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Horizontal Facility for the Western Balkans and Turkey II
Action against Economic Crime in Albania
(HFII-AEC-AL)

TECHNICAL PAPER

"Comments on draft amendments to political finance legislation in Albania"

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The European Union/Council of Europe Horizontal Facility for the Western Balkans and Turkey (also referred to as: Horizontal Facility phase II or HF II) is a co-operation initiative of the European Union and Council of Europe for South East Europe.

The first phase of the Horizontal Facility ran from May 2016 to May 2019, and was succeeded by Horizontal Facility phase II, which will be implemented from May 2019 to May 2022. The second phase of the Horizontal Facility will continue to build on the Statement of Intent signed on 1 April 2014 by the Secretary General of the Council of Europe and the European Union Commissioner for Enlargement and European Neighbourhood Policy, in which both Organisations agreed to further strengthen their co-operation in key areas of joint interest.

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ABBREVIATIONS

AEC-AL	Action against Economic Crime in Albania
LFPEEC	Law on Financing of Political Entities and Election Campaigns
CEC	Central Election Commission
EC	Electoral Code
HF	Horizontal Facility
MMB	Media Monitoring Board
LPP	Law on Political Parties

1 Executive Summary

One of the key components of the anti-corruption activities of the Horizontal Facility "Action against Economic Crime in Albania" (AEC-Albania) focuses on reform of the legal and institutional framework regulating the financing of political parties and election campaigns. The Action has previously provided recommendations and technical assistance for reform of the legal and institutional framework during Phase I of the Horizontal Facility Programme and most recently in a workshop held in Korça on 17 and 18 January 2020 at which a range of stakeholders discussed the problems that need addressing and how to do so.

This paper provides a brief assessment of i) the most recent draft amendments to the Electoral Code drafted by experts of the Ad Hoc Parliamentary Committee on Electoral Reform, and ii) a proposed unified Law on Political Party Financing provided by the United Opposition. Recommendations for changes to the drafts are also provided. In addition, where deemed appropriate, recommendations provided by another consultant (Fernando Casal Bértoa) have also been integrated.[1]

As with previous AEC-AL assessments, this assessment is informed by three key assumptions:

- The key to reducing incentives for corruption or other misconduct in political finance is reducing the costs of elections.
- Prohibitions and restrictions should be designed to be as simple as possible and as easily monitorable (and therefore enforceable) as possible.
- Effective oversight and enforcement cannot be ensured by the CEC and independent auditors alone, and expectations of independent auditors in particular should be realistic. Effective oversight depends on the active participation of other actors, including the media and civil society. Such participation should be facilitated through maximum transparency of political finance, together with effective mechanisms for complaints to facilitate the communication of alleged violations to the CEC.

Both the draft amendments to the Electoral Code (consolidated draft) and the United Opposition draft implement many of the previous recommendations of AEC-AL. While the consolidated draft consists of amendments to the Electoral Code, the proposal submitted by the United Opposition is of a different nature: a new law on Financing of Political Parties and Electoral Subjects is proposed, which would regulate all aspects of political finance. The draft consists of the existing financing provisions of the Law on Political Parties and Electoral Code, some of them amended, plus some other provisions. Comments on the United Opposition draft therefore include issues related to ordinary party financing (as currently regulated in the Law on Political Parties), and these are not repeated under the comments on the consolidated draft.

[1] ECCD-HFII-AEC-AL-TP-3-2020 "Review of regulations on public and private party financing in the Council of Europe member States and recommendations for Albania".

Core **findings** of the assessment include the following:

- Both the consolidated draft amendments and the United Opposition proposal implement many if not most previous AEC-AL recommendations. However, neither of the proposals addresses the key issue of restricting or prohibiting paid political advertising on broadcasting media.
- The "consolidated draft" does not define campaign spending, has problematic provisions on use of public resources and does not amend provisions on sanctions to ensure sufficient flexibility and proportionality/dissuasiveness. In addition, a key issue is that the consolidated draft by definition does not address any issues that still need addressing in the financing of political parties outside election campaigns. This is an important gap, not least because there is no prohibition on parties using resources raised outside electoral periods to finance their electoral campaigns.
- The United Opposition draft does not clearly establish the obligation of electoral subjects to submit election campaign finance reports. In addition, it transposes provisions of the Law on Political Parties without resolving remaining problems in the regulation of non-election financing, especially a system of state subsidies that disproportionately favours large parties, and absent limits on donations.

The main **recommendations** of the assessment are the following:

United Opposition draft:

The approach of this draft has the **key advantage of consolidating all financing provisions into one law – and has long been recommended by AEC-AL**. The consolidation of all political finance regulation into one law minimises the probability of conflicts between different legal provisions and means that amendments to the legal framework can be made much more easily than at present. This is a key advantage, as international experience shows clearly that political financing regulation needs adaptation and amendment from time to time. This said, the draft should be amended in the following aspects, in addition to the issues that are identified for both drafts (see below): <u>Election campaign finance</u>*:*

- Ensure that the definition of campaign spending includes any spending on campaign items, irrespective of when the spending is incurred.
- Include in the list of CEC powers the responsibility to maintain a mechanism to deal with complaints.
- Concerning the proposed Article 8.8, simply state that when a party does not return subsidies owed under paragraph 8.6 this will be deducted from the following year's state subsidy.
- Proposed provisions in Article 14 under which the CEC would determine the campaign spending limit and "reference costs" of campaign items are problematic and should not be included.

- The proposed Article 17 empowering electoral subjects to verify other electoral subjects financial subject is problematic and should not be included.
- The proposed Article 28.3 empowering major political parties to select each other's auditors from the CEC's approved list is problematic and should not be included.
- Ensure that sanctions are not only sufficiently stringent, but also consistent across campaign finance and ordinary finance regulations, and also sufficiently flexible.
- The proposal in Article 33 to at least triple state funding for the 2020 elections appears either irrelevant (if there are no elections) or excessive if there are, and at a minimum should be clearly justified.
- Ensure the draft contains a clear prohibition of political advertising on broadcasting media.
- Ensure the draft contains a clear obligation of parties to submit Election Campaign Finance Reports.

<u>Political party financing</u>:

- Adjust the provisions on public funding to benefit large and small parties more proportionately.
- Consider introducing a system of matching funds (subsidies that match private donations) in order to encourage a larger number of smaller private donations.
- Introduce provisions conditioning the release of a proportion of the annual state subsidy on the fulfilment by parties of a quota of women MPs and consider introducing a similar condition for election campaign subsidies for electoral subjects.
- Establish a limit on the size of donations provided to parties in the non-electoral period.

"Consolidated" draft:

If the approach in the consolidated draft were to be pursued (meaning that provisions on political financing remain divided between the Law on Political Parties and Electoral Code), the following recommendations on the proposed changes to the Electoral Code should be taken into account:

- As responsibility for monitoring media coverage in elections would be transferred to the Audiovisual Media Authority (AMA) under changes to Article 85, it is vital to guarantee the AMA's independence.
- Ensure provisions on the classification of candidate financing as financing of the party for which the candidate stands (amendments to article 87/1) are worded as in the United Opposition proposal, to ensure candidate loans are covered.

- Amend EC Article 91.4 to lower the threshold (size of donation) over which the identity of donors must be made public.

General (both drafts):

- The amendments on use of public resources are problematic and difficult to implement. The provision previously recommended by AEC-AL in proposed guidelines on the use of public resources would be a better solution.
- Ensure that proposed amendments on the criteria for distribution of public subsidies and on the reduction of the campaign spending limit are based on clear analysis and justification.
- Ensure that the drafts address vote-buying in the way previously recommended by AEC-AL in proposed guidelines on the use of public resources, including a complete ban on the provision of cash to voters.
- Concerning the proposed CEC mechanism for dealing with complaints, the mechanism should be a permanent one for both campaign financing and ordinary financing, not just a temporary mechanism around elections.
- Ensure the draft law prohibits political advertising on broadcasting media.
- The CEC should be given the power to verify any information provided by parties in their campaign finance reports, rather than being given the authority to "verify audit reports".
- Resolve problems in the current regulation of party financing outside of election campaigns – in particular the absence of any donation limits, the disproportionate advantage to large parties from public funding and the absence of any gender-targeted public funding. Issues and recommendations on ordinary party financing regulation are presented in Section 4.

2 CONSOLIDATED DRAFT

While the consolidated draft implements many AEC-AL recommendations, a key underlying issue that is not resolved is the relationship between the Electoral Code and Law on Political Parties (LPP). A reform of legislation as extensive as the one under way should logically address not only the Electoral Code, but also the LPP. There are two aspects to this. First, it is essential to ensure that the two laws are closely coordinated and do not contradict each other. In this context, extensive amendments to the LPP were passed prior to the June 2017 parliamentary elections, with the aim of changing election campaign finance regulation (since amending the Electoral Code is much more difficult). This resulted in at least one contradiction between the two laws: the LPP prohibits advertising on broadcasting media during election campaigns, while the EC does not. The consolidated draft does not ensure even that all regulation of election campaign financing is in the Electoral Code.

More generally, it would be optimal to combine all provisions on political finance into one law, as proposed by the United Opposition (see Section 3).

