



ASSEMBLEIA DA REPÚBLICA
EUROPEAN AFFAIRS COMMITTEE

Written Opinion

COM (2012) 499

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the statute and funding of European political parties and European political foundations

COM(2012)500

COMMISSION WORKING DOCUMENT prefiguring the proposal for an amendment to the Financial Regulation introducing a new title on the financing of European political parties



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PART I - INTRODUCTORY NOTE

In accordance with Article 7 of Law no. 43/2006 of 25 August 2006 on the monitoring, assessment and pronouncement by the *Assembleia da República* within the scope of the process of constructing the European Union, as amended by Law no. 21/2012 of 17 May 2012 as well as the methodology of scrutinising European initiatives approved on 20 January 2010, the European Affairs Committee received the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the statute and funding of European political parties and European political foundations [COM(2012)499] and COMMISSION WORKING DOCUMENT prefiguring the proposal for an amendment to the Financial Regulation introducing a new title on the financing of European political parties [COM(2012) 500].

In view of their subject-matter, the above draft acts were sent to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees, which examined the draft acts and approved the Report attached to this Written Opinion and which forms an integral part thereof.

PART II - RECITALS

In accordance with Article 10(4) of the Treaty on European Union, "*Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union*". Nine years after the entry into force of Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding, and five years after the amendment of that Regulation in 2007, which, amongst other things, included European political foundations affiliated to those parties within the scope of the Regulation, the Commission has conducted a comprehensive assessment of the current regulatory and financing framework for European political parties and foundations.

This assessment was carried out following the adoption of a report by the Secretary General of the European Parliament (EP) on party funding at European level, submitted to the Bureau on 18 October 2010, of the Report dated 18 March 2011 (hereafter referred to as [the Giannakou report](#)) and the European Parliament resolution of 6 April 2011 on the application of Regulation (EC) No 2004/2003, in which it was decided to request that the European Commission propose a draft statute for European political parties in accordance with Article 225 of the Treaty on the Functioning of the European Union and notes that what is needed on a shorter-term basis is an improved regulatory environment for the European political parties and foundations, involving, as a first step, the adoption of the European statute.



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The Commission has proposed a series of complementary proposals to improve the funding and regulatory frameworks of the political parties and political foundations at European level: the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the statute and funding of European political parties and European political foundations, the objective of which is to replace the current Regulation (EC) No 2003/2004 and a second proposal, submitted at the same time, the aim of which is to amend the Financial Regulation.

In this context we would refer you to the comments made in full in point II of the Report by MP Ricardo Rodrigues (PS) on these draft acts, which was submitted and discussed at the meeting of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees¹.

In view of the provisions contained in the proposal, we would raise the following questions:

a) Legal basis

The Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the statute and funding of European political parties and European political foundations [COM(2012) 499] is based on Article 224 of the Treaty on the Functioning of the European Union, which states that "*The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, by means of regulations, shall lay down the regulations governing political parties at European level referred to in Article 10(4) of the Treaty on European Union and in particular the rules regarding their funding*".

Essentially, this provision corresponds to the second subparagraph of Article 191 of the Treaty establishing the European Community, on which Regulation (EC) No 2004/2003 is based.

The two draft acts are based on the Resolution of 6 April 2011 on the application of Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding, in which the European Parliament suggested, in the light of the experience acquired, a series of improvements for the financing of European political parties and European political foundations.

b) Principle of Subsidiarity

¹ The Report was approved with votes in favour cast by the PSD, PS and CDS/PP parties, votes against cast by the PCP party and abstentions by the BE party, with the PEV party not being present at the vote.



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The proposal complies with the principle of subsidiarity, on the basis that action at EU level is the only way of establishing rules on the statute and funding of European political parties and European political foundations. It should also be stated that these draft acts do not amend regulation at national level governing political parties and that European parties will have to comply with the legislation applicable in the country in which they have their headquarters.

c) Content of the initiative

The Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the statute and funding of European political parties and European political foundations [COM(2012) 499] makes it possible to register as a European political party or political foundation and therefore obtaining a legal status on the basis of EU law. This new European legal personality will replace any pre-existing national legal personality. The creation of a similar European legal status for political foundations affiliated to political parties recognises the role of such foundations in terms of supporting and complementing the activities of European political parties.

Therefore, as requested by the European Parliament in its resolution of 6 April 2011, and as recognition of the role the European Parliament has of directly representing the Union's citizens, assigned to it by Article 10(2) of the Treaty on European Union, the Commission is proposing that only those political parties – and, by extension, affiliated political foundations – that are represented in the European Parliament by at least one of their members should be entitled to receive EU funding.

