

# PROBLEMS AND CHALLENGES IN THE FINANCING OF PARLIAMENTARY ELECTIONS

## IN THE CONTEXT OF THE ELECTORAL SYSTEM REFORM

- The adjustment of the legal framework on campaign financing as a result of the electoral system reform does not eliminate the risks associated with the disproportionate influence of financial resources on the electoral process that generate new challenges with regard to the enforcement of legislative provisions.
- Despite having been lowered, the donation caps for physical and legal entities still remain relatively high, thus allowing for the electoral competitors to amass a large amount of campaign funds from a small pool of potential donors.
- The introduction of the mixed electoral system will contribute to the increasing of campaign expenses due to the overlapping of electoral outlays carried out by nationwide lists and SMD candidates. This will result in the doubling of spending for one vote, a fact that might disproportionately advantage the rich candidates and undermine the fairness of electoral process.
- The increasing number of electoral competitors, as a result of the electoral system reform, will have a negative effect on the campaign funding transparency, by causing even more hurdles regarding the control of the money's source as well as the monitoring of campaign expenses.
- The oversight of campaign financing remains the most vulnerable aspect of elections due to the CEC's dependence on other state bodies in fulfilling its supervisory tasks, such as police and tax office. Since these bodies are not politically independent the fairness of the oversight mechanism might be compromised by their involvement in the electoral process.

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## ABBREVIATIONS

<b>LPOSP</b>	Law on Parties and other Social-Political Organisations
<b>LPP</b>	Law on Political Parties
<b>CEC</b>	Central Electoral Commission
<b>OSCE</b>	Organisation for Security and Cooperation in Europe
<b>CE</b>	Electoral Code
<b>SMD</b>	Single Member District
<b>PAS</b>	Party of Action and Solidarity
<b>PDM</b>	Democratic Party of Moldova
<b>PSRM</b>	Party of Socialists of the Republic of Moldova
<b>PCRM</b>	Party of Communists of the Republic of Moldova

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# 1. Executive summary

Financing of political parties and electoral campaigns remains a sensitive area and a vulnerable issue in ensuring democratic elections in the Republic of Moldova. Despite recent amendments to the regulatory framework aimed at improving the financing rules, the enforcement of new provisions in local and presidential elections has demonstrated the existence of several regulatory loopholes, especially regarding the transparency and control of funding. While the poor enforcement of some provisions in local elections can be attributed to a fairly short period for their application, the presidential election campaign represented a genuine test for the effectiveness of campaign funding rules implementation.

Although some progress has been made with respect to electoral competitors' compliance with legal requirements, the presidential campaign has clearly shown that the origin and transparency of financial means remain blurry, while the control is still flawed, selective and politically biased. Moreover, some regulations have been amended in a rather decorative way, which left too large room for manoeuvre for political parties in raising funds from private sources given the introduction of public funding that would require establishing tighter restrictions on private contributions.

Against this backdrop, the substitution of the proportional electoral system with a mixed one is another test for the elections' financing, as the transition to the mixed system implies the adjustment of the current provisions to cover single member district (SMD) candidates as well. This adjustment implies increasing the complexity of the regulatory framework on campaign funding, as well as the difficulty in implementing these regulations. Therefore, in the context of the Venice Commission's warning, according to which the replacement of the electoral system might increase the impact of money in structuring relations between SMD candidates and business interests, the nature of campaign funding regulations could distort the fairness of the electoral process by undermining the level playing field for all candidates. However, together with the change of the electoral system, several legislative amendments were adopted in July 2017 by Parliament, including election financing. Consequently, several articles of the Electoral Code were amended by expanding regulatory framework to incorporate SMD candidates alike. The extent to which these amendments can mitigate the risks and challenges associated with

campaign financing under a mixed electoral system represents the topic of this analysis.

On the whole, the adjustment of financing regulations to a mixed electoral system does not remove the risk of collision between SMD candidates and particularistic interests at the local level. Despite lowering the donation caps, they still remain relatively high, thus allowing for garnering by electoral competitors of substantial amount of financial means from a small pool of donors.

Under the current circumstances, the transition to the mixed electoral system will more likely increase campaign expenses due to the establishment of spending caps on both party lists and SMD candidates. This, in turn, might distort even further the electoral competition by favouring wealthier parties and candidates over the less financially endowed contestants.

Transparency of party financing remains an unresolved issue, especially by restricting the public access to the donors' identity data. The conflict between the public interest in knowing who finances political parties and the personal data protection has been resolved in favour of parties by prohibiting the general public's access to data about donors' identity. As a result, this diminishes the transparency of campaign funding and does not allow for the external stakeholders to verify the truthfulness of the financial means' origin.

Another sensitive issue and a major challenge generated by the transition to the mixed electoral system is epitomized by the control of election financing. Despite the CEC' extended legal mandate in supervising campaign financing, the existing approach by which the institution exercises its powers only by reacting to complaints about potential financial violations, will not contribute to the strengthening of the control mechanism over electoral contestants. Given the growing pressure generated by a heavier workload the institution will be exposed to, as result of SMD introduction, its legal mandate will be insufficient without an enhanced institutional capacity in terms of staff and resources. Moreover, the lack of a proportional and deterrent system of sanctions, corresponding to the gravity of campaign financing violations, increases the risk of selective and discretionary enforcement.



## 2. Financing from private sources: donation caps

Until the direct introduction of public funding in 2015, political parties and electoral competitors relied solely on private financing, but a stricter regulation of political contributions was introduced only in 2008 as a result of adoption of a new Law on Political Parties (Official Gazette No 42-44 art.119, 29.02.2008). Respectively, over a relatively long time-span, the political parties in the Republic of Moldova were not exposed to any quantitative restrictions on donations, being constrained only by some qualitative restrictions, i.e. they could not receive donations from certain donor categories. However, the introduction of quantitative restrictions has not radically changed the situation because of excessively high donation caps that allowed for the political parties to amass large amounts from lavish donations. Moreover, because of high donation caps, political actors have managed to collect most of the financial resources from a very small pool of donors. As a result, during the first three parliamentary elections held in 2009 – 2010, the top electoral contestants which garnered most financial resources had a very limited donor network. Except for the communists (PCRM) who benefited from a wider donor network in the April 5 and July 29, 2009 elections, the other parties, including the Alliance for European Integration (AEI) constituent parties, have collected most financial resources from a very narrow pool of sponsors<sup>1</sup>. Such a pattern of raising money from plutocratic donations has drawn the attention of civil society and media which questioned the truthfulness and credibility of financial data, as reported by parties, revealing the identity of some dubious donors with a very limited payment capac-

ity, who nevertheless contributed to campaign coffers of several electoral contestants<sup>2</sup>.

The pressure from international organizations coupled with the increased attention of NGOs and media over elections financing partly contributed to the changing of the behavioural patterns and money raising strategies. Political parties, as electoral contestants, were forced to multiply and consequently expand their donor network. This trend was initiated in the parliamentary elections from November 2010, but took impetus in the November 2014 parliamentary contest, as well as during the presidential race in October 2016, albeit the presence of lavish donors on several party lists reflected the permissiveness of legal framework due to high donation caps<sup>3</sup>.

