

2014

Law on Financing of Political Parties

Recommendations Report

18th March



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Introduction

Subcommittee

During this term, GhSL engaged in a number of current legal issues, the most recent being the Justice reform recommendations report which was drafted with the help of four Law students from different years of the course.

In fact, in order to follow in the footsteps of the previous sub-committee, and keep within this newly established practice of contributing with our ideas to society at large, GhSL appointed a subcommittee under the direction of Clive Gerada, President of GhSL and Dirk Urpani, Academic officer of GhSL

The **members of the Subcommittee** were the following:

Clive Gerada President of GhSL, *ex officio*;

Dirk Urpani Academic Officer of GhSL, *ex officio*;

Michelle Camilleri, LL.D 2nd year;

Pier Bencini, LL.D 1st year;

Brenda Jane Camilleri, LL.D 1st year;

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Aim

The GhSL recommendations report on the Law of Party Financing is being drafted in light of the Government's call for public consultation and submission of written proposals till 31st March, 2014.

GhSL seeks to engage itself within this objective legal debate before the bill proposed enters into force. This augurs well for student organisations eager of participating within such public arena, with the aim of providing important arguments to the debate beforehand.

This report, discussed the four pillars discussed present in the bill: General Provisions, Registrations, Accounting Requirements and Donation Controls. One can find a compilation of findings centring different legal systems with regards to the Law on Party Financing and based upon such findings, the subcommittee proposed a number of recommendations.

Part One: General provisions

Accountability: More money is being spent on party financing than what the law allows. There needs to be accountability of this expenditure, and this bill proposes to regulate such spending.

Regulation of funding: should the state and the government get involved in the registration of funding? Should a court be allowed to strike off a party?

Registration: This is beyond the finances of a party. Ultimately we have to see what definition is given to a *bona fide* political party. What are the grounds of registry? And what do you register? It is an undisputed fact that in Malta the two main political parties have an enormous influence in the electoral process.

Therefore, we believe that registration should be automatic. What is required is registration for benefits but not as a prerequisite for the existence of a political party as the latter should remain independent from the state.

We believe that whilst it is important to instil order, this should not necessarily result in the over regularisation of parties for the latter must not be made to be over dependant on the state. The freedom of association is absolute but according to law so we are diffident on the state being involved in such a manner. This holds true even more so for smaller political parties as burdensome procedures may discourage their future existence.¹

The Electoral Commission: The Electoral Commission could be described as an entity which ensures that the electoral process is carried according to law². Is the Electoral Commission best suited to fulfil this role?

Political Parties: One has to distinguish between the two major parties which have large business interests in their own right. We are trying to establish how far donations tally to the spending of the party but does this extend to the party's company arms? It has been suggested that it should not exclude these companies³ thus have to fall within the political party's accounting exercise.

State Funding: Interestingly some countries like Canada allow government injection of funds either directly depending on the number of votes won in an election or indirectly through a tax credit scheme.⁴ Although this may not be feasible or indeed even possible here in Malta, such a

¹ David Cacopardo, 'The financing of political parties: a proposal of Alternattiva Demokratika – the Green Party' [6th February 2014], Page 6, lines 131-136

² Article 61 of the Constitution of Malta

³ David Cacopardo, 'The financing of political parties: a proposal of Alternattiva Demokratika – the Green Party' [6th February 2014], Page 6, lines 167-186

⁴ Stephen Crone, 'After significant reforms, Canada's political parties now have their income and expenditure closely controlled, and are more dependent on public funds.' (London School of Economics 2013)
<<http://blogs.lse.ac.uk/usappblog/2013/09/10/canada-party-funding-reform/> - accessed 10th March 2014

comparative analysis of foreign systems is important as through such an exercise we might well discover ideas which we may adopt for our own system:

*"It is hard to deny that this is a better inequality than the inequality that existed before the legislation was introduced. It is better because it is based on grass-roots support, it is an inequality that is not accounted for by large donations from sources of doubtful legitimacy"*⁵

Recommendations:

GhSL believes that the examination of financial accountability of each political party, should not be left only in the hands of the electoral commission as the latter may be described as being politically oriented and based on a balance of the major political parties. The electoral commission must be given all the necessary resources to help in the establishment of a true financial accountability of the political parties.