The Commission Working Document prefiguring the proposal for an amendment to the Financial Regulation introducing a new title on the financing of European political parties, although not being a formal Commission proposal, presents the changes which would be required to the Financial Regulation (hereinafter "FR") following the triennial revision of the FR.

However, since the new FR has not yet been formally adopted, the Commission may only submit its proposal in the form of a working document. The Giannakou report considers that, in light of the experience acquired, the financing of European political parties and European political foundations should be improved in a number of areas. In particular, the report calls for an end to the system of grants and the creation of a new financing instrument in the FR "*devoted solely and tailored specifically to the funding of European Parties and foundations*". It also proposes that Political parties should be financed through a new instrument (contributions), rather than through an operating grant, as is currently the case.

It also states that the envisaged amendment to the Financial Regulation is not expected to have any significant budgetary implication.



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PART III - PERSONAL VIEW OF THE RAPporteur

In the absence of justified reservations concerning non-compliance with the principle of subsidiarity or the timeliness of submitting this Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the statute and funding of European political parties and European political foundations, a number of questions could form the subject of further discussion and reservations regarding their inclusion in the final document.

It should be stated that the legislation applicable, in accordance with Article 10 of the Proposal, is the Regulation which states that: *"For matters not regulated by this Regulation or, where matters are partly regulated by it, the European political party and the European political foundation shall be governed in the Member State in which it has its seat by those national laws applicable to the legal form referred to in the party or foundation statutes. Activities carried out by the European political party and the European political foundation in other Member States shall be governed by the relevant national laws of those Member States."*

This "crossing" of applicable provisions would mean a need for consistency between such provisions in order to prevent any conflict resulting from a different rules or rules which are even incompatible; such a situation could occur specifically with regard to rules governing the internal democracy of European political parties, and also rules governing donations and contributions.

In addition to a possibility of conflicting rules, it is important for the system to be as close as possible to the system which exists at national level in order to avoid two separate systems applying to similar situations. Therefore, for example, on the subject of donations, the proposed draft act indicates that *"European political parties and European political foundations may accept donations from natural or legal persons of up to a value of EUR 25 000 per year and per donor"*. The Portuguese rules governing the Financing of Political Parties and Electoral Campaigns states that donations of a pecuniary nature made by individuals shall be subject to the annual limit of 25 times the value of the IAS (Portuguese social support indexation) per donor and shall be made by cheque or bank transfer and political parties may not be able to receive anonymous donations or receive donations or loans of a pecuniary nature or from national or foreign legal persons.

It should also be noted that it should not be the European Parliament to verify the conditions and the requirements laid down, because although this responsibility was already provided for in the previous regulation, it was purely for the purpose of establishing legal personality and the corresponding representativeness, whereas under the proposals made in this draft act, the European Parliament verifies, on an annual basis, whether the conditions of registration, governance and internal democracy of European political parties and/or political foundations continue to be met.



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Finally, Article 51 of the Constitution of the Portuguese Republic states that "no one may be simultaneously registered as a member of more than one political party, and no one may be deprived of the exercise of any right because he is or ceases to be registered as a member of any legally constituted party", which constitutes an impediment to the participation of nationals.

PART IV - CONCLUSIONS

Although no questions have been raised regarding the timeliness of these draft acts and subsidiarity has not been compromised, there are a series of questions which are worthy of further reflection and consideration, which even have the potential of creating conflict with national legislation, in view of the possible disputes which could be caused by their entry into force and application. Given that the scrutiny of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the statute and funding of European political parties and European political foundations [COM(2012)499] falls within the context of Protocol No 2, in respect of which the deadline for sending an opinion to the EU institutions is on 16 November, we propose sending this opinion, without prejudice to the possibility of extending debate, together with the Report issued by the Committee on Constitutional Affairs, Rights, Freedom and Guarantees, by means of a hearing having been held.

PART V - OPINION

In view of the above and having regard to the Report issued by the relevant Committee, the European Affairs Committee hereby issues the following opinion:

1. The initiative in question does not compromise the principle of subsidiarity, insofar as the objective to be met will be achieved more efficiently by means of action taken at Union level.
2. As regards the content of the proposals contained in the draft acts in question and given the points made above, the Committee has reservations which prevent it from issuing an opinion and indicating its full agreement. These reservations concern, in particular, both the solutions proposed which are incompatible with national provisions or where the implementation of could involve distortion, specifically in terms of the financing, governance and internal democracy of political parties, and also the extension of the powers granted to the European Parliament in terms of verifying the registration of European political parties.

Therefore, taking into account the proposal to extend the debate and involve the Government, in addition to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees, the Committee reserves its position for a subsequent opinion.



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São Bento Palace, 13 November 2012

Rapporteur, Ana Catarina Mendes

Committee Chairman, Paulo Mota Pinto



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PART IV - APPENDIX

Report from the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees