Avukat Muscat

Curing the Cancer of Corruption:

A Comparative and Analytical Study of the Political Parties Financing Act

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ABSTRACT

Money and politics are inextricably linked. A functioning democracy necessitates a flow of money through the political sphere. However, a democracy is vulnerable to being infiltrated by corruption should illegal practices be allowed to flourish. Thus, open and transparent funding of political parties is vital in the fight against corruption.

The Funding of Political Parties Act was recently enacted as a direct measure of enhancing transparency and thwarting corruption. It withers the adverse effects of money in politics and prevents politicians from becoming less responsive to voters by dissolving a political party's close ties with its financiers. The revolutionary Act is the first ever domestic legal instrument tasked with comprehensively regulating the functioning of political parties in Malta's legal system.

This study conducts a dissection of the Act parallel to a comparative analysis of foreign political finance laws and certain suggestions are made for the purpose of refining the Act. The findings from this research illustrate that the Act imposes a set of obligations on political actors, such as the duty of financial reporting and that of observing private donation limits. Enforcement powers are bestowed onto the Electoral Commission and it has a mandate to receive audited reports and render them public, and investigate infringements. Different types of sanctions serve to deter political actors from breaching their duties under the Act.

Political finance is comprised of private contributions and public funding. Notwithstanding the lack of public funding regulations in the Act, this thesis also examines the notion of State funding and ultimately draws up a proposal for domestic public funding.

Keywords: Corruption, Donation, Political Party, Public Funding, Transparency

To *Nanna Doris*

...

Now what?

FLÉCTERE SI NÉQUEO SÚPEROS, ACHERONTA MOVEBO
— Virgil, The Aeneid

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ABBREVIATIONS

FPPA	Financing of Political Parties Act
GDP	Gross Domestic Product
GRECO	Group of States against Corruption
MLP	Malta Labour Party
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PL	Partit Laburista
PN	Partit Nazzjonalista
UNCAC	United Nations Convention against Corruption

INTRODUCTION

Start by doing what is necessary,
then what is possible, and
suddenly you are doing the
impossible.

— St. Francis of Assisi

Power tends to corrupt; absolute power corrupts absolutely.

– John Emerich Edward Dalberg Acton, 1887

The Financing of Political Parties Act[1] (FPPA), by virtue of its aptitudes for enhancing the democratic functions of political parties, augmenting political transparency, and bolstering civil trust afforded to politicians, serves as an exceptional device specifically designed for the purpose of thwarting corruption.

Corruption can be equated to a form of cancer, and rightly so. When corruption grows in the body politic, it has the ability to rapidly and insidiously infiltrate and destroy the organs of the state. Its excision is extremely difficult once it is embedded and no country is immune.

Corruption has become the subject of numerous debates even on a European level. Special Eurobarometer 397 of 2014[2], a noteworthy document in this respect, enunciated that a disturbingly frequent reappearance among European Member States refers to the fact that politicians have failed to self-regulate the conflicts of interest that arise due to their dealings with business. This has given rise to recurrent corruption scandals in the awarding of public contracts and the ever-present 'revolving door' between the industry and government is all the more under unrelenting scrutiny.

The values of fair play and inclusiveness, upon which the ideal democratic process is built, are susceptible to being dethroned by political systems. One major factor that prevents the political sphere from attaining these democratic principles is the influence of money. Healthy politics in a democracy undoubtedly necessitates the use of money. However, money can also be wielded as a means through which the political process can be unduly influenced and manipulated, such as by influencing party decisions and buying votes. Transparent funding of political parties is vital in the fight against corruption. Just as it protects politics against illicit money, it exposes any undue influence exercised over politicians.

[1] Financing of Political Parties Act, Chapter 544 of the Laws of Malta (Financing of Political Parties Act).

[2] European Commission, *Special Eurobarometer 397 - Corruption Report* (2014).

The European Commission's Special Survey is not unique in bringing into the limelight risks of corruption associated with party financing. The Group of States against Corruption (GRECO) has, in fact, also played a key role in accentuating the need and importance of enacting and sustaining party financing regulations. The United Nations Convention against Corruption (UNCAC) also declared that States should enhance transparency in the funding of political parties. These stimuli triggered the Maltese legislator to devise a direct measure of retaliation against corruption in the form of Act 14 of 2015.

This thesis will delve into a thorough dissection of the FPPA and, in the interest of honing the Act, a comparative study of party financing laws promulgated across the globe is indispensable therewithal.

The primary function of the FPPA is to ensure a viable democratic process of representation. It seeks to enhance the democratic functions of political parties by various means, such as by granting political parties a clear status at law and increasing political accountability and transparency through accounting obligations and disclosure rules. However, the Act is a political finance regime targeted towards the flow of political funds and its main impetus is that of regulating the private funding of political parties.

Private funding of Maltese political parties refers to the fact that parties collect revenue from individual citizens who willingly make contributions or pay party membership fees. Thus, given the absence of a Maltese structure of public funding where money originates from the State budget, private funding depends on the good will of the citizens. In controlling party donations, one key feature of the FPPA is to prohibit or limit certain types of donations from being received by the parties, hence stopping undesirable actors from exerting undue influence over the Maltese political sphere.

The uniqueness of the FPPA lies within its revolutionary context. Since the inception of political parties, no single piece of legislation ever attempted to regulate political parties or at the very least acknowledge their status within our national legal framework. Given such lack of regulations, it was naturally

inconceivable for research to be undertaken in the field; apart from theoretical research based on the hypothetical implications that a law governing party finance would give rise to.

Thus, this thesis strives to plug the lacuna existent within our national research data bank. National research has invariably suffered from a deficiency of factual research in the subject-matter and it is such dearth which propels forward the yearning for a comprehensive analysis of the key elements orbiting around party financing as contextualised by the provisions of the FPPA.

In **Chapter 1**, the analysis is initiated by outlining the evolutionary and historical context of the FPPA. A discussion on the concept of a *Supervising Authority* then ensues, succeeded by an examination of the notion of *Political Parties*, as domestically documented. The discussion revolving around the aforesaid notions is also accompanied by a comparative study in this Chapter.

Chapter 2 delves into party registration and accounting requirements. Verification of a political party's accounts is no longer effected at the discretion of the political party which takes initiatives itself with the scope of attracting the trust of the electorate. The minimum standards laid by the FPPA are well-scrutinised in this Chapter.

Donation control is put under heavy scrutiny in **Chapter 3**. This is certainly the most important facet of the FPPA due to its direct correlation with corruption risks. The capping of private contributions to political parties, coupled with the prescribed accounting requirements, is imperative to foster more transparency. This Chapter does not limit itself to the sole analysis of the FPPA's provisions, as it meticulously conducts a comparative study contrasting the Act's provisions with regulations enacted in foreign jurisdictions.

In **Chapter 4**, the author probes the notion of State funding of political parties despite the fact that the FPPA falls short of providing for public financing. A thorough assessment of foreign public funding laws is envisaged in this Chapter

and, after having tallied the arguments in favour with those against, a set of recommendations is drawn up.

The concluding chapter is comprised of recommendations specifically drawn up for the purpose of refining the FPPA and devising efficient and effective party financing regulations within our legislative framework.

However extensive the thesis sets out to be, the research process was not exempt from limitations as it was cripplingly circumscribed by the politically-charged nature of the topic and the novelty of the FPPA. The numerous legal issues which arose during the writing of this thesis often times had to be suppressed and focus was only given to key issues which merited their inclusion in this paper. More so, the comparative study had to be restricted to a handful of jurisdictions thus avoiding ceaseless descriptive arguments of legal systems embraced abroad.

This thesis utilises a bifocal lens for the purpose of inspecting the issues orbiting around political finance. Anti-corruption concerns and the issue of democratic consolidation as envisaged by the FPPA are examined on the one hand, while on the other, the Act's provisions are constantly contrasted with legal regulations applicable in foreign jurisdictions. It is deemed imperative by this thesis for its essence to be ever-mindful of the fact that a healthy democracy should be dominated by the ballot, not by the bank note.

All information contained herein is accurate and reliable at the time of writing, that is, until the 1st of May 2016. The author declares, also, that the text of this thesis is in no way politically inclined and that the views contained therein represent the fruit of an unbiased and non-partisan analysis.

CHAPTER I:
LAYING DOWN THE FOUNDATIONS

Fighting corruption is not just good governance. It's self-defence. It's patriotism.

— Joe Biden

The Financing of Political Parties Act is quite revolutionary as it seeks to, not only enhance the fundamental human rights envisaged by the Constitution, but also grant political parties their own legal status, thereby putting an end to the controversial debate over the status of political parties.

This chapter shall place the FPPA within its proper historical context, and thereafter delve into a thorough scrutiny of the general principles contained within the FPPA.

1.1 Evolution of Act 24/2015

Prior to the entry into force of the FPPA, political parties were never subjected to accounting and disclosure rules. The FPPA owes its origins to the 1987 election period, hidden within the electoral manifestos of the Malta Labour Party (MLP)[3] and the Nationalist Party (PN)[4].

In their 1987 electoral manifestos, the MLP and PN had suggested that political parties represented in Parliament should receive an allowance which should aid parties in reaching out to the electorate and informing the public of the party's creed and views.

This was the first instance in national history where reference to State funding was made, and thereafter, the discussion had gathered enough momentum to be catapulted into a white paper entitled *Il-Bidla Tkompli...* in 1993.[5]

The 1993 white paper was the first document to bring political party accountability to the forefront and it had suggested that a system of public funding should be introduced wherein the State grants funds to political parties. It had also advocated that political parties should not be allowed to grow dependent on such funds.

The white paper had stated that in supporting political parties, the state must also make sure that parties publish their accounting records. It had argued that as long

[3] Malta Labour Party, Electoral Manifesto (1987), p4.
[4] Nationalist Party, Electoral Manifesto (1987), p 3, para 5.
[5] Department of Information, White Paper – *The Change Continues ...*, Valletta, 11 November 1993

as political parties were not receiving subsidies from the state then they owed loyalty only to their members, however, if they were to receive funds from the state, the party's responsibility is widened and they must be held accountable towards society.

A few months later, a Parliamentary Commission was set up under the name of *Kummissjoni Dwar il-Finanzjament u Rendikont tal-Partiti Politiċi u tal-Kandidati ghall-Elezzjoni Ġenerali* (Galdes Commission) [6] with the aim of issuing a report on the financing and financial reporting of political parties with respect to general elections.

The Galdes Commission met with representatives from the main political parties as well as members of civil society and drew up a report addressing the issues of state funding, control of private donations, reporting of statement of accounts as well as the issue of which authority should supervise these obligations.

The report produced by the Galdes Commission (Galdes Report)[7] had made it manifestly clear that a law regulating political parties must inevitably define what constitutes a donation[8]; an issue which the FPPA clearly addresses. Interestingly enough, whereas the Galdes Commission argued that donations from foreigners are not to be prohibited[9], the Act remains silent on the matter and has not included their prohibition in Article 34. However one cannot argue that, a contrario sensu, donations from foreign sources are to be allowed under the FPPA due to the fact that the Foreign Interference Act[10] expressly prohibits certain transactions and donations from foreigners to political parties, especially during an election period[11].

The Galdes Report, however, died a natural death. It had primarily revolved around the issue of public funding and since this concept is totally new in our legal system,

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[6] Commission on Financing and Accountability of Political Parties for General Elections, set up on the 25th of April 1994. This Commission was chaired by Mr. Anthony P. Galdes, hence it is commonly cited as the Galdes Commission.

[7] Commission on Financing and Accountability of Political Parties for General Elections Report, Final Report, 12 June 1995.

[8] Ibid 36, para 5.2.4.

[9] Ibid, para 5.2.5.

[10] Foreign Interference Act, Chapter 300 of the Laws of Malta.

[11] Ibid, art 3(2)(b).

the electorate might have seen it as a radical change and something to which they are unaccustomed, thus, this unpopularity led to it never being translated into law.

It seems that history repeated itself in 2007 when Government[12] expressed the need for enhancing transparency of political parties and argued in favour of setting up a Parliamentary Commission under the name *Kummisjoni Parlamentari dwar it-Trasparenza fil-Finanzi tal-Partiti Politiċi* [13] tasked with the drawing up of a report on donation control and reporting requirements. In this motion, the Government saw fit not to include the concept of public funding.

Regrettably, this motion was never approved by the House and consequently, the Commission was never set up and there are no reports on the topic. Thus, this too died a natural death.

The issue was again tackled a year later, when after having expressed the need of a law regulating party financing, Government[14] sought to establish a Select Committee to deal with the broad aspect of enhancing democracy and eliminating corruption.

Unfortunately, during the discussions of the 2008 Select Committee, the two major political parties diverged in their opinions and the discussion was halted and abandoned.

The first major breakthrough in the evolution of the FPPA came about seventeen years after the publication of the Galdes Report. In 2012, Dr Franco Debono tabled a private members motion before the House[15] through which he sought to regulate the formation, inner structures, functioning and financing of political parties.

This motion serves as the corner stone upon which the FPPA is moulded and formulated and can be considered as the direct precursor of the FPPA. The present Minister of Justice also remarked[16] that if Maltese legal nomenclature were to

[12] Motion Number 306, 1 October 2007.
[13] Parliamentary Commission for the Transparent Funding of Political Parties.
[14] Motion Number 47, 16 July 2008.
[15] Private Members Motion Number 288, *Financing of Political Parties Bill*, 21 January 2012.
[16] Ministry for Justice, 'Press Release PR152786' (2015).

follow norms such as those in Italy where laws are named in honour of who proposed them, the FPPA could well be referred to as 'Debono Law'.

Over the course of 5 years, Dr Franco Debono expressed his views on the matter on eleven occasions before the House where he spoke about the necessity of such a law to enhance transparency and to combat corruption. His motion, much like the FPPA, did not delve into the notion of public funding, but rather limited itself to laying down the basic principles governing party financing and regulating private funding. Although his motion was never put on the agenda and the contents therein where never discussed in Parliament, his effort assisted the revival of the discussion on regulating political party financing.

Following the private members motion, the next instrument which brought the issue of party financing to the forefront was Special Eurobarometer 397[17]. In this document, the European Commission placed in the limelight the solid nexus between corruption and lack of regulations with respect to political party financing. Moreover, studies conducted by the Eurobarometer distressingly demonstrate that 59% of respondents believe that there exists no transparency in relation to political party financing in Malta[18].

Special Survey 397 explained how insufficient transparency and supervision of political party financing leads to citizens thinking that bribery and abuse of positions of power for personal gain are widespread within political parties and among politicians.

Apart from the Eurobarometer, studies conducted by Transparency International during the same year were also alarming as Malta was indexed at 55[19] on the Corruption Perception Index. The Corruption Perception Index is measured on a scale of 0 to 100, wherein a score of 100 reflects very clean politics and a score of 0 reflects high corruption. In comparison to previous years, Malta suffered continuous downgrades. In 2012, Malta was indexed at 57[20], while in 2013 it

[17] European Commission, *Special Eurobarometer 397 - Corruption Report* (2014).
[18] Ibid, T82, QB15.12.
[19] Corruption Perception Index 2014, Transparency International (2015).
[20] Corruption Perception Index 2012, Transparency International (2013).

declined to 56[21] and again downgraded to 55 in 2014 meaning that in 2014, Malta ranked 43rd among the 175 countries in under scrutiny. In their totality, these results were very disquieting and necessitated immediate remedial action.

In a bid to rectify the situation, another white paper[22] was published wherein Government proposed the introduction of a new law to regulate party financing seeking to enhance political accountability and transparency of political parties through a set of disclosure rules.

Before being translated into a Bill, this white paper underwent a series of public consultations and was also shaped by a working group composed of Dr Franco Debono, the Attorney General, the Minister of Justice, and the Director General at the Ministry of Justice.

Bill 59 of 2014[23] was eventually tabled before the House and was submitted for a first hearing on the 9th June, 2014 where Parliament voted unanimously for the question posed.

Upon request by the Minister of Justice, Bill 59 was also scrutinised by the European Commission for Democracy through Law (Venice Commission) as well as the Office for Democratic Institutions and Human Rights (ODIHR) operating within the Organization for Security and Co-operation in Europe (OSCE). Together, these organisations published a joint opinion[24] on the Bill which was adopted by the Venice Commission at its 100th plenary session in Rome.

In this report, the two organisations expressly stated that the need for such a law in Malta has long been felt and that such need was also expressed by the Council of Europe's Group of States against Corruption (GRECO) in one of its evaluation reports. They also noted that the Bill could certainly benefit from other additions as it lacks regulations with respect to foreign funding of political parties[25],

[21] Corruption Perception Index 2013, Transparency International (2014).
[22] Department of Information, White Paper – *Financing of Political Parties*, January 2014.
[23] Motion Number 146, *Financing of Political Parties Bill*, 02 of June 2014.
[24] Venice Commission & OSCE, *Joint Opinion on the Draft Act to Regulate the Formation, the Inner Structures, Functioning and Financing of Political Parties and their Participation in Elections of Malta*, 11 October 2014, ODIHR Opinion Number POLIT-MLT/262/2014.
[25] Venice Commission, *Joint Opinion* (n 24), p 8, para 24.

restrictions on the use of personal resources by candidates[26], among other aspects which remain absent in the present Act.

The Bill eventually passed through all stages before the House and was submitted to the President of the Republic where it was approved on the 28th of July 2015. The FPPA is currently in vigore[27] and it constitutes the first Act in our domestic legal history expressly regulating party financing as well as clearly defining political parties and donations thereto.

1.2 The Supervising Authority

Instead of setting up a fresh regulatory body, the FPPA places the already-existing Electoral Commission at the heart of the enforcement of its provisions. However, the granting of enforcement powers to the Electoral Commission has generated a vast debate.

The Electoral Commission is established by virtue of the Constitution[28] and its members are appointed by the President of the Republic 'acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition'[29]. Members of the Commission can be removed from their office by the President acting under the advice of the Prime Minister on the grounds that such member is unable to perform his or her functions or on the grounds of misbehaviour[30].

The powers of the Electoral Commission are better defined in the General Elections Act[31], where, for instance, it states that in the execution of their duties, the powers of the Commissioners are equated to those of a Court of Magistrates for the purpose of ensuring respect due to them and enforcing order at their sittings[32].

[26] Venice Commission, *Joint Opinion* (n 24), p 13, para 53.
[27] Financing of Political Parties Act (Cap. 544) - Commencement Notice, LN 427 of 2015.
[28] Constitution of Malta (Constitution), art 60.
[29] Ibid, art 60 (3).
[30] Ibid, art 60 (7).
[31] General Elections Act, Chapter 354 of the Laws of Malta (General Elections Act).
[32] Ibid, art 9.

Furthermore, the Commission is enabled to set up a Medical Board with the power to disqualify voters[33]. The powers of the Commission are wide enough that it is also empowered to ask for any information from any person in determining whether a person is entitled to be registered as a voter[34].

Another instrument of great import which merits a mention in the discussion of the powers bestowed upon the Electoral Commission is the Electoral (Polling) Ordinance of 1939[35]. Under this ordinance, the Electoral Commission is entitled to receive information with respect to candidate expenditure from each and every candidate within 31 days from the date of publication of the election result in the Government Gazette[36].

Following the publication of the Bill, a debate ensued as to which regulatory body is best suited to supervise compliance. The Nationalist Party and the *Alternattiva Demokratika* disagreed with this decision and expressed their opinion as to which independent body is appropriate to enforce party financing law.

The Nationalist Party in fact contended that enforcement should lie within a newly set up Commissioner for Standards in Public Life[37] and argued that due to the Electoral Commission being made up of 4 members appointed by the party in opposition and 5 members appointed by Government where one of such members acts as a chairman, the independence and impartiality of the body[38] would be in doubt. It went on to say that the Commissioner for Public Standards, on the other hand, would be appointed by two thirds of the House and impeached accordingly.

Despite the aforesaid argument, the Electoral Commission has a proven track record and has already attained a solid reputation in the execution of its duties. On the other hand, the Commissioner for Political Standards has no resources or

[33] General Elections Act, art 14.
[34] Ibid, art 19 (1).
[35] Electoral (Polling) Ordinance, Chapter 102 of the Laws of Malta [Electoral (Polling) Ordinance].
[36] Ibid, art 50 (1).
[37] Bill 63 of 2014, Standards in Public Life Act, art. 4.
[38] Hon. Chris Said, House of Representatives – Plenary Sitting 193, 29 October 2014.

experience and should such institute be established, it can be argued that the powers of such office falls beyond the realm of general elections[39].

The Electoral Commission is set up by the Constitution, complimented with other pieces of legislation, and the FPPA only adds to its powers. Moreover, if the Commissioner for Political Standards were to monitor and enforce the FPPA, there would be a divergence of powers. Such a situation would surely fail to expedite the process and any hindering to the execution of the powers contained within the Act would result in self-degradation.

The Venice Commission and OSCE too were of the opinion that the Electoral Commission was not suitable for the role and that another regulatory body should be contemplated for the enforcement of the FPPA[40].

Their Joint Opinion emphasises that in spite of the high level of trust the Electoral Commission enjoys, the manner in which its members are appointed and dismissed, together with the fact that these members are political appointees, calls into question the Commission's impartiality and independence from the executive of the State[41].

The Joint Opinion further underlines the fact that in order to oversee compliance to the Act, the enforcement body should be one with sufficient powers of investigation. It made reference to the Guidelines on Political Party Regulations[42] and the recommendations by the Committee of Ministers[43] and argued that the process of auditing can easily be rendered ineffective if the enforcing authority has to rely on information submitted to it and lacks any powers to examine the correctness of the information. In this respect, the FPPA contains provisions whereby the Commission can demand information from any political party and in

[39] Hon. Owen Bonnici, House of Representatives – Plenary Sitting 182, 21 July 2014.
[40] Venice Commission, *Joint Opinion* (n 24), p 11, para 43.
[41] Ibid, para 40.
[42] *Guidelines On Political Party Regulation* (OSCE /ODIHR 2011).
[43] Council of Europe, *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*, 835th meeting of the Ministers' Deputies, 8 April 2003.

the eventuality that the party does not acquiesce to the demand, the Commission is able to bring the matter before the First Hall of the Civil Court.

The FPPA provides for an additional safeguard as it imposes on the Electoral Commission a duty to appoint one or more auditors to assist it in scrutinising the financial records of the political parties. This plays a vital role in the dynamics of the system due to the fact that an accountant can only perform his functions at law if he holds a valid warrant issued by the State. Therefore, should an auditor appointed by the Electoral Commission for the purposes envisaged by the FPPA ever be in breach of the law, such auditor would not only lose his warrant, but he would also be committing a criminal offence since he took an oath of office when appointed by the Electoral Commission due to it being a Constitutional organ.

Under the FPPA[44], registered political parties shall have a legitimate aim and shall conform to the laws of Malta. However, the Act fails to include a party's ethos as a requirement for registration purposes and thus, the question arises as to who will supervise parties in relation to their political doctrine.

Registration of political parties is left to the competence of the Electoral Commission. It is empowered to scrutinise all documents it receives, and can deny registration on a set of criteria; for instance, it can deny registration of an emblem if it is deemed to be obscene or offensive.

Under Article 4 however, it can be implied that the powers of scrutiny granted to the Electoral Commission are to be extrapolated beyond the documents it receives so as to scrutinise the aims and objectives of the political party. Nevertheless, should the Electoral Commission take it upon itself to investigate the aim of a political party and eventually decide that the aims of such party are in violation of the Laws of Malta, the Act fails to provide sanctions for a party whose aims are illegal.

[44] Financing of Political Parties Act, art 4.

The Guidelines on Financing Political Parties and Election Campaigns[45] too shed light over the question as to which body should oversee enforcement of the FPPA. The Guidelines state that where financial reports are reviewed by official auditors – such as the case in Malta where the Commission has to appoint at least one auditor – there exists 'the advantage of relying on professions who are trained in examining complex financial transactions and accounts, and who can thereby be expected to act as independent experts rather than partisans'[46]. This goes to show that the Maltese system is based on two tiers; the first being the independence of the Electoral Commission and the second tier being the impartiality of the auditors appointed by the Commission to scrutinise the party's statement of accounts.

In the case of Germany, auditors with strong links to a political party are prohibited from being appointed[47], while in Austria, political parties have a significant influence over the composition of the auditing body because they are given the opportunity to present the Minister of Finance with a list of suggested auditors from which the Minister has to choose and appoint as the auditing body[48].

