Chapter 9

France

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This case study presents the French system of funding for political parties and campaigns, the expenditure rules that apply to campaigns, as well as the transparency and reporting measures in place. It also discusses the role of the French oversight body charged with ensuring compliance with existing rules.
Level playing field

France’s legislation on electoral campaigns and parties funding is treated separately and has three characteristics:


- Rules on electoral campaign finances owe much to jurisprudence put upon the electoral courts involved in the proceedings.¹

- Public funding represents the most important part of electoral campaigns and party funding.

Public financing of parties

Public financing of parties directly from the State budget represents roughly EUR 61 million each year. This amount is split into two instalments.

The first one depends on the results of the parties in the previous parliamentary elections. To be eligible for these funds, candidates put forward by political parties must have obtained 1% of the votes in the first ballot in at least 50 constituencies, and the allocation of public funds is proportional to the number of votes gained by the party. Payment of the first instalment of public funding must comply with the principles on gender parity. When the difference in the number of candidates of each gender having declared to be affiliated to a party or a political group at the last elections to the National Assembly exceeds 2% of the total number of candidates, the amount of the first instalment given to this party or this group is reduced by a percentage corresponding to three-quarters of that difference in proportion to the total number of candidates. In 2013, political parties paid EUR 6 million in fines for that reason.

The second half of direct public party financing is based on the number of seats of the political parties in both chambers of Parliament that benefit from the first half of financing. The reattachment of a parliamentarian corresponds to EUR 45 000 each.

In 2015, the first half is EUR 28.4 million and the second half was EUR 33 million. The Socialist Party received EUR 25.4 million in 2014 and the opposition party, UMP (Union pour un mouvement populaire), EUR 18.1 million.

If we refer to the annual report of the National Commission for Campaign Accounts and Political Funding (CNCCFP), which is the supervising body of political party and electoral campaign finances, in 2013 direct public funding of political parties was 37.8% of the total income of political parties. But this figure does not totally reflect the different forms of indirect public funding to which political parties benefit, such as tax deductibility of donations,² broadcasting time, supply of staff and premises by local bodies, funding of political newspapers with small advertising subsidies or funding of parliamentary groups and foundations close to political parties. Direct and indirect public funding of political parties is estimated, in reality, to be between 60% and 70% of the total income of the parties. Other sources of party funding are the followings: 20.3% from elected representatives’ contributions, 14.7% from donations of physical persons, 14% from member contributions and 13.3% from others sources.
In 2013, 408 political parties filed their accounts but of this total, approximately 10 play a significant role. The total amount of political parties’ income was EUR 199.6 million and the total amount of political parties’ expenses was EUR 192.9 million.

**Public funding of electoral campaigns**

Limits of electoral expenditures apply to all elections in constituencies over 9,000 inhabitants. The spending limit for the 2012 presidential election was EUR 16.851 million for the first ballot and EUR 22.509 million for the second. The average spending limit for legislative elections is approximately EUR 60,000. This ceiling is readjusted every two years for inflation. If the candidate obtains 5% or more of the votes cast in the first round, he or she receives a flat reimbursement. The maximum amount of this flat reimbursement allowed by law is equal to 47.5% of the upper limit of electoral expenses, defined by each constituency according to the number of its inhabitants. To be reimbursed, the candidate must meet several requirements: appoint a financial agent, an individual or an association; file campaign accounts that must be submitted by an accountant registered with the Association of Chartered accountants in the legal time limit. The amount of flat reimbursement was EUR 36.3 million for the 2012 presidential election, and EUR 49.3 million for legislative elections the same year.

**Private funding of electoral campaigns**

Only donations from individuals - domestic and foreign persons - are allowed with a limit of EUR 4,600 per donor per year for a candidate and EUR 7,500 per donor per year for a party. Contributions may be made by members and elected officials to parties. The only donations from legal persons to candidates which are allowed are donations from parties. French electoral code prohibits all public figures and state-owned enterprises from giving donations or other benefits to a candidate. Campaign accounts may be rejected on the ground that the candidate enjoyed a benefit within the meaning of these provisions. It is for the CNCCFP and the electoral court to assess whether the campaign accounts should be rejected accordingly, having regard to all the circumstances and in particular to the value of the benefit, the conditions in which the benefit, the in-kind contribution was given and its amount. For instance, the occasional use of a photocopier by a candidate, given the amount, the nature and the benefit, does not justify rejection of the candidate’s campaign account.³

**Public funding for the organisation of elections**

The French State paid EUR 415 million for the organisation of the presidential and legislative elections in 2007 (EUR 1.90 per voter) and EUR 600 million for the same elections in 2012 (EUR 2.76 per voter).

**Electoral expenses**

At the last presidential election in 2012, if we refer to candidates who gained more than 5% of the votes cast, the breakdown of electoral expenses was the following: 45.9% for public meetings; 16.6% for paper advertising; 10.3% for personnel costs; 5.0% for Internet expenses; 4.5% for premises, equipment, telephone; 3.6% for other advertising expenses; 4.2% for fees; 2.7% for receptions; 1.8% for advice in communication, polls and enquiries; and 0.5% for postal costs.
From a general point of view, French funding regulations of politics have two merits. They have limited expenditures on elections, and they have a reduced dependence on private donations.