Table 1: Comments on consolidated draft amendments to the Electoral Code

Proposed amendment	Comments
Article 5 Article 4 shall be amended as follows: " Article 4 Activities of public institutions in campaign 1. Public central and local institutions shall report to the CEC on all activities of public character that they plan to conduct in the six months prior to the election date until election day. Reporting shall be the personal responsibility of the person responsible for the administrative management of public institutions, agencies and State-owned enterprises (the institution's secretary-general, or, where appropriate, the general director or executive director). Reporting shall be made no later than 48 hours before the scheduled deadline for the activity. 2. For the purpose of reporting under paragraph 1 of this Article, the CEC shall	The misuse of public institutions to organise activities that are effectively of an election campaign nature is seen as a significant problem in Albania. However, the solution proposed here may be quite problematic in practice. • "All activities of a public nature" is a very wide and subjective concept. It would need to be specified much more clearly. • • It is questionable whether the CEC can be given the authority to forbid official activities by other state and public entities. **Recommendation**: The proposal in the AEC-AL proposed guidelines on use of public resources would be more workable. The proposal could be included as an Article worded as follows:

maintain and administer the reporting interface of public activities. The responsible persons shall receive personalized access to this interface and enter data on the date and time of the activity, its type, topic, highest level of participation, guests of honour, scheduled speakers and mediatization. The information under this paragraph shall be accessible to all interface users from the moment of data entry until the announcement of the final election result. 3. In case the CEC, *ex officio* or upon third-party request, finds from the information referred to in paragraph 2 of this Article that the activity may constitute misuse of State resources, it shall order the prohibition of its conduct. Prohibition shall become effective by inserting the note *"Prohibited by the CEC"* in the reporting interface, in the section pertaining to the activity. The note *"Prohibited by the CEC"* shall be inserted no later than 24 hours after the reporting. The information under this paragraph shall be accessible to the public from the moment of data entry until the announcement of the final election result. 4. Activities prohibited by CEC shall not be broadcast or featured in news editions or radio and TV programs dedicated to campaign coverage. Their broadcasting or featuring in violation of this paragraph shall make the radio or TV operator liable under this law. 5. Failure to report activities of public character scheduled by public institutions, agencies and/or State-owned enterprises, or their conduct despite the CEC prohibition, shall be cause for liability of the responsible person and the head of the relevant institution wherever he/she obstructs compliance with this provision.	"**Events organised at any time by the government or local government** (or any public entity) must respect the division between parties/political entities and the state. Specifically, this means that: i. Such events should never display of the logos, symbols or other means of visual identification of any party or electoral subject. ii. Events should never be used as propaganda or PR for a particular party or electoral subject or its representative/s. For example, a ceremony to open a road or hospital may highlight the role of the relevant government or administration, but may not claim or imply credit for a specific political party or its representative/s. Such events include for example the opening of a new institution (e.g. school, hospital) or piece of infrastructure (e.g. road); celebrations of religious holidays or other "humanitarian" activities, etc."

6. Rules on the examination – ex officio or upon request – of cases that may constitute misuse of State resources under paragraphs 1 and 3 of this Article shall be approved by the CEC in a legislative act."	
In Article 64, the letter "e" with the following wording shall be added: a) the written statement signed by the Chair of the political party which mentions the solemn commitment to reject involvement in any vote-buying practices, accepting unlawful financing or benefits, particularly those coming from criminal activities, and the solemn commitment to complete in elections with honesty and integrity. The text of the statement shall be defined by the CEC." **Article 64** In Article 78, paragraph 6 with the following content shall be added: "6. Electoral subjects shall be forbidden and held criminally liable if they offer or give money, material goods, promise jobs or other favours in whatever form to the voter or other persons related to him/her, with a view to obtain the signature for nominating a candidate for election, to vote in a certain way, to participate or not participate in voting, or to engage in illegal activities to support a candidate or political party.	These provisions seem well-designed. However, the AEC-AL recommendations on tackling vote-buying included also the following: a. The provision of cash to voters should be prohibited. Note that this means the provision of cash under any circumstances, whatever the reason - and is therefore stricter than the proposed Article 78.6 b. The provision of other benefits should be limited to printed campaign materials and other items with a defined maximum value, for example a maximum of 5 Euro or less for any individual item. The Central Electoral Commission (CEC) should be obliged to elaborate and publish guidelines on which benefits may be provided, and up to which value. c. Parties and candidates should be prohibited from organising the transport of voters to polling stations. **Recommendation**: Include in the provisions on vote-buying a prohibition on providing cash to voters under any circumstances, clear limitations on the materials/benefits that may be provided to voters, and prohibit the organising of transport of voters to polling stations.
Article 65 Article 79 shall be amended as follows: "Article 79 Posting of propaganda materials	This article is consistent with AEC-AL recommendations.

1. No later than 35 days prior to election date, the Mayor, in a fair and impartial manner, shall specify the public places in the territory of the relevant municipality to be used for posting of propaganda materials by political parties and electoral subjects. The places designated for this purpose must be located in environments that ensure public visibility and adequate space where all electoral subjects participating in elections can present their electoral programs and messages. The decision of the Mayor shall be published on the municipality's webpage immediately upon approval. 2. During the electoral campaign, the use and display of any other static electoral propaganda materials, including flags and posters, shall be permitted at a distance of only up to 5 meters from the electoral office of a political party or electoral subject. 3. The use of static propaganda materials in violation of the provisions in paragraph 2 of this Article shall be forbidden. 4. The Municipal Police and/or State Police shall guarantee compliance with the provisions of this Article by immediately removing any propaganda materials of electoral subjects that are incompliant with the provisions in paragraphs 1 and 2 of this Article."	
Article 66 Article 85 shall be amended as follows: "Article 85 Electoral campaign monitoring	This provision establishes that monitoring of media coverage during the election campaign will be conducted by the Audiovisual Media Authority (AMA) instead of the Media Monitoring Board (MMB), a body that under the current Electoral Code is established specifically for this purpose. The MMB was a body appointed

1. Election campaign monitoring on radio and television shall be conducted by the regulatory entity that regulates and oversees the audio and audio-visual broadcasting services. Monitoring shall be conducted across the entire electoral territory. 2. The Regulatory Entity that regulates and supervises the activity of radio and television operators shall monitor the compliance with the rules of this law and the acts of legislative nature issued by CEC - by radio and television broadcasters and electoral subjects. 3. No later than 3 months prior to the election date, the CEC shall approve and publish the Media Monitoring Methodology. 4. The Regulatory Entity shall present its findings in detailed reports, at least weekly, which it shall submit to the CEC for competence. Reports shall, where appropriate, be accompanied by proposals for administrative sanctions. The media monitoring reports shall be published on the CEC's website immediately upon submission to CEC. 5. Based on the findings of monitoring reports, the CEC shall order the correction of conduct by radio and television operators or electoral subjects, or, where appropriate, shall impose administrative sanctions on them. The CEC decisions are subject to appeal in accordance with the procedures set forth in this Law. The appeal does not suspend the execution of the CEC decision. 6. Public and private radio and television broadcasters shall record all their	by the CEC from a list proposed by "non-for-profit media organisations". Unless the independence of the AMA is ensured, it is not clear how the proposed amendment would ensure independent monitoring of media coverage during the election campaign

broadcasts throughout the electoral campaign period. These records shall be kept for a 3-month period after the end of the elections and shall be made available to the CEC immediately upon request.[2] **Article 67** Article 85/1 shall be abrogated	
Article 68 Article 87 shall be amended as follows: 1. Paragraphs 6 and 7 shall be amended as follows: "6. If the amount calculated in paragraph 5 of this Article is higher than the total electoral campaign expenses reported by the political party or the electoral subject, or it has been assessed as such by the CEC according to its independent audits or verifications, the electoral subject/political party shall have the obligation to give back the difference to the CEC. 7. If the political party or electoral subject does not comply with the stipulation in paragraph 6 of this Article, it shall lose the right to benefit public funds for a period of no less than 5 years." 2. Paragraph 8 shall be abrogated.	This amendment seems reasonable: it deletes the previous obligation to return funds when an electoral subject achieved a worse result than the advance payment "assumed", as recommended by AEC-AL. The obligation in the amendment appears to be a sensible idea, as long as it does not motivate electoral subjects to overstate their spending.
Article 69 Article 87/1 shall be amended as follows: 1. Paragraph 2 with the following wording shall be added: "2. The CEC shall define in a decision the rules and modalities required to calculate the monetary value of in-kind	Paragraph 1 is in line with the AEC-AL recommendation. Paragraph 2 correctly establishes the principle that income to candidates should be regarded as income to the party on whose list they stand.