The supervising body present in the Russian Federation too is doubtful with respect to its independence as it is composed of representatives of different branches of the executive and cannot be said to provide for sufficient impartiality[49].

The controlling commission in Belgium, on the other hand, is quite similar to the Maltese Electoral Commission as it is composed of an equal number of members of the House of Representatives and the Senate[50].

Perhaps the best example of a purely independent and impartial body would be that present in France[51] where, in contrast to the above instances, the responsible

[45] Ingrid van Biezen, *Financing Political Parties and Election Campaigns – Guidelines* (Council of Europe Publishing 2003).
[46] Ibid, page 64, guideline 19.
[47] Political Parties Act, Parteiengesetz – Part G (Germany), s 23.
[48] Federal Act on the Functions, Financing and Election Campaigning of Political Parties, *Political Parties Act 2012* (Austria), s II.4.
[49] Federal Law No. 95-FZ, *On Political Parties* (Russian Federation), s 34.
[50] Political Finance Act, *Law on the limitation and control of election expenses* (Belgium), 1989.
[51] Law on Financial Transparency in Political Life, *Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique* (France), 2013.

French commission is made up of members of a variety of institutions which are independent from parliament and government and includes members from the Conseil d' Etat, the Court de Cassation and the Court des Comptes, among others, thus leaving much less room for doubt as to the body's impartiality.

It is readily ascertainable that the powers conferred upon the Electoral Commission have for the past decades granted the Commission access to sensitive personal data and as such, the FPPA is placed on the same frequency. The FPPA – along with other laws – contains sufficient safeguards against partisan influence which should repel any partisan influence. Professional auditors display a greater degree of impartiality than purely partisan appointments and, in addition, the Electoral Commission has the autonomous capacity to investigate violations to the law, thereby reaching a stable balance between independence and impartiality on the one hand, and freedom of manoeuvre on the other.

Moreover, any doubt as to the independence and impartiality of the members of the Electoral Commission is also disposed of by virtue of their method of appointment. The Constitution[52] dictates that members of the Electoral Commission are appointed for a period of 3 years and such period cannot be extended and members are not able to be reappointed.

By denying members the opportunity to be reappointed, the Constitution secures the independence of the organ and ensures that the decisions of the Commission are in no way influenced by an external force. While in certain systems independence is achieved through appointing members for life, the same level of independence can still be achieved when the tenure of office is definite as long as such members are not eligible for reappointment.

When members of an organ are not eligible for reappointment or their term is in perpetuity, their decisions and actions will not be based on their willingness to please the Executive – or whoever appointed them – in the hope of being reappointed or of not losing one's position thereby losing one's source of income.

[52] Constitution, art 60 (5).

Should members be eligible for reappointment, the influence exerted onto the members is not trivial as these members will seek to act in a manner as to secure their reappointment and if such fact shall not be so, then the perception by the public would still be one of suspicion and that alone is sufficient to degrade and undermine the trust attributed to that organ's independence.

The Guidelines on Political Party Financing of the Council of Europe also make express reference to the fact that decisions of the auditing body may be vitiated by external influence should its members be eligible for reappointment. The Guidelines state that 'Commissioners should not be eligible for re-appointment; those holding lifetime or one-term appointments are the least likely to be influenced by partisan interests'[53]

With respect to impartiality, the Guidelines delve deeper and go on to state that:

> Furthermore, there should be no budgetary strings attached which curtail the powers and restrict the scope of activities of the controlling commission should it criticise the government or major political parties.[54]

It is evidently clear that one important attribute that the auditing body should possess is freedom from external influence, and in fact, the Guidelines of the Council of Europe too declare that 'The auditing commission should be free from political pressure in carrying out its activities, and should be free from party intervention when appointing its staff.'[55]

These declarations by the Guidelines can be equated to an echo of a similar declaration found in our Constitution which predates those by the Guidelines.

In fact, the Constitution implants the notion of impartiality deeply within the roots of the Electoral Commission by stating that 'In the exercise of its functions under

[53] Ingrid van Biezen (n 45), p 66.
[54] Ibid.
[55] Ibid.

this Constitution the Electoral Commission shall not be subject to the direction or control of any other person or authority.'[56]

Therefore, it is manifestly evident that, irrespective of the arguments brought forward as to its inadequacy to fulfil the role as an auditing organ due to its lack of impartiality, the Constitution – which is to prevail over the FPPA – expressly states that the Electoral Commission cannot be subjected to external forces.

However, the phrase 'In the exercise of its functions under this Constitution'[57] further complicates matters.

Naturally, when the Electoral Commission was set up, there were no other references to the Electoral Commission within our legislative framework hence the Constitution did not feel the need to extend this sub-article to the functions of the Commission beyond those provided in the Constitution.

Prior to the promulgation of the FPPA, the General Elections Act of 1991 too made reference to the Electoral Commission as established by the Constitution and it also defined the powers attributed to the Commission.

It can be argued that the functions of the Commission under the General Elections Act too fall beyond the scope of Article 60 (9) of the Constitution. However, since the General Elections Act dictates that the members of the Commission are to take the oath of allegiance as found in the Constitution, it has inadvertently tied the functions and workings of the Commission under the General Elections Act to the rule against undue influence found in the Constitution.

On the other hand, the FPPA fails to connect the functions attributed to the Commission under the same Act to the rules established in the Constitution and it merely states that the Commission to which it is referring is that established by the Constitution however it does not speak of the powers which it then grants.

[56] Constitution, art 60 (9).
[57] Ibid.

Thus, arguing a contrario sensu, it can be said that the Electoral Commission in the execution of its powers under the FPPA can be subject to the direction and control of any other person or authority and such direction or control is not unconstitutional.

The author is of the opinion that the situation can be remedied through two alternative methods; the legislator can either amend Article 60 (9) of the Constitution to include the functions of the Commission beyond the Constitution, or by inserting within the FPPA a new article similar to Article 60 (9) of the Constitution wherein it is stated that in the execution of the Commission's functions under the Act, the Commission is too prohibited from being managed and controlled by any external person or authority.

1.3 The Political Party

> Political parties are an essential element of pluralistic democracies.[58]

The FPPA has, for the first time, integrated within our legislative framework a concrete definition of a political party. This definition is of great import when coupled with the aim of the Act since regulation on private funding to political parties would be rendered quite questionable and unreliable if there is no certainty as to what constitutes a political party; and, needless to say, in such a situation, the lack of definition would puncture the FPPA in a manner that benefits political parties as a means to circumvent donation control regulations.

Before delving any further into the contents of the definition, it is imperative to first contextualise this definition within the historical and evolutional backdrop of the Maltese Constitution, illustrating the want and need for such a definition thereby being better equipped to assess truthfully the importance of this definition.

[58] Braden Sammut, 'Party State Funding And Implications For Financial Reporting – The Perception Of The Maltese Electorate' (LLD, University of Malta 2014), p 12.

1.3.1 The Situation Prior the FPPA

A historical examination must necessarily be conducted in parallel with the evolution of the Maltese Constitution as it is the basis upon which all other laws are enacted apart from being the supreme law of the Republic.

Under the eleven Constitutions prior to the coming into force of the Malta Independence Order of 1964, the Constitution contained no reference to the phrase 'political party', thus, from the outset, political parties were not expressly recognised by the Constitution, their formation and function was not regulated, and above all, no definition can be found as to what constituted a political party.

Needless to say, the notion of political parties was in its embryonic stage prior to the year 1964; hence, it might explain why these several Constitutions never sought to define them.

However, political parties played a vital role in the year 1921. In fact, it can be noted that political parties were already gathering momentum as the events of 7th June 1919 demonstrate.

In 1921, Lord Plumer[59] signalled the launch of the election campaign for the first ever Maltese Parliament elected by Maltese citizens. In October[60], four political parties had emerged to contest the general elections.

In elections to the Senate, Panzavecchia's *Unione Politica Maltese*[61] won twelve out of seventeen seats; the Labour Party won four, whilst the Constitutional Party won only one seat. The *Partito Democratico Nazionalista*[62], which had opposed the institution of the Senate, won none[63]. In the Legislative Assembly, the *Unione Politica Maltese* was equally successful where it won fourteen seats, which meant it was three seats short of an absolute majority. Gerald Strickland's Constitutional

[59] Letters Patent, 30th of April 1921.
[60] Elections for the Senate were held on the 5th and 6th of October, while elections for the Legislative Assembly were held on the 18th and 11th of October.
[61] Maltese Political Union.
[62] Nationalist Democratic Party.
[63] Godfrey A Pirotta, *Malta's Parliament* ([Office of the Speaker of the House of Representatives, Malta and the Department of Information] 2006), p 61.

Party won seven while the Labour Party won seven seats as well, with Enrico Mizzi's *Partito Democratico Nazionalista* winning four seats, all of which from the district of Gozo[64] – which is an interesting fact in its own right.

Hence, it is manifestly evident that political parties were the major protagonists under the 1921 Constitution and had gained enough momentum to be in a position to influence both policy-making and the electorate. Despite having such a vital role, political parties were still not regulated or at least defined.

It was in 1987 that an amendment to the 1964 Constitution introduced a clear and express reference to 'political parties' in the form of a proviso to Article 52(1)[65].

This amendment was rendered necessary by the 1981 election result where the Malta Labour Party governed without having obtained the majority of votes cast. It introduced the concept of 'political party' into our Constitution however it failed to define such organisations.

Prior to the above-mentioned amendment, the Constitution contained no significant reference to political parties although it did mention 'political parties' in passing in 2 instances; the first mention relating to the appointment of the Leader of Opposition[66] and a second reference with respect to the functions of the Broadcasting Authority[67].

Furthermore, there exists another article which merits a notable mention in this regard as it does make reference to 'political parties' albeit indirectly;

> It shall be unlawful to establish, maintain or belong to any association of persons who are organised and trained or organised and equipped for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object.[68]

[64] Godfrey A Pirotta (n 63), p 62.
[65] Act 4 of 1987, Constitution of Malta (Amendment) Act (1987), art 3.
[66] Constitution, art 90 (2).
[67] Ibid, art 119.
[68] Ibid, art 117 (1).

Therefore, it is readily ascertainable that the references to 'political parties' as found in the Constitution fail short of defining them. The first real attempt to define 'political parties' came about in 1991 with the enactment of the General Elections Act.

The General Elections Act dictates that:

> [P]olitical party shall, for the purposes only of sections 10 and 14 of this Act, mean any person or group of person who having contested the general election under one name is represented in the House by, at least, one member or was so represented when the House was last dissolved, and in all other cases 'political party' shall mean any person or group of persons contesting the election as one group bearing the same name.[69]

Prima facie, it is evident that this article provides a twofold definition of a 'political party' thus the issue revolves whether the political party is represented in Parliament or not. Such distinction does not degrade the status of one party while promoting another, but it merely provides for different rights during the election period.

In the first part of the definition, the Act provides that those parties represented in Parliament at the time Parliament is dissolved shall have the right to nominate two persons to supervise the work of the Electoral Commission, and together with the Electoral Commission these parties shall have the right to participate in certain important aspects of the electoral process.

The second half of the definition goes on to provide a more universal classification of 'political parties' wherein in simple terms declares that those groups of persons who contest the election under one name are to classified as 'political parties'. Hence, political parties which are not represented in Parliament when it is dissolved have no exclusive rights during the non-election period, however, they

[69] General Elections Act, art 2.

are still given the right to scrutinise the electoral process once an election is declared – a right which is attributed to all political parties.

Thus, the twofold definition divides 'political parties' as to their representation in Parliament and grants those parties represented in Parliament certain exclusive rights pertaining to the non-election period, while those parties which are not represented in Parliament are entitled to no exclusive right but they do enjoy the all-encompassing and ever-present right to scrutinise the electoral process.

It is to be noted, therefore, that while the Constitution is more focused on elected members of the House, it was the General Elections Act that brought to the front the notion of 'political parties'. Moreover, despite this article being amended three times[70], the definition of 'political parties' has remained intact and it is identical to that found in the original Act 21 of 1991.

The Constitution envisages a House of Representatives composed of members who are legally elected and is oblivious to the notion of 'political parties'. From a Constitutional perspective, regardless of the political party from which the member is elected, as long as the candidate is legally elected, such candidate is deemed to be a member of the House by the Constitution. In practise, whenever these candidates are elected and are present in Parliament, they coagulate together in groups to form political parties – a fact which is beyond the scope of the Constitution because the Constitution is focused solely on having a House with lawfully elected members, and any segregation within such members is considered to be an internal management system conducted by the House itself.

In fact, the spirit of the General Elections Act can be said to have completely derogated away from that of the Polling Regulations of 1939 where the latter sought to imprint in the electorate's mind that their vote is a means of choosing individual candidates. It was in 1976, with the Polling (Amendment) Regulations[71], that there was introduced the possibility that candidates contesting the election under the same party be grouped together on the ballot paper. This goes to show that the

[70] First by Act 15 of 1996, then by Act 16 of 2002, and yet again by Legal Notice 486 of 2012.
[71] Act 1 of 1976, Polling (Amendments) Regulations.

spirit of our 1964 Constitution is very much in line with that of the original Polling Regulations as the Constitution too inclines heavily towards members of Parliament, as opposed to 'political parties'.

For a significant period of time, there seemed to exist a tacit consensus over the acceptance of the definition of 'political parties' as dictated by the General Elections Act. It could well be the case that the ingredients of a 'political party' were never expressly stated either through the legislator's inadvertence, or perhaps, the constituent elements of a political party were never thought to be of particular relevance unless to regulate the electoral process.

1.3.2 The Situation Today

By virtue of the FPPA, the law now provides us with a clear and tangible definition of 'political parties', the objectives of which go beyond the realm of the electoral process and seeks to emphasise the core principles underlining a political party.

The Financing of Political Parties Act defines political parties as:

> [P]olitical party means a free association of persons, the aims of which include the participation in the formation of the political will of the people by securing the election of one or more of its members to the House of Representatives, the European Parliament or Local Council, and ensuring a continuing active relationship between the people and the state institutions.[72]

It is manifestly evident that, although this provision is not regulatory in nature, its importance lies within its innate value. This definition has, for the first time in history, recognised political parties for what they truly are, instead of simply defining political parties for the short term for the purposes of certain specified laws. This clause can be extrapolated to any other law where political parties are mentioned and not simply relevant solely for the purposes of the FPPA.

[72] Financing of Political Parties Act, art 2.

The FPPA is quite ambitious in this regard, and it not only provides for a much needed definition, but it also goes on to eradicate the perception that political parties are merely voluntary organisations by imprinting their prominence and newly-found recognisability into the Constitution thereby granting political parties a Constitutional status.

> There may be formed political parties in order to attain free democratic order in the formation of the people's political will, according to the Constitution, and the State shall, as a matter of public interest, favour the formation and operation of such political parties.[73]

In this respect, Dr Franco Debono opines that the article need not mention expressly the Constitution because where the article states that parties are to be formed in order to attain free democratic order in the formation of the people's political will, the article is in itself referring indirectly to the principles enshrined in the Constitution[74]. Despite being so implied in the text and an express reference to the Constitution in the marginal note, the words 'according to the Constitution' were still inserted during Committee Stage.

Both of the above-mentioned articles are significant in value, and although they may seem revolutionary due to the lack of such articles in our legal history, they are a statement of what was applicable in practice. However, since these were only applicable as a form as custom, they still necessitated an express provision in the law otherwise should a situation arise where the norm is infringed, the law would not have prohibited such adverse actions.

In relation to the above-mentioned articles, article 8 too merits a mention as it too reiterates what is applicable in practise while also being the first legal provision of its kind.

> Political parties shall enjoy a legal personality and the right to sue and be sued. Political parties shall also

[73] Financing of Political Parties Act, art 3.
[74] Dr Franco Debono, Consideration of Bills Committee – Sitting 49, 19 May 2015.

> have all the rights of free expression which are competent to individuals according to the Constitution.[75]

While Article 3 is the first to acknowledge political parties on a Constitutional level, article 8 is granting political parties a legal personality in the same manner that a legal personality is attributed to any other legal bodies such as companies, thus placing political parties on a par with natural persons with respect to their rights and obligations. Article 8 then goes on to speak about the necessity of a public statute upon which the party is formed, which is again a reiteration in itself, however political parties are now duty bound to provide a copy of such statute to the Electoral Commission and update it with any changes thereby rendering such statute public.

In our legal framework, we are today faced with two co-existing definitions. There is this new definition under the FPPA, and there exists the twofold definition under the General Elections Act. These two definitions are not incompatible with each other and are able to exist under a symbiotic relationship, especially given the fact that while the twofold definition is more focused on the rights attributed to parties during election and non-election periods, the newly-established definition under the FPPA is an umbrella clause which is concerned with the very essence and nature of political parties and speaks of what constructs a political party as opposed to granting political parties rights without properly defining them.

Interestingly enough, our legal framework has evolved from not having provided for a proper definition of political parties to a situation where there are now two definitions present, each with their own significance although that in the FPPA defines the key elements of the political party upon which the definition in the General Elections Act grants certain rights.

It is to be noted that the original Bill sought to discard the definition in the General Elections Act and substitute it with the definition under the Bill[76]. Such substitution would have been necessary in order to bring both definitions in line

[75] Financing of Political Parties Act, art 8.
[76] Bill 59 of 2014, Financing of Political Parties Act (2014), art 49.

with each other and eliminate the dichotomy, however, the General Elections Act is closely linked to the Referenda Act[77], and should the definition in the General Elections Act be amended without amending the reference to it under the Referenda Act, there would have arisen an unnecessary complication.

In fact, Dr Peter Grech during Committee stage expressed his opinion that it would be best to leave the definition under the General Elections Act intact[78], and consequently, the relevant provision in the Bill was deleted. Thus, if the legislator ever feels the need to re-examine the definition under the General Elections Act and the reference thereto under the Referenda Act, it would be best to view them side by side and amend them both simultaneously instead of adopting a piecemeal approach.

Moreover, while the right of freedom of expression is underlined by the definition, the FPPA further enhances such right by declaring that 'no person shall be forced to join or belong to a political party against his will'[79]. In fact, the Act has seen fit to not only enhance the right of freedom of expression, but also to grant to the individual party member a right of defence in any internal disciplinary proceedings[80]. However, the FPPA falls short of mentioning what constitutes exactly a right of defence, whether application of principles of natural law or rules concerning fair trial are sufficient or whether it would suffice to allow the member to make representations.

One other striking feature of the FPPA is the inclusion of the newly-established definition for candidate, wherein it states that:

> [C]andidate means a person nominated for election to the House of Representatives, a local council or to the European Parliament, whether such person is standing as a member of a political party or not.[81]

[77] Referenda Act, Chapter 237 of the Laws of Malta.
[78] Dr Peter Grech, Consideration of Bills Committee – Sitting Number 64, 14 July 2015.
[79] Financing of Political Parties Act, art 6 (1).
[80] Ibid, art 9.
[81] Ibid, art 2.

Prima facie, it is evident that a candidate need not contest under the name of a political party – a fact which often times occurs in practise and which is now being recognised by the same definition. The definition under the original Bill, however, could have posed certain problems with respect to regulating donation control where candidates could potentially circumvent their duties to record and report by not contesting under a political party thus falling beyond the grasp of the same Bill.

GRECO too noticed such discrepancy in the Bill between political parties and independent candidates and emphasised that the lack of disclosure rules for independent election candidates, together with a further increase in expenditure limits, GRECO's recommendation would only be partly implemented.[82]

The situation was in fact remedied by the FPPA wherein it is expressly stated that independent candidates too are under an obligation to record and report donations.[83] This constituted a necessary introduction, otherwise the FPPA could have suffered from certain lacunas which beckoned exploitation. The tying of independent candidates to the regulations on donation control has, effectively widened the reach of the FPPA.

1.4 Contrast with Germany

Certain foreign jurisdictions too have recognised political parties as the primary vehicles for political action and have thus deemed it fit to define political parties so as to at least safeguard the rights of the individuals members and to prevent them from adopting undemocratic policies; with some even going on to recognise political parties on a constitutional level similar to the Maltese position.

The German constitution represents one of the most serious efforts to define and regulate political parties. The Basic Law for the Federal Republic of Germany states that:

[82] GRECO (2009) Evaluation Report on Malta on Transparency of Party Funding (Theme II), p 4, para 19.
[83] Financing of Political Parties Act, art 37 (5); ibid, art 38 (6).

> (1) Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.
> (2) Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.[84]

If one were to compare and contrast the Maltese definition under the FPPA as well as Article 4, with Article 21 of the German law, it is readily ascertainable that the resemblance between the two is uncanny.

The Maltese and German provisions are almost equal in every aspect as they both refer to a number of identical features, such as; that parties must be freely established and the fact that political parties participate in the formation of the political will of the people. The latter is also referred to by the Maastricht Treaty of the European Union where, in an ideological statement, it declares that:

> Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.[85]

While the German provision mentions that internal organisation is to conform with the democratic principles, the FPPA does contain provisions dealing with certain minimum standards which a political party must observe in order to be fully compliant with the law, although it does not mention such fact expressly in

[84] Grundgesetz für die Bundesrepublik Deutschland (Germany), art 21.
[85] Treaty of Maastricht on European Union (1992), art 138a.

the definition. Similarly, while the German article states that parties must make public their assets and funds, the FPPA's main purpose is just the same and need no such reference in the definition as it dedicates a whole chapter to accounting requirements. Moreover, in parallel to what the German article states vis-à-vis political parties and their duty to establish objectives in conformity with the law, a similar statement is found in the proviso to Article 3 of the FPPA where the latter states that 'formation and operation of political parties shall be within the parameters established by law[86].

Additionally, the FPPA dictates that 'political parties shall have a legitimate aim and shall conform to the Constitution and the laws of the State'[87].

Hence, it can safely be said that the Maltese definition was inspired by, if not modelled on, the above German formula. The German formula constitutes an invaluable point of reference and which has been scrutinised on numerous occasions by the German Constitutional Court as it is only such court that can rule over these matters.

The FPPA admits of the possibility of a political party dissolving itself. However, it falls short of mentioning other instances how a party may be dissolved. Arguing a contrario sensu, then a political party can only be dissolved by the party itself and none of the three organs of the state can induce such dissolution. However, if the legislator were to introduce a provision similar to the German provision were the German Constitutional Court is granted the power to dissolve parties on the grounds that its aim endangers democratic order, it would put the Maltese provision on a par with the German one.

German law ostracizes Government from having the power to dissolve a political party and bestows such power onto the Constitutional Court, thus political parties are granted an extra degree of protection due to the fact that if such power is left at the domain of the executive, there is an obvious risk that the government might

[86] Financing of Political Parties Act, art 3.
[87] Ibid, art 4.

proscribe an opposition party on the pretext that its policies on its agenda are anti-democratic.

On the other hand, the FPPA dictates that political parties shall conform to the Constitution; however, it falls short of stating who is to supervise compliance by the political parties. The German Federal Constitutional Court has respected the role of political parties on several occasions and one should trust that if given the chance, the Maltese Constitutional Court would do just the same.

If one were to analyse the impact that such German law left on the national democratic system, one would find that such law was quite successful for Germany as it has developed into a durable democracy, one marked by high voter turnouts and a competitive system capable of producing stable coalitions.

In its totality, the Maltese position is a significant leap forward as opposed to the scenario prior to the enactment of the FPPA. Seeing as it is modelled on its successful German counterpart, the test of time shall serve to illustrate its effectiveness.

1.5 Dissolution of a Political Party

Additionally, the FPPA also speaks of the possibility that a political party be dissolved. Instead of providing strict regulations as to how parties are to be dissolved, it leaves the notion of dissolution within the dominion of the political party[88].

The original Bill provided extensive regulations as to the manner in which parties may be dissolved[89]. This was too heavily criticised by the Venice Commission and OSCE wherein, in their Joint Opinion, they held that if political parties were to be dissolved by a 'decision, democratically adopted, carrying a two-thirds majority of the members of the political party'[90], such provision would be over-regulatory. The Joint Opinion had remarked that a two-thirds majority may at times be difficult to

[88] Financing of Political Parties Act, art 10.
[89] Bill 59 of 2014, Financing of Political Parties Act (2014), art 11.
[90] Venice Commission, *Joint Opinion* (n 24), p 6, para 16.

achieve and could lead to a deadlock within the party, thus it recommended that this provision be amended by removing the requirement of two-third majority[91]. In essence, the individual political parties themselves should decide how the party is dissolved.

