

# An Introduction to European Standards on Political Finance

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## Introduction

In most parts of the world, the regulation of issues concerning the financing of political parties and election campaigns is a relatively recent phenomenon. As a result, there are few truly international standards in this field. Another reason for this lack of common norms is the significant differences in political background and culture between different regions, which also determines the role that money plays in politics and the democratic goals seen as most pertinent. As a result, it is unlikely that a consensus can be reached on global standards in political party and campaign finance (below jointly referred to as “political finance”) without these becoming so general as to hold limited meaning.

At a regional level however, political finance standards can be more meaningful, and European institutions have come further than other regions in developing a framework of standards for political finance regulation and oversight. While these standards are not legally binding on European countries, they give moral guidance as to how the regulation of political finance should be approached in Europe so as to provide effective oversight of political party and campaign finance and reduce political corruption without curbing the healthy competition between political actors that is such an integral part of electoral democracy.<sup>2</sup> Over the last decade, the Council of Europe (COE) and the Organization for Security and Co-operation in Europe (OSCE) in particular have taken an interest in issues regarding political finance regulation. In addition, the Group of States against Corruption (GRECO) has since 1999 been monitoring compliance with COE anti-corruption standards, and in 2006 the transparency of political party funding was added to its areas of monitoring. The rationale behind the work carried out by these organisations can be said to be the notion that;

“In order to maintain and increase the confidence of citizens in their political systems, Council of Europe member states must adopt rules governing the financing of political parties and electoral campaigns.

The Assembly is of the opinion that the general principles on which these rules should be based must be formulated at European level.”<sup>3</sup>

This brief introduction to standards in Europe aims to give an initial idea of what is considered appropriate and inappropriate in political finance regulation. The discussion focuses mainly on these documents (other documents have been used as appropriate), apart from giving cases from individual countries;

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<sup>1</sup> Any opinions expressed in this paper are those of the author and do not necessarily represent those of IFES.

<sup>2</sup> The need for more codified rules was noted in a 2009 motion presented at the Council of Europe Parliamentary Assembly entitled „The need for a code of good practice in the field of funding of electoral campaigns”. Motion by Mr Lindblad and others, presented 27 November 2009, Doc. 12089. The Political Affairs Committee decided on 1 June 2010 to seek the opinion of the Venice Commission on the matter.

<sup>3</sup> COE Recommendation 1516 (2001) 3&4.

Document	Sponsoring body	Year	Comment
Recommendation Rec(2003)4 of the Committee of Ministers to Member states on common rules against corruption in the funding of political parties and electoral campaigns	Council of Europe, Committee of Ministers	2003	The Committee recommended that governments should adopt “rules against corruption in the funding of political parties and electoral campaigns”, and provided common rules for political finance in Europe.
Recommendation 1516 (2001), Financing of political parties	Council of Europe, Parliamentary Assembly	2001	This document in many ways paved the way for later more detailed documents on political finance in Europe.
Code of Good Practice in Electoral Matters	Venice Commission	2002	Adopted by the Venice Commission at its 51st and 52nd sessions (5-6 July & 18-19 October 2002)
Guidelines on the Financing of Political Parties	Venice Commission	2001	The Venice Commission (“The European Commission for Democracy through Law) is an advisory body on constitutional matters for the Council of Europe)
Guidelines for Reviewing a Legal Framework for Elections	OSCE/ODIHR	2001	Developed in collaboration with International IDEA
Copenhagen Document (Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE)	Commission on Security and Cooperation in Europe (also known as the US Helsinki Commission)	1990	The participating states agreed on a series of principles to strengthen the respect for “ human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character

While the regulation of political finance is a multidimensional issue touching upon many types of activities, the most common forms of regulations are disclosure requirements, the provision of public funding and bans and limits on contributions and expenditure. This will be discussed in turn, followed by regulations relating to the abuse of state/administrative resources and sanctions/enforcement.

