

20 THE CONCEPT OF THE EUROPEAN POLITICAL PARTY

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Not much time has passed since political parties prevailed in democratic political systems, while their explicit constitutional recognition is even more recent. In the middle of the 20th century the public funding of political parties became accepted in western democracies; and although political parties and alliances emerged already in the first years of European integration,¹ their funding is rather a new phenomenon. The European Parliament and the Council adopted Regulation (EC) No. 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding only in the end of 2003, and within a short period of time, several new documents, legal sources and institutions ensued. Reforming the regulation was on the agenda for several years before the new regulation on party funding was finally adopted in 2014.

In this paper I intend to present the new regulation, focusing on selected aspects: the justification for funding and the definition of European political party; next, I shall give an overview and structured analysis of the constitutional issues of the definition of political parties and their funding by the European Union. Since political finances are considered to be basic elements of the fundamental principle of democracy, which is to be achieved on both the national and the supranational level, it is worth comparing the new regulation to the principles and standards established by the Council of Europe² on the regulation of political parties.

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1 S. Hix, *The Political System of the European Union*, 2nd edn., Palgrave, London 2005, pp. 186-187. T. Jansen, *Pan-European Political Parties*, Federal Trust for Education and Research, London 2001 [European Essay No. 14].

2 European constitutional standards are compiled according to established methodology in: *Guidelines on Political Party Regulation* by OSCE/ODIHR and Venice Commission. Venice 2010 [CDL-AD(2010)024].

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20.1 LEGAL SOURCES

20.1.1 *Rationale for Regulating Political Parties – a Theoretical Framework*

In the process of European integration, concerns regarding democracy deficit and legitimation were met through the promotion of different forms of popular representation within the framework of the institutions of the European Communities. Direct elections and national level campaigns for the election of the members of the European Parliament yielded practical experience regarding the cooperation of political parties³ of the member states belonging to the same political families; and the presumption was (and continues to be) that the evolution of European public opinion and awareness on European public issues will contribute to the development of European integration.⁴ The role of political parties in this development and in democratic processes in general was declared in Article 191 of the Treaty establishing the European Community: “Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.” The creation of a European political system was inconceivable without the effective contribution of political parties on the European level.

Members of the Common Assembly of the European Coal and Steel constituted the first transnational political party groupings in 1953, Christian Democrat, Socialist and Liberal. Soon

the political groups developed as the main aggregate organisational entities in the European Parliament. The groups were given financial support. Each group organised independent secretariats and was given office space within the European Parliament’s buildings in Strasbourg and later in Brussels. Debates in the parliament also began to be organised on the basis of official group positions instead of individual members’ statements. By the time the first European elections were held in 1979, the political groups dominated all aspects of the parliament’s work, from deciding who is elected to be the parliament’s president, to assigning committee positions, to organizing the agenda of the plenary.⁵

3 ‘Inter-state political parties’ are also recognized by the Council of Europe and the Venice Commission, stating that “[their co-operation] contributes to creating solid democratic party systems ... [therefore] political parties should be free to enjoy communication with others who share their ideals at the national and international level.” CDL-AD(2010)024, [82]-[83].

4 Jansen 2001, pp. 11-15, 26-28.

5 S. Hix, A.G. Noury and G. Roland, *Democratic Politics in the European Parliament*, Cambridge University Press, New York 2007, pp. 22-23.

As far as the democracy deficit⁶ of European integration is concerned, many thought that increasing the competences of, and directly electing the European Parliament would be a solution. The emergence of ‘European public opinion’ or ‘European demos’ was considered to be its necessary backdrop in society. In both aspects, political parties are meant to play a crucial role, both on the national as well as the European level. At this point, it is not necessary to elaborate in detail on the preconditions of a democratic political system or democracy itself, nor the various polity costs of such a system. Politics and policy making on the EU level can be considered as elements of a ‘European political system’, although the EU itself cannot be considered a state.⁷ I study the concept of the European political party in the framework of the EU funding of political parties, yet I think the impact of money and other forms of capital in modern politics as well as corruption, ‘policy capture’⁸ and other consequences of money-distorted democracy⁹ must be avoided on all levels of politics. In this paper I focus on the constitutional issues of establishing European political parties in EU institutions, however, the justifications for regulating political party funding are also connected to the concepts of democracy and the democratic political system of the EU.

The law of the European Union has to define political parties when it comes to regulate them as beneficiaries of funding. This can be achieved through defining them not only by their status as political and legal entities but also with reference to their public interest – i.e. financeable – functions. The legal framework is marked by the treaties of the European Union, with first references to the ‘political parties at European level’ in Article 191 TEC, later Article 10 Paragraph 4 TEU (“Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.”) and Article 224 TFEU (“The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, by means of regulations, shall lay down the regulations governing political parties at European level referred to in Article 10(4) of the Treaty on European Union and in particular the rules regarding their funding”). The Charter of Fundamental Rights of the European Union in Article 12 (*Freedom of assembly and of association*) Paragraph 2 declares that “Political parties at Union level contribute to expressing the political will of the citizens of the Union.”