The alternatives therefore are three-fold:

- 1.1 **The Auditor General:** Perhaps a more 'natural' and better suited office for this role is that of the Auditor General. This is because the Auditor General oversees the funding of the state and is independent with two-thirds majority whereas the members of the electoral commission are chosen by the parties.
- 1.2 **Commissioner for Standards in Public Life.**⁶
- 1.3 **An independent Court of Auditors:** This idea stems from the *Corte dei conti* system as currently exists in Italy where they have a court of auditors formally appointed having the full independence of judges with the two-thirds majority appointed and removed and they are professional auditors. This is the '*corte dei conti*' which has its own procedure and is appointed and removed by two-thirds majority.⁷

⁵ *ibid*

⁶ David Cacopardo, 'The financing of political parties: a proposal of 2 Alternattiva Demokratika – the Green Party' [6th February 2014] , Page 6, lines 167-186

⁷ 'La Corte: Chi Siamo' (Corte dei Conti) <http://www.corteconti.it/chi_siamo/la_corte/ - accessed 9th March

Part Two: Registration

Introduction

The White Paper drawn up by government, which will culminate in the Bill, sets out a second section wholly dedicated to the Registration of Political Parties. This has been a topical issue in the realm of Funding Political Parties in various countries. It is recommended in the ODIHR Guidelines for Political Party Regulation⁸ that the legal framework should recognize and give status to political parties as associations, thereby also granting them protected rights. However, it admits that not all countries require that political parties are subjected to registration, although doing so will not impinge on the rights of freedom of association. It is reasonable enough that registration is required by the proposed legislation, since it is also granting the political parties legal status to accompany it.

The Office of the Treasurer

In a similar fashion to the system adopted in the UK, registration shall require the establishment of three offices: the leader of the party, the nominating officer and the treasurer.

Undoubtedly, the office that has the most far-reaching effects is that of the Treasurer, which will better the transparency of the political party. The British Act imposes accounting responsibilities as well as compliance requirements on the Treasurer, which are also suggested by the White Paper.

Since it is clear that it is the treasurer who is burdened with the mass responsibilities, **GhSL** suggests that this person:

- Possess a minimum standard of academic qualifications relevant to the office;
- Be subjected to periodic courses and training, so as to ensure that the office holder is knowledgeable in his tasks as Treasurer;
- Shall attend frequent seminars and informative sessions on the recent developments relating to the management and auditing of accounts for the political party;

Moreover, **GhSL** further puts forward the proposition that there be Disqualifications for the Office of the Treasurer. Similarly to the British Act⁹, it is proposed that the office shall terminate with immediate effect, should he commit an offence related to his position as treasurer.

It is paramount therefore that the Treasurer remains impartial and transparent at all times. Since the Treasurer is chosen from among the party affiliates, there is no element of independence. **GhSL** suggests that the treasurer be audited periodically, thus maintaining the impartiality of the office.

⁸ *Guidelines on Political Party Regulation*, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) [2011], para 65-66

⁹ *Political Parties, Elections and Referendums Act* [2000], Section 24(9)

The Electoral Commission as the Party Financing Watchdog

The effectiveness of the system depends largely on the approach by the Electoral Commission being an independent regulatory body. There are thus a number of recommendations to be made in this respect.

The proposal of the Electoral Commission being the regulatory body, once again follows the UK model, wherein the Electoral Commission is the holder of the Registrar and is obliged to make it available to the public as per Article 149 of the Act¹⁰. In the UK, the Electoral Commission supervises the financial activities of political parties and candidates in elections.

