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# The funding of politics in Italy

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## Introduction

The Letta reform ([legislative decree 149/2013, converted by law 13/2014](#)) abolished direct public funding to parties in Italy, gradually reducing it to zero in 2017. Indirect forms of public financing remain – namely 2x1000 and tax benefits on private contributions – but private financing inevitably takes on a greater role. Public funding, however unpopular, has the advantage of being established with objective criteria. With private financing, on the other hand, there is the risk of undue influence on the democratic process by economic actors and political interests outside the country and the need arises to guarantee citizens transparency on the origin of available resources.

Here below we will discuss, also in a comparative fashion, the following points:

- the obligation of transparency and the matter of new political subjects;
- limits to donations from abroad;
- limits to donations by legal persons;
- limits to the amount of donations;
- effective transparency;
- the adequacy of control bodies.

## Transparency, me? The new political subjects

First of all we need to clarify that the issue does not only concern the public financing of parties, but also, more extensively, the funding of politics. In fact, while political movements used to be organised – in both financial and logistical terms – almost exclusively through parties, Law 13/2014 contributed to the multiplication of the subjects involved<sup>1</sup>. Foundations, associations, think tanks: the galaxy of structures that carry out explicitly political activities has grown considerably. From 2015 to

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<sup>1</sup> OpenPolis, "[Soldi alla politica, la sfida della trasparenza](#)", OBCT, July 24<sup>th</sup>, 2019.

date, Openpolis in Italy has registered 121, including 101 born after 2010. However, up to law 3/2019, these organisations were excluded from the obligation of traceability of the disbursements foreseen for the parties. This made it impossible to establish their revenues and expenses, although the parties used them in various ways.

These organisations get their funds from private donations, membership fees, and contributions from members. In 2018, however, only 18.8% of the 101 surveyed entities made their budgets available, i.e. only 19. The only piece of information that is always available is the revenue from the public administration, published online every year thanks to the transparency obligation established by law 124 of 2017<sup>2</sup>.

Law 3/2019 equated these structures to parties, imposing more general transparency obligations<sup>3</sup>. Some unclear aspects of the law were then better defined with legislative decree 34/2019, approved in April 2019. The legislation, in its latest version, therefore equated to parties all foundations, associations, and committees which:

- have governing bodies that are determined in whole or in part by political parties or movements;
- have executive or management bodies composed for at least 1/3 of members of political bodies or political parties or persons who are or have been members of the national or European Parliament or of regional or local elected municipal assemblies with more than 15,000 inhabitants, or who hold or have held government offices at national, regional, or local level in the previous six years, in municipalities with more than 15,000 inhabitants;
- have donated a sum of 5,000 Euros or more to political parties or movements<sup>4</sup>.

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<sup>2</sup> Openpolis, [Cogito ergo sum 2018](#), p. 10.

<sup>3</sup> Maria Chiara Ubiali, [Le disposizioni extra-penali della legge c.d. Spazza-corrotti: trasparenza e finanziamento dei partiti politici e norme sulla regolamentazione delle fondazioni](#), in *Diritto Penale Contemporaneo*.

<sup>4</sup> OpenPolis, ["Soldi alla politica. la sfida della trasparenza"](#), OBCT, July 24<sup>th</sup>, 2019.

Exception is made for organisations that, despite having former politicians in their executive or management bodies, are Third Sector Entities registered in the single national register, and foundations, associations, and committees belonging to religious confessions with which the State has stipulated agreements.

There is the notable Italian peculiarity of personal think tanks, linked to a specific political leader and not to a party: in 2017, Mattia Diletti identified 33. The best known include Massimo D'Alema's *Italianeuropei* foundation, born in 1998, and Matteo Renzi's more recent Open, already closed. For a private subject, financing a personal think tank (perhaps preferring it to a party's) can become a way of creating a relationship with the political leader. It should also be noted that some of these institutions still do not fall under those subject to the transparency obligation<sup>5</sup>.

The recognition of these institutions as political subjects is undoubtedly an important step for the regulation of political funding. However, the recent legislation seems to have neglected the problematic aspects of considering only organisations run by politicians. As shown by the recent [Russiagate](#) scandal, the Lombardia-Russia cultural association does not fall into the categories mentioned above, despite its significant ties with the League, because it has no political representatives as managers and is therefore not concerned by current transparency obligations<sup>6</sup>.

On the other hand, we must also be careful not to extend too many burdensome obligations: the first version of this extension has provoked protests from many associations, and subsequently the [revision of the standard](#).