What the FPPA failed to inherit from the original Bill was the democratic society test found under Article 11 (2) of the Bill. As the European Court opines, dissolution of political parties should be a means of last resort as it is 'of the essence of democracy to allow diverse political programmes to be proposed and debated, (…) provided that they do not harm democracy itself'[92]. Moreover, the Council of Europe declared that 'dissolution of political parties should be regarded as exceptional measures to be applied in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country'[93]. The Guidelines on Political Party Regulation too state that 'the fact alone that a party advocates a peaceful change of the constitutional order is not sufficient to justify its prohibition or dissolution'[94]. The Joint Opinion recommended that the provision be adequately amended so as to include a specific mention that dissolution of a political party shall be a measure of last resort and one which is applied only in extreme cases[95]. However, Article 11 of the original Bill was almost totally amended and what remains now in Article 10 of the FPPA is solely a condensed version which leaves the concept of dissolution within the ambit of the individual political parties themselves.

1.6 Discrimination

Another area of law that necessitated express regulations was that concerning discrimination concerning political parties and their members. The point of origin of the discussion on discrimination has to be Article 5 of the FPPA where it states;

[91] Venice Commission, *Joint Opinion* (n 24).
[92] *Socialist Party and others v Turkey* App. No. 21237/93, (ECtHR, 25 May 1998), para 47.
[93] Resolution 1308 of the Parliamentary Assembly of the Council of Europe, *Restrictions on political parties in the Council of Europe's member states* (2002), para 11.
[94] Venice Commission, *Guidelines* (n 42), par 93.
[95] Venice Commission, *Joint Opinion* (n 24), p 6, para 17.

> Political parties shall receive equal treatment by the State without prejudice to any law or regulation based on objective differences particularly those based on the size of the parties or which regulate the workings of the electoral process.[96]

This constitutes a clear prohibition on discrimination by the State against political parties which is, however, not absolute as it allows certain forms of discrimination against political parties as long as such forms of discrimination emanate from other pieces of legislation.

All political parties are to be treated equally by the State; however, not all forms of inequalities give rise to discrimination. For instance, the political party in Government might enjoy additional air time during broadcasted political debates, yet such inequality is still permissible by the FPPA as it envisages a scenario where political parties cannot be equal at all times.

The FPPA also prohibits discrimination against party members by the State, and here too it allows for certain exceptions.

> No person shall be discriminated against on the ground that the said person is a member of a political party:
>
> Provided that the provisions of this sub-article shall not apply to persons, who by reason of their employment, are under a duty of discretion in political matters or who hold offices which are incompatible with the exercise of political activity, so long as such restrictions are necessary in a democratic society.[97]

This principle is not new to Malta as the Constitution itself provides for certain offices that are incompatible with political activities such as prosecutors and judges. Though this proviso reaffirms what other pieces of legislation declare, it is needed nonetheless; otherwise any old laws would be tantamount to a breach of the general rule against discrimination and one could argue that those offices

[96] Financing of Political Parties Act, art 5.
[97] Ibid, art 6 (3).

declared incompatible with political activities under other laws are discriminatory in nature as no person shall be discriminated against on the basis of being a member of a political party.

The Act also prohibits discrimination in the relationship between political parties and their individual members and it is declared that;

> No person shall be debarred from membership of a political party on the basis of gender, race, financial status, sexual orientation or gender identity.[98]

If one were to compare and contrast this article to its counterpart found within the Constitution, one would find that the grounds against discrimination under the Constitution are much wider. As Dr Franco Debono explains, the aim of the FPPA is to stipulate the minimum requirements while not being too restrictive and it should leave parties an adequate margin of discretion within which to operate[99]. Dr Debono also notes that while the Constitution mentions 'political opinion' as one ground for discrimination, political parties are to be allowed to refuse membership if the person has a different political opinion that the political party.

A word of great import in this regard is 'person'. It is to be noted that reference here is not made to citizens or persons whose residence lies in Malta, but persons. This effectively means that the reach of the FPPA is much wider and applies to any person who is present in Malta; hence, all persons present in Malta are protected against discrimination.

Interestingly enough, the above-mentioned article does not specify 'territory' as one of the prohibited grounds, thus there exists the possibility where a political party is composed of members from one locality. Thus, should the now-extinct Gozo Party re-emerge in today's society, such party would not be in breach of this article and it cannot be said that by denying membership on the basis of being a Maltese national the party is discriminating against the individual.

[98] Financing of Political Parties Act, art 6 (2).
[99] Dr Franco Debono, Consideration of Bills Committee – Sitting Number 49, 19 May 2015.

> Without prejudice to the provisions of sub-article (2) of article 6, political parties shall decide freely on the admission of members in accordance with the relevant provisions of their statutes and the political party shall not be required to give reasons for any refusal of an application for membership.[100]

Article 7 further reiterates the principles already reaffirmed in Article 6. However, here the FPPA is also allowing political parties to refuse membership without the need of providing reasons for such refusal.

By allowing political parties not to provide reasons for refusal, one might argue that the political party can refuse on the basis of race however it then refuses to give reasons and hence, one would never know what were ultimately the reasons for refusal and whether such reasons where legitimate or not.

In this respect, there is still a viable remedy since if a person feels that he or she was discriminated against on the basis of such racial discrimination, such person is allowed by the laws of Malta to seek judicial redress. The FPPA seeks to establish a balance between minimum standards of discrimination and a situation where a party can refuse without reasons. Hence, the filing of an action in this regard is the best form of balance as it places the onus of proof on who alleges the discriminatory behaviour while leaving parties free to act.

As Dr Peter Grech opines, no person has a right to be a member of a political party, thus it follows that no one has a right to be given reasons for refusal[101]. Furthermore, given the strong importance of the media today, it is unwise for a political party to refuse without reasons or to discriminate on the basis of race; hence the balance envisaged above is achieved in this regard.

[100] Financing of Political Parties Act, art 7.
[101] Dr Peter Grech, Consideration of Bills Committee – Sitting Number 51, 1 June 2015.

CHAPTER II:
REGISTRATION & ACCOUNTING REQUIREMENTS

In a state where corruption abounds, laws must be very numerous.

— Publius Cornelius Tacitus

Despite the innovative spirit displayed by the majority of the FPPA's provisions in establishing virgin rules, a significant portion of the Act serves a dissimilar purpose. Whereas certain provisions are heavily inclined towards the introduction of new regulations, others are concerned with the codification of principles which were applicable in practice yet never rooted and translated into law.

In reiterating what is already applicable in practice, the FPPA is effectively laying down the foundations by stipulating certain minimum standards which have to be observed in relation to the registration of political parties and their auditing of accounts. The FPPA exploits this clarity as a means to convey the message that political parties are, now, more adequately regulated.

2.1 Registration of Political Parties

Rules on the registration of political parties cover the entire spectrum of a party's lifespan, targeting the birth as well as the death of a political party.

In order for a political party to be recognised as such, it must bear a statute which indicates the manner in which the leader and the treasurer of the political party are elected[102]. When presenting an application for registration, the political party must indicate the names of the officials of the party together with the party's name and registered address, and must also declare that it intends to present candidates for elections[103]. By satisfying these requirements, the political party is registered in the register of political parties held by the Electoral Commission[104].

Interestingly enough, by demanding that political parties submit a declaration of their intentions to nominate candidates for elections, the FPPA is indirectly making a reference to the democratic scope behind the formation of political parties, that is, that of providing society with alternative ideologies through their candidates and striving to achieve a position of power to effect such ideologies for the betterment of society in accordance with their perspectives.

[102] Financing of Political Parties Act, art 13.
[103] Ibid, art 14.
[104] Ibid, art 11.

In a similar fashion to company law, it is also possible for a political party to register a description and an emblem to be used on the ballot paper[105]. The Electoral Commission may, however, refuse to register such description or emblem if it is of the opinion that the emblem or description is the same as one which is already registered or it is likely to cause confusion. Descriptions or emblems which are obscene would also be refused, so would emblems which mislead voters if they were to appear on the ballot paper.

Given the fact that political parties are living organisms that evolve according to the needs of society, entries in the register of political parties can be subjected to amendments as a political party is given the opportunity to apply to the Commission to change its name, description or emblem[106]. Additionally, if any other particular in the party's entry in the register ceases to be correct, the political party is under an obligation to inform the Commission of such inaccuracy and provide it with the updated information and the Commission must adjust the entry as soon as reasonably practicable[107]. In the case of a change in the political party's registered address, the political party must inform the Commission within fourteen days of such change[108].

The Electoral Commission is, naturally, empowered to refuse an application in accordance with the provisions of the FPPA. In such case, the political party must be notified and informed of the reasons and if the party feels aggrieved by such refusal, the party may challenge the decision of the Commission by means of a sworn application filed in the First Hall of the Civil Court, without prejudice to the party's right to re-submit a revised application for registration[109].

The FPPA envisages two possibilities through which a candidate can be nominated for an election; either as an independent candidate or in the name of a registered party after being confirmed by the nominating officer of that party. Therefore, if a candidate wishes to contest and stand in the name of one political party, it is only

[105] Financing of Political Parties Act, art 15; ibid, art 16.
[106] Ibid, art 17.
[107] Ibid, art 19.
[108] Ibid, art 14 (c).
[109] Ibid, art 18.

the party that can nominate such candidate and the latter cannot contest of his own accord under the name of that party. Furthermore, this eradicates the possibility of a candidate emerging during an election campaign contesting under a newly-created party if such party is not yet registered.

Dissolution of a political party is also contemplated by the FPPA and it provides an exhaustive list of the grounds on which a political party's entry in the register may be deleted, thus bringing about the demise of the political party[110]. The foremost ground contemplated by the Act, which can befittingly be equated to a form of suicide, is where the political party itself applies to have its entry removed. Another ground for deletion from the register refers to a scenario where a political party does not nominate candidates for elections for over ten years. A political party can also be struck off the register in the event that the party was dissolved in accordance with the statute of the same political party.

Nonetheless, the aforementioned provisions on the registration of political parties do not include a time-frame within which decisions by the Electoral Commission should be taken. The author is of the opinion that expeditious decisions are predominantly important for fresh parties seeking to present candidates for elections, thus recommends that a time-limit be introduced in order to avoid circumstances where an association of persons is left in an obscure legal situation due to the Electoral Commission taking too long to decide. Reference here must be made to the Guidelines on Political Party Regulation wherein it is stated that 'deadlines that are overly long constitute unreasonable barriers to party registration and participation'[111].

2.2 Accounting Requirements

Supervision over the control and management of the finances of a political party is also a core element of the FPPA. Provisions dealing with surveillance of a political

[110] Financing of Political Parties Act, art 20.
[111] Venice Commission, *Guidelines* (n 42), p 19, para 69.

party's finances are not limited solely to donations and are, instead, concerned with a statement of accounts which comprises assets and liabilities in their totality.

The FPPA burdens the treasurer of a political party with the obligation of keeping accounting records of the political party and ensuring that such records conform to audit standards[112], but it falls short of referring to a particular set of standards and instead stipulates that records must be kept 'in accordance with generally accepted audit standards'[113]. In addition, the FPPA seeks to punish any member of a political party who fails to provide any relevant information to the treasurer by means of a fine of not more than €2,000, though not less than €100[114].

An annual statement of accounts must be prepared annually. A statement of accounts together with the relevant accounting records must be preserved for at least ten years from the end of the financial year to which they relate[115]. In the event that a political party is struck off the register before the lapse of ten years, the Electoral Commission may order that such documents be destroyed, otherwise the last treasurer of the dissolved party is charged with keeping such documents[116].

The statement of accounts must be audited by an auditor each year, and such that auditor is granted wide powers under the FPPA[117]. In fact, the Act expressly states that the auditor engaged for the auditing of accounts has the right of access to all documents held by the party and to all information and explanations from the treasurer or any other party official together with all the powers granted by law to an auditor who audits a commercial company[118].

In the event that any person fails to provide the auditor with the requested information or explanation, the auditor may turn to the Commission and the Commission would then give such person any appropriate directions in writing[119]. Lack of compliance with the directions of the Commission would be tantamount

[112] Financing of Political Parties Act, art 23.
[113] Ibid.
[114] Ibid, art 24 (3).
[115] Ibid, art 25 (1).
[116] Ibid, art 25 (2).
[117] Ibid, art 26.
[118] Ibid, art 27.
[119] Ibid, art 27 (2).

to an offence liable to an administrative fine of between €1,000 and €10,000 and to a suspension form holding an office within a political party for a period not exceeding 3 months[120]. The same holds true for any person who negligently or knowingly makes any false representations before the auditor. Similarly, the Act provides for an umbrella provision which entraps all sorts of falsities stated by any person, including the auditor, before the Commission and such wilful misinformation is punished by means of an administrative fine not exceeding €10,000 and a suspension form holding an office within a political party for a period not exceeding 3 months[121].

Subsequent to the auditing of accounts, the treasurer must deliver the audited accounts to the Commission within four months of the end of that financial year[122]. If the treasurer fails to submit audited accounts, the Electoral Commission may appoint an auditor to audit the political party's accounts and in this case, the expenses incurred by the appointed auditor must be recovered by the Commission from the funds of the political party as a civil debt[123]. Whenever the treasurer fails to deliver the audited accounts to the Commission, the Commission can order that an extension of seven days be granted within which to deliver such audited accounts[124]; and if special reasons exist for failing to deliver such accounts, the Commission may, on an application made by the party, grant a further extension within which to submit the audited accounts[125]. Audited accounts received by the Commission must be made available for public inspection within one month from date of receipt and a copy of the said statements must also be uploaded on the web portal of the Electoral Commission[126].

Therefore, in simple terms, the treasurer of a political party is in duty bound to keep accounting records in order, prepare an annual statement of accounts in respect of each financial year, ensure that such accounts are properly audited by a

[120] Financing of Political Parties Act, art 27 (3).
[121] Ibid, art 31.
[122] Ibid, art 28 (1).
[123] Ibid, art 26 (2); ibid, art 26 (3).
[124] Ibid, art 28 (2).
[125] Ibid, art 28 (3).
[126] Ibid, art 29.

qualified auditor, and ultimately deliver the aforesaid documents to the Electoral Commission wherein such documents shall be rendered available for public scrutiny.

In the case that the treasurer of the political party does not fulfil the obligations established by the FPPA, a penalty in the form of an administrative fine not exceeding €10,000 would then be imposed[127]. It is interesting to note, however, that such administrative fine is not imposed on the treasurer, but on the political party. Therefore, despite the placing of the onus on the treasurer by the Act, it is in the political party's interests to ensure conformity with the law and that the treasurer abides by his duties otherwise it would be liable to a penalty.

In addition, the Act allows for the possibility of revision of defective statements of accounts whereby a treasurer of a political party is granted the opportunity to prepare a revised statement of accounts if he is of the opinion that the prepared statement of accounts is not in conformity with the law[128]. Likewise, the Commission may order the preparation of revised documents within one month if it is of the opinion that they are defective[129]. Failure to abide by the Commission's instructions, the Commission is empowered to resort to the First Hall of the Civil Court and ask the court to order the political party to submit a revised statement of accounts[130]. In this case, however, any court fees payable by the political party may be borne by the treasurer personally and not by the political party[131]. Revised statements of accounts can also be subjected to further revisions as necessary and which must also be made public by the Commission[132].

The Act obiter contains a lapsus linguae as the following extract illustrates:

> The notice shall specify a period of **not more than one month** for the treasurer to give the Commission

[127] Financing of Political Parties Act, art 30.
[128] Ibid, art 32 (1).
[129] Ibid, art 32 (3); ibid, art 32 (4).
[130] Ibid, art 32 (5); ibid, art 32 (6).
[131] Ibid, art 32 (7).
[132] Ibid, art 32 (10).

> an explanation of the statement of accounts or prepare a revised statement.[133]
>
> If at the end of the specified period, **or such longer period** as the Commission may allow, it appears to the Commission –[134]

It is distinctly evident that while the FPPA expressly dictates that the granted time-limit cannot exceed one month on the one hand, it mentions a possibility of such time being longer on the other. Although such Freudian slip may prove sterile in the future, its manifestation is noteworthy.

In essence political parties are under an obligation to disclose to the Electoral Commission all information relevant to their financial administration and any failure to do so would result in the imposition of administrative fines. Additionally, the Electoral Commission may also sanction political parties by means of exposure and adverse comments being made in public, which although they are not as punitive as a financial penalty, they are strong penalties nonetheless.

[133] Financing of Political Parties Act, art 32 (4).
[134] Ibid, art 32 (5).

CHAPTER III: DONATION CONTROL

Law and order are the medicine of the body politic and when the body politic gets sick, medicine must be administered.

— Bhimrao Ramji Ambedkar

3.1 The Maltese Position

To regulate private funding of political parties is the FPPA's raison d'être. The neoteric regulations on the control of donations to political parties and independent candidates contained within the Act are, essentially, the FPPA's main weapon against corruption.

Malta has long been criticised by foreign organisations for lacking control regulations with respect to private funding of political parties. The FPPA seeks to combat corruption by regulating private funding of political parties through two tactical approaches; first by seeking to establish a sufficient level of transparency, and secondly, by means of an adequate system of supervision of such private funding.

3.1.1 Mechanism under the FPPA

In regulating the control of donations, the FPPA commences by stating that, as a general rule, donations to political parties are to be allowed[135], and then it sets out specific exceptions to this general rule indicating instances where donations are either prohibited or are to be restricted.

The FPPA establishes a three tier system wherein publicity of donations to political parties is directly proportional to the quantum of such donations. This approach justifies the purpose behind the FPPA's rules as it is through these rules that society is being offered the opportunity to inspect and scrutinise the accounts of political parties.

Tier 1:-

Donations exceeding €25,000 from one source in one year are prohibited.

The FPPA establishes a threshold of €25,000 and anything beyond such amount is illegal[136]. The capping resets every year and, upon the lapse of one year, the threshold starts to operate afresh.

[135] Financing of Political Parties Act, art 33.
[136] Ibid, art 34 (e).

When defining the parameters of what constitutes a single source, the Act also provides a clarification with respect to companies wherein it is declared that where a company forms part of the same group of companies, or where the company is directly or indirectly controlled by each other or by the same person or group of persons, all of such companies shall be deemed to be a single source[137]. Thus, if a particular company has already satisfied the maximum limit, neither of its sister companies are allowed to donate any further to that political party.

Hence, if one were to speak in terms of legislature periods, a political party cannot receive more than €125,000 from a single source in one five-year period, which is quite substantial, yet not too restrictive, considering that a political party would have multiple other sources.

Tier 2:-

Donations below €25,000 yet exceeding €500 – they are recorded by the political party and reported to the Electoral Commission.

If a donation exceeds €500, it is to be recorded in the party register by the political party[138]. This party register is kept by the political party thus the Electoral Commission is still unaware of such donations and it is through the donation report that the Commission becomes cognizant.

When recording donations which are in excess of €500, apart from recording the amount, the political party must also record the name of the donor, together with his or her address, the date when the donation was received and any other relevant details. In the case where the donor is a company, its registration details must also be recorded. When a donation does not by itself exceed €500 but it does exceed such amount when added to other donations or benefits accruing to the political party, such donations must be recorded when the threshold is reached[139].

[137] Financing of Political Parties Act, art 34 (e).
[138] Ibid, art 37 (1).
[139] Ibid, art 37 (2).

Each year, the treasurer of a political party is bound to compile a donation report and submit this report to the Electoral Commission[140]. The political party must report **all** donations made to it irrespective of the amount. The crux of the issue is when to report the ***name*** of the source to the Commission – an issue, the fulcrum of which lies at the €7,000 mark.

The FPPA stipulates that any donation which exceeds €7,000 must be reported with reference to its source[141]. This effectively means that those donations which exceed €500 though fall short of €7,000, must still be reported. However there is no need of citing the name of the donor.

This illustrates the idea that the level of publicity increases in tandem with the amount of donation and it can be said that those donations in excess of €7,000 are placed on a high level of publicity, while those donations in excess of €500 yet under €7,000 enjoy a medium level of publicity.

Similar to the €500 aggregate rule, when a donation does not by itself exceed €7,000 but surpasses this limit when it is added to another donation or benefit, the aggregate amount shall be reported with reference to its source under the donation period in which the aggregate exceeded €7,000[142].

While the Electoral Commission is informed of the source for donations which exceed €7,000, it would not necessarily be informed through the donation report of the sources which fall below €7,000. Thus, the Commission is empowered to demand to be provided with all information as it may require from the political party, or any other person who may be in possession of such information, so as to determine the source of any particular donation[143].

Accordingly, the FPPA does not allow that a donation in excess of €500 be collected on condition that the identity of the donor is not divulged to third parties[144]

[140] Financing of Political Parties Act, art 38.
[141] Ibid, art 38 (3).
[142] Ibid, art 38 (4).
[143] Ibid, art 37 (4).
[144] Ibid, art 34 (d).

because parties are duty-bound to disclose the identity of the source should the Electoral Commission demand it.

As regards the contents of the donation report collected by the Electoral Commission, the author hypothesises that, in practice, the contents of such report would be comprised of a list wherein those donations which exceed €7,000 would be listed individually in connection with the identity of the donor, while those donations which fall short of the €7,000 mark would, for the sake of practicality, be listed cumulatively; meaning that parties would declare that they received, for instance, twenty donations of €600 each or that they received a hundred donations which add up to the global amount of €20,000.

Tier 3:-

Donations below €500 – the source need not be reported to the Electoral Commission {Confidential Donations}.

Donations below €50 – they are not recorded by the party provided that they are received during a political event {Anonymous Donations}.

Donations which do not exceed €500 are recorded by the party and reported to the Electoral Commission; however, the party is not obliged to reveal the source of such donations. Thus, donations beneath the €500 threshold mark are afforded a low level of publicity and can be considered as being confidential donations since their sources are concealed within the party register. GRECO standards, too, accept the possibility that donations be given in confidence[145]. Hence, confidential donations which do not exceed €500 may be necessary to avoid political persecution of donors, especially given Malta's small society.

In order to counter the possibility that political parties might abuse of such low level of publicity, the Electoral Commission can still ask for the source to be revealed in similar fashion to its powers under Tier 2, although under Tier 3 the Electoral Commission must surpass a further obstacle, that is, that of proving that

[145] Ingrid van Biezen (n 45), p 22.

there are reasonable grounds to believe that the amount actually donated confidentially exceeds €500[146]. In this respect, proof may take any form such as, for example, a whistleblowing report, or an affidavit by a third party.

Despite the lack of an express article declaring that political parties are under an obligation to record the source of donations the amount of which falls below €500, the fact that the FPPA allows the Electoral Commission to bring forth proof in order to demand that the source of such donation be revealed is tantamount to an implicit rule that political parties must record such source in its party register otherwise it would not be in a position to satisfy the Commission's demands and reveal the source.

Given the low level of publicity and the confidential nature attributed to such donations, there exists an additional safeguard against exploitation by imposing an administrative fine of not more than €10,000 onto anyone who is guilty of 'maliciously, with intent to conceal the origin and amounts of donations, divides a donation into smaller amounts, or in order to circumvent the recording and reporting requirements'[147].

This serves as a deterrent and ensures compliance with the regulations laid down by the FPPA. It must be said, however, that although one would be guilty of an offence, the punishment is an administrative one. This effectively means that the offence is decriminalised and once it is no longer a criminal charge, then the fine imposed is no longer considered as a criminal sanction and is instead deemed to be a civil debt and failure to pay such fine would not amount to a conversion into prison days.

Moreover, and perhaps most importantly, once the offence is no longer considered as a criminal charge, proceedings relating to such offence fall beyond the realm of

[146] Financing of Political Parties Act, proviso to art 37 (4).
[147] Ibid, art 37 (3).

the concept of fair hearing as established by the Constitution and the European Convention on Human Rights[148].

Therefore, if, for instance, a treasurer of a political party is faced with an administrative fine of €10,000, s/he would not be guaranteed by the right of fair trial, such as the right to make representations or the right to legal assistance as established by the Criminal Code[149]. Needless to say, given the lack of a factual case, this remains a hypothetical scenario and such theory would have to be tested before a Court of Law; where it could very well be the case that the Court places such administrative offences on a par with tax disputes and consider such proceedings to be a dispute on a civil right and obligation thus being covered by the right to fair trial analogous to the Court's approach in John Anthony Frendo vs Avukat Generali[150]. Alternatively, it could also be the case that the Court follows the judgement of Ozturk vs Germany[151] and declare that the amount of the fine not only deters but also punishes thus being classified as a criminal charge and hence the right to fair trial would apply.

