



Party Law in Modern Europe

The Legal Regulation of Political Parties in Post-War Europe

Party Regulation in Italy

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The Legal Regulation of Political Parties

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Abstract

What factors drive the evolution of party regulation? And do political and societal changes have an impact on how legislators shape policy reforms? This article answers to these questions by observing the evolution of the regulation of political parties in Italy from 1948 to 2012. Through an in-depth analysis of the major sources of party law of the country, the author shows that corruption scandals and societal pressure, alone, may reveal insufficient influencing the parties' legislative behavior. Responsive reforms instead appear to take place when a broader number of factors are involved, most importantly, the emergence of a new – truly challenging – political competitor.

Keywords: political parties, political finance, party regulation, revenue maximization, political corruption

Introduction¹

The regulation of political parties is often encouraged by international organizations as a means to level the playing field of electoral competition and prevent political corruption. Research in the area, however, has warned on an inherent conflict of interests arising, as legislators are also partisans (Nassmacher 1993; Scarrow 2004; Gauja 2011). Some scholars cautioned on the instrumental use that political parties make of party regulations. Katz and Mair, for example, pointed to the provision of financial facilities to political parties as a means through which the established parties guarantee their own financial interests and organizational survival (Katz and Mair 1995). Others have claimed that party interests are not fixed, and that self-serve revenue maximization logics do not always explain party behavior: they have shown that after corruption scandals and when facing hostile public opinion in particular, a logic of electoral competition prevails and reforms introducing greater state control and internal transparency are established (Paltiel 1980; Nassmacher 1993; Koss 2008).

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This article analyzes what factors drive the evolution of party regulation looking at the case of Italy. Italy makes a particularly good case to observe, since the discussion on party regulation in this country has a long history, which started in the Constitutional Assembly of 1946 and has remained high on the political and public agenda ever since. Over the decades, Italy has repeatedly debated the interpretation of the constitutional provisions on political parties and has repeatedly reformed its system of political finance. Most importantly, Italy provides an example of a country where corruption scandals have played a dramatic role in shaping party system dynamics, and determining high degrees of mistrust in political institutions. Have elected officials been responsive to the changing societal and political circumstances that the country has been experiencing? Or, has the self-serve revenue maximization logic prevailed nonetheless?

In order to answer to these questions, this article undertakes a close analysis of the legal framework that has been established *on and by* the Italian political parties from 1948 to 2012 in the main sources of party law. If we can never be completely sure of the true motivations for elected officials to act in one way or another (Gauja 2011, p. 14), observing the quality of the rules on political parties and which aspects of party organizations have been regulated (and which ones have not) provide an important key for assessing the legislators' objectives and intentions.

What Drives Party Regulation? A Theoretical Framework

Scholars have mostly looked at party regulation as an independent variable, as a set of legal rules influencing the party system level. Research has been particularly concerned to search evidence for the cartel party thesis by Katz and Mair (1995), investigating the effects of the financial support to political parties on patterns of party competition (Scarrow 2006 and 2007), party entry (Tavits 2007; van Biezen and Rashkova 2012), party membership (Casas-Zamora 2005; Whiteley 2011), party system change (Pierre, Svåsand and Widfeldt 2000), and institutionalization (Booth and Robbins 2010). Results have so far revealed little evidence that party regulation, alone, affects party systems, nor it has led to any generalizable conclusions (Koss 2008). Scholars have underlined the difficulty to insulate the effects of party regulation vis à vis other institutional and non-institutional factors, such as electoral rules or changes in public opinion (Casas-Zamora 2005; Pierre, Svåsand and Widfeldt 2000; Scarrow 2006 and 2007). This article reverses the research perspective, and looks at party regulation as a dependent variable: what factors drive the evolution of party regulation?

Concomitantly to the increasing regulation of political parties and to the growing scholarly attention to this subject (Avnon 1995; Karvonen 2007; van Biezen 2008 and 2011; van Biezen and Piccio 2013; Bertoa, Piccio and Rashova, 2013), research has tried to shed light on the motives underlying the regulation of political parties and on the objectives that party regulation aims to pursue. Indeed, even though political finance laws were established in the wake of corruption scandals, as a means to prevent special interests to influence the political arena while guaranteeing fairness of political competition (Koss 2011; Zovatto 2007), the increasing amount of public subsidies at the parties' disposal brought scholars to acknowledge the possible instrumental use of political finance rules. In one of the most influential propositions developed in the political science literature in the latest decades, the 'cartel party' thesis, Katz and Mair (1995) pointed to public subventions as a means through which established parties guarantee their own financial interests while drawing away from society. It is worthwhile to recall, in fact, that the very agents of party regulation are the political parties themselves. For political finance regulation in particular, this implies that political parties have the 'effective ability to write their own salary checks' (Katz and Mair 2009, p. 756). Yet, and despite the uncontroversial conflict of interests existing, which has been stressed upon by various scholars (e.g. Nassmacher 1993; Scarrow 2004; Gauja 2011; Piccio 2013), there is no agreement on whether this perspective ought to be considered as the sole possible explanation for party regulation reforms. Self-serve mechanisms would not explain, for example, reduction of party subsidies, or the convergence towards greater transparency of political finance rules in Europe (Koss 2008). Hence, the literature has pointed to the role of societal and political factors in influencing and shaping the parties' legislative behavior (Nassmacher 1993; Koss 2008). Examining these questions, Scarrow (2004) proposed a distinction between two main goals that political parties may be interested to pursue in relation to political finance: 'revenue maximizing' and 'electoral economy' views. Under the revenue maximizing view, political parties have money as an end in itself: boosting their capital is their primary focus, independently from political circumstances and public attitudes. This view is consistent with the 'cartel party' model, according to which the provision of financial facilities to political parties is a means by which party leaders could both perpetuate their own financial interests and insulate themselves, compensating for their weakening linkages with society (Katz and Mair 1995; Blyth and Katz 2005). Under the electoral economy view instead, money is a means by which political parties pursue electoral ends. Political circumstances and public attitudes here do play a role, as the parties are more focused on competition, and the immediate electoral costs of supporting new state subsidies

