the 2012 amendment narrowed it to the current wording.

⁶⁶ Ibid.

VII. FORMS OF THIRD PARTY REGULATIONS

78. The level of political party and campaign finance regulation varies significantly between countries in the OSCE region, with some having countries only applying limited reporting requirements and no if any restrictions (for example in Sweden), whereas the regulations in many East Europe countries employ detailed restrictions on political party and campaign finance.
79. As mentioned above, most countries in the OSCE region has not regulated third party involvement at all, apart from in some cases noting that the finances of entities formally connected to political parties should be included in the financial reporting of each party. Should it be decided to introduce regulations of third party involvement, these rules can like the overall political party and campaign finance regulations vary from liberal to a strict approach, with many middle approaches available in-between.
80. One approach to regulating third party involvement in election campaign would be to ban it outright. The Nigerian Constitution for example states (Article 221) that:
- No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.*⁶⁷
81. However, banning involvement in campaigns for those who are not direct contestants may, under ECHR rulings, be seen as an undue limitation of the freedom of speech. In this context, the legislation in Romania, as amended in 2016, is very interesting. Law 334-2006 on the financing of the activity of political parties and election campaigns states (Article 36.4) that “expenses related to propaganda materials shall be borne solely by their beneficiaries – independent candidates, political parties or political alliances”.⁶⁸ Reviewing the provisions in the context of an earlier recommendation to further regulate third party activity, GRECO concluded that the “...production or payment by third parties of ‘propaganda materials’ is a misdemeanour, a situation that may most certainly have a preventive effect...”⁶⁹
82. While a complete ban on third party involvement in election campaigns is not seen as acceptable in most countries in the OSCE region, imposing some restrictions on their involvement certainly is.⁷⁰ As is shown below, most countries in the OSCE region do not regulate third party involvement in election campaigns. However, OSCE/ODIHR has stated that:

Third parties should be free to fundraise and express views on political issues as a means of free expression, and their activity should not be unconditionally prohibited. However, it is important that some form of regulation be extended

⁶⁷ Nigeria law (1999). The Electoral Act of Nigeria states that any funds received by political parties in contravention of this Constitutional provision should be forfeited (Article 90.2), but does not regulate the issue further, and there is no information that this provision has been enforced.

⁶⁸ Romania Law (2006).

⁶⁹ GRECO (2017a) page 5.

⁷⁰ See for example the rulings by the ECHR discussed in the case study of the United Kingdom below.

*to third parties that are involved in the campaign, to ensure transparency and accountability.*⁷¹

83. If a country decides to introduce financial regulations regarding the involvement of third parties in election campaigns, there are different issues that must be addressed in developing a regulatory framework. Regulations must not be so restrictive as to unduly limit fundamental freedoms in the electoral and political process, and should generally be in line with those used for direct contestants.
84. There are also a series of issues that need to be addressed when regulating third party activity. These include:

1. Who may be allowed to engage in third party campaigning?

85. In many countries in the OSCE region, there are restrictions on who can make donations to direct contestants. Most countries, for example, ban foreigners from contributing to political parties and candidates. In this regard, the Council of Europe stresses that ‘States should specifically limit, prohibit or otherwise regulate donations from foreign donors’.⁷² Similarly the OSCE/ODIHR and the Venice Commission highlights that ‘this is an area which should be regulated carefully’.⁷³ In other several jurisdictions legal entities such as companies and trade unions are banned from donating. It is reasonable for these rules to be extended to third party campaigning to ensure consistency and close down potential avenues for circumventing restrictions on sources of donations.

2. What type of third party involvement might be regulated?

86. There should be clarity about what type of third party involvement will be subject to regulation and this requires that there be a workable statutory definition/test. Some activity is blatantly election related. By way of illustration, an organisation with an environmental focus produces a billboard during the election campaign that reads, “Don’t vote for political parties which reject climate change, such as parties X and Y”. The electoral purpose of the communication is unambiguous. However, other activities may be less clear cut, e.g. the distribution of voter guides that identify the candidates/parties’ position or voting record on a particular issue but that don’t explicitly exhort the reader to take any action.
87. In developing a test for determining whether an activity is to be regulated, it will be necessary to decide what factors to consider when assessing its purpose. The purpose of an activity, for example, can be determined by what a reasonable, independent person would conclude based on all of the circumstances presented. Alternatively, the determining factor could be what the third party actually intended, based on its own assertions. The framing of the test may influence the effectiveness and enforceability of the regulation. For example, if Is the actual intent of the third party controls, then one

⁷¹ OSCE/ODIHR (2015a) page 37.

⁷² Council of Europe (2003) Article 7.

⁷³ OSCE/ODIHR and Venice Commission (2011) Article 172.

might expect few third parties to acknowledge upfront, for example, that their intent was to influence electoral outcomes.

88. In the UK, a third party is “any person or body other than a registered party” (or candidate) that incurs spending that “can reasonably be regarded as intended to promote or procure electoral success at any relevant election” for a particular party or candidate”.⁷⁴ Importantly, the UK law encompasses not just campaigning to directly favour or disfavour a particular party or candidate, but also campaigning intended to promote the electoral success of:

*...one or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties, or... candidates who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of candidates.*⁷⁵

89. The majority of regulations of third party activity in countries in the OSCE region found in this study focus on this category – campaigning to favour or disfavour a direct contestant, without taking into account whether or not the activities are coordinated with a direct contestant.