Exceeding the expenses ceiling results in the rejection of the campaign account by the CNCCFP. If it is confirmed by the electoral court, and if this excess is significant (17% for instance), the candidate may lose his/her flat reimbursement and he/she may lose office for three years. The same rule applies in the case of a significant infringement of the regulations on electoral campaign funding, when, for instance, before 2013 candidates made direct payments without going through an agent. This electoral sanction of ineligibility is not available for presidential elections but applies to other elections. For the legislative elections in 2007, the penalty of ineligibility has been applied twice for elected members of parliament (MPs), for the legislative elections in 2012, three times.

**Transparency and accountability**

Disclosure by candidates and political parties is achieved in two ways.

*Candidates’ campaign accounts*

In constituencies of more than 9,000 inhabitants, all candidates in an election, whether presidential, legislative, senatorial, regional, cantonal, municipal or European, are required to file a campaign account. This campaign account must be submitted by a chartered accountant to the CNCCFP by the tenth Friday after the first round. Candidates who did not obtain 1% of the votes at the first ballot are exempt from this required submission of a campaign account.

This campaign account must include donations by individuals, the candidates’ personal contributions, bank loans taken out by candidates, borrowings from political parties, expenses paid by electoral parties, in-kind contributions by the candidate, the political party and miscellaneous income.

In the same constituencies and for the same elections, candidates are required to appoint a financial agent or an electoral financial association. They are the sole intermediaries regarding campaign financing. The agents have to collect campaign funds over the course of the year before the first day of the month in which the election takes place, and up to the date of the filing of the candidate’s accounts, i.e. the tenth Friday after the first ballot. They settle expenses incurred directly by the candidate or on his/her behalf. They must open a single bank or post office account for all transactions of the electoral campaign. According to the relevant provision of the Electoral Code, the account’s title shall show that the holder is acting as financial agent for the duly named candidate. This agent shall be declared at the Prefecture of the residency of the candidate. These agents have to be declared when candidates submit their candidature and serves as a way for candidates to ease the centralisation of expenses and income of the electoral campaign.

Receipts enclosed to donations from physical persons below a threshold of EUR 3,000 serving as proof of payment for tax administration do not mention the candidate to whom the donation was given. The Group of States Against Corruption (GRECO) in one of its recommendations suggested to French authorities to lay down an appropriate threshold above which the identity of the donor must be disclosed. French authorities view that it would excessively undermine the principle of freedom of political opinion, one of the consequences of which is the principle of the secret ballot. Given the
small amount of these donations (EUR 4 600 to a candidate and EUR 7 500 to a political party), the risk of an excessive influence of individuals on political actors should not be exaggerated.

**Political party’s accounts**

Political parties must establish annual accounts, i.e. a balance sheet, and a profit and loss statement. These documents must be certified by two auditors and submitted to the CNCCFP before the 30th of June of the following year. These accounts are consolidated accounts including accounts of political parties or groups and all organisations or entities in which the party has more than the half of the authorised capital, holds seats in the managing body or within its exercises decision-making or managing authority, and prepared under accounting methods defined by the National Accounting Board. The political party itself determines the scope of its influence and the extent of the consolidated accounts. On the basis of guidelines, categories of expenditures include propaganda and communication, financial support for candidates’ election campaigns, other financial support, purchase of consumables, other external expenses, interest expenses and bank charges, extraordinary expenses, depreciation and amortisation. Donations must be received through a financial agent or an association. Donations to associations are the most commonly used practice. Donations may not exceed EUR 7 500 per person per year and are eligible for tax deduction. Fees to the party of national or local representatives are not included in the ceiling. Donations from foreign physical persons are permitted. Donations from foreign legal persons are prohibited but loans from foreign legal persons are permitted. For instance the National Front took out a loan of EUR 9.4 million from the First Czech Russian Bank in 2014. Political parties must submit to the CNCCFP the list of the individuals having made donations.

Concerning supervision of party accounts, the CNCCFP has three duties: establish whether there has been a breach of the rules for setting up accounts or donations by legal entities; publish the summary party accounts of political parties in the French Gazette; and determine and transmit to the Prime Minister the list of political parties that met their accounting obligations and may claim public funding.

Public information on party accounts is available in the French Gazette and on the CNCCFP website.

In practice, supervision relies mostly on the auditors. Two auditors from two different firms check the consistency of the accounts and compliance with legal regulations that prohibit donations from legal persons. Prior to an amendment adopted in 2013, the CNCCFP had no means of investigating party funding. It did not have access to supporting documents, nor was it empowered to perform on-site supervision procedures. The 2013 amendment to the Act 88-227 of 11 March 1988 enabled the CNCCFP to request as necessary the documents of any accounting or supporting documents needed for its monitoring duties. Such provision strengthens the supervision power of the CNCCFP, however it may not issue any injunction or order to the party, and a party’s refusal to co-operate is not liable to sanctions. But an injunction power would not comply with freedom of activity of political parties embodied in the Constitution.