Under French party financing Law, the **French National Commission on campaign accounts and Political Party Financing (CNCCFP)**, has the role of ensuring compliance of political parties with accounting requirements imposed on them, administers the system of donation and receipts and ensures that parties publish their accounts in the *Journal Officiel*, though there is no system of compulsory registration.

GhSL agrees with the proposal that the Electoral Commission should be the regulatory authority, due to its independence from the political parties. The Electoral Commission is appointed by the President on the advice of the Prime Minister after having consulted with the Leader of Opposition and, one is disqualified from being appointed into the Electoral Commission if he is a Minister / Parliamentary Secretary, Member of the House of Representatives, a candidate for election, or a public officer, thus eliminating room for bias¹¹.

As the proposed regulator of Political Party Financing and Funding Law in Malta, **GhSL** stresses that the Electoral Commission must discharge its duties in an entirely independent manner, without exception.

GhSL commends this decision to incorporate into the registration process, a document with the parties' methodology for implementing the requirements of the Legislation on Political Party Financing. **GhSL** suggests, that the Commission as part of its duties, must ensure that these objectives do indeed materialize.

GhSL proposes grounds whereupon a registration application may be refused, are specified in the Law. This, as recommended in the ODIHR Guidelines on Political Party Regulation¹² will avoid conflicts of interests by the Commission and ensures independence.

Independent Parties: a loophole in the system?

An issue which seems to be overlooked in the White Paper is the Registration of independent parties. **GhSL** questions how the donations and expenditure by independent parties in an

¹⁰ *Political Parties, Elections and Referendums Act* [2000, Section 149(2)

¹¹ Chapter 0 of the Laws of Malta, *Constitution of Malta*, Article 60(4)

¹² *Guidelines on Political Party Regulation*, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) [2011], para 68

election will be controlled if they are not registered in the Register of Political Parties. Therefore the question which arises from this discussion is: **are independent parties excluded from the party financing legislation structure, and are able to find a loophole around publicizing donations and expenditure figures?**

GhSL proposes that the Bill must also set out limitations on independent parties. Notwithstanding that they are not to be registered in the Register of Political Parties, there is room for specification on what activities are according to law.

The UK Electoral Commission has devised a system whereby Independent parties who have an expenditure higher than a specified amount must register with the Commission. Once they register, they must comply with defined rules and must submit their expenditure reports after the Election, which will be publicized by the Commission¹³.

Recommendations

In summation, whilst **GhSL** commends Government for initiating the process for the establishment of a law, vital to the functioning of a democracy, is broadly presenting three recommendations in the following areas.

- 2.1 **Firstly**, that the Treasurer be a competent individual and appropriately skilled for the tasks the office presents. Moreover, an audit of the office is essential to the continual transparency of the party.
- 2.2 **Secondly**, **GhSL** agrees with the choice of the Electoral Commission as the overseer, but recommends that steps are to be taken to ensure that the Commission remains independent.
- 2.3 **Thirdly**, **GhSL** has recognized a lacuna in the proposed legislation in the form of independent parties, or rather, the lack thereof. **GhSL** therefore recommends a system similar to the British Act, which provides a capping; exceeding which the candidate must register in a manner akin to political parties.

¹³ Regulating Third Party Campaigning in the UK, The Electoral Commission, November 2013, http://www.electoralcommission.org.uk/__data/assets/pdf_file/0004/155380/Briefing-on-third-party-campaigning-in-the-UK.pdf, accessed on 28th February 2014

Part Three: Accounting Requirements

Findings:

Independent Audit Authority

In May 2001, the Parliamentary Assembly of the Council of Europe mentioned seven principles upon which the regulation on the financing of political parties must be built.¹⁴ One of these principles is the establishment of an independent audit authority. Consequently, this means that the review of accounts is to be done by professional auditors who are completely independent from any political party.