3. What types of spending might be regulated?

90. It is also important to decide what type of election campaign expenses are subject to regulation. For example, should only the production and placement of the billboard be included in reporting and count towards spending limits, or also opinion polls testing the effectiveness of the message? For third parties to be able to comply with regulations, what counts as campaign spending must be defined.⁷⁶
91. Until 2014, UK law targeted only a limited range of election expenses – namely, expenditure on the production or publication of ‘election material.’ The amendments in 2014 expanded this to include spending on canvassing, market research, press conferences, transport and public rallies and events.
92. Another notable aspect of UK law is that only activities aimed at the public are regulated under the third party provisions. The goal is to allow organisations to communicate with its members without being subject to regulation. There has been some debate about what constitutes the ‘public’ but by and large the provision seems to have worked fairly well in practice.

⁷⁴ UK Law (2000) Section 85.

⁷⁵ Ibid.

⁷⁶ The same applies for the ability of direct contestants to comply with political finance regulations. IFES (2013) pages 13 and 58-59.

4. What might be the time period for regulating third party expenditure?

93. If the regulatory system imposes reporting requirements or spending limits on third party activity, it is essential to determine the time period during which these regulations apply. This consideration most often arises in countries that have regulated campaign period for direct contestants. It may be that the same period of regulation is appropriate for both direct contestants and third parties. However, in the UK for example, political party spending for general elections is regulated for 365 days before polling day. Such a lengthy time period could create significant regulatory burdens for third parties and could be viewed as imposing undue restrictions on their freedom of expression. If, however, a shorter period of regulation applies only to third party expenditure, it is critical that the law encompass anti-circumvention measures such as a ban on coordinated activity.

5. What regulations might be applied to third parties?

94. It is essential to consider the underpinning goal(s) for third party regulation to establish what forms of regulation are most appropriate. If the goal, for example, is to increase transparency, then registration and reporting requirements will be critical. If reducing the overall cost of election campaigns is the key goal, then consideration should be given to imposing spending limits. By contrast, donation or spending limits for third parties in countries where no such limitations exist for direct contestants could be seen as an undue limitation of fundamental freedoms.
95. Regulatory options include registration and reporting requirements, as well as qualitative and quantitative donation and spending restrictions, as outlined in the table below.

Table 2, Types of third party regulations

Type of regulation	Purpose served	Issues to be addressed	Used in
Registration requirement	Facilitates other forms of regulations and oversight. Enhances transparency by identifying active third party actors.	Should all third parties be obliged to register, or should registration only be required for those spending above a set threshold?	Czech Republic, Ireland, Slovakia, UK (in some cases)
Submission of financial reports	To increase transparency of income and spending in relation to election campaigns. See the Council of Europe Recommendation 2003(4).	For which period should transactions be reported? What should be the frequency and timing for submission of	Slovakia, UK (in some cases)

		<p>reports?</p> <p>What should be the level of detail in reports (relates both to the administrative burden on third parties and to the privacy of donors)?</p> <p>How will the information be published?</p>	
Donation bans	Applying the same restrictions on third parties as on direct contestants supports the concept of equality. It also reduces the risk that direct contestants will use third parties to bypass such restrictions. See the Council of Europe 2003(4) and the OSCE/ODIHR & Venice Commission recommendation (2010).	Should bans only apply to funds used for third party involvement or for all of the third party activities? (e.g., an organisation may be allowed to receive foreign funding for non-electoral activities, but not election campaign activities).	Ireland, Sweden (indirectly) UK (in some cases)
Donation limits	Limiting donations for third parties reduces the chances for direct contestants bypassing party/campaign donation limits. See the Council of Europe 2003(4) and the OSCE/ODIHR & Venice Commission (2010) recommendations.	<p>What is the time period to which the limit applies?</p> <p>At what level should the limit be set, and should it be at the same level as for direct contestants? (</p>	Ireland
Ban on advertising ⁷⁷	Ban on paid advertising that applies both to direct contestants and to third parties reduces cost of electoral campaigns and supports equality amongst participants.	<p>What types of advertising mediums (TV, radio, newspaper, online media, other) are to be regulated?</p> <p>What constitutes campaign advertising (likely to be similar to</p>	Belgium, France, Ireland, UK

⁷⁷ See Centre for Law and Democracy (2012) page 3.

		considerations of activities that constitute third party involvement)?	
Spending limit	A spending limit for third parties reduces the chances for direct contestants to bypass party/campaign spending limits (assuming that there are no rules on coordination) and may reduce undue influence. See the OSCE/ODIHR & Venice Commission (2010) recommendations.	<p>What is the test for determining that and activity is to be regulated as third party spending?</p> <p>What types of spending count towards the spending limit?</p> <p>Should the limit be expressed at a national and/or constituency level?</p> <p>What should the level of the spending limit be?</p>	Czech Republic, Slovakia, Latvia, UK
Anti-circumvention provisions	Avoid direct participants using third parties to circumventing rules such as donation or spending limits.	<p>How will “coordination” be defined?</p> <p>What are the consequences when third parties ‘coordinate’ their activities with direct contestants?</p>	UK (other countries only apply rules for directly related entities) ⁷⁸

96. While almost all countries in the OSCE region ban donations from certain sources to political parties and candidates (most commonly state institutions and foreign sources), this report has only found similar regulations for third parties in Ireland and the UK. An indirect provision exists in the Swedish Penal Code, which bans any person from accepting money from a foreign power if the intent is to influence public opinion on significant issues for the realm.⁷⁹

97. It seems that only Ireland imposes limits on *donations* to third parties, a type of regulation that similarly to third party spending limits could arguably reduce the risk of

⁷⁸ Some provisions in France and Latvia may also be seen as relating to coordination.

⁷⁹ Sweden Law (1962) Chapter 19, Section 13.