may come to offset any likely economic benefits the new funds might bring (Scarrow 2004, pp. 655-657). This view is consistent with the position of those other scholars who have claimed that changing political circumstances and societal factors, such as public opinion, and the intensity by which the discourse on political corruption has entered the public agenda, play an important role in influencing the parties' legislative behavior, encouraging political finance reforms that promote greater transparency and control mechanisms (Paltiel 1980; Nassmacher 2003; Koss 2008).

This article borrows the differentiation between revenue maximization and electoral economy views for the interpretation of the legislative behavior of political parties in relation to political finance in Italy. Before doing so, it is worthwhile remarking how these two alternative views of party interests differ from one another for the implications they have on the quality of the representative process. Under both views, political finance rules are instrumental means by which political parties pursue a particular set of priorities. However, while the electoral economy view implies at least some degree of ex-post party responsiveness towards social demands, under the revenue maximization view political parties are impermeable to society pressures. Which of the two interpretations prevails is therefore important beyond the sole empirical question, as it bears implications on the discussion on the functioning of representative democracies, where political parties play the most central role.

Party Regulation In Italy

The discussion on party regulation in Italy has a long history. It started in the country's Constitutional Assembly (1946-1947), was debated repeatedly throughout the decades (including in two referenda on public subsidies to political parties), and is currently among the most contentious issues in Italian politics. As we will see below, in the name of freedom of association and political pluralism, two core principles of the Italian fundamental law, the Constitution left political parties substantially unregulated, and no party law has been established. The party finance law introduced in 1974 which aimed to reduce the levels of political corruption in the country proved to fail its main purpose (della Porta and Vannucci 1999; Pujas and Rhodes 1999), as scandals and illicit financial practices have continued to characterize the Italian political landscape. Political finance scandals led to the collapse of the Italian party system in the early 1990s, and their persistence has caused Italy to rank the

highest in western Europe – in a neck race competition with Greece – in the six waves of Transparency International’s index of party corruption perception.¹ Due to the high intensity of the social debate around political corruption, to the widespread anti-party sentiment, and to the political turnover resulting after the breakdown of the party system of the so-called ‘first’ Republic, Italy provides a particularly suitable context to observe whether the electoral economy view holds, or if self-serve mechanisms do instead prevail. These underlying factors are captured observing the evolution of the legal framework on political parties in Italy throughout the republican period (1948-2012) in the main sources of the country’s party law: the Constitution and the political finance laws. It is of course difficult to infer party interests, as well as the true motivations for elected officials to act in one way or another (Scarrow 2004; Gauja 2011). However, and as argued elsewhere, the fact that political parties are the principal agents of their own legal rules provides the opportunity to consider the rules they establish as important indicators of their own priorities and objectives (Piccio and van Biezen 2013).

Political Parties In The Italian Constitution

For a thorough understanding of the legal regulation of political parties in Italy it is essential to get back to Italy’s fundamental law. Indeed, the Constitutional provisions on political parties – in particular art. 49 of the Constitution and the interpretation thereof – are of crucial importance for an understanding of the specific pattern by which party regulation has evolved in Italy (Pelizzo 2004; Grasso 2010). Overall, the Italian Constitution attributes to political parties a specific role in the functioning of the democratic process, as intermediary associations between the society and the institutions (Ceccanti 2008). Yet, the Italian Constitutional Assembly (1946-1947) avoided to restrain the political parties’ activity or organizational functioning, and avoided to codify political parties as parts of the state apparatus. Indeed, the spirit of the Italian Constitution of 1948 is far from ‘militant democracy’ idea, whose ‘cradle’ is to be found in the German model (Thiel 2009, p. 8). The Italian Constitutional Assembly instead oriented to recognize the political freedoms that the two Fascist regime had banned, and allow for ‘the maximum expansion of freedom of association in political parties’ (Ridola 1982, pp. 73-74; Ceccanti and Clementi 2008).

