



STEFAN **BATORY**  
**FOUNDATION**



## **European Parliament Elections 2009**

**Monitoring report on campaign financing**

**Conference memo regarding the monitoring of the European Parliament elections conference**

**Warsaw 2010**

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## **Preamble**

In March 2010 The Anti Corruption Program ran by the Stefan Batory Foundation presented the monitoring report on the 2009 European Elections. This report intended to reflect upon the methods and actions used by Polish candidates to the European Parliament and present conclusions and expose common infractions of the electoral law as well as suggest needed changes.

This brief is a summary of the report including the main points and explaining the common infractions reported by the Anti Corruption Program as well as a memo from the conference during which the results of the report were presented and discussed. In addition to the description of the event, the memo will include the main issues raised by the panel and the audience. The conference was lead by a panel including representatives from the Anti Corruption Program – Grażyna Kopińska and Adam Sawicki. Further members of the panel included two guest speakers – MEP Rafał Trzaskowski and Witold Gintowt-Dziewiałtowski, Polish MP and head of the parliamentary Select Committee on the Changes to the Electoral Law, to which the Batory Foundation is very grateful for their participation.

# **1. Monitoring of campaign finances**

## **A short summary of the report on the monitoring of the 2009 European Parliament elections**

### **1.1 Aims of the monitoring**

Since the monitoring of the 2005 Presidential elections and the 2006 local elections in Poland, monitoring of the 2009 European Parliament elections is the third successfully completed project of this nature by the Anti Corruption Program at the Stefan Batory Foundation. The main aim of the project was to increase transparency by providing the general public with insight on how and where campaign funds are gathered as well as the manner in which they are distributed by the campaign committees. Previous projects revealed numerous irregularities in the raising and distribution of funds – contributed specifically for campaign purposes and accountable to rigid legal regulations.

### **Rules and regulations of European Parliament campaign financing**

1. Election law for the European Parliament set out in the bill from the 23<sup>rd</sup> January 2004, specifically article 48, clearly enforces the right of the Election Committee to lead and scrutinise campaigns. Chapter 11 states the rules and regulations for:
  - i. Raising campaign funds
  - ii. Justified expenditure
  - iii. Necessity of a final finance report accountable to the State Electoral Commission (PKW)

Further restrictions can be found in other statutes and regulations such as the bill on political parties. Moreover, an additional campaign financing codex is being currently negotiated, in which its regulations should further define the laws of campaign financing.

The aim of the monitoring program was to indicate if these regulations set out by election law were either infringed or neglected. Furthermore the objective of the monitoring report was an attempt to not only aimed to signalise the areas of infringement or neglect but also to propose a range of improvement propositions intended to increase equality and transparency in the financing of Polish election campaigns for various institutions.

### **1.2 Monitoring methods**

The project was realised on two levels and in two phases, local and national monitoring being the two levels. The primary phase being the monitoring of campaigns during the campaign period and secondly scrutinising the final campaign finance report, post elections, which by regulations is required by the State Electoral Commission. Due to a strict schedule the monitoring focused on five election committees from major parties which the monitors felt had the best chance of making an affective campaign and being elected, these parties were Civic Platform (PO), Law and Justice (PiS), Polish Folk Party (PSL), Democratic-left Alliance (SLD) and the Central-left Future Understanding Party (PdP). The monitoring crew

included NGO workers, student union members, local reporters as well as other non associated individuals. Due to conflict of interests, parties, party candidates and student party activists could not take part in the monitoring.

The analysis monitored numerous aspects of campaign management including expenditure on, media campaigns, propaganda material, internet advertisements and event organisation however the base of this analysis was focused upon the mean by which campaign committees raised funds and in particular how or indeed if the funds were spent in part on public assets. OMD Media Direction made all data on campaign committee media and internet expenditure available.

Referring back to the two levels mentioned above, volunteers specially trained by the Anti Corruption Program monitored local campaigns by researching their media campaigns and attending campaign meetings in various locations. This included following internet advertisements relevant to the local district and interviewing members of the local campaign committee. Furthermore, they reported their findings on campaign expenditure and collected exemplary campaign material. In June 2009 a primary report was presented in order to swiftly expose the findings on campaign funding and expenditure

The second phase focused on the analysing and scrutiny of the campaign committee report submitted to the State Electoral Commission and then comparing it with the monitoring research to check for any irregularities and essentially forms of corruption, findings from this analysis were joined with the primary report, thus completing the monitoring report and were published as a whole in 2010.

