

A. State funding of political parties in Germany

1. Legal bases

Following the fundamental ruling by the Federal Constitutional Court on the state funding of political parties on 9 April 1992 (Decisions of the Federal Constitutional Court [BVerfGE] vol. 85, pp. 264 ff.), the relevant provisions in the Law on Political Parties (PartG) were thoroughly amended with effect from 1 January 1994. The procedure for reimbursing election campaigning costs for the various elections at federal and Land (state) level applied hitherto was replaced by a system of general annual state funding (amendment to the Law on Political Parties of 31 January 1994, Federal Law Gazette I p. 149). The Eighth Law on the Amendment to the Law on Political Parties of 28 June 2002 again amended the Law on Political Parties in material respects (Federal Law Gazette I p. 2268; draft bill: Bundestag printed paper 14/8778), amongst other things, considerably increasing the severity of financial and criminal-law sanctions for infringements of the Law on Political Parties. With the exception of section 3 ("three Land requirement"), it was adopted into law with effect from 1 July 2002 and 1 January 2003. The Ninth Law on the Amendment to the Law on Political Parties of 22 December 2004 (Federal Law Gazette I p. 3673, draft bill: Bundestag printed paper 15/4246) introduced modifications of some elements of reporting and accounting requirements and, in line with a ruling of the Federal Constitutional Court of 26 October 2004 (BVerfGE 111, pp. 382 ff), repealed the aforementioned Article 3 before it came into force.

Under section 18 (1) of the Law on Political Parties, German political parties receive state funding to help them perform the duties incumbent on them under the Basic Law and specified in the Law on Political Parties. The amount of state funding the parties receive is determined by the extent to which they are established within society. This is measured, firstly, by the parties' performance at the most recent European, Bundestag and Landtag (state parliament) elections and, secondly, by the level of contributions they receive from natural persons. Contributions under this definition are paid-up membership subscriptions, contributions by elected representatives, and legally acquired donations (section 18 (3) no. 3 of the Law on Political Parties).

2. Preconditions for entitlement to state funding

Under section 18 (4) of the Law on Political Parties, parties are entitled to receive state funding if they won at least 0.5% of the valid votes cast for their party lists at the most recent European or Bundestag elections, or if they polled at least 1% of votes cast at one of the most recent Landtag elections. If a party is not permitted to present a list, section 18 (4) of the Law on Political Parties stipulates that it is entitled to state funding if it wins 10% of the valid direct votes cast in a constituency.

Further preconditions for entitlement to state funding are the submission of the last due statement of account, which must comply with legal regulations (section 19a (1) and (3) of the Law on Political Parties) and – for parties not entitled to state funding in the previous year – a written application for assessment and disbursement of state funding (section 19 (1) of the Law on Political Parties).

3. Extent of entitlement to state funding

Under section 18 (3) of the Law on Political Parties, parties entitled to state funding receive €0.85 per valid vote won at the most recent European, Bundestag and Landtag elections up to a total of four million votes, and €0.70 for every additional vote thereafter (votes-based funding).

For contributions given by natural persons, section 18 (3) No. 3 of the Law on Political Parties states that parties receive €0.38 per person per year up to a total of €3,300 (contributions-based funding). The total level of contributions used to assess contributions-based funding is disclosed by the parties in an audited statement of account for the year preceding the year for which they are claiming funding (entitlement year) pursuant to section 24 (8) of the Law on Political Parties. Although contributions by natural persons in excess of the eligible amount of €3,300 are permitted, as are contributions by legal entities, they are not included in the calculation of contributions-based funding and are only taken into account for the purpose of assessing the relative limit (cf. no. 4 below).

4. Limits

Section 18 (2) of the Law on Political Parties states that the maximum annual amount of state funding that may be granted to all parties together may not exceed an 'absolute limit'. In line with the aforementioned decision by the Federal Constitutional Court of 9 April 1992 and in accordance with the recommendations made by the Independent Commission on Party Funding set up by the former German President (cf. section 18 (7) of the Law on Political Parties), this absolute limit amounted to the current level of state funding for political parties - namely DM 230 million - from 1994 to 1997 (cf. Bundestag printed paper 12/4425, p. 74). After this limit was raised in line with inflation to DM 245 million for the years 1998 to 2001, the absolute limit has now been set at €133 million for years as from 2002 (section 18 (2) of the Law on Political Parties).