- direct contestants using third parties to bypass existing regulations (donation limits to political parties in election campaigns exist in 33 per cent of European countries, and donation limits to candidates exist in 48 per cent of countries).⁸⁰
98. It is a general rule in political finance that formal regulations do not alter the role of money in politics by themselves – rules must be enforced, and the compliance with such rules by direct contestants and (in this case) third parties monitored.⁸¹ For this to be possible, a clear mandate must be given to an oversight institution with the necessary independence, powers and resources to effectively monitor compliance and enforce regulations.⁸² This power must include the mandate to either impose sanctions on third parties that fail to comply, or to initiate sanctioning procedures, depending on the overall administrative regulations in each country.⁸³
99. A key task for the oversight institution is to provide guidance on any third party regulations. It can be especially challenging to reach organisations and individuals who may not be aware that their activities could be subject to regulation, unlike political parties and candidates. Among the issues that guidance should address are: the activities that will subject them to third party regulations; their obligations as third parties, and how to comply with them. As third party regulations may apply to volunteer organisations or even individuals, it is essential that guidance is easily accessible.⁸⁴
100. Finally, the role of money in the electoral and political process is constantly changing, and political stakeholders are likely to respond to regulations in different ways, not always anticipated in the initial reforms.⁸⁵ As a consequence, it is necessary to regularly review the impact and effectiveness of any third party regulations in light of the stated intention and goals of such regulations. It is recommended that such a review be carried out after each general election (as part of an overall review of existing political finance regulations). Such reviews may also inform whether an earlier decision not to regulate third party involvement remains valid. See the UK case study for the results from one such review.

⁸⁰ Data from the International IDEA political finance database, see <https://www.idea.int/data-tools/data/political-finance-database> . Data from 42 countries.

⁸¹ Ohman (2014).

⁸² OSCE/ODIHR (2010) Articles 211-214.

⁸³ For more about political finance sanctions, see OSCE/ODIHR (2010) Articles 215-217 and 224-228.

⁸⁴ As positive examples see the UK Electoral Commission (2016a, 2016b and 2017).

⁸⁵ IFES (2013) page 7.

VIII. REGULATIONS OF THIRD PARTY INVOLVEMENT IN DIFFERENT EUROPEAN COUNTRIES

1. Countries that do not regulate third party involvement

101. A number of countries in the OSCE region do not regulate the involvement of third parties in election campaigns, beyond possibly entities that have a formal relationship to a political party.⁸⁶

OSCE participating States that do not regulate the involvement of third parties
Albania, ⁸⁷ Andorra, ⁸⁸ Armenia, ⁸⁹ Austria, ⁹⁰ Belarus, ⁹¹ Bosnia and Herzegovina, ⁹² Bulgaria, ⁹³ Cyprus, ⁹⁴ Denmark, ⁹⁵ Estonia, ⁹⁶ Finland, ⁹⁷ Germany, ⁹⁸ Hungary, ⁹⁹ Iceland, ¹⁰⁰ Italy, ¹⁰¹ Lichtenstein, ¹⁰² Lithuania, ¹⁰³ Malta, ¹⁰⁴ Moldova, ¹⁰⁵ Norway, ¹⁰⁶ Portugal, ¹⁰⁷ Slovenia, ¹⁰⁸ Turkey, ¹⁰⁹ Sweden ¹¹⁰ , Switzerland ¹¹¹ and Ukraine. ¹¹²

⁸⁶ Third party regulations exist also in the OSCE participating states of Canada and the United States. In Canada, oversight of third party activities is the mandate of Elections Canada, and 147 third parties were registered in the 2019 federal elections, being subject to reporting requirements and spending limits. See further Elections Canada (2020). In the United States, often complicated regulations exist at both federal and state levels, often using the concept of political action committees. See footnote 51 above, and also see the “Pacronym” list at the website of the Federal Election Committee, <https://transition.fec.gov/pubrec/pacronyms/Pacronyms.pdf>

⁸⁷ Reed (2017) page 12.

⁸⁸ In Andorra, the absence of regulations of third party finances is related to a lack of political party accounting obligations. GRECO (2011a) page 11.

⁸⁹ GRECO (2010a) page 11, GRECO (2012) page 9.

⁹⁰ GRECO (2011b) page 11, OSCE/ODIHR (2017b) page 2.

⁹¹ OSCE/ODIHR (2015c) page 9.

⁹² GRECO (2017b) page 10-11.

⁹³ GRECO (2010b) page 21, GRECO (2013a) page 7.

⁹⁴ GRECO (2011c) page 10, GRECO (2013b) page 10.

⁹⁵ GRECO (2009b) page 14, GRECO (2011e) page 7.

⁹⁶ OSCE/ODIHR (2015b) page 2.

⁹⁷ GRECO (2011d) page 11. The current regulations require financial reporting by political parties to include transactions relating to party-related entities, but do not regulate the activities of entities campaigning in favour of or against a particular direct competitor.

⁹⁸ OSCE/ODIHR (2017a) page 1.

⁹⁹ OSCE/ODIHR (2018f) page 8.

¹⁰⁰ OSCE/ODIHR (2018g) page 1.

¹⁰¹ OSCE/ODIHR (2018d) page 13.

¹⁰² GRECO (2016b) page 10.

¹⁰³ GRECO (2009d) page 22.

¹⁰⁴ OSCE/ODIHR (2017c) page 13.

¹⁰⁵ OSCE/ODIHR (2016a) page 16.

¹⁰⁶ OSCE/ODIHR (2013) page 2.

¹⁰⁷ OSCE/ODIHR (2019) page 8.

¹⁰⁸ OSCE/ODIHR (2018e) page 7.

¹⁰⁹ OSCE/ODIHR (2018c) page 17.

¹¹⁰ Ohman (2016).

¹¹¹ Switzerland has effectively no political finance regulations at a federal level. GRECO (2018).