Regulation (EC) No. 2004/2003 discussed below did not provide further explanation for why it is necessary to finance political parties on the EU level or what the advantages

6 Hix 2005, pp. 177-180.

7 S. Hix, ‘The EU as a new political system’, in: D. Caramani (Ed.), *Comparative Politics*, Oxford University Press, 2008, pp. 580-581.

8 OECD (2016), ‘Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture’, *OECD Public Governance Reviews*, OECD Publishing, Paris, DOI: <http://dx.doi.org/10.1787/9789264249455-en>.

9 J. Rowbottom, *Democracy Distorted. Wealth, Influence and Democratic Politics*, Cambridge University Press, 2010.

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of certain basic principles of funding (such as transparency, division of party funding on the national and EU level, etc.) would be. These are assumed to be in the public interest according to the preamble of the regulation. The preamble [recitals (3)-(6) and (33)] of the new regulation of 2014 goes into more detail, with a more explicit and coherent motivation, declaring that

- European *citizens* should be enabled to use those rights [Freedom of expression and information; assembly and association, Articles 11 and 12 of the Charter] in order to *participate fully in the democratic life of the Union*.
- Truly transnational European political parties and their affiliated European political foundations have *a key role to play in articulating the voices of citizens at European level by bridging the gap between politics at national level and at Union level*. European political parties ... *should be encouraged and assisted in their endeavour to provide a strong link between European civil society and the Union institutions, in particular the European Parliament*.
- Experience [acquired by the former Regulation] shows the need to improve the legal and financial framework for European political parties and their affiliated European political foundations so as to enable them *to become more visible and effective actors in the multi-level political system of the Union*.
- For reasons of transparency, and in order to strengthen the scrutiny and the democratic accountability of European political parties and European political foundations, information considered to be of substantial public interest, relating in particular to their statutes, membership, financial statements, donors and donations, contributions and grants received from the general budget of the European Union, decisions ... on registration, funding and sanctions. Establishing a regulatory framework to ensure that this information is publicly available is the most effective means of *promoting a level playing field and fair competition between political forces, and of upholding open, transparent and democratic legislative and electoral processes, thereby strengthening the trust of citizens and voters in European representative democracy and, more broadly, preventing corruption and abuses of power*. [Emphasis added.]

The concept of political party at Union level has its roots in the classical concept of political parties at the national level, referring on the one hand to the freedom of association of citizens and the role of parties in a democracy (contribution to political will formation and the formulation of public opinion) on the other. Empirically, EU political groupings behave in many respects like political parties. Nevertheless, the question is still open whether

the goal of improving the democratic credentials of the EU can be reached by financing European political parties or whether this aim could be achieved by supporting political parties on the national level.

I assume the message of the regulation is that when the problem (that is, democracy deficit) arises on the EU level, it must be solved on the level of, and by the EU. However, there is no evidence that functions of political parties that are effective on the national level will be effective on the EU level as well.¹⁰ Some phrases in the cited preamble point to existing phenomena (*the gap between politics at national level and at Union level; the multi-level political system of the Union*), while others much rather express certain expectations (*the voices of citizens at European level; European civil society; European representative democracy*) or goals. Can these expectations be achieved through strengthening (funding) political parties at the European level? Or should experience be grounds for pessimism?

European Parliament elections did not produce coherent transnational parties, which were capable of mobilising voters to campaign for and support particular European-wide policy platforms. Instead, the general pattern across Europe was that these elections were little more than ‘second-order national contests’, about national rather than European issues, and on the performance of national rather than European-wide parties.¹¹

I find that the level of regulation and our everyday experience with political systems are connected and analogous. In case we accept the expectations based on the analogous application of party functions in national political systems, reservations stemming from a constitutional approach to the national regulation of political parties will also apply to the level of the EU.

20.1.2 Regulations

Although the Maastricht Treaty had introduced the abovementioned Article 138a (later Article 191) into the TEC already in 1992, the European Parliament and the Council adopted Regulation (EC) No. 2004/2003 on the regulations governing political parties at

10 Not to mention detrimental functions and the critique of political parties, e.g. there are arguments “that parties should not be strong, as they would undermine the ability of voters to hold their elected representatives individually accountable.” For an overview of the role and functions of political parties in *legislative politics* and *electoral politics*, and the implications for the European Parliament see: Hix-Noury-Roland 2007, pp. 33-53; also R. Ladrech, ‘The European Union and Political Parties’, in: R.S. Katz and W. Crotty (Eds.), *Handbook of Party Politics*, Sage, London, 2006, pp. 492-498.

11 Hix-Noury-Roland 2007, p. 51. See also Hix 2005, pp. 192-196.

European level and the rules regarding their funding¹² only a decade later, in the end of 2003.¹³ In 2007, amendments introduced *inter alia* rules governing the political foundations of political parties.¹⁴ Given the fact that this Regulation did not provide for sufficient procedural rules, the Bureau of the European Parliament issued a decision implementing the Regulation in 2004¹⁵ (amended several times since then).