[2] Amendments for media in electoral campaign are necessary, specifically amendments to Articles 84 and 84/1 in line with ODIHR recommendations.

donations or services provided, according to the market value at the moment of their provision." 2. Paragraph 3 with the following wording shall be added: "3. For the purpose of this Law, donations in monetary values, in kind or in the form of services provided to candidates of electoral subjects shall be considered as contributions to the political party for which they are standing. For candidates proposed by coalitions, the political parties participating in a coalition shall determine - in their coalition-establishment agreement - which party will declare the candidate's expenses. 1. Paragraph 4 with the following wording shall be added: "4. The electoral subject shall take measures for the coordination of information by its candidates during the electoral campaign, so that no donor exceeds the donation limit set out in Article 89, paragraph 2 of this Law."	However, it only includes donations and not loans. **Recommendation**: use the same wording as proposed in the DP draft amendments, to ensure that loans to candidates also have to be reported as loans to the party. The proposed paragraph 4 imposes an obligation on electoral subjects to take steps to ensure that not only it but also its candidates do not violate the limit on donations. However, the donation limit is the maximum donation to an electoral subject, which should be understood as the party (this also follows from the proposed paragraph 3); otherwise, a donor could circumvent the limit by giving donations to multiple candidates of the same party. In addition, the phrase "shall take measures for the coordination of information" is rather vague. **Recommendations**: • Reword proposed Paragraph 4 to state that "The electoral subject shall take measures for the coordination of information by its candidates during the electoral campaign to ensure that the limit on donations to the electoral subject set out in Article 89, paragraph 2 of this Law is not exceeded."
Article 70 Article 87/2 shall be amended as follows: "Article 87/2 State Budget funds for the electoral campaign The fund defined through a decision of the Assembly, according to point 1 of article 87 of this Law, shall be distributed to the parties that are registered as electoral subjects as follows: a) 90 per cent of the fund shall be distributed to the political parties	It is difficult to assess whether this amendment would be an improvement on the current regulation or not. **Recommendation**: ensure that the breakdown in allocation of public funds for the electoral campaign is based on a clear analysis and justified accordingly in the explanatory report for the law.

registered as electoral subjects, which have received no less than 0.5 per cent of the valid votes in the previous elections. Two-thirds of this fund shall be given to these parties in advance, whereas one-third shall be distributed after the held elections and submission of the relevant financial reports to the CEC; b) 10 per cent of the fund shall be distributed to the political parties and independent candidates registered as electoral subjects who are not eligible under letter "a" of this Article."	
Article 71 Article 88 shall be amended as follows: 1. Paragraph 2, the following sentence shall be added at the end: "Use of human resources shall also include the promise or provision of benefits to public employees or students to participate in election campaign-related activities outside working or learning hours, as well as the exercise of pressure on them for this purpose." 2. Paragraphs 4 and 5 with the following wording shall be added: "4. The broadcasting by Public Radio and Television of the activities of central or local public institutions for electoral purposes shall be prohibited. An activity is considered to be for electoral purposes when it promotes institutional achievements, investments or the progress in public works, or when it promotes specific aspects of an electoral subject's electoral program. 5. The CEC shall issue detailed guidelines to specify the use and misuse of public resources."	These proposed amendments are in line with AEC-AL recommendations.

Article 72 Article 89 shall be amended as follows: 1. In point 3, letter 'a', the words "2 years" shall become "3 years". 2. At the end of letter 'a', the following sentence shall be added: "This prohibition shall apply also to sub-contracting or public-private partnership contracts." 3. Paragraph 4 with the following wording shall be added: "4. Natural persons or legal entities which donate to a political party or candidate in elections shall not receive public contracts, public-private partnership contracts, or in any other way, funds with a total value exceeding ALL 10 million, including as a sub-contractor on a public contract/concession, for up to 3 years following the Election Day."	These proposed amendments are in line with AEC-AL recommendations. However, it would make sense to also amend Article 89.2 (which establishes the limit on donations from any one entity) so that is it indexed to inflation. **Recommendation**: Amend Article 89.2 so that the limit on the total donations received from any single entity is indexed to take account of inflation since the last election.
Article 73 Article 90 shall be amended as follows: 4. In paragraph 2, the words "ALL 100,000" shall become "ALL 30,000". 5. Paragraph 3 shall be amended as follows: "3. The total expenses made by a political party, including its candidates, for an electoral campaign shall not exceed 2 times the highest amount that an electoral subject has received from public funds for electoral purposes, according to Article 87/3 of this Law. Any expense for the electoral campaign shall be documented and carried out in compliance with the fiscal legislation in force. For the purpose of this Law, *campaign expenses* shall mean any expenditure incurred by a party or its candidates for electoral campaign	The lowering of the threshold over which a donation must be made through the special bank account is consistent with AEC-AL recommendations. However, neither this nor other proposed amendments lower the threshold over which the identities of donors must be made public (currently 100,000 ALL in Article 91.4). The lowering of the campaign spending limit is broadly in line with AEC-AL recommendations. Whether the limit of 2 times the highest state subsidy is an optimal limit should be determined by a realistic analysis of the maximum amount an electoral campaign could reasonably cost. **Recommendations**:

purposes, regardless of the date it is incurred."	- Amend Article 91.4 to lower the size of donation over which the identity of the donor must be made public (as implemented in Article 27.1 of the United Opposition draft). - Introduce a provision stating that the donation limit will be adjusted at each election for inflation. - Ensure that the campaign spending limit is based on a clear analysis and justified accordingly in the explanatory report.
Article 74 After Article 90, Articles 90/1, 90/2 and 90/3 shall be added with the following wording: "Article 90/1 Declaration and publication 6. Electoral subjects shall submit an electoral campaign Financial Report to the CEC within 60 days from the announcement of the election result. 7. The report referred to in paragraph 1 of this Article shall be submitted according to a template approved by the CEC. It shall include information on: i. Every donation made to the party/electoral subject (including its branches and candidates) during the election campaign and six months prior to the campaign and the source thereof, including in-kind donations and services. ii. Income for the purposes of electoral campaigning from all other permitted sources. iii. All items of expenditures for the purpose of electoral campaign as defined in the CEC decision and in Article 90, paragraph 3 of this Law. iv. The balance sheet of assets and liabilities of the political party for the	These proposed amendments are in line with AEC-AL recommendations.

period from the decreeing of the election date until the election date. 5. Any political party participating in elections shall keep and maintain in its archives for a period of 7 years, complete and detailed documentation of its financial standing and of all its branches for the period covered by this report, including: i. accounting books, kept in line with the legislation in force, indicating all the income by source and amount, identifying how the payment was made, as well as all payments made to third persons, the purpose of payments and how each payment has been effectuated; ii. documentation of all expenditures incurred; iii. balance and transactions in its bank accounts; iv. complete documentation of immovable properties owned by the political party, and any contract concluded for hiring, renting, commissioning, or sale of movable and immovable properties.	
Article 90/2 Electoral campaign monitoring 5. No later than six months prior to the elections date, the CEC shall appoint a sufficient number of persons to monitor the compliance by electoral subjects with obligations relating to campaign financing and other obligations pursuant to Article 4 of this Law. Monitors shall be selected from persons with experience in election observation.	These proposed amendments are generally in line with AEC-AL recommendations. However, the requirement in Article 5 that monitors have experience in election observation may be over-restrictive. **Recommendation**: Consider deleting from paragraph 5 the sentence "Monitors shall be selected from persons with experience in election observation."

6. The CEC shall determine in a special instruction the criteria for the selection of monitors and the scope of monitoring. Monitoring shall be limited to observation of readily verifiable compliance with obligations of electoral subjects related to electoral campaigning, including compliance with prohibitions and restrictions on certain forms of campaigning, and misuse of State resources. 7. Monitoring shall not expose monitors to unnecessary risks. 8. Monitoring shall not require monitors to estimate total election campaign expenses by electoral subjects or other financial variables requiring the collation of extensive metadata. 9. In the event monitors observe violations during the monitoring process, they shall inform the CEC through the means defined by the CEC, on the same day the observation occurs.	
"Article 90/3 Portal to report about financing 10. The CEC shall establish and maintain - for a period of six months prior to the election date and up to six months after the election date – an internet portal with free access for anyone to report alleged violations of this law by electoral subjects and candidates concerning campaign financing. 11. The detailed criteria and procedures on the operation and maintenance of the portal, and the administrative investigation procedure and its time-limits, as well as the conclusions to be	The establishment of a complaints' mechanism is in line with AEC-AL recommendations. However, the period in which complaints may be filed after the election is probably too short. Campaign finance reports are to be submitted within 2 months of the announcement of the final result, but the timing of the latter is unpredictable (legal disputes may delay it, for example). This may lead to a situation where there is literally no time at all to submit complaints concerning inaccuracies in financial reports. **Recommendation**: Change the proposed amendment to establish a permanent portal/complaints mechanism, both for campaign finance and ordinary party finances (as well as other campaign violations).

reached at the end of it, shall be defined by a CEC decision."	
Article 75 In Article 91, paragraph 6 with the following wording shall be added: "6. The CEC shall have the right to directly verify electoral campaign expenses for any political party registered as an electoral subject, or candidates proposed by voters, or to verify the audit report pursuant to paragraph 1 of this Article. The CEC, for the implementation of this article, shall have the right to request data, documents or information from electoral subjects or third parties which shall respond to the CEC request within 15 days from its receipt. Failure or refusal to cooperate, destruction of documents, delays or inappropriate behaviour during the verification process conducted by the CEC shall be reported to the prosecution office as a criminal offense, pursuant to Article 248 of the Criminal Code, and shall be administratively punished in compliance with Article 173 of this Law."	Giving the CEC clearly the right to verify party finances is generally in line with AEC-AL recommendations. However: • The phrase "verifying the audit report" is probably not the ideal choice, as it implies a formal audit verification role of the CEC which may not be in line with standard auditing procedures. • It is not clear why the first part of the sentence specifies the right to verify campaign expenses, and not income as well. **Recommendation**: The amendment should simply give the CEC the right to verify any information provided by parties in their campaign finance reports.
Article 76 Article 92, paragraph 4 shall be amended as follows: "4. The election budget shall envisage necessary funds for the audit of electoral subjects and the monitors of electoral campaign expenses. Contractual conditions for this shall be defined by the CEC in a decision."	This proposed amendment is in line with AEC-AL recommendations.