Some 296 political parties submitted their accounts to the CNCCFP in 2012 and 408 in 2014.
Compliance and supervision

The CCNCFP is an independent administrative authority composed of nine active or honorary members from the highest courts: three from the Council of State, three from the Court of Cassation and three from the Audit court. These members are tasked with the election of their chair. Its budget amounted to EUR 6.7 million in 2015 (EUR 4.2 million for personnel costs and EUR 2.5 million for management costs). Some 47 employees work in the commission. It is expected to treat 11,600 accounts of candidates for departmental elections and 250 accounts of lists for regional elections in 2015.

Supervision of political parties funding

As previously mentioned, under Article 4 of the Constitution, the formation of political parties and groups and the performance of their activities are free. So regarding the constitutional status of the political parties, the CNCCFP is an independent administrative body with limited remits. For instance, it is not entitled to monitor the expenses of the political parties, and its monitoring must be focused on the lawfulness, but not on the expediency, of the financial operation. If a political party did not meet its obligations, it will not benefit from public funding. This means the loss of public funds for the party and for the funding of the candidates who participate in the electoral campaign. But the loss of public funds is not necessarily deterrent in practice, insofar as 80% of the parties presenting accounts with the CNCCFP do not receive public funds. Another sanction is the loss of the tax benefit attached to the donations to the party. Besides this financial sanction, the CNCCFP may declare to the National Financial Intelligence unit any acts for which there are reasons to suspect a tax offence. With respect to party funding if the powers of the CNCCFP are weak, the police and the judiciary may obtain access to political parties’ accounts in the context of legal proceedings.

Other sanctions that may apply are administrative and penal sanctions. If a funding association fails to meet its obligations, its authorisation may be withdrawn by the CNCCFP. Fines of EUR 3,750 and a one-year prison sentence for persons who have made or received donations unlawfully may be applied.

Supervision of electoral campaign’s accounts

In the case of the campaign’s accounts, the CNCCFP has six months to approve, reject or revise them. Some 2.5% of accounts were rejected for the 2007 legislative elections, 2.1% for the 2012 legislative elections.

If the account is accepted, the State grants candidates with at least 5% of the votes cast at the first round 47.5% of the flat reimbursement of electoral expenditures. There are various possible reasons for the rejection of a campaign account: no account opened by an agent, a deficit unaccounted for, no invoices attached to the account, or a significant excess of the ceiling of expenses. In the event the CNCCFP rejects the campaign accounts, it refers the matter to the court with jurisdiction for the election. In the event the CNCCFP suspects that a criminal offence has been committed, it refers the matter to the public prosecutor.

If the CNCCFP has to deliver its decisions within a period of six months from the deadline for the submitting the accounts, this period is reduced to two months if the election has been challenged by a voter who has an interest in pursuing legal procedure.
Decisions of the CNCCFP may be challenged by the candidates before the relevant election jurisdiction.\(^7\)

A sanction which may be applied is ineligibility, which is one of the main characteristics of the French system. This ineligibility may be ordered by the court if the campaign account has been rightfully rejected on grounds of fraud or serious breach of the rules on electoral campaign funding. It applies for a maximum of three years and to all elections, but not for the previous elections. It is a very effective sanction. Out of the 6,603 candidates at the 2012 legislative elections, 195 were declared ineligible by the Constitutional Council. In 18 cases, the candidate corrected his/her situation during the procedure, and in 19 cases the Constitutional Council determined that the infringement of the rules was not sufficiently serious to justify the penalty of ineligibility. If this penalty applies for only three years, in practice the disqualified elected representative may not be elected for the whole duration of the mandate, which will be fulfilled by another elected representative. One point has to be emphasised. Ineligibility applies to all elections except for presidential elections, because the announcement of the results of the election by the Constitutional Council is a judicial decision, just after the second ballot, which cannot later be questioned. Pursuant to Article 62 of the Constitution, this announcement shall be binding on public authorities, on all administrative authorities and all courts.

In the event the CNCCFP considers that a criminal offence has been committed, it can refer the matter to the public prosecutor. The Electoral code provides for sanctions of criminal offences with fines of EUR 3,750 and/or a prison sentence of up to one year.

**Conclusions**

The constitutional status of political parties prevents an increase of the investigative powers of the supervision body. If we benchmark French regulations regarding transparency, supervision and sanctions, we have to admit that these rules are honourable. They have succeeded in reducing the influence of money in politics, enhanced transparency of party funding, reduced expenses in legislative and local elections and set up an independent supervision body.
Notes

1. There are various courts with jurisdictions for elections in France: the Constitutional Council for Presidential, legislative elections, elections at the Senate and referendum and administrative courts and Council of State as court of appeal for municipal and cantonal elections, Council of State as unique court for regional elections and elections to European Parliament.

2. Some 66% of the amount donated within a limit of 20% of taxable income. Donations from individuals may be paid by cheque, bank transfer, direct debit or bank card. The amount of donations and fees was EUR 90 million in 2011 and 2012, what is considered as a tax expenditure of EUR 60 million by the CNCCFP.


7. See Endnote 1, above.