¹¹² Sydoruk (2017) pages 40 and 47. In *Belgium*, financial accounts submitted by political parties must take “account of expenditure made by third parties”, unless the political party has formally requested that the third party

102. The GRECO report on France tellingly notes that third party involvement in campaigning “is mostly considered in France to be an Anglo-Saxon concept”, which does not mean that such involvement does not take place in France, or that regulations do not exist, see above.¹¹³
103. In some cases, an absence of third party regulation can be explained by a reluctance to alter a well-established and entrenched system of political finance regulation. However, there are several examples where countries in the OSCE region have in recent years introduced political finance regulation, without addressing the issue of third parties. When Sweden passed its first ever law on political finance transparency in 2014, no regulations of third party involvement were included in this legislation. While the 2018 law extended the political party reporting requirements to also cover the finances of entities directly related to the party, no regulations exist regarding the involvement by for example trade unions or employer organisations.¹¹⁴ The situation was the same when Iceland passed its first political finance legislation in 2006.¹¹⁵
104. Other countries have flatly refused to engage with the third party issue. When GRECO recommended that the authorities in Denmark should seek ways to increase the transparency in donations from “related entities and interest groups etc” to political parties, the Danish parliament did not even discuss this issue (though it did discuss other GRECO recommendations).¹¹⁶ By the time of the sixth interim compliance report in 2018, the Danish government reported that while it recognised the value of increased transparency, it placed greater value on considerations regarding the “protection of the internal and economic affairs of the associations”, and that extended regulations would “cause more administrative work for the political parties that receive donations from associations”.¹¹⁷
105. No regulations of third party involvement in election campaigns exist in Hungary, and the OSCE/ODIHR Limited Election Observation Mission (LEOM) to the 2018 parliamentary elections noted that;
106. For example, the large-scale 15 March ‘peace march’, organized by a CSO, was not subject to campaign finance oversight. Further, the ODIHR LEOM observed instances of party-affiliated CSOs distributing goods on behalf of candidates. The lack of oversight of third-party spending undermines the effectiveness of the overall campaign finance system and impedes the ability of political actors to compete on a level playing field.¹¹⁸

ceases its campaign. GRECO (2009a) page 11. In *Moldova*, there is a ban on donations from third parties to political parties, but this concept is not further defined. CREDO (2004) page 10. A blanket ban on third parties purchasing advertising in favour of or against a direct contestant was proposed in an earlier legal amendment, but this was removed after a joint recommendation by the Venice Commission and the OSCE/ODIHR in 2013. OSCE/ODIHR and Venice Commission (2017) article 57.

¹¹³ GRECO (2009c) page 13.

¹¹⁴ For further information, see Ohman (2016).

¹¹⁵ GRECO (2008a), OSCE/ODIHR (2018g) page 1.

¹¹⁶ GRECO (2011e) page 7.

¹¹⁷ GRECO (2018) page 6.

¹¹⁸ OSCE/ODIHR (2018b) page 17.

2. The United Kingdom

107. Of the European countries that regulate third party finance, the UK “undoubtedly takes this approach to transparency and limits on third party expenses further than any other.”¹¹⁹ The first law regulating candidate campaign expenditures was enacted in 1883 but did not address spending by political parties or other entities. By 1917, concerns were raised about the non-regulation of spending of ‘pressure groups’ which led to the law being amended. Since then, courts have addressed the issue of third party regulation in a series of cases such as *R v. Hailwood* and *Ackroyd Ltd* (holding that the motive of the entity for undertaking the spending is not relevant), *DPP v Luft* (upholding *Hailwood* but requiring some element of intent to promote the election of a candidate) and *R v. Tronoh Mines Ltd* (limiting the then existing *regulatory provisions to activity referencing particular candidates, not to general party campaigning*).¹²⁰ In the 1959 general election, it is estimated that the iron and steel companies vastly outspent the two major parties on election advocacy and exceeded the cumulative amount reportedly spent by all candidates.¹²¹ Thus, the issue of third party spending has emerged as an issue at various times in the UK during the past century.
108. UK law distinguishes between third party campaigns for or against candidates in a particular electoral area (local campaigns) and general campaigns for or against a political party, policy or issue (“third party controlled expenditure”).
109. Local campaigns, which are regulated by the Representation of the People Act 1983 (or its equivalent in Scotland, Wales and Northern Ireland) limit spending incurred “with a view to promoting or procuring election of a candidate”¹²² during a period that generally runs from dissolution of Parliament until polling day. The police investigate breaches of the law and enforcement authority rests with the Crown Prosecution Service.
110. The validity of regulating third party local campaign expenditure underwent thorough examination by the ECHR in *Bowman vs. UK*¹²³. The ECHR decision provides some helpful insight into the sensitivities of this type of regulation.
111. During the 1992 general election campaign, Phyllis Bowman and the “Society for the Protection of the Unborn Child” printed a leaflet which stated that “We are not telling you how to vote, but it is essential for you to check on candidates' voting intentions on abortion and on the use of the human embryo as a guinea pig”, and which outlined the view on the subject of abortion of the three main candidates in a particular constituency.¹²⁴
112. Bowman was charged with exceeding the then third party spending limit of £5 (around EUR 11 by the current rate)¹²⁵, and though the case was dismissed on procedural grounds, Bowman referred the case to the European Commission of Human Rights which

¹¹⁹ Doublet (2011) page 26.

¹²⁰ Ewing (1987). The case references are [1928] 2 KB 277, [1977] AC 962 and [1952] 1 All ER 697.

¹²¹ *Ibid* page 91.

¹²² Feasby (2003) page 24.

¹²³ European Court of Human Rights (1998).

¹²⁴ *Ibid* page 4.