Based on the experience gained from the application of the 2003 regulation, the EP and the Council adopted a Regulation on the statute and funding of European political parties and European political foundations in the new term of the EP [hereinafter: the 2014 Regulation] “to improve the legal and financial framework for European political parties and their affiliated European political foundations so as to enable them to become more visible and effective actors in the multi-level political system of the Union.”¹⁶ This new Regulation may be considered a substantial step in the right direction.¹⁷ The Statute will enter into force on 1 January 2017; its institutional novelty, the Authority (see below) shall be set up by 1 September 2016.

It is necessary to read these regulations together with other financial provisions, e.g. regulation (EU, Euratom) No. 966/2012 on the financial rules applicable to the general budget of the Union.¹⁸ The sum to be distributed among European political parties is determined in the budget of the European Parliament.¹⁹ The case law of the Court of Justice of the European Union is rather modest in respect of the legal issues of party financing.

We may conclude that EU law contains various legal sources governing European political parties and foundations, their funding and related procedures. In many respects the 2014 Regulation improves the quality of the regulation in rule of law terms. These

12 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003R2004> amended in 2007 by the Regulation (EC) No. 1524/2007.

13 www.europarl.europa.eu/contracts-and-grants/en/20150201PVL00101/Political-parties-and-foundations.

14 Regulation No. 1524/2007 of 18 December 2007, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007R1524>.

15 Decision of the Bureau of the European Parliament of 29 March 2004 laying down the procedures for implementing Regulation (EC) No. 2004/2003 of the European Parliament and of the Council on the Regulations governing political parties at European level and the rules regarding their funding, see [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014D0304\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014D0304(01)&from=EN).

16 Preamble (6) of the Regulation No. 1141/2014 of 22 October 2014, see: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R1141>.

17 Transparency International, ‘EU Position Paper European Commission reform proposal: Statute and Financing of European Political Parties’, 2012 [hereinafter: *TI-EU position*], <http://trans2.demo.mujo.be/wp-content/uploads/2012/11/TI-EU-Position-Paper-Europarty-Financing.pdf>. Regarding also for the text version of 2012, see the recommendations of the EP Committee on Constitutional Affairs: www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0140+0+DOC+XML+V0//EN.

18 See Arts. 125.6 and 140, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:298:0001:0096:EN:PDF>.

19 It amounts to EUR 31.4 million for the year 2016, see Budget line 402: <http://eur-lex.europa.eu/budget/data/General/2016/en/SEC01.pdf>.

provisions will be examined below, focusing on the constitutional approach for defining European Political Parties without dealing with financial rules in detail.

20.2 THE CONCEPT OF EUROPEAN POLITICAL PARTY

20.2.1 *Name It*

Regulation (EC) No. 2004/2003 on party funding establishes a stepwise definition of political parties at European level. Article 2 provides that for the purposes of this Regulation, ‘political party’ means an association of citizens which pursues political objectives, and which is either recognised by, or established in accordance with, the legal order of at least one Member State. The ‘political party at European level’ means a political party or an alliance of political parties which satisfies further conditions referred to in Article 3. The new Regulation maintains the notion of ‘political party’, but changes the term ‘political party at European level’ to ‘European political party’ in Article 2 (and prescribes similar criteria with new elements to be met to become eligible for funding).

This new term is a result of a simplification and may be welcomed by citizens. However, some reservations remain, as Zoltán Szabó noted as early as 2009: the overly broad adjective ‘European’ should have been clarified; he proposes the term ‘political party of the European Union’.²⁰ I note that this question of terminology is less important than the criteria underlying it; and if the political parties are created by citizens or through the alliance of political parties, the term ‘of the European Union’ is misleading, inasmuch as these parties are not organs or institutions *of the Union*, nor were they created *by the Union*. It is true that the rules of funding are connected to the European Union, and simplified terminology of EU institutions is not confusing either (European Parliament, etc.). Other denominations can also be found in relevant documents, but I would rather not predict the career of such terms as e.g. the informal nickname ‘Europarties’.²¹

Since these terms are used for the sake of determining the organizations that are entitled to receive EU funding, it is necessary to refer to other eligible entities as well. Based on the 2003 Regulation and the 2014 Regulation we can identify entities (all connected to political parties) that may receive funding from the European Union. These subjects are the foun-

20 Szabó, Z. Gy., Az európai pártok és alapítványaik finanszírozására vonatkozó jogszabályok, *Jog-Állam-Politika* No. 3, 2010, p. 140.

21 Editors of the Special Issue of *Acta Politica* deemed it to be ‘commonly known’, see: N. Timuș and S. Lightfoot, ‘Europarties: Between the processes of “deepening” and “widening”’, *Acta Politica*, No. 1, 2014, pp. 1-4. A search on the official website of the European Union (<http://europa.eu/geninfo/query/index.do>) does not yield any results for the terms ‘Europarty’ or ‘Europarties’, with a slight exception: http://eur-lex.europa.eu/summary/glossary/eu_parties_status.html?locale=en.