Three are the constitutional articles that refer to political parties. In art. 49, the Constitution establishes the right of all citizens ‘to associate freely in political parties in order to contribute by democratic method to the determination of national policy’; in art. 98 it prescribes the

incompatibility of party membership with activity in the judiciary, in the armed forces and in diplomatic and in consular representation organs abroad (art. 98); in the XII Transitory and Final Provision it prohibits the reconstruction of the Fascist party. While the two latter articles found an immediate consensus, art. 49 not only caused divergence among the political forces participating to the Constitutional Assembly,² but its interpretation has been object of discussion ever since the Italian Constitution was enacted up to today. Should the “democratic method” that article 49 refers to apply to the internal organizational sphere of political parties, or should it rather apply to their external activity, prescribing respect of the democratic order and democratic inter-party competition? With a few exceptions (Calamandrei 1970), it is the second interpretation that has prevailed in the decades that followed the promulgation of the Italian Constitution, therefore leaving political parties free to decide on their internal organizational functioning. The decision not to regulate political parties’ internal organization by the Italian Constitutional Assembly reveals clearly when comparing article 49 with article 39 of the Constitution, which regulates trade unions. Under art. 39, trade unions are provided with legal personality, they need to register and draft statutes. Moreover, in order to register, ‘the statutes of the trade union confirm the democratic basis of the internal organization’ (Italian Constitution, art. 39). In recent years a shift in doctrine appears to have taken place by which these stipulations are increasingly understood as a legitimate basis for the legal regulation of intra-party democracy (see Rossi 2011; van Biezen and Piccio 2013, p. 33). ‘Without any intervention in this field’, the constitutional lawyer Barbera recently argued, ‘it is not possible to grant the citizens the right to “determine national politics”, as stated in article 49 (Barbera 2009). Hence, according to this more recent interpretation, the necessary conditions need to be established which enable the citizens, the subject of art. 49, to effectively participate.

If the interpretation of art. 49 has divided the Italian doctrine, unanimous agreement instead exists on the fact that the Italian Constitution left blind spots in the regulatory framework on political parties that hitherto still have to be filled in. Not only the reference to ‘democratic method’ remained ambiguous,³ but also no legal framework was established on the political parties’ legal status. Hence, political parties remained by law considered like any other private association, regulated under the Civil Code by those articles on ‘Associations with no legal personality’ (arts. 36-38). Overall, this form of association has been observed as the best one to guarantee to political parties full autonomy and freedom of activities, as in line with the pluralist vocation of the Italian Constitutional chart (Ceccanti 2008). At the same time,

however, political parties in Italy have remained almost immune from external control (della Porta 2001; Rossi 2011). This contrasts from all countries which experienced an authoritarian rule where constitutional provisions on political parties do instead prescribe the activities and behavior of political parties, as well as their programmatic identity (van Biezen and Borz 2012).

Party Finance Regulation

The establishment of a political finance legislation and the concomitant introduction of public subsidies to political parties in Italy does not significantly differ from the experience of other European countries: it was first introduced as a consequence of a case of political corruption. In 1974, important oil company producers, as well as the main state-owned energy company, paid a bribe to the governing parties in order to influence energy policy (the so-called ‘Oil scandal’). The first party finance law in Italy (L.195/1974), dated in the same year, was introduced as a consequence to this corruption scandal, in order to regulate the mechanisms of party funding and prevent further cases of corruption to emerge (Ridola 2000; Pacini 2009). Moreover, as stated in the law proposal, through the introduction of public funding, political parties would manage to face their financial and organizational needs even in the face of the decline of voluntary contributions.⁴ If the preamble of political finance regulation is similar to other countries in Europe, the way in which political finance legislation has evolved in the decades that followed 1974 have made the Italian case become rather exceptional. In particular, as I will discuss hereafter, the Italian political finance legislation has characterized for its opaqueness, for poor oversight mechanisms, and for a dramatic heightening of party subsidies. Moreover, as I will underline in the next section, and differently from the pattern of party regulation that has been observed elsewhere in Europe, no changes in the legal status of political parties have been established after the introduction of public funding to political parties.

Public funding, no legal status. In the development of party regulation followed by most European countries, the provision of public subsidies to political parties brought about greater intervention from the state in the political parties’ activities. In particular it entailed the establishment of rules providing their definition and legal status, and more generally a codified system of party registration and control (Mair 1998; Scarrow 2011). This more detailed regulation has been implemented either through separate party laws, or within the same legal documents though which public funding of political parties was introduced.

Indeed, the promulgation of party laws in Europe chronologically closely follow, if not coincides with, the introduction of public funding to political parties. Germany is the most well-known example of a country that established a party law (in 1967) less than a decade after the introduction of the public financing of political parties (1959). A similar pattern can be observed in countries such as Finland (where public funding of political parties was introduced in 1967 and the party law in 1969), Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Lithuania, Romania, Slovenia, Ukraine, and also in the case of the European Union (EU), where a single Act defines both provisions on public financing of EU-level political parties and their registration and legal requirements.⁵ The *do ut des* logic, i.e.: the granting of public subsidies accompanied by the introduction of mechanisms of greater control and regulation of the parties' activities, has been applied even in the case of France, historically one of the most liberal traditions in opposing state control over political parties' life, as the party finance law enacted in 1988 provides for the first time a legal status and legal personality to political parties (Dorget 2004). Italy remains exceptional in this perspective, as in spite of the introduction of party funding, no registration requirements, no legal definition and no legal status have been established. Indeed, the Group of States against Corruption remarked that Italy is among the few countries in Europe where political parties are not required to have legal personality (GRECO, 2012). As argued in the previous section, the discussion around the legal status of political parties already emerged within the Constitutional Assembly, but the proposals failed to find a convergence between the different political actors represented. The law proposals for the establishment of a legal status to political parties that were presented throughout the Italian Republic all had a similar fate. When the before mentioned 2004/2003 EU Regulation came on the political agenda, Italy voted against. Two were the main concerns raised by the Commissions for Constitutional Affairs: first, that party registration procedures would have made political parties too much subject of *ex ante* or *ex post* controls; second, that the acquisition of legal status by the EU parties was in contrast to the legal status of parties in Italy. Indeed, in the Commissions' words, 'political parties in the Italian jurisdiction are not considered as legal entities, but they fall under the category of the non-legally recognized associations'.⁶