¹²⁵ Historical exchange rate taken from <http://inflation.iamkate.com/>

ruled that her right to freedom of expression had been violated (Article 10 in the European Convention on Human Rights).¹²⁶ The UK government submitted the case to the ECHR, which reaffirmed that some restrictions on freedom of expression are permissible but that the £5 limit at issue was practically an absolute bar and thus violated Bowman's freedom of speech.¹²⁷ The UK government responded to the court decision by raising the spending limit for third parties.

113. By contrast to local campaign regulations, third party spending for general elections has only been regulated since the passage of The Political Parties, Elections and Referendum Act 2000 (PPERA).¹²⁸ PERA, as amended in 2014, sets out a two-prong test for determining if third party expenditure is subject to regulatory controls. The first prong focuses on the purpose of the expenditure. To qualify as regulated third party spending, it must be seen as reasonably intended to influence voters to vote for or against a political party or a category of candidates. The second requirement is that the spending be targeted to the public and not just members of the third party organisation.
114. UK law imposes restrictions on who can donate to candidates and political parties and the same restrictions apply to those who wish to contribute to third parties. The amount that third parties are allowed to spend is limited, depending on the type of election and the area within the UK where campaigning takes place. The law also specifies a regulated period, which again varies depending on the election. For general elections, the period covers the 365 days preceding the election. This has been subject to debate as some argue that the period imposes too many regulatory burdens on third parties. As a result of amendments in 2014, the activity subject to regulation includes not only election materials (e.g., posters and flyers) but also election related activities such as opinion polls, media events and rallies.
115. Third party campaigners are not required to register with the Electoral Commission, but if they do not, their legal spending is limited to £20,000 in England or £10,000 in any of Scotland, Wales or Northern Ireland. However, once registered, they are allowed to spend up to £390,000 in the United Kingdom if a campaign covers the entire country, though not more than £9,750 in an individual constituency.¹²⁹ After elections, they must report to the UK Electoral Commission on their spending and donors. In particular, they must report the identity of all those donating more than £7,500, and the total value of donations received with a value of between £500 and £7,500.¹³⁰

¹²⁶ European Court of Human Rights (1998) page 4-6.

¹²⁷ Feasby (2003) page 25 highlights that the court ruling did "not make it clear whether it understood [the legal provision] to be a barrier to pure issue advocacy or just sham issue advocacy of the type found in Mrs. Bowman's leaflets." In its analysis of the ruling, the Committee on Standards in Public Life concluded that "Leaflets designed merely to bring factual information to the attention of voters or to assist a national campaign without referring to particular candidates fall outside the section". See Committee on Standards in Public Life Fifth Report(1998) page 129.

¹²⁸ UK law (2000).

¹²⁹ UK Electoral Commission (2017) page 19.

¹³⁰ Uberoi, Elise (2016) page 14.

116. A review of the third party regulations as applied in the 2015 general elections was requested by parliament and carried out by The Lord Hodgson of Astley Abbots.¹³¹ The review found that;

*Effective regulation which maintains public trust in our electoral system is in the interest of us all: it should not prohibit third parties from participating in public discourse at election time but it must ensure that the elections cannot be “bought”.*¹³²

117. As noted in the report, there were 68 third party campaigners registered in 2015 of which 47 were specifically for that year’s general election. The total amount reportedly spent by them amounted to £1.8 million and represented 4.8 % of the cumulative amount spent by political parties.¹³³
118. The involvement of third parties is also relevant to referendum contests. Although the UK law in this area is complex, for purposes here it is worth noting that the legal framework allows for entities wishing to campaign to take advantage of a higher spending limit by registering with the Electoral Commission. There also are rules governing coordination and common plans (e.g. joint activity undertaken by the organisation designated by the Electoral Commission as the lead campaigner for a particular outcome in the referendum and other campaign entities). The Commission investigated instances of ‘joint activity’ in the 2016 Referendum on the United Kingdom's membership of the European Union and referred the designated Leave campaigner and another entity to the police for potential criminal violations of the law. In particular, the Commission, inter alia, found that the expenditure for certain joint activity should have been reported by the designated organisation and counted against its spending limit. As a result, the Commission concluded that the designated organisation overspent its limit by nearly £500,000.¹³⁴
119. A study of the 2019 British elections found “multiple instances” of third party groups “with opaque funding mechanisms” being involved in the election campaign.¹³⁵

3. Ireland

120. Regulations on third party involvement in elections were introduced in Ireland through the 2001 amendment of the 1997 Electoral Act. Irish legislation defines a third party as any entity other than a registered political party or candidate that in a year receives a donation given for political purposes that exceeds a value of EUR 100.¹³⁶ Such entities must register with the Standards in Public Office Commission and “comply with the rules

¹³¹ Lord Hodgson of Astley Abbots (2016).

¹³² Ibid page 5.

¹³³ This represented a decline in spending from the hotly contested 2010 election where 33 third parties spent £2.8 million which was about 9% of cumulative political party spend.

¹³⁴ UK Electoral Commission (2018). See also the High Court judgment which concluded that the Electoral Commission should have concluded that as a result of this activity, the designated leave organisation and others had broken the law based on another statutory provision. UK High Court of Justice (2018).

¹³⁵ Computational Propaganda Project et al (2019) page 4.