Since the introduction of quantitative restrictions on donations in 2008, the regulatory framework has been amended twice by lowering the maximum amount a physical or legal entity could contribute to party and election fund. In 2015, both the Law on Political Parties (LPP) and the Electoral Code were amended by capping annual and campaign donations at the same level (Official Gazette, №. 93, art.134, 14.04.2015). However, these amendments have generated some confusion because it was not clear from the text of both laws whether campaign donations fall within the annual limits or should be treated separately. This ambiguity was also noted by the Venice Commission/ OSCE assessment of the Draft Law on Party and Electoral Campaign Financing in 2013, although the envisaged donation caps in the submitted draft law were ten-fold lower than in

<sup>1</sup> Sergiu Lipcean, „Evaluarea finanțării partidelor politice și campaniilor electorale în Republica Moldova”/ Evaluation of the funding of political parties and electoral campaigns in the Republic of Moldova, Public policies (Chișinău: IDIS „Viitorul”, 2009); Sergiu Lipcean, „Aspecte deficitare ale mecanismului de finanțare politică în Republica Moldova”/ „Legal shortcomings of the political financing mechanism in the Republic of Moldova”, in *Finanțarea partidelor politice: între transparență și obscuritate/ Funding of political parties: between transparency and obscurity*, vol.8, Public Policies (Chișinău IDIS „Viitorul”, 2010), 8-11; Sergiu Lipcean, „Finanțarea campaniilor electorale parlamentare prin prisma rapoartelor financiare”/ “Funding parliamentary election campaigns in the light of financial reports”, in *Finanțarea partidelor politice: între transparență și obscuritate/ Funding of political parties: between transparency and obscurity*, vol. 8, Public Policies (Chișinău: IDIS „Viitorul”, 2010), 12-32; OSCE/ODIHR, „Republic of Moldova: Early Parliamentary Elections 28 November 2010” (Warsaw: OSCE/Office for Democratic Institutions and Human Rights, 26 ianuarie 2011), 13.”

<sup>2</sup> Cornelia Cozonac, „Transparența donațiilor partidelor antrenate în cursa electorală pentru parlament în 2010 și a veniturilor candidaților aspiranți la funcția de deputat”/ Transparency of donations of the parties involved in the electoral race for the parliament in 2010 and of the incomes of the candidates aspiring for the position of deputy, in *Finanțarea partidelor politice: între transparență și obscuritate/ Funding of political parties: between transparency and obscurity*, vol. 8, Public Policies, vol.8 (Chișinău: IDIS „Viitorul”, 2010), 45-51; Ziarul de Gardă, „Politica neagră din Moldova”/ „Black politics in Moldova”, Ziarul de Gardă, 11 April 2010, <http://www.zdg.md/politic/politica-neagra-din-moldova>; Timpul, „Cine a finanțat cele două campanii electorale ale comuniștilor?”/ „Who financed the two Communist electoral campaigns”, *Timpul* - Știri din Moldova, 22 December 2009, <http://www.timpul.md/articol/cine-a-finanțat-cele-doua-campanii-electorale-ale-comuniștilor-5519.html>; Europa Liberă, „Finanțarea campaniei - pensionari providențiali, șomeri cu dare de mână”/ „Funding of the campaign - provident pensioners, unemployed with handshake”, *Radio Europa Liberă*, 28 October 2010, <https://www.europalibera.org/a/2204300.html>.

<sup>3</sup> Lipcean, „Finanțarea campaniilor electorale parlamentare prin prisma rapoartelor financiare”/ „Funding of parliamentary election campaigns in the light of financial reports”, 23-24; Promo-Lex, „Finanțele concurenților electorali în cadrul campaniei electorale pentru alegerile parlamentare 2014”/ „Finances of electoral contestants in the electoral campaign for the 2014 parliamentary elections” (Chișinău: Promo-Lex, 18 December 2014), 8-9; Promo-Lex, „Misiunea de observare a alegerilor pentru funcția de Președinte al Republicii Moldova din 30 octombrie 2016”/ Election Observation Mission for the Presidential elections of the Republic of Moldova on October 30, 2016 (Chișinău: Promo-Lex, January 2016), 47-48.

<sup>4</sup> Venice Commission și OSCE/ODIHR, „Joint Opinion on Draft Legislation of the Republic of Moldova Pertaining to Financing Political Parties and Election Campaigns” (Venice: European Commission for Democracy through Law, March, 2013), 10.

**TABLE 1.** *Evolution of the donation caps from physical and legal entities*

Period	Legal source	Ceiling/ Average salaries		Ceiling/ Lei		Period of application
		<i>Individuals</i>	<i>Legal entities</i>	<i>Individuals</i>	<i>Legal entities</i>	
1991 – 2008	LPOSP	Absent	Absent	absent	absent	
2008 – 2015	LPP	500	1000	1264850	2529700	annual
2015 – 2017	LPP + Electoral Code	200	400	922180	1844360	annual/ campaign
2017 – present	Electoral Code	50	100	254200	508400	campaign

**Source:** Developed by the author

*Note:* Wage data is retrieved from National Statistical Office (BNS).

its final version enacted in 2015<sup>4</sup>. The second amendment is more recent and was passed in the context of electoral system change (Official Gazette №. 253-264, article 422, 21.07.17). This amendment significantly lowered donation caps for individuals and legal entities. It also clarified the ambiguity caused by the 2015 amendments by setting up lower caps on campaign contributions relative to the annual caps. Table 1 summarizes these developments by indicating the donation's value in average wages, according to the regulations, as well as their MDL nominal value based on the average wage annual value.

Even a superficial look at the data provides some insights on the evolution of donation caps, suggesting that political parties have been reluctant to set up more restrictive caps on political contributions. Moreover, if one also considers the fact that other types of non-financial contributions (services/ in kind) have not been practically regulated until 2015, one can say that legislative provisions have provided so far the electoral competitors with a broad leeway regarding the accumulation and management of their financial and material resources. Despite a 2,5-fold decrease in the donation caps in 2015 based on the average wage, the real decrease in 2015 was only about 27 percent compared to 2008. Such a discrepancy is easily explained by the calculation method which ties the donation cap to the dynamics of average wage. Therefore, it would be wrong to claim that the contribution limits, as set in 2015, substantially constrained the money raising endeavours of electoral competitors since individuals were legally

authorised to contribute by almost one million MDL, while legal entities – double as much.

Yet, in the context of electoral system change, the key provision in restricting campaign contributions touches upon the decreasing of donation caps to 50 and 100 average wages for individuals and legal entities respectively. This change will significantly contribute to the personalization of elections across SMD which could also affect the way in which the money is raised and spent. Given that the joint opinions of the Venice Commission and OSCE on the electoral system change have underlined that the risk of dangerous linkages established between SMD candidates and local businesspeople, or other non-electoral stakeholders pursuing particularistic interests might prevail over the relationship between constituency and their representatives, the way in which SMD candidates are funded becomes crucial<sup>5</sup>. Therefore, the substantial reduction in the donation caps for both SMD candidates and party lists represents a clear move in the right direction. However, the fundamental question is to what extent these regulations make it easier or harder for the electoral subjects to establish potentially dangerous linkages between SMD candidates and their donors through campaign financing. Hence, the lower donation caps, requiring candidates to raise money from as many donors as possible, the lower the risk of dependence on a narrow pool of sponsors and/or vested interests.