There are at least two other categories of subjects that can be taken into consideration: parliamentary groups (which, however, are not very problematic as they receive exclusively public funding) and individual politicians or candidates (subject in many countries to similar standards as parties).

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<sup>5</sup> Mattia Diletti, "The Think Tank and The Funding of Politics: The Italian Way" in Maria Romana Allegri, Mattia Diletti, Paola Marsocci, *Political Parties and Political Foundations in Italy. Their Changing Landscape of Structure and Financing*, Franco Angeli, 2017.

<sup>6</sup> OpenPolis, "[Soldi alla politica, la sfida della trasparenza](#)", OBCT, July 24<sup>th</sup>, 2019.

## Funding from abroad

The Russian case brings us to the problem of foreign funding. In many countries, the financing of politics by foreign subjects – be they governments, companies, organisations, or individuals – is prohibited or subject to limitations<sup>7</sup>. In some countries of the European Union, although donations by foreign subjects are generally prohibited, exceptions are made for donations from other Member States<sup>8</sup>.

International standards do not give clear indications. Article 7 of the Council of Europe Recommendation on the adoption of Common Rules against Corruption in the Financing of Political Parties and Electoral Campaigns (2003)<sup>4</sup> states that "States should specifically limit, prohibit or otherwise regulate donations of foreign donors". The Venice Commission (consultative body of the Council of Europe), in a 2006 opinion, states that each case must be evaluated individually, taking into account the political system of the country in question, its relations with its neighbours, its Constitution, and the party financing system itself, in compliance with international and regional regulations and standards. Some European states, in view of the process of European integration and in line with the OSCE guidelines of the 1990 Copenhagen Document on international cooperation and support for individuals, groups, and organisations that promote human rights and fundamental freedoms (Articles 10.4 and 26 in particular), allow the possibility of receiving various types of support – including financial – from foreign branches or international organisations of political parties<sup>9</sup>.

According to IDEA, which created a database on legislation on party financing, donations from abroad are prohibited in most of the countries analysed; in particular, 67.2% prohibit foreign donations

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<sup>7</sup> OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris, p. 52.

<sup>8</sup> OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Public Governance Reviews, OECD Publishing, Paris.

<sup>9</sup> OSCE (2017), *Opinion on Laws Regulating the Funding of Political Parties in Spain*.

to parties, and 55.9% also to candidates<sup>10</sup>.

Some examples:

- Germany prohibits donations over 1,000 Euros by persons outside the EU;
- in France, only persons with French citizenship or residents in France can donate to political parties or groups;
- in Sweden there are no prohibitions related to foreign financing for politics; however, receiving money from a foreign donor or someone acting on their behalf can be considered a criminal offense if the aim is to influence public opinion in matters related to administration of the country or national security;
- the United Kingdom prohibits foreign financing, except for funds coming from British citizens residing abroad, on condition that they enjoy active and passive voting rights;
- Spain admits financing by foreign private subjects, with the same ceilings as citizens' private donations. On the other hand, it prohibits donations by foreign governments, public bodies and companies, or companies directly or indirectly connected to parties<sup>11</sup>.

In Italy, law 13/2014 did not set any limit for donations and funding from foreign entities, be they private companies, individuals, or public bodies. In this case, art. 4 of [Law 659/1981](#) had already set a declaration obligation (by the recipient only). However, an analysis carried out by Transparency International highlighted that, between 2014 and 2017, the only Italian parties to report revenues from foreign subjects were Forza Italia (which received € 8,044 in 2014 and € 150 in 2015) and the 5-Star Movement (which in 2016 received 30,514 Euros, down to 7,461 in 2017)<sup>12</sup>. This law was also in force during the election campaign for the March 2018 political elections.

Law 3/2019 has prohibited the financing of political parties by foreign subjects. In particular, on

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<sup>10</sup> [Political Finance Tool](#), International IDEA.

<sup>11</sup> [Spain](#), Political Finance Database, International IDEA.

<sup>12</sup> Transparency International Italia (2018), [Partiti e fondazioni: quanto ne sappiamo davvero dei soldi ai politici?](#)

the basis of the new legislation, political parties and movements and the lists participating in elections in municipalities with more than 15,000 inhabitants are forbidden to receive contributions, services, or other forms of support from governments, public bodies of Foreign States, or legal persons established in a foreign State not subject to tax obligations in Italy. Contributions received in violation of these obligations must be paid to the *Cassa delle ammende* (Fine Fund), and not returned (Article 1, paragraph 13).