The method used to calculate entitlement to state funding described in no. 3 above regularly results in a total that exceeds the absolute limit, so that the amounts of state funding paid to all political parties have to be reduced proportionally pursuant to section 19a (5) sentence 2 of the Law on Political Parties. Consequently, the parties do not actually receive

the amounts for each vote won and each euro received in contributions as stated in section 18 (3) of the Law on Political Parties; they only receive correspondingly reduced amounts.

Owing to the ban - deriving from section 21 (1) of the Basic Law - on political parties being 'predominantly' funded by the state, section 18 (5) sentence 1 of the Law on Political Parties states that the level of state funding given to each political party may not exceed the total annual revenue raised by the party itself ('relative limit'). If the latter is lower, the state funding allocated to the party is limited to the party's own total annual revenue.

5. Assessment and disbursement of state funding

Under section 19a (1) of the Law on Political Parties, on 15 February of each year the President of the German Bundestag - as the authority responsible for administering the funds in accordance with the Law on Political Parties - assesses the amount of state funding to be allocated to the entitled parties for the previous year (entitlement year). The parties must submit to the President of the German Bundestag the relevant statements of account for the year preceding the entitlement year by 30 September of the entitlement year. The President may extend the deadline for submitting these statements of account by up to three months pursuant to section 19a (3) sentence 2 of the Law on Political Parties. If a party fails to submit its statement of account by this deadline, it irrevocably loses its entitlement to contributions-based funding pursuant to section 19a (3) sentence 3 of the Law on Political Parties. If a party fails to submit its statement of account by 31 December of the year following the entitlement year (assessment year), it also irrevocably loses its entitlement to votes-based funding and, consequently, its entire entitlement to state funding for the entitlement year. The deadlines prescribed in section 19a (3) sentence 5 of the Law on Political Parties are only deemed to have been met if the statement of account corresponds to the structure prescribed in section 24 of the Law on Political Parties and contains an audit opinion pursuant to section 30 (2) of the Law on Political Parties.

The funds calculated are disbursed to the party associations at Land and federal level. Of the total state funding allocated to the party as a whole, the Land associations receive €0.50 for each vote cast for the party at the most recent Landtag elections (section 19a (6) of the Law on Political Parties), irrespective of any reduction to the absolute limit and regardless of the increased allowance for the first four million votes, both of which apply only at federal level. The President of the German Bundestag notifies the presidents of the regional (Land) parliaments - the authorities responsible for administering the funds at Land level - of the amounts to be disbursed to the party organisations at Land level (section 21 (1) sentence 2 of the Law on Political Parties); this notification is binding. The remaining state funding is disbursed to the parties' federal associations or, if the party is only represented at Land level, to the Land association by the Federation (section 21 (1) of the Law on Political Parties).

6. Advance payments

Parties for which state funding was assessed in the assessment year are entitled, without filing any further application, to receive four advance payments of no more than 25% each of the amount assessed for the previous year; these amounts are disbursed in the middle of each quarter. If it is deemed likely that the party concerned will have to repay some of these amounts when the next assessment is made, the disbursement of advance payments can be made conditional upon provision of collateral (section 20 (1) of the Law on Political Parties). These advance payments are offset against the amounts assessed on 15 February of the following year. Excess amounts disbursed must be repaid without delay (section 20 (2) of the Law on Political Parties).

7. Indirect funding of parties – tax privileges conferred on contributions

In addition to the direct state funding given to political parties, the latter also receive indirect state funding *inter alia* by virtue of their exemption from inheritance and gift tax (section 13 (1) no. 18 of the German Inheritance Tax Act) and because natural persons can claim tax relief on contributions given to political parties (paid-up membership subscriptions, contributions by elected representatives, and lawful donations). The latter option applies to contributions up to a total of €3,300 p.a. for individuals and €6,600 p.a. for couples assessed jointly for tax purposes (section 10b (2), section 34g sentence 2 of the German Income Tax Act). Although contributions over and above these amounts are permitted, they are not tax-deductible, nor are lawful donations by legal entities.

