Chapter 1

Addressing the risks of policy capture

Money is a necessary component of the democratic processes, enabling the expression of political support as well as competition in elections. Yet, the increasing concentration of economic resources in the hands of fewer people presents a significant threat to political and economic systems. This chapter highlights the risks of policy capture through political finance and presents a Framework on Financing Democracy: Supporting Better Public Policies and Averting Policy Capture, which provides policy options and a mapping of risks.
Money and influence are necessary components of democratic representation

Money plays a role both as a channel for citizens to support their candidates or political parties, and as a means for candidates and political parties to reach out to their constituencies, shaping the public debate with policy options. Access to resources for political parties and candidates also shapes political competition. There is a correlation between campaign spending and performance in elections, suggesting that well-funded candidates are likely to defeat opponents with fewer resources (Silver, 2013; Speck and Mancuso, 2013). However, whether the candidate is elected because he/she had more resources than the opponent, or because he/she was able to mobilise more funds as a result of a greater support from the electorate, is still unclear.

The legitimacy of financing the democratic process is tainted by risks that threaten to undermine its very purpose. Although money is necessary for political parties and candidates to operate and reach out to their voters, experience has shown that there is a real and present risk that some parties and candidates, once in office, will be more responsive to the interests of a particular group of donors rather than to the wider public interest. Donors may also expect a sort of “reimbursement” for donations made during an election campaign and to benefit in future dealings with the respective public administration, for instance through public procurement or policies and regulations.

A basic distinction can be made between influencing where politicians make decisions based on their discretionary power, and intermediation of favours granted by public administration, which typically includes transgression of laws and regulations. In the first case, lawmakers and governments shape laws and regulations of economic activities taking into account demands and interests from campaign donors, but also from lobbyists, public opinion, guidelines from political parties and their own convictions. In the second case, elected officeholders use their influence on civil service to arrange for donors to earn contracts, get access to public loans or earn other benefits. This involves undue political influence on public service and unlawful behaviour of public servants involved in policy making, public procurement, licensing, permissions or other areas where companies expect illegal favours in return for campaign donations.

Public opinion might accept a representative speaking for the interest of a specific economic segment, yet it may launch a public debate on the influence of donations. For example, German political parties regularly receive donations from the German automotive industry. Despite the fact that those donations are transparent, do not contravene any law and Germany is one of the main sites for the car industry, it still can lead to public debate on the influence of political donations in the policy-making process.

Globalisation shifts this debate as well. Where bans on foreign and corporate funding exist in many countries, many multinational corporations have become part of the economy of hosting countries, creating a large number of local jobs. The question of whose money, and thus whose political preferences, should influence a country’s elections and political parties is becoming more complex.
Risk of policy capture through political finance is still prevalent in OECD countries

The other type of buying of economic favours by means of campaign donations evokes a different response. For elected officeholders to be able to grant or intermediate favours to individual companies, they need to have influence over parts of the public administration responsible for public contracting, public loans, tax inspection or any other state activity that is in contact with the private sector. While the term of the corrupting influence of private donations on politics is often used metaphorically, it is in these cases that campaign donations come closest to bribery in its original sense.

Policy capture occurs when the interests of a narrow group dominate those of other stakeholders to the benefit of that narrow group. In a democratic context, this involves the exclusion of parties and opinions, and violates basic democratic norms (Warren, 2003). When policy making is captured by a handful of powerful interests, rules may be bent to favour only the few in society. The consequences are likely to be the adoption of policies that counter public interest. At the centre of policy capture, there are exchanges of favours between private and public actors, which can be set up for one exchange or established and maintained on a regular, even highly institutionalised basis. In the latter case, policy capture is best characterised as a stable flow of mutual favours among the captor network.

Access to public procurement, for instance, has been used by elected officials to “return the favour” to corporations that made important contributions to their campaigns or to exclude corporations that supported the opponent as a means of retaliation. Campaign donors can get access to overpriced public contracts; receive favourable conditions in public loans or receive other forms of illegal benefits from public administration (Box 1.1). Private companies depending on government contracts can also be forced to make donations to the ruling party or be prevented from supporting opposition parties.

Box 1.1. Risks of policy capture in high-spending areas

Research in Italy highlights that mayors who stayed in office for one extra term were associated with deteriorated procurement outcomes, such as lower numbers of bidders, higher prices, biased concentration of the local procurement market, and higher probability that the winning firm was local. This quantitative evidence indirectly points at how the local heads of administration could use their time in power to build a collusive network with bidding companies capturing local public procurement spending (Coviello and Gagliarducci, 2010).