However, a few months after the enactment of the law at the request of the League, the possibility of funding for foundations and associations connected to parties was re-introduced<sup>13</sup>. An amendment by M5S MP Anna Macina forbids that this money is then turned over in the coffers of political parties and movements<sup>14</sup>, but this is a modest change, since the possible recycling of resources of foreign origin through a third sector entity to a candidate or a party is extremely difficult to monitor<sup>15</sup>. Thus foundations, for the first time equated with parties, become again distinguished from them.

### Donations by legal persons

Article 5 of the Recommendation [Rec\(2003\)4](#) of the Committee of Ministers of the CoE on the common rules against corruption in the financing of political parties and electoral campaigns sets some additional rules for donations by legal persons, and in particular that:

- donations from legal persons to political parties are recorded in the financial statements of the legal entities themselves;
- shareholders and any other person part of the legal person are informed of the donation.

It is also recommended that states take measures to limit, prohibit, or strictly regulate donations from legal entities that provide goods or services to any public administration. Donations from legal persons under the control of the state or other public authorities are to be prohibited.

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<sup>13</sup> The amendment was introduced with the "Growth" decree of April 2019, converted into law in June of the same year.

<sup>14</sup> Transparency International Italia, [I finanziamenti esteri ai partiti sono leciti?](#)

<sup>15</sup> Alessandro Parodi, [Finanziamenti esteri ai partiti: spunta un emendamento leghista](#), Open, July 12<sup>th</sup>, 2019.



Some countries completely prohibit donations by corporations. These include: Belgium, Bulgaria (which also excludes individual companies), Estonia, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Poland, Slovenia, and Spain<sup>16</sup>. 70% of the countries analysed by IDEA allow them<sup>17</sup>. Italy falls in the latter category, but with a difference with respect to natural persons in terms of maximum threshold. We talk about it in the next paragraph.

## Entity of donations

According to Article 3 of the aforementioned Recommendation Rec(2003)4 of the CoE Committee of Ministers, states should consider the possibility of introducing rules that limit the amount of private donations to political parties. The aim is of course to limit the influence of big donors on politics<sup>18</sup>.

In European countries, the limits on donations vary significantly. Some of the countries that do not prohibit funding by legal persons have different limits for individuals and legal entities (with a higher limit in the latter case).

Some countries set a limit for donations by a subject to a political party in a given time period, ranging from 500 Euros per year in Belgium to 43,300,000 rubles (about 600,000 Euros) in Russia for legal entities. In some countries, the limit is not set in absolute terms, but based on the minimum wage: 50 times the monthly minimum wage in Latvia, 25 times in Portugal, and 15 times in Poland<sup>19</sup>.

Usually there are also limits to direct donations to candidates. In some cases there is also a limit specifically linked to election campaigns. The limits often also take into consideration donations in kind, or non-cash donations (real estate, services, etc.). Loans are sometimes regulated.

In Italy, a natural person can donate up to 100,000 Euros to each party (art. 10 c.7 of l. 13/2014),

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<sup>16</sup> [Is there a ban on corporate donations to political parties?](#), International IDEA

<sup>17</sup> [Political Finance Tool](#), International IDEA.

<sup>18</sup> [Political Finance Tool](#), International IDEA.

<sup>19</sup> [Is there a limit on the amount a donor can contribute to a political party over a time period \(not election specific\)?](#), International IDEA.

while companies can donate up to 100,000 Euros a year in total to all parties (Article 10, paragraph 8 of law 13/2014), although the latter norm is not entirely clear<sup>20</sup>.

### Transparency

For the CoE, the transparency of donations and the ban on secret donations must be among the general principles governing donations to parties. It is therefore recommended that donations to parties be public, particularly if they exceed a defined threshold (Article 3, Rec(2003) 4).

In fact, according to IDEA, countries usually forbid anonymous donations to parties (56.1% of countries), less frequently those to candidates (43.5%). Some countries make exceptions for small donations (11.1% for parties, 9% for candidates) for reasons of confidentiality<sup>21</sup>.

In Italy, law 3/2019 introduced other changes towards greater transparency and traceability of funding, starting from the lowering of the ceiling to anonymous donations from 5,000 to 500 Euros and the obligation to advertise donor names<sup>22</sup>.

Some documents, however, are published in formats that make it difficult or impossible to consult them: documents compiled by hand, poor quality scans, and patches to cover supposedly sensitive data. Some MPs unlikely declare zero expenses and zero contributions for their electoral campaigns<sup>23</sup>.