3 United Opposition recommendations

Table 2 provides the text of the proposed draft law provided by the opposition, with comments on its individual provisions. One initial comment is that the title of the draft law provided in English translation is "Law on Political Parties", whereas it should be "Law on Financing of Political Parties and Election Campaigns".

Table 2: Proposal for a new Law on Financing of Political Parties and Election Campaigns (financing provisions)

Proposed paragraph	Comments
CHAPTER I **GENERAL PRINCIPLES**	
Article 1 **Purpose** This law regulates the modalities and conditions for the financing, administration, verification, monitoring, transparency and reporting concerning the financing of electoral subjects and political parties for the calendar year in the Republic of Albania. **Article 2** **Definitions** "Election campaign expenses" means expenses incurred by or on behalf of a political party registered as electoral subject, including candidates and its/or its branches, or by an independent candidate to promote a party, its candidates or an independent candidate in elections, or attempting to damage the standing of another party, another party's candidates or an independent candidate. "Campaign financial reporting period" is the period of seven months ahead of the election date. "Election campaign period" is the period of 30 days ahead of the election date until 24 hours ahead of the election date."	This Article is in line with AEC-AL recommendations. It is important that the definitions of election campaign spending and the campaign financial reporting period would be interpreted in practice so that spending on the election campaign would not be included in reporting if it took place outside of the reporting period – as such spending often does. **Recommendation**: Consider amending the definition of election campaign expenses to ensure that parties must report spending on the election campaign even if that spending is incurred before or after the official reporting period.

Article 3 **General provisions** 1. Political party financing shall be guided by the principle of transparency. The information on the political party financing sources and expenses shall always be published. 2. The rules on monitoring, supervision and auditing of financial and material resources shall, in any case, observe the equality of political parties before the law and shall not infringe on their right to free establishment.	
Article 4 **CEC powers concerning the party financing** 1. The Central Election Commission shall be the component body to monitor and oversee party financing, in accordance with the rules laid down in this law. 2. The Central Election Commission, based and pursuant to this law, shall have these powers: a) draft and adopt rules on reporting of finances, monitoring, supervision and financial audit of political parties, as well as the reporting templates for the political party reporting; b) approve the format of the special registry of non-public funds given to political parties, and the template on the form and content of the statement of donations of non-public funds; c) maintain the list of certified accounting experts and assign them according to the rules of this law to audit political party finances and expenses; ç) monitor, oversee and audit the political party financing by checking financial documents and accounting records of political	AEC-AL recommended that provisions on CEC powers include the clear right to deal with complaints from any entity. **Recommendation**: Include in the list of CEC powers (meaning obligation) the maintenance of a mechanism to receive and process complaints about alleged violations from any entity.

parties and of entities directly or indirectly related to political parties or under their control; d) impose sanctions when it finds infringements of the provisions of this law; dh) develop awareness-raising programmes and organize training events on the financing of political parties and entities involved in this process, in accordance with the provisions of this law; e) determine the amount of public funds each political party shall receive as annual financial subsidy, in accordance with this law; ë) issue implementing acts pursuant to and for the implementation of this law.	
CHAPTER II **CAMPAIGN FINANCING**	
Article 5 **Activity of public institutions in campaign** 1. Central and local public institutions, autonomous agencies and any other entity where the State owns capital or shares and/or appoints the majority in the supervisory body or the management body of the entity, regardless of the source of capital or ownership, shall be bound to report to the CEC all activities of a public character that they plan to conduct in the six months prior to the election date until election day. Reporting shall be the personal responsibility of the person responsible for the administrative management of public institutions, agencies and state-owned enterprises (the institution's secretary-general, or, where appropriate, the general director or executive director). Reporting must be completed no later than 48 hours before the scheduled deadline for the activity.	See comments on Consolidated draft, Article 5.

2. For the purpose of reporting under paragraph 1 of this Article, the CEC shall maintain and manage the reporting interface of public activities. The responsible persons shall receive personalized access to this interface and enter data on the date and time of the event, its type, theme, highest level of participation, guests of honour, scheduled speakers and media coverage. The information under this paragraph shall be accessible to all interface users from the moment of data entry until the announcement of the final election result. 3. In case the CEC, *ex officio* or upon third-party request, finds from the information referred to in paragraph 2 of this Article that the activity may constitute an abuse of State resources, it shall order the prohibition of its development. Prohibition shall be effectuated by placing the note "Prohibited by the CEC" in the reporting interface, in the section pertaining to the activity. The note "Prohibited by the CEC" shall be placed no later than 24 hours after the reporting. The information under this paragraph shall be accessible to all interface users from the moment of data entry until the announcement of the final election result. 4. Activities prohibited by CEC shall not allowed to be aired or featured in news editions or radio and TV programs dedicated to campaign coverage. Their broadcasting or featuring in breach of this paragraph shall result in the radio-television broadcasters with liability under this law. 5. Failure to report scheduled activities with a public character by public institutions, State agencies and/or enterprises, or the conduct of such activities despite the CEC prohibition, shall be cause for liability of the responsible person and the head of the relevant institution, whenever he/she obstructs the compliance with this provision.	

Article 6 **Rights and obligations of electoral subjects during the campaign** 1. During the election campaign, any electoral subject shall be entitled to make election propaganda in any lawful way, 2. Electoral subjects shall be forbidden and held criminally liable if they offer or give money, material goods, promise jobs or other favours, in whatever form, to the voter or other related persons, with a view to obtaining the signature for nominating a candidate for election, to vote in a certain way, to participate or not participate in voting, or in exchange for engagement in illegal activities to support a candidate or political party. **Article 7** **Displaying [posting] of propaganda materials** 1. No later than 35 days prior to election date, the Mayor, in a fair and impartial manner, shall specify the public places in the territory of the relevant municipality to be used for displaying propaganda materials by political parties and electoral subjects. 2. The places determined for this purpose must be located in environments that ensure public visibility and they should have adequate space where all electoral subjects participating in elections can present their electoral programs and messages. Immediately upon approval, the decision of the Mayor shall be published in the municipality's webpage. 3. During the electoral campaign, the use and display of any other static electoral propaganda materials, including flags and posters, shall be permitted at a distance of only up to 5 meters from the electoral office of a political party/electoral subject.	**Concerning Article 6.7 on vote-buying, the same comments apply as to Article 64 of the consolidated draft.** **Recommendation**: Include in the provisions on vote-buying a prohibition on providing cash to voters under any circumstances, clear limitations on the materials/benefits that may be provided to voters, and prohibit the organising of transport of voters to polling stations.

4. The use of static propaganda materials in violation of the provisions made in paragraph 2 of this Article shall be forbidden. "Static propaganda materials" shall mean any materials that serve to the electoral subject/political party for the promotion of the electoral campaign and that are installed or displayed in public spaces or space with public access, such as street lighting poles, facades of buildings, squares, store or building's fronts, along city roads, along interurban roads, etc. 5. The Municipal Police and/or State Police shall guarantee compliance with the provisions of this Article by immediately removing any propaganda materials of electoral subjects that are placed in locations different from what is stipulated in paragraphs 1 and 2 of this Article.	
CHAPTER III **FINANCING OF ELECTORAL SUBJECTS**	
Article 8 **State budget funds to finance parties participating in the elections** **[Article 87 of EC, first 5 paragraphs copy pasted, 6-8 amended]** 1. Political parties participating in the elections, which have received no less than 0.5 per cent of votes nationwide, are entitled to State Budget funds, based on the number of votes of each party in those elections. This fund is determined through a decision of the Assembly and comprises a separate item in the State Budget for the respective electoral year. This fund may not be lower than the aggregate sum allocated to political parties in previous elections. 2. Within 5 days from the declaration of the final result at national level, the CEC determines, by a decision, the monetary value of a valid vote, dividing the adopted general fund by the overall number of valid votes	The A similar comment applies here as for the consolidated draft) This amendment seems reasonable: it deletes the previous obligation to return funds when an electoral subject achieved a worse result than the advance payment "assumed", as recommended by AEC-AL. The obligation in the amendment to return funds when the amount allocated exceeds declared spending also appears to be a sensible idea, as long as it does not motivate electoral subjects to overstate their spending. In addition, however, an additional proposed paragraph 8 appears to enable the CEC to deduct funds that a party owes to it (under paragraph 6) from the public funds the party receives the following year. This provision is not worded clearly enough – the phrase "the

received by the political parties that participated in the last elections which have received no less than 0.5 per cent of valid votes at national level. For elections for local government bodies, the calculation is based on the number of votes received for the local councils at national level. 3. The CEC calculates the amount due to each party, by multiplying the monetary value of one valid vote, as defined in point 2 of this article, with the number of valid votes received by each party in the last elections. 4. From the amount calculated according to point 3, the CEC deducts the financial sanctions, which are imposed on respective parties according to this law, and have become executive titles. 5. The resultant amount after calculations of point 4 is the amount that the party that participates in elections is entitled to from the State Budget. 6. If the calculated amount in point 4 of this article is higher than the total electoral campaign expenses reported by the political party or the electoral subject, or it has been assessed as such by the CEC, according to its independent audits or verifications, the electoral subject/political party shall have the obligation to give the difference back to the CEC. 7. If the political party or electoral subject does not implement the stipulation made in point 6 of this article, then it shall be exempted from the right to benefit public funds, for a period of no less than 5 years. 8. In any case, the CEC has the right to compensate [offset] between sums that subjects have to return to the CEC and amounts that it distributes according to the law in the following year.	CEC has the right" potentially creates a dangerous amount of discretion. **Recommendation**: Amend proposed Article 8.8 to simply state that when a party does not return money owed under paragraph 6 this will (not may) be deducted from the following year's state subsidy.