### **1.3 Main conclusion and recommendations presented in the monitoring report**

The data collected throughout the monitoring process showed that no major infractions occurred during the 2009 European Parliament campaigns, however irregularities were noted and exposed in the monitoring report. Irregularities were unmasked not only in the methods used to gain funds and resources but also in their expenditure. The most important misconducts include:

- the usage of public assets to finance campaigns
- financing campaigns from private assets
- free usage of party materials and assets to aid campaigns
- exploiting volunteers, beyond the restrictions set out by electoral law
- concealing or lowering of campaign expenditures
- campaign materials did not indicate the source of their funding

Proposals from the Anti Corruption Program

- although the current electoral law effectively restricts major financing infractions, it should further specify on the usage of party budgets for campaign means.
- the electoral law should take in to consideration the internet as a realistic medium between candidates and the public during campaign periods and consider its stance on non-fiscal donations with regards to the internet, however it should ensure that any future regulations do not create a gateway for illegal fundraising.

- the electoral law should be modified to define the role of the EU within electoral campaigns as to ensure transparency and prevent allegations such as the ones made during the 2009 European Parliament elections ( PO was accused for accepting money from EPP – which currently is forbidden). A similar requirement was put forward by the OSCE<sup>1</sup>
- applying restrictions on posters and regulating televised campaign material, as our scrutiny of the campaign finance report indicated that a large portion of funds re spent on advertisements, which in truth does not act towards increasing the standards of elections.
- in addition to the above recommendation, we suggest that actions should taken with regards to the large sum of money from party budgets spent on pre-campaign media publicity. This money would be better spent if put towards fulfilling party programmes.
- the restructuring of the campaign committee report to make it more clear and transparent
- the revision of electoral law regarding the issue of ‘buying votes’ – a single incident in the 2009 campaigns brought to light the loop hole in electoral law, which makes the actual transaction of money from candidates to voters illegal, but the promising of financial returns for votes legal.
- increasing the means by which the State Electoral Commission (PKW) can monitor and scrutinise party campaign finances.

In conclusion it would be safe to add that with regards to the 2009 European Parliament elections, the amount of irregularities were much lower in comparison to the 2005 Presidential elections, we believe this is thanks to the well developed EP electoral law, which differs from the 2005 Presidential electoral restrictions. Furthermore, the scrutiny and monitoring of third sector organisations and media, played a role in ensuring campaign committees obeyed the regulations.

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<sup>1</sup> “Elections to the European Parliament” - *Campaign Regulations and Campaign and Party Financing*, pg 4-7  
 June 2009, OSCE Office for Democratic Institutions and Human Rights, Warsaw,  
[http://www.osce.org/documents/odihr/2009/09/39652\\_en.pdf](http://www.osce.org/documents/odihr/2009/09/39652_en.pdf)

## 2. Conference brief

### 2009 European Parliament elections campaign finance monitoring report

#### 2.1 Introduction

The purpose of the conference was to promote the findings of the report and stimulate discussions on the subject of electoral proceedings in Polish elections. As mentioned in the preamble the conference was lead by a panel of specialists. Adam Sawicki, from the Stefan Batory Foundation, Anti Corruption Program began the conference by breaking up, explaining and expanding on the monitoring findings.

The monitoring report was specifically aimed towards campaign finance during the campaign period, however it was noted and brought to attention that some parties before the campaign period begins, spend large amounts of money on party promotion. Parties spend funds on promotion before the campaign period begins as the funds spent will not contribute to the campaign budget which is capped, in 2009 the cap was set at 10,351,733.84 PLN. For example in the two months before the campaign period (March-June), PiS was the highest spender on party promotion, spending 7,303,353.63PLN. This example is purely to highlight the issue of money distribution and ways in which parties manipulate the campaign regulations. If the figure PiS spent on their pre-campaign promotion was to be included in the campaign budget it would grossly exceed the permitted figure of expenditure. Although this is essentially difficult to regulate as it does not break any regulations regarding election campaigns the panel thought it appropriate to mention and raise the eventual question of whether a portion of these costs should be added to the official campaign committee budget report.