The evolution of political finance legislation. The evolution of party finance legislation in Italy can be summarized in two main periods distinguished from one another by two different systems of funding of political parties and election campaigns. The first period dates from the introduction of public funding in 1974 to 1993, when a popular referendum – the only

referendum that took place in Europe on the issue of political finance – repealed ordinary public funding to political parties. The second period from 1993 to 2011. While the two periods will be analyzed in detail, a shorter final section examines the most recent reform to the political finance legislation (2012), and the law proposals that are currently under examination of the parliament. The 2012 reform seems to open the path for a fundamental change not only in the spirit of the system of public funding but also in the evolution of party regulation more broadly.

(i) 1974-1993:

The 1974 party finance law envisaged two avenues of public funding: a *regular contribution*, consisting of the ordinary payment of an annual amount to the political parties' parliamentary groups,⁷ and a *reimbursement of election expenses* to parties having achieved at least two per cent of votes in the national parliamentary elections. From 1974 to 1993, both funding systems were applied, although the majority of public funding in this period took the form of ordinary contributions, supplemented in election times by the system of election reimbursement (Pacini 2009). Throughout this period up to 1993, the system of party funding did not experience significant changes despite the frequent amendments to the 1974 law. The party finance reforms adopted in this time frame primarily broadened of the scope of the legislation – extending public funding to cover elections to the European Parliament and to the regional councils (1.422/1980) – and the heightened the public funds available to political parties (1.659/1981, 413/1985, 1.43/1993).

In terms of control over the political parties' financial management, political parties had to disclose their financial assets in their balance sheets, which had to be published in national newspapers. After the 1981 amendment, the control of the regularity of the parties' balance sheets was assigned to the Presidents of the Chamber of Deputies and of the Senate. Controls were mainly formal, and illicit practices were systematically ignored as dramatically revealed by the corruption scandals that emerged with the 'clean hands' investigation in the early 1990s (Ginsborg 1998).

(ii) 1993-2011:

In 1993, a popular referendum was held where 90.30 per cent of the voters opted in favour of the abrogation of the ordinary contributions to political parties.⁸ Such a high percentage of votes in favor of the (partial) abrogation of public funding resulted as the outcome of the

'bribesville' corruption scandals that had been emerging in these years, which factually swept away from the parliament almost the entire political class leading to the end of the so-called Italian 'first' Republic. After the outcome of the 1993 referendum, the system of public funding of political parties was substantially modified. Assuming the 'electoral economy' view to hold, and political circumstances and public attitudes playing a role in shaping political finance reform outcomes (Scarrow 2004; Koß 2008), we would expect the new system of public funding to reflect the hostility of the public opinion and to ensure transparency and mechanisms of effective control over the parties' financial management. As will be shown below, this did not happen.

From 1993 onwards, the only form of public funding that political parties could rely upon was the reimbursement of the election expenses. In the new system of public funding, introduced by law 515/1993, four funds for election reimbursement were established, for each election level (European Parliament, Chamber of Deputies, Senate and Regional Councils).⁹ The amount at the political parties' disposal was calculated based on a formula multiplying a fixed amount by the number of 'registered Italian citizens'. Probably the most relevant characteristic of the new system was that the amount of money available for parties in the respective reimbursement funds were distributed among the eligible parties according to election results, independently from the political parties' actual expenses. In other words, election reimbursements were not paid out based on the money that parties actually spent, but on having achieved the by law established minimum threshold.¹⁰ As I will argue later, this transformed the reimbursement of election expenses into a masked form of ordinary contributions, disregarding, if not formally in its substance, the outcome of the 1993 referendum.

The development of the post-1993 political finance regulation best characterizes by a 'legislative incontinence' (Clift and Fisher 2004), resulting in the adoption of over seven laws in fifteen years, which amended or repealed parts of the 1993 law. The two most relevant changes to the system of public funding in the 1993-2011 period were established in 1997 (by law 2/1997) and in 1999 (by law 157/1999). The 1997 law, repealed in two years' time, provided the option of earmarking four per cent of their personal income tax for the funding of political parties. This implied a second channel of public funding for political parties, albeit mediated by the choice of the taxpayers, as the state forewent a proportion of its revenue in favor of the parties (Pacini 2009, p. 185). The adoption of this law implied a brief re-introduction of a new form of public funding for the parties' ordinary contributions. The

1999 law lowered the threshold for accessing to election reimbursement for the Chamber of Deputies to one per cent of the votes,¹¹ and increased the funds for election reimbursement substantially. Indeed, the formula for the establishment of the amounts at the parties' disposal was changed, more than doubling the fix amount from 1,600 to 4,000 Italian Liras (from 0,83 to 2,07 Euros, approximately). Moreover, this law established that reimbursement of election expenses would no longer be provided as a lump sum, but would be divided into annual installments.