## Disclosure

The need for increased transparency in political finance is established in the United Nations Convention Against Corruption (UNCAC), where Article 7(3) establishes that all state parties to UNCAC shall;

“...consider taking appropriate legislative and administrative measures, consistent with the objectives of this convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties”

Most European countries now require political parties to report on their finances (85%), whereas less than half have similar requirements for candidates standing in elections (45%). One reason for this discrepancy is likely to be the prevalence of proportional representation electoral systems in

Europe, which normally places the campaign spending focus on parties rather than on individual countries (the gap globally is only 25%).<sup>4</sup>

The Venice Commission has similarly recommended that (2001, Guidelines 11 and 12);

“Electoral campaign accounts will be submitted to the organ charged with supervising election procedures, for example, an election committee, within a reasonable time limit after the elections... The transparency of electoral expenses should be achieved through the publication of campaign accounts.”

The Council of Europe has called on member states to (Rec(2003)4, Article 14a & b);

“...provide for independent monitoring in respect of the funding of political parties and electoral campaigns... The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication”.

It should be noted that also in European countries where political finance disclosure has been an established principle for several decades, there is often a considerable gap between theory and practice in terms of the actual supervision of political party and campaign finance.

In this context it is important to bear in mind the recommendation of the Council of Europe that member states should “promote the specialisation of the judiciary, police or other personnel in the fight against illegal funding of political parties and election campaigns” (Rec(2003)4, Article 15). See further under the section on sanctions and enforcement.

## Public funding

An increasingly common form of campaign finance regulation is the provision of public funds to political parties (and less commonly to election campaigns). As of 2009, almost 90% of European countries provide direct funding to political parties, and normally also indirect assistance in the form of free media exposure, tax relief or subsidized party offices.<sup>5</sup> The goal of using public funds in this manner is normally to ensure that all (relevant) political actors have enough resources to reach out to the electorate with their message. The provision of public funding combined with spending limits (see below) can also help to reduce the advantage of rich contestants over poor.

The Council of Europe recommendation 2003(4) counsels member states to provide public funding of political parties. However, the Council has also advised that such government assistance should be limited to “reasonable contributions” and not exclude or replace private funding of party activities (Article 1). The main argument for this is presented in the COE 1516 (2001) Recommendation 8 iii that “...excessive reliance on state funding can lead to the weakening of links between parties and their electorate”. The accuracy of this notion is disputed, and at least one study has concluded that in

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<sup>4</sup> It can be argued that the Council of Europe has indirectly called for disclosure by candidates by stating that its recommendations about political party transparency should be applied *mutatis mutandis* to that of candidates in elections (Article 8).

<sup>5</sup> Public funding is somewhat less common in East and Central Europe than in Western Europe; 82% against 92% in the 22 and 24 countries respectively in the International IDEA database on political party finance. Note that the information in the IDEA database is from 2002, and that an update is likely to be available within the next couple of years. See further [www.idea.int/parties/finance/db](http://www.idea.int/parties/finance/db)

Western democracies, the introduction of public funding does not seem to have affected the growth or decline of party membership.<sup>6</sup>

In either case, there is no European consensus on what *reasonable* contributions may be, with governments in some countries providing the bulk of the funds used by political parties whereas others are very modest in their contributions.

Establishing a system of public funding requires paying close attention to a series of issues, such as the institution responsible for distribution, distribution calculations and timing and whether or not provided funding should be earmarked for certain activities. There is not room here to go into every such detail, but it can be noted that the Venice Commission has addressed one of the most important, namely who should be eligible to receive public funding. The Commission notes that as a minimum all political parties with Parliamentary representation must receive funding, but also states that (2001, Guideline 4),

“in order, however, to ensure the equality of opportunities for the different political forces, public financing could also be extended to political bodies representing a significant section of the electoral body and presenting candidates for election. The level of financing could be fixed by legislator on a periodic basis, according to objective criteria.”

Data from 21 COE countries show that the threshold for qualifying for public funding varies from 1,000 votes to 7% of the votes, with an average threshold of 3%. Only a few countries restrict public funding to political parties with Parliamentary representation.<sup>7</sup>

## Spending and contribution bans and limits

One of the most common forms of limits in relation to political finance is to restrict the amount that political parties and/or candidates can spend in relation to election campaigns. The reason for such limits is normally to reduce the advantage of contestants with access to significant amounts of funds, or to reduce the amount spent on election campaigns overall.