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dations of European political parties and political groups in the EP. Nevertheless, their funding is separated from the financing of political parties.

Political foundations appeared in the 2003 Regulation with the 2007 amendment, while the 2014 Regulation retained and confirmed similar rules. The requirements in order to be registered at the Authority are all similar to political parties described below.

‘European political foundation’ means an entity which is formally affiliated with a European political party, which is registered with the Authority in accordance with the conditions and procedures laid down in this Regulation, and which through its activities, within the aims and fundamental values pursued by the Union, underpins and complements the objectives of the European political party by performing one or more of the following tasks: (a) observing, analysing and contributing to the debate on European public policy issues and on the process of European integration; (b) developing activities linked to European public policy issues, such as organising and supporting seminars, training, conferences and studies on such issues between relevant stakeholders, including youth organisations and other representatives of civil society; (c) developing cooperation in order to promote democracy, including in third countries; (d) serving as a framework for national political foundations, academics, and other relevant actors to work together at European level. [Article 2 (4)]

Political groups in the European Parliament are formed on a partisan basis and as we saw above the development of the political parties at European level had its roots in the grouping of the MEPs. The majority of European political parties that receive funds from the EU have representation in the EP but not all of them have formed groups. Political groups also receive financial support from the budget of the European Parliament, and this may become problematic since activities of the groups and European Political Parties are very similar. Since direct subsidies to political parties from EP political groups have been prohibited (under Art. 6(2)(b) of Regulation 2003/2004, Article 20.5(b) of the 2014 Regulation), these activities should be clearly separated from each other in order to ensure the transparent funding of the different affiliated organizations of political parties.²²

In 2016 the undifferentiated appropriations for “Current administrative expenditure and expenditure relating to the political and information activities of the political groups and non-attached Members” amount to EUR 61 million, while for political foundations this amount is 18.7 million.²³ This 61 million compared to the 31.4 million earmarked for European political parties shows that the legislative political functions of political entities

22 TI-EU position, B).

23 See Budget line 400 and 403, <http://eur-lex.europa.eu/budget/data/General/2016/en/SEC01.pdf>.

receive most of the funds. It is worth mentioning that since there is no need to finance European election campaign activity in 2016, this amount is meant to further the organization²⁴ of European political parties.

20.2.2 Conditions

In order to become a European political party, a political organization should be able to fulfill several requirements specified by the regulations. In case these criteria are fulfilled the decision of the European Parliament will confirm eligibility for EU subsidy; and from 1 January 2017, the decision of the Authority will be constitutive of the legal entity of European political party. These conditions can be considered as components of the definition of European political party; next, I will elaborate on these criteria as provided for under the 2003 and 2014 Regulations.

According to Article 2 of the 2003/2004 Regulation, for a political organization to become eligible for EU funding, it must

- be regarded as a political party (an association of citizens, pursuing political objectives, either recognized by, or established in accordance with, the legal order of at least one Member State);
- create an alliance of political parties (structured cooperation between at least two political parties);
- satisfy – alone or as a member of an alliance – the conditions set forth by Article 3.

The conditions prescribed in Article 3 are:

- (a) the political organization must have legal personality in the Member State where it has its seat;
- (b) it must be represented, in at least one quarter of the Member States, by Members of the European Parliament or in the national Parliaments or regional Parliaments or in the regional assemblies, or it must have received, in at least one quarter of the Member States, at least three percent of the votes cast in each of those Member States at the most recent European Parliament elections;
- (c) it must observe, in particular in its programme and in its activities, the principles on which the European Union is founded, namely the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law;

²⁴ According to the wording of Art. 8 of the Regulation it may be used for the “administrative expenditure and expenditure linked to technical assistance, meetings, research, cross-border events, studies, information and publications”.

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(d) it must have participated in elections to the European Parliament, or have expressed the intention to do so.

the 2014 Regulation introduced some novelties:

- European legal personality is granted through the constitutive decision of the Authority;
- European political parties should be registered by the Authority;
- the values of the European Union in Article 2 of TEU are cited literally;
- political objectives were highlighted by including the intention expressed publicly “to participate in the next elections to the European Parliament”;
- a European political party must not pursue profit (Article 3(1));
- further requirements are set out in Article 4 on the governance of a political party, i.e. its name, logo, seat, political programme and democratic internal organization.

In what follows, I shall mention some reservations and remarks in connection with these provisions of the regulation.

20.2.2.1 A Cross-Border Entity

The adjective ‘European’ is naturally awarded to those political organizations that extend beyond one Member State. At the same time this definition also connects political parties to the legal orders of the Member States: these serve as a basis of recognition or establishment.