Another study indicates that large companies’ success on federal public procurement tenders in the United States is highly dependent on their political connections. The strongest predictor of these companies’ value of contracts won was whether they had a former politician on their boards of directors associated with the political camp holding the power at the time (Goldman, Rocholl and So, 2013).

A recent study also shows that firms specialising in public works projects in Brazil can expect a substantial boost in contracts - at least 14 times the value of their contributions - when they donate to a federal deputy (lower house) candidate from the ruling Workers’ Party and that candidate wins office (Boas, Hidalgo and Richardson, 2013).
Similarly, if government favouritism is rampant, the change of government and the corresponding turnover of political leadership are likely to affect the winning chances of firms in the public procurement market in some countries. Research in Hungary highlights top managers of large construction, information technology (IT), and healthcare companies supplying public organisations expressed the view in which the swings in market shares of companies reflect the changing preferences of the political leadership for particularly well-connected companies (Fazekas, King and Tóth, 2013). According to this interpretation, success in the public procurement market may depend much more on political connections than on the competitiveness of companies, implying a preferential allocation of public resources. In the same research (Fazekas, King and Tóth, 2013), such claims are demonstrated by tracking the changes in market shares of the largest companies before and after the new government entered office. It highlights that the companies with the largest market share throughout the one and a half years leading up to the elections in the first half of the 2010 lost about 25-30% of their combined market share. This change was accompanied by a comparable increase in the total market share of companies dominating the post-election market between the second half of 2011 and 2012.


In addition to the awarding of public procurement contracts, other favours may include granting tax breaks or state subsidies, preferential access to public loans, and selling public assets below market prices. While high-spending areas, such as infrastructure and urban planning, are particularly vulnerable to the risk of capture, any policy-making process can be a target of powerful special interests. Policy capture involves varieties of actors and means, but one of the most effective remedies to avert policy capture in policy making is to adequately regulate the funding of political parties and election campaigns.

Though much of the attention regarding political finance regulation focuses on national parties and election campaigns, the risks of undue influence and corruption are also present at the local or regional level as well. Local-level studies have pointed out the most revealing experiences when it comes to vote buying, the exchange of public contracts for political donations, and the role of illicit financial flows and organised crime. It is also at local or regional level that capture of public authorities may occur (Pinto-Duschinsky, 2013). For example, research argues that political party financing has been the major corruption driver in France: a process that has been further accelerated by administrative decentralisation and regionalisation in recent decades. Public contracts in large cities like Paris have been granted to companies that have provided support to political parties (Lalam, 2012).

Assisting inclusive growth though averting policy capture

Over the past three decades, income inequality has risen in most OECD countries, reaching in some cases historical highs. The increasing concentration of economic resources in the hands of fewer people presents a significant threat to increase the risks of policy capture. When government policy making is captured by a handful of powerful special interests, the rules may be bent to favour the rich. The consequences of a widespread feeling that governments are not working in the wider public interest are
grave, leading to the erosion of democratic governance, the pulling apart of social cohesion, and the undermining of crucial concepts that underlie democracy such as equal opportunities for all.

The challenges of the 21st century continue to test the ability of governments to develop and deliver policies and programmes that benefit all citizens. In this regard, the pursuit of inclusive growth has become one of the priorities for OECD countries. The OECD Initiative on Inclusive Growth highlights that it is not enough to put in place policies that harness growth, countries are also expected to ensure that the benefits of growth are shared by everyone. The design and implementation of effective reforms to create conditions for economic recovery and to sustain inclusive growth require a top-quality, policy-making process that citizens can trust.

Embedding the policy-making process with mechanisms that safeguard the public interest and curb the undue influence of money and power is essential to inclusive growth. The relationship between inequality and undue influence in politics through political financing is often overlooked. Socio-economic inequality is only the tip of an iceberg of inequalities of different dimensions, including differences in influence, power and voice. Consequently, governments are expected to proactively address high-risk areas at the intersection of the public and private sectors, including lobbying, conflict of interest in public decision making, and the influence of vested interests exercised through political financing. In-depth analysis of facts and comparative evidence on political finance and its associated risks to the fairness of policy making is needed to understand the risks and opportunities in different institutional settings and to move away from an ideological discussion.