Extrapolating this relationship on the current regulatory framework on campaign funding, one can assert

<sup>5</sup> Venice Commission & OSCE/ODIHR, „Joint Opinion on the Draft Law Amending the Electoral Legislation of the Republic of Moldova”, CDL-AD(2014)003 (Venice: European Commission for Democracy through Law, March 2014), 8; Venice Commission & OSCE/ODIHR, „Joint Opinion on the Draft Laws on Amending and Completing Certain Legislative Acts (Electoral System for the Election of the Parliament)”, CDL-AD(2017)012 (Venice: European Commission for Democracy through Law, June 2017), 9-10.

that the decrease in donation caps, according to the recent amendments to the Electoral Code, does not eliminate this risk. This risk will persist because SMD candidates will still be able to amass the necessary campaign resources from a very narrow circle of potential sponsors given their ability to donate about a quarter million MDL, while a legal entity – half a million as reflected in *Table 1*. The risk is even more obvious if one considers the spending cap imposed on SMD candidates' election fund. To assess this relationship, I used data on the number of registered voters and the aggregate spending cap as set by CEC in the 2016 presidential elections and extrapolated it on the mixed electoral system incorporating 51 SMD. Hence, based on the CEC methodology, the average spending cap for each SMD is calculated by multiplying the number of registered voters (55148 on average per SMD) by the coefficient set by CEC<sup>6</sup>. By using, for instance, the spending cap per single voter established by CEC at the last presidential elections (23.05 MDL)<sup>7</sup>, multiplied by the average number of

voters in the nominal districts we obtain an average spending cap for SMD amounting to 1271170 MDL. Dividing this aggregate cap by the donation caps from individuals and legal entities, we obtain a coefficient representing the minimum number of donors required to reach the aggregate spending cap per district, which is 5 and 2.5, meaning that *each SMD candidate would need the financial backing of 5 individuals or 3 legal entities to legally raise the amount of financial means for his/her election campaign*. This simple simulation suggests that despite the lowering of donation caps, the risk of distorting the electoral process via campaign financing persists and the Venice Commission and OSCE warnings are quite relevant in the context of current regulations. Even if the above depicted situation represents an extreme case and SMD candidates will, in fact, amass their campaign funds from a larger pool of sponsors, the legal framework *per se* is rather friendly towards building up of mutually beneficial relationships between SMD candidates and vested interests.

### 3. Spending caps

Until the introduction of public funding, the Moldovan legislation did not foresee any limits on party spending for their statutory activity, i.e. outside the election campaign timeframe. Only with the introduction of public funding, the aggregate amount of funds obtained from private sources was capped at 0.2% of the budgetary revenues foreseen for the respective year (Official Gazette №. 42-44 art.119, 29.02.2008: Article 26). However, since the provisions of public funding have been postponed several times and their actual implementation occurred only in 2016, this restriction has not been applied in practice until 2016. However, in 2015 this cap was lifted to 0.3% of the budgetary revenues (Official Gazette №. 93, Art.134, 14.04.2015), thus creating even more opportunities for the distortion of political competition by the richest parties that have mostly benefited from state funding. The provision of public funding is usually associated with tighter financing restrictions, not their liberalisation as it recently occurred in Moldova. Even though the current regulations envisage a limit on aggregate income/spending for party statutory activity, it is excessively high, reflecting a similar case with the contributions from individual and corporate donors.

Yet, in the context of the electoral system reform, the issue of campaign spending restrictions becomes even more salient. It is worth noting that during the last decade, the campaign spending caps for parliamentary contests have considerably increased from one election campaign to another. Table 2 eloquently proves this increase for political parties/electoral blocks and independent candidates since the 2001 legislative elections.

Consequently, during the last six parliamentary elections there was a 55-fold nominal increase in the spending cap for political parties and a 40-fold increase for independent candidates. Even if one accounts for the inflation trends between 2001 and 2014, there is still a 26-fold increase in the spending caps for parties and a 19-fold increase for independent candidates<sup>8</sup>. These developments were induced by a higher demand for resources due to the shift in campaigning style. The professionalization of electioneering imposed an intensive campaigning style in which most resources were allotted to the broadcasting and outdoor advertising. Moreover, one may notice a trend from extremely restrictive to rather permissive spending caps which currently favour the

<sup>6</sup> The CEC methodology implies multiplying the number of voters by 0.5% of the average wage.

<sup>7</sup> №. 240, 13.09.2016/ On the establishment of the general ceiling of the financial means that can be transferred to the "Electoral Fund" account of the presidential electoral candidate from 30 October 2016.

**TABLE 2.** *Evolution of spending caps for political parties and independent candidates in parliamentary elections*

Date of election	Parties/ Electoral blocks	Independent candidates
25 February 2001	1000000	50000
6 March 2005	2500000	100000
5 April 2009	12000000	500000
29 July 2009	7500000	500000
28 November 2010	21664445	2166444
30 November 2014	55000000	2000000

**Source:** CEC's decisions №. 1363 as of January 12, 2001; №. 672 as of January 14, 2005; №. 2067 as of February 6, 2009; №. 2590 as of June 20, 2009; №. 3566 as of October 5, 2010; №. 2692 as of October 7, 2014.

rich parties and candidates. Under such permissive spending rules, it is possible that the gap between the financially endowed contestants and their poorer counterparts may undermine the fairness of the electoral competition.

Thus, the switch to the mixed electoral system is expected to strengthen the position of the financially endowed parties and candidates at the expense of other competitors, by further undermining the level playing field. This scenario is likely to materialize due to the overlapping of the electoral expenses as a result of campaign spending caps set on SMD candidates and party lists in the nationwide constituency. Considering the new methodology applied by CEC in the last local and presidential elections, whereby the spending cap was determined by multiplying the number of voters by a coefficient of 0.5% of the average salary, will create a situation in which parties submitting both a national list as well as filing SMD candidates will be able to spend twice as much per a single voter compared to previous campaigns. As a consequence, this will increase the weight of the financial resources as a key factor of electoral perfor-

mance. It should be noted, however, that such a development is only one of several possible scenarios because the EC does not directly regulate the size of election fund, delegating this task to CEC which decides the maximum amount of campaign expenses for each election contest. Although the delegation of this task to the electoral body offers more flexibility, it also causes some uncertainties about the amount of permissible outlays. It should be mentioned that until the 2010 parliamentary elections, CEC had no methodology to determine the maximum of aggregate campaign spending. In 2010, it was set at the equivalent of EUR 0.50 for parties and EUR 0.05 for independent candidates, which was later replaced, applying the above-mentioned coefficient. If the current formula remains unchanged and is applied to both types of electoral districts, i.e. SMD and nationwide constituency, the increase in the election expenses and, as a consequence, a stronger influence of money in future elections is an unavoidable outcome. As a result, the interaction between the aggregate spending and donation caps will contribute to the deterioration of the electoral process integrity, thus undermining the fairness of electoral competition.

<sup>8</sup> The data on the inflation dynamics are retrieved from National Bureau of Statistics (BNS).

## 4. Transparency of election financing

Transparency of campaign financing represents one of the most sensitive issues of the electoral process, but the current enforcement of reporting and disclosure of donations and outlays remains deeply flawed. Until the 2009 parliamentary elections, the reporting and disclosure of competitors' financial information was virtually non-existent due to very general provisions stipulated by electoral legislation<sup>9</sup>, which was frequently emphasized by the OSCE election monitoring reports<sup>10</sup>. Since the 2009 parliamentary contest, however, the electoral subjects have been compelled to report in more details on their income sources, including disclosure of donors' identity, as well as to provide more detailed information on their outlays, although this practice was rather induced by the adoption of the party law than the EC provisions which at that moment remained still blurry on the reporting criteria. The presence of legal loopholes allowed for the electoral contestants to provide incomplete data on the donors' identity, thus limiting the ability of the civil society and media to verify the accuracy and truthfulness of donations, as well as to effectively avoid reporting on all campaign expenses<sup>11</sup>.

### 4.1 Reporting and disclosure of donations

The disclosure of donors' identity constitutes one of the most controversial aspects of how the transparency rules and the public character of election financing, as foreseen by party and electoral regulations, have been interpreted and implemented. At the beginning, during the parliamentary elections held in 2009 – 2010, all campaign financing reports submitted by electoral competitors and published

by CEC on its website contained detailed data on donors' identity, including personal ID, birth year, residence, workplace, and the amount<sup>12</sup>. However, certain journalistic investigations have revealed that some financial declarations contained donors with limited contribution capacity who, nevertheless, poured lavish amounts to the election fund of electoral contestants<sup>13</sup>. As a result of these scandals that shed light on the legal shortcomings and practices regarding the registering and disclosure of electoral contributions, the political parties struck back by restricting access to the donors' identity data, referring to the protection of personal data. Thus, all the information on donors' identity, except for the name and transferred amount, was retroactively erased from the financial statements of electoral contestants. Furthermore, despite the 2015 amendments aimed at enhancing transparency obligations, the financial reports submitted for the 2015 local elections and the 2016 presidential contest, demonstrate the inconsistency in the implementation of transparency obligations to publish the donors' identity.