In this way, national legal and political systems are recognized: if a political party is established according to the legal requirements of any of the Member States’, it is not possible to question its lawfulness on the EU level. In this scenario, Member States are expected to enact regulation governing the right of association and political parties ensuring that democracy and pluralism shall prevail. Political parties are required to observe a handful of values on both the national *and* EU level, i.e. the fundamental values of the Union. Parties’ respect for these – generally accepted – values should also be verified by authorities on the national level. It may have consequences on the EU level if these national authorities fail to fulfill or even they misuse their power to ban ‘unconstitutional’ parties. On the other hand, according to the 2014 Regulation, the Member State where the political party has its seat may warn the EU Authority that the political party in question “has seriously failed to fulfil relevant obligations under national law” (Art. 16(3)), because in this case it is up to the Authority to strike it from the register first.

While according to the 2003 regulation the ‘political alliance’ was created by political parties, under the 2014 Regulation it means a “structured cooperation between political parties *and/or* citizens”; and the European political party is a political alliance – and not an alliance of political parties. This wording seems to allow citizens to create a European political party without involving political parties from the national level. The challenge

occurs for such an alliance when it comes to nominate candidates at the EP election or gain representation in legislative bodies (at any level). Although the necessary thresholds may be achieved – they will face much rather political than legal obstacles (acquiring mandates without affiliation with other parties on the national level). However, since both registering with the Authority and acquiring legal entity may be fulfilled at EU level; a political alliance of citizens does not have to be registered in or established by any of the Member States. (Nevertheless, the European political party must have a seat in one of the Member States, according to Art. 3(1).a, enabling Member States to exercise some kind of jurisdiction – this will be discussed in the framework of the analysis of the legal capacity of these parties.) These alliances of citizens compete for representation on EU and national level, meeting the national-level requirements to nominate candidates in various elections. This transnational entity is awarded legal personality by the 2014 Regulation.

In the framework of registering the alliance, the Authority and the Committee should “give full consideration to the fundamental right of freedom of association and to the need to ensure pluralism of political parties in Europe” (Arts. 6(2) and 11(3)). The value of political pluralism may be restricted through thresholds for entering European level politics, either in terms of thresholds of parliamentary representation or registration for funding from the EU. The 2014 Regulation retains earlier criteria for registering as a European political party:

it or its members must be, or be represented by, in at least one quarter of the Member States, members of the European Parliament, of national parliaments, of regional parliaments or of regional assemblies;
or it or its member parties must have received, in at least one quarter of the Member States, at least three per cent of the votes cast in each of those Member States at the most recent elections to the European Parliament [Art. 3(1)(b)].

It should be noted that allowing political parties outside the European Parliament or the national parliaments to receive public or European funding is a necessary precondition for preserving their chance to enter these bodies, making the party system more competitive. As the Venice Commission found,

Where minimum thresholds of support are required for funding, it should be considered that an unreasonably high threshold may be detrimental to political pluralism and small political parties. Further, it is in the interest of political pluralism to have a lower threshold for public funding than the electoral threshold for the allocation of a mandate in parliament.²⁵

25 CDL-AD(2010)024 [185].

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Transparency International notes that a lower threshold not only enables political parties to receive funding but they become subject to the transparency and monitoring system too.²⁶ It can be discussed whether these thresholds provided by the regulations are too high or not, but in fact, EU funding also extends to transnational political parties that are outside the EP; a very basic requirement from a constitutional perspective.

20.2.2.2 Political Objectives

The definition requires political parties and European political parties to pursue a political objective. On the occasion of the registration provisions laid down in the statute of the political party “on the political programme setting out its purpose and objectives” are also investigated (Art. 4(1)c). The declaration of the objectives of political parties may help ascertain their planned activities in the light of constitutional requirements, but it is not customary to ask for the detailed policy or strategic program when registering with authorities. The Venice Commission correctly found that

Some states require political parties to publicly file a party constitution upon registration. While such a requirement is not inherently illegitimate, states must ensure that this requirement is not used to unfairly disadvantage or discriminate against any political party. Such a requirement cannot be used to discriminate against the formation of parties which espouse unpopular ideas.²⁷

Political objectives are not defined precisely by any of the regulations. They can include various aims that political organizations usually follow: competition for mandates or other public offices, implementation of policy programs, influencing governmental or other political decisions, influencing public opinion, etc. The condition mentioned in Article 3(1)(d) of the 2003 (and 2014) Regulation also refers to a political objective, i.e. competing in elections for mandates (in the EP). It is certainly impossible to include all potential political objectives in legislation, but the desire to be represented in political (representative) bodies is a commonly accepted requirement of a functioning (existing) political party. I would like to draw attention to the fact that elections to the European Parliament are regulated by member states through certain framework provisions, and competing for EP mandates is usually based on national party lists.²⁸ The composition of these party lists is

²⁶ TI-EU position, A).

²⁷ CDL-AD(2010)024 [72].

