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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW**  
**AMENDING THE LAW ON THE FINANCING**  
**OF POLITICAL ACTIVITIES**  
**OF SERBIA**

**Article 1**

In the Law on Financing of Political Activities ("Official Gazette of the RS", no. 43/11 – hereinafter "the "Law"), in Article 2, line 5, after the word "body" the word "political" is added.

**Article 2**

In Article 3, paragraph 3 after the word "borrow" the word "exclusively" is added.

**Article 3**

In Article 8 paragraph 2 is amended to read:

"A political party may receive payment of membership dues only from member's current account".

**Article 4**

In Article 9 a new paragraph 3 is added to read:

"A legal entity and natural person may effect payment of pecuniary amounts specified in paragraph 1 hereof only from his/her current account".

Current paragraphs 4, 5, 6 and 7 become paragraphs 5, 6, 7 and 8.

**Article 5**

In Article 12 paragraph 1 after the words "other organizations" the words "and individuals exercising public authority" are added.

**Article 6**

In Article 15 paragraph 3 after the word "hereof" the words "contribution received contrary to Article 9 paragraph 5 hereof".

**Article 7**

In Article 19 paragraph 2 is deleted.

**Article 8**

In Article 20 a new paragraph 3 is added after paragraph 2 and reads:

"In case of interim financing the relevant authorities are required to provide funds from public sources to cover election campaign costs in the amount of 0.1% of expenditure of the Republic of Serbia budget, expenditure of the autonomous province budget, and/or local government unit budget, of the previous fiscal year for which the budget had been approved".

**Article 9**

In Article 21, paragraph 1 the word "five" is replaced with the word "ten".

**Article 10**

In Article 25, paragraph 3 the word "three" is replaced with the word "five".

### **Article 11**

The title above Article 28 is amended to read:

**“Annual financial report on financing of political entity”**

### **Article 12**

In Article 28, paragraph 1 the words “annual financial report” are replaced with the words “annual financial report on financing of political entity”, and the words “as well as a report on donations and assets” are replaced with the words “that contains data on donations and assets.”

After paragraph 1 a new paragraph 2 is added to read:

“The annual report on financing of a political entity contains data on origin, amount and structure of all collected and spent funds from public and private sources”.

Current paragraphs 2 and 3 become paragraphs 3 and 4, and are amended to read:

In paragraph 3 the words “annual financial report” are replaced with the words “annual financial report on financing of political entity”.

In paragraph 4 after the word “content” the words “and manner of submission” are added, and the words “annual financial report” are replaced with the words “annual financial report on financing of political entity”.

### **Article 13**

In Article 29, paragraph 5 after the word “content” the words “and manner of submission” are added.

### **Article 14**

In Article 30, paragraph 1 the words “by the date of submission of report” are replaced with the words “by the date provided by law for submission of report”.

In paragraph 2 the words “by the date of submission of report” are replaced with the words “by the date provided by law for submission of report”.

### **Article 15**

In Article 32, paragraph 4 after the words “at its request” the words “within a timeframe set by the Agency, which may not exceed 15 days” are added.

### **Article 16**

Article 33 is amended to read:

#### **“Article 33**

Funds for performing control of election campaign costs for the election of president of the Republic, election of members of parliament, deputies and councillors are provided to the Agency from the Republic of Serbia budget.

In case of elections, the amounts of funds specified in paragraph 1 of this Article are in relation to the aggregate amount of funds allocated from the Republic of Serbia budget for election campaign for members of parliament, as follows:

- for the president of the Republic, or president of the Republic and members of parliament, or president of the Republic and deputies, or president of the Republic and councillors, in the amount not less than 6%;

- for members of parliament, or members of parliament and president of the Republic, or members of parliament and deputies, or members of parliament and councillors, in the amount not less than 6%;
- for deputies, or for deputies and councillors on the territory of autonomous province, in the amount not less than 2%;
- for councillors in the Assembly of the City of Belgrade, in the amount not less than 2%;
- for councillor in city councils, in the amount not less than 0.25%;
- for councillors in municipal assembly, in the amount not less than 0.20%;

The amount of funds specified in paragraph 1 of this Article may not be less than 6% of the aggregate amount allocated from the Republic of Serbia budget for the election campaign for election of members of parliament, if elections are concurrently held for the president of the Republic, members of parliament and deputies.