¹³⁶ Standards in Public Office Commission (2015) page 4

regarding the opening and maintenance of a political donations account and the non-acceptance of prohibited donations”.¹³⁷

121. Ireland is the only country analysed in this report where the definition of a third party is connected to donations received rather than the activities conducted by an entity, though in practice the difference may be limited. The concept “political purposes” in this context means to act in favour or against any political party or candidate, in support of a particular outcome in a referendum, or:

*...to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority.*¹³⁸

122. With this latter definition of “political purpose”, it is possible that third parties within the last type presented above (entities engaging independently in election campaigns without favouring or targeting any direct contestant), may also need to register. The interpretation of “political purpose” has been debated in Ireland, and the Standards in Public Office Commission, which is in charge of overseeing third parties, has published some of the concerns raised.¹³⁹ The Irish Council for Civil Liberties argued that “potentially any individual or group which accepts donations could be captured by the definition of a third party”, that a strict interpretation “might stifle the advocacy and campaigning work of NGOs” and that;

*In American, Canadian and British legislation the restrictions on third parties are much more tightly circumscribed than is the case under Irish legislation and apply only to third parties which involve themselves in electoral activities during the period which precedes an electoral event. Such an approach would seem to provide a pragmatic model for the reform of the current Irish law.*¹⁴⁰

123. As of October 2018, there were 42 third parties registered with the Standards Commission, including two individuals.¹⁴¹ An analysis of the registered third parties shows that around half had as their focus campaigning for or against the repeal of the 8th amendment of the Irish Constitution in the 2018 referendum (technically the referendum asked if parliament should be permitted “to legislate for the regulation of termination of pregnancy”), while some registered third parties focused on campaigning in the 2015 referendum on same-sex marriage, or even on the 2009 referendum on the Lisbon Treaty.¹⁴² Only four of the 42 registered third parties have an explicit ideological stance on the traditional left-right political scale.¹⁴³

¹³⁷ GRECO (2009d) page 10, Standards in Public Office Commission (2015) .

¹³⁸ Standards in Public Office Commission (2015) page 11.

¹³⁹ Standards in Public Office Commission (2009).

¹⁴⁰ Ibid. See further Irish Council for Civil Liberties (2017) and Irish Times (2017).

¹⁴¹ Standards in Public Office Commission (2018).

¹⁴² Analysis by the author.

¹⁴³ Two of the registered third parties refer to themselves as “socialist”, while two are reported as far-right groups.

124. Irish third parties are not required to disclose their received donations, though they must report on their expenditure in connection to local government election campaigns within 90 days of polling day, in line with the requirements for political parties and candidates.¹⁴⁴
125. No limits exist on the amounts that a third party can spend, but they are banned from receiving donations from foreign sources, and there is a donation limit of EUR 1,000 in the case of a candidate and EUR 2,500 in the case of a political party.¹⁴⁵ The rules regarding loans to political parties also apply to third parties (loans where “normal rules” do not apply are considered as donations).
126. Third parties in Ireland are finally required to designate a “responsible person” who is legally liable for the activities of the third party.¹⁴⁶

4. Latvia

127. Third party involvement in election campaigns has been noted as an issue for a long time, although originally not all agreed that the issue needed to be regulated. In a 2001 report, Bob Dahl argued that:

*It is possible to prescribe a regulation and format for reporting ‘independent expenditures’ made by persons or groups. But, as the examples show, it is complicated to administer and difficult to enforce such regulations. At this stage of Latvia’s political development, it would be better to focus on preventing undue financial influence upon political parties and encouraging transparency of political party finance through reporting and disclosure.*¹⁴⁷

128. This view changed over time, as third party involvement in election campaigns became significant. In its initial assessment of political party finance in Latvia, GRECO noted that absence of third party regulation, seen as especially problematic in the 2006 elections (when spending limits were used for the first time);

...two parties/coalitions benefited considerably from publicity campaigns conducted by third party front organisations, allegedly set up specifically for this purpose by persons closely linked to the parties in question. The campaign conducted for the benefit of the two parties/coalitions allowed them to circumvent the aforementioned expenditure ceiling – reportedly by three times the campaign expenditure ceiling in one case – as well as the cap on donations. The two parties in question went on (together with two other parties/coalitions) to form the current coalition government. The issue cast a long shadow over the outcome of the 2006 elections (which was contested by two parties up to the European Court of Human Rights).

¹⁴⁴ GRECO (2009d) page 10, 15.

¹⁴⁵ Standards in Public Office Commission (2015) page 6.

¹⁴⁶ Ibid page 7. Further information about third party regulations in the 2019 elections is available at the Department of Housing, Planning and Local Government (2019).

¹⁴⁷ Dahl (2001) page 40.

129. Latvian authorities subsequently passed a legal amendment through which a chapter on “Campaigns of persons not related to political parties and associations thereof” was introduced to the laws on election campaigns in 2009.¹⁴⁸ If an entity engaged in campaigning is declared to be linked to a political party, any campaign expenses incurred by this entity are considered as part of the political party’s expenditure. It seems that the criteria for judging this link is not whether spending was coordinated with that of a direct contestant (compare with the approach in the UK and the US), but rather whether the entity is administratively connected to a political party.
130. If the entity is determined to be independent, it must be identified as incurring campaign spending, and be subject to a spending ceiling of 15 minimum wages.¹⁴⁹ Such entities are subject to supervision by the Corruption Prevention and Combating Bureau (KNAB), and subject to warnings and fines in cases of violations. KNAB can order the end of a media campaign if it believes that a political or third party has exceeded the spending limit.¹⁵⁰
131. There are however different views regarding the 2009 regulations, with one commentator arguing “the wording of amendments is so vague that even party members who do not run on a candidate list can be regarded as third parties vis-à-vis the candidate list of their own party.”¹⁵¹

5. The Czech Republic

132. There were few regulations on political party and campaign finance in the Czech Republic until a new law was passed in 2016 (Act no. 322/2016 Coll). The GRECO analysis of political finance in the Czech Republic provided a series of recommendations to increase oversight and transparency of political party and campaign finance, including a recommendation “to include the accounts of entities related, directly or indirectly, to a political party or movement or otherwise under its control” in financial reporting.¹⁵²
133. The 2016 law introduced a series of reforms including the creation of a new oversight institution (the independent Office for the Supervision of the Finances of Political Parties and Movements), donation limits to political parties and spending limits for election campaigns.¹⁵³
134. Among the reforms were requirements for third parties spending money “in favor and/or disadvantaging party or candidate” to register with the new oversight institution, and to comply with particular requirements.¹⁵⁴ All spending by such groups or individuals must be classified as either “a) spending on pre-election polls; b) spending on advertisement in printing media; c) spending on outdoor advertisement; d) other spending”, and there are spending limits varying from CZK 50,000 (around EUR 2,000) for parliamentary single-

¹⁴⁸ GRECO (2010c) page 8.