Tier 3 also discusses the notion of anonymous donations. Donations which do not exceed the amount of €50 can be considered to be given anonymously, however, in order to qualify as an anonymous donation, such donation must be collected during a public manifestation or political event organised by the political party[152].

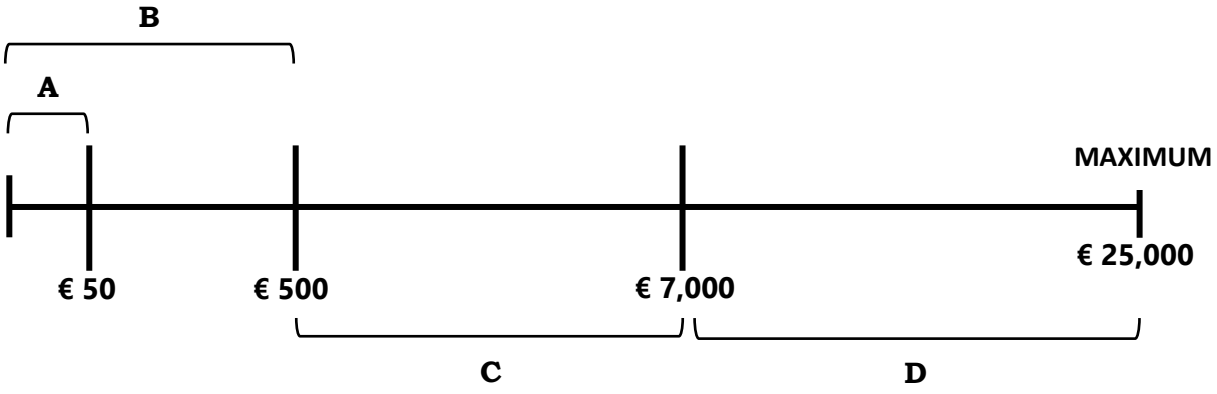
Therefore, donations received during political events, provided that they do not exceed €50, are not recorded by the political party in its party register and are hence equally exempt from being reported to the Electoral Commission. Thus, in terms of publicity, anonymous donations fall beyond the hierarchy of publicity levels and are in fact shrouded in obscurity as they cannot be traced.

[148] Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe (1950).
[149] Criminal Code, Chapter 9 of the Laws of Malta.
[150] Anthony Frendo vs Avukat Generali et, Constitutional Court, 30 November 2001.
[151] *Öztürk vs Germany* App. No. 8544/79, (ECtHR, 21 February 1984).
[152] Financing of Political Parties Act, proviso to art 37 (1).

The legislator, by including anonymous donations into the FPPA, seeks to address the practical and anthropogenic norms which are already present in our society, namely, to cater for the practice of telethons.

If, for instance, one where to consider a scenario where at the end of the year, the treasurer of a political party submits the annual donation report to the Electoral Commission and in such report the Commission notices that a €10 donation is listed, such donation would have been listed due to it being received outside of a political activity organised by the party. The Commission here is enabled to ask the political party to reveal the source of such donation however, since the donation does not exceed €500, the Commission must provide proof that it has reasonable grounds to believe that the amount donated was actually higher than €500. For any donation, except anonymous donations, which does not exceed €7,000, the source of the donation is still known to the party irrespective of whether the Commission demands its divulgement since it would be listed in the party register.

The following diagram serves to better illustrate the above-discussed explanation, albeit in a diluted manner:



A: Anonymous Donations *(No Publicity)*

A donation which does not exceed €50 shall not be recorded provided that such donation was collected during a manifestation or event organised by the political party.

B: Confidential Donations *(Low Publicity)*

A donation which does not exceed €500 is recorded in the party register; however the source is not reported to the Commission. The Commission may demand that the source be revealed on condition that it provides proof that it has reasonable grounds to believe that the amount donated actually exceeds €500.

C: Source of Donation need not be Divulged *(Medium Publicity)*

When reporting a donation which does not exceeds €7,000, the party need not report its source. The Commission may demand that the source be revealed from any person who is in possession of such information and need not provide proof in furtherance of such demand.

D: Source of Donation Must be Reported *(High Publicity)*

A donation which exceeds €7,000 must be reported with reference to its source.

It is imperative to note that a donation report is submitted to the Electoral Commission annually at the end of each year and this brings about a reset in the system whereby any previous donations to political parties do no accrue with the new donations of the subsequent year. Thus, threshold limits by source are operative only for a single year. Additionally, whenever there exists a threshold, the aggregate rule always applies and although a single donation may not exceed €500 or €7,000, it must be considered in conjunction with other donations and

benefits from the same source and whenever such aggregate reaches the threshold, it is then subject to the rules under the new threshold.

Most importantly, however, all of the rules imposed on political parties vis-à-vis control of donations applies equally to individual candidates[153]. Hence, individual candidates are not exempt from these rules by virtue of their having contested the election with no formal party affiliation.

It is worth noting that the FPPA utilises the term 'record' so as to refer to the registration of a donation in the party register kept by the political party, while it opts for the term 'report' to refer to the donation being indexed in the donation report submitted to the Electoral Commission.

3.1.2 General Principles Governing Donation Control Regulations

3.1.2.1 Procedure

Prior to accepting a donation which exceeds €500, a political party must first verify the identity of the donor[154] as the Electoral Commission is enabled to demand its divulgement by the political party, hence the identity of the source needs to be properly recorded. Furthermore, the political party must also ascertain whether such donation is a permissible donation[155], and in this respect, reference must be made to the exhaustive list provided by the Act detailing those instances where political parties cannot receive donations.

Primarily, political parties cannot receive donations given anonymously[156], subject to one exception, or donations which do not exceed €500 given confidentially on condition that the source is not disclosed to third parties[157]. This reiteration emphasises the nexus between such donations and the power of the Commission to demand that the identity of source be revealed. Neither is a party allowed to accept donations in excess of €25,000 in one calendar year[158].

[153] Financing of Political Parties Act, art 37 (5); ibid, art 38 (6).
[154] Ibid, art 41 (1).
[155] Ibid.
[156] Ibid, art 34 (c).
[157] Ibid, art 34 (d).
[158] Ibid, art 34 (e).

In conjunction with the €25,000 capping limit, should a party receive a donation in the form of a loan which is on more favourable terms than ordinary commercial terms, such donation is not necessarily rendered illegal provided that the party does not benefit from a discount of more than €25,000 in one calendar year off the interest payable by the party when compared to the interest which would have been due if such loan was contracted on ordinary terms[159].

Donations which are evidently made in return for, or in the expectation of, some political or financial advantage are also classified as prohibited donations[160]. However, it must be said here that difficulty would surely lie in proving the clarity of the expectation since a political party might argue that although the donor might have expected a political advantage, such expectation on the part of the donor was not evident enough for the party to be cognisant of the donor's intentions and the arguments for this statement's rebuttal lie within the subjectivity of the term '*evidently*'. Moreover, donations which are made with the intent to gain an advantage should not be accepted irrespective whether it is evident or not.

In addition, political parties are not allowed to receive donations from any parastatal body or public corporation in which the State has a controlling interest[161]. However, being mindful of special laws which provide assistance in kind to political parties such as, for example, air-time rules during political debates, the law admits to certain exceptions in this regard and allows services to be received from such bodies provided that such services are governed by a special law which regulates assistance in kind and the proportions on which it is to be provided according to each individual party as well as expressly regulating the timing of the assistance given before, during, and after election periods[162].

Prohibited donations also include donations from any corporate body where the ultimate beneficial owner is not identifiable[163]. This restates the FPPA's inherent

[159] Financing of Political Parties Act, art 34 (f).
[160] Ibid, art 34 (a).
[161] Ibid, art 34 (b).
[162] Ibid.
[163] Ibid, art 34 (g).

rule that the donor must be readily identifiable under any circumstances thus eliminating the risk that a party receives donations the donor of which cannot be traced.

In verifying the identity of the donor and the permissibility or otherwise of the donation, the FPPA itself stipulates what level of attentiveness should be afforded by the party. The FPPA expressly dictates that political parties must undertake their functions with due diligence[164]. Such statement as to the level of diligence that is to be observed is a welcome and fresh declaration in our legal framework, as it contradicts the persistent trend which dominates our legal aura wherein often times the level of diligence that should be observed is left to the Court's discretion.

In the event that the donor is not permissible at law or has not been sufficiently identified despite having acting with due diligence to verify his/her identity, then the political party must refuse the donation[165].

Moreover, should a political party, after having acted with due diligence to ascertain the donor's identity and the permissibility of the donation, accept a donation and later discover that either the identity of the donor is erroneous or the donation is prohibited at law, the political party is under an obligation to return the donation to the donor within thirty days. If the donor cannot be reached or he refuses reimbursement, the donee must deposit the sum in Court[166].

If the political party disregards these obligations and does not, with due diligence, verify the identity of the donor or the donation's permissibility, or after having done so, the party learns that such donation is prohibited yet it does not refuse the amount or does not seek to reimburse the donor, the FPPA dictates that the responsible member of the political party shall be liable to an administrative fine of €5,000[167].

[164] Financing of Political Parties Act, art 41.
[165] Ibid, art 41 (2).
[166] Ibid, art 41 (3).
[167] Ibid, art 41 (4).

If one were to consider the recording of a donation in the party register by the political party as being the first half of the process envisaged by the FPPA, then the reporting of such donations to the Electoral Commission can be equated to the second procedural half.

The duty to compile a donation report lies in the hands of the treasurer of the political party. Throughout the entire provisions of the FPPA, it is readily ascertainable that the Act places the treasurer of a political party at the core of its provisions to the extent that, in conjunction with the aforesaid duty to compile donation reports, the treasurer is also charged with ensuring compliance with the totality of the FPPA; from preparing annual accounts for audit and presenting them at the annual general meeting of the party for its approval, to performing any other function in relation to financial reporting of the political party.

A donation report must exhibit all amounts received by way of donation and must be divided into three segments; the first being 'January to April', the second 'May to August', and the third and final segment, 'September to December'; thus, each donation is to be listed under the heading in which it was received, or, as the case may be, in which the relevant threshold was surpassed[168]. Additionally, as requested by the *Alternattiva Demokratika* during the early stages of development of the Bill, the Minister for Justice may also publish templates in relation to the format in which donation reports are to be compiled.

In this donation report, the treasurer must also list all those donations which the party had refused[169] and, in this respect, such listing should contain all relevant details such as; a statement indicating the manner in which the donation was made and that such donation was refused, the date on which the donation was received and the date in which it was returned. It is important to note that the main concern of this report is the declaration of the donations received and in no way must it be confused or must it resemble a statement of accounts of the political party.

[168] Financing of Political Parties Act, art 38.
[169] Ibid, art 38 (5).

A donation report is compiled annually, at the end of each year, similar to Income Tax Self-Assessments. It must be delivered to the Electoral Commission within sixty days which start to accrue from the end of the previous year, that is, from the end of the reporting period to which it relates[170]. Independent candidates, however, have sixty days to deliver it to the Commission and such period starts to accrue from the date of the election. If the treasurer, or independent candidate, without reasonable cause, fail to deliver the donation report to the Commission within sixty days, he can be found liable to an administrative fine which does not exceed €20,000[171]. However, if the donation report is delivered to the Commission yet it contains certain inaccuracies, then the administrative fine is mitigated by €10,000[172].

A donation report must also be accompanied by a declaration made by the treasurer or the independent candidate. Under normal circumstances, ie when the party is not filing a nil return, the treasurer must make two important pronouncements wherein he must declare that, to the best of his knowledge and belief;

1. the donations received were from permissible donors[173], and,
2. that during the reporting period no other donation has been accepted and that no donation from any person other than those allowed by law has been accepted[174]

If the treasurer is filing a nil return, the declaration differentiates from the above and he must instead declare that, to the best of his knowledge and belief, no donations have been accepted by the party during the reporting period and that such statement is accurate[175]. Failure to declare accurate statements renders the treasurer liable to an administrative fine of €10,000[176].

[170] Financing of Political Parties Act, art 39.
[171] Ibid, art 39 (2).
[172] Ibid, art 39 (3).
[173] Ibid, art 40 (2) (a).
[174] Ibid, art 40 (2) (b).
[175] Ibid, art 40 (3).
[176] Ibid, art 40 (4).

If the Commission feels dissatisfied with the donation report received, it may file an application before the First Hall of the Civil Court and if it is proven that the political party failed to comply with the FPPA with the intention of concealing the existence or the true amount of the donation, the Court is enabled to compel the political party to forfeit an amount equal to the donation in favour of the government[177].

Therewithal, there exists a widespread umbrella clause within the Act whereby;

> Whosoever knowingly does any act in furtherance of any arrangement which facilitates or is likely to facilitate, whether by means of any concealment or disguise or otherwise, the making of donations to a political party or candidate, by any person or body other than by a permissible donor, shall, be liable to an administrative fine of not more than twenty thousand euro (€20,000).[178]

It is manifestly clear that this serves as a last means to ensnare any illicit behaviour which might otherwise dodge other provisions. It would suffice to remark that the actions contemplated by this article need not actually facilitate the making of a prohibited donation, and it is sufficient if such action was *merely* likely to facilitate the making of a prohibited donation. Furthermore, whenever the FPPA provides for an administrative fine, as in this case, the inapplicability of Criminal Law is dictated by other laws. Hence, the person on whom an administrative fine is imposed cannot also be charged with a criminal offence thereby the rules on ne bis in idem are not invoked.

Donation reports are to be kept by the Electoral Commission and the Commission must make them accessible to the public[179] and upload them to its website portal within such time and in such format as the Minister for Justice regulates.

In fact, the FPPA contains an enabling provision whereby the Minister, in agreement with the Electoral Commission, is granted wide powers to establish

[177] Financing of Political Parties Act, art 39 (4).
[178] Ibid, art 42.
[179] Ibid, art 43.

regulations in correlation with the Act. However, the Minister is precluded from raising the penalty for the administrative fines contained therein beyond the €50,000 mark in respect of each offence, or to more than €5,000 for each day during which the offence continues and neither is he allowed to suspend an official of a political party for a period of more than five years[180].

The FPPA allows any person who feels aggrieved by the penalty imposed to seek judicial redress before the First Hall of the Civil Court by means of a sworn application filed within thirty days from the imposition of such fine or sanction[181].

3.1.2.2 Value and Sponsorships

The FPPA recognises the fact that a donation need not necessarily be a monetary donation, and hence, it also takes into account donations in the form of gifts or sponsorships. Here the FPPA focuses on the qualitative attributes of a donation as well as its quantitative quantities. Irrespective of the quality of donations, they are subject to the same quantitative rules as discussed above.

Whenever a donation takes the form of a gift or property, the value of the donation is deemed to be equal to the cost price suffered by the donor[182]. Moreover, whenever there exists an exchange between the political party and the donor, the value of the donation which is considered to be received by the party is deemed to be equal to the difference between the cost price of the gift or property suffered by the donor and the value in monetary terms of the consideration provided by the political party[183]. The same holds true for any services, loans, or other facilities that may be donated to a political party for its use and benefit[184].

A donation can also be made by way of sponsorship. In such a case, the value of the donation is considered to be equal to the amount of money provided or, as the case may be, the cost incurred by the donor of the property transferred[185]. With

[180] Financing of Political Parties Act, art 44 (c).
[181] Ibid, art 44 (2).
[182] Ibid, art 35 (1).
[183] Ibid, art 35 (2).
[184] Ibid, art 35 (4).
[185] Ibid, art 35 (3).

respect to donations, however, any monetary consideration conferred onto the person providing the sponsorship shall be disregarded.

The FPPA provides an exhaustive provision dealing with instances where a sponsorship is deemed to have been made and other instances which do not constitute a sponsorship. The only instance envisaged by the Act where a sponsorship is deemed to have been made is where money or property is transferred to a political party and the purpose of such transfer is to help the party, to any extent, to meet any expenses to be incurred or incurred by the party or to secure that any such expense is not incurred[186]. These expenses are better illustrated by an indicative list provided by the FPPA where such expenses may include expenses in connection with the following:

- any meeting, conference, or other event organised by the political party
- the preparation, production, or dissemination of any publication by the political party
- any research or study organised by the political party[187]

Furthermore, the Act provides for instances wherein a sponsorship cannot be deemed to have been made immaterial of their compliance, or otherwise, with the above-mentioned constituent elements which synthesize a 'sponsorship'[188]. It is expressly declared that any payment in respect of any purchase price or charge for admission to any event, or for access to any publication, or for the listing of an advert in any publication do not constitute a sponsorship. Additionally, the provision of services, property, or facilities for the use or benefit of the political party, too, is deemed to be excluded from constituting a sponsorship.

With respect to the listing of adverts and the provision of services, property, or facilities for the benefit of the party, payment is assumed to be made at the applicable normal commercial rates, and hence, any other more favourable rate of payment would fall beyond the ambit of the aforementioned exclusion.

[186] Financing of Political Parties Act, art 36 (1).
[187] Ibid, art 36 (2).
[188] Ibid, art 36 (3).

3.1.3 Candidate Expenditure

The FPPA has also deemed fit to amend and raise the maximum thresholds afforded to candidates relative to election expenses and a study thereof is conducive to a fruitful examination of the essence of the Act. It is imperative to note that the applicability of laws in relation to election expenditures encompasses a wide time span, ranging from before, during and after the election.

Prior to the enactment of the FPPA, when contesting for the general election, a candidate could not exceed €1,397.62 in expenses[189]. The fee payable to his agent or other fees incurred for the candidate's personal expense were, however, excluded from such limit and in any case, the fee payable to the candidate's agent could not exceed €232.94[190]. Moreover, candidates contesting for the election in the same division under the same party name were allowed to pool their resources and in such case, the maximum capping of such aggregate was set at either €6,988.12 or €1,397.62 multiplied by the number of candidates and the applicable limit would be that which is smaller[191].

The FPPA raised the spending limit afforded to candidates to €20,000 per district[192]. It also went a step ahead to declare that whenever a candidate contests the election on two electoral districts, the €40,000 need not be apportioned equally and the distribution of such limit is left within the discretion of the candidate. Thus, today, a candidate who contests on two districts can spend €30,000 on one district, and the remaining €10,000 on the other. In addition, the candidate is allowed to deduct from the campaign expenses those fees which the candidate charges with respect to participation in a political event or for any goods or services available at such event, if any such charges exist.

After the publication of the result of the election in the Government Gazette, the candidate is under an obligation to transmit to the Commissioners a return of his

[189] Electoral (Polling) Ordinance, art 46 (1).
[190] Ibid, proviso to art 46 (1).
[191] Ibid, art 46 (2).
[192] Financing of Political Parties Act, art 49.

or her campaign expenses within 31 days[193], and such was the position even prior to the enactment of the FPPA. However, under the old provision of the Electoral (Polling) Ordinance, it was the agent of the candidate that was responsible to deliver such return of expenses to the Commissioners and, in fact, the FPPA shifts this burden of deliverance onto the candidate personally[194].

While candidates who are not elected are to return their expenses within 31 days from the publication in the Government Gazette, the obligation of such return burdening candidates who were elected is more onerous. Elected candidates have 10 days within which to disclose their expenses and such time frame starts to run from the date that the candidate is declared elected, irrespective of when the results are published in the Government Gazette[195]. Also, the FPPA expressly provides that the examination of the return of expenses of elected candidates by the Commissioners shall be completed within one month from date of receipt[196].

A candidate is guilty of malpractice whenever he or his agent does not conform to the rules relating to the return of campaign expenditure. As dictated by the Electoral (Polling) Ordinance, prosecution in relation to an illegal practise must be instituted with the approval of the Attorney General and one would, on conviction, be liable to a fine *multa* of not more than €465 as well as losing the right to vote for a period of not more than four years[197].

With respect to elected candidates, the FPPA inserted a new provision specifying that, save for the penalties as aforesaid, whenever the Commissioners examine the return of expenses and it appears that prima facie the candidate has supplied them with false information or that the expense incurred exceeds that allowed by law, the Electoral Commission is empowered to ask the Constitutional Court, by means of an application, to determine the question as to whether the seat of such elected candidate has become vacant[198]. This is one of the rare cases where the law

[193] Electoral (Polling) Ordinance, art 50 (1).
[194] Financing of Political Parties Act, art 50.
[195] Ibid, art 50 (a) (iv).
[196] Ibid.
[197] Electoral (Polling) Ordinance, art 52.
[198] Financing of Political Parties Act, art 51.

expressly dictates that the case is to be decided urgently; reflecting the crucial stand the FPPA takes against deliberate misinformation contrived by members of the House of Representatives.

With respect to elections of members of the European Parliament, the law used to specify that the maximum limit afforded to candidates is that of €18,634.99[199]. This has now been raised to €50,000, stipulating also that where a candidate charges a fee for participation in a political event or for goods or services available at such events, such charges shall be deducted from the candidate's campaign expenses[200].

The Local Councils Act[201], too, has benefitted from an increase in thresholds by virtue of the FPPA. The Local Councils Act used to allow candidates to spend up to a maximum of €1,165 or €0.25 per registered voter in the locality, whichever was the higher[202]. It also envisages the possibility of candidates pooling their finances, in which case the limit was €1,165 multiplied by the number of candidates or €46,590, whichever is the smaller[203]. The Minister is also empowered to amend such limits, however, the bar could not be raised beyond €2,330 or €0.50 per registered voter, and in the case of pooling of resources, the maximum is set at €2,330 multiplied by the number of candidates or €93,180, whichever is the smaller[204].

Today, candidates contesting a local council election face a maximum limit of €5,000 and any fees charged for participation in any political event or for goods or services available at such event shall be deducted from the expenses incurred by the candidate[205]. Candidates contesting in the same locality under the same party name can still bundle their finances together according to the aforesaid rules.

An amendment of great import is that to the Constitution, through which the FPPA makes it possible that the seat of any elected candidate shall become vacant if the

[199] European Parliament Elections (Maximum Expenses) Regulations, S.L. 467.01, art 2.
[200] Financing of Political Parties Act, art 52.
[201] Local Councils Act, Chapter 363 of the Laws of Malta.
[202] Ibid, art 97 (1).
[203] Ibid, art 97 (2).
[204] Ibid.
[205] Financing of Political Parties Act, art 53.

Constitutional Court decides that such member gave fraudulent information in the return of election expenses or that the expenses incurred actually exceed the amount permitted by law[206]. This serves as a critical new sanction whereby a candidate, contesting any election, is unseated by the Constitutional Court if it is found that such elected candidate has declared less or disclosed any untruths.

The raising of the ceiling of election expenditures is an echo of the impractical implications which the previous ceiling left which had led society to question the truthfulness of the expenses declared and in return, curtailed the trust afforded to politicians by society.

In today's neoliberal economy, everything is driven by the market where everything can now be sold and, given the fact that elections are an expensive affair, such neoliberal economic conditions necessitate an increase in election expenditure limits.

The advent of social media has created a new dimension within the notion of campaigning and this created a shift from the personal door-to-door campaign to campaigning through media, where the internet is extensively used and exploited. This newly found method of campaign mechanism means that election costs are much higher than traditional campaigning.

In addition, the increase in the number of electors and the increase in the cost inflation index are also important features which factor into the increase of election expenditure limit. The increasing number of voters renders a candidate unable to compete fairly unless a large sum of money is spent, even more so where a significant number of candidates are contesting in one constituency since each candidate faces heavy competition and money must be spent to invest in more publicity.

It is readily ascertainable that the FPPA confers unto candidates and political parties relatively short time frames within which to report their expense and donation returns, respectively. This connects with the fact that should politicians

[206] Financing of Political Parties Act, art 46.

act in contravention of the law, the FPPA seeks to remedy with utmost urgency through proper sanctions the harm done to society.

Furthermore, the Act stays shy of delving into the realm of party expenditure and the limits thereof. Although, prima facie, it might appear that the lack of such regulations might secure the status quo and obstruct the development of a level playing field, such lack does not necessarily generate inequitable repercussions due to the fact that political party election expenditure is still limited, albeit indirectly, by the rules on donation control. By capping a political party's income, the FPPA indirectly restrains the amount that the party can spend since it has less money at its disposal.