- *In France*; the audit unit is composed of nine members: three from the State's Council, three from the *Cour de Cassation* and another three from the Court of Auditors. Such a composition 'leaves little room for doubts about the independence of the Commission's members'.¹⁵
- *In Germany, Belgium, Italy, Austria and Spain*; auditors are appointed by government based on a list of auditors suggested by the parties themselves and these are generally appointed for a five year period. These auditors are collectively organized in an independent commission for the control of political party financing.
- *In the UK*; responsibility for party finance is vested in the Electoral Commission, who independently from government reports directly to parliament. The Electoral Commission has the duty to collect party accounts, reports of disclosable donations and returns with regard to election expenses. The Commission has the power to require registered political parties to provide information to the Commission relating to their financial affairs. Moreover, a person authorized by the Commission may also enter the premises of a party to inspect its financial records. For the necessary checks and balances, above the Electoral Commission there is also the Speaker's Committee.

In relation to the UK, paragraphs 91-94 of Rep Doc 9077 state that:

91. *The Electoral Commission is independent of any government department and will report directly to Parliament. Commissioners will be appointed by Her Majesty on the presentation of an Address from the House of Commons and will enjoy substantial security of tenure: they will be appointed for up to 10 years with the possibility of reappointment. A removal from office is therefore only possible on an address of the House of Commons to that effect which can only be made if the Speaker's Committee has decided that one of the grounds for removal is fulfilled.*
92. *The Electoral Commission has got the function of receiving accounts, reports of disclosable donations and returns as to election expenses from political parties and a duty to monitor compliance – but not to mount criminal prosecutions. It has got the power to require registered political parties to provide information to the Commission relating to their financial affairs. Moreover, a person authorised by the Commission may also enter the premises of a party to inspect their financial records.*
93. *The Speaker's Committee which is composed of the Speaker of the House of Commons, the Home Secretary, the Minister for Local Government, the Chairman of the Home Affairs Select Committee and five Members of the House of Commons appointed by the Speaker has*

¹⁴ Parliamentary Assembly of the Council of Europe, Financing of Political Parties (4 May 2001) Rep Doc 9077

¹⁵ Ibid, para 96

general oversight of the exercise of the Commission's functions and, in particular, responsibility for approving its budget and five-year corporate plan. Both Commission and Committee are required to report annually to the House on their performance.

94. *Whereas the Commission seems to provide for sufficient independence of Commissioners it is not evident why itself is being controlled by a body composed of members of the government and of parliament which cannot be considered independent.*¹⁶

In October 2011, GRECO's 'Compliance Report on Malta'¹⁷ concerning the Draft Bill of 2011 (on which the current White Paper seems to be based) provides in *Recommendation iv.* that Malta has to ensure independent auditing, as appropriate, in respect of political parties obliged to keep books and accounts. Article 27 of Draft Bill of 2011 stated: the accounts of a political party shall each year be audited by an accountant as defined by Article 2 of the Accounting Professions Act.¹⁸

Independent Supervisory Authority

Recommendation v. of the Compliance Report,¹⁹ states that there is to be a supervisory authority to effectively ensure the independent monitoring of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4. Each State has the discretion to define the status of this control authority. 'Independence' is necessarily relative and can never be absolute. The essential attribute of the supervisory authority is that it should be free from improper external influence in the discharge of its functions;²⁰

*GRECO recalls that the Electoral Commission is the sole entity charged with the general administration of elections in Malta. It is established under the Constitution²¹ and it is composed of a Chairperson and eight commissioners, appointed by the President, following consultations with the Prime Minister and the opposition. The Commission has a distinct legal personality and it should not be subject to the direction or control of any other person or authority, as stipulated in the Constitution.²² GRECO does not dispute the independence of the Commission. What has now been reported by Malta will clearly widen the mandate of the Electoral Commission to include some monitoring of political parties' accounts, in addition to a monitoring function in respect of election candidates. It appears from article 29 of the draft Bill 2011 that the monitoring is to be limited to the accounts of the parties and the accompanying audit reports, but apart from that, the draft text does not provide much guidance. Clarifications in law or in regulations would therefore be required. GRECO appreciates that the draft Bill 2011, if adopted, would establish some kind of monitoring of party financing for the first time in Malta, which is to be welcomed.*²³