The Venice Commission has recommended that (2001, Guideline 8);

“In order to ensure equality of opportunities for the different political forces, electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of voters concerned.”

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<sup>6</sup> Pierre, Svåsand & Widfeldt (2000) “State Subsidies to Political Parties: Confronting Rhetoric with Reality” in *West European Politics*, Vol. 2, No. 3, p 18. Young found that after the introduction of public funding in Canada, the “[p]arties’ ties to civil society... remain intact (although fragile for other reasons)” Young (1998) “Party, State and Political Competition in Canada: The Cartel Model Reconsidered” in *Canadian Journal of Political Science / Revue canadienne de science politique*, Vol. 31, No. 2. p 358.

<sup>7</sup> Ongoing research by author. The same research indicates that out of 14 COE countries for which data is available, an average of 20% of the public funds are provided equally to all eligible political parties, whereas the rest is distributed in accordance to the number of seats won in the most recent election (or in a few cases in accordance with the number of seats held in elected bodies). The countries include the whole range from all the funds being provided equally to all funds being distributed on a proportional basis. The main argument in favour of equal distribution is that it reduces the advantages of rich political parties and gives all a chance to be heard. Arguments against equal distribution (and in favour of proportional) is that such practices can lead to the fragmentation of the party system and that it can skew political competition in a manner not related to popular support for different parties. Clear is that the larger the share of public funds being distributed equally, the more important the eligibility criteria will be.

While the Venice Commission has thereby placed focus on the relative funds available to political contestants, the Council of Europe (Rec(2003)4, Article 9) has placed focus on the overall level of finances by stating that;

“States should consider adopting measures to prevent excessive funding needs of political parties, such as establishing limits on expenditure on electoral campaigns.”

Not all European countries have yet become persuaded by either argument. In East and Central Europe 41% of countries use election spending limits for political parties, and only 35% do so in Western Europe.<sup>8</sup>

An argument often made against spending limits (not least in the US) is that they restrict free speech. An interesting test case relating to this issue was *Bowman v. The United Kingdom*. In 1998, the European Court of Human Rights ruled in a case where Ms Phyllis Bowman had been sanctioned by UK authorities for breaching a £5 pound spending limit in her attempts to bring attention to anti-abortion issues in British elections.<sup>9</sup> The court ruled in Bowman’s favour, arguing that the spending limit was disproportionate. However, more important was that the Court established the right of countries to limit spending in relation to elections. It noted in its ruling that “in certain circumstances the two rights [of free speech and free elections] may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the ‘free expression of the opinion of the people in the choice of the legislature’”.<sup>10</sup>

Spending can also de facto be reduced by limiting the amount that eligible entities can contribute to political parties or electoral campaigns. The main argument behind contributions limits is that they can reduce the dependence of politicians on large donors. A difficulty is that contributions are more difficult to monitor than spending, and contribution limits are therefore notoriously difficult to enforce. Of the 17 countries in East and Central Europe for which data is available in the International IDEA database on political party finance regulations, two thirds used contribution limits, as compared to only 40% that used limits on political party expenditure.<sup>11</sup>

The COE does rather vaguely note (Rec(2003)4, Article 3b,ii) that members states should “consider the possibility of introducing rules limiting the value of donations to political parties”. Similarly, the Venice Commission simply notes (Recommendation 6) that among the limitations that “may... be envisaged” is “a maximum level for each contribution”. The OSCE has elaborated (p 22) regarding the suitable size of such contribution limits, emphasising the need for flexibility;

“What is reasonable depends on the type of election and factors unique to the particular country, such as geography, demographics, and relative costs of media and other campaign materials.”

If the Council of Europe and the Venice Commission are both vague on the issue of contribution limits, both institutions make references to direct *bans* on certain types of contributions. One such case refers to donations from other countries. The Venice Commission is clear in its

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<sup>8</sup> Data from the IDEA database.

<sup>9</sup> This was subsequently not a case of spending by a political party or a candidate, but so-called third party spending, which was included in the ban (set out in the UK Representation of the People Act 1983).

<sup>10</sup> European Court of Human Rights, case 141/1996/760/961. While deciding that the £5 limit in question was too low, the Court also acknowledged that “...in striking the balance between these two rights, the Contracting States have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems...”.