¹⁴⁹ Ibid.

¹⁵⁰ Ikstens (2013) page 14.

¹⁵¹ Ikstens (2013) page 9-10.

¹⁵² GRECO (2011g) page 23.

¹⁵³ Vymětal (2017) pages 15-16. More information about the oversight institution, known in Czech as *Úřad pro dohled nad hospodařením politických stran a politických hnutí*, is available at <https://udhpsch.cz/>

¹⁵⁴ Ibid.

- seat elections including run-offs to CZK one million (around EUR 39,000) for presidential elections including run-offs.¹⁵⁵
135. Registering as a third party can be done electronically, and a new register is created for each election.¹⁵⁶ In the first elections when this new system was used, 33 individuals and 26 legal entities were registered. Of the legal entities that registered, 14 were listed as corporations, four as political parties and eight as associations. Many of the registered entities did not explicitly favour a particular party or candidate, but campaigned on issues that often would have disfavoured certain direct contestants. For example, the owners of the guesthouse Kam Na Pardubicku spent around CZK 33,000 (around EUR 1,300) campaigning against the electronic records of sales system advocated by Andrej Babiš, who became Prime minister after these elections.¹⁵⁷ Equally, an individual who campaigned against President Miloš Zeman registered as a third party in the parliamentary elections (though submitting a blank financial report).¹⁵⁸
 136. The OSCE/ODIHR Election Assessment Mission to the 2017 parliamentary elections noted that the online publication of financial reports by direct contestants and third parties “positively contributed to campaign finance transparency and public trust”.¹⁵⁹
 137. The number of registered third parties however declined significantly in the 2018 presidential and senate elections (five individuals and four legal entities registered for the former and only one individual and two legal entities in the latter). It is not clear if this decline is related to the different types of elections, to reduced third party involvement or to reduced interest or willingness to comply with the regulations. The amounts spent by the registered third parties have also tended to be low, seldom more than a few thousand Euros.
 138. The exact definition of acting “in favor and/or disadvantaging party or candidate” in the Czech regulations is not entirely clear. Although the non-profit organisation Frank Bold, which had campaigned for the political finance reform, did not intend to favour or disfavour any direct contestant, they decided to register as a third party (in all three elections) as their anti-corruption activities could be interpreted that way.¹⁶⁰

6. Slovakia

139. The regulations in Slovakia before 2016 were arguably somewhat more coherent than those in neighbouring Czech Republic, as a result of legal reforms in 2001 and 2005. Even so, the 2007 GRECO review of the Slovak regulations noted several shortcomings, and one of the recommendations were for the authorities to “introduce proportionate

¹⁵⁵ *ibid.* page 19.

¹⁵⁶ See <https://registrace.udhphsh.cz/reg/tofzvu/2018sv>

¹⁵⁷ See <https://www.pernikova-chaloupka.cz/tema/tema.phtml?id=11137>

¹⁵⁸ See <https://www.michalblaha.cz/volby-info/>

¹⁵⁹ OSCE/ODIHR (2018a) Page 12. The report noted however that the spending limits for third parties are “relatively high” (Ibid page 11).

¹⁶⁰ Frank Bold was one of the organisations behind the major anti-corruption initiative *Reconstruction of the State*, see <https://www.rekonstrukcestatu.cz/en>

- disclosure rules for expenditure incurred by entities outside the party structure, related directly or indirectly to the party, in connection with election campaigns”.¹⁶¹
140. New regulations introduced in Slovakia before the 2016 elections included a requirement for individuals and legal entities wishing to support a direct contestant to register with the State Commission for Elections and Control of Financing of Political parties, and to establish a dedicated bank account for their finances.¹⁶² Before these reforms, it had been the responsibility of political parties to report about expenses made by third parties on behalf of the political party.¹⁶³
141. Unlike in the UK, third parties can receive funding from political parties, as well as from individuals and legal entities. There are no limits on the value of donations to third parties, though a third party is not allowed to spend more than EUR 100,000 on an election campaign, apart from local elections, where the spending limit is EUR 25,000.¹⁶⁴ Not more than ten days after an election, third parties must make information about all their transactions available on the website, and keep these available for at least two months. Third parties found to have violated the regulations may be sanctioned with a fine of up to EUR 10,000 (the same as for independent candidates, while political parties may be fined up to EUR 300,000).¹⁶⁵
142. There are several similarities with the Czech Republic regarding the registrations and publication of data, including the fact that the oversight entities do not publish the financial records of third parties directly, instead providing links to the individual online account postings by the third parties themselves. As in the Czech Republic, registers are created for each election, and while 85 third parties registered for the 2016 elections (both individuals and legal entities), only 36 did so for the 2017 elections, declining further to 20 registered entities in 2018.¹⁶⁶ Just as with the Czech Republic, it is difficult to draw any conclusions regarding the cause of this decline without an in-depth analysis.
143. The OSCE/ODIHR Election Assessment Mission praised the amendments as “...a step forward in increasing the transparency of the financing of election campaign as well as the accountability of political parties”, though the report did point out that as political parties are allowed to make donations to third parties, and since there is no limit on the number of third parties that can support a direct contestant, it is possible for parties to use third parties to bypass the spending limit that applies to political parties (EUR three million, or the equivalent of the spending limit for 30 third parties.)¹⁶⁷

¹⁶¹ GRECO (2007b) page 20.