3.2 Foreign Legal Systems

A significant number of foreign jurisdictions have regulated the flow of political funds for quite some time. Through foreign legal instruments akin to our FPPA, foreign political finance regimes include a variety of regulations such as bans and limits on certain kinds of income and expenditure, rules on publishing of donation reports, as well as enforcement of rules and sanctions for infringements. Despite the differences that exist between foreign political finance regimes, they share a common feature, that is, they all require an authority to be responsible for the monitoring, control, and enforcement of such laws. A systematic study of such foreign laws shall be dealt with in the following sections.

3.2.1 Qualitative Contribution Limits

The purpose behind qualitative rules on the control of donations is normally to block the political sphere from being influenced by undesirable actors.

3.2.1.1 Donations from Foreign Sources

It is quite common for political party financing regulations to ban or restrict donations from foreign sources. In fact, 69% of European states prohibit political

parties from received donations from a foreign donor[207]. Most frequently, the purpose for such a ban is to limit the influence exerted by other external forces, and for this reason, foreign interests such as governments and corporations are often forbidden from making donations to political parties.

In certain countries, such as Italy[208] and Liechtenstein, there exists no form of restriction or limitation on contributions made by foreign entities towards political parties or their candidates. This is especially true in the case of Liechtenstein where the funding of political parties is left unregulated without any form of limits as to expenditures, sources of funding and disclosure obligations[209]. The same holds true for Monaco, where the financing of election campaigns and political parties is totally unrestricted and uncontrolled[210].

On the other hand, there are those countries which stand on the opposing side of the balance and which provide for an outright ban on the receiving of donations from foreign sources, such as Greece[211], Croatia[212] and Ireland[213], where foreign sources are not permitted to make contributions towards political parties or their candidates and such rule admits of no exceptions. Poland too can be added to such list, where it is only Polish citizens with a permanent domicile in Poland who are allowed to make donations[214].

The case of Norway is a rather interesting situation. Norwegian law[215] expressly dictates that political parties are not permitted to receive donations from foreign donors, however, due to the fact that elections in Norway are heavily party-oriented, campaign funding laws only apply to registered political parties. This

[207] Öhman M, *Political Finance Regulations Around The World* (International IDEA Publications Office 2012), p 18.
[208] Legge n. 515/1993, *Disciplina delle campagne elettorali per l'elezione alla Camera dei deputati e al Senato della Repubblica* (Italy), p 8.
[209] OSCE/ODIHR, 'Principality Of Liechtenstein 2009 Parliamentary Elections' (Organization for Security and Co-operation in Europe 2008), p 8.
[210] GRECO, Evaluation Report on Monaco, Transparency of Political Party Funding (2012), p 6.
[211] Law 4304/2014, which amends Law 3023/2002, *On Financial Control of political parties and elected representatives to the national and European Parliaments, and other provisions* (Greece), art 5.
[212] Political Activity and Electoral Campaign Financing Act , (Croatia) 2011, art 22.
[213] GRECO, Evaluation Report on Ireland, Transparency of Party Funding (2009), p 13.
[214] Election Code of Poland, (Poland) 2011. Art 132.
[215] LOV 2013-02-01-6, Lov om endringar i partiloven (Norway), art 17 (a).

effectively means that candidates and unregistered groups fall beyond the ambit of such law and face no ban with respect to donations from foreign sources; or any other limitation for that matter. The ramifications that such loophole left on the country obiter falls beyond the scope of this thesis, primarily given the fact that the FPPA leaves no such loopholes and thus a study of such effects would serve no purpose to the author's scope.

Other countries, such as Germany and Austria, chose to adopt a mid-way position on the balance, wherein they allow political parties to receive donations from foreign sources as long as a maximum threshold is not exceeded. In the case of Austria, the maximum is set at €2,500[216], while that of Germany is set at €1,000[217]. It must be said, however, that while the same rules apply to candidates in Austria, the situation is different in Germany where the maximum threshold applies vis-à-vis political parties and there are no general rules that apply to candidates due to the fact that German law considers candidates as being the primary responsibility of their respective parties as they are nominated by them[218].

The states of Iceland, Finland, and Latvia too allow for donations to be received from foreign sources, albeit subject to certain criteria. Iceland and Latvia restrict foreign donations on the basis of the rights that the donor possesses. In Iceland, foreign donations are only allowed if the donor has the right to vote in Iceland or it is a foreign legal person registered in Iceland[219], while in Latvia, foreign donations are allowed if the donor has the right to receive an Aliens passport of the Republic of Latvia[220]. Finland, however, basis its restriction on a more subjective approach where it allows foreign donations to be received as long as the foreign person or organisation share the same ideological stance as the donee[221]. Bulgaria too allows foreign donations to be made, provided that the donor is a natural person[222].

[216] Federal Act on the Functions, Financing and Election Campaigning of Political Parties, Political Parties Act 2012, Federal Law Gazette I No. 56/2012 (Austria), art 6 (6).
[217] Political Parties Act, Parteiengesetz – Part G, 2004 (Germany), 2004, art 25 (2).
[218] GRECO, Evaluation Report on Germany on Transparency of Party Funding (2009), p 7.
[219] GRECO, Evaluation Report on Iceland, Transparency of Party Funding (2008), p 6.
[220] Law on Financing of Political Organisations (Latvia), art 4 (1).
[221] Partilag, 1969 (Finaldn), art 8 (b).
[222] Election Code of Bulgaria, Official Gazette nr. 19, 2014 (Bulgaria), art 168.

3.2.1.2 Corporate Donations

In the international forum, there often arises the discussion as to whether companies should be allowed to make contributions in favour of political parties. One school of thought in favour of the permissibility of such donations suggests that this enhances freedom of speech, while another school of thought alternatively opines that the influence exerted on political parties by companies must be controlled by the State. European states are more likely to ban foreign donations than donations from companies, illustrating the idea that while influence by companies is to be controlled, it is in the State's greater interest to control influence from foreign interests.

Certain states allow companies to contribute towards political parties, albeit in a restricted manner. Belarus[223] and the Russian Federation[224] both stipulate that in order to be eligible to make contributions in favour of political parties, a company must have been registered for more than one year before the making of such donations. In addition, Russia does not permit donations to be made by companies with foreign participation or state participation[225].

In Italy, private legal entities are allowed to make donations provided that such donations are duly approved by the management body and they are properly entered and declared in the company's financial statements; however, donations which do not exceed €50,000 are not subject to declaration[226]. It is interesting to note that Italy used to limit donations, including corporate donations, in favour of individual candidates to €13,000, however this limit has been uprooted[227].

[223] Legal Acts on Political Parties, No. 3266-XII of Oct 5 (Belarus), 94, 1994, art 48 (1) (2).
[224] On Political Parties, Federal Law No. 95-FZ (Russian Federation), art 30.
[225] Ibid.
[226] GRECO, Evaluation Report on Italy, Transparency of Political Party Funding – Third Evaluation Report (2012), p 8.
[227] Law n. 13/2014, *Abolizione del finanziamento pubblico diretto, disposizioni per la trasparenza e la democraticitá dei partiti e la disciplina della cntribuzione volontaria e della contribuzione indiretta in loro favore* (Italy), art 11 (6).

Finland has opted for the use of threshold markers and its laws state that a political party cannot receive donations from legal entities in excess of €30,000[228], while the maximum mark for individual candidates is set at €6,000[229].

A rather interesting restriction is that embraced by Cypriot law wherein legal entities are not prohibited from making contributions in favour of political parties aside from two exceptions; namely that such legal person does not exercise or use control over betting agencies or casinos, or where such legal person is governed by public law[230].

On the contrary, the United Kingdom allows public listed companies to donate provided that the company asks its shareholders for their approval[231]. All other companies are allowed to donate according to their own internal rules only if the company is active, registered in the United Kingdom, and incorporated in any EU Member-State[232].

Political party financing laws in Luxembourg[233], Portugal[234], Lithuania[235], France[236] and Estonia[237] provide a complete prohibition over private funding of political parties through legal persons. However, Estonian law admits of one exception when it allows corporate donations to fund an election campaign only in respect of independent candidates[238].

[228] Partilag, 1969 (Finland), art 8 (b).
[229] Lag om kandidaters valfinansiering, 2009 (Finland), art 4.
[230] Political Party Law 2015 (Cyprus), art 5 (1).
[231] GRECO, Evaluation Report on the United Kingdom on Transparency of Party Funding (2008), p 10.
[232] Political Parties, Elections and Referendums Act, 2000 (United Kingdom), art 54 (2) (b).
[233] Loi portant Réglementation du Financement des Partis Politiques, 2007 (Luxembourg), chapter, 3 art 8.
[234] Law on the Financing of Political Parties and Election Campaigns, No. 19/2003 (Portugal), art 8.
[235] Party Finance Law No.XI-1777 of December 2011 (Lithaunia), art 7 (7).
[236] Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique (France), art 11 (4).
[237] Political Parties Act 1994 (Estonia), art 123.
[238] GRECO, Evaluation Report on Estonia, Transparency of Party Funding (2008), p 5.

Other countries like Sweden[239], Croatia[240], Serbia[241] and Austria[242] take an opposing stand and allow political parties to receive donations from legal entities without any form of restriction. Ukraine too falls under this category, however, Ukrainian laws on the financing of political parties are at a variance with each other, and while they allow corporate donations to be received by political parties[243], individual candidates cannot finance their election campaigns through such donations[244].

In certain states where companies and trade unions are considered as being more likely to give contributions to different political parties, a prohibition on company donations is often times combined with a prohibition on donations from trade unions. Luxembourg is one such country[245].

In Croatia, there too exists a prohibition on trade union donations by virtue of its political party financing laws wherein an indicative list describes labour unions and employer associations as being a prohibited source[246]. In the United Kingdom, on the contrary, the law expressly declares trade unions to be permissible donors at law, provided they are registered in the United Kingdom and are properly entered in the list of registered trade unions[247].

On a marginal note, a significant number of states also deem it fit to prohibit donations from religious organisations, with the most notable examples being

[239] Lag (2014:105), om insyn i finansiering av partier (Sweden), art 6.
[240] Political Activity and Electoral Campaign Financing Act 2011 (Croatia), art 11.
[241] Law on Financing Political Activities (Serbia), art 9.
[242] Federal Act on the Functions, Financing and Election Campaigning of Political Parties, Political Parties Act 2012, Federal Law Gazette I No. 56/2012 (Austria), art 6 (3) (2).
[243] Law on Political Parties (Ukraine), art 15.
[244] Denis Kovriženko, *Regulation The Current Of Political State And Parties Direction In Ukraine Of Reforms* (Agency for Legislative Initiatives 2010), p 96.
[245] Loi portant Réglementation du Financement des Partis Politiques, 2007 (Luxembourg), chapter 3, art 8.
[246] Political Activity and Electoral Campaign Financing Act 2011 (Croatia), art 22.
[247] Political Parties, Elections and Referendums Act 2000 (United Kingdom), art 54 (2) (d).

Montenegro[248], Romania[249], Croatia[250], Bulgaria[251] and Belarus[252]. Belarus, in fact, also prohibit donations from being made by under-age citizens[253], and Montenegro encompasses a wider list of prohibitions wherein it also prohibits donations from betting organisations, donations made in cash, and donations from persons convicted of a crime of corruption[254]. Additionally, Albania also prohibits donations made by companies involved in the media sector[255].

3.2.1.3 Government Entities

Laws on the financing of political parties ordinarily seek to restrict or prohibit donations from government entities in order to repel the abuse of state resources. State resources can take multiple forms and include, for example, office space, official vehicles and office equipment of state authorities. In tackling such abuse, these laws recognise the fact that state resources can be coerced either directly or indirectly.

For this reason, prohibiting state resources from being given to political parties or candidates prevents direct abuse, whereas a ban on donations from companies in which government has an interest is intended to stop indirect abuse of state resources.

When states prohibit foreign donations, it is shielding its own electoral system from external pressures and influence. When, however, a state prohibits donations from public institutions or government-owned corporations, it is effectively

[248] Law on Financing of Political Parties, chapter IV, art 19; Law on Financing the Election Campaign for the President of Montenegro, Mayor and President of Municipality 2009 (Montenegro), art 12.
[249] Law on the Financing of the Activity of Political Parties and Electoral Campaigns, No. 334/2006 (Romania), art 10 (3).
[250] Political Activity and Electoral Campaign Financing Act 2011 (Croatia), art 22.
[251] Political Parties Act 2009 (Bulgaria), art 24.
[252] Law On Amendments and Modifications to Some Laws of the Republic of Belarus Regulating the Conduct of Elections and Referendums 2009 (Belarus), art 17 (8).
[253] Ibid, art 17 (5).
[254] Law on Financing the Election Campaign for the President of Montenegro, Mayor and President of Municipality 2009 (Montenegro), art 12; Law on Amendments to the Law on Financing of Political Parties, 2014 (Montenegro), art 5.
[255] The Electoral Code of the Republic of Albania 2015 (Albania), art 89.

securing a level playing field wherein no party receives the advantage of incumbency and, thus avoiding an unfair situation.

Those countries which prohibit private companies from making donations to political parties are more likely to ban public institutions from doing the same given the fact that the stakes are higher for any political party. Moreover, those countries, such as France[256] and Estonia[257], which prohibit completely corporate donations, would automatically include government-owned companies and public institutions in such prohibition.

When restricting donations from companies belonging to the State, the issue that arises is that of determining the sufficient level of controlling interest beyond which the company cannot be allowed to make contributions.

In lieu of adopting a stipulated objective threshold, Cyprus[258] and Croatia[259] opt for a different approach and their financing laws state that a political party is not permitted to accept contributions of any kind from companies in which the State has any interest or share. This is, in effect, quite wide and means that a company in which the State has minimal interest, such as a 2% share, would still be caught up by such prohibition. Similarly, Romanian law[260] prohibits donations from companies whose entire or majority capital is owned by the state.

Bulgarian law too provides for a wide net in which most companies would be caught up even those with marginal state-ownership. However, it does provide an objective test and states that the prohibition only applies if 5% or more of the share capital is owned by the State[261]. Under Bulgarian law, the prohibition applies to individual candidates only in so far as the sum exceeds BGL 30,000 [262] (€ 15344.49) and if the interest of the State in the company exceeds 50%[263]. Additionally,

[256] See text to (n 236).
[257] See text to (n 237).
[258] Political Party Law, as amended December 2015 (Cyprus), art 5 (1).
[259] Political Activity and Electoral Campaign Financing Act 2011 (Croatia), art 22.
[260] Law on the Financing of the Activity of Political Parties and Electoral Campaigns, No. 334/2006(Romania), art 10 (2).
[261] Political Parties Act 2009 (Bulgaria), art 24.
[262] Bulgarian Lev
[263] Elections of Members of Parliament Act 2001 (Bulgaria), art 71.

Bulgaria also prohibits contributions from companies with government contracts. The reasoning behind such prohibition is to reduce the risk of quid-pro-quo donations.

Austria is more lenient in this respect as it bans donations only if the state holds more than 25% of the shares[264]. The Russian Federation is, almost, at par with Austria as it bans legal entities from donating to political parties if the shares held by the State exceed 30%[265].

This consistent legal pattern is, however, disrupted by the Latvian legal system. Latvian law prohibits all donations from companies without exception, and, more importantly, it stipulates that companies in which the state holds at least 50% of the shares must provide free or subsidized access to their premises for campaigning[266].

The United Kingdom, on the other hand, does not prohibit donations form state-owned companies. Under UK law, there exists no specific provision for companies with partial government ownership and it can be deduced that since such companies are included under the provision of permissible donors, and there exists no exception in their regard, then no prohibition applies.

All of the aforementioned states prevent the direct abuse of state resources by prohibiting them from being given to political parties or candidates. Under Latvian law, however, such prohibition exists by way of deduction due to the fact that while the law provides an exhaustive list of the manner in which political parties may be financed, state resources are not among the allowed sources, thereby, a contrario sensu, such sources are rendered illegal at law.

3.2.1.4 Anonymous Donations

The majority of countries resort to a complete prohibition regarding anonymous donations in order to increase transparency and to ensure that donations are not

[264] Federal Act on the Functions, Financing and Election Campaigning of Political Parties, Political Parties Act 2012, Federal Law Gazette I No. 56/2012 (Austria), art 6 (6).
[265] Federal Law on Political Parties (Russian Federation), art 30 (3).
[266] Law on Pre-election Campaign Before the Saeima Elections and Elections to the European Parliament 2004 (Latvia), art 19.

received from other prohibited sources. Other authors however criticize such prohibitions and argue that anonymity can still serve a purpose as it is much needed in order to protect the right of privacy of donors.

A significant number of jurisdictions prohibit anonymous donations without exception. The Czech Republic[267], Croatia[268], Albania[269] and Bulgaria[270] are but a few examples wherein anonymous donations are completely prohibited. Often times, states do not prohibit anonymous donations through express provisions of law, but rather through indirect means such as by requiring donations to be paid via bank transfer, credit card, or cheque, which, in all circumstances, excludes anonymity. The Czech Republic and Albania are two such states; here there exists a de facto prohibition due to the fact that political parties are duty bound to record and report the identity of each donor.

A handful of countries, however, opt for a different approach and allow the making of anonymous donations only in so far as they do not exceed a maximum threshold. Irish law adopts a position analogous to the FPPA's approach as it allows the making of anonymous donations which do not exceed €100[271]. In Austria, the bar is set considerably higher, at €1,000, beyond which anonymous donations are not allowed[272]. In Italy, however, the threshold is set even higher and political parties are not allowed to receive anonymous donations which exceed €5,000[273].

Swedish law is quite interesting in this respect. In Sweden, the law does not prohibit anonymous donations; however, it stipulates that if a political party receives anonymous donations, it is disqualified from benefitting from public

[267] Act 424/1991 on Association in Political Parties and Political Movements 1991 (Czech Republic), art 18.
[268] Political Activity and Electoral Campaign Financing Act 2011 (Croatia), art 22.
[269] The Electoral Code of the Republic of Albania 2015 (Albania), art 90.
[270] Election Code of Bulgaria, 2014 (Bulgaria), art 168 (1).
[271] Electoral Act No. 25, 1997 (Ireland), art 26.
[272] Federal Act on the Functions, Financing and Election Campaigning of Political Parties, Political Parties Act 2012, Federal Law Gazette I No. 56/2012, art 6 (6).
[273] Legge n. 13/2014, *Abolizione del finanziamento pubblico diretto, disposizioni per la trasparenza e la democraticitá dei partiti e la disciplina della cntribuzione volontaria e della contribuzione indiretta in loro favore* (Italy), art 5 (3).

funding[274]. This serves as an incentive for political parties to opt for the path of transparency otherwise they would not be eligible to benefit from public funds.

3.2.2 Quantitative Contribution Limits

Political party financing laws typically limit the amount that can be received by way of donation over a specified period of time, which is generally held to be one calendar year. The previous unit dealt with the imposition of donation limits with respect to the actors in issue. This unit focuses on limitations imposed on all donations received by political parties irrespective of the nature of the donor.

In dealing with donation limits, certain states deem it fit that a distinction be drawn between ongoing donations and their annual limits on the one hand, and limitations on donations in relation to election campaigns on the other.

While limitations on the amount of donations received during election periods are often time imposed in order to curb and reduce the influence of wealthy benefactors over election campaigns, annual limits are generally imposed as a means to reduce the risk of donors circumventing campaign donation limits by making hefty contributions well ahead of election time.

In Croatia[275], donations from natural and legal persons are capped at HRK 30,000[276] (€ 3,988.24) and HRK 200,000 (€ 26,585.93), respectively, per calendar year. Croatian candidates cannot receive more than HRK 30,000 (€ 3,988.24) from natural persons, and any donation from a legal person cannot exceed the sum of HRK 100,000 (€ 13,292.96) for a national election or a European Parliament election, and not more than HRK 30,000 (€ 3,988.24) for any local or regional government election.

Similarly, in Bulgaria[277], a political party or a candidate cannot receive more than BGN 10,000 (€ 5,114.83) per calendar year from individuals, while in Finland[278] a political party is not allowed to receive more than €30,000 per calendar year from

[274] State Financial Support to Political Parties, Act 1972:625 (Sweden), art 6.
[275] Political Activity and Electoral Campaign Financing Act 2011 (Croatia), art 11.
[276] Croatian Kuna
[277] Election Code of Bulgaria, 2014 (Bulgaria), art 167.
[278] Partilag, 1969 (Finland), art 8 (b).

the same source. In Finland, however, a different limit applies to candidates and such limit branches off intro three segments[279]; a €3,000 capping applies for candidates of a municipal election, candidates of parliamentary elections face a €6,000 limit and in case of a European Parliament election, a €10,000 capping applies.

Under Irish law, the maximum amount allowed by law over the course of one year is €2,500[280]; whereas under Cypriot law[281], a donation from a natural person cannot exceed €8,000, while a donation form a private limited company cannot be in excess of €20,000 and that of a company listed on the stock exchange cannot exceed €30,000 per year. In Cyprus, however, there exists a Special Common Fund in which any named or anonymous contributions can be deposited and this Fund then distributes its money proportionally between political parties each year[282].

Furthermore, in France, a donor is not allowed to make contributions exceeding €7,500[283]. This maximum ceiling, unlike the most other states, does not apply per political party and instead applies per donor meaning that a natural person cannot donate more than €7,500 per year, irrespective of the number of parties that benefit therefrom. Likewise, a donation towards an individual candidate cannot exceed €4,600[284].

In neither of the aforementioned jurisdictions does the law provide for an additional limitation with respect to the funding of election campaigns. The lack of a specific limit effectively means that the regular limitations apply. However, there exists a significant repercussion whenever a law provides for specific limits on donations received by candidates to fund their election campaigns without providing a similar limit for donations received by political parties.

[279] Lag om kandidaters valfinansiering, 2009 (Finland), art 4.
[280] Electoral (Amendment) (Political Funding) Act 2012 (Ireland), art 9.
[281] Political Party Law (Cyprus), art 5 (1).
[282] Law to provide for the registration, the funding of political parties and other matter incidental thereto (Cyprus), art 5 (4).
[283] Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique (France), art 11 (4).
[284] Code Electoral (France), art 52 (8).

As the National Commission for Campaign Accounts in France itself observes, whenever a law limits donations in relation to candidate election campaign but not in relation to political parties, if a donor wishes to contribute to a candidate's campaign as well as to the party which is endorsing such candidate, then it is possible for the donor to give to the political party and the candidate their respective maximum amounts[285]. Taking the case of France as an example, a donor is allowed to give a donation of €7,500 to a political party and another donation of €4,600 to one of its candidates without breaching the provisions of the law. This therefore translates into an elevation of the maximum ceiling by more than 60%, which is quite significant given the large volume of donors.

In Russia[286], the amount received by a political party from a legal person cannot exceed RUB 43,300,000[287] (€ 593,497.25), while that received from a natural person cannot exceed RUB 4,330,000 (€ 59,349.72). Russian federal law also provides extensive donation limits with respect to election campaigns of political parties and candidates. In addition, the limitations imposed on contributions to candidates are defined in percentages of the total limit of expenditures wherein; in the case of presidential election, donations by citizens and legal entities cannot exceed 1.5% and 7%[288], respectively, of the maximum limit on all expenditures, whilst in the case of parliamentary elections, donations by individuals and legal persons are not to exceed 5% and 50%[289], respectively, of the maximum level of all expenditures.

In Slovenia, the manner of measuring the maximum amounts permissible at law is quite interesting: the ceiling does not reflect a stipulated sum or percentage but rather it is calculated on the basis of the average monthly wage. Slovenian

[285] Barbara Jouan, 'Conference On International Standards Of Financing Of Political Parties And Election Campaigns, Financing Of Political Parties And Electoral Campaigns In France - The Role Of The Frenchnational Commission On Campaign Accounts And Political Party Financing' (2008) http://transparency.hu/uploads/docs/francia accessed 6 December 2015.
[286] Federal Law of December 1, 2012 (Russian Federation), art 30 (8).
[287] Russian Ruble
[288] Federal Law on the Election of the President of the Russian Federation (Russian Federation), art 58 (2) (3).
[289] Federal Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation (Russian Federation), art 66 (2) (3).

financing law dictates that a contribution by an individual person cannot, in a single year, exceed ten times the average gross monthly wage per worker[290].