<sup>11</sup> This is different from Western Europe, where two thirds of the 20 countries for which data is available do *not* use contributions limits, with the same figures for election expense limits.

recommendation that “donations from foreign States or enterprises must... be prohibited” (2001, Guideline 6) and the Council of Europe similarly states that (Rec(2003)4, Article 7) “States should specifically limit, prohibit or otherwise regulate donations from foreign donors”.<sup>12</sup> East and Central European countries have taken these recommendations to heart more than those in Western Europe with 76% using such bans compared to 30% in the West.<sup>13</sup> East and Central European countries are also more likely to ban anonymous donations; 82% against 45% in Western Europe.<sup>14</sup>

A final point; it makes little sense to pass detailed regulations on contribution and spending limits and bans before a reasonably well functioning system has been put in place. As the OSCE has put it; “Legitimate limitations on campaign expenditures are meaningless without reporting and disclosure requirements.” (page 22).

## The Abuse of State (Administrative) Resources

Another important area of regulating political finance deals with the abuse of state or administrative resources in relation to political parties and election campaigns. This has proven to be a major impediment to democratic development in a number of European countries, and it has proven to be an issue that seems especially difficult to address.

While this issue is not as well covered by the European guiding documents as the others discussed above, some guidance is available. A good starting point is the Copenhagen document, which noted that there must be;

(5.4) “a clear separation between the State and political parties; in particular, political parties will not be merged with the State;”

It can be useful to consider state resources under four categories to assist the understanding the range of ways in which state resources can be abused.<sup>15</sup>

Institutional resources	Material and personnel resources available to the state, including publicly owned media
Financial resources	Monetary assets (normally through the state budget)
Regulatory resources	The ability to pass laws and regulations that benefit one political group or disadvantages others
Coercive resources	The use of security and law enforcement institutions

There are several ways through which legislation can address the abuse of administrative resources. These can be categorised under three headings;

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<sup>12</sup> A sensitive issue in some countries with a sizable diaspora is whether citizens living abroad should be permitted to contribute financially to political activities. The Venice Commission Guidelines clearly oppose a ban on such practices.

<sup>13</sup> Data from 17 countries in East and Central Europe and 20 countries in Western Europe.

<sup>14</sup> Many countries allow anonymous donations in certain cases, particularly regarding donations under a certain amounts. Such rules protect the privacy of ordinary people and reduce the accounting burden on political parties. However, it can also open a loophole for unscrupulous donors and party officials to avoid publicity (and spending limits) by dividing large donations into many smaller ones.

<sup>15</sup> The Open Society Justice Initiative “Monitoring Election Campaign Finance, a Handbook for NGOs” (2005), uses the categories “institutional resources” (including what we term financial resources), “regulatory resources” and “legislative resources” (both of which we include under regulatory resources), “coercive resources” and “State media” (we include the latter under institutional resources).

- A. Banning public entities (or entities with a public connection) from favouring or disfavouring any political actor
- B. Banning public entities and entities with a public connection from certain types of behaviour regardless of whether there is an intent to favour or disfavour any political actor (at all times or during particular periods, such as election campaigns)
- C. Banning political actors from receiving favour from public entities (or entities with a public connection)

In line with the first approach, the Council of Europe has called on member states to “prohibit legal entities under the control of the state or of other public authorities from making donations to political parties” (Rec(2003)4, Article 5c).<sup>16</sup>

The OSCE/ODIHR has similarly stated in its Guidelines for Reviewing a Legal Framework for Elections (p 21f) that;

“the legal framework should ensure that state resources are not misused for campaign purposes and that they are used only with strict adherence to the applicable legal provisions... The legal framework should specifically provide that all state resources used for campaign purposes, such as state media, buildings, property, and other resources are made available to all electoral participants on the basis of equal treatment before the law”.

In its Code of Good Practice in Electoral Matters (Section I.2.3.a), the Venice Commission has also stated that the principle of equality of opportunity;

“entails a neutral attitude by state authorities, in particular with regard to:

- i. the election campaign;
- ii. coverage by the media, in particular by the publicly owned media;
- iii. public funding of parties and campaigns.”