Hence, while the financial reports submitted in local elections indicate some information on donors' identity such as the workplace, the financial declarations pertaining to presidential campaign do not provide any identity data, except for the donor's name and amount, which makes it impossible for the verification of campaign finances by the general public. Against this background, one remarks the lack of uniform practice of enforcing transparency obligations of electoral competitors, mostly regarding the disclosure of donors' identity.

The change of the electoral system increases the probability of hampering transparency either because of the non-compliance with current provisions, or other regulatory loopholes. For instance, the obli-

<sup>9</sup> Article 38 of the Electoral Code obliges electoral competitors to submit to the electoral bodies every two weeks financial reports containing information on campaign revenues and expenditures as well as to publish in the media information on the income and other material resources one month after the start of the campaign.

<sup>10</sup> OSCE/ODIHR, „Republic of Moldova: Parliamentary Elections 6 March 2005” (Warsaw: OSCE/Office for Democratic Institutions and Human Rights, 3 June, 2005), 6; OSCE/ODIHR, „Republic of Moldova: Early Parliamentary Elections 28 November 2010”, 12-13; OSCE/ODIHR, „Republic of Moldova: Parliamentary Elections 30 November 2014” (Warsaw: OSCE/Office for Democratic Institutions and Human Rights, 10 March, 2015), 12-13.

<sup>11</sup> OSCE/ODIHR, „Republic of Moldova: Early Parliamentary Elections 28 November 2010”, 12-13; OSCE/ODIHR, „Republic of Moldova: Parliamentary Elections 30 November 2014”, 12-13; GRECO, „Evaluation Report on Moldova Transparency of Party Funding (Theme II)” (Strasbourg: Council of Europe, April 2011).

<sup>12</sup> Decision No. 2167 from 20.02.2009 on the approval of the Regulation on the Financing of Electoral Campaigns and Political Parties. Published: 03.03.2009 in the Official Monitor no. 47-48, art. No.174.

<sup>13</sup> Timpul, „Who Financed the Two Election Campaigns of the Communists?”, Timpul - Știri Din Moldova, December 22, 2009, <http://www.timpul.md/articol/cine-a-finatat-cele-doua-campanii-electorale-ale-comunistilor-5519.html>; Ziarul de Gardă, „The Black Moldovan Politics,” Ziarul de Gardă, April 11, 2010, <http://www.zgd.md/politic/politica-neagra-din-moldova>; Europa Libera, „Campaign Funding - Provident Pensioners, Lavish Unemployed,” Radio Europa Libera, October 28, 2010, <https://www.europalibera.org/a/2204300.html>.



gation to make donations exclusively by wire transfers provided for by EC, refers only to legal entities, which offers more possibilities to conceal the origin of the financial means received from individuals. It is no wonder why political parties prefer to mostly register donations from individuals, while their financial reports contain only few corporate donations. Moreover, the court battle recently won by some political parties, by removing the cap on cash donations for party statutory activity<sup>14</sup>, confirms the reluctance of political actors to become more transparent in relation to their money raising activities. In this context, the recent accusations of PDM by PAS on accepting cash donations above the established threshold, as well as the allegations regarding the collusion of certain state bodies in committing such violations, suggest that the struggle over transparency of private funds is not finished yet<sup>15</sup>.

Additionally, the electoral legislation is not entirely clear in relation to another provision that could generate additional problems under a mixed electoral system. The controversial provision touches upon the financial transfers made from the party budget to the campaign budget, i.e. to election fund. Although this loophole has not been systematically exploited by the electoral competitors, there have been at least several cases in which some parties have used this tool to transfer funds from the party account to the electoral fund, without indicating their primary source, that is, the identity of donors who contributed to party coffers outside the electoral period. Considering that until 2015 the political parties did not publish the donors' annual register, this loophole effectively allowed for the concealing of the origin of a considerable amount of financial resources. Only as a result of the July 2017 amendments this gap seems to have been eliminated by requiring the publication

of the primary donors' identity when the party transfers its own resources to the electoral fund (Article 38<sup>2</sup>/6<sup>1</sup>). At the same time, it is not clear whether this clause will apply only to the national list or will also cover SMD candidates.

## 4.2 Reporting and disclosure of campaign spending

Reporting and transparency of campaign spending is, at least, as sensitive as transparency of political contributions. Since the beginning of reporting during the 2009 legislative elections, political parties have systematically eluded to report all campaign expenses. The previous analyses of campaign financing have underlined the unwillingness of electoral competitors to provide complete data on campaign outlays, by not reporting altogether or underreporting on certain spending categories, especially those related to personnel costs, transportation, event organization or political consulting costs<sup>16</sup>. Besides the reluctance of electoral competitors to fully report on their campaign spending, this behaviour was also induced by the lack of clear provisions regarding the definition of electoral expenses. Except for the explicit ban to provide money, gifts and other goods for free to voters, as well as the prohibition to spend any money avoiding election fund and without the consent of the electoral competitors (Art.38 para. (6) (7)), the legal framework did not contain any provisions on the spending categories or items to be reported in the competitors' financial statements, as it was remarked by the OSCE election observation missions<sup>17</sup>. Only in 2012 CEC developed a reporting model including a range of different spending categories,

<sup>14</sup> Resolution of the Supreme Court of Justice from 6 September 2017 (case no.3ra-856/17); Decision no. 1100 from 12.09.2017 on the amendment of the Regulation on the Financing of the Activity of Political Parties, approved by the decision of the Central Electoral Commission No. 4401 from 23.12. 2015.

<sup>15</sup> Unimedia, „(video) PAS acuză PDM de obținerea a 2458 de donații cu încălcări. Maia Sandu: PDM ar trebui să transfere statului 25,9 milioane de lei”, PAS accuses PDM of obtaining 2,458 donations through violations. Maia Sandu: PDM should transfer 25.9 million lei to the state, Unimedia, 11 April 2017, <http://unimedia.info/stiri/video-pas-acuza-pdm-de-obtinerea-a-2458-de-donatii-cu-incalcari-maia-sandu-pdm-ar-trebuie-sa-transfere-statului-25-9-milioane-de-lei-131315.html>; Unimedia, „(video) PAS acuză CEC-ul că încearcă să protejeze Partidul Democrat. Maia Sandu: PD trebuie să transfere 29 de milioane de lei la bugetul de stat”, PAS accuses CEC of trying to protect the Democratic Party. Maia Sandu: PD should transfer 29 million lei to the state budget, Unimedia, June 2017, <http://unimedia.info/stiri/video-pas-acuza-cec-ul-ca-incearca-sa-protejeze-partidul-democrat-maia-sandu-pd-trebuie-sa-transfere-29-de-milioane-de-lei-la-bugetul-de-stat-134363.html>; Agora, „PD a obținut prin judecată... schimbarea normelor” PAS: CSJ a emis o decizie în favoarea democraților/ PD obtained through court ... the changing rules” PAS: SCJ issued a decision to favour the democrats, Agora, 7 September 2017, <http://agora.md/stiri/36815/pd-a-obtinut-prin-judecata-schimbarea-normelor-pas-csj-a-emis-o-decizie-in-favoarea-democratilor>; Unimedia, „PAS a prezentat o presupusă schemă prin care se finanțează Partidul Democrat: «PD ar trebui să verse în bugetul de stat circa 47 milioane de lei»”, PAS presented an alleged scheme through which the Democratic Party is financed: „PD should pay about 47 million lei to the state budget”, Unimedia, 2 October 2017, <http://unimedia.info/stiri/foto-video-pas-a-prezentat-o-presupusa-schema-prin-care-se-financeaza-partidul-democrat-pd-ar-trebuie-sa-verse-in-bugetul-de-stat-circa-47-milioane-de-lei-140319.html>.