Article 9 **Financing sources for the electoral campaign** **[Article 87/1 of EC, paragraphs 2-4 added]** 1. The sources for financing the campaign of electoral subjects are the following: a) advanced funds given by the State Budget for political parties registered as electoral subjects; b) income generated by the electoral subject itself, in accordance with the legislation in force; c) gifts in monetary value, in kind or services rendered, according to article 13 of this law; ç) loans taken by the political parties in accordance with the law. The value of a loan shall not exceed the amount of money defined in point 2 of article 13 of this law. 2. Financing of election campaigns from funds, gifts or other services without remuneration given by Albanian or foreign natural or legal persons, outside the cases and rules provided for in this law, shall be prohibited. Violation of this prohibition results in legal liability on the person responsible for finances in that political party, as well as on the Albanian or foreign natural or legal person. 3. The CEC shall issue a decision establishing the rules and necessary modalities for determining the monetary value of in-kind donations or services provided, according to the market value at the moment of provision. 4. For the purpose of this Code, contributions or loans given to candidates of electoral subjects shall be regarded as contributions to the party for which they are standing.	The proposed paragraph 2 appears to be superfluous, essentially stating that income that is not permitted under the law is not permitted.
Article 10 **State budget funds [given] for the electoral campaign** **[Article 87/2 of EC amended]**	The same comment applies here as for the consolidated draft: It is difficult to assess whether this amendment would be an improvement on the current

The fund defined through a decision of the Assembly, according to point 1 of article 87, is given in advance to the parties that are registered as electoral subjects as follows: a) 90 per cent of the fund is distributed to the political parties registered as electoral subjects, which have received no less than 0.5 per cent of the valid votes in the previous elections; b) 10 per cent of the fund is distributed to the political parties and independent candidates registered as electoral subjects and do not profit according to letter "a" of this article. The above fund shall be distributed to political parties in advance, prior to the conduct of elections.	regulation or not. It would be good if there is a clear justification for the change in the proportion of funds allocated to parties over and under the 0.5% threshold. It should also be noted that this paper recommends the introduction of a provision that would link the annual subsidy for political parties to the fulfilment of a certain quota of women MPs (see comments on Article 23). While it would be more complicated, a similar condition could be introduced in Article 10. **Recommendations**: - Ensure that the breakdown in allocation of public funds for the electoral campaign is based on a clear analysis and justified accordingly in the explanatory report for the law. - Consider introducing a provision stating that a certain proportion of the public subsidy for any electoral subject will be conditional on it fielding a certain proportion of female candidates (or female candidates in the higher end of party candidate lists).
Article 87/3 **Calculation of advance[d] funds** 1. The fund defined according to letter "a" of article 10 of this law is calculated by dividing this fund with the total number of valid votes received by the political parties, which profit [benefit] funds according to letter "a" of article 10 of this law. The result from this division is multiplied by the number of valid votes received by the respective political party in the previous elections. 2. The fund defined according to letter "b" of article 10 of this law is distributed by dividing this fund with the number of the political parties that profit funds, but in no case may this amount be higher than the smallest	This article should presumably be Article 11 of the draft, although it is transposed from current EC Article 87/3.

amount profited by one party, according to point 1 of this article. 3. For elections to the Assembly, the applied criterion is the result at national level as declared by the CEC for the previous elections to the Assembly. For local government elections, the applied criterion is the result for the local councils at national level, as declared by CEC for the previous local government elections. 4. The fund determined to be distributed, according to article 10, is given to each party no later than 5 days from the registration of the multi-name lists, or to the candidates for mayor of the local government unit of the respective party.	
Article 12 **Prohibition on using public resources to support electoral subjects** **[Article 88* of EC, parts in red added]** 1. Except when otherwise provided by law, resources of central or local public bodies or entities, or of any other entity where the state holds capital or shares or/and appoints the majority of the supervisory or administrative body of the entity, regardless of the source of the capital or ownership, may not be used or made available to support candidates, political parties or coalitions in elections. 2. For purposes of this article, current and fixed assets provided for in article 142 of the Civil Code, as well as any human resources of the institution, shall be considered as "resources". Use of "human resources" shall mean the obligatory use for electoral purposes of the institution's administration within the work hours, as well as the obligatory and organized use of students of the pre-university system within the lesson hours, in the electoral campaign. Use of human resources shall also	The proposed changes are in line with AEC-AL recommendations.

include pressure or provision of benefits to public employees or students to participate in election campaign-related activities outside working or learning hours. 3. During the electoral campaign, the recruitment, dismissal, release, movement or transfer in duty in public institutions or entities is prohibited, except for legally-justified cases. Legally-justified cases shall refer to cases when movement or release from duty occurs when the respective legislation is violated, or when recruitment by the public institution or entity, in fulfilling their mission, is carried out within the organisation's staffing and structure in force before the electoral campaign. This does not apply to cases of emergencies arising from unanticipated events, which dictate recruitment. 4. The broadcasting by Public Radio and Television of the activities of central or local public institutions for electoral purposes shall be prohibited. An activity is considered to be for electoral purposes when it promotes institutional achievements, investments or the progress in public works, or when it promotes specific aspects of the electoral programme of the electoral subject. 5. The CEC shall issue detailed guidelines to specify the use and misuse of public resources	
Article 13 **Financing of electoral subjects through non-public funds** **[Article 89* of EC amended]** 1. Electoral subjects may receive funds for the purposes of their electoral campaigns only from domestic natural or legal persons. For the purposes of this law, an Albanian citizen who resides outside the territory of the Republic of Albania shall also be considered a domestic natural person.	The change Article 3.a) are broadly in line with AEC-AL recommendations. However, as noted under the consolidated draft, it would make sense to also amend Article 13.2 so that the limit indexed to inflation. The proposed change in paragraph 3 to extend the prohibitions on donations by legal entities to include relatives of shareholders up the third degree is unusually strict. Paragraph 4 is in line with AEC-AL recommendations with the

2. The amount that each natural or legal person may give to an electoral subject including its candidates, may not be larger than ALL 1 million or the equivalent value in kind or services. 3. Donation of funds by a legal person or any of its shareholders and his/her related persons up to the third degree is prohibited if one of the following conditions applies: a) has received public funds, public contracts or concessions in the last 4 years, exceeding ALL 10 million. This prohibition shall also apply to sub-contracting or public-private partnership contracts; b) exercises media activity; c) has been a partner with public funds in different projects; ç) has monetary obligations towards the State Budget or any public institution. This obligation is not applicable if the shareholder owns these shares as a result of a public offer. 4. Natural or legal persons and related persons up to third degree which/who have donated to a political party or candidate in elections shall not receive public contracts, public-private partnership contracts, or in any other way, funds with a total value exceeding ALL 10 million, including as a sub-contractor on a public contract/concession, for up to 4 years following the Election Date.	exception of the same issue (inclusion of relatives of shareholders). **Recommendations:** - Amend proposed Article 13.2 so that the limit on the total donations received from any single entity is indexed to take account of inflation since the last election. - Consideration should be given to whether the possible benefit of the inclusion of relatives of shareholders in the restrictions on donations from legal entities justifies the encroachment on individual rights.
Article 14 **Registration of non-public funds** **[Article 90* of EC amended, points 1, 2 seem to be omitted]** 1. The total expenses made by a political party, including its candidates, for an electoral campaign shall not exceed 1.5 times the highest amount that an electoral subject has received from public funds, according to article 11 of this law. Every expense for the electoral campaign is documented and carried out in respect of the fiscal legislation in force. For the purpose of this law, "campaign expenses" shall mean any expenditure	The same comment applies here as for the consolidated draft: The lowering of the campaign spending limit is broadly in line with AEC-AL recommendations. Whether the limit of 1.5 times the highest state subsidy is an optimal limit should be determined by a realistic analysis of the maximum amount an electoral campaign could reasonably cost.