If in one calendar year multiple elections are held at different times, the percentage specified in paragraph 2 shall apply to every election”.

### **Article 17**

In the title above Article 34 the word “Control” is replaced with “Audit”.

### **Article 18**

Article 34 is amended to read:

“Article 34

The auditing program of the State Audit Institution every year shall encompass the relevant number of political entities which have representatives in the National Assembly.”.

### **Article 19**

After Article 34 a new Article 34a is added and reads:

“Article 34.a

The annual plan of tax control, which is drawn up in accordance with the law governing tax procedure and tax administration, encompasses control of supplier of financial funds, i.e. goods and services to political entities.

The selection of entities for control specified in paragraph 1 of this Article is done primarily on basis of reports of the Anti-Corruption Agency on financing of political entities.”

### **Article 20**

In Article 39, paragraph 1, point 8) is amended and reads:

“acts contrary to Article 18 hereof”;

In paragraph 1, point 12) is amended and reads:

“fails to act in accordance with Article 28 hereof”;

In paragraph 1, point 13) the words “financial report” are replaced with the words “annual financial report on financing of a political entity”.

### **Article 21**

The title above Article 40 is amended to read:

“Other misdemeanors”.

## **Article 22**

After Article 42 Articles 42.a and 42.b are added and read:

### **“Article 42.a**

Political parties are required to, within one year of coming into force of this law, conclude agreement on disposal of ownership of shares or stocks they had acquired prior to coming into force of the Law, file an application with the relevant register for recordation of change of ownership of shares and stocks and within 15 days notify the Agency of all undertaken actions.

### **Article 42.b**

Political parties that fail to conclude an agreement on disposal and/or fail to file an application with the relevant register for change of ownership of shares and stocks within the timeframe set forth in Article 42.a hereof, relinquish the right to regular financing of work from public sources until conclusion of agreement on disposal and filing of application with the relevant register for recordation of change of ownership of shares and stocks.

The decision on relinquishing of right to receive funds from public sources specified in paragraph 1 of this Article shall be issued by the Agency and may be appealed through administrative action“.

## **Article 23**

This law shall come into force on the eighth day of publication in the “Official Gazette of the Republic of Serbia”.

## **RATIONALE**

### **I. CONSTITUTIONAL BASIS**

The constitutional grounds for enactment of the Amending Law to the Law on Financing of Political Activities are contained in provisions of Article 97, points 11 and 17 of the Constitution of the Republic of Serbia whereby the Republic of Serbia regulates and provides, *inter alia*, control of legality of disposal of funds of legal entities and financial audit of public funds, as well as other relations of interest to the Republic of Serbia, in line with the Constitution.

### **II. REASONS FOR ENACTMENT OF THE LAW**

The obligation to enact the Amending Law to the Law on Financing of Political Activities derives from two acts, namely, the National Anti-corruption Strategy for the period 2013 to 2018 (“Official gazette of the RS”, no. 57/13), and the pertaining Action Plan for Implementation of the National Anti-corruption Strategy for the period 2013 to 2018 (“Official Gazette of the RS”, no. 79/13). Namely, in the third chapter of the National Strategy, one of the defined goals which is imperative to achieve is the goal under 3.1.1 which implies correcting of deficiencies in the legal framework for control of financing of political activities and entities. Normative activities to achieve the set goal are defined in the pertaining Action Plan, in measure no. 3.1.1.1, which provides amendments to the Law on Financing of Political Activities in order to clearly define and delineate duties of the Anti-corruption Agency and the State Audit Institution and other bodies in the procedure of control of political activities and entities. Furthermore, measure no. 3.1.1.2 for whose realization the Government is denoted as the responsible entity, and which should have drafted the Amending Bill to the Law on the State Audit Institution so as to include in the audit program as mandatory the audit of parliamentary political parties at republic level, and for reasons of functionality to be realized through amendments to the Law on Financing of Political Activities which, *inter alia*, regulates also the matter related to control of financial reporting by political entities, as well as measure no. 3.1.1.3 which sets the obligation of the Ministry of Finance to, as the responsible entity, amend the Tax Procedure and Tax Administration Act so as to introduce the duty of the Tax Administration director to add as

mandatory into the annual or extraordinary plan of tax control the contributors of financial means and other services to a political entity in accordance with the report of the Anti-corruption Agency on financing of political activities and entities, to be realized through the adopted Amending Law to the Law on Financing of Political Activities.