8. Parties' statutory obligation to publish accounts

Section 21 (1) sentence 4 of the Basic Law and sections 23 ff. of the Law on Political Parties state that all political parties must publicly account for their assets and for the sources and uses of their funds - irrespective of whether they are entitled to receive direct state funding - in a statement of account broken down into the party as a whole, its federal association, its Land associations and subordinated regional associations. Section 24 of the Law on Political Parties prescribes the scope and structure of such statements of account; the statement of assets and liabilities must be accompanied by an explanatory note meeting certain minimum requirements (section 24 (7) of the Law on Political Parties). The statement of account must usually be audited by an independent party (auditor or firm of auditors) and, together with the pertinent audit opinion, be submitted to the President of the German Bundestag, who publishes it as a Bundestag printed paper (section 23 (2) of the Law on Political Parties). If a party not entitled to receive state funding has no revenues and assets of no more than €5,000, an unaudited statement of account can be published (section 23 (2) sentences 4 and 5 of the

Law on Political Parties). The President of the German Bundestag (or, more precisely, the Administration of the German Bundestag) examines whether the statement of account complies with the provisions of Part Five of the Law on Political Parties (section 23a of the Law on Political Parties). If there is good reason to believe that a party's statement of account contains misstatements, the Bundestag Administration must clarify the facts of the matter by following a specific procedure, possibly drawing on the services of independent auditors. In such cases, state funding may only be provisionally assessed and only disbursed against provision of collateral amounting to the party's possible payment obligation (sections 31a to 31c, cf. subsequent nos. 9.1 to 9.3) (section 19a (1) sentence 3 of the Law on Political Parties). The findings of this audit are included in the report on the parties' statements of account, which is also published as a Bundestag printed paper (section 23 (3) ff. of the Law on Political Parties). A list of source references for the previously published statements of account and the reports by the President of the German Bundestag on these statements of account is attached as Annex 1.

9. *Administrative procedures in the event of incorrect statements of account and other breaches of the Law on Political Parties and criminal law*

9.1 *Incorrect reporting of contributions pursuant to section 24 (8) of the Law on Political Parties (section 31a of the Law on Political Parties)*

If the amount of contributions reported in a party's statement of account - on which the calculation of its state funding is based - is incorrect and, as a result, the party has been granted too much state funding, the incorrect level of funding assessed is declared null and void and a demand issued for repayment of the excess amount; where appropriate, this amount may be offset against the next payments due. The levels of funding assessed and disbursed to the other parties remain unchanged (section 31a (4) of the Law on Political Parties).

If the party rectifies errors made concerning the amount of contributions reported in its party's statement of account in previous years by reporting lower amounts in the next statement of account due, the incorrect level of funding assessed for the previous year will not be declared null and void (section 31a (1) sentence 2 of the Law on Political Parties). In this case, a correspondingly lower level of funding will be assessed for the party in the following year, which - because of the systemically necessary reductions to the absolute limit (cf. no. 4. above) - then benefits the other parties entitled to state funding.

9.2 *Sanctions imposed for misstatements in the statement of account (section 31b of the Law on Political Parties)*

If the audits conducted pursuant to section 23a of the Law on Political Parties (cf. no. 8 above) reveal misstatements in the statement of account and section 31c (1) sentence 2 does not apply (cf. no. 9.3 below), the party will be fined twice the misstated amount. If such misstatements relate to the party's land and buildings or to investments in companies either in the statement of assets and liabilities or in the pertinent explanatory notes, the fine amounts to 10% of the undisclosed or misstated assets. Parties will not be subject to these legal consequences if they report the misstatements in writing to the President of the German Bundestag without delay before concrete evidence of these misstatements becomes known either publicly or to the President of the German Bundestag or as part of another procedure, and the party discloses and rectifies the misstated information fully (section 23b of the Law on Political Parties).