incurred by a party or its candidates for electoral campaign purposes, regardless of the date it is incurred." 2. The Central Election Commission, in accordance with the maximum amount provided for in point 1 of this Article, shall determine the maximum expenses for each election campaign, based on the overall economic situation in the country, the total number of voters registered in the voters list, and the activities, services and materials necessary for the conduct of an election campaign. 3. The Central Election Commission shall approve by an instruction the reference list of costs for any activity, propaganda materials such as flags, shirts, audio systems, entertaining event, service or other material etc. to be used for electoral or political purposes by political parties during the election campaign. 4. The Central Election Commission shall determine by an instruction the types and number of activities, events, services, electoral offices and materials allowed to be used by a political party during the election campaign. 5. Any electoral subject shall record in a designated register – whose template is approved by a CEC decision – the amount of funds benefited from any natural or legal person and other data related to the clear identification of the donor. Upon donation, the donor shall sign a declaration where he/she acknowledges that he/she is not in any of the situations provided for in Article 13 of this law and shall be held liable for false declaration. The form and content of the declaration shall be approved by the CEC and is mandatory to be signed in case of each donation. 6. Donation of non-public funds over 30 thousand ALL [circa 240 euro] shall be done	Paragraph 2 introduces discretion of the CEC to determine "maximum expenses" on an election-by-election basis. This introduces a large degree of uncertainty for parties planning election campaigns and is not in line with good practice. It is not necessary if the limit is set sensibly in paragraph 1. Paragraph 3: As noted in previous assessments of AEC-AL, "determining the reference costs of campaign items" is an extremely complicated task and may not even be possible given the variety of things that can qualify as campaign services – for example costs of an event may vary depending on whether a party organises everything itself, or hires a company to do so. Paragraph 6 is in line with AEC-AL recommendations. **Recommendations**: • Ensure that the campaign spending limit is based on a clear analysis and justified accordingly in the explanatory report. • The proposed paragraphs 2 and 3 should not be included.

only in a designated bank account opened by the electoral subject. The person responsible for finances of the electoral subject, no later than three days from the start of the election campaign, shall declare the bank account opened for this purpose. The bank account number of each electoral subject shall be posted on CEC's official website. 7. Obligations provided in this article shall apply also to candidates proposed by voters, registered as per articles 69 and 70 of the Electoral Code. The total expenses to be incurred by the candidate proposed by the voters shall not exceed 50% of the amount that an electoral subject has obtained from public funds under Article 11 of this law.	
Article 17 **Verification of the campaign of electoral subjects** 1. Electoral subjects registered in elections have the right to verify the reports of second-tier banks, six months prior to the election date, which shall be forwarded and submitted to the General Directorate on Prevention of Money Laundering. [unclear??] 2. Verification shall be conducted directly by a financial expert proposed by the coalition or parliamentary party when its runs alone, and shall be approved by the CEC. 3. If financial experts of subjects find violations during the verification process, they shall inform the CEC through the modality defined by the CEC. Data collection, processing and management, under this law, shall be subject to the personal data protection rules.	This proposed article is highly controversial. It establishes what constitutes by definition a biased verification process, in which electoral subjects would have an incentive to report violations even if these are debatable or unfounded. In general, external verification should only be conducted by financial experts appointed in an official process (as with audit of parties' financial reports currently in Albania). In addition, the mechanism proposed adds yet another layer of control to the existing ones (monitoring during the campaign, audit of Election Campaign Finance reports, and possible verification by CEC). **Recommendation**: Do not include this Article
Article 18 **Portal to report about financing** 1. The CEC shall establish and maintain - for a period of six months prior to the election date and up to six months after the election date – an internet portal with free access for anyone	The same comment applies here as for consolidated draft:

to report alleged violations of this Code by electoral subjects and candidates concerning campaign financing. 2. The detailed criteria and procedures on the operation and maintenance of the portal, and the administrative investigation procedures and its deadlines, as well as the conclusions to be reached at the end of it, shall be defined by a CEC decision.	The establishment of a complaints' mechanism is in line with AEC-AL recommendations. However, the period in which complaints may be filed after the election is probably too short. Campaign finance reports are to be submitted within 2 months of the announcement of the final result, but the timing of the latter is unpredictable (legal disputes may delay it, for example). This may lead to a situation where there is literally no time at all to submit complaints concerning inaccuracies in financial reports. **Recommendation**: Change the proposed amendment to establish a permanent portal/complaints mechanism, both for campaign finance and ordinary party finances (as well as other campaign violations).
Article 19 **Auditing of electoral campaign funds and expenses** **[Article 91* of EC amended]** 1. No later than 5 days after the declaration of the final election result for each political party registered as an electoral subject or for the candidates proposed by the voters, the CEC appoints one or more certified accounting experts selected in accordance with article 19 of this law, to perform an audit of the funds received and spent for the electoral campaign. The audit report shall be submitted to the CEC by the deadline provided for in the appointment decision. The report may not include personal data of donors under the value provided for in point 2 of article 14 of this law. 2. The electoral subjects specified in point 1 of this article shall make available to the auditor appointed by the CEC all information,	The article referred to in the last sentence of paragraph 1 should be 14.6, not 14.2. On the same subject, the law does not state anywhere clearly which donations will be published in full (including the identity of the donor). Concerning paragraph 6, the same comment is provided as for the proposed new Article 91.6. Giving the CEC clearly the right to verify party finances is generally in line with AEC-AL recommendations. However: • The phrase "verifying the audit report" is probably not the ideal choice, as it implies a formal audit verification role of the CEC which may not be in line with standard auditing procedures. • It is not clear why the first part of the sentence specifies the right to verify

documents or data that are related to the financing and expenses of the electoral campaign in accordance with this Code. 3. The electoral subjects that are being audited shall make available all the information they have from the banks, institutions or third persons related to the audit, or authorize the auditor to obtain such information from third parties. The CEC shall make available to the auditor the information it receives from third parties about the subject being audited, at each phase of the auditing process. 4. The CEC shall publish the audit reports for electoral subjects no later than 30 days from the date the report has been submitted, or depending on the case, from the date the respective verifications have been completed. The names of persons who donate amounts of no less than ALL 30,000, as well as the respective amounts, are published together with the report. 5. Failure by electoral subjects or donors to comply with the rules provided for in this Chapter, when it does not constitute a criminal offence, shall constitute an administrative offence and is sanctioned according to the provisions of article 30 of this law. 6. The CEC shall have the right to directly verify electoral campaign expenses for any political party registered as an electoral subject, candidates or candidates proposed by voters, or to verify the audit report, pursuant to paragraph 1 of this article. The CEC, for the implementation of this article, shall have the right to request data, documents or information from electoral subjects or third parties, who must respond to the CEC request within 15 days from its receipt. Failure to cooperate or refusal to cooperate, annihilation of documents, delays or inappropriate behaviour, in the verification process conducted by the CEC shall be reported to the	campaign expenses, and not income as well. **Recommendations**: - The proposed Article 19.6 should simply give the CEC the right to verify any information provided by parties in their campaign finance reports. - Ensure the reference to Article 14 in the last sentence of Article 19.1 is correct.

prosecutor's office as a criminal offense, pursuant to Article 248 of the Criminal Code, and shall be administratively punished in compliance with Article 30 of this law."	
Article 20 **`Selection of auditors by the CEC** **[Article 92 of EC amended]** 1. The CEC selects by competition a list of licensed statutory auditors at the beginning of the electoral year. 2. The list should contain at least 20 statutory auditors who have been exercising this profession in the last 5 years. 3. The main majority party has the right to select one or more statutory auditors from the list of auditors approved by the CEC under point 2 of this article, in order to audit the funds received and spent by the main party of the parliamentary opposition. After the main majority party selects, this right shall be exercised by the main party of the parliamentary opposition which shall select from the list of statutory auditors approved by the CEC the statutory auditor to audit the finds received and spent by the main majority party. This procedure shall apply also to the second majority party and the second parliamentary opposition party. For the other parties participating in the elections, the CEC shall appoint by lot one or more statutory auditors to carry out the audit of funds received and spent for the electoral campaign. 4. Procedures, criteria for the selection of the preliminary list and their appointment are determined by instruction of the CEC. In any case, one auditor may not audit the same electoral subject for two consecutive elections. 5. The budget for elections should also envisage the fund needed for auditing the electoral subjects and monitors of electoral campaign expenses. The CEC shall define by decision the contractual terms on this.	Paragraph 3 of this Article changes the procedure for selecting auditors so that major political parties select each other's auditors from the CEC's approved list. It is not clear how this proposal is expected to improve the situation compared to random selection from the approved list. Moreover, the concept of "main majority party" and "main opposition party" are not precise: under certain political circumstances it may become unclear which party is the "main governing party or "main opposition party". **Recommendation**: Maintain Article 20.3 of the draft as it is currently worded.
CHAPTER IV	

FINANCIAL AND MATERIAL MEANS OF POLITICAL PARTIES	
Article 21 Political parties are legal persons. They shall have assets to conduct their activity. Political parties shall have their means of propaganda and relevant institutions to propagate it. **Article 22** The financial and material resources and materials of political parties shall consist of their membership quotas; public funds, including the subsidy in the amount set in the State Budget and approved by law by the Assembly; non-public funds, which include financial donations, in-kind donations, services, sponsorships, loans or various guarantees, as well as any other financial transaction.	The second sentence of proposed Article 21 appears superfluous, and it is not clear what significance it would have legally.
Article 23 1. A fund serving as public subsidy for the annual activities of political parties shall be earmarked each year in the State Budget. The subsidy earmarked in the State Budget for non-electoral years shall, as a rule, not be less than the subsidy of the preceding year. 2. This fund shall be divided according to the following rules: i. a) 70 percent shall be divided according to the number of seats won in the last parliamentary elections. Any parliamentary party shall be entitled to public subsidy according to the number of seats won based on the electoral system laid down in the Electoral Code; b) 20 percent shall be divided equally among parliamentary parties and the parties that received over 10 thousand votes in the last parliamentary elections;	The current criteria for allocation of public funds are disproportionately weighted towards larger parties (see separate Technical Paper, ECCD-HFII-AEC-AL TP-2-2020 "Review of regulations on public and private party financing in the Council of Europe member States and recommendations for Albania"). Second, public funding appears to account for a very high percentage of total party funding, although the figures are not entirely clear. Donations in general appear to be very limited, although this may be a problem of reporting (especially in-kind donations). Simply reducing state funding may therefore do little to redress the balance, although as noted elsewhere the amount of the total state subsidy should be determined on the basis of a proper analysis of the fair cost of an election campaign given the restrictions on campaigning that are in the law (plus ban on TV advertising as recommended in this paper). An additional question would be whether regulation could stimulate more donations from party

c) 10 percent shall be divided according to the percentage obtained by the political parties that took part in the last parliamentary elections and obtained over 1 percent of the votes.