¹⁶² OSCE/ODIHR (2016b) 10. The oversight institution is known as *Štátna komisia pre voľby a kontrolu financovania politických strán* in Slovak, and further information is available at <https://www.minv.sk/?statnakomisia>

¹⁶³ Casal Bértoa & Deegan-Krause (2012) page 15.

¹⁶⁴ Šimral (2015) page 15.

¹⁶⁵ Ibid page 16.

¹⁶⁶ Calculated from State Commission for Elections and Control of Financing of Political parties (2018).

¹⁶⁷ OSCE/ODIHR (2016b) 10.

IX. CONCLUSIONS

1. Summary of findings

144. This report has found that political processes and election campaigning is not limited to those who present or stand as candidates and appear on the ballot. The issue of other actors, often referred to as “third parties” becoming involved in political processes and election campaigns is discussed in many OSCE pSs, as well as in analyses and standards documents.
145. The majority of countries in the OSCE region have not introduced regulations regarding the involvement of third parties (with the partial exception of entities formally related to political parties). Since the turn of the millennium, however, a yet small but growing number of countries in the OSCE region have chosen to regulate third party finance in different ways, including reporting requirements as in the UK, donation bans and limits as in Ireland, spending limits as in Latvia and bans on purchasing advertising in countries such as in Belgium and France.
146. Such moves are generally supported by international standards on political finance by entities such as the Council of Europe, OECD and OSCE/ODIHR, as well as rulings by the ECHR. However, these standards, and the discussions throughout the OSCE region, also stress the potential risk of third party regulations stifling the fundamental freedoms in relation to those who are not direct contestants.
147. This study found that both the rationale and the actual regulations introduced vary between different countries in the OSCE region, and that there is no consensus (yet) regarding how and if third party involvement in political processes and election campaigns should be regulated. Most countries have not regulated third party involvement, and may continue not to do so.
148. It is interesting to note that the distinction that is so central to US federal regulations on third party involvement between coordinated and uncoordinated campaigning seems seldom applied in other parts of the OSCE region where this issue is regulated – the main issue tends rather to be whether an entity that is not a direct contestant engages in activities that may favour or disfavour a direct contestant.

2. Recommendations

149. Given the significant variation between countries in the OSCE region in how political finance is perceived and regulated, and as the existing standards on political finance regulation are worded fairly generally and do not address third party engagement directly, caution is necessary in making recommendations applying to all countries. Notwithstanding this, the below recommendations should be relevant to all countries in the OSCE region regardless of their situation.

1. All countries could consider studying the involvement of third parties in political activities, to analyse how their engagement may affect transparency and existing political and campaign finance regulations.
2. Potential negative results of regulating third party involvement should also be considered, such as hampering fundamental freedoms and making organisations reluctant to raise issues they feel strongly about in relation to election campaigns. Third party regulations must not be so strict as to unduly hinder free speech.
3. The impact of regulating third party involvement on gender equality and the engagement of vulnerable groups in politics should be specifically studied.
4. If third party involvement is significant and may reduce transparency or undermine regulatory objectives, countries may consider introducing context-adapted and proportional regulations of third party involvement. If such regulations are introduced, the intention and goals of the rules should be expressed explicitly, and key issues such as the specific activities to be regulated, the expenditure to be covered, and appropriate anti-circumvention measures should be considered.¹⁶⁸
5. Regulations could consist of all or some of registration and reporting requirements and qualitative and quantitative donation and spending restrictions.
6. Any regulation of third party involvement must be accompanied by a clear oversight mandate given to an institution with the necessary independence, powers and resources to effectively monitor compliance and enforce regulations, including as appropriately issuing sanctions or initiating sanctioning procedures.
7. The institution mandated to oversee their compliance should develop clear guidance on the situations in which an activity will be considered as third party involvement, and the rules to be complied with if this occurs.¹⁶⁹
8. Any decision on how to regulate or not to regulate third party involvement should be reviewed regularly, ideally after each general election.

3. Concluding remarks

150. In regulating and monitoring the role of money in politics, it is important to consider all streams of money flowing through the river of electoral politics. If the goal with overseeing political finance is to achieve transparency, ignoring the involvement of others beyond direct contestants may mean missing a significant part of fundraising and spending. If the goal is to limit the role of money or increase equality through bans and limits, it must be aware that such regulations may increase the temptations for stakeholders to use third parties to bypass these regulations.

¹⁶⁸ The recommendation from the 2019 expert meeting in Prague could be considered, stating that “Everyone involved in campaigning in favour or against specific political parties or candidates ought to report on their political campaign related revenues and expenditures to an appropriate regulatory authority, if their spending is above a certain limit defined by law” UNODC, IFES and OSCE/ODIHR (2019) page 10.

¹⁶⁹ As positive examples see the UK Electoral Commission (2016a, 2016b and 2017).

151. Countries in the OSCE region should consider the role of third parties in the political process, and may wish to introduce regulations that are suited to the context and political goals of each country. This may include regulations of coordinated third party involvement to reduce the risk of actors bypassing regulations on direct contestants. Some countries may wish to introduce regulations also on non-coordinated third party involvement, for example to increase transparency or to reduce the advantage of wealthy interests. If regulations are introduced, it is essential to consider potential negative consequences of such regulation on the freedom of speech and the engagement of citizens in politics.

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