²⁸ Council Decision 2002/772/EC, Art. 1 provides that ‘In each Member State, members of the European Parliament shall be elected on the basis of proportional representation, using the list system or the single transferable vote.’ The STV system is applied only in three countries (Ireland, Malta, UK); while in most countries not only political parties but other organizations can also nominate candidates for the EP elections.

generally beyond the powers or influence of the (transnational) leadership of European political parties.²⁹

The Venice Commission's Guidelines' states that a political party is "a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections."³⁰ In my opinion, referring to participation "in the management of public affairs" defines the political aim of a political party somewhat more precisely.

20.2.2.3 Observing of the Fundamental Values of the EU

Article 3(1)(c) of the Regulation refers to the fundamental principles of the European Union: political parties' programmes and activities must respect the values of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. Respect for these principles shall be verified (by majority voting) at the request of one quarter of the MEPs, representing at least three political groups in the EP. Article 3(1)(c) reiterates the enumeration of values in Article 2 TEU; which, however, formulating them as follows: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities." The 2014 Regulation already cites this provision literally in Article 3(1)(c). The related procedure shall be analyzed below.

20.2.2.4 Democratic Governance

If a political party respects the fundamental value of democracy, it will manage its activity, objectives, program according to this principle. It is rather doubtful whether a political party could implement public policies, governance or could fulfil its "fundamental role in democratic processes" without designing its interior structure and functioning according to the democratic principle. Venice Commission highlights that

Due to the important role that parties play as actors in a democracy, some OSCE states have legislated requirements that certain internal party functions be democratic in nature. The basis and applicability of such legislation must be carefully considered. Regulation of internal party functions, where applied, must be narrowly constructed as to not unduly interfere with the right of parties as free associations to manage their own internal affairs.

However, as parties contribute to the expression of political opinion and are instruments for the presentation of candidates in elections, some regulation of internal party activities can be considered necessary to ensure the proper

²⁹ Jansen 2001, pp. 24; Hix-Noury-Roland 2007, pp. 133-136.

³⁰ CDL-AD(2010)024, [9].

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functioning of a democratic society. The most commonly accepted regulations are limited to requirements for parties to be transparent concerning their decision making and to seek input from membership when determining party constitutions and candidates.³¹

The 2014 Regulation provides that the statutes of European political parties shall include provisions on internal party organization covering at least the following: (a) the modalities for the admission, resignation and exclusion of its members, the list of its member parties annexed to the statutes; (b) the rights and duties associated with all types of membership and the relevant voting rights; (c) the powers, responsibilities and composition of its governing bodies, specifying for each the criteria for the selection of candidates and the procedures for their appointment and dismissal; (d) its internal decision-making processes, in particular voting procedures and quorum requirements; (e) its approach to transparency, in particular in relation to bookkeeping, accounts and donations, privacy and the protection of personal data; and (f) the internal procedure for amending its statutes (Art. 4(2)).

These aspects can be regarded as providing sufficient information about the decision-making procedures and membership-rights for assessing the democratic nature of internal governance. A further dimension would be to consider voting procedures and quorums, etc., where and what kind of majority requirements will meet the principle of democracy.

20.2.3 *Legal Personality*

According to Article 12, European political parties and European political foundations shall have European legal personality. European legal personality is a rather new phenomenon of Union law, applied mainly in corporate law (see for example the European public limited liability company, or *Societas Europaea*³²) and in the context of the legal personality of the Union and its bodies.

Legal capacity of the European political party stems from the recognition of a Member State's legal system (Art. 3(1)a of the Regulation). European legal personality grants European political parties legal recognition and legal capacity in all Member States (Art. 13). The political party acquires European legal personality on the date the decision of the Authority to register the party is published in the Official Journal of the European Union (Art. 15(1)).

31 CDL-AD(2010)024, [97]-[98].

32 Its introduction intended to achieve similar transnational or federal objectives as described in respect of the European political parties. See for those intentions: N. Lenoir, 'The Societas Europaea (SE) in Europe: A Promising Start and an Option with Good Prospects', *Utrecht Law Review*, No. 1, 2008, pp. 13-21.

As European political parties have their seat in one of the Member States, consequently their functioning is regulated on several levels: some aspects are governed by the 2014 Regulation, while others “by the applicable provisions of national law in the Member State in which they have their respective seats” (Art. 14(2)). It is worth mentioning that some states do not require any registration for parties to function in their political system,³³ but in order to benefit from public funding or other advantages (acquiring bank account, contracting, etc.) legal capacity seems to be a mandatory precondition.

When acquiring European legal personality, the national legal personality ceases to exist, or better said, it is transformed into a European legal personality. Such a legal entity fully retains all pre-existing rights and obligations (Art. 15(3)). European legal personality will be transformed back into the national one when the Authority decides to remove the party from its register, according to the procedure described below. In case the European political party does not acquire legal personality under the law of the Member State where it has its seat, it shall be wound up in accordance with the applicable law of that Member State. In any case, since de-registering may serve the purpose of sanctioning, it is necessary to provide that

the Authority and the Authorising Officer of the European Parliament may agree with the Member State concerned the modalities for termination of the European legal personality, in particular in order to ensure the recovery of any funds received from the general budget of the European Union and the payment of any financial sanctions imposed (Art. 17.6-7).