The non-allocated remainder of the 10 percent shall be added to the 70 percent and shall be divided among parliamentary parties.

3. The concrete amount of the public funds received by each political party in the form of annual subsidy in compliance with this law shall be determined by a decision of the Central Election Commission. This decision shall be notified to both the beneficiary political parties and the Ministry of Finance.

4. In any case, the annual subsidy shall be awarded provided that the political party have already submitted the financial report of the preceding year according to the rules defined by the Central Election Commission. Failure to submit this report shall be sufficient cause to deny the political party the right to obtain the annual subsidy.

5. Appeal against the decision of the Central Election Commission which sets the exact amount of public funds for each political party may be filed with the court in line with rules on review of administrative disputes.

6. The political party shall as a rule dedicate 30% of the State budget funds received to the organization and functioning of partner organizations, youth organizations and/or other entities with political, academic and educational functions, related to the political party, such as foundations, academia, political schools, etc.

sympathisers, while discouraging large donations in return for corrupt benefits.

Third, the proposed Article 23.6 would earmark 30% of the State budget funds received so that they should be used for "organization and functioning of partner organizations, youth organizations and/or other entities with political, academic and educational functions." However, the phrasing "as a rule" here makes it unclear whether the provision is mandatory or enforceable.

Fourth, regarding the same provision (Article 23.6), there are no provisions currently in Albania to incentivise parties to increase participation of women.

Recommendations:

- Adjust the criteria for allocation of public subsidies for political parties to benefit larger and smaller parties more equally. This could be done for example by providing funds in direct proportion to the votes won by parties in the previous election (i.e. similar to the criteria for allocating funds for election campaigns). While retaining this general rule, the formula for allocation could be designed so that:

    - Only parties that exceed a certain proportion of the vote (e.g. 1%, with a higher threshold for coalitions) qualify for funds.

    - The amount of funds provided per vote decreases as the number of votes increases (e.g. a certain sum per vote up to 5%, a smaller amount for each extra vote up to 10%, etc.

Given the sheer number of parties formally registered in Albania, any solution should avoid providing any automatic lump sum to all parties.

	- Consider introducing a system of "matching donations", where the state provides a subsidy to match each private donation up to a certain size of donation (30,000, 50,000, 100,000?). If necessary, a cap on the total subsidy to any one party/electoral subject could also be considered. - Include in the public subsidy rules a provision that conditions the release of a certain proportion of the subsidy (for example 30% or 50%) on the party having a certain proportion of MPs who are women (for example 30%).
Article 24 1. Establishment by the political parties or through third parties of commercial and non-commercial legal entities exercising activity for profit, shall be prohibited. 2. Political parties may use their assets and facilities for economic-social activity in the form of publications, printing, services or leasing, according to the legislation in force.	These articles are directly transposed from the Law on Political Parties and are not the subject of any AEC-AL recommendation.
Article 25 1. Financial and material assistance from foreign public or private entities or governments, as well as from Albanian public entities or entities with State capital shall be prohibited. 2. Gifts and assistance from a party or international union of parties, from Albanian or foreign political foundations and organizations, as well as from Albanian private natural and legal persons shall be permitted.	**As noted by other experts, it is not entirely clear whether these provisions could prohibit** electoral assistance to parties provided by international organizations such as ODIHR, EU, IDEA, IFES, Westminster Foundation *etc*. Such assistance can be of great importance in supporting party development and democratic consolidation. Second, an important gap in current legislation is the absence of a limit on the size of private donations (including in-kind donations). **Recommendations**: - Amend Article 25.2 to include in the list of permitted sources assistance to parties from international organisations.

	- Introduce a limit on the total donations received from any one entity in a financial year, for example the same limit as for election campaigns (ALL 1 million). It would make sense to index the limit to inflation on an annual basis.
Article 26 1. Political parties shall submit financial reports to the Central Election Commission once a year no later than 31 March, which shall contain detailed information on: a) financing sources provided in a standardized template approved by the CEC; b) expenses provided in a standardized template approved by the CEC; c) entities directly or indirectly related to political parties or controlled by them, which are declared by the political party itself; 2. Political parties shall submit the annual financial report along with the audit report drawn up by statutory auditors in accordance with the provisions of this law. 3. The annual financial report shall be submitted either by the person in charge of finances at the political party or by an individual assigned [to carry out this duty] by the statute of the political party within the time-limit defined by the Central Election Commission. 4. During an election year, the financial reports of the political party must be submitted together with the financial report of the election campaign. 5. The annual financial report, the report of the certified accounting experts, the financial report of the election campaign and the report of the Central Election Commission shall be published on the official website of the Central	This article is transposed from the Political Parties Law as is consistent with PACA and AEC-AL recommendations.

Election Commission no later than 30 days from the date of their submission by the political party.	
Article 27 1. Any political party shall record in a special register, according to the template approved by the Central Election Commission, the amount of funds received by any natural or legal person, and the data clearly defining the identity of the donor. In any case, when giving the donation, the donor shall sign a donation statement, in accordance with the template approved by the Central Election Commission. The list of persons who donate funds of not less than 30 thousand ALL along with the respective amount [donated] shall be made public at all times. 2. Donation of non-public funds over 30 thousand ALL shall be made only through a special bank account opened by the political party. The person in charge of finances at the political party shall notify to the Central Election Commission the bank account number opened for this very purpose no later than three months from the establishment of the political party. The bank account number of each political entity shall be published on the official website of the Central Election Commission. 3. Reception of non-public funds donated by entities which fail to declare their identity, or whose identity is not clearly stated by the political party benefiting the non-public funds shall be prohibited. 4. Any expenses incurred by the political party shall be effectuated and documented in compliance with the tax legislation in force.	The lowering of the thresholds in Article 27.1 and 27.2 from 100,000 to 30,000 is consistent with AEC-AL recommendations.
Article 28 1. Pursuant to this Law, the CEC shall maintain the list of licensed accounting	Article 28.3 (empowering the main governing party to select the auditor of the main opposition party and *vice versa*) is problematic.

experts, including all licensed accounting experts with experience and who have been practising this profession for more than the last five years, and who apply. 2. The Central Election Commission shall assign by lot one or more licenced accounting experts from the list to audit the funds received and spent by the political party throughout the calendar year. The assignment shall take place no later than 45 days from the registration of the political party and at the beginning of each calendar year. The auditing report shall be submitted to the Central Election Commission within the time-limit set in the CEC's decision for the assignment of the experts. 3. The main majority party has the right to select one or more statutory auditors from the list of auditors approved by the CEC under point 1 of this article, in order to audit the funds received and spent by the main party of the parliamentary opposition during the calendar year. After the main majority party selects, this right shall be exercised by the main party of the parliamentary opposition which shall select from the list of statutory auditors approved by the CEC the statutory auditor to audit the finds received and spent by the main majority party during the calendar year. This procedure shall apply also to the second majority party and the second parliamentary opposition party. For the other parties participating in the elections, the CEC shall appoint by lot one or more statutory auditors to carry out the audit of funds received and spent for the electoral campaign. 4. Political parties shall make available to the auditor appointed by the CEC all information, documents or data that are related to the financing and expenses incurred during the calendar year, in accordance with this law.	In theory, it may not be clear which is the "main" governing or opposition party (for example where coalition parties win equal numbers of seats). In addition, it may invite collusion between parties to choose auditors that are favourable to or desired by the party being audited. Even if these risks were not realised, it is not clear what the benefit from such a provision would be. The provision also contradicts paragraph 2, which states (as in the current LPP) that the CEC selects auditors by lot. **Recommendation**: Do not include the proposed Article 28.3.