Albania[291], on the contrary, can be considered as a mirror image of the aforementioned states as it provides for no annual limit for ongoing donations, yet it provides for an express limit with respect to the funding of election campaigns. In fact, its laws state that an electoral subject cannot receive a donation which exceeds 1 million ALL[292] (€ 7,253.92).

Seemingly in defiance of all of the above-mentioned restrictions, Hungarian laws lack any sort of limitations. Such a fact was also noted by GRECO in one of its evaluation reports wherein it observed that in Hungary, there 'are no restrictions with regard to the size or periodicity of the contributions'[293].

3.2.3 Expenditure Regulations

Laws regulating the financing of political parties generally tend to delve also into the notion of expenditure limitations. In seeking to curb certain forms of undesirable spending, many States impose limits on how much and on what political parties and candidates can spend. Moreover, such restrictions also decrease and restrain the advantage that a political party with access to significant resources enjoys while also reduces the overall spending on political party activities and election campaigns.

Certain states, such as Albania and Greece, where there exists direct public funding to political parties, expenditure limits are tied to the amount received through public funding. In Greece, electoral expenses incurred by a party cannot exceed 20% of the most recent total annual amount of regular public funding received by that party[294], while in Albania, the limit on expenses is capped at ten times the highest amount that an electoral subject has received from public funds[295]. An

[290] Political Party Act (ZPols-E) as amended in 2014 (Slovenia), art 22.
[291] The Electoral Code of the Republic of Albania, 2015 (Albania), art 89.
[292] Albanian Lek
[293] GRECO, Evaluation Report on Hungary on Transparency of party funding (2010), p 10.
[294] Law 3023/2002, On Financial Control of political parties and elected representatives to the national and European Parliaments, and other provisions (Greece), art 13.
[295] The Electoral Code of the Republic of Albania, 2015 (Albania), art 90.

Albanian candidate, however, cannot incur expenses in excess of 50% of the highest amount received from public funds and such amount is also included in the party spending limit[296].

On the other hand, despite the existence of direct public funding in Hungary and Austria, the expenditure limits in both of these states is not linked to such public funding. In Austria, a party may not spend more than € 7 million for election campaigning which includes all of the individual candidate campaign expenditures, unless a candidate spends less than €15,000 wherein such sum does not count towards the party's limit[297]. This effectively means that, in theory, a candidate within a political party has a spending limit of € 7 million if neither the party nor any other candidate incurs any costs. Under Hungarian law, campaign spending is calculated on a candidate basis and not on a party basis, and it stipulates that a candidate is not allowed to spend more than 5 million HUF[298] (€ 15,923.58)[299].

In Russia, the spending limit for an electoral fund of a political party and a Presidential candidate cannot exceed 250 million RUB (€ 3,423,237.50), while Parliamentary candidates are limited to 6 million RUB (€ 82,157.70), wherein such limits are indexed yearly to the inflation rate[300]. Slovak law too provides for a maximum spending limit and dictates that a party cannot incur costs in excess of 12 million SKK[301] (€ 398,328.00) on advertising and campaigning expenses[302].

Furthermore, Italian law is quite innovative in calculating expenditure limits. In Italy, a political party cannot spend more than the amount equivalent to the multiplication of €1 by the total number of registered voters[303]. In addition to the limit for political parties, candidates are allowed to spend € 52,000 for each

[296] The Electoral Code of the Republic of Albania, 2015 (Albania).
[297] Federal Act on the Functions, Financing and Election Campaigning of Political Parties, Political Parties Act 2012, Federal Law Gazette I No. 56/2012 (Austria), art 4 (1).
[298] Hungarian Forint
[299] LXXXVII/2013 (Hungary), art 7 (1).
[300] Federal Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation (Russian Federation), art 66.
[301] Slovak Koruna
[302] Act of the National Council of the Slovak Republic of 18 August 1994 (Slovakia), art 3.
[303] Legge 515/1993 (Italy), art 10.

electoral district and an additional sum equivalent to the multiplication of €0.01 by each citizen resident in the electoral district where the candidate is campaigning[304].

Icelandic laws fall short of providing a limit on political party campaign expenses, however, an unprecedented phenomenon was witnessed in 2007 whereby, despite the lack of restrictions on the amount of expenses which a political party may incur, political parties themselves, for the parliamentary election of the 12th of May 2007, reached an amicable consensus on a budgetary limit of 28 million ISK[305] (€ 202,285.60) for expenses connected to advertising incurred during the electoral campaign[306].

In addition to regulating expenditure limits, certain states also address vote buying as being one type of campaign spending and it is expressly prohibited by the majority of states. Votes are vulnerable to being bought and sold by having a political party offering or providing financial or material incentives for voters to vote in a certain way or to abstain from voting. In Germany for instance, much like the Maltese stand, whoever undertakes to buy votes is held liable to a term of imprisonment not exceeding five years[307]. However in Malta, the General Elections Act classifies such offence under that of bribery and the applicable punishment for bribery applies thereon.

3.2.4 Reporting, Oversight & Sanctions

Efficient political party financing laws must necessarily cover the issues of financial reporting, supervision by an institution which is empowered to investigate potential violations and to receive financial reports, and must also provide for sanctions should any obligation be breached. Transparency cannot be achieved without effective supervision and disclosure, and it is highly improbable that political actors observe rules such as spending limits and donation prohibitions.

[304] Legge 515/1993 (Italy), art 7.
[305] Icelandic Króna
[306] GRECO, Evaluation Report on Iceland, Transparency of Party Funding (2008), para 32.
[307] Criminal Code, 1998 (Germany), art 108e.

In Poland, political parties must submit an annual report on the sources of raised funds, including bank loans, to the State Electoral Commission[308]. Another financial report must be submitted by political parties and candidates alike in relation to election campaigns and such report must be submitted within 3 months from the date of the election[309]. Both of these reports must be published in the Public Information Bulletin by the National Electoral Commission within 30 days from the date of their submission[310]. As regards donations, the source of donations which exceed one minimum wage must also be published[311]. The National Electoral Commission is the sole supervising authority in Poland and is responsible for the auditing of reports submitted to it. Polish law provides for numerous types of sanctions, such as fines, prison, forfeiture of prohibited donations, loss of public funding, and deregistration of the political party[312].

Under Hungarian law, political parties are also obligated to publish their annual account. Such account is published in the Official Hungarian Gazette by the end of April each year and also uploaded on the political party's website[313]. Financial accounts in relation to campaigns must be submitted by political parties and candidates within sixty days form the date of the election[314]. The identity of the sources of donations is only revealed if such donation exceeds HUF 500,000 (€ 1,589.31)[315]or, in the case of foreign donors, HUF 100,000 (€ 317.86)[316]. The powers of auditing and supervision are bestowed onto the State Audit Office of Hungary, which is also empowered to institute proceedings in Court should there be a serious infringement of law[317]. Apart from the imposition of fines, any prohibited donation accepted by the party must be forfeited in favour of the State within

[308] Law on Political Parties, 1997 (Poland), art 38.
[309] Election Code of Poland. 2011 (Poland), art 142.
[310] Election Code of Poland. 2011 (Poland), art 143.
[311] Ibid, art 140.
[312] Ibid, art 495 – 516.
[313] Act XXXIII of 1989 on the Operation and Financial Management of Political Parties (Hungary), art 9
[314] Act LXXXVII of 2013, Transparency of Campaign Costs related to the Election of the Members of the Parliament states (Hungary), art 9.
[315] Act XXXIII of 1989 on the Operation and Financial Management of Political Parties (Hungary), art 9 (2).
[316] Ibid.
[317] Ibid, art 10.

fifteen days and the budgetary subsidy of that political party is reduced by the sum of the donation accepted[318].

Norwegian political parties are to submit their annual reports on assets and liabilities to the central register of statistics in Norway to be made public[319], and separate reports must be filed if, during an election campaign, a donation in excess of NOK 10,000[320] (€ 1,076.83) is received[321]. However, parties with a total income of less than NOK 12,000 (€ 1,292.20) are exempt from such obligations yet they must still submit a simplified report which contains a declaration to the effect that their income is below NOK 12,000[322]. Any donation exceeding NOK 35,000 (€ 3,768.92) must be reported in conjunction with its source and such ceiling is lowered to NOK 23,000 (€ 2,476.72) for county council level and to NOK 12,000 (€ 1,292.20) for municipal level[323]. While reports are received by the central register for statistics, the examination of such financial reports is the responsibility of the Political Parties Act Committee and the Party Auditing Committee[324]. The Political Parties Act Committee is, in fact, empowered to withhold government grants to a political party, either on its own initiative, or acting on the recommendation of the Ministry of Government Administration and Reform and such decision cannot be appealed from, but it can be challenged before a court[325]. Depending on the severity of the violation, sanctions can range from a fine, forfeiture, or imprisonment[326].

Montenegro, a current candidate for European Union accession, also embraces laws dealing with the financing of political parties, wherein it is expressly declared that annual reports of political parties must be submitted by the end of March each year for the preceding calendar year[327] and reports in relation to election to

[318] Act XXXIII of 1989 on the Operation and Financial Management of Political Parties (Hungary), art 4.
[319] LOV-2013-02-01-6: Lov om endringar i partiloven (Norway), art 18 (2).
[320] Norwegian Krone
[321] LOV-2013-02-01-6: Lov om endringar i partiloven (Norway), art 18 (4).
[322] Ibid, art 18 (3).
[323] Ibid, art 20.
[324] Ibid, art 24.
[325] GRECO, Evaluation Report on Norway, Transparency of Political Party Funding (2006), p 15.
[326] LOV-2013-02-01-6: Lov om endringar i partiloven (Norway), arts 28 to 30.
[327] Law on Financing of Political Parties (Montenegro), art 20.

campaigns must be delivered within thirty days after the election[328]. These balance sheets are submitted to the State Audit Institution, which is then obligated to prepare and publish an audit report[329]. Supervision over the compliance with the law is, however, vested in the State Election Commission[330].

[328] Law on Financing of Political Parties (Montenegro), art 25.
[329] Ibid, art 23.
[330] Ibid, art 29.

CHAPTER IV:
THE WAY FORWARD – PUBLIC FUNDING

Taxpayers will not stand for - nor should they - the funding of poster sites, leaflets or advertising. What people will support is funding for political education, for training, for party organization.

— Peter Hain

Public financing of political parties refers to the provision of funds by the State to political parties to help fund party activities. In broad terms, the receipt of such public grants is contingent upon certain eligibility criteria and allocation calculations.

State financing, however, does not necessarily refer to the direct injection of public funds into a political party. Political parties can be indirectly financed by the State through the provision of free or subsidised use of State resources, such as broadcasting airtime.

The notion of publicly funding political parties is non-existent in the FPPA as it does not ponder on the possibility of political parties receiving financial support other than from civil society. The raison d'être behind this Chapter is to delve into the concept of State funding, thoroughly analysing all of its facets, and ultimately siphon off provisions from foreign legislation for the purpose of erecting a domestic structure of public funding.

The FPPA has deemed it fit to entrench political accountability in our laws and, in so doing, it has enabled the public to be cognizant with the sources from whom political parties receive financial support. This has, actually, ploughed the land and rendered possible the sowing of public funding in our laws. By enhancing public confidence in political parties through the Act, there exists the possibility of introducing State funding in the near future for the purpose of strengthening national democracy.

While public funding may be the way forward, one must, however, allow the FPPA to seep deeper into our system and witness what fruits it reaps over a period of time. It is only when the Act has proven to be effective that discussions on public funding should be generated.

In the interest of strengthening democracy and invigorating political participation, political parties must first reinforce the public confidence they enjoy through informing the public of their sources of income and how these funds are being

spent. It is only thereafter that public funding can be introduced for the purpose of supporting them in their democratic functions.

4.1 Foreign Mechanisms

If the Maltese legislator ever intends to codify a structure for state financing of political parties, the optimum manner in which to do so would be to survey the mechanisms employed by foreign jurisdictions; a concise compilation of which will now ensue.

4.1.1 Eligibility Criteria

In countries where public funding is provided, there arises the key issue of determining which of the political parties are entitled to receive such funds.

Most European states adopt a threefold approach and they base eligibility criteria on three main pillars, namely;

- *Registration of the political party*
- *Percentage of votes obtained (usually set at 1%)*
- *Parliamentary representation*

Two typical systems founded upon this three-pillar model are those established in Bulgaria[331] and Austria[332]. In both systems, the threshold relative to the votes received is fixed at 1% and while registration of the party is necessary, parliamentary representation only serves as a differentiating factor in determining the amount received by way of public funding.

Similarly, Albanian law requires the fulfilment of the same criteria and even grants a party post-registration assistance when it is registered[333]. In addition, however, Albanian law also provides for election funding and the budgetary sum allotted towards election funding is divided into two, namely, half the sum is distributed

[331] Election Code of Bulgaria (Bulgaria), arts 25 to 27.
[332] Federal Act on Federal Support of Political Parties, Support of Political Parties Act 2012, Federal Law Gazette I No. 57/2012 (Austria), art 1, ss (2) & (3).
[333] GRECO, Evaluation Report on Albania, Transparency of Party Funding (2008), p 6, para 24.

among parties having representation in Parliament, and the other half among parties who won two or more seats in the last election[334]. This sum received by the party in relation to election funding must be returned to the State if the party fails to win a seat in Parliament[335], thus it incentivises parties to strive towards winning a seat in Parliament thereby creating homogenous representation in the House.

The legal framework in Lithuania is somewhat similar in relation to ongoing annual funding, yet takes a different approach in terms of campaign funding. In Lithuania, political parties are awarded public grants provided that they attained at least 3% of the votes cast in the last election[336], thus contrasting with the normal threshold of 1% opted for by other countries. In relation to election funding, Lithuanian law shifts the paradigm and instead of granting direct funds for election purposes, it reimburses parties campaign expenses, albeit not necessarily in full[337]. In order to benefit from such reimbursement, a political party must necessarily obtain at least 3% of the votes cast in the election in issue[338].

In discussing eligibility criteria, Swedish law is noteworthy as it not only provides for admissibility rules similar to the aforesaid rules, it also provides for a disqualification. In Sweden, any political party which receives anonymous donations is barred from benefitting from state funding[339]. This strengthens the principle of transparency and ensures that the public is aware of the sources of income of the party prior to the party receiving any funds from the state.

Spanish law too provides for a disqualification from being entitled to receive public funds. Pursuant to Spanish election laws, public funds and subsidies cannot be awarded to a party which has, in its management body, a person convicted of a serious offence such as terrorism and offences against public administration[340].

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[334] GRECO, Evaluation Report on Albania, Transparency of Party Funding (2008), para 26.
[335] Ibid.
[336] Law on funding of, and control over funding of, political parties and political campaigns (23rd August 2004/amended 6th of December 2011) (Lithuania), art 15 (2).
[337] Law on Financing and Financial Control of Political Parties and Political Campaigns (Lithuania), art 7.
[338] GRECO, Evaluation Report on Lithuania on Transparency of Party Funding (2009), p 6.
[339] State Financial Support to Political Parties, Act 1972:625 (Sweden), art 2.
[340] Organic Law 5/1985 on the General Election Regime (Spain), art 126.

Though such disqualification may not necessarily be directly targeted towards the curtailing of corruption, it nonetheless ensures that political parties and their management offices are sincere and genuine in their pursuit of shaping society.

Serbian electoral law is deeply committed to equality between the genders. In fact, Serbian law demands that for every four candidates there must be a candidate of the gender less represented in the candidate list and these minority candidates must form at least 30% of the list[341]. This effectively means that political parties must present an electoral list a third of which must be of the underrepresented gender. If a party fails to submit an electoral list in accordance with these prerequisites, such list cannot be proclaimed accepted and the party is not allowed to participate in election processes, and, consequently, that party cannot benefit from state funding.

4.1.2 Allocation Calculation

Whenever public funding is provided, there must be a clear determination of the method in which funds are to be distributed between the eligible political parties.

Foreign jurisdictions opt for a twofold system in which the yearly support provided by the State is composed of a lump sum together with a rate established either per vote or in terms of parliamentary seats. Hence, contributions by the State are often divided into two; one portion being equal to all parties, and another portion being unequal in that it is allotted proportionately to the votes obtained or the seats won by that particular party.

One case in point is the system applicable in the United Kingdom. Here, there exists a Policy Development Grant of more than £2 million (€2,629,935.16) which is available for distribution among those political parties which have at least two members in the House of Commons who have taken the oath of allegiance[342]. Distribution of the Policy Development Grant is done by means of a complex formula weighted by votes won in the preceding election. There also exists the

[341] Law on the Elections of Deputies, 2000 (Serbia), art 40 (a).
[342] The Elections (Policy Development Grants Scheme) Order 2006 (United Kingdom), art 7.

notion of *short* money[343], which is essentially a system of general funding for opposition parties. General funding for opposition parties consists of £15,039.85 (€ 19,740.67) for every seat won at the last election plus £30.04 (€ 39.43) for every 200 votes obtained by the political party[344]. The House of Lords is unelected in the United Kingdom and any state support thereto does not exist.

Luxembourgish law too follows suit. In Luxembourg, annual contributions to political parties consist of a lump sum of €100,000, an additional sum of €11,500 multiplied by the percentage of votes obtained in the general election, together with a further amount of €11,500 multiplied by the percentage of votes obtained in the European elections[345]. In order to benefit from public funding, however, a political party must obtain at least 2% of the votes cast in the last election[346].

Public funding law in Estonia is, perhaps, more complex than the aforementioned jurisdictions. In Estonia, state support is classified into three depending on the votes obtained and representation in parliament. Those political parties which fail to elect a seat in parliament but receive at least 1% of the votes cast receive the minimum of 150,000 EEK[347] (€ 9,587.19) annually[348] while those parties having failed to elect a seat in parliament yet obtain more than 4% of the votes receive 250,000 EEK[349] (€ 15,978.65). The third category of funding is indifferent to parliament representation and the sum allotted for this category is further sub-divided into two equal halves: one half is distributed in proportion to the votes received in the previous general election among those parties having obtained at least 5% of the votes, while the other half is distributed in proportion to the votes received in the previous local government election between those parties having obtained at least 5% of the votes nationally[350].

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[343] A system introduced in 1975, styled *short* after Edward Short (later Lord Glenamara), the then-Leader of the House of Commons.
[344] Richard Kelly, 'Short Money' (House of Commons Library 2016), p 30.
[345] Loi portant Réglementation du Financement des Partis Politiques, 2007 (Luxembourg), chapter 2, art 2.
[346] Ibid.
[347] Estonian Kroon
[348] Political Parties Act, 1994 (Estonia), art 125 (1).
[349] Ibid, art 125 (1).
[350] Political Parties Act, 1994 (Estonia), art 125 (2).

German law, on the other hand, does not provide for lump sums, but rather opts for a rate proportional to the votes received. German political parties receive €0.85 for each valid vote obtained and €0.38 for each €1 received from other lawful sources[351]. However, only donated amounts of less than €3,300 per natural person are taken into account and in calculating the sum in relation to the votes obtained, the rate drops to €0.70 after the first 4 million votes. Any party which has obtained at least 0.5% of the votes cast is eligible for support[352]. Moreover, the amount received by way of public funding cannot exceed the sum of the party's annual income, thus, the private funds raised by the party constitute the absolute upper limit in calculating state support[353].

In Ireland, parties with either parliamentary representation or which won at least 2% of the votes cast in the last election receive a sum proportional to the number of first preference votes received[354]. However, political parties lose 50% of their funding if they have less than 30% of either gender in their candidate list[355]. This provision was introduced in 2012 with the aim of stimulating gender equality and the law itself states that the 30% threshold is to be increased to 40% sometime after 2020[356].

However, Irish law is not alone in this and it is not uncommon for other countries to join the quest for promoting gender equality. In Portugal, for instance, parties with unbalanced genders amongst their candidate lists are prone to losing anything between 25% and 80% of their share of public funding[357]; while in Romania, state funding increases proportionally to the number of mandates obtained by female candidates[358]. Slovenian law, interestingly, allows women's

[351] Political Parties Act, 2004 (Germany), art 18.
[352] GRECO, Evaluation Report on Germany on Transparency of Party Funding (2009), p 9.
[353] Political Parties Act, 2004 (Germany), art 18 (5).
[354] Electoral Act No. 25, 1997 (Ireland), art 17 (3).
[355] Ibid, art 17 (4).
[356] Ibid.
[357] Lei da Paridade, Lei Orgânica No. 3/2006 (Portugal), arts 2 (1) (2) & 7.
[358] Law on the Financing of the Activity of Political Parties and Electoral Campaigns, No. 334/2006 (Romania), art 14 (2).

organisations to acquire public funds for special projects in accordance with the rules governing public interest in the field of gender equality[359].

4.1.3 Earmarking of Funds for Specific Usage

Whenever political parties are granted direct public funding, foreign laws often dictate that such funds must be used for specific purposes. Generally, earmarking of state funds is prescribed in a considerably wide manner as it often directs political parties to spend such money on election campaigns and other ongoing party activities. For example in Germany[360] and Bulgaria[361], the law grants funds for the financing of the party's general activities and its participation in elections.

Earmarking can also be imposed in relation to other specific functions and projects. In Greece, for example, political parties received annual financial support for founding and maintaining study and research centres[362]. Similarly, Dutch law provides political parties with a financial grant for expenses incurred in relation to training and political science activities, youth organisations, and any other expenses incurred for the purpose of engaging in education and training with sister parties outside the country[363]. Such a provision plays a vital role in the European aura as political parties often engage in activities with parties from the same family.

Polish law, on the other hand, takes a different approach and instead of earmarking funds for specific uses, it classifies public funds as forming part of the political party's assets once received by the party. The law governing the assets of the parties then goes on to dictate that the assets of a political party may only be made use of for the purposes enshrined in the constitution of the political party or for charitable purposes[364].

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[359] Political Party Act (ZPols-E) as amended in 2014 (Slovenia), art 21.
[360] Political Party Act (Parteiengesetz) (Germany), art 18 (1).
[361] Political Parties Act, 2009 (Bulgaria), art 29 (1).
[362] Law 4304/2014, which amends Law 3023/2002 , *On Financial Control of political parties and elected representatives to the national and European Parliaments, and other provisions* (Greece), art 4 (1).
[363] Wet van 7 maart 2013, houdende regels inzake de subsidiëring en het toezicht op de financiën van politieke partijen (Wet financiering politieke partijen) (Netherlands), art 7 (2).
[364] Law on Political Parties, 1997 (Poland), art 24 (2).

Monaco's law on public funding too earmarks funds for election expenses, albeit in an indirect manner. Here, political parties do not receive annual funding for ongoing activities but instead receive funding in the form of reimbursement of election expenses, thus it can be inferred that the totality of public funding is earmarked for the sole purpose of election participation[365].

The United Kingdom compartmentalises public funding into three different classes and grants support to opposition political parties in relation to Parliamentary business and its execution, travel expenses, and the running costs of the office of the Leader of Opposition[366]. All political parties, on the contrary, benefit from the Policy Development Grant and funds received from this scheme are earmarked for the development of policies.

Earmarking of funds can also be employed for the benefit of promoting gender equality, as illustrated by the legal systems in Italy and Ireland. Irish law dictates that funds received by the political party must, to a certain extent, be used in conjunction with promoting the participation of women and young persons in politics[367]. Italian law, however, is more precise as it expressly imposes that 5% of the received funds must be allocated for the purpose of increasing participation of women in political activities[368].

4.1.4 Indirect State Assistance

Public resources need not necessarily be made available to political parties in a direct manner. There exists the possibility that the state supports political parties in an indirect manner by providing them with resources of monetary value. Commonly, indirect assistance creates less of a controversy than direct funding due to the fact that it carries a lesser weight. Indirect public funding can take multiple forms, such as interest-free loans or subsidised access to the media.

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[365] Loi No. 839 sur les Élections Nationales et Communales, modifiée, 2007 (Monaco), art 33.
[366] Kelly Richard (n 344), p 3.
[367] Electoral Act 1997 (Ireland), art 18.
[368] Legge n. 13/2014, *Abolizione del finanziamento pubblico diretto, disposizioni per la trasparenza e la democraticitá dei partiti e la disciplina della cntribuzione volontaria e della contribuzione indiretta in loro favour* (Italy), art 9.