<sup>16</sup> Lipcean, „Evaluarea finanțării partidelor politice și campaniilor electorale în Republica Moldova”, „Evaluation of the funding of political parties and electoral campaigns in the Republic of Moldova”, „Costurile neoficiale de campanie ale partidelor politice importante în alegerile din 28 noiembrie 2010”, „Unofficial campaign costs of major political parties in the elections from November 28, 2010”, in *Finanțarea partidelor politice: între transparență și obscuritate/ Funding political parties: between transparency and obscurity*, vol. 8, Public Policies (Chișinău: IDIS „Viitorul”, 2010), 33-40; „Costurile neoficiale de campanie ale partidelor politice importante în alegerile locale generale din 5, 19 iunie 2011”, „Unofficial campaign costs of major political parties in the general local elections from 5, 19 June 2011”, in *Finanțarea partidelor politice în alegerile locale din 2011: o mostră a relațiilor medievale/ Funding of political parties in the 2011 local elections: a sample of medieval relations*, vol. 6, Public Policies (Chișinău: IDIS „Viitorul”, 2011), 24-35; „Consultanții politici și remunerarea lor în Republica Moldova”, „Political consultants and their remuneration in the Republic of Moldova”, in *Finanțarea partidelor politice: între transparență și obscuritate/ Funding political parties: between transparency and obscurity* vol. 8, Public Policies (Chișinău: IDIS „Viitorul”, 2010), 41-44; Promo-Lex, „Finanțele concurenților electorali în cadrul campaniei electorale pentru alegerile parlamentare 2014”, „Financing of electoral contestants in the electoral campaign for the 2014 parliamentary elections”; Promo-Lex, „Misiunea de observare a alegerilor pentru funcția de Președinte al Republicii Moldova din 30 octombrie 2016”, „Election Observaton Mission of the presidential elections of the Republic of Moldova from October 30, 2016”.

<sup>17</sup> OSCE/ODIHR, „Republic of Moldova: Early Parliamentary Elections 28 November 2010”, 12-13; OSCE/ODIHR, „Republic of Moldova: Parliamentary Elections 30 November 2014”, 12-13.

requiring electoral competitors to report their expenses using a standardized form<sup>18</sup>. Additionally, in 2015 the EC was completed with an additional article containing the list of mandatory spending items to be indicated in party financial statements (Art. 38<sup>2</sup>). At a first glance, these amendments seem to have increased the parties' compliance with reporting requirements of electoral expenses, which is partly confirmed by their financial declarations for the last elections which incorporate data on some spending categories missing from previous declarations. Still, it is difficult to estimate the accuracy of reporting and their share in the campaign budgets, at least, as reflected by the increasing costs of elections and more permissive spending caps.

Nevertheless, despite some legislative improvements on transparency and a better compliance of electoral competitors with legal requirements, the electoral system change will negatively affect the archived progress. The switching to a mixed electoral system is more likely to aggravate the existing issue of underreporting since the current financing model of parliamentary elections will be substituted, at least partially, with another one applied in local elections as result of SMD introduction. At the same time, the evaluation of local elections suggests that the reporting of campaign spending is more deficient, given the unwillingness of many candidates to open an electoral bank account, benefiting from the non-obligation to do so provided that they inform the respective electoral bodies about this decision<sup>19</sup>. The last 2015 local elections are telling in this respect since most district councils have not performed any checks on the financial reports submitted by the independent candidates and have not imposed any sanctions on those who did not comply with the rules<sup>20</sup>.

Even if one admits that during parliamentary elections the probability of avoiding financial reporting

is lower due to higher electoral stakes and a larger turnover of financial resources to be deployed by contestants, the transparency of the campaign funding could be affected for another reason. This relates to the complexity of financial reporting and the way it will be performed by party lists and SMD candidates. While the EC is not very explicit in this respect, it stipulates that CEC is the institution in charge with the receiving of financial declarations of both types of electoral subjects. Therefore, the report structure becomes crucial but for the time being it is not clear how the election expenses reported by SMD candidates and nationwide lists, when they represent the same electoral subject, will be aggregated. For instance, the aggregation of all campaign expenses in a single financial report is the least transparent solution because it will not allow to disentangle the costs borne by SMD candidates in their electoral districts. If one uses the CEC methodology for determining the spending caps for SMD it becomes clear that there will be different spending caps for SMD contingent on the number of registered voters. Accordingly, for more transparency, reporting of campaign expenses for each SMD should be reflected separately, at least in an aggregate form at the constituency level. Besides, the transparency of the campaign spending could also be negatively affected by the EC provision according to which a party candidate included in the nationwide list may also compete for office in a SMD (Article 79/6). In such cases, it is not clear how the campaign expenses will be accounted for. As it stands now, it appears that an electoral competitor could spend twice for the same candidate which obviously undermines the fairness of the electoral process. Likewise, it is not clear how and by whom these expenses will be reported. Under these circumstances, transparency of campaign spending under a mixed electoral design remains a vulnerable aspect of the electoral process and raises new challenges, particularly in the light of the enforcement mechanism of their campaign financing.

<sup>18</sup> Decision No 1524 din 27.11.2012 on the amendment of the Annex to the Regulation on the Financing of Electoral Campaigns and Political Parties. Published: 21.12.2012 in the Official Monitor No. 263-269, art. №. 1588.

<sup>19</sup> OSCE/ODIHR, „Republic of Moldova: Local Elections 3 & 17 June 2007” (Warsaw: OSCE/Office for Democratic Institutions and Human Rights, 21 September 2007), 11; OSCE/ODIHR, „Republic of Moldova: Local Elections 5 and 19 June 2011” (Warsaw: OSCE/Office for Democratic Institutions and Human Rights, 28 November 2011), 11-12; OSCE/ODIHR, „Republic of Moldova: Local Elections 14 and 28 June 2015” (Warsaw: OSCE/Office for Democratic Institutions and Human Rights, 20 august 2015), 13-14; Promo-Lex, „Monitorizarea Alegerilor Locale Generale din 14 (28) iunie 2015” (Chişinău: Promo-Lex, 17 septembrie 2015), 30/ „Monitoring of General Local Elections from June 14, 2015 „(Chişinău: Promo-Lex, September 17, 2015), 30”.

<sup>20</sup> OSCE/ODIHR, „Republic of Moldova: Local Elections 14 and 28 June 2015”, 14.

## 5. Control of campaign financing

To ensure an efficient control of party and campaign funding, at least two conditions need to be met: the presence of an independent institution endowed with sufficient monitoring/supervisory powers and the existence of a proportionate and deterrent gamut of sanctions matching the gravity of financing related offenses. Both conditions must be simultaneously present for the control mechanism to properly function. The presence of an independent agency but with limited powers and/or the lack of sanctions considerably weakens the control mechanism, if not destroys it completely. On the contrary, the availability of dissuasive sanctions without a supervisory body entitled to apply them, obstructs alike the control of campaign funding. Applying this formula to the Moldova's campaign regulations, one may definitely claim that none of these conditions were fully met until the recent amendments to the LPP and the EC (Official Gazette No 93, Art.134, 14.04.2015), passed under the pressure of international organizations<sup>21</sup>.