### Control bodies

For effective transparency to be ensured, checks and sanctions are needed: according to Esposito of GRECO, the anti-corruption body of the Council of Europe, these are two sides of the

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<sup>20</sup> This was stressed by Gaetano Pelella, legislative assistant at the Chamber of Deputies, at the conference "Reinforcing democracy and supervising the financing of political parties. The Italian case", organised by the Catholic University of the Sacred Heart of Milan. Registration is available on [Radio Radicale](#).

<sup>21</sup> [Political Finance Tool](#), International IDEA.

<sup>22</sup> Maria Chiara Ubiali, *Le disposizioni extra-penali della legge c.d. Spazza-corrotti: trasparenza e finanziamento dei partiti politici e norme sulla regolamentazione delle fondazioni*, in *Diritto Penale Contemporaneo*.

<sup>23</sup> OpenPolis, *Bilanci e donazioni, il grande bluff della trasparenza*, OBCT, October 21<sup>st</sup>, 2019.

same coin<sup>24</sup>.

For this reason, the bodies in charge of checking and verifying the revenues and expenses of political formations are fundamental.

In Italy, these bodies are distinguished at national and local level:

- the Commission for guaranteeing the statutes and for the transparency and control of the statements of political parties, established by law 96 of July 6<sup>th</sup>, 2012 to accept a GRECO recommendation, is currently composed of five magistrates – one appointed by the First President of the Court of Cassation, one by the President of the Council of State, and three by the President of the Court of Auditors. The Commission is tasked with verifying compliance with the obligations of transparency and publicity as well as the regularity and compliance with the law of the reports and related attachments and the statutes of the formations that intend to take advantage of the benefits accorded by the law. Starting from 2018, the authorised sum for the expenses necessary for the functioning of the Commission is 3 million Euros, while its staff in October 2019 consists of 5 officials of the Court of Auditors and 2 of the Senate<sup>25</sup>, even if by law it can reach 20 units;
- the College of control on electoral expenses, existing since 1993. Law 515/1995 (article 12) approved its establishment at the Court of Auditors. It is composed of 3 magistrates chosen by lot among the councillors on duty, assisted by 9 auditors and the necessary support staff. Its tasks are limited to verifying compliance with the law of the expenses incurred by the entitled parties and of the documentation produced to prove the expenses themselves;
- the Regional colleges for electoral guarantee, established by law 515/1995 (article 13) at the Court of Appeal or the regional capital court. They receive declarations and statements of contributions and services received and of the expenses incurred by individual candidates in political, regional, municipal elections – limited to municipalities with a population of more than

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24 Niccolò Caranti, [Finanziamento ai partiti: contro la corruzione ci vuole trasparenza](#) (interview with Giancarlo Esposito), OBCT, October 18<sup>th</sup>, 2019.

25 The number was quoted by Luisa De Petris, member of the Court of Auditors and of the Guarantee Commission, at the conference “Reinforcing democracy and supervising the financing of political parties. The Italian case”, organised by the Catholic University of the Sacred Heart of Milan. Registration is available on [Radio Radicale](#).

15,000 inhabitants – and European ones.

The separation between controls for the budget and controls for electoral expenses creates a fragmented situation, because it distinguishes between control bodies of the expenses incurred by political parties/ movements and control bodies of the expenses incurred by individual candidates. In the second compliance report of June 2018, GRECO [reiterated](#) the need to provide more details on the way in which the Commission coordinates its supervisory action with the other authorities responsible for controlling the financial management of political parties and electoral campaigns, as well as on how the different bodies cooperate and verify the information received.

Furthermore, in October 2014 – just two years after its institution – the members of the Guarantee Commission resigned, complaining about lack of personnel and adequate resources. The college that replaced them also denounced this situation a few months later. Eventually, Law 175/2015 intervened to fix the problem by posting special staff. Nevertheless, in a [report](#) of April 2018, the Commission reiterated its operational difficulties as well as the difficulties in interpreting a particularly fragmented regulatory framework.

With law 3/2019, which equated foundations and political associations to parties, the situation risks becoming even more complex. On the possible criticalities of delegating to the Commission also the verification of the money flows to new political subjects, a note by then president of the National Anti-Corruption Authority (ANAC) Raffaele Cantone invited the legislator to "adequately reinforce the personnel and resources available to the Commission, to ensure its full functionality and, consequently, the effectiveness of the norm"<sup>26</sup>.

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<sup>26</sup> Raffaele Cantone, [Ddl Bonafede: rischi e opportunità per la lotta alla corruzione](#), *Giurisprudenza Penale Web*, October 2018.

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