The financial benefits for political parties of the new party funding regime were considerable. The payment in annual instalments for each of the four election reimbursement funds determined *de facto* a continuous replenishment of the reimbursement funds after elections and continuous channel of funding for political parties (Pacini and Piccio 2012). Moreover, the amount of money available in the four election reimbursement funds was heightened significantly throughout the years, often by means of small, rapidly approved and non-transparent legislative amendments. Scholars remarked the exceptional speed by which the party finance laws have gone through the infamously slow legislative processes, which seem to further corroborate the hypothesis of inter-party collusive behavior (Pacini 2009; della Porta and Vannucci 1999; Pizzimenti and Ignazi 2011). After the one established in 1999, a second substantial heightening of the public funds was established in 2002, when the amount at the parties' disposal was effectively multiplied for each year of the legislature (l.156/2002). In 2006, an amendment introduced the reimbursement for a full (five year) legislature even in the event of the early dissolution of the Chamber of Deputies and the Senate. This implied that in case of early dissolution of the legislature (which indeed took place in 2008), political parties would have receiving funding for both the election expenses incurred for the previous and for the current legislature. In sum, it implied a doubling of the funds relating to the two Chambers. This latter amendment was severely contested and ultimately abrogated in 2011. Only in 2007 and 2008 (and as we will see later, in 2012) a reduction in the amount of public funding was established. Figure 1 shows the amount of public funding provided to political parties from 1974 to 2011.

[Figure 1 about here]

Since its introduction in 1974, the amount of public resources available to political parties has increased exponentially, and most significantly *after* the 1993 referendum. The previously mentioned lack of correlation existing between incurred expenses and available

reimbursements, determined a surplus of revenues that transformed the reimbursement of election expenses into a disguised form of ordinary contributions to political parties (Pacini 2009; Pizzimenti and Ignazi 2011; Pacini and Piccio 2012). This became particularly evident after that the amount of the funds was heightened, in 1999 and 2002. Table 1, based on the report issued by the The Board of Comptrollers of Election Expenses at the State Audit Court in relation to the political elections of 2008, shows the established expenditures and the state contributions throughout the period from 1994 to 2008 resulting from this system of election reimbursements allocation.

[Table 1 about here]

The evident discrepancy between the parties' established expenditures and the associated 'reimbursements' that political parties received as state contributions – with differences amounting in some cases over 400 million euro – was denounced several times by the Italian Court of Auditors, and was also observed critically by the Group of States against Corruption (hereafter, GRECO) in 2012.¹² By means of this political finance regime, as shown in figure 2, Italy has become one of the countries in Europe where political parties have the highest percentage of dependency on public funding.

[Figure 2 about here]

Besides the financial benefits, the new political finance system was not combined by effective mechanisms of oversight and control over the parties' financial management. Actually, the new system of party funding controls proved to be as poor as the one in force before 1993. Indeed, GRECO defined the control mechanisms as 'the weakest area in the regulation of party funding in Italy' (GRECO 2012, p. 23). First, no legal requirements were imposed on the procedures for the internal control of party accounts. Internal controls were not operated by state authorized or registered accountants, as they are in most European countries (Doublet 2011), but by internal auditors only (so-called 'treasurers'), with no particular requirement as to the qualification that the party auditor had to possess (l.2/1997). Second, the external control performed by public authorities on the parties' financial management remained very fragmented and largely inefficient. The Board of Comptrollers of Election Expenses at the State Audit Court was only responsible for the control of the parties' declared expenditure and for verification that electoral spending by political parties do not exceed the limits set by the law, and had no powers of inspection or to impose sanctions.¹³ The same holds for the authority verifying the accuracy and legal compliance of the political

parties' annual financial statements. This authority, moreover, a committee of five members nominated by the Presidents of the two Chambers of the Italian Parliament, failed the minimal standards of impartiality due to the direct political affiliations of the auditors.

All in all, political parties introduced a new system of political finance that compensated their loss of revenue due to the repeal of the ordinary contributions in 1993, by circumventing the rules and disregarding, in its substance, the outcome of the popular referendum. The development of the political finance regulation in Italy revealed by far unaffected by the dramatic political corruption scandals that emerged in the early 1990s nor by the increasingly more averse public opinion. Quite on the contrary, as Pelizzo notes, 'when they seriously risked to be put out of business by widespread anti-party sentiment (mid 1993) they formed a cartel to protect their collective financial security and material survival, by anchoring themselves in the state' (2004, p. 138). Self-interested logics of revenue maximization indisputably emerges as the legislators' primary drive.

The 2012 Reform: Towards A New Legal Framework?