### 5.1 *Monitoring/ supervision of the election financing*

Two fundamental requirements need to be met to provide for an effective oversight mechanism: political independence of the supervisory body and a sufficient legal mandate to carry out its duties, especially in relation to such a sensitive issue as election financing. Even if CEC can be regarded as more independent relative to other controlling bodies placed under the direct executive control, the political autonomy of the electoral body still remains a contentious issue. Between 1997 and 2005 the nomination of the CEC's members was split between Executive, Legislative and the Superior Council of Magistracy, each of them being entitled to nominate one third of the CEC's composition which hinged on the political configuration and did not provide a secure guarantee against political partisanship as it happened with

its composition elected in 2003 when six out of nine members were nominated by a single political party<sup>22</sup>. At the same time, political partisanship of CEC was not so much a threat for the campaign financing of the opposition due to the lack of clear transparency regulations and the overwhelming advantage over access to resources, including administrative ones, of the ruling party. In 2005, the nomination of the CEC membership was altered, contributing to its further politicization, although this time the opposition obtained the right to appoint most of the CEC members as a result of a political bargain with the ruling party in exchange for the opposition's vote for the president (Official Gazette №. 107-109, art: №. 535, 12.08.05)<sup>23</sup>. In 2010, the nomination formula was amended again by increasing the share of CEC members appointed by Parliament. The opposition, however, was deprived of the right to nominate the majority of the CEC members. Yet throughout these reshufflings, the supervisory powers of the electoral body regarding campaign financing remained unchanged (Official Gazette No 108-109, art: №. 332, 29.06.2010)<sup>24</sup>. Only in 2015 the Article 22 of the EC was amended by significantly expanding the CEC supervisory powers, including its capacity to apply more sanctions (Official Gazette No 93, Art.134, 14.04.2015). Among the new explicitly conferred powers, special attention should be devoted to the CEC right to request relevant information from other state bodies, to record financial contraventions and to draw up protocols for misreporting or non-reporting in due time, as well as the direct enforcement of harsher sanctions (Article 22/2).

Against this background, it should be noted that the supervisory activity of CEC in overseeing campaign financing during the last parliamentary elections cannot be qualified as politically unbiased in the light of disproportionate sanctions imposed on some electoral contestants without CEC representation. This cast doubts on its decision-making autonomy and impartiality regarding the enforcement of campaign funding offences<sup>25</sup>. Furthermore, although the CEC oversight powers have been extended, the in-

<sup>21</sup> GRECO, „Evaluation Report on Moldova Transparency of Party Funding (Theme II)”; GRECO, „Compliance Report on the Republic of Moldova „Incriminations (ETS 173 and 191, GPC 2)” „Transparency of Party Funding” (Strasbourg: Council of Europe, March 2013); GRECO, „Second Compliance Report on the Republic of Moldova “Incriminations (ETS 173 and 191, PDC 2)” „Transparency of Party Funding” (Strasbourg: Council of Europe, March 2015).

<sup>22</sup> OSCE/ODIHR, „Republic of Moldova: Parliamentary Elections 6 March 2005”, 6-7.

<sup>23</sup> CEC's opposition has obtained the right to appoint 5 out of 9 members of CEC.

<sup>24</sup> According to the amendment, 8 members of CEC were designated by the Parliament in accordance with the principle of proportionality of the parliamentary majority and the opposition..

<sup>25</sup> Details about the nature of sanctions and their application by CECs are discussed in the next section.

stitution is still dependent on the collaboration and coordination of its actions with other state bodies such as the General Police Inspectorate (Ministry of Interior) and Tax Inspectorate. None of these bodies fulfil the political independence requirement given their executive affiliation and subordination which could negatively affect the CEC ability to adopt unbiased decisions.

Under a mixed electoral system, there is an increased probability that the control over campaign financing will be weakened by the multiplication of electoral competitors and, as a consequence, by the increased workload the electoral body will be exposed to. Albeit at this point it is difficult to predict how much this workload will increase, one fact is certain – the pressure on CEC will be considerable. Taking as starting point the last parliamentary elections, in which over 20 political parties were registered as electoral contestants, and extrapolating this situation upon a mixed electoral system in which the political parties will also file their candidates in SMD, it is obvious that the campaign funding oversight will become a major challenge for the electoral body. Considering that CEC will have to review the structure of the campaign funding report, so as to incorporate the revenues and expenditures of SMD candidates, the mere examination of the candidates' compliance with the formal reporting rules alone will be a substantial burden, let alone a more substantive control that would require much more resources.

Accordingly, the effectiveness of the financial control is somewhat dependent not only on the availability of supervisory powers already bestowed upon the electoral body, but also on the capacity and available resources to perform this function in a pro-active manner<sup>26</sup>. The lack of sufficient resources to ensure an effective control remains a pressing issue and is reflected by the current operational style of CEC. As it stands now, the electoral body only examines the mutual complaints of electoral competitors and checks electoral subjects' compliance with the formal aspects of reporting even after it was provided with extended powers<sup>27</sup>. Hence, if until now CEC has adopted a cautious strategy, refraining from the *ex officio* investigation of financial offences, justifying its actions with the lack of a clear legal mandate, as well as trying to avoid accusations of preferential or discriminatory treatment of certain electoral competitors, employing the same strategy after being

entitled with extended powers will rather contribute to the persistence of a deficient control. If nothing changes, the control of campaign financing under a mixed electoral design will rather multiply and aggravate existing problems of a poor oversight, thereby contributing to the worsening of election financing control. The reification of this threat is even more indicative considering the range of available sanctions, as well as their actual enforcement during the last election campaigns.

## 5.2 Sanctions related to financing offences

The lack of an effective control over election financing was largely due to the lack of proportional and deterrent sanctions for campaign funding breaches. From 1997 to 2008, the entire arsenal of sanctions was limited to cancelling the electoral contestant's registration for spending undeclared or foreign funds, followed by the forfeiture of illegally acquired means, thus depicting an extremely rigid system of penalties with a low probability to eventually apply the harshest sanction. In 2008, CEC was explicitly entitled to warn the election contestants of discovered offences, as well as to request the cancellation of their registration on grounds related to campaign funding (Official Gazette, №. 83, art 283, 07.05.2008). This offered the electoral body more flexibility but also the possibility to apply disproportionately mild penalties for financial wrongdoings. It should be noted however that, at the time, some financing violations like the exceeding of donation and spending caps or non-reporting on campaign funds were not defined by the EC, while the fines provided by the secondary legislation such as the Contravention Code were so insignificant that they could barely discourage electoral competitors from unlawful behaviour. Under such circumstances, it is no wonder why the GRECO evaluation report highlighted *"that no sanctions (apart from warnings) have been imposed on parties or election candidates"*<sup>28</sup>. In 2010, the range of violations for which the cancellation of the electoral contestant's registration could be applied was extended (Official Gazette No 108-109, art: №. 332, 20.06.2010). As a result, the exceeding of campaign spending cap by more than 5% would have entailed the exclusion of competitors from electoral race.

<sup>26</sup> GRECO, „Addendum to the Second Compliance Report on the Republic of Moldova: „Incriminations (ETS 173 and 191, GPC 2)“ „Transparency of Party Funding“” (Strasbourg: Council of Europe, December 2015), 7.

<sup>27</sup> OSCE/ODIHR, „Republic of Moldova: Local Elections 14 and 28 June 2015“, 13-14; OSCE/ODIHR, „Republic of Moldova: Presidential Election October and 13 November 2016“ (Warsaw: OSCE/Office for Democratic Institutions and Human Rights, 15 February 2017), 17-18.