### **III. EXPLANATION OF INDIVIDUAL SOLUTIONS**

Provision of Article 1 of the Draft Amending Law to the Law on Financing of Political Activities (hereinafter "Draft Law") precisely defines provisions of Article 2 of the Law on Financing of Political Activities (hereinafter "Law") in order to underscore the political character of the activities of the political entity during election campaign.

Article 2 of the Draft Law precisely defines provisions of Article 3 of the Law so as to direct debt contraction by political entities exclusively to banks and other financial organizations, which engage in granting loans as their basic activity. In this way political entities are obligated to borrow under regular conditions set forth by law, and thus prevent the possibility to borrow from natural persons or legal entities which, through granting loans, could exercise influence over political entities.

Provision of Article 3 changes Article 8 of the Law thus achieving transparency in financing of political parties, which is one of the key goals of this Law (obligates political parties to receive membership dues only through bank account, unless exceeding the amount of 1,000 RSD).

Article 4 of the Draft Law supplements Article 9 of the Law which regulates issues related to contributions given to political entities by legal entities and natural person, in order to prevent misuse during giving and receiving contributions.

Article 5 of the Draft Law specifies the ban stipulated in Article 12 of the Law, which is explicit and clear in terms of prohibition of financing of political entities by public enterprises, institutions and other organisations with powers. As our legal system allows the possibility to transfer powers to individuals (e.g. notaries, bailiffs) it is, hence, justifiable to prevent that they also appear as financers of political entities.

Article 6 of the Draft Law harmonizes Article 15, paragraph 3 with Article 9, paragraph 5 of the Law.

Article 7 of the Draft Law deletes Article 19, paragraph 2 of the Law because the said provision failed to show adequate effects in application, and also in control itself, hence by deleting of said provision it is left to the free choice of political entities to what percentage will they use funds from public sources for professional advancement, training, international cooperation and work with members.

Provision of Article 8 of the Draft Law supplements Article 20 of the Law which sets forth the amount of funds provided from public sources for covering election campaign costs for regular or snap elections, as well as the amount which competent bodies are required to ensure for covering of election campaign costs during interim financing (0.1% of expenditures of the Republic of Serbia budget, expenditures of autonomous province budget and local government budget for the previous fiscal year for which the budget was passed).

Provisions of Articles 9 and 10 of the Draft Law amend provisions of Article 21 and 25 of the Law so as to extend the stipulated timeframes from five to ten and from 3 to five days.

Provisions of Article 12 of the Draft Law supplements and amends Article 28 of the Law by introducing mandatory content of the Annual Report on Financing of a Political Entity. In this way the Annual Report is made comparable to reports on election campaign costs, becomes

more transparent, which strengthens discipline in spending public and private funds. Change of title from Annual Financial Report to Annual Report on Financing of Political Entity, whose content and manner of submission is stipulated by the director of the Anti-corruption Agency, was made in order to underscore also the formal difference in respect to the report submitted to the Serbian Business Registers Agency. The annual financial report which is defined by the director of the Anti-corruption Agency (M1) contains elements necessary for control of financing of political activities of political entities and differs from the report to the SBRA in that no determination is possible from the SBRA report of general information relating to the political entity, personal data of the authorized person who is nominated by the Statute of the political party as the responsible officer for finances, reporting, keeping of books and contact with the Agency, information on political entity's business accounts, name of endowment/foundation founded by the political entity, as well as the name of international political association in which the political entity is member. In the form for Balance Sheet only business income are stated in aggregate, as well as financial income and other income. Furthermore, it is not possible to account non-pecuniary contributions received by the political entity from home and abroad (international political associations. In the part relating to expenditures of a political entity, which are shown synthetically in the SBRA report, the structure of expenditures cannot be seen. In the balance sheet business expenditures are only accounted in aggregate, as well as financial expenditures and other disbursements.