The results from the monitoring report show a number of irregularities however the conference clearly focused on reoccurring issues. These issues were:

- internet campaigning
- the lack of clearly marked campaign material indicating the source of its financing
- wrong usage of public assets
- the eventual advantage of sitting ministers over their opposition
- exploitation of volunteers and restricting the range of campaign activities they may part take in

#### 2.2 Guest speaker comments

**Rafał Trzaskowski** was the first guest speaker to speak and as a member of the European Parliament he was able to give invaluable insight into to campaign funding and the issues surrounding it from a candidates point of view. Mr. Trzaskowski clearly mentioned the issues which he felt were the most difficult to approach during his campaign, the impression was that he felt particularly strongly on the how candidates behave in public, for example when attending public events. On many occasions candidates, as political figures are invited to

events and festivities and Mr. Trzaskowski proclaimed its a “question of good manners” not to turn non related events or festivities in to campaign promotion. This was a subject that the monitoring also picked up on as such events do not appear in the campaign committee finance report. Later on in his speech Mr Trzaskowski also picked up on the topics of internet advertising, volunteers and interestingly he mentioned that the public have a weak knowledge on how they are allowed to participate in political campaigns. He claimed that on several occasions he was offered products or services at cost price or even for free but had to refuse due to campaign regulations. “Sadly some of these individuals took offence to this.” The reason for having to decline is that if a service or product is offered to one candidate at a promotional price then it must also be available to other candidates, furthermore it could be classified or suspected as a donation or form of volunteer exploitation. To conclude Mr. Trzaskowski said that campaign regulations “should be modified and revised but it is important not to exaggerate as regulations should not deprive the public of information or prevent their participation and enthusiasm”, moreover he continued to pronounce that the form of monitoring the Stefan Batory Foundation program is undergoing is healthy for promoting fairness, equality and transparency within Polish political elections.

**Witold Gintowt-Dziewiałtowski** was the second guest speaker to speak at the conference. Mr Gintowt-Dziewiałtowski is the vice-speaker for the parliamentary Select Committee on the Changes to the Electoral Law. He was excited to attend the conference, with the hope of receiving new ideas from the debate, on the possible changes that should be made the electoral codex. The different point of view between the two speakers was noticeable, as Mr Gintowt-Dziewiałtowski described his opinion from a regulators stance. He explained the importance of interpretation by the campaign committees of the general rules, however underlined that the major regulations should be made clear and accountable. Mr. Gintowt-Dziewiałtowski went on to speak about the current discussion in the Polish Sejm about non financial donations and the way they should be regulated and concluded by voicing the State Electoral Commission codex should be modified in various areas. Mr Gintowt-Dziewiałtowski did mention his failure to distinguish between financial bribes for votes and candidates making promises in order to gain votes, moreover he believes they should be regulated in a similar way.

### **2.3 Main issues discussed at the conference – audience concerns**

All of the conclusions and recommendations stated in summary of the report were mentioned during the conference, however the audience and focused their deliberation on a few specific issues which they felt were particularly important. The deliberation stands on the identification of an issue (based on the findings by the Anti Corruption Program) however the thoughts and comments where discussed amongst the panel and the audience, this brief is a short memo of that discussion.

#### **Volunteers**

As in many countries which suffer from a shortage of public involvement in politics, often indicated by voter turnout, is the ambiguous understanding on how the public may take part

and contribute to a candidates campaign. The absence of clear guidelines was the main issue which candidates had preventing them from taking full advantage of willing volunteers.

During the campaign period, non party members, offered to provide a service or product for free or at promotional prices. Candidates struggled to take advantage of these offers as by European election campaign regulations all products or services and products must have a fiscal value, and this value must be registered and accountable for in the financial report submitted at the end of the campaign. The law restricts volunteer work to distributing flyers and posters, any other activities must be accounted for, therefore excluding other areas such as call centres or internet activity.

In countries which suffer from lack of public involvement it may seem obscure to why election would wish to prevent public will from taking part in campaigns. Mr Trzaskowski raised the point that if an individual makes a homemade poster or banner, should the campaign have to pay for the production costs? If so it would be near impossible to monitor such activities. PKW however made an unofficial statement that the estimation of volunteer activities was removed from the electoral codex as it was unfeasible to calculate the additional contributions, a comment which Mr Gintowt-Dziewiałtowski complied with.

### **Internet campaigns (web 2.0)**

The 2009 elections were the first elections under monitoring, in which the usage of internet campaigning was severely noticed, moreover the correlation between the size of a candidates internet campaign and the final election results was very strong. In politics everything comes back to money and financing, and sticking with tradition, the issues surrounding the usage of internet were whether or not it should be free for party campaigns. Further discussions concerning the lack of clear site funding information and if the internet can be restricted or regulated to ensure one party or candidate does not dominate were also of public concern.