The Commonwealth of Independent States adopted the third of the above approaches in the “Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Commonwealth of Independent States” (article 36);

“The candidates do not have the right to take advantages of their official position or advantages of office with the aim of being elected. The list of breaches of the principle of equal suffrage, and measures of responsibility for such breaches are determined by laws.”

In many cases, a combination of these approaches will be necessary to effectively counteract abuse of administrative resources. It should however also be noted that this area is particularly difficult to address, and no formal regulations will suffice if they are not backed by political will and popular pressure for reform.

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<sup>16</sup> See also COE Parliamentary Assembly 2001 (Article 8a,va), which recommends a “ban on donations from state enterprises, enterprises under state control, or firms which provide goods or services to the public administration sector”

## Sanctions and enforcement

Enforcement of political finance regulations are universally difficult to implement, so much so that a leading expert in the field has used the expression “too much regulation, too little enforcement” to describe the situation worldwide.<sup>17</sup> Indeed, many countries have more than adequate legal frameworks regarding political finance oversight that are rendered meaningless by insufficient (or a total absence) of enforcement.

The Venice Commission (2001, Guidelines 13 & 14) has provided the following recommendations;

“Any irregularity in the financing of a political party shall entail sanctions proportionate to the severity of the offence that may consist of the loss of all or part of public financing for the following year...

Any irregularity in the financing of an electoral campaign shall entail, for the party or candidate at fault, sanctions proportionate to the severity of the offence that may consist of the loss or the total or partial reimbursement of the public contribution, the payment of a fine or another financial sanction or the annulment of the election.”

The Council of Europe has similarly stated (Article 16) that member states;

“should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions”

The notion of proportionality is particularly important. Sanctions that are too mild will fail to deter illegal activities (for example if a fine is imposed that is dwarfed by the financial benefit of the infraction). Conversely, sanctions that are particularly severe risk not being used at all or to invite biased application. For example, OSCE has stated (p 22) that “candidates should not be disqualified from running due to minor reporting irregularities”.

Note that any sanction mechanism will need to be reviewed regularly to ensure that it serves as an effective deterrent against malpractices. The new Political Parties and Elections Act in the United Kingdom provides a new range of sanctions coming into effect on 1 December 2010, in spite of the fact that the country has regulated political finance for several decades.<sup>18</sup>

A capable and active institution should be in charge of receiving and reviewing financial reports submitted by contestants. The OSCE has stated that “The legal framework should specifically identify the agency responsible for receiving and maintaining campaign contribution and expenditure reports.” (Page 23). Similarly, the COE Parliamentary Assembly has called on member states to “establish independent auditing bodies endowed with sufficient powers to supervise the accounts of political parties and the expenses linked to electoral campaigns” (Article 8d).

The detection of inaccuracies in submitted financial reports will also be greatly facilitated if the information in submitted reforms is made public, and therefore available to civil society groups and the media for further scrutiny. The Venice Commission has argued (Recommendation 12) that “The transparency of electoral expenses should be achieved through the publication of campaign accounts.”

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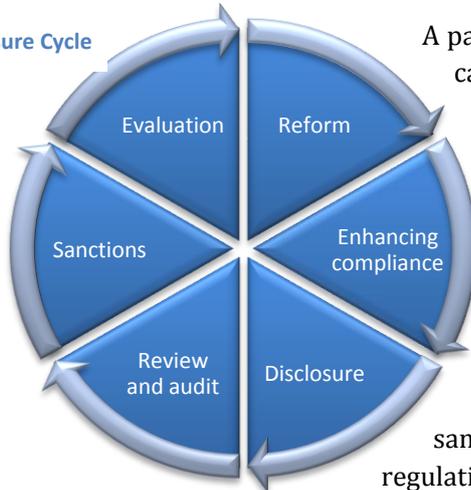
<sup>17</sup> Pinto-Duschinsky, Michael (2002) “Financing Politics: A Global View” in *Journal of Democracy*, Vol 13, No 4. Page 80.

