



Strasbourg, 5 September 2006

Opinion no. 394 / 2006

CDL(2006)064
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON THE FINANCING OF POLITICAL PARTIES
OF CROATIA

BILL ON THE FINANCING OF POLITICAL PARTIES

I. CONSTITUTIONAL BASIS FOR THE ADOPTION OF THE LAW

The constitutional basis for the adoption of this Law is contained in the provision of Article 6 of the Constitution of the Republic of Croatia.

II. ASSESSMENT OF THE SITUATION AND THE BASIC ISSUES THAT NEED TO BE REGULATED BY THE ADOPTION OF THE LAW AND THE CONSEQUENCES WHICH WILL ENSUE FROM THE ADOPTION OF THE LAW

The conduct of elections and the consolidation of application of democratic standards in the electoral procedure require further upgrading of certain electoral institutions, as well as higher-quality and more adequate solutions for certain issues of significance for the legality and regularity of the conduct of elections.

Thus, the issue of the financing of political parties is one of the significant issues which requires legislative regulation adequate to the norms and practices of European countries. Namely, according to the current and valid legislative solution, the financing of political parties is regulated by the Law on Political Parties ("Official Gazette", No. 76/93, 111/96, 164/98 and 36/01) in such a manner that political parties are established as non-profit associations, which are enabled and allowed, for the purpose of achieving their political goals, to gain profits on different bases. Those profits are primarily gained from membership fees and voluntary donations, then profits from publishing activities, the sale of advertising material and from organising party manifestations. Political parties may be financed at the same time from the state budget, budgets of local and regional self-government units and other sources permissible under legal regulations of the Republic of Croatia.

Furthermore, political parties may also receive donations, whereby positive regulations of the Republic of Croatia do not impose restrictions in the sense of limiting the amount and frequency of financial donations or donations of goods or services. Given the insufficiently regulated legal provisions pertaining to the sources and funds for the financing of political parties, there is a need for the adoption of a comprehensive law which would define and specify the permissible funds for financing and funds which are not allowed to be used for the financing of political parties, all with the aim of ensuring the functioning of the system of financing political parties without larger disturbances and possible obstructions.

The National Anti-corruption Programme for 2006-2008 ("Official Gazette", No. 39/06) establishes the obligation to pass a special Law on the Financing of Political Parties which would stipulate the possible sources of financing of political parties and specify permissible funds, in such a manner that it will incorporate best practices of the European Union countries. Clearly and precisely determined obligations regarding the control of the financing of political parties and the transparency of their financing is one way of decreasing the possibilities for corruption in politics.

Therefore, the basic issues proposed to be regulated by this Bill refer to the manner and conditions of acquiring funds for the financing of political parties, as well as the control and transparency of their financing, which will ensure effective mechanisms of strengthening the financial discipline of political parties and decrease the possibilities for corruption.

III. ASSESSMENT AND SOURCES OF FUNDS NECESSARY FOR THE IMPLEMENTATION OF THE LAW

The implementation of this Law does not require the allocation of additional funds in the State Budget of the Republic of Croatia.

IV. TEXT OF THE BILL WITH AN EXPLANATION

Enclosed herewith is the text of the Bill on the Financing of Political Parties with an explanation.

BILL ON THE FINANCING OF POLITICAL PARTIES

I. GENERAL PROVISIONS

Article 1

This Law shall regulate the manner and conditions for the acquisition of funds for the activities of political parties, as well as supervision and transparency of acquiring and spending of funds.

II. FUNDS FOR THE WORK OF POLITICAL PARTIES

Article 2

Political parties shall be non-profit associations.

Political parties may, for the purpose of exercising their political goals, gain income from membership fees, voluntary contributions (donations) [hereinafter: donations], publishing activity, sale of advertising material, organisation of party manifestations, from the property that they own and from other legally permitted sources.

Political parties may be financed from state budget funds, as well as from funds of local and regional self-government units, in a manner and under conditions set forth by this Law.

A political party may use the funds referred to in Paragraphs 2 and 3 of this Article exclusively for the purpose of achieving goals determined by the programme and statute of the political party.

Membership fee and donations

Article 3

A membership fee, in the sense of this Law, shall be considered a regular amount of money that a member of a political party pays in the manner and under conditions determined by the statute or other act of the political party.

Donations, in the sense of this Law, shall be considered temporary or regular payments by which natural or legal persons voluntarily give money to a political party in the amount that exceeds the amount of a membership fee, as well as the provision of services or products to a political party free of charge.

For donations provided to a political party in the form of products or services, natural and legal persons shall be obliged to issue an invoice which will indicate the market value of a donated product or service, as well as that it is addressed to a political party and that it is not subject to remuneration.

Political parties shall be obliged to keep records on the receipt of membership fees and donations and issue certificates on the receipt of membership fees and donations.

Article 4

Natural and legal persons may give single or multiple donations to political parties during a calendar year.