Captured policies lead to low levels of trust in government, and the fairness of decision making is being questioned

In a number of countries money is perceived as having undermined the government decision-making process, which has led to low levels of trust in government. The 2013 Edelman Trust Barometer found that 52% of respondents surveyed in 26 countries distrusted government. Among the key factors they cited to explain the prevailing distrust were “wrong incentives driving policies” and “corruption/fraud”. Together, the two factors accounted for half of all reasons for trusting government less. The figure stood at the same level in the 2015 survey as well. In addition, the 2014 Eurobarometer shows that while levels of trust in government are low, trust in political parties is even lower (Figure 1.1).
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Figure 1.1. Trust in government and political parties in 23 European OECD countries, 2014

Note: Trust in national government and political parties: % of “tend to trust” answers to the question: I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it; national government and political parties.


Trust in public institutions is driven not only by the substance and outcomes of policies, but also by the policy-making process

A solid foundation of trust for effective policy making is of particular importance in the current economic situation, where structural reform involves difficult, unpopular choices and requires the confidence of citizens and markets to reignite growth. Accordingly, the OECD has put the building of trust in institutions and government at the heart of its New Approaches to Economic Challenge (NAEC) Initiative and its forward-looking Trust Agenda.

The OECD has identified five key policy dimensions for action by governments seeking to invest in trust:

1. Integrity: The alignment of government and public institutions with broader principles and standards of conduct that contribute to safeguarding the public interest while mitigating the risk of corruption.

2. The fairness of public policy making: The ability to propose policy-making processes and decisions that are perceived as fair and meet locally accepted standards.

3. Openness and inclusiveness: A systematic, comprehensive approach to institutionalising two-way communication with stakeholders, whereby relevant, usable information is provided and interaction fostered as a means to improve transparency, accountability and engagement.
4. Reliability: The ability of governments to minimise uncertainty in the economic, social, and political environment of their citizens and act in a consistent and predictable manner.

5. Responsiveness: The provision of accessible, efficient, and citizen-oriented public services that effectively address the needs and expectations of taxpayers.

The first three policy dimensions - integrity, fairness, openness and inclusiveness - are especially relevant to financing democracy, where it is essential to ensure fairness and a level playing field for stakeholders who seek to influence the decision-making process. All stakeholders are entitled to participate effectively in that process and the information enabling their participation needs to be available. Furthermore, the integrity of decision makers also needs to be ensured so that the wider public interest - and not only vested interests that can afford to make large political contributions - forms the basis of policy making.

In this context, trust in public institutions is driven not only by the substance and outcomes of policies, but also by the process of policy making. The way policies are designed and implemented, and the compliance that policy makers show with broader principles and standards of behaviour, matters to trust.

**OECD Framework on Financing Democracy**

Recognising that adequately regulated political finance forms the foundation for restoring trust in government and inclusive growth, this report builds on the discussions and findings of the 2013 OECD Forum on Restoring Trust in Government: Addressing Risks of Influence in Public Decision Making and the 2014 OECD Forum on Financing Democracy and Averting Policy Capture, and presents a Framework on Financing Democracy: Supporting Better Public Policies and Averting Policy Capture that maps a range of risk areas and provides policy options to adequately regulate the financing of political parties and electoral campaigns, thus strengthening the integrity and credibility of the government decision-making process (see Table 1.1 at the end of this chapter).

The Framework has four main pillars: promoting a level playing field; ensuring transparency and accountability; fostering a culture of integrity; and ensuring compliance and review. The following four chapters look at each of the pillars with comparative data to highlight the trend of political finance regulations and remaining areas for improvement in OECD countries.

**Third-party campaigners and transnational private interests present risks to levelling the playing field**

Chapter 2 reviews various policy options to promote a level playing field in financing democracy. Allocation of public funding and the rules for private funding continue to need special attention to ensure a level playing field for all stakeholders. To be effective, a comprehensive regulation of political finance should focus on the whole cycle including the pre-campaign phase, the campaigning period itself, and the period once the elected official take office. Additionally, applying spending limits also contributes to stopping the spending race and framing the impact of private funding. Privileged access to state resources also needs to be understood through an analysis of the incumbency factor - the advantage which entails that ruling political parties may have privileged access to public resources.
It also highlights that certain shortcomings in the regulations are particularly vulnerable to exploitation by powerful special interests. Loans, membership fees and third-party funding can be used to circumvent the regulations of private funding. Many countries struggle to clearly define and regulate third-party funding to prevent re-channelling of election spending through supposedly independent committees and interest groups. Third-party campaigners are sometimes referred as non-party campaigners and may include charities, faith groups, individuals or private firms that campaign in the run up to elections, but do not stand as political parties or candidates. Increasing globalisation also further complicates the regulation of private funding as many foreign companies and wealthy individuals are deeply integrated with domestic business interests, blurring the national boundaries. In addition to bans and regulations on foreign and corporate funding, regulation of anonymous donation and disclosure of the donor identity serve as complementary measures to minimise the impact of undue influence.