¹⁶ Ibid, para 91-94

¹⁷ GRECO, 'Compliance Report on Malta' (21 October 2011) GRECO RC-III (2011) 11E <[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)11_Malta_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)11_Malta_EN.pdf)> accessed 3 March 2014

¹⁸ Chapter 281 of the Laws of Malta, Accountancy Profession Act, article 2 states that 'accountant' means a warrant holder or an accountancy firm.

¹⁹ GRECO (n 4) para 37

²⁰ Committee of Ministers, Recommendation on common rules against corruption in the funding of political parties and electoral campaigns [8 April 2003] Rec (2003)4, para 67

²¹ Constitution of Malta, article 60

²² Ibid, article 60(9)

²³ GRECO (n 4) para 39

Resources and Specialised Personnel

The Electoral Commission is now going to be given a wider role and wider powers. The question arises whether the Commission has the necessary resources to carry out these new functions and all other requirements as laid out in the White Paper? Good regulation without enforcement barely reaps any fruit. Having an effective enforcement mechanism is fundamental and therefore if the Commission is to oversee every aspect of party operation and financing it would have to be adequately manned.

Article 15 of Recommendation Rec(2003)4²⁴ provides that it is left to the discretion of the State to determine whether there should be a structural specialization or only functional specialization of the personnel in the fight against illegal political funding. As regards the independent supervisory authority, personnel should include those with specialist knowledge of the financing of political parties and election campaigns.

Rules on Book-keeping and Publicity Principle

Here, the underlying principle is mainly that of ensuring transparency. This focus is designed to shed light on the finances of political parties by keeping proper accounts, the recording of donations and their donors, and the presentation and publication of accounts. It is generally recognised that the strongest single influence against corruption is the light of accountability and public scrutiny.²⁵

Every political party should keep strict accounts of all incomes and expenditures, which must be submitted at least once a year, to an independent auditing authority and made public. Publication requirements should seek to create a balance between the need for providing a full picture of a party's financing and accessibility for the ordinary citizen.²⁶

71. Usually, political parties are obliged to give some public accountability by submitting reports on their finances of the last year. Whereas a general obligation of that sort is widespread provisions as to what exactly has to be reported in detail, the authority to which a report has to be submitted and whether and how the report has to be published vary widely.²⁷

In Germany:

72. The obligation of political parties to give a public account of their finances is even enshrined in the Constitution (Art. 21 I 4 Basic Law). Reports have to include not only sources of income and overall budgetary volume but also expenses and property on all levels of the party structure. The idea is that an average citizen can inform him- or herself through specific reports edited by the administration of parliament and/or the president of parliament.²⁸

²⁴ Committee of Ministers (n 7) para 68-69

²⁵ Ibid 9

²⁶ Parliamentary Assembly of the Council of Europe (n 1), para 75

²⁷ Ibid, para 71

²⁸ Ibid, para 72

In Italy and France:

75. In Italy, the report will be published in full length in the *Gazzetta Ufficiale* while at the same time it has to be published in a shortened version in two newspapers, one of which must have national distribution. In France, the reports on the parties' bank accounts have to be published in full in the *Journal Officiel* whereas the reports on expenditures in election campaigns will be published by the Commission on financing of election campaigns in a simplified version.²⁹

Article 13 of Recommendation Rec(2003)4 deals with *the obligation to present and publish accounts*:

60. This article contains two distinct obligations: first, States should require political parties to present their accounts at set intervals to an independent authority; second, the parties themselves should be required to publish annually or more frequently at least a summary of their accounts, and the election expenses on the occasion of each election. The first obligation enables effective control and sanction; the second is intended to provide the public with the information needed to judge for itself the sources and extent of certain kinds of influence on a party.³⁰

Recommendation *iii.* of the Compliance Report on Malta, states that there should be a co-ordinated approach for the publication of political financing accounts and/or reports (including party and election campaign financing) in order to facilitate the public's access to such documents.³¹

The White Paper (similarly to the Draft Bill of 2011) provides that the statements of accounts and all relative documents are to be handed over to the Electoral Commission within 4 months from the end of the financial year and are to be made public within one month otherwise administrative sanctions are to be imposed.

According to GRECO the effectiveness of such publication depends on 1) how detailed the annual statement is and 2) on how the annual statement is to be made available to the public (this was not described in the Draft Bill of 2011 and likewise is still not provided for in the White Paper). Further clarifications would be required to this end. GRECO also noted that the suggested time limits for publication appear unnecessarily long and that there were no specific rules concerning the publication relating to election campaigns³² – this publication requirement is still not tackled in the White Paper.

Sanctions

Recommendation *vi.* provides that existing and yet-to-be-established rules on the financing of political parties and electoral campaigns must be accompanied by appropriate sanctions, which are effective, proportionate and dissuasive³³ (in line with Article 16 of the Recommendation Rec(2003)4).

Ordinary criminal sanctions may be cumbersome to apply in practice therefore more flexible sanctions ought to be introduced in respect of less serious violations of the political financing rules and which do not necessarily require a criminal court procedure. In so far as the Draft Bill of 2011 was concerned, GRECO pushed for the introduction of a more systematic sanctioning system and, possibly, of administrative sanctions that could be applied directly by the Electoral

²⁹ Ibid, para 75

³⁰ Committee of Ministers (n 7), article 13 para 60

³¹ GRECO (n 4), para 29

³² Ibid, para 31

³³ Ibid, para 41

Commission for minor procedural violations – as things stand at the moment, the White Paper still doesn't specify what these administrative sanctions are.

Article 16 of Recommendation Rec(2003)4³⁴ leaves it to the States themselves to determine what sanctions should be applied. Sanctions can be penal or administrative in nature. Moreover, sanctions vary widely from one country to another, ranging from small fines to imprisonment for up to 10 years and include the:

- *Deprivation of an elected representative's mandate*
- *Disqualification from standing for election for up to 10 years*
- *Loss of right to vote for up to 5 years*
- *Loss of office or employment*
- *Ineligibility for appointment as magistrate or public official for 2-10 years*
- *Loss of election expenses refund*
- *Ineligibility for State funding*
- *Forfeiture of illegal funds*
- *Cancellation of election*
- *Award of seat to election opponent*
- *Dissolution of party*

Recommendations:

3.1 Given that the role of the Electoral Commission is going to be extended and to ensure the effectiveness of the enforcement mechanism, the Commission should be allocated with added resources in order to fulfil its new responsibilities more efficiently.

3.2 To ensure independent auditing, the National Audit Office and the Auditor General (in conjunction with the Electoral Commission) should be responsible for the auditing of party accounts and their systems of financing. In so far as transparency is concerned, it is important to point out that both the Auditor General and the Electoral Commission are constitutionally independent from any other institution.

3.3 The Auditor General should communicate with the Electoral Commission on what actions should be taken against a political party or candidate breaching the financial regulations. As to whether an ad hoc crime is to be prescribed in case of false declarations in party accounts, one can point out that false declaration is already a crime under Maltese law, and that ordinary criminal sanctions may be cumbersome to apply in practice. Moreover, would this ad hoc crime invoke the personal liability of the treasurer himself or would it bring about the imposition of criminal sanctions against the political party as a whole? These matters would have to be looked into.