Donations in cash shall be paid to the gyro-account of a political party.

A total amount of donations given by a natural person to a political party may not exceed HRK 90,000.00 (ninety thousand) in the course of a calendar year.

A total amount of donations given by a legal person to a political party may not exceed HRK 1,000,000.00 (one million) in the course of a calendar year.

Anonymous donations

Article 5

Receiving of donations from unidentified (anonymous) sources shall be prohibited.

Article 6

Political parties shall be obliged to report the amounts of donations that exceed the amounts determined in Article 4 of this Law, as well as possible payments of donations from unidentified (anonymous) sources to the State Audit Office and the Ministry of Finance – Tax Administration and pay them in favour of the State Budget within 8 days from the day of payment, at the latest.

Financing from state budget funds

Article 7

Funds for regular annual financing of political parties shall be provided in the State Budget of the Republic of Croatia in the amount of 0.056% of funds for current budget expenditures for the previous year.

Article 8

Political parties with at least one representative in the Croatian Parliament shall be entitled to funds from the state budget.

Article 9

Funds referred to in Article 7 of this Law shall be allocated in such a manner that an equal amount of funds is determined for each representative in the Croatian Parliament, thus each political party shall receive funds proportionally to the number of its representatives at the moment of constituting the Croatian Parliament.

If an individual representative (or representatives) leave or change membership in a political party after the constitution of the Croatian Parliament, funds allocated in compliance with Article 9, Paragraph 1 of this Law shall remain with the political party to which the representative belonged at the moment of constituting the Croatian Parliament.

Article 10

For each elected representative of an under-represented gender, political parties shall have the right to compensation in the amount of 10% of the amount anticipated for each representative and determined in Article 9, Paragraph 1 of this Law.

Article 11

The Parliamentary Committee for the Constitution, Standing Orders and Political System shall pass a decision on the allocation of funds pursuant to Article 9, Paragraph 1 of this Law.

Financing from the local and regional self-government units' budget funds

Article 12

Funds for the work of political parties with at least one member in representative bodies of local and regional self-government units shall be allocated from local and regional self-government units' budgets, in an appropriate manner, pursuant to the provisions of this Law pertaining to the financing from state budget funds.

Article 13

Funds provided for regular financing of political parties in local and regional self-government units' budgets shall be allocated to the gyro-account of the political party's branch at the level of appropriate local and regional self-government unit, quarterly, in equal amounts.

Indirect financial supports

Article 14

For the activities that are strictly related to the political activity of a party, political parties referred to in Article 8 of this Law have the right to tax benefits pursuant to the provisions of a special law.

III PROHIBITION OF FINANCING AND PREFERENTIAL TREATMENT

Article 15

Financing of political parties by the following entities shall be prohibited:

- by foreign countries, foreign political parties, foreign legal persons,
- by state bodies, public companies, legal persons vested with public powers and trade companies with majority interest of the state or local and regional self-government unit, as well as other legal persons in which the Republic of Croatia or a local and

regional self-government unit are majority stock or share holders, as well as public and other institutions owned by the Republic of Croatia and local and regional self-government units,

- associations of employees and employers,
- associations, trust funds and foundations represented by state officials or officials of local and regional self-government,
- religious communities, humanitarian and other non-profit associations and organizations.

A political party shall be obliged to immediately report possible donations paid to the account of the political party from impermissible sources pursuant to Paragraph 1 of this Article to the State Audit Office and the Ministry of Finance – Tax Administration, while paid funds shall be paid in favour of the State Budget.

Article 16

Political parties may not perform political or any other pressure on natural and legal persons when collecting donations for the financing of their activities.

Political parties may not promise political or any other counter-favours, privileges or personal benefits of any kind to natural and legal persons when collecting donations for the financing of their activities.

IV. SUPERVISION AND FINANCIAL OPERATIONS OF POLITICAL PARTIES

Article 17

The supervision over financial operations of a political party shall be conducted by the State Audit Office and the Ministry of Finance – Tax Administration.

Article 18

Political parties shall be obliged to keep business records and submit financial reports in the manner established by the regulations on book-keeping for non-profit organizations.

Article 19

Political parties shall be obliged to publicly present the origin and mode of expenditure of funds accumulated in the course of the last calendar year.

Political parties shall forward the annual accounts and financial report which lists in detail the sources of income, data on natural and legal persons which provided donations and the purpose, that is, activities for which funds were spent, to the State Audit Office and the Ministry of Finance - Tax Administration in the manner and within the deadline anticipated for financing non-profit organizations.

The annual accounts and financial report referred to in Paragraph 2 of this Article shall be published in the Official Gazette and on the web-site of a political party.

Article 20

The supervision over financial operations of political parties shall be conducted by the State Audit Office and the Ministry of Finance – Tax Administration in the first half of each calendar year for the previous year.