Institutionalising an enabling environment for better transparency and public scrutiny

Chapter 3 focuses on measures to ensure transparency and accountability in financing democracy. Keeping records of election campaigns expenditure as well as keeping books and accounts of political parties and their affiliated entities forms a basis for greater transparency and accountability. Comprehensive disclosure of income sources of political parties and candidates contributes to greater transparency, serving as a deterrent measure to limit undue influence. No oversight mechanism is complete without the participation of civil society and media. In this regard, civil society organisations (CSOs) can be effective watchdogs and have proven instrumental in advancing transparency and anti-corruption efforts in the field of political finance.

For disclosure of information to make sense and inform the citizen, information needs be organised in an intelligible and user-friendly way. In this regard, online technologies facilitate countries developing more comprehensive proactive disclosure. Ideally, all reports are submitted and published in a standardised, machine-readable format so as to ensure their comparability, clarity and digestibility. CSOs and media can only be effective watchdogs if substantive political finance information is publicly available for their analysis. In order to mobilise CSO support in advocacy, political finance information must be reliable and accessible, creating an enabling environment in which CSOs, media and private citizens can conduct effective public scrutiny.

Promoting a holistic approach to avert policy capture by connecting surrounding integrity measures with political finance

Chapter 4 looks at the importance of fostering a culture of integrity to effectively promote a holistic approach to connect surrounding integrity issues, such as lobbying and conflict of interest, to better understand the impact of money in politics on the quality of policies. Matters such as conflict of interest, asset disclosure and lobbying cannot realistically be considered without taking into account the role of political finance in many countries. Conversely, controls of party and election funding are likely to be ineffective if they exist in isolation. On their own, they are likely to result merely in the re-channelling of money spent to obtain political influence through lobbying, and through third-party financing. Any consideration of political funding needs to be part of an overall strategy to assure public integrity and good governance. However, less than half of
OECD member countries have so far acted to set or tighten lobbying standards. While disclosure of private interests by decision makers is also essential for managing conflict-of-interest situations and spotting any suspicious financial flows in public decision making, the level of disclosure of private interests (assets, liabilities, income source and amount, paid and un-paid outside positions, gifts and previous employment) and the public availability of the disclosed information varies considerably among and within countries in the different branches of government.

**Increasing importance of independent electoral management body for effective oversight**

Chapter 5 focuses on policy measures and institutional mechanisms to ensure the compliance and review of political finance regulations. Regulating income and spending are not sufficient if there is no proper and efficient oversight and enforcement. In many cases, the responsibilities of monitoring and supervising breaches to political financing regulations are rather diluted among various institutions. This raises concerns over effective co-ordination, information sharing, and responsiveness. An independent electoral management body (EMB) is desirable although there is no one-size-fits-all model. In 29% of OECD countries, the EMB receives financial reports from political parties and/or candidates for oversight. Institutions responsible for enforcing political finance regulations should also have a clear mandate and power, not just the capacity, but the legal power to conduct investigations, refer cases for prosecution, and impose sanctions. Development of such powers is critical for the effective enforcement of a transparent and equitable campaign finance regime. Well-staffed and well-funded supervisory bodies that lack the independence and/or legal authority to meaningfully regulate potential violators limit the extent to which existing regulation can be enforced. Besides, sound political finance regulations need sanctions, serving as deterrents for breaches and indirectly promoting compliance. However, countries still struggle to ensure the right balance in penalising infringements to political finance regulations and define sanctions that are proportionate and dissuasive.