<sup>28</sup> GRECO, „Evaluation Report on Moldova Transparency of Party Funding (Theme II)“, 17.



Yet, the likelihood to apply this sanction for the 2010 parliamentary contest was virtually ruled out given the lack of any regulations that would define the spending categories to be reported in a mandatory way by electoral subjects in their campaign funding statements. Moreover, the probability of excluding someone from electoral race for overspending during the 2014, 2015 and 2016 parliamentary, local and presidential elections was drastically reduced due to extremely high spending caps, although the 5% threshold was removed in 2015.

Despite the diversifying and tightening of the party and campaign funding related sanctions in 2015 (Official Gazette №. 93, Art.134, 14.04.2015), as well as their recent adaptation to the mixed electoral system (Official Gazette №. 253- 264, art: №. 422, 21.07.2017), the arsenal of sanctions remains relatively limited and still disproportionate. While the EC amendments introduced a new sanction – the withdrawal of public funding – it is an asymmetric one since it can only be used against electoral competitors benefiting from state subsidies. For instance, it is not clear what happens if CEC repeatedly warns two electoral contestants during the same campaign, of which only one benefits from budgetary subventions (Article 69/3<sup>1</sup>). Likewise, the withdrawal of public funding is not expressly targeted at financial offences such as the use of unreported and foreign funds or the exceeding of spending caps, offences for which electoral body can request the immediate cancelling of the candidate's registration (Article 69/4). This ambiguity generates

uncertainty over the uniform enforcement of regulations towards all electoral competitors. Besides LPP and EC, the extension and harshening of sanctions has been accomplished through the amendments of Contravention and Criminal Codes in 2015. It implies, however, that political parties have essentially transferred or substituted collective accountability with the individual one since financial offenses and their corresponding sanctions in both codes are being applied to individuals, either as physical persons or as officials. At the same time, the level of established fines for campaign funding breaches does not appear to be prohibitive despite their recent adjustments as result of the increase in the conventional unit's value from MDL 20 to MDL 50 (Official Gazette No 369-378, Art.751, 28.10.2016). The table 3 displays the current value of sanctions corresponding to the campaign financing violations as defined by the Contravention Code.

As showed in the table above, the maximum value of a fine represents 25 thousand MDL, which at a first glance appears to be impressive. However, if this fine is compared to donation caps from physical and legal entities, the value of the maximum fine is 10-fold and 20-fold lower which cannot be regarded as a proportionate and dissuasive sanction against eventual offences. Even if the administrative fines are complemented with criminal sanctions which, indeed, are much tougher in the sense that criminal sanctions also envisage imprisonment, these sanctions are applied to individuals, exempting the

**TABLE 3.** *Sanctions for the electoral campaign infringements provided by the Contravention Code*

Type of contravention	Physical entities		Officials	
	Minimum fine	Maximum fine	Minimum fine	Maximum fine
Unreported and/or foreign funds	2500	7500	15000	25000
Failure to present the financial reports in due time and in the established format *			5000	7500
Proper recording of election funds/ failure to disclose the donors' identity data			5000	15000
Use of administrative resources			7500	20000
Failure to execute the CEC directive on paying to the state budget of illegally acquired funds or above spending limits			15000	25000

**Source:** Contravention Code Art. 48<sup>1</sup> – 48<sup>2</sup>.

\* *Note:* For failure to submit campaign funding reports in due time or in the established format, the responsibility is borne by the electoral subject.

electoral competitors from being punished for committing campaign funding related criminal offenses. Moreover, the harshest sanctions provided by the Criminal Code dealing with vote buying or the use of administrative resources are the most problematic to enforce given their blurry formulation, that is, they do not cover or clearly define a series of actions falling under the label of voters' corruption or the use of administrative resources<sup>29</sup>. Therefore, except for the forfeiture of illegally acquired funds, the loss of the budgetary subsidies (which cannot be applied to all electoral competitors), and the cancelling of candidate's registration, the legal framework does not foresee a proportionate and deterrent gamut of sanctions specifically imposed on political parties as electoral contestants. This represents an obvious shortcoming of the control mechanism. At the same time, it should be noted that the current system of pecuniary fines was not tested yet since it took effect only after the presidential election in 2016. It remains to be seen whether the updated sanctions are sufficient to ensure an effective financing control through their unbiased enforcement on all candidates in the next parliamentary election, most likely held under more complex electoral rules. Yet, considering the experience of recent electoral contests, transparency and enforcement of the campaign funding remains a vulnerable aspect of the electoral process<sup>30</sup>.

In spite of many campaign funding violations, particularly the failure to report campaign expenses (an offence that would entail the exclusion from electoral race), as unveiled by various monitoring reports<sup>31</sup>, CEC applied the maximum sanction by demanding the cancelling of candidate's registration only in two cases. In the first case, CEC requested the exclusion from electoral race of the "Patria" Party, led by Renato Usatii, for the campaign use of foreign funds based on a complaint lodged by the General Police Inspectorate just few days before elections<sup>32</sup>. The CEC request was upheld by the Court of Appeal and Supreme Court decisions whereby "Patria" was eliminated from the electoral race. In the second case,

CEC requested cancelling the registration of Inna Popenco – a presidential candidate – for the campaign use of unreported funds relying on a similar complaint lodged by Silvia Radu – another presidential candidate<sup>33</sup>. Likewise, the CEC request was endorsed by both courts in a record time.

Although in both cases the outcome was the exclusion of candidates from the electoral race, the way sanctions were applied hints at the selective and disproportionate nature of the oversight mechanism. While in the case of "Patria" there were few alternatives to choose from given the limited range of sanctions, in the case of Inna Popenco the legal framework was already amended but, as it turned out, the cancelling was the only available sanction to be used for the non-reporting of campaign spending. In all other cases, however, the electoral body applied just warnings for all sorts of infringements, regardless of their severity. The discretionary and selective nature of the control mechanism is particularly underscored by the case of "Patria" because, despite the reasonable doubts and evidence to exclude it from the electoral race due to campaign use of foreign funds, the question boils down to why the General Police Inspectorate reacted only in this case, by deploying a lot of institutional resources to collect evidence and mount a case namely against this electoral subject? Why has not it undertaken corresponding actions in other cases in which the origin of financial resources raised similar doubts, while the payment capacity of many donors who contributed to campaign coffers of other contestants or the origin of campaign funds was, at least, as questionable as the origin of "Patria" funds? Beside the electoral subjects' financial declarations which provided a good starting point for the investigative bodies to initiate proceedings, as it occurred with "Patria", the journalistic investigations exposed, at least, several cases worth to look at for investigating the financial sources of other electoral competitors<sup>34</sup>.

Under the mixed electoral system, in which the range of sanctions for campaign funding infringe-

<sup>29</sup> Promo-Lex, „Calificarea și investigarea infracțiunilor și contravențiilor cu specific electoral și de finanțare politică”/ „Qualifying and investigating of offenses and crimes related to the electoral and political funding” (Chișinău: Promo-Lex, 2017), 87-89.

<sup>30</sup> OSCE/ODIHR, „Republic of Moldova: Parliamentary Elections 30 November 2014”, 12-14; OSCE/ODIHR, „Republic of Moldova: Local Elections 14 and 28 June 2015”, 13-15; OSCE/ODIHR, „Republic of Moldova: Presidential Election October and 13 November 2016”, 16-18.

<sup>31</sup> Promo-Lex, „Finanțele concurenților electorali în cadrul campaniei electorale pentru alegerile parlamentare 2014”/ „Finance of Electoral Competitors in the Election Campaign for the 2014 Parliamentary Elections”, 12-20; Promo-Lex, „Monitorizarea Alegerilor Locale Generale din 14 (28) iunie 2015”/ „Monitoring of General Local Elections from 14 (28) June 2015”, 32-36; Promo-Lex, „Misiunea de observare a alegerilor pentru funcția de Președinte al Republicii Moldova din 30 octombrie 2016”/ „Election Observation Mission for the presidential elections of the Republic of Moldova from October 30, 2016”, 49-57.