9.3 Breaches of the duty to disclose large donations in the statement of account
(section 31c (1) sentence 2 of the Law on Political Parties)

If, in contravention of the duty of disclosure prescribed in section 25 (3) of the Law on Political Parties, a party fails to report in its statement of account donations and contributions by elected representatives exceeding a total of €10,000 in any one calendar year, also disclosing the name and address of the donor and the total amount of the donation, it will be fined twice the undisclosed amount.

A party will not be subject to these legal consequences if it reports its breach of disclosure requirements under the same conditions as mentioned under no. 9.2 above.

Section 25 (3) of the Law on Political Parties states that individual donations to the party as a whole exceeding €50,000 must be reported without delay to the President of the German Bundestag irrespective of any subsequent reporting so that they - and the name of the donor - can be published in a timely fashion in a separate Bundestag printed paper (cf. list of sources: publication of individual donations exceeding €50,000 - ANNEX 1). If the party fails to comply with this reporting requirement, it will not face any legal consequences.

9.4 Donations acquired illegally (section 31c (1) sentence 1 of the Law on Political Parties)

If a party accepts donations that are not permitted under section 25 (2) of the Law on Political Parties (e.g. in cases where the donor is unknown or where such donations have obviously been given in order to gain a financial or political advantage, or where the donations come from public bodies or companies with at least 25% public-sector involvement) and does not

forward them without delay to the President of the German Bundestag pursuant to section 25 (4) of the Law on Political Parties, it will be fined three times the illegally acquired amount.

Section 25 (1) sentence 2 of the Law on Political Parties stipulates that parties may only accept cash donations of up to €1,000. Breaches of this provision do not incur sanctions pursuant to section 31c of the Law on Political Parties, as the scope of this provision is explicitly restricted to cases of illegal donations as defined by subsection 2; however, such breaches mean that such donations are deemed not to have been legally acquired. They therefore cannot be included as contributions in the calculation of state funding under section 18 (3) no. 3 of the Law on Political Parties, as only 'legally acquired' donations are counted. Likewise, such donations must not be counted towards the contributions reported in the statement of account - on which this calculation is based - pursuant to section 24 (8) of the Law on Political Parties. If they are counted towards these contributions, the statement of account is incorrect and incurs the legal consequences described under sections 31a and 31b of the Law on Political Parties (cf. nos. 9.1 and 9.2 above).

Breaches - under section 25 (2) of the Law on Political Parties - of the ban on accepting illegal donations and of the requirement to report such donations without delay pursuant to section 25 (4) of the Law on Political Parties are unrelated to the reporting and accounting requirements described under sections 23 ff. of the Law on Political Parties. However, the exemption from sanctions as a result of parties having reported such donations themselves, as outlined under section 23b of the Law on Political Parties, relates only to misstatements in the statement of account, not to the unlawful acceptance of illegal donations.

9.5 Breaches of criminal law (section 31d of the Law on Political Parties)

Anyone who - in an attempt to conceal the sources or uses of a party's funds or assets or to circumvent the statutory reporting and accounting requirements - causes misstatements about the party's revenue or assets to be made in a submitted statement of account or submits an incorrect statement of account or, as the recipient of a donation, divides this donation into smaller portions and accounts for them - or arranges for them to be accounted for - as such or, in contravention of the obligation under section 25 (1) sentence 3 of the Law on Political Parties, does not forward a donation without delay to a member of the party's national executive authorised by the party to handle its financial affairs in accordance with its statutes will receive a custodial sentence of up to three years or a fine. This will not apply if the person in question reports such actions in writing to the President of the German Bundestag before concrete evidence of these actions becomes known either publicly or to the President of the German Bundestag or to other officials responsible for such procedures, and the person in question discloses and rectifies such actions fully (section 31d (1) of the Law on Political Parties).

Sanctions - from which the offender cannot be exempted as a result of his or her having reported the relevant actions themselves - are also imposed on anyone who, when acting as an auditor or assistant to an auditor, incorrectly reports the findings of the audit of a statement of account, conceals material information in the audit report or issues an audit opinion that is factually incorrect. If the offender is acting in return for payment or in order to gain a financial advantage either for himself or for another person or in order to harm another person, he will receive a custodial sentence of up to five years or a fine (section 31d (2) of the Law on Political Parties).

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