20.3 PROCEDURES

The above mentioned conditions and terms are of utmost importance when an application raises the question of not only whether the entity may be considered a ‘political party’ but also whether it is eligible to receive EU funding. According to Articles 4 and 5 the Regulation, judging the fulfilment of these conditions lies in the competence of the European Parliament. First when awarding the financial grants on an application basis, the EP regularly verifies “that the conditions set out in Article 3(a) and (b) continue to be met by political parties at European level.” The most interesting test for meeting the conditions is Article 3(1)(c) which refers to the fundamental principles of the European Union is carried out (by a majority voting) at the request of one quarter of MEPs, representing at least three political groups in the EP.

³³ “There are no registration requirements in Germany, Greece or Switzerland... In Denmark and The Netherlands, political parties are not obliged to register, but certain formalities are required in order for them to participate in elections.” CDL-AD(2010)024, [65]-[67].

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It is worth noting that the European Parliament is a *par excellence* political body, yet its decisions may affect rights and obligations of persons; for example when it verifies whether fundamental principles had been observed by the political parties. Grants already awarded may be revoked if the EP arrives at the conclusion that the party does not adhere to these values in its program or its activities. Article 5(3) provides that “the relevant political party at European level, which has for this reason forfeited this status, shall be excluded from funding under this Regulation.” This provision has an effect on the political party since it loses funding by losing the status of political party at European level’.

Assessing compliance with EU values is otherwise a delicate issue; usually debated under the framework of the application of Article 7 TEU.³⁴ The decision on the activities of a political party seems to be of less importance than deciding on the infringement of EU values by a Member State, but it still may be a question whether the application of a legal norm by a representative body (the EP) has been fair and just, as well as politically unbiased. Provisions laid down by the Regulation aim to guarantee a fair procedure: before taking its decision the European Parliament shall hear the representatives of the relevant political party and ask a committee of independent eminent persons to deliver an opinion on the subject (Art.5(2)).³⁵

The 2014 Regulation establishes a new Authority (*Authority for European political parties and European political foundations*) “for the purpose of registering, controlling and imposing sanctions on European political parties and European political foundations in accordance with this Regulation.” This removes the abovementioned delicate decisions from the purview of the Parliament, aiming at a fair procedure hopefully separated from political considerations. The Authority shall decide on the registration and de-registration of European political parties and European political foundations in accordance with the procedures and conditions laid down in the 2014 Regulation regularly verifying whether registration conditions are met (Art. 6(2)). When verifying compliance with the values of the EU, the Authority asks for an opinion from the ‘*Committee of independent eminent persons*’ (Art.11). This Committee is composed of 6 persons, with the European Parliament, the Council and the Commission appointing 2 members each (in the previous Regulation, the committee had 3 members and a shorter statute as compared to the new Regulation). The Authority and the Committee shall “give full consideration to the fundamental right of freedom of association and to the need to ensure pluralism of political parties in Europe.” (Arts. 6.2 and 11.3).

34 Láncoš P. L., Értékek és elvek az európai médiajog területén, in Koltay A. – Török B. (Eds.), *Sajtószabadság és médiajog a 21. század elején*. Complex, Budapest, 2014, pp. 411-423.

35 The European Court of Human Rights provided with certain aspects for achieving fairness of proceedings when regulating such procedures (application of legal norms by a legislative, political body) in the case of *Karácsony and others v. Hungary* (2014) at [79]-[85].

The status of the Authority is formulated in such a way as to ensure it an autonomous position, providing that – among other guarantees – the Director of the Authority shall be appointed for a five-year non-renewable term by the European Parliament, the Council and the Commission by common accord;³⁶ the Director shall be independent in the performance of his or her duties; when acting on behalf of the Authority, the Director shall neither seek nor take instructions from any institution or government or from any other body, office or agency.

The Authority can decide on the sensitive issue of de-registering as a sanction after a verification process, on the grounds of the request of

- the Member State where the European political party has its seat (Art. 16(3)) – alleging that European political party failed to meet the requirements provided by the national law of the given state; it must identify precisely and exhaustively the illegal actions and the specific national requirements that have not been complied with;
- the European Parliament, the Council or the Commission (Art. 10(3)) – requesting for verification of compliance by a specific European political party with the conditions referring to the fundamental EU values).

The decision of the Authority to de-register a European political party on the grounds of a manifest and serious breach of EU fundamental values will be communicated to the European Parliament and the Council; and they will have three months to raise objections against the decision. The decision will enter into force only if no objection is expressed or the EP and the Council have both informed the Authority that they will not object. The decision shall be published in the Official Journal of the European Union, and will enter into force only three months following the date of publication (Art. 10(4-5)).