<sup>32</sup> Decision No 3069 of 26 November 2014 on the Central Electoral Commission's referral by the General Police Inspectorate, registered under No. CEC-7/10006; Decision No. 3070 of November 26, 2014 on the granting of consent for the legal liability of the candidates of the electoral contestant "Patria" Political Party."

<sup>33</sup> Decision No. 435 of 20 October 2014 on complaint no. CEC-10/27 of 19 October 2016 filed by the presidential candidate Ms Silvia Radu.

<sup>34</sup> Rise Moldova, „Banii lui Dodon din Bahamas”/ „Dodon's money from Bahamas”, Rise Moldova, <https://www.rise.md/articol/banii-lui-dodon-din-bahamas/>; Timpul, „Dodon și justiția selectivă. Campania PSRM este finanțată din bani rușești prin Bahamas”/ „Dodon and selective justice. The PSRM campaign is funded from Russian money through Bahamas”, Timpul - Știri din Moldova, <http://www.timpul.md/articol/dodon-i-justitia-selectiva-campania-psrm-este-finanata-din-bani-ruse-ti-prin-bahamas-99105.html>; Anticoruptie.md, „Banii, afacerile și interesele lui Igor Dodon și alianțele «cruciale» PD-PSRM”/ „Money and Dodon's businesses and interests and the «crucial» PD-PSRM alliances”, <https://anticoruptie.md/ro/electorala-2016/banii-afacerile-si-interesele-lui-igor-dodon-si-aliantele-cruciale-pd-psrm>.

ments remains disproportionate towards the gravity of different infringement types, it would be extremely problematic to establish a functional and unbiased controlling mechanism. Even though CEC is an independent statutory body, its decision-making process might be affected by the actions and information provided by other institutions that are under direct political control.

Therefore, the establishment of a non-partisan controlling mechanism would be affected by additional hindrances. Furthermore, the latent political influences over the supervisory body would increase the risk of using arbitrary criteria to enforce the application of sanctions which, in turn, might considerably undermine the integrity of electoral process.

## 6. Conclusions and Recommendations

This brief analysis highlights the fact that despite the recent amendments to the party and campaign funding rules, the regulatory framework remains either too permissive regarding the key provisions or contains other evident loopholes that can still be exploited by political parties and electoral competitors. The replacement of proportional representation with the mixed electoral design will further complicate the implementation of election funding rules due to the increase in the electoral competitors' number. Moreover, the split of control powers between several bodies will make it more difficult to enforce campaign funding regulations in a uniform and unbiased way. Although the current political establishment has enacted several amendments aimed at adjusting the financing rules to the new electoral system, the hurry whereby they have been drafted and passed through legislature shows that most of the key aspects of campaign financing did not receive satisfactory solutions to diminish the disproportionate influence of money on electoral competition.

Contrary to the joint opinion of the Venice Commission and OSCE which underlined the vulnerability of SMD candidates towards vested interests, the current provisions on donation caps do not eliminate the risk of collusion between candidates and their sponsors. Even though donation caps have been diminished, they still allow for the raising of large amounts from a narrow circle of potential sponsors which facilitates the creation of such collusive agreements, thus by favouring more affluent candidates. *Therefore, it is necessary to revise the donation caps from physical and legal entities for SMD candidates.* A common practice in this respect is the application of differentiated donation limits for nationwide lists and SMD candidates to ensure, on the one hand, the

amassing of necessary resources, and to prevent, on the other hand, the excessive reliance on a too narrow group of potential donors. In this context, the determining of donation cap at a certain level should be considered together with the aggregate cap on election expenses which represents another sensitive issue of the electoral process.

Contingent on its permissiveness, the caps on election expenses can distort in different ways electoral competition. In the Republic of Moldova, one could notice an evolution from very restrictive to very permissive campaign spending caps. While in the first case, the richer electoral competitors were constrained, at least legally, thus being unable to fully capitalize on their advantage, in the second case, one attests an opposite situation in which the availability of financial resources and their campaign deployment through various channels can decisively affect the electoral performance. In the context of electoral system change, there is a risk of increasing campaign expenses. The introduction of SMD will contribute to the overlapping of campaign expenses due to spending carried by both types of electoral competitors i.e. the nationwide lists and SMD candidates. This could further benefit the electoral contestants with access to resources, who will be able to fully capitalize on the permissiveness of regulations, thus distorting even more electoral competition. As it stands now, it is difficult to anticipate a certain scenario but if CEC doesn't review the methodology regarding the establishing of aggregate spending limits, the increase in the election expenses is the most realistic one given the doubling of election spending for one vote. *Accordingly, to keep the campaign spending under control, it is necessary to revise the methodology according to*

*which campaign spending caps are determined, by lowering the wage coefficient which is currently used to calculate the campaign spending per vote.*

The last parliamentary elections have proved that transparency remains a weak point. Despite the recent amendments aimed at enhancing transparency obligations of electoral contestants, the key provisions regarding the disclosure of donors' identity are not enforced. As a consequence, the public has limited knowledge about who are the real financial backers of parties and candidates and cannot check either the veracity of donors' identity or the origin of financial means. The campaign funding statements from the last electoral contests clearly demonstrate inconsistency in enforcing disclosure rules pertaining to the donors' identity data which, ultimately, affects the credibility and reliability of financial reports. The asymmetric application of personal data protection rules at the expense of the right to information, in order to conceal the donors' identity, represents a disproportionate approach that negatively affects transparency. The provision of state subsidies to political parties represents another strong argument to shed more light on the party and campaign finances by publishing the identity of donors. *Therefore, the electoral body has to ensure a minimum level of transparency by publishing, at least, some donors' identity data such as the workplace, while protecting more sensitive personal data.*

Campaign financing control represents clearly one of the weakest links of the electoral process. This

weakness might be preserved for a longer time since the new electoral design will further diminish the institutional capacity to cope with this challenge. The continuous reliance of the electoral bodies on the backing and expertise of other state bodies which are not politically independent, undermines, from the outset, the non-partisanship of the controlling mechanism. In spite of the CEC's extended powers, its reactive approach to campaign funding breaches suggests that it has neither institutional capacity nor necessary resources to oversee candidates' abidance by the campaign regulations. Although under the current framework the removal of these drawbacks seems unlikely, *in order to ensure an effective and non-partisan control over election financing, CEC needs not only an extended legal mandate but, likewise, an enhanced institutional capacity and additional resources to accomplish its legally assigned tasks.*

Although the range of sanctions has been diversified, it is not proportionate and dissuasive enough to discourage the election funding infringements by electoral contestants. The adjustment of sanctions was done by extending the range of and increasing the value of fines imposed on physical entities and officials. However, with regard to the collective accountability of electoral subjects, the range and harshness of sanctions remains relatively limited and rigid. *Therefore, it is necessary to revise and clarify more precisely the match between the severity of the campaign funding infringements and their corresponding sanctions applied to political parties and candidates in their capacity as electoral subjects*<sup>35</sup>.

<sup>35</sup> For example, exceeding the ceilings on donations or spending, in addition to confiscating funds raised over the ceiling, could be sanctioned with fines proportionate to the overrun of the ceiling. Alternatively, these offenses could be penalized by reducing the budget subsidy in proportion to the volume of funds exceeding the ceiling. In the same context, it is necessary to increase the amount of fines for misreporting of financial means which at the moment is insignificant in relation to the ceilings on donations and expenditures.



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