5. The Central Election Commission may verify the report data by interviewing individuals and various entities, by checking the documents related to this issue with the respective offices of the political parties that submitted the report, as well as by obtaining information from the banks or any other third persons. Natural and legal persons are obliged to provide assistance for the smooth conduct of the verification procedure. 6. The Central Election Commission shall publish the political party audit reports no later than 30 days from the date the report was submitted, or where appropriate, from the date the verification procedure was completed. 6. Failure by political parties or donors to comply with the rules defined in this law shall be deemed an administrative contravention, unless it constitutes a criminal offence, and it shall be punished according to the provisions of this law.	
Article 29 1. The accounting expert shall not audit the same political party for two consecutive years. 2. The expenses incurred to audit the political parties shall be covered by the political parties themselves which shall transfer the sums needed for this purpose to the bank account of the Central Election Commission. Detailed rules on the conduct of this process shall be defined by way of an instruction issued by the Central Election Commission.	These provisions do not change the current legal set-up and are not the subject of AEC-AL recommendations.
Article 30 1. Violation of the provisions on political party financing by the candidate, when it construes a criminal offense, shall lead to announcing his/her mandate invalid and early termination	The phrasing "provisions of political party financing" is slightly confusing, as the provision presumably relates only to violations of regulations on election campaign finance.

of his/her term by the CEC. In this case, the CEC shall notify the Speaker of the Assembly for the invalidity of the MP mandate, or the Prime Minister for the invalidity of the mandate of mayor or municipal councillor. 2. Violation of the provisions on political party financing by the political party, when it construes a criminal offense, shall lead to the invalidity of the mandate and early termination of the last mandate won by the political party in the electoral zone with the biggest number of votes. announcing his/her mandate invalid and early termination of his/her term by the CEC. In this case, the mandate shall go to the party with the biggest quotient within the coalition when the party stands in coalition or to the party with the highest quotient when the party runs alone.	The draft proposal would lead to the loss of mandate by MPs convicted of vote-buying or failing to cooperate with the CEC in providing information for verification purposes. Making more serious campaign finance violations criminal offences is in line with good practice elsewhere, and such sanctions can be a very useful deterrent. Indeed, a question is whether other serious violations might also be criminalised, for example the use of certain public resources for campaign purposes, major breaches of spending limits, etc. On the other hand, until the independence of the judiciary is fully ensured, it may be appropriate to restrict criminalisation to offences whose standard of proof is unambiguous. This would imply a more limited set of offences.
3. The Assembly shall define in a decision detailed rules and time-limits to take measures to comply with the prohibitions provided for in points 1 and 2 of this article. 4. A violation of the provisions on electoral campaign financing by the chief of finance of a political party shall be punishable by a fine of ALL 100,000 to 200,000. 5. Obstructing or failure of the electoral subject to cooperate with the auditor shall be punishable by a fine of ALL 2,000,000 to 3,000,000, and suspension of the public financing of the political party for up to 5 years.	The provisions in this proposed Article on sanctions for electoral campaign finance violations do not appear to be consistent with violations of ordinary financing regulations (in proposed Article 31). The proposed paragraph 4, introduces a different (more severe) sanction on responsible persons for violation of provisions on electoral campaign financing than the sanction for violation of (ordinary) party finance regulations. It is not clear what the rationale for this is. A similar comment applies to proposed paragraph 5, 6 (dramatically – the fine for failing to submit the annual financial report is from 50-100,000 in the draft) and 9.
6. Failure to submit the election campaign financial report within the legal deadline shall be punishable by a fine of ALL 2,000,000. Submission of reports in breach of standardized formats approved by the Central Election Commission shall be fined from ALL 500,000 to 1,000,000.	Regarding the fines established in the draft, these increase the maximum fines. However, they do not necessarily increase the flexibility of fines, as recommended by AEC-AL. For example, AEC-AL recommended that the fine for violation of provisions on electoral campaign financing should be punishable by a fine "up to 200,000", not "between 100,000 and 200,000".

7. Non-public funds obtained by a political party, whose donor`s identity is not known or is not clearly defined, shall be transferred to the account of the CEC. Failure to do so shall result in the confiscation of the funds obtained and a fine equal to the amount of the funds obtained. 8. Acceptance of private funds worth more than ALL 30,000 and when the transaction is not carried out through bank accounts shall be punishable by a fine equal to the amount donated and forfeiture of the funds received to the CEC. 9. Acceptance of funds from prohibited donors, as specified in Article 25, shall be punishable by forfeiture of the funds received to the CEC, and a fine of up to twice the amount of the funds received. 10. Non-cooperation or denial to cooperate, annihilation of documents, delays or inappropriate conduct during the verification process by CEC, pursuant to Article 9, paragraph 6, shall be punished by fine by the CEC, from 100 000 ALL up to 3 000 000 ALL. 11. Violation of the maximum limit of expenses by an electoral subject shall be punishable by a fine of up to ALL 5,000,000 or a fine equal to the amount by which the limit was exceeded, whichever is higher. 12. A complaint shall not suspend the execution of the decision on the fine given, according to this article. The fine given by CEC is an executive title and shall be executed within 30 days upon being informed on it. The CEC is excluded from the obligation to prepay the tax or fee on the bailiff service.	Paragraph 30.6 imposes a blanket fine of ALL 2m for failing to submit the campaign financial report on time. This gives the CEC no flexibility – for example the sanction is the same whether a party submits its report one day late and if it does not submit the report at all – and is not in line with international good practice. It is important that the CEC has some flexibility. For example, it should be able to issue warnings and/or compliance orders to give parties an opportunity to comply, then be able to impose a range of fines, and perhaps in cases of complete failure to report to initiate criminal proceedings. **Recommendations**: • Ensure that it is clearly stated that the sanctions in the proposed Article 30.1 and 30.2 are for violations of election campaign financing provisions. • Ensure that provisions of Article 30 and 31 are consistent. • Amend paragraphs 3 and 5 so that the sanction is "up to 200,000 ALL". • Ensure that the CEC has sufficient flexibility in sanctions. This applies particularly to paragraph 30.6.
Article 31 **Sanctions for political party financing**	See comments on Article 30 above.

1. A violation of the provisions concerning the political parties funding by the person in charge of finances at the political party or the individual assigned by the party statute [to carry out this duty] shall be punishable by a fine of 50 000 to 100 000 ALL. 2. A violation of the obligation of the political party to cooperate with the licensed accounting expert assigned by the Central Election Commission shall be punishable by a fine of 1 000 000 to 2 000 000 ALL. 3. Failure or refusal to disclose the financial sources of the political party or to allow the auditing by the licensed accounting expert or by the Central Election Commission to take place shall be punishable by a fine ranging 2 000 000 ALL to 5 000 000 ALL and/or a five-year suspension of public funds to the political party. 4. Failure to submit the financial report within the established timeframe or the submission of reports which fail to comply with the standardised template approved by the Central Election Commission shall be punishable by a fine of 50 000 to 100 000 ALL. 5. Non-public funds received by the political party, if the identity of the donor is unknown or not clearly defined, shall pass in favour of the Central Election Commission. 6. Accepting non-public funds in excess of 100 thousand ALL by a transaction that bypasses the bank account shall be subject to a fine of 30% of the donated amount.	
Article 32 If a political party does not pay its obligations to the authorities deriving from executive titles or enforceable administrative sanctions, the respective amount shall be retained from the annual State budget that is earmarked as financial public fund to the respective party.	This article is directly transposed from the Law on Political Parties and is not the subject of an AEC-AL recommendation.

CHAPTER VI **TRANSITIONAL AND FINAL PROVISIONS**	
Article 33 **State budget funds to finance parties participating in the 2020 elections** Funds to finance parties participating in the next elections to the Assembly and the local government elections shall be determined through a decision of the Assembly and comprises a separate item in the State Budget for the respective electoral year. This fund may not be lower than three times the aggregate sum allocated to political parties in previous elections.	This proposed amendment at least triples the amount of state funding received by political parties in the "2020 elections". However, no elections are scheduled in 2020. More important, it is not clear at all why public funding should be tripled, especially in a context where permitted spending has been *de facto* reduced since 2017 by restrictions on campaigning activities. **Recommendation**: If public funding is to be increased, there should be a clear justification for this included in the explanatory report for the draft law.
Article 34 The provisions of the Law 8589 "On political parties" as amended, concerning the political party financing, the provisions of the Electoral Code on the election campaign financing and any provisions in conflict with this law shall be repealed.	
Article 35 This law shall enter into force 15 days following the day of publication in the Official Gazette.	

Important recommendations of AEC-AL not addressed by the United Opposition draft are the following:

- To ensure that political advertising on broadcasting media is prohibited.

- To include a clear obligation of parties to submit Election Campaign Finance Reports.

Recommendations:

- Clearly prohibit political advertising on broadcasting media (and to abolish the provisions of the Electoral Code that currently permit such advertising), for example in Article 6 or 7.
- State the obligation of political parties to submit Election Campaign Finance Reports – for example in a new Article 90/1 as proposed in the consolidated draft.

4 CONCLUSIONS AND FOLLOW UP

This technical paper will be shared with the Technical Experts of the Ad Hoc Parliamentary Committee and ODIHR experts and will be consequently submitted to the co-chairs of the Ad Hoc Committee on Electoral Reform for consideration in the final version of amendments. The Action against Economic Crime in Albania will also continue to further support the reform process in the area of Political Party Financing through assistance to the Ad Hoc Committee on Electoral Reform and Central Election Commission.