Mr. Gintowt-Dziewiałtowski made it clear during his speech that the commission do not recognise the internet as a form of mass communication therefore is not subject to fees. A comment the audience at the conference in majority sternly disagreed with. Many people gave the example of watching TV channels on the internet instead of on television, suggesting this is a form of mass communication.

Amongst others, issues arose on the basis of 'Google ads', their lack of the short finance statement and 'facebook' groups, which potentially set up by volunteers. Mr Trzaskowski also had a strong stance on the subject, his view was that if the internet domain was created before the campaign period and sole purpose is not for the election then it should not undergo maintenance costs, however if its creation is purely for the reason of the political campaign then it should in some form or other be regulated. In relation to the Google ads, Mr Trzaskowski mentioned some are not correctly signed as increasing the amount of letters in the advert also increases the cost of the advert. However it appeared that the main concern was not the internet exploitation made by the party campaign but by the public, who add photos, create forums, communities and upload film clips. These are all forms of candidate awareness, and the monitoring raised the question of their regulation as they are becoming increasingly popular, to which in a swift response the representative of PKW (unofficially) replied it is near impossible to condense the internet to an extent to which it can be regulated in a fair and equal way. moving away from that statement, restricting the internet may restrict the possibility for the public to discuss issues potentially surrounding the candidates manifesto, which in turn restricts public knowledge of the political issues on

which they are meant to be voting. However some forms of public internet activity are clearly aimed towards campaigning for a particular candidate or party. Mr Trzaskowski later said that “bloggers sometimes can achieve ten times the publicity than a party campaigner can”, the problem then is distinguishing between the two. An issue the electoral commission are not willing to approach. A final note made by Mr. Trzaskowski returns to the issue of public involvement in politics and the principle that it should not be restricted, with the fear that it may “prevent fresh blood from participating in politics”.

### **Exploitation of public assets**

Another topic which created tension during the conference was brought up by the first member of the audience to speak at the conference Prof. Lena Kolarska-Bobińska a member of the European Parliament, previously head of the Institute of Public Affairs . It has been noticed that incumbent representatives use party offices, telephones, transportation and contacts in order to gain an advantage over their rivals. Asymmetry during a campaign is natural and usually determines who is elected, however the use of public assets is a clear unbalanced advantage and should be prevented. Moreover, if a candidate uses a ministerial office, telephone line or means of transportation the costs should be noted in the financial report, however this is a difficult area to monitor, thus this sort of conduct should be forbidden by the electoral codex.

Furthermore, many members of the public complained about the sticking of posters and excess use of flyers which littered the streets and vandalised lampposts, fences and walls. The Anti Corruption Program proposed that candidates should include costs for cleaning areas in which they used campaign material and be restricted to using registered billboards and signposts to prevent the issue in future campaigns.

## **2.4 Criticism of the monitoring process**

Criticisms of the Monitoring report presented by the Anti Corruption Program were few, however the regions under observation and time scale of the project were brought in to question. Prof. Lena Kolarska-Bobińska had reservations to the time scale of the monitoring and inquired in to the methods by which the regions of local campaign observation were chosen, suggesting particular campaigns in various regions may have been unequally scrutinised. In a decisive response, Adam Sawicki from the Anti Corruption Program highlighted that “its the governments role to investigate and prosecute” party campaigns or candidates, and that the project was to meant to “monitor and observe” with the aim to uncover eventual irregularities and present them for consideration.

## **2.5 Recommendations suggested during the conference**

These recommendations are opinions from the audience and guest speakers, they are not necessarily the suggestions made by the Anti Corruption Program, which were stated in the monitoring report.

### **Proposals from the conference debate (including opinions of guest speakers and audience)**

The fiercest noticeable debate which concerned the audience was over internet campaigning, its potential influence on campaigns, methods of its financial regulation and the monitoring of its distribution between 'Google' advertising and advertisement on regional domains. Proposals included:

- revision of the State Electoral Commission's position that the internet is not a form of mass communication
- monitoring the uploads of news clips, bloggers and new domains to ensure particular campaigns are not taking advantage or flooding specific communes, as well as distinguishing between campaign sites and public domains as to not prevent voter involvement or knowledge
- the consideration of improving future cost calculations of internet campaigns

In other areas the audience appealed to candidates to:

- not take advantage of festivities which are not related to the elections.
- taking responsibility for the distribution of campaign materials
- the improvement of auditor training.