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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT OPINION**

**ON THE NEED FOR A CODE OF GOOD PRACTICE IN  
THE FIELD OF FUNDING OF ELECTORAL CAMPAIGNS**

**on the basis of comments by**

**Mr Nicolae ESANU (Member, Moldova)**

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

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## I. Introduction

1. On 14 September 2010 the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe endorsed the request of Mr David Harutyunyan to consult the Venice Commission on the need for a Code of good practice in the field of funding of electoral campaigns and expressed the opinion that such a study would be very valuable.

2. *This opinion was adopted by the Council for Democratic Elections at its ... meeting (Venice, ... .. 2011) and by the Venice Commission at its ... Plenary Session (Venice, ... .. 2011).*

## II. Analysis

3. In the request addressed to the Venice Commission no specific problem is mentioned, for which solution it is necessary to draft a Code of good practice in the field of funding of electoral campaigns. In this situation the decision on the opportunity to draft such a Code must be adopted on the basis of an abstract assessment.

4. In the light of the examination of the various international documents and doctrinal sources the importance of the problem and the necessity to have internationally recognised standards in the field of funding electoral campaigns are obvious. In the common opinion of an important number of international organisations, practitioners, including human right defenders and scholars, without fair rules on funding of electoral campaigns, it is impossible to have free and democratic elections. It is important to mention that most of the analyses and recommendations deal generally with financing of political parties without making differences between political party and campaign finance. But even in cases when such a difference is made, it is accepted that the principles and the rules are generally the same. For this opinion the rules on funding political parties will be regarded as applicable to funding of electoral campaigns<sup>1</sup>. This is also expressly recognised in Article 8 of Recommendation Rec (2003) 4 of the Committee of the Ministers on common rules against corruption in the funding of political parties and electoral campaigns, which establishes that the rules regarding the financing of political parties should apply *mutatis mutandis* to the funding of electoral campaigns and to the funding of political activities of elected representatives.

5. It has to be underlined that the importance of the problem is stressed also by the European Court of Human Rights which expressly stated that the rights guaranteed by the Convention can be violated by the rules on funding of electoral campaigns<sup>2</sup>.

6. The Venice Commission, separately or jointly with OSCE/ODIHR, has already expressed opinions on various aspects of funding of electoral campaigns when it assessed the drafts or legislation in force in an important number of countries, especially electoral Codes<sup>3</sup>. The most important of these documents are the Code of Good Practice in Electoral Matters: Guidelines and Explanatory report adopted by the Venice Commission at its 52<sup>nd</sup> session

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<sup>1</sup> The Venice Commission adopted the same approach in the document *Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission*, adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session (Venice, 15-16 October 2010), CDL-AD(2010)024.

<sup>2</sup> See for example: *Bowman v the United Kingdom*, (141/1996/760/961), judgment of 19 February 1998.

<sup>3</sup> See for example: Joint opinion on amendments to the Electoral Code of the Republic of Albania by Venice Commission and the OSCE/ODHIR adopted by the Venice Commission at its 72<sup>nd</sup> and Plenary Session (Venice, 18 October 2007), CDL-AD(2007)035; Opinion on the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States adopted by the Venice Commission at its 70<sup>th</sup> Plenary Session (Venice, 16-17 March 2007), CDL-AD (2007)007; Joint opinion on the Electoral Code of the Republic of Albania, adopted by the Venice Commission at its 78<sup>th</sup> Plenary Session (Venice, 13-14 March 2009), CDL-AD(2009)005; Joint opinion on the Election Code of Georgia as amended through March 2010, adopted by the Venice Commission at its 83<sup>rd</sup> Plenary Session (Venice, 4 June 2010), CDL-AD(2010)013.

(Venice, 18-19 October 2002), CDL-AD(2002)023rev, the Code of Good Practice in the field of Political Parties, adopted by the Venice Commission at its 77<sup>th</sup> Plenary Session (Venice, 12-13 December 2008) and the Explanatory Report adopted by the Venice Commission at its 78<sup>th</sup> Plenary Session (Venice, 14-15 March 2009), CDL-AD(2009)021 as well as the Guidelines on political party regulation, by OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session (Venice, 15-16 October 2010), CDL-AD(2010)024.

7. The same issue on funding of electoral campaigns has been addressed by other bodies, for example, Recommendation Rec (2003) 4 of the Committee of the Ministers on common rules against corruption in the funding of political parties and electoral campaigns. The Group of States against Corruption (GRECO) of the Council of Europe has, since 2007 and in the context of its Third Evaluation Round, been monitoring implementation of the rules on transparency, supervision and sanctions contained in Recommendation Rec (2003) 4<sup>4</sup> in its 49 member States.<sup>5</sup>

8. These documents, in different level of details, provide general guidelines for most aspects of the funding of electoral campaigns, concerning especially: a) disclosure rules; b) spending limits; c) contribution limits; d) measures to control use of public resources for campaign purposes; e) rules on personal use of candidate funds; f) political broadcasting rules; and g) rules concerning the funding of internal party contests.