The political finance law adopted in July 2012 (law 96/2012) addresses a number of the shortcomings of the political finance legislation that have been discussed so far, and seems to point to relevant steps in the direction of a more comprehensive regulation of political parties in Italy. The new law changed political finance rules in many respects. First, it halved the state contributions for the current year (2012), and reduced the yearly amount of state contributions to political parties to the fixed amount of 91 million euro. Second, the new law changed the very system of public funding. Under the current law, two are the types of public funding envisaged: a reimbursement of the political parties electoral and ordinary expenditures (accounting for 70 per cent of the total funding); a 'co-financing' sum, disbursed in relation to the income derived by membership fees and donations (30 per cent).¹⁴ Third, changes were introduced in relation to both internal and external controls over the parties' financial management: the internal control the parties' financial balance sheets is performed by qualified state recognized auditors, whereas the external control is performed by a new independent commission established at the Court of Audits. ('Commissione per la trasparenza e il controllo dei bilanci dei partiti e dei movimenti politici'). Differently from the previous control authorities, the latter is provided with effective powers of investigation. Most interestingly, the 2012 law establishes a new regulation linking political finance to the internal democratic functioning of political parties. Under article 5, in order to benefit of

public funding, political parties must adopt a statute which “complies with the democratic principles of internal life, in particular with reference to the selection of candidates, the rights of minorities and the rights of members” (art. 5.1). Noticeably, no reference is made to the subjects authorized to control the statutes’ compliance with the democratic principles, nor to the criteria according to which those internally democratic processes should be conducted (Foti, 2012). In other words, without further legal specification and explicit provisions, these remain general requirements lacking prescriptive connotations. However, it is the first time that internal party democracy entered the body of party law, indicating the underlying normative preference of the legislator.¹⁵ The latter also reveals from the analysis of recent law proposals, currently under examination by the Commission of Constitutional Affairs at the Chamber of Deputies, aimed to introduce a more comprehensive legal regulation of political parties in Italy. The common features that the different law proposals share are essentially three: the implementation of the “democratic method” formulated in article 49 of the Italian Constitution, the creation of a Party Register, and the attribution of legal personality to political parties.¹⁶

The 2012 ‘legal twist’ was established following a new wave of political finance scandals, which caused the re-emergence of the societal and political discourse on party funding. Two were the main political finance scandals that emerged in 2012, both relating to the party ‘treasurers’. The first case relates to the treasurer of ‘La Margherita’, Luigi Lusi, alleged for having falsified the party’s balance sheets and transferred public funds of the party abroad for own investments. The second case relates to the treasurer of the Lega Nord, Francesco Belsito, for private investments of public money. It is concomitantly to these judicial rulings that the Chamber of Deputies, changing the parliamentary schedule, started the discussion on this new law proposal (Foti 2012). Besides the financial scandals, the 2012 debate was exacerbated by a number of factors: the political and economic crisis which led to the early dissolution of the government led by the Prime Minister Silvio Berlusconi and the formation of the ‘technical government’ of the Prime Minister Mario Monti, the austerity measures that had been advanced, and Italy’s growing figures of poverty and unemployment. Moreover, in March 2012, the Council of Europe issued a very critical report on transparency and party funding in Italy, urging Italian authorities to implement extensive reforms in the legal framework on political finance. Finally, and most importantly, a new powerful electoral competitor had entered the political arena. ‘The Five Star Movement’ led by Beppe Grillo, started a vigorous campaign for the repeal of public funding to political parties, gaining

increasing consensus among the Italian population. Urgent measures had to be adopted to respond to this plurality of factors, and this time political parties seemed to recognize this.

Conclusions

Vis à vis other types of regulation, party regulation is particular in the fact that the parties themselves are the principal agents of their own legal rules. Some scholars have argued that this might lead political parties to act according to a self-serve maximization logic: under this perspective, elected officials aim to maximize their revenues, and remain as unconstrained as possible from legal measures of external control and transparency. Others have observed instead how party interests should not be assumed as fixed, as they vary depending on the political and social circumstances. Under this other perspective, and particularly after corruption scandals, the logic of electoral competition prevails: in order to respond to public opinion, elected officials are more likely introduce rules promoting mechanisms of greater control and transparency in the parties' internal management. Tracing the evolution of political finance legislation in Italy, I observed how, overall, it is the self-serve logic which has prevailed. Since its introduction in 1974, the privileges of a growing public funding have never been accompanied by the establishment of appropriate measures of transparency and control over the political parties' financial activities. Noticeably, the political parties' legislative behavior proved unaffected by the political and societal changes that took place in the early 1990s. Corruption scandals, hostility of public opinion, and a popular referendum repealing part of the state provisions to political parties showed to be insufficient to bring about changes in the country's regulatory framework on political parties. The principle of freedom of association of political parties that stems from the Italian Constitution, has been taken as an opportunity for elected officials to act undisturbed. While the turnover of the Italian party system from the 'first' to the 'second' republic did not correspond to a shift in the nature of the interests of the political parties in office, the most recent reforms seem to point to a possible reverse trend. Indeed, the three latest party finance laws, lowered state subventions for the first time since their introduction, and the 2012 reform introduced new, potentially more effective mechanisms of both internal and external control. Moreover, law proposals are currently discussed in parliament aim to introduce a more codified and comprehensive regulation on political parties.