Political parties in Cyprus[369] and Belarus[370] receive free airtime on television and radio broadcasts during election campaigns and such airtime is divided in equal amounts. Parties in Germany[371] and Albania[372] too receive free airtime; however, in these countries, such airtime is divided proportionally between the parties depending on the share of seats elected during the last election. When media time is allocated proportionally, it does not mean that it is not allocated equally. Under the principle of graded equal opportunities, parties still receive equal treatment as they are subject to equal opportunities and even though larger parties receive more airtime, smaller parties are still given the opportunity to voice their opinions in the media. As Ukrainian law points out, mass media also refers to printed media thus a political party can also benefit from the free or subsidised usage of printed space at the expense of the State[373].

State controlled media can also be made available to candidates and not limited solely to political parties. This normally levels the playing field and allows eligible candidates to deliver their message to the public. The Czech Republic and Andorra are two noteworthy jurisdictions in this respect. While Czech law[374] allows for the use of free broadcasting time by political parties and disallows such usage by candidates, Andorra, contrary to Czech law, prohibits political parties from benefitting from free airtime[375] and permits candidates to make use of free broadcasting airtime in which to showcase their messages and ask for the public's vote[376].

Apart from free access to the media, certain countries also provide for other methods of indirect public funding such as providing space for fixtures of campaign materials, such as billboards. Albanian political parties which enjoy parliamentary representation are furnished with premises in which to set up their central

[369] Cyprus Broadcasting Corporation Law (Cap. 300A) (Cyprus), art 26.
[370] Electoral Code of the Republic of Belarus, No. 370-Z, 2000 (Belarus), art 46.
[371] GRECO, Evaluation Report on Germany on Transparency of Party Funding (2009), p 10.
[372] The Electoral Code of the Republic of Albania, 2015 (Albania), art 80.
[373] Law on Elections of the People's Deputies of Ukraine, as amended in 2014 (Ukraine), art 71 (4).
[374] Law No. 247/1995 on Elections to the Parliament (Czech Republic), art 16.
[375] Llei 28/2007, del 22 de novembre, qualificada de modificació de la Llei qualificada del règim electoral i del referèndum (Revision of 1993 electoral law) (Andorra), art 13 (1).
[376] Ibid, art 31 (1).

headquarters and offices and where this is not possible, the State takes over the payment of rent[377].

Presidential candidates in Belarus are provided with free access to public premises for the purpose of holding meetings[378] and so do candidates in Andorra[379]. However, Andorran law provides candidates with further assistance as it allows for the distribution of a candidate's election address to the public by the government and also provides for publicly funded opinion surveys. Greek members of parliament, on the other hand, also benefit from a reimbursement of travel expenses[380].

Another common form of indirect assistance relates to the various forms of tax relief or tax exemptions, as in Cyprus and Croatia. In Cyprus, neither direct state funding nor private donations are subject to taxation[381]; while in Croatia, a political party may be entitled to tax benefits under special laws and is not subject to the payment of value-added tax and profit tax in relation to its efforts strictly associated with its political activities[382].

One prevalent form of indirect state support most readily acceptable by the public is, perchance, that relating to the free use of the postal service. In fact, free postage costs for the purpose of communicating with the electorate is practiced on a widespread scale internationally, with countries such as Finland, Austria, France, Japan, Italy and the United Kingdom[383] all allowing the free usage of their postal service.

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[377] Law on Political Parties of 2000 (Albania), art 22.
[378] Law On Amendments and Modifications to Some Laws of the Republic of Belarus Regulating the Conduct of Elections and Referendums, 2009 (Belarus), art 13.
[379] Act 28/2007 (Andorra), arts 29 to 31.
[380] Law 3023/2002 (Greece), art 9.
[381] Political Party Law, as amended December 2015 (Cyprus), art 4 (2).
[382] Political Activity and Electoral Campaign Financing Act, 2011 (Croatia), art 9.
[383] Kevin Casas-Zamora and Daniel Zovatto, *The Cost Of Democracy: Essays On Political Finance In Latin America* (Organization of American States & Inter-American Dialogue 2016), p 33.

4.2 Arguments in Favour

Proponents of public funding often opine that assistance, monetary or in kind, provided by the State helps smaller parties to voice their opinions as well as maintaining a level playing field. Many authors argue that public funding enables political parties to better focus on representing their constituents and ensures that political parties do not succumb to external pressures.

Former civil servant Sir Hayden Phillips, after being charged with drafting a reform proposal, opted for a threefold approach[384] when recommending higher levels of public funding for the United Kingdom. First, he stated that by restricting the amount which a party can receive through private donations, public funding is necessary to offset the negative financial impact. Secondly, political parties face long-term financial instability due to ever-increasing costs involved and given the fact that financial instability is the enemy of healthy politics, state funding ensures that confidence in political parties is maintained. Lastly, in view of the decline in democratic engagement as manifested by dwindling membership numbers, Sir Hayden Phillips argues that state funding reinvigorates political parties and enables them to engage more members of society in a political debate[385].

Another oft-cited argument is that of thwarting corruption and of restricting the influence wielded by private money. Kevin Casas-Zamora further argues that state financing enhances financial transparency as is eliminates economic dependence by political parties on large private donors[386]. Casas-Zamora emphasises the fact that public funding is an innately transparent source of political money as it is a sum of money openly and publicly granted to the party[387].

Moreover, Ingrid Van Biezen notes that while modern politics has increasingly grown more professional and cost-intensive, the reservoir of volunteers has depleted over time. Thus, while resources where being drained from this reservoir,

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[384] Hayden Phillips, *Strengthening Democracy: fair and sustainable funding of political parties* (HMSO 2007)
[385] Ibid, chapter 5.
[386] Kevin Casas-Zamora, *Public Funding Solutions For Political Parties In Muslim-Majority Societies* (1st edn, IFES), p 16.
[387] Kevin Casas-Zamora (n 386), p 16.

not all parties benefitted in the same way and one party may have managed to horde more resources than another party. For this reason, Van Biezen argues that public funding helps to correct and stabilise the incongruity of resources held by small and large political parties[388].

The pivotal argument in favour of state funding is that it would prevent corruption and undue influence. Moreover, coupling public funds with restrictions on private contributions should also serve to restore or enhance confidence in the integrity of the political system; as Premier Neville Wran famously declared: '[Public funding] removes the risk of parties selling favours and declares to the world that the great political parties of New South Wales are not up for sale'[389].

Political parties require funds to operate, otherwise they would not be in a position to prepare policy decisions, keeping contact with constituencies and paying professional staff. Hence, it is often argued that state funding is a natural cost of democracy as it ensures the stability of political parties.

Moreover, if one considers the argument that large private donors are in a better position to influence party decisions, then so too would the State be able to exert pressure over the party if it grants public funds. Although naturally, such pressure cannot exceed the magnitude of the funds received. In this respect, by granting public funds, the State can level the playing field and force parties to engage in activities which promote women or youth participation in politics.

Furthermore, public funding ensures that economical inequalities present in society do not translate into political inequalities in the governing body of the State. Given the fact that the support base of political parties is divided along socioeconomic lines, those political parties preferred by the working classes are traditionally less wealthy than those supporting other parties. Thus, without public funding, these socioeconomic differences will result in differences in political power. Likewise, in societies where a significant number of citizens are living just

[388] Ingrid van Biezen (n 45), p 8.
[389] Neville Wran, New South Wales, *Parliamentary Debates*, Legislative Assembly – 15 April 1981, p 5944.

above, or under, the poverty line, parties cannot expect to receive large private contributions.

Local exponents have also contended, on several occasions, that state financing of political parties is necessary for the better functioning and sustainability of our democracy. John Attard Montalto, in fact, declared that the discussion on state funding cannot be postponed much longer.[390]

Since the 1970's, party financing laws across the globe always sought to regulate the three main facets of the electoral dimension, namely: election campaigning, private contributions, and public funding. However, the Maltese legal framework never deemed it fit to regulate state financing of political parties despite the growing concern over the employment of political incumbency for the benefit of the political party in government.

The issue of public funding never came to the fore until 1994, and for this reason, the Galdes Commission was appointed and charged with devising recommendations on the matter. The Galdes Commission had acknowledged the fact that political parties were undergoing a period of development and it declared that public funding for these evolving parties was necessary in contemporary politics in the interests of democracy[391].

Although most of the principles contained within the Galdes Report were agreed to by the political parties, the eligibility criteria and allocation calculations remained a point of disagreement. Consequently, the Galdes Report was shelved and the recommendations contained therein have remained frozen for the past 21 years.

Given the fact that a consensus over the principles of the Galdes Report seemed to exist, certain exponents tried to promote a revision of the amount of public funding to little or no avail. Such was the case in 2009[392] when the Malta Labour Party

[390] John Attard Montalto, Times of Malta, 30 September 2003.
[391] Galdes Report (n 7), p 17, para 4.1.6.
[392] Herman Grech, 'Labour Makes €7.2 Million State Funding Proposal' *Times of Malta* (2009) http://www.timesofmalta.com/articles/view/20090215/local/labour-makes-euro-7-2-million-state-funding-proposal.245026 accessed 12 March 2016.

proposed that political parties receive public funding on the basis of €5 per vote obtained.

In his thesis titled 'Should Malta Introduce State Funding for Political Parties', Joseph Muscat, after delving into a study of public funding and its implications, expressed his view that 'Malta should introduce State funding for political parties'[393]. Chris Said and Charlo Bonnici expressed the same opinion when discussing the FPPA in its second reading, wherein they also emphasised that the contents of the Act are not true to its title as the Act does not contain provisions for state financing of political parties[394].

It must be said, however, that state financing cannot be modelled on a simple one-fits-all scheme. Hence, as aforesaid, while a consensus may exist over the concept of state financing, reaching agreement on a package which is acceptable to all political parties has proven to be elusive.

4.3 Arguments Against

Naturally, as in all other instances where a debate is generated, there exists a school of thought the exponents of which oppose the notion of state funding to political parties.

Those against the use of public funds for the benefit of political parties frequently argue that public funding is detrimental to democracy as it increases the gap between political parties and citizens. Political parties would not be motivated to involve citizens in party decisions if the party does not depend on its supporters for pecuniary contributions or voluntary work. Moreover, if a substantial amount of the political party's income is derived from state funding rather than voluntary contributions, parties run the risk of losing their ties to civil society in favour of becoming an organ of the State.

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[393] Joseph Muscat, 'Should Malta Introduce State Funding For Political Parties?' (BA (Hons) Public Policy, University of Malta 1996), p 61.

[394] Hon. Chris Said, House of Representatives – Plenary Session 182, 21 July 2014; Hon. Charlo Bonnici, House of Representatives – Plenary Session 192, 28 October 2014.

While independence is a virtue in many aspects, it is not always so with respect to political parties. Excessive State funding could potentially segregate parties from their supporters and become more independent. The support enjoyed by the leaders of political parties would not depend on their capacity to garner political support or upon maintaining a healthy relationship with their political base. Although public funding enables parties to become more professional as they engage more full-time staff, the reality in Norway demonstrates that more professionalism might translate into a detachment from the people[395]. Thus, public funding is often criticised for elevating political parties above society.

Given the fact that funds are often allocated among parties which enjoy parliamentary representation, public funding also solidifies the status quo as it preserves the power enjoyed by well-established parties. This system would make it more cumbersome for newly-established political parties to gain representation.

Furthermore, state funds can also be criticised for their inability to combat corruption. If public funding were to replace membership income and small private contributions instead of large donations, corruption would in no way be curtailed as corruption is not precipitated by small donations, but by large ones.

Through state funding, ordinary citizens would be forced to support political parties whose views they do not share and no taxpayer should be forced to fund such parties. The majority of taxpayers might not be interested in funding a political party's professional campaigning and would be, instead, more interested in utilising such funds for the purpose of building new schools and hospitals.

Moreover, public funding can also be criticised for the fact that such a scheme would mean that, in addition to the public grants themselves, the State would incur additional costs in relation to the administration and monitoring of the system. As is customary in public policy, every project necessitates that the State incurs extra costs for the purpose of executing such project. This fact, coupled with the public's

[395] Lars Svåsand, *How Parties Organize, Change and Adaptation in Norwegian Party Organisations*, 1994.

negative perception of public funding, supports the argument that State money would be made better use of if spent on projects other than public funding.

4.4 Recommendations & Proposal

Despite the fact that direct public funding is presently non-existent in Malta, political parties do receive public funds or subsidies in an indirect manner. The two major modes of indirect state assistance can be said to be the following:

1. **Free Use of Postal Services**
   Each deputy in Parliament receives a monthly quota of state envelopes which do not require the payment of postage fees. Although not directly associated with political parties, political parties still benefit from such service as, often times, deputies utilise these envelopes for promulgating the interest of the party other than for Parliamentary business.
2. **Broadcasting Airtime**
   Political parties, irrespective of their representation in the House, are supplied with a pre-specified slot of air-time on State-owned media during election periods wherein political parties are offered the opportunity to convey their message to the public. This free airtime is monitored by the Broadcasting Authority and can take various forms, such as debates, political spots, and party productions on both television and radio stations.

An opinion poll conducted by Joseph Muscat in 1996 illustrates that 51% of the public were in favour of financial assistance being given by the State to political parties[396]. However, this percentage point dropped substantially in 2014 wherein, a survey of public opinion conducted by Braden Sammut revealed that only 23.6% of the general public agree with the notion of state financing of political parties[397].

Given the existence of indirect state funding as aforementioned, the author submits that direct public funding would serve well to be introduced in Malta, thus consolidating various pieces of legislation and strengthening political transparency. However, on account of the apparent poor degree of public approval, it would be best if such a law is promulgated contingent upon a positive opinion

[396] Joseph Muscat (n 393), p 36.
[397] Braden Sammut (n 58), p 86.

poll or heavy investments in public relations in which the public is informed of all the facets of public funding, of the lack of tolerance towards abuses of the system, and of the benefits it would reap for Maltese politics.

Direct public funding would prove beneficial for various reasons. It would suffice to state that the shallow pool of big donors destroys political participation and renders Maltese political parties at risk of losing their autonomy by severing their ties with civil society.

Furthermore, State funding of political parties would strengthen the principle of equal suffrage enshrined in our law. While the principle of equal suffrage dictates that one person is to hold one vote, the lack of public funding affords a voter the power of money. This situation clearly violates the principle of equal suffrage and public funding serves to counter such extra influences.

Devising public funding for Maltese political parties would also compliment the FPPA. A pair of legislative instruments, where one limits private donations and another grants public funds, would work in perfect harmony with each other and their synergistic effect would ensure that while caps on donations are imposed, political parties can still prosper and perform their functions suitably for the welfare of democracy.

Save for aiding political parties to serve their democratic functions, another major objective behind the introduction of public funding in Malta is that of eradicating corruption.

The author opines that the introduction of public funding in Malta would ensure that the nexus between civil society and political parties is not eroded. In so doing, the legislator would do well to be mindful of funding schemes in other micro-states, such as Luxembourg, thus being in a better position to devise a structure tailor-made for Malta.

It is in the author's view that a Maltese system of public funding ought to be based on the formula hereunder explained.

The first issue that arises is determining the quantity of the total sum that the State budget must set aside for the purpose of public funding of political parties. The author submits that such sum should be calculated on the basis of the Gross Domestic Product (GDP). By siphoning a percentage of the GDP into a sum available for distribution, the system would effectively be fastening public funding of political parties to the wealth of the economy.

The Galdes Report[398] had proposed that the total sum available for public funding should not exceed 0.02% of the GDP. In light of the official figures published by the National Statistics Office for the year 2015[399], 0.02% of the GDP would equate to € 1,759,300. It is readily ascertainable that while the percentage may seem microscopic, the sum it translates into is quite significant, though still relatively low when compared to the Government budget. Given the fact that such fund is to be distributed among numerous political parties, it is adequately substantial for the purpose of state assistance.

Malta's distinct features as a micro-state should serve to properly contextualise the aforesaid sum. One noteworthy micro-state is Luxembourg. If one were to compare the proposed sum of € 1,759,300 with total sum which would hypothetically be distributed to Maltese parties under Luxembourgish law[400], one could note that, in applying Luxembourgish law, the theoretical amount paid by the State would reflect 0.025% of the GDP, and is thus interchangeable with the proposed amount.

Additionally, if one were to take into account Austria's public funding mechanism, the total amount available for distribution in Austria is calculated by multiplying the total number of registered voters by € 4.60[401]. Hence, if one were to adopt this method, Maltese parties would receive the sum of €1,518,331.20[402]. It is manifestly evident that despite Austria not being a micro-state and its population greatly

[398] Galdes Report (n 7), p 26.
[399] See Annex I, p 123.
[400] See Annex I.
[401] Federal Act on Federal Support of Political Parties, Support of Political Parties Act 2012, Federal Law Gazette I No. 57/2012 (Austria), art 1 (2) (3).
[402] See Annex I, Figure 1.

exceeds that in Malta, the amount which would be allocated for public funding using Austria's mechanism would run parallel to the proposed sum.

Therefore, the proposed sum cannot be considered to be far off from reality as it is based on the foundations laid by other countries and such countries share a common structure among them irrespective of their differences in size and limitations.

The next concern would then be the manner in which to dispense of this sum. It is imperative that distribution takes place in accordance with well-defined eligibility criteria and allocation calculations.

A law on public funding must necessarily impose a threshold beyond which a political party would be eligible to receive public funds. An eligibility threshold is of utmost importance as it suppresses democratic fragmentation by ensuring that individuals are not encouraged to set-up new political parties for the sole reason of obtaining public grants.

The author opines that a twofold approach should be adopted in establishing an eligibility criterion. Such an approach dictates that parties would only be entitled to public funds if they either exceed a pre-established threshold of the number of votes obtained during the last election, or if they are represented in Parliament by at least one seat. This approach is in absolute compliance with the domestic electoral system where a political party might potentially elect a seat in Parliament even with a small percentage of votes obtained.

Joseph Muscat had argued that in measuring the required number of votes, a threshold of 5% should be imposed as such a limit is well within the reach of well-organised political parties[403]. If, however, the legislator opts for the 5% threshold envisaged by Joseph Muscat, one must note that the *Alternattiva Demokratika* has never managed to garner more than 2% of the valid votes cast during general elections. Therefore, although such dispute falls beyond the scope of this thesis, there exist serious ramifications in establishing eligibility criteria and whether to

[403] Joseph Muscat (n 393), p 62.

link such criteria to general elections only or to general elections and European Parliament elections simultaneously. Needless to say, one might also argue that should the legislator opt for the 5% bar, the *Alternattiva Demokratika* are still offered the chance to elect a seat under our electoral laws, thus such a threshold would not entirely preclude it from obtaining public funds.

Consequent to the calculation of the aggregate sum in accordance with the domestic GDP and to the political parties having been declared eligible for public funds in accordance with a set of criteria, these public funds would then need to be distributed.

In allocating public funds, the author notes that account should be taken of the fundamental democratic principles of equality and equity. A small portion of the sum, such as 15%, should be distributed among all eligible political parties. The remaining sum, 85% in this case, would then be distributed pro rata on the basis of the votes obtained during the last election. This ensures that public funding is based on equality – wherein parties receive an equal sum irrespective of external features, and on equity – wherein parties would benefit proportionally according to the number of votes won.

Not unexpectedly, different political parties have different needs. A newly-established political party might utilise public funds for infrastructural purposes, whereas a well-established political party may utilise public funds for the purpose of conducting education and training courses. However, it is in the State's interest that earmarking of funds is also set in place, thus compelling political parties to use a percentage of the funds received for the purposes dictated by the State. The author is, in fact, of the opinion that a percentage of funds should be earmarked for the purpose of increasing women and youth participation in Maltese politics.

A set of disqualifications must also be established. If a political party is in breach of the FPPA, of the law on public funding, or of any other law, the State must have the power to retrieve from such party the sum received by way of public funding, either in whole or in part, or disqualify such party from receiving funds. Moreover, a law on public funding must also define clear penalties for breaches of the law,

which may include prison terms and – in line with the spirit of the FPPA – administrative fines.

The author, however, considers the eligibility criterion a virtue as well as a burden. While it disallows the formulation of new fake parties which are intent on acquiring public funds, it could potentially preserve the status quo since citizens might not be motivated to formulate new parties due to the perception that such new parties would not be in a position to compete with those receiving public funds. Naturally, new parties would not have elected any members during the past elections and would not have obtained a percentage of votes. Thus new parties would start off without receiving any funds and would be at a much more difficult position to gain representation. Hence, through a cycle of positive reinforcements, new parties would face an almost impossible challenge to obtain public funds especially in Malta where culture has traditionally favoured a two-party system. For this reason, it would do justice to introduce another special fund awarded exclusively post-registration to newly-established political parties, provided that they are genuine and intent on presenting candidates for the upcoming elections.

Monitoring and enforcement of public funding laws should, once more, fall within the remit of the Electoral Commission. Since the FPPA has already seen fit to assign supervision and oversight to the Electoral Commission, monitoring and enforcement of public funding would only serve to widen its scope. If these powers were to be assigned to a different body, an unhealthy divergence of powers would have been created resulting in the defeat of the very essence of both the FPPA and the instrument regulating public funding.

In line with the spirit of the FPPA, political parties should also be compelled to publish and audit their accounts in so far as public funds are concerned. Political parties must be held accountable and must at any given time be in a position to disclose the fate of the sums received by way of public funding.

Furthermore, a law on public funding must expressly delve into provisions regulating independent candidates. The possibility, or otherwise, of independent

candidates benefitting from public funds must clearly be established so as to be as all-encompassing as possible and to avoid ambiguities.

The aforementioned formula does not burden taxpayers with additional financial costs. However, taxpayers would likely to suffer from lack of opportunities due to the fact that a percentage of the GDP will be earmarked for public funding of political parties in lieu of other public projects, such as upgrading hospital equipment or rehabilitation of roads. Nevertheless, public funding is innately beneficial for taxpayers as it is a measure which strengthens democracy.

By introducing public funding, Malta would effectively move away from the Anglo-Saxon orbit, where political parties must subsist on private donations which are regulated by the State, towards a Continental Western European culture where public funds are granted and the State monitors the activity of a party's finances.

The author believes that a healthy mix of private and public funding would reap great benefits for Maltese democracy. By granting funds for the purpose of covering costs in connection with routine operations, the State would be providing assistance in relation to the administration of the party and not in relation to the party's commercial aspects. On the other hand, by allowing parties to receive private contributions, the State would ensure that political parties do not lose contact with their constituencies due to the fact that political parties would still require financial support from civil society. Such a system would reach a harmonious balance between the principle of ensuring transparency in the sources of income and prohibiting actors from compromising the democratic functioning of political parties.

The fundamental objective behind public funding is to inhibit the privatisation of party decisions. However, in granting public funds, political parties should only be provided with the bare minimum for them to function properly, otherwise their dependence would then shift to the State budget.

Ultimately, State funding of political parties serves as a direct measure of retaliation against corruption. Scandals revolving around political party finances

have shaken jurisdictions in every region of the world. This naturally led to public cynicism and distrust towards political parties and public confidence was undermined, even locally. However, political parties are necessary for democracy and require financial support in order to compete for political power. The proposal as afore-explained would mean that the amount allotted to public funding results in € 4.10 per capita[404]; meaning that for the meagre amount of € 4.10 – almost equal to an hour's work – taxpayers would assist the State in supporting political parties to combat against the notion of quid pro quos which might infiltrate a political party. The ultimate beneficiary is always the citizen as it is the citizen which finally benefits from a democracy purified of corruption.

[404] See Annex I.

Conclusion

You rarely achieve finality. If you did, life would be over, but as you strive new visions open before you, new possibilities for the satisfaction of living.

— Eleanor Roosevelt

This thesis conducted a meticulous dissection of the FPPA parallel to a comparative analysis of similar legal instruments employed abroad. Recommendations were drawn up subsequent to such study and certain modifications were suggested for the purpose of ameliorating the FPPA, thus distilling the former study into material propositions.

Despite the fact the FPPA is the first ever piece of legislation wholly dedicated to regulating political parties, it strikes a fair balance between codifying certain practically-applied norms into law for the purpose of being as all-encompassing as possible, and revolutionising other aspects of the political sphere.

This study found that the FPPA imposes a set of limitations on private income of political parties and candidates while concurrently addressing the requirement of financial reporting by the same political actors. In order to ensure that political parties and candidates fulfil their obligations as stipulated by the Act, the FPPA bestows enforcement and supervisory powers onto the Electoral Commission. The Electoral Commission's powers are thus widened as it now has, among other responsibilities, a mandate to receive audited reports and render them public, as well as investigating potential breaches in relation to the FPPA. A set of sanctions serve to deter political parties and candidates from infringing the FPPA and different types of sanctions apply to different violations.