Provisions of Article 13 of the Draft Law supplement Article 29 of the Law in order to grant authority to the director of the Anti-corruption Agency to define, in addition to content, also the manner of submission of report.

Provisions of Article 14 of the Draft Law supplement Article 30 of the Law in order to obligate the political entity to repay unspent funds from public and private sources into the budget of the Republic of Serbia, autonomous province or local government or transfer onto the account for regular work, within the timeframe in which it is required to submit the report.

Provisions of Article 15 of the Draft Law define the timeframe in which bodies of the Republic of Serbia, autonomous province and local government, banks, as well as legal entities and natural persons which finance political entities, i.e. which for and on their behalf performed certain services, are required, at the Agency' request, submit all data required by the Agency to perform tasks set forth by the Anti-corruption Agency Act, hence supplementing of Article 32 of the Law was made to this end.

Provisions of Article 16 of the Draft Law, unlike the current legal solution, specify the manner of calculation of the amount of funds needed by the Anti-corruption Agency to perform control tasks depending on election campaigns being conducted. The amount of funds proposed in Article 33 of the Law, which would be allocated to the Agency does not exceed in aggregate the scope of funds that was earmarked to date for allocation to the Agency.

Provisions of Article 18 of the Draft Law amends provisions of Article 34 of the Law in order to achieve the goals set by measure 3.1.1.2 determined in the Action Plan for implementing the National Anti-corruption Strategy, so that the program of audit of the State Audit Institution each year includes the appropriate number of political entities which are represented in the National Assembly.

Provisions of Article 19 of the Draft Law adds a provision to Article 34.a of the Law aimed at fulfilling measure no. 3.1.1.3 determined in the Action Plan for implementing the National Anti-corruption Strategy, so that the annual plan of tax control that is drafted in line with the law governing tax procedure and tax administration, includes control of contributor of financial means, i.e. goods and services to political entities.

Provisions of Article 20 of the Draft Law harmonize provisions of Article 39 of the Law with other provisions of the Law to which it relates.

Article 21 of the Draft Law amends the title above Article 40 of the Law as provisions of the said Article stipulate punishment of also persons who are not contributors of financial services; hence the amended title is more adequate.

Article 22 of the Draft Law adds Articles 42.a and 42.b which stipulate that political parties are obliged to alienate shares and stocks acquired prior to coming into force of the current Law on Financing of Political Activities. The said provisions are not in collision with the constitutional principle of prohibition of retroactive operation of law by reason that this law established prohibition of ownership of stocks and shares by political parties, and the above provision 42a sets the timeframe within which political parties are required to alienate ownership of shares and stocks acquired prior to coming into force of the Law on Financing of Political Activities. Hence, based on constitutional authority, this regulates the area of financing of political parties. Through amendments, and after a certain period of operation of the Law, a reasonable timeframe is set forth for political parties which have acquired ownership of shares and stocks prior to coming into force of the Law on Financing of Political Activities to alienate ownership of shares and stocks, thus enabling transfer of ownership within a timeframe sufficient to achieve equitable compensation during alienation of stocks and shares. In this way a possibility is created that all existing political parties are financed under equal terms and operate in a single legal environment. Furthermore, in proposing the said provision attention was given to the constitutional role of political parties that "The role of political parties in democratic shaping of the political will of the citizens shall be guaranteed and recognized" (Article 5, paragraph 1 of the Constitution), as well as application of defined standards in regulating financing of political parties, anti-corruption standards of international institutions, and the very concept itself of financing political parties from public sources, which guarantees them a sizeable amount of budget funds and the right to funds acquired through contributions from legal entities and natural persons, thus in line with public interest limitation of financing political parties through ownership of shares and stocks, i.e. participating in lucrative business deals, would also mean preventive frustration of corruptive financing of political parties through deals and involvement in commercial activities. Hence, it is made possible to political parties to alienate ownership by their will, whilst loss of rights to financing from public sources is established as a direct measure for non-compliance with imperative statutory provision.

#### **IV. FINANCIAL MEANS REQUIRED FOR IMPLEMENTING OF THE LAW**

For implementation of this law no funds have to be provided in the budget of the Republic of Serbia.