The report on conducted supervision over financial operations of political parties which, according to the provisions of this Law, are entitled to state budget funds shall be submitted by the State Audit Office to the Croatian Parliament.

The findings of the State Audit Office shall be published in the Official Gazette.

V. PENAL PROVISIONS

Article 21

A fine in the amount from HRK 100,000.00 (one hundred thousand) to HRK 500,000.00 (five hundred thousand) shall be imposed on:

- a political party which uses financial resources contrary to the provision of Article 2, Paragraph 4 of this Law,
- a political party which does not keep records on the receipt of membership fees and donations and does not issue certificates on their receipt in compliance with the provision of Article 3, Paragraph 4 of this Law,
- a political party which does not keep business records and does not publicly present the origin and mode of funds spent, in compliance with the provisions of Articles 18 and 19 of this Law.

A fine in the amount from HRK 10,000.00 (ten thousand) to HRK 20,000.00 (twenty thousand) shall be also imposed on a person authorized to act on behalf and represent a political party as well as a person responsible for financial operations of a political party.

Article 22

A fine, three times as high as the amount of paid or received funds, shall be imposed on:

- a political party which does not report and does not pay into the state budget, in compliance with Article 6 of this Law, the amounts of donations which exceed the amounts stipulated by Article 4 of this Law, as well as possible payments of donations from unidentified sources,
- a political party which does not report the payment of a donation from an impermissible source and does not transfer paid funds into the state budget, in compliance with Article 15, Paragraph 2 of this Law.

A fine in the amount from HRK 10,000.00 (ten thousand) to HRK 20,000.00 (twenty thousand) shall be also imposed on a person authorized to act on behalf and represent political party as well as a person responsible for financial operations of a political party.

Article 23

Funds accumulated or spent by a political party in the manner contrary to the provisions of this Law shall be confiscated and paid into the state budget.

VI. INTERIM AND FINAL PROVISIONS

Article 24

The Minister of Finance shall stipulate by the Rule Book the manner of keeping records and issuing certificates, as well as forms for records and certificates referred to in Article 3, Paragraph 4 of this Law.

The Rule Book as per Paragraph 1 of this Article shall be passed by the Minister of Finance within 60 days from the day this Law comes into effect, at the latest.

Article 25

By the enforcement of this Law, the provisions of Chapter III FUNDS FOR THE WORK OF POLITICAL PARTIES of the Law on Political Parties (Official Gazette, No. 76/93, 111/96, 164/98 and 36/01) shall cease to be valid.

Article 26

This Law shall come into effect on the eighth day from the day of its publication in the Official Gazette.

Explanation

With Article 1

This provision stipulates issues proposed to be regulated with this Bill.

With Article 2

This provision stipulates sources for financing political parties.

With Article 3

This provision defines the notion of a membership fee and donation, stipulates the manner of providing donations in products or services as well as obligation to keep records on the receipt of membership fees and donations.

With Article 4

This provision stipulates the highest amount of donations that may be donated by natural and legal persons to a political party in a single calendar year.

With Article 5

This provision stipulates the prohibition of receiving funds from anonymous donors.

With Article 6

This provision stipulates the commitments of political parties in case of receipt of donations that exceed the highest permitted amount and in case of possible receipt of anonymous donations.

With Articles 7-11

These provisions stipulate the issue of regular annual financing of political parties from state budget funds. They stipulate the manner of determining the amount of funds ensured in the state budget for financing political parties, they stipulate which political parties are entitled to state budget funds and the manner of allocation of funds and the body competent for deciding on the allocation of funds.

With Articles 12 and 13

These provisions stipulate the manner of financing political parties from local and regional self-government budget funds.

With Article 14

This provision stipulates the right of political parties to tax benefits pursuant to the provisions of a special law.

With Articles 15 and 16

These provisions stipulate the prohibition of financing political parties from certain sources, the manner of conduct, that is, the commitments of political parties in case of donations paid from impermissible sources, as well as prohibition of political pressures and preferential treatment in the course of collecting donations.

With Articles 17-20

These provisions stipulate bodies and mode of conducting supervision over financial operations of political parties, the obligation to keep business records and submit reports on financial operation of political parties, and the obligation to publicly present annual accounts and financial reports of political parties.

With Articles 21-23

These provisions stipulate fines for violations of provisions of this Law and stipulate the manner of administering funds collected or spent contrary to the provisions of this Law.

With Article 24

This provision stipulates the competence of the Minister of Finance to pass a Rule Book that will regulate the manner of keeping records and forms for records and certificates on the receipt of membership fees and donations as well as the deadline for the adoption of such a Rule Book.

With Article 25

This provision stipulates the cessation of validity of the provisions as per Chapter III “Funds for the Work of Political Parties” of the Law on Political Parties (Official Gazette, No. 76/93, 111/96, 164/98 and 36/01), which pertain to the issues proposed to be regulated by this Law.

With Article 26

This provision stipulates the enforcement of this Law.