<sup>18</sup> See further <http://www.electoralcommission.org.uk/party-finance/enforcement>

## Conclusions

Money is undoubtedly a necessary part of democratic politics. Even so, the existence of money in politics always entails temptations to engage in corrupt or other non-democratic activities, and some form of control is therefore necessary. As recent scandals in some of the oldest democracies have shown, this is the case whether the country in question is a long established or a recent democracy.

The Disclosure Cycle



A particularly poignant example of the need for constant review of campaign finance regulations is the rules regarding disclosure. Political contestants will seek new ways to avoid potentially harmful information reaching the public, and the regulator therefore needs to continually reassess its rules and practices. As the disclosure cycle to the left illustrates, a period of reform must be followed by close interaction with stakeholders to enhance compliance.

Once disclosure has taken place, received reports must be reviewed and audited, and effective and proportionate sanctions meted out. It is then of great importance that the regulations and implementation practices are evaluated, allowing for further reform and additional improvements. Subsequently, at no point must the work to enhance oversight end. The temptation must also be resisted to tighten control by continually imposing increasingly stricter reporting requirements, as a system that creates an undue reporting burden on political parties and electoral candidates is unlikely to enhance transparency and effective oversight. More detailed financial reports do not necessarily translate into more transparency.

The starting point for considering political finance regulations in Europe can be taken from the principles established by the Council of Europe Parliamentary Assembly (COE Recommendation 1516 (2001), 7);

- A reasonable balance between public and private funding,
- Fair criteria for the distribution of state contributions to parties
- Strict rules concerning private donations,
- A threshold on parties' expenditures linked to election campaigns
- Complete transparency of accounts,
- The establishment of an independent audit authority and meaningful sanctions for those who violate the rules

Took take a global view, a three-year project on common principles in political finance recently concluded by IFES identified the following key global understandings of a series of organisations active in this field;

1. *Money is necessary for democratic politics, and political parties must have access to funds to play their part in the political process. Regulation must not curb healthy competition*
2. *Money is never an unproblematic part of the political system, and regulation is desirable*
3. *The context and political culture must be taken into account when devising strategies for controlling money in politics*

4. *Effective regulation and disclosure can help to control adverse effects of the role of money in politics, but only if well conceived and implemented*
5. *Effective oversight depends on activities in interaction by several stakeholders (such as regulators, civil society and the media) and based on transparency*

A key recommendation is that any country that considers introducing or reforming its regulations on political finance should start by considering what values such regulations are supposed to support, and what role that political parties and election campaigns are seen to have in the democratic politics of the country. Such consideration need to guide the development of regulations rather than technical considerations.

Finally, Europe is no exception to the rule that well-meaning rules and admirable regulations amount to nothing unless they are actively enforced by a capable and determined institution endowed with access to relevant sanctions. A vigilant civil society and media is also necessary to make people aware of these issues, as the Council of Europe has rightly stated that “raising public awareness on the issues of prevention and fight against corruption in the field of funding of political parties is essential to the good functioning of democratic institutions” (Introduction, Recommendation Rec 2003(4)).

## Additional information

For further information, please visit the following websites;

Organisation	Website	Comment
Council of Europe	<a href="http://www.coe.int">www.coe.int</a>	The institution in charge of both the Venice Commission and GRECO
Venice Commission	<a href="http://www.venice.coe.int">www.venice.coe.int</a>	Includes much relevant information, including the VOTA database of electoral legislation
Group of Countries against Corruption	<a href="http://www.coe.int/greco">www.coe.int/greco</a>	Includes reports from 27 countries (as of November 2010) about the transparency of party funding
IFES (Money and Politics)	<a href="http://www.moneyandpolitics.org">www.moneyandpolitics.org</a>	IFES website with global resources in political finance (under review)

### The following sources can also be of use;

Ohman, Magnus & Zainulbhai, Hani (eds) <i>Political Finance Regulation; The Global Experience</i> . (Washington: IFES, 2009)	<a href="http://www.ifes.org/files/Political_Finance_Regulation_The_Global_Experience.pdf">http://www.ifes.org/files/Political_Finance_Regulation_The_Global_Experience.pdf</a>
International IDEA Political Finance Database	<a href="http://www.idea.int/parties/finance/db/index.cfm">http://www.idea.int/parties/finance/db/index.cfm</a>