Remedy following verification by the EP can be sought before the Court of Justice, as the preamble of the 2003 Regulation subtly provides: “The judicial control which falls within the jurisdiction of the Court of Justice will help ensure the correct application of this Regulation.” The competence of the Court of Justice is established more firmly in the Decision of the Bureau of the European Parliament of 29 March 2004, laying down the procedures for implementing Regulation (EC) No. 2004/2003, Article 13:

Decisions taken pursuant to these rules may be the subject of an appeal to the Court of Justice of the European Communities or the Court of First Instance of the European Communities, in accordance with the conditions laid down by the Treaty.³⁷

36 The involvement of minor or “opposing” EP groups should also be elaborated in that procedure (nomination, voting majorities, etc.) to meet the democratic standards in this respect as well.

37 See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:112:0001:0035:EN:PDF>.

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The 2014 Regulation maintains and confirms the right to be heard and the right to appeal (Arts. 34 and 35). Article 6(11) (and 35) explicitly establishes the competence of the CJEU, providing that

The Court of Justice of the European Union shall review the legality of the decisions of the Authority in accordance with Article 263 TFEU and shall have jurisdiction in disputes relating to compensation for damage caused by the Authority in accordance with Articles 268 and 340 TFEU. Should the Authority fail to take a decision where it is required to do so by this Regulation, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.

The Venice Commission found that deadlines for deciding political party registration applications should be reasonably short, because long deadlines “constitute unreasonable barriers to party registration and participation.”³⁸ The 2003 Regulation only had one deadline: the Parliament had to decide on the application for funding within three months. The procedure provided by the 2014 Regulation is much more sophisticated, where the Authority has to decide on the registration of European political parties within a month (or four months if correspondence with a Member state proves to be necessary). In case the committee of independent eminent persons is involved in the procedure, this committee has to deliver an opinion in two months (Articles 9(2) and 10(3)). It is important to note that verification procedures shall not be initiated within a period of two months preceding European Parliamentary elections. There are no further deadlines set for the Authority neither in the verification, nor at the de-registering procedure. This means that these procedures in themselves can be used as a warning to European political parties, and since there is no obligation to take a decision in these procedures the Authority has a certain discretion to prolong procedures or drop such decisions. Therefore, I propose that clear deadlines should be laid down in respect of all procedures of the Authority.

During the last decade of the application of the Regulation, the case of the *Alliance of European National Movements (AENM)* raised questions with respect to the European level activities and conformity with EU values of a political party at. The EP decided to reduce the grants awarded to AENM in October 2013 by about 45000 EUR. The reasoning behind this decision referred to the hostile or racist activity of AENM member parties towards Jews, Roma or Muslim minorities.³⁹ AENM turned to the CJEU alleging – *inter alia* – the infringement of the rule of law, claiming AENM “has been discriminated against

38 CDL-AD(2010)024, [69].

39 P. Haydon, ‘MEPs call for review of funding for European far-right’, *Liberal Democrat Voice*, 31st January 2013, www.libdemvoice.org/meps-call-for-review-of-funding-for-european-farright-32964.html; Horváth Á., “Az Unióban és keleten is a Magyar érdekekért”, *alfahír*, 2 June 2013, <http://alfahir.hu/node/125183>.

in terms of its budget as against other European political parties”; and alleging “misuse of powers, since the Parliament used financial constraints in order to restrict the means of action of a political party whose ideals are not shared by some of the Parliament’s members.”⁴⁰

20.4 CONCLUSIONS

European Union established rules governing European political parties in order to enhance democracy in the Union and to reinvigorate citizens’ participation in multi-level European politics. Although political parties seem to be appropriate organizations to serve these goals, the question may be posed whether the regulation of the same is adequate. I elaborated on the concept of European political parties through a comparison between the 2003 and 2014 Regulations, analyzing the features of the national and European political systems and also comparing the regulation to European standards as summarized by the Venice Commission. We observed a process of gradual definition of political parties, and the interaction between the European and the national legal systems.

When the Union faces challenges in the form of Eurosceptic political parties the funding of the same from the common budget may cause certain inconveniences – i.e. scrutinizing compliance with general democratic values without discriminating “disturbing” ideas and ideologies is expected. The EU must – not unlike a self-defending or militant democracy – assess the breach of EU fundamental values in a procedure that is in accordance with principles of the rule of law and fair procedure. These values can be perceived as elements of the concept of European political party, just as much as the fairness of procedure which has a decisive impact on the existence of political parties.

The EU correctly recognizes the functions of European political parties, and established a system of funding for their organization, activities, their groups in EP and political foundations. The goals pursued by this financing system will only be reached in case expectations regarding the behavior of political parties are fulfilled and the awareness of citizens is improved. There is still a long way to go, but the money for that purpose is already at their disposal.

40 Case T-678/13 *AENM v. Parliament*, see at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62013TN0678&from=HU> It has been deleted from the register of the ECJ, without any decision in merits. According to the information provided from Béla Kovács, MEP, deputy-chair of the AENM, this debate was rather of “technical nature”, stemming from some errors in financial management of the Office of the EP; and following the correction, the plaint has been withdrawn.