The **Institute for Democracy and Electoral Assistance (IDEA)** refers to 'submitting incorrect data in the statement of accounts' and gives the following examples:³⁵

In Denmark, submitting incorrect information can bring the penalty of a fine or prison up to four months (failure to submit reports can mean loss of public funding).

³⁴ Committee of Ministers (n 7), article 16 para 70-71

³⁵ <<http://www.idea.int/political-finance/question.cfm?field=296®ion=50>> accessed 8 March 2014

In Germany, if in the course of the verification of a statement of accounts, the President of the German Bundestag detects incorrect data in the statement, the party is liable to pay twice the amount of the wrongly stated sum (Section 31b of the PPA). If incorrect data in the asset and liability statement or in the explanatory part refer to the party's real estate or participations in companies, the party's liability amounts to 10 per cent of the value of the assets not included or listed inaccurately. If a party becomes aware of any incorrect data in a statement of accounts already submitted by it, it can avoid the aforementioned legal consequences if the following conditions are met: a) the inaccuracy in the statement of accounts must be notified, in writing, immediately after its detection to the President of the German Bundestag; b) there should be no concrete information suggesting that such incorrect data was publicly known, that they came to the knowledge of the President of the German Bundestag or came to be known in the course of any other official proceedings; c) finally, the party is required to fully disclose and correct the relevant facts and figures (Section 23b, PPA).

In Australia, including false or misleading information in a return is punishable by a fine of up to \$10, 000; knowingly providing false or misleading information for inclusion in a return is punishable by a fine of up to \$1, 000 and failure to retain records for three years is punishable by a fine of up to \$1, 000.

- 3.4 There should be more clarification as to the type of administrative sanctions which could be imposed against a political party. These can either be aimed at a person or at property.
- 3.5 The introduction of publication requirements is essential. The accounts should be made available to the media and the general public at large by publishing a reduced set of accounts in two local newspapers and/or online. An updated full set of accounts should also be published again two months before the general elections.

Part Four: Donations Control

Findings:

170. *Funding of political parties is a form of political participation, and it is appropriate for parties to seek private financial contributions. In fact, legislation should require that all political parties be financed, at least in part, through private means as an expression of minimum support. With the exception of sources of funding that are banned by relevant legislation, all individuals should have the right to freely express their support for a political party of their choice through financial and in-kind contributions. However, reasonable limits on the total amount of contributions may be imposed.*³⁶

173. *Limits have historically also been placed on domestic funding, in an attempt to limit the ability of particular groups to gain political influence through financial advantages. It is central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry, not to wealthy special interest groups. As such, a number of reasonable limitations on funding have been developed. These include limitations on contributions from state-owned/controlled companies and anonymous donors.*³⁷

175. *Reasonable limitations on private contributions may include the determination of a maximum level that may be contributed by a single donor. Such limitations have been shown to be effective in minimizing the possibility of corruption or the purchasing of political influence. Legislation mandating contribution limits should be carefully balanced between ensuring that there is no distortion in the political process in favour of wealthy interests and encouraging political participation, including by allowing individuals to contribute to the parties of their choice. It is best that contribution limits are designed to account for inflation, based on, for example, some form of indexation, such as a minimum salary value, rather than absolute amounts.*³⁸

In the light of these principles enshrined by OSCE, the Committee firmly believes that the maximum of Euros 50,000 as contribution from the same source in one financial year, exceeds what may be considered reasonable for the Maltese context.