Other notable findings include the clear Constitutional status granted to political parties and the revision of candidate expenditure in relation to their campaign in order for such ceilings to better reflect current realities.

This thesis further demonstrates that the provisions contained within the FPPA are much akin to foreign laws. In fact, there exist numerous variants within foreign political party financing laws which are closely analogous to the rules established in the FPPA. Thus, the FPPA can be considered as a montage of foreign rules which it had filtered and shaped in accordance with our domestic needs.

These unequivocal findings denote a fortification of the democratic functions of political parties and an augmentation of political transparency. It is by virtue of

effective disclosure and monitoring rules that transparency is achieved and the influence exerted by undesirable actors onto our domestic political sphere is mitigated.

As demonstrated by this study, the FPPA protects our domestic political process from being unduly manipulated by money. This renders the FPPA as a prime piece of legislation for the purpose of curbing corruption associated with political money.

However, despite the numerous virtues enshrined within the FPPA, the Act is still blemished by certain imperfections and shortcomings. Thus far, every Chapter of this study included observations and recommendations in relation to the theme under discussion. Hence, the following reflections and remarks serve to supplement the aforesaid recommendations as well as to identify further defects of the FPPA.

Owing to the fact that the main concern behind the FPPA is to regulate the private income of political parties and that such income is comprised of both private contributions as well as membership fees, the FPPA does not provide for regulations in relation to such fees. Hence it would seem that the main objective of the FPPA cannot be satisfactorily fulfilled as it leaves the notion of membership fees unchartered. Regulations on membership fees need not have necessarily been employed to restrain such fees, but mere acknowledgement of the fact that parties are allowed to levy fees from their members under certain circumstances would suffice.

In deeming a specific list of donations to be prohibited donations, the FPPA does not make reference to candidates yet it does impose an obligation on candidates to verify whether the donation is a permissible one prior to accepting a donation. This would thus seem that the FPPA is tacitly bonding political parties and their candidates together in a manner that their duties under the Act are merged into a single uniform obligation. However, these joint obligations might cause serious practical ramifications. Donation limits are the most prone to being abused in this regard due to the fact that since the FPPA is allowing a candidate to receive a

donation provided that it complies with the prohibitions listed in relation to political parties, then a donor can potentially contribute € 25,000 to the candidate while also contributing another € 25,000 to the party which endorses such candidate and still act within the parameters of the FPPA. Naturally, there still remains the argument that whatever is received by the candidate must be transferred to the endorsing party thus there cannot be the concurrent application of two donation limits. In the author's view, such a scenario should not be allowed to manifest itself and the issue should be expressly tackled by the FPPA to evade unnecessary complications.

With regards to the sanctions established by the FPPA, it is readily ascertainable that the FPPA does not take into account reoccurring violations. The quantum of the administrative fines envisaged by the FPPA should take into account reoccurring and continuous violations so as to preclude political actors from starting de novo with a clean slate after the commission of their first violation thus discouraging further violations in the future. In so doing, each and every breach recorded per political party or independent candidate would carry weight ad nauseam instead of being forgotten the instance the fine is paid. Furthermore, loss of registration status is not contemplated by the FPPA yet it would suit well to tie such sanction to reoccurring breaches.

The FPPA also suffers from a deficiency in relation to independent candidates and regulations thereof. Independent candidates are governed by two sets of rules, one emanating from the FPPA and another from the Electoral (Polling) Ordinance. Under the FPPA, independent candidates are duty-bound to submit a donation report to the Electoral Commission within 60 days from the date of the election[405]. Most importantly, however, the FPPA fails to make provisions for these reports to be made accessible to the public. In accordance with the second set of rules under the Electoral (Polling) Ordinance, independent candidates must submit an election expenditure report within 31 days from the publication of the election results and such report must include inter alia information on donations, excluding

[405] Financing of Political Parties Act, art 39 (1).

those from legal persons[406]. The report envisaged by the Electoral (Polling) Ordinance is, on the other hand, rendered public against a fee[407]. The author firmly opines that these regulations are confusing and an effort should be made to bring the two pieces of legislation in sync with each other.

Furthermore, only political parties and other interested persons are allowed to challenge a decision of the Electoral Commission before the First Hall of the Civil Court[408]. Hence, independent candidates are left out of the equation. It would appear that appeal proceedings can still be instituted by independent candidates provided that the Court is satisfied that such independent candidate is an interested person. However, this test is a rather subjective one and an independent candidate can still be blocked from seeking redress before the First Hall should the Court deem the candidate to fall beyond the scope of an 'interested person'. Such a situation must not be tolerated and for this reason the author argues that independent candidates should be given the same level of protection as political parties by their specific inclusion in Article 44 (2) of the FPPA.

This study demonstrates that the FPPA has extrapolated a series of foreign legal provisions to our domestic legal framework. However, there remain certain significant pieces of regulations which were not imported. One such aspect of political finance laws is that concerning donation limits with respect to election periods. In effect, the FPPA fails to include rules aimed specifically towards reducing the influence of wealthy benefactors in relation to election campaigns. Another aspect of regulations which is omitted by the FPPA, despite its heavy presence within foreign political finance regimes, relates to campaign expenditure. This effectively means that the FPPA fails to directly curb undesirable spending and fails to restrict the advantage of those with access to abundant resources. Most importantly, however, the FPPA does not address the notion of vote buying and fails to provide for prohibitions thereon. Thus, the offering of financial or material

[406] Electoral (Polling) Ordinance, art 50 (1).
[407] Ibid, art 51.
[408] Financing of Political Parties Act, art 44 (2).

enticements by parties and candidates for voters to vote in a certain way or to abstain from voting is left untouched by the FPPA.

As discussed previously in this thesis, the notion of public funding too remains absent from the FPPA. Public funding can be adopted as a means to prevent corruption, support political parties and to avoid undue reliance on private donors. Such funding ensures that all political actors are able to compete fairly for elections in accordance with the principle of equal opportunity, thus strengthening democratic institutions and enhancing political pluralism. However, public funding must not destroy the need for private donations and should not create over-dependence on state support. Although the author is in favour of introducing public funding in our domestic political sphere, attention must be paid to the current societal trends. For this reason, the author argues that in introducing public funding, the legislator should adopt a titration approach and introduce such funding gradually in unpretentious portions in consonance with the results obtained from opinion polls.

More importantly, the pre-eminent weak point that the FPPA suffers from is that in relation to loans. This issue has, in fact, surfaced numerous times in current national debates over the launching of the controversial '*Skema Ċedoli 2016*' by the Nationalist Party. The concept of 'loans' can be exploited for the ulterior motive of circumventing bans on donations. While the FPPA attempts to equate loans to donations if they are granted at particularly advantageous conditions, this is regrettably insufficient.

There exists the risk that loans may be possibly written-off by the creditor at a later date. The net established in the FPPA is not wide enough to catch such instances within its grasp, hence loans which are later written-off would not be considered as an in-kind or financial contribution and the limits applicable for contributions would not apply.

Moreover, repayment of loans normally takes a considerable amount of time thus loans would not be properly reflected in the financial reports submitted to the Electoral Commission. This would undermine the FPPA's reporting mechanism as

well as destabilising the principle of public scrutiny since the documents available to the public would not satisfactorily reflect the reality of the party's financial dealings.

Additionally, loans carry a further risk if they are guaranteed by third parties. In the event that the political party, who originally received the loan, fails to repay the sum, the third party will then have to pay the creditor directly in accordance with the terms of the guarantee. This effectively means that such third person would be providing the party with a financial contribution.

The Nationalist Party's '*Skema Ċedoli 2016*' involves the contracting of loans of a value of € 10,000 which are repaid over a period of ten years against a 4% annual interest rate, reserving the right for the party to terminate the loan prior to the lapse of ten years provide that it fully pays any outstanding balance[409]. This scheme manages to dodge the provisions of the FPPA by arguing that since a loan is not a donation, then the obligation to divulge the identity of the source does not apply, despite the quantum of such sum falling under Tier 2.

It must be said, obiter, that the moniker '*Ċedoli*' is somewhat confusing as the term in our domestic context almost inflexibly refers to a schedule of deposit. Here the Nationalist Party is promising to pay a specified amount during a specified period of time, hence it would have been more reasonable to utilise the term '*Kambjali*', or promissory notes. Such discussion, however, falls beyond the realm of this thesis.

The issue of political parties contracting undisclosed loans is, in effect, the FPPA's Achilles' heel as it vitiates the spirit of the Act by undermining the financial reporting structure which it seeks to fortify and destabilise public trust. For the aforesaid reasons, the author strongly believes that this lacuna should be sealed by imposing disclosure rules on all types of loans in the same manner as for donations, thus rendering loans open to public scrutiny.

[409] See Annex II.

Furthermore, the FPPA is quite subjective in determining what constitutes a loan 'given on terms more favourable than ordinary commercial terms'[410] since such advantageous terms cannot be adequately determined in an objective manner.

Therefore, consideration should be given to including specific provisions within the FPPA regulating loans and loan guarantees in a strict objective manner, through reporting requirements necessitating the disclosure of all information relative to the receipt and repayment of all forms of loans. This would, in effect, widen the grasp of the FPPA and enhance transparency while also ensuring that the spirit of the FPPA is observed by all political actors. In order to truly widen the FPPA's net, however, regulations should not be limited to loans, but should also encapsulate all forms of credit lines and cash advances.

The importance of this thesis is closely connected to the importance of the FPPA. In the very same way that the FPPA seeks to regulate legal issues which were left unregulated for a number of years, this research sheds light on issues which were left untouched by other previous research. Thus, similar to the FPPA which is the first legislative instrument of its kind, this thesis lays down the foundations upon which future research can be built.

Although the study presented in this thesis testifies to the effectiveness of the FPPA, the Act can still be further polished in a number of ways. Thus, future research in the field should concentrate on examining further the frailties of the FPPA and the manner in which to cleanse it from such blemishes. In particular, the notion of 'loans' should constitute a solid substratum for prospective research wherein the researcher can compile a comparative study of foreign regulations and distil such provisions into a concrete proposal recommending specific amendments which the FPPA can undergo.

Moreover, the FPPA served as the final instalment in a trilogy of laws concerned with curtailing corruption. The previous two legislative pieces concerned the removal of prescription for politicians and the enactment of the Whistle-blower

[410] Financing of Political Parties Act, art 2 (d).

Act. Thus, future research can also investigate the synergistic effect left by the FPPA in relation to the other legal instruments as well as examining the importance of the FPPA's contribution towards combatting corruption and whether such aim is truly achieved.

Notwithstanding the kinks outlined in this study, the FPPA is still a potent weapon against corruption. In fact GRECO itself, after numerous evaluation rounds criticising harshly Malta's lack of political finance regulations, acknowledged the FPPA to be 'commendable'[411]. Prior to the enactment of the FPPA, GRECO was not, however, the only organisation to criticise Malta for its lack of such rules. The Venice Commission, together with OSCE/ODIHR, and the European Commission, through Special Eurobarometer 397, both brought forth the issue that our domestic legal framework lacks a political finance regime. The agglomeration of opprobrium by these authoritative bodies heralded the revival of discussions in our domestic political sphere over the issue of regulating political finance and, consequently, the FPPA was injected into our legal system.

The enactment of the FPPA is an important milestone as it introduces for the first time ever a solid regulatory framework which strengthens transparency in our national political sphere. The FPPA establishes clear obligations in respect of both independent candidates and political parties which apply to any election, be it general election, local or European elections. Political parties are now duty-bound to keep audited accounts and report such financial statements to the Electoral Commission, which is empowered to subject any person guilty of non-compliance to a range of administrative sanctions, as well as being responsible to render political parties' financial statements public.

By virtue of a Commencement Notice by the Minister for Justice, the FPPA came into full force on the 1st of January 2016[412]. Given the fact that the FPPA obligates political actors to report their financial statements annually, the financial data being presently compiled by such actors would only be available for public scrutiny

[411] GRECO, Second Interim Compliance Report on Malta on Transparency of Party Funding (2015), p 9, para 41.
[412] Financing of Political Parties Act (Cap. 544) - Commencement Notice, LN 427 of 2015.

in the early months of 2017. Thusly, the FPPA's performance cannot be accurately gauged until the lapse of the current year.

By wielding citizens with the right to information, the FPPA does an excellent piece of work in supporting the fight against corruption. Corrupt campaign financing adversely affects political participation, political accountability and transparency. Corruption is a cancer that eats into the political fabric of society and slowly degrades the vital organs of the State ultimately preventing them from functioning properly. The cancer of corruption poses a great threat to our national democracy as it undermines the rule of law and gives rise to a fundamental misallocation of resources. In the interest of our Republic, corruption should not be allowed to flourish and should be obliterated leaving no countermeasure spared. Malta's democracy should be driven the power of the vote, and never by the size of bank accounts.

ANNEX I:
HYPOTHETICAL DISTRIBUTION OF PUBLIC FUNDS

Situation in Luxembourg

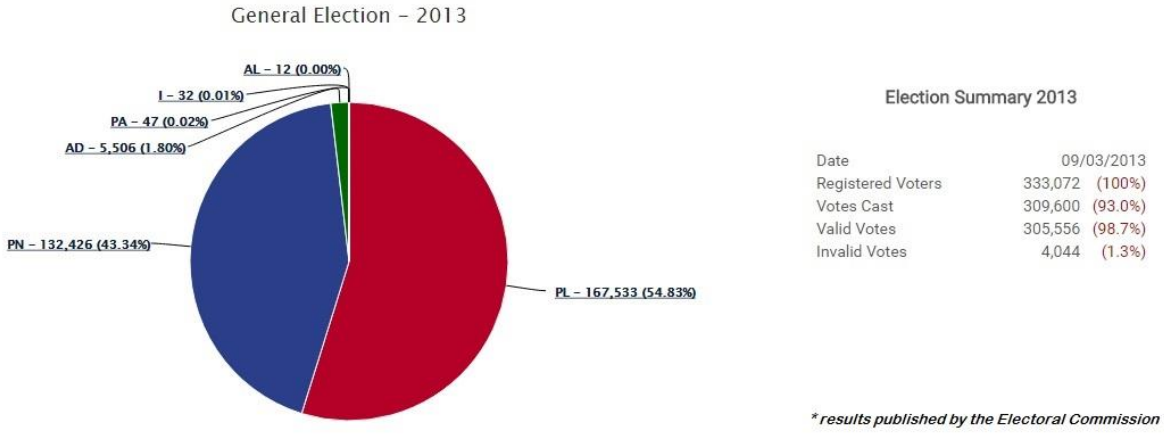
In Luxembourg, political parties receive annual State funding as follows:

- Lump sum of € 100,000
- € 11,500 x *percentage of votes obtained in the general election*
- € 11,500 x *percentage of votes obtained in European election*

However, in order to be eligible for public funding, Luxembourgish parties must obtain at least 2% of the valid votes cast both in the last general election and the last European election.

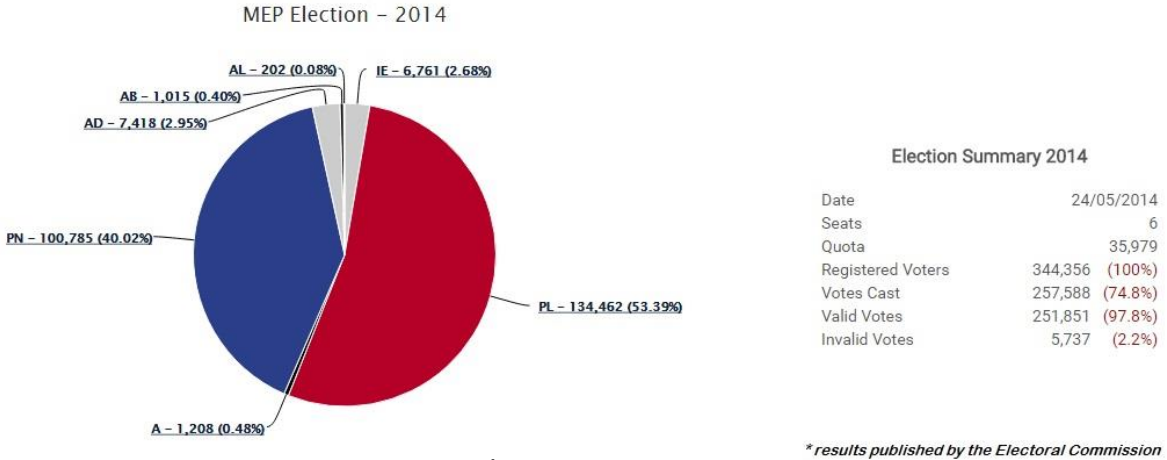
Conversion into a Maltese System

The following are the results of the last general election, as published by the Electoral Commission:



*** Figure 1**

On the other hand, the following constitute the results of the last election for members of the European Parliament:



*** Figure 2**

Therefore, if one were to convert Luxembourg's method of allocation of public funds into a domestically applicable system and derive a calculation on the basis of the last elections, annual contributions by the State would be distributed as follows:

	Partit Laburista	Partit Nazzjonalista
Lump Sum	€ 100,000	€ 100,000
General Election Votes	€ 11,500 x 54.83 = € 630,545	€ 11,500 x 43.34 = € 498,410
European Election Votes	€ 11,500 x 53.39 = € 613,985	€ 11,500 x 40.02 = € 460,230
Total :	€ 1,244,530	€ 958,640

The Partit Laburista and the Partit Nazzjonalista were the only two parties who obtained at least 2% of the total votes in both of the last elections; hence they are the only parties who would benefit from public funds. Among them, the State would be granting a total of € 2,203,170 in public funds.

The National Statistics Office's latest reports[413] illustrate that at the end of 2015, the Maltese population stood at 429,344, while the total GDP produced amounted to €8,796.5 million.

Thus, on the basis of these reports, the hypothetical amount of € 2,203,170 translates into € 5.13 per capita, or 0.025% of the GDP.

[413] See pps 122 & 123.

NEWS RELEASE

EUROPEAN STATISTICAL SYSTEM

10 July 2015 | 1100 hrs | 129/2015

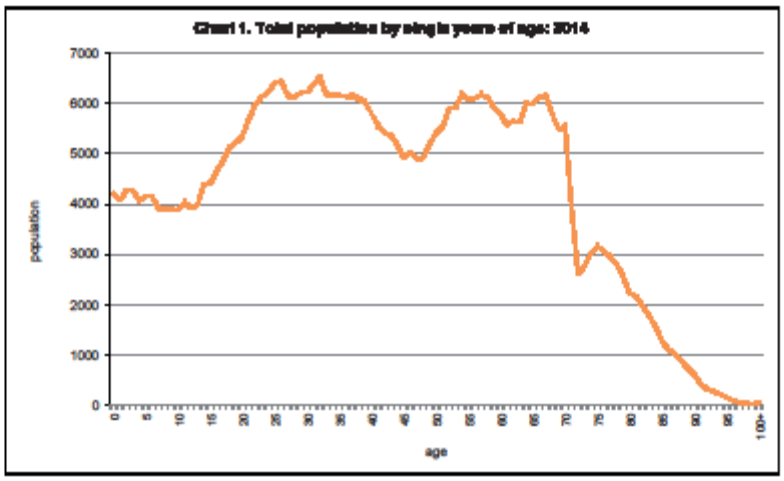
The total population of Malta at the end of 2014 stood at 429,344, up by 0.9 per cent when compared to 2013.

World Population Day: 11 July 2015

The population increase was mainly due to net migration (immigration less emigration). In the total population, persons under 18 years of age made up 17.6 per cent, and persons aged 65 and over 18.5 per cent. Of these, 2,332 persons - 1,661 females and 671 males - were over 89 years. The Maltese population accounted for 93.6 per cent of the total population (Tables 1 and 2).

Live births registered in 2014 increased by 4.5 per cent over the previous year (Table 4). 109 babies, or 2.5 per cent, were born to teenage mothers. Almost two-thirds of babies were born to mothers aged 25-34 (Table 5). In 2014, there were 3,270 registered deaths of which 63.5 per cent were persons aged 75 and over (Table 6).

An increase of 293 registered marriages was observed last year: 246 in Malta and 47 in Gozo. Civil marriages accounted for 48.3 per cent of the total, an increase of 15.8 per cent over the previous year (Table 7). From the perspective of age, nearly 20 per cent occurred between spouses aged 25-29. Nearly a one-third of grooms were aged 25-29 and 30.5 per cent between 30-34. Just over 40 per cent of brides were aged 25-29 and 24.1 per cent 30-34 (Table 8) ■



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NEWS RELEASE

EUROPEAN STATISTICAL SYSTEM

8 March 2016 | 1100 hrs | 041/2016

Provisional estimates indicate that the Gross Domestic Product (GDP) in 2015 amounted to €8,796.5 million, an increase of €712.3 million or 8.8 per cent when compared to 2014. In real terms, GDP went up by 6.3 per cent.

Gross Domestic Product: 2015

Cut-off date:
7 March 2016

The production approach

During 2015, Gross Value Added (GVA) increased by €626.3 million when compared to 2014. This was mainly generated by wholesale and retail trade; repair of motor vehicles and motorcycles; transportation and storage; accommodation and food service activities (NACE G to I) which increased by €154.0 million or 9.6 per cent; professional, scientific and technical activities; administrative and support service activities (NACE M to N) which increased by €144.9 million or 17.9 per cent; and public administration and defence; education; human health and social work activities (NACE O to Q) which increased by €93.1 million or 6.9 per cent. A drop of €2.9 million or 0.4 per cent was registered in manufacturing (Table 1).

The expenditure approach

In 2015, total final consumption expenditure in nominal terms increased by 6.2 per cent and by 4.9 per cent in real terms when compared to 2014. Gross fixed capital formation increased by €401.8 million in nominal prices and by 21.4 per cent in real terms. Real exports and real imports increased (Tables 2 and 4).

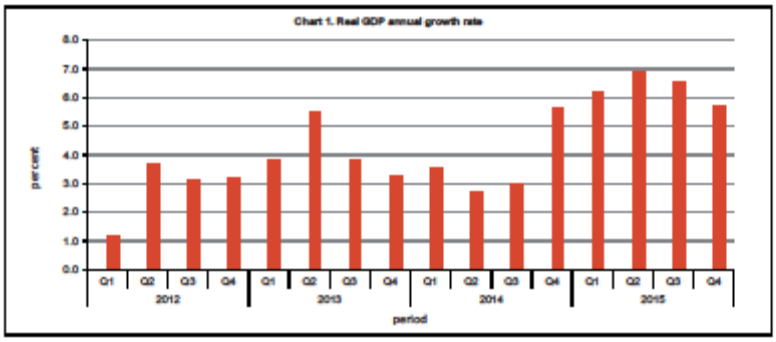
The income approach

Compared to 2014, GDP at current prices went up by €712.3 million, and is estimated to have been distributed into a €189.9 million increase in compensation of employees, a €449.2 million increase in gross operating surplus of enterprises, and a €73.2 million increase in net taxation on production and imports (Table 3).

Gross National Income

Considering the effects of income and taxation paid and received by residents to and from the rest of the world, Gross National Income (GNI) at market prices 2015 is estimated at €8,567.5 million (Table 3) ■

The National Statistics Office is publishing an online version of the ESA 2010 GNI Inventory and the complementary Process Tables for reference year 2010 (Methodological Note 5).



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ANNEX II: PN SKEMA ĊEDOLI 2016

Skema Ċedoli 2016

L-Iskema Ċedoli hi skema li biha wieħed jidħol volontarjament f'kuntratt mal-Partit Nazzjonalista. Permezz ta' dan il-kuntratt tingħata *loan* volontarja lill-Partit Nazzjonalista.

Il-kuntratt ikun fih il-kundizzjonijiet kollha li bihom ikun marbut il-Partit Nazzjonalista.

Il-kundizzjonijiet prinċipali jkunu dawn li ġejjin:

- *Loans* volontarji ta' għaxart elef (10,000) ewro għal għaxar snin
- B'rata tal-imgħax ta' erbgħa fil-mija (4%) pagabbli darba fis-sena
- Il-Partit Nazzjonalista jirrizerva d-dritt li jħallas lura l-*loan* qabel l-għeluq tal-għaxar snin.

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