The described evolution of the Italian political finance legislation adds to the theoretical debate on what factors drive political finance reforms in two fundamental respects. First,

along the findings of Scarrow and Koss, it shows how the self-interested ‘more is better’ approach does not necessarily explain legislative reforms and that party interests vary depending on the circumstances. Second, it shows that social pressures, alone, are not sufficient for breaking patterns of inter-party collusion. At least two other factors can be accounted for the most recent party regulation reforms in the case of Italy: the external pressure from the Council of Europe, and, most importantly, the internal pressure deriving from the spectacular electoral outcomes of a new political competitor, ‘The Five Star Movement’, which has made political finance and the abuse of state resources by political parties its core issue of electoral competition. It is certainly too early to draw conclusions on whether the 2012 reform is indeed a turning point in the Italian legislators’ self-serve behavior. It constitutes, however, a first signal of the legislators’ responsiveness after decades of impermeability towards social demands.

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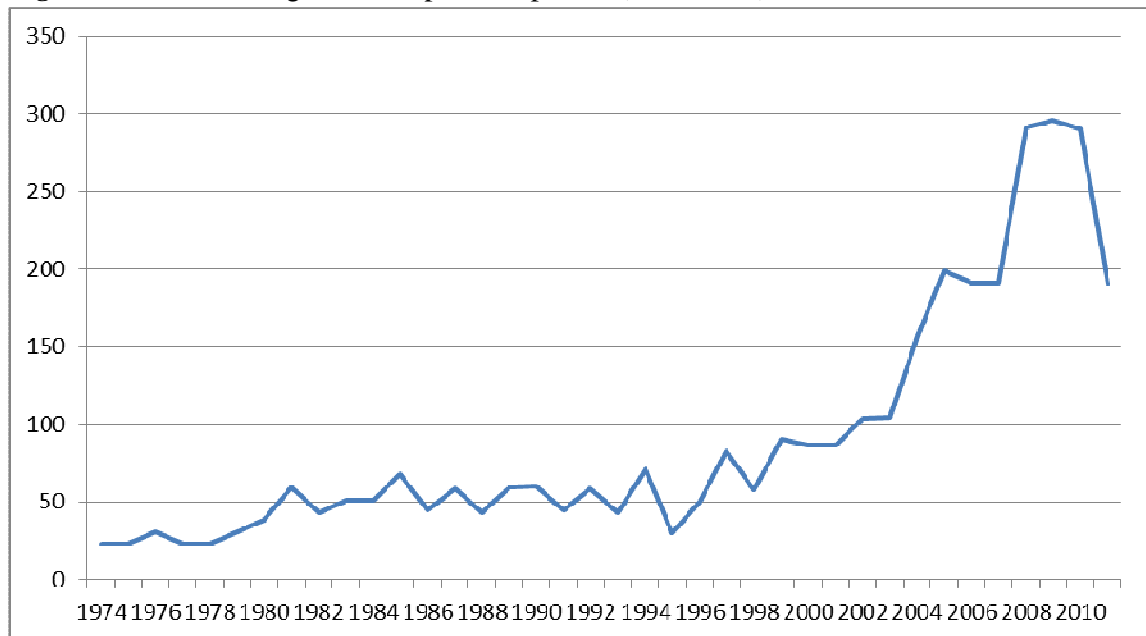
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Figure 1 Public funding to Italian political parties (1974-2011) – Values in Millions of euro



* Source: 'Gazzetta Ufficiale della Repubblica Italiana'. Author's elaboration based on Veltri and Paola, 2012.

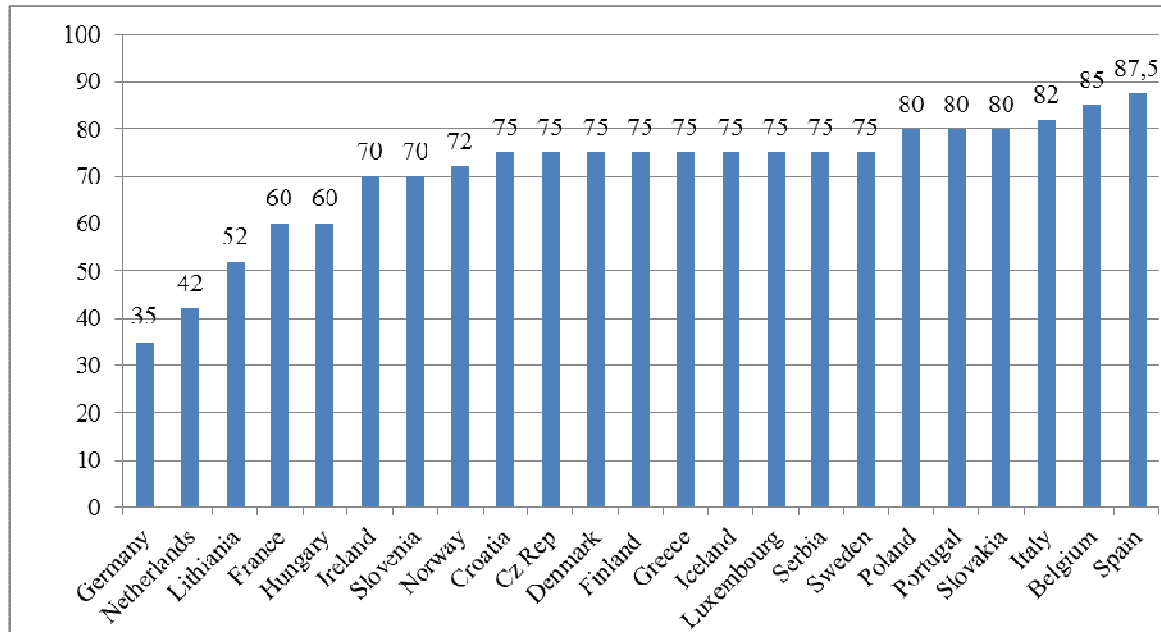
Table 1 Established expenditure and election reimbursements (1994-2008)