**Country case studies provide in-depth analysis of political finance regulation and its challenges in different institutional settings**

In order to examine practices and lessons learned in various country contexts, this report features country case studies from Canada, Chile, Estonia, France, Korea, Mexico, the United Kingdom, Brazil and India. Countries selected for case studies include both OECD member countries and key partner countries in Europe, North America, South America and Asia, providing detailed practices of political finance regulations and challenges that are of particular importance in each country. Findings from these country case studies also confirm the trend and emerging concerns in regulating political finance as well. Further elucidating the risks of money in the government decision-making process as well as identifying practical solutions based on evidence and good practices will contribute to refining the framework and develop an associated toolbox that may be useful in different country contexts.
Table 1.1. Framework on Financing Democracy: Supporting Better Public Policies and Averting Policy Capture

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<tr>
<th>Overall objective</th>
<th>Policy options and specific risks to mitigate</th>
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<tr>
<td><strong>Promoting a level playing field</strong></td>
<td><strong>Balancing funding through direct and indirect public contributions</strong> Direct funding which entails a monetary transfer to parties, candidates: - clear and equitable criteria such as equal access and proportionality - provision to promote gender equality. Indirect funding, including tax exemptions, subsidised access to media, meeting rooms, etc. <em>Unintended consequences may include:</em> Risk of unbalanced playing field for the challengers and smaller parties if, for example, the criteria of allocation is based on past electoral performance.</td>
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<td><strong>Framing private funding</strong></td>
<td>Banning certain types of private contributions, in particular: - foreign interest - corporations with government contracts or partial government ownership - corporate donations, trade unions, etc. Limiting anonymous donations. <em>Unintended consequences may include:</em> Risks of avoidance through third-party funding and other legislative loopholes.</td>
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<tr>
<td><strong>Applying spending limits</strong></td>
<td>Clear limits based on absolute amount, percentage of total public funding, certain amount per citizen in the electoral district, etc. <em>Unintended consequences may include:</em> Risk of avoidance through third-party funding Risk of an uneven playing field for the challengers if there is abuse of state resources by the incumbent.</td>
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<tr>
<td><strong>Limiting privileged access to state resources</strong></td>
<td>Controlling abuse of state resources: - ban the use of state resources for political purposes - ban state resources being given to, or received by, political parties or candidates (except regulated public funding) - ban disproportionate government spending on advertising before or during campaigns, hiring new public servants and signing large public contracts. <em>Unintended consequences may include:</em> Risk of avoidance if the incumbents use the public resources to campaign for their votes in the name of “carrying out their legislative duties”.</td>
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<tr>
<td><strong>Ensuring transparency and accountability</strong></td>
<td><strong>Requiring disclosures</strong> Requiring comprehensive reporting, including: - timely provision of information. Not limiting reporting to only how public funds have been spent, but also include private donations. <strong>Enabling scrutiny</strong> Timely, reliable, accessible and intelligible public disclosure of reports. Promote media and civil society scrutiny.</td>
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<tr>
<td><strong>Fostering a culture of integrity</strong></td>
<td><strong>Applying the integrity framework in the public sector</strong> Code of conduct. Conflict of interest and asset disclosure provisions. Disclosure on lobbying. Risk mapping. Whistleblower protection. <strong>Promoting standards of professionalism, integrity and transparency in private donors</strong> Self-regulation of financing of political parties and electoral campaigns: - appropriate accounting practices - private sector codes of conduct - responsible lobbying.</td>
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Table 1.1. **Framework on Financing Democracy:**
Supporting Better Public Policies and Averting Policy Capture (continued)

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<tr>
<th>Overall objective</th>
<th>Policy options and specific risks to mitigate</th>
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<td><strong>Ensuring compliance and review</strong></td>
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| Assuring independent and efficient oversight | Strengthen independence of monitoring body and process:  
- independent appointment of members  
- ensure security of tenure to members  
- independent budget for the body to conduct monitoring.  
Provide capacity:  
- sufficient resources  
- specialised auditing capacities and methodologies.  
*Unintended consequences may include:*  
*Risk of over-complication of procedures among many different institutions.* |
| Applying dissuasive and enforceable sanctions | Proportionate and dissuasive sanctions, for example:  
- lose public subsidies  
- confiscation of illegal donations or funds  
- fines  
- criminal charges such as imprisonment  
- ineligibility: loss of elected office, forfeiting right to run for elections  
- deregistration or suspension of a political party.  
Enforcement of sanctions in a timely manner. |
| Appraising the system | Reviewing periodically - with the involvement of stakeholders - the functioning of the system and making necessary adjustments:  
- identify new risks to the policy objectives of the system  
- identify mitigation strategies. |
| Support to political parties | Providing support to political parties to help them comply with regulations:  
- setting up a support unit within the monitoring agency focused on supporting compliance  
- dialogue between parties and monitoring agencies in order to facilitate adherence to the rules and allow for better understanding of political finance. |
Bibliography


International IDEA (2003), *Funding of Political Parties and Election Campaigns*, www.idea.int/publications/funding_parties/.