174. *Anonymous contributions should be strictly regulated, including through a limit on the aggregate allowable amount of all anonymous contributions. Legislation should limit the aggregate maximum amount to a reasonable level designed to ensure that anonymous donors cannot wield undue influence.*³⁹

36 Guidelines on Political Party Regulation- OSCE Adopted by the Venice Commission at its 84th Plenary Session Venice, 15–16 October 2010

37 Guidelines on Political Party Regulation- OSCE Adopted by the Venice Commission at its 84th Plenary Session Venice, 15–16 October 2010

38 Guidelines on Political Party Regulation- OSCE Adopted by the Venice Commission at its 84th Plenary Session Venice, 15–16 October 2010

39 Guidelines on Political Party Regulation- OSCE Adopted by the Venice Commission at its 84th Plenary Session Venice, 15–16 October 2010

US law regulating party financing, sets a maximum of US Dollar 100 for anonymous donations :

"No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office." Source: Title 2, Chapter 14, Subchapter 1, §441g "§432 [...] (c) Recordkeeping. The treasurer of a political committee shall keep an account of— (1) all contributions received by or on behalf of such political committee; (2) the name and address of any person who makes any contribution in excess of \$50, together with the date and amount of such contribution by any person; (3) the identification of any person who makes a contribution or contributions aggregating more than \$200 during a calendar year, together with the date and amount of any such contribution;"⁴⁰

175. Reasonable limitations on private contributions may include the determination of a maximum level that may be contributed by a single donor. Such limitations have been shown to be effective in minimizing the possibility of corruption or the purchasing of political influence. Legislation mandating contribution limits should be carefully balanced between ensuring that there is no distortion in the political process in favour of wealthy interests and encouraging political participation, including by allowing individuals to contribute to the parties of their choice. It is best that contribution limits are designed to account for inflation, based on, for example, some form of indexation, such as a minimum salary value, rather than absolute amounts.

US law regulating party finance, prohibits any donations from entities which are parties to a contract of service with the government.

441c. Contributions by government contractors (a) Prohibition. It shall be unlawful for any person— (1) Who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for the later of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use"⁴¹

⁴⁰ Title 2, Chapter 14, Subchapter 1, §432c (United States Code, Title 2, The Congress)

⁴¹ Title 2, chapter 14, subchapter 1, section 441c (United States Code, Title 2, The Congress)

Recommendations:

- 4.1 While we understand that the maximum amount of donations tolerated is not central and should not inhibit the success of this legislation, **GhSL** feels that for the Maltese context a maximum of 50,000 euros donation from the same source is excessive and should be reduced.
- 4.2 While understanding the White Paper's position intentioned to safeguard the rights of the benefactor *in bona fide* to remain anonymous, **GhSL** feels that the maximum donation from an anonymous benefactor must be reduced drastically from the 500 euros mentioned in the White Paper.⁴²
- 4.3 To ensure high levels of transparency, **GhSL** believes that as other countries', entities in contracts providing services to the Government of the day should be prohibited from providing donations to political parties for the period of the contract of services⁴³

⁴² Title 2, Chapter 14, Subchapter 1, §441g '§432 (c) Recordkeeping., United States Code, The Congress - Il-Ligi tal-Istati Uniti tipprovdi ghal donazzjoni sa massimu ta' 100 dollaru Amerikan (c. 72 Ewro) sabiex il-benefattur warajha jista' jibqa' anonimu. F'kuntest tali ghal dak ta' Malta, il-massimu ta' 500 Ewro jinhass esagerat'.

⁴³ Title 2, Chapter 14, subchapter 1, Section 441c United States Code, The Congress

Conclusion

Following this report, GhSL established a number of recommendations based on a comparison of different legal systems mainly, Germany, France, UK, Denmark, and United States of America, with the aim of presenting them to Government, in view of the upcoming Bill.

On a concluding note this white paper is in our view a positive step forward in the regularisation of party financing in our country. Whilst on the one hand we believe that some proposals require further detail and explanation, at the same time we acknowledge that the proposals are in the form of a white paper and may differ from the final bill.

Perhaps a final word may be reserved until after the government carries out its consultation meetings which may result in a clearer picture as to the final outcome of the Bill. However, until then, and even within this context of a white paper, we ask the avid reader to keep in mind our suggestions made in the collective spirit of ensuring the future prosperity of our democratic system of governance.