Election rounds	Established expenditure	State contribution	Difference
NE – March 1994	36.264.124,34	46.917.449,32	+ 10.653.324,98
EP – June 1994	15.595.788,66	23.458.724,66	+ 7.862.936,00
RE – April 1995	7.073.555,52	29.722.776,08	+ 22.649.220,56
NE – April 1996	19.812.285,84	46.917.449,32	+ 27.105.163,48
EP – June 1999	39.745.844,39	86.520.102,57	+ 46.774.258,18
RE – April 2000	28.673.945,87	85.884.344,63	+ 57.210.398,76
NE – May 2001	49.659.354,92	476.445.235,88	+ 426.785.880,96
EP – June 2004	87.243.219,52	246.625.344,75	+ 159.382.125,23
RE – April 2005	61.933.854,85	208.380.680,00	+ 146.446.825,15
NE – April 2006	122.874.652,73	499.645.745,68	+ 376.771.092,95
NE – April 2008	110.127.757,19	503.094.380,09	+ 392.966.623,71

Source: Court of Auditors (2008).

Key: NE = National elections; EP = European Parliament elections; RE = Regional elections.

Figure 2 Political parties' dependence on state funding in Europe



Source: GRECO Evaluation Reports (author's elaboration). Figures refer to 2007-2011, with the exception of Slovakia (2000). Averages are computed when range data are provided in the reports.

¹ Global Corruption Barometer, Transparency International (waves 2004-2010/2011).

² Among the proposals discussed in the Constitutional Assembly for the drafting of what later became article 49, two included provisions attributing to political parties a legal status and prescribed their internal democratic functioning. However, the fear to provide the executive with the power to control party activity, especially perceived by the Italian Communist Party which feared to be outlawed, made those proposals to be rejected (for detailed overview on the promulgation process of article 49, see Pasquino 1992 and Merlini 2009).

³ Art. 49 has been defined as "inadequate" (Pasquino 1992, p. 4), "incomplete, weak and contradictory" (Merlini 2009, p. 10), or as a "norm with no prescriptive significance" (Del Pennino and Compagna 2005, p. 59).

⁴ Piccoli ed altri: Contributo dello Stato al finanziamento dei partiti politici. Atto C. 2860 del 20 marzo 1974.

⁵ Regulation (EU) 2004/2003.

⁶ Commission of Constitutional Affairs and EU Affairs of the Chamber of Deputies, and Commission of Constitutional Affairs of the Senate, cited in Grasso 2010, p. 625

⁷ Under law 195/1974 parliamentary groups were obliged to devolve 90 per cent of the received funds to the political parties. This figure was later increased to 95 per cent.

⁸ This was the second referendum that took place in Italy for a (partial) abrogation of public funding to political parties. The first one, in 1978, failed for a small margin of votes (as 56.6 per cent of the voters chose for maintaining direct public funding).

⁹ Until 1993, the reimbursement of expenditure for national parliamentary elections was drawn from a single fund (Pacini 2009, p. 200).

¹⁰ In law 515/1993 the payoff thresholds for political parties to benefit of the reimbursement of election expenses were set as follows: three per cent of the votes for the elections of the Chamber of Deputies, five per cent for the elections of the Senate (or one representative elected), one representative elected representative for the elections of the Regional Councils and for the European Parliament elections.

¹¹ The lowering of the thresholds determining access to public funding in 1999 gave as result the gradual proliferation of beneficiaries. The number of political formations benefiting from *at least one* of the four funds covering election expenditures rose from 30 in 2001, to 94 in 2008, to 98 in 2010 (Pacini 2009; Pacini and Piccio 2012).

¹² Corte dei Conti, Collegio di controllo sulle spese elettorali, July 10, 2012; 'Evaluation Report on Italy. Transparency of Party Funding', March 23, 2013.

¹³ Law 515/1993 explicitly refers to the controls to be "limited to verify conformity of the actual spending to the legal limitations imposed by law" (art. 12).

¹⁴ Calculated as 0,50 euro, for each euro received as yearly subscriptions and donations received by natural or legal persons, within the maximum limit of euro 10,000 per year (l.96/2012, art. 2).

¹⁵ For a comparative analysis of the legal regulation of internal party organizations in Europe, see van Biezen and Piccio 2013.

¹⁶ Documentazione per l'esame di Progetti di Legge. Attuazione dell'art. 49 Cost. in materia di partiti politici (Camera dei deputati, Dossier n. 469).