9. In this situation the adoption of a new document, in the Commission's opinion, would not add much if it deals only with general guidelines on the other hand, to go in deeper detail and provide more specific recommendations at the moment is hardly possible, due to the great differences existing between member states.

10. The only main issue which is not dealt with in a fully satisfactory manner seems to be the problem of abuse of public resources such as the involvement of Public Officials in election campaigns or the partisan use of public funds or the facilities of the public institutions. However, this problem is not specific to the funding of the electoral campaigns. Even if the abuse of state resources includes the use of the public funds for electoral campaigns (it is necessary to take into consideration not only the use of the state resources for the election campaign as such but also, for example, the increase of the salaries or pensions close to or during the electoral campaigns or the allocations of different subsidies to citizens or to business) the main issue is not the financing of electoral campaigns but the abuse of public resources which do not include finance in a lot of cases. In the Commission's opinion it will be more appropriate to deal with the problem of abuse of public resources in a separate document.

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<sup>4</sup> The individual country reports constitute a valuable source of information on best practice and insufficiencies in this area; they contain recommendations for improvement which are leading *de facto* to the development of some common standards across Europe (and beyond) to increase transparency of party and campaign finances in an effort to prevent corruption. Individual country reports are published on GRECO's website ([http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp)). A horizontal overview is available in the study "Political Financing: GRECO's first 22 evaluations", by Mr Yves-Marie Doublet, Deputy Director of the General Secretariat of the National Assembly, France ([http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco\(2010\)8\\_RapportYVDoublet\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco(2010)8_RapportYVDoublet_EN.pdf)). This document is appended.

<sup>5</sup> GRECO comprises 49 Member States: 48 European States (Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, "the former Yugoslav Republic of Macedonia", Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom) and the United States of America.

### **III. Conclusion**

11. The Venice Commission is of the opinion that a general document on the funding of electoral campaigns could in principle be useful. Nevertheless, the adoption of a Code of good practice in the field of funding of electoral campaigns would not add much, compared with existing documents. Even the convenience to see all the recommendations in one document will hardly justify the efforts for its drafting and adoption if it does not lead to more detailed and specific recommendations. It would be more useful to explore the possibility of adopting guidelines on the abuse of public resources.

## **Appendix I: Council of Europe Reference documents**

### **Recommendation No. R (99) 15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns**

*(Adopted by the Committee of Ministers on 9 September 1999 at the 678<sup>th</sup> meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Noting the important role of the media in modern societies, especially at the time of elections;

Stressing that the fundamental principle of editorial independence of the media assumes a special importance in election periods;

Aware of the need to take account of the significant differences which exist between the print and the broadcast media;

Underlining that the coverage of elections by the broadcast media should be fair, balanced and impartial;

Considering that public service broadcasters have a particular responsibility in ensuring in their programmes a fair and thorough coverage of elections which may include the granting of free airtime to political parties and candidates;

Noting that particular attention should be paid to certain specific features of the coverage of election campaigns, such as the dissemination of opinion polls, paid political advertising, the right of reply, days of reflection and provision for pre-electoral time;

Stressing the important role of self-regulatory measures by media professionals themselves - for example, in the form of codes of conduct - which set out guidelines of good practice for responsible, accurate and fair coverage of electoral campaigns;

Recognising the complementary nature of regulatory and self-regulatory measures in this area;

Convinced of the usefulness of appropriate frameworks for media coverage of elections to contribute to free and democratic elections, bearing in mind the different legal and practical approaches of member States in this area and the fact that it can be subject to different branches of law;

Acknowledging that any regulatory framework on the coverage of elections should respect the fundamental principle of freedom of expression protected under Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;

Recalling the basic principles contained in Resolution No. 2 adopted at the 4th Ministerial Conference on Mass Media Policy (Prague, December 1994) and Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting,

Recommends that the governments of the member States examine ways of ensuring respect for the principles of fairness, balance and impartiality in the coverage of election campaigns by the media, and consider the adoption of measures to implement these principles in their domestic law or practice where appropriate and in accordance with constitutional law.

## **Appendix to Recommendation No. R (99) 15**

### **Scope of the Recommendation**

The principles of fairness, balance and impartiality in the coverage of election campaigns by the media should apply to all types of political elections taking place in member States, that is, presidential, legislative, regional and, where practicable, local elections and political referenda.

These principles should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address citizens of the country where the election is taking place.

#### **I. Measures concerning the print media**

##### **1. Freedom of the press**

Regulatory frameworks on media coverage of elections should not interfere with the editorial independence of newspapers or magazines nor with their right to express any political preference.

##### **2. Print media outlets owned by public authorities**

Member States should adopt measures whereby print media outlets which are owned by public authorities, when covering electoral campaigns, should do so in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate.

If such media outlets accept paid political advertising in their publications, they should ensure that all political contenders and parties that request the purchase of advertising space are treated in an equal and non-discriminatory manner.

#### **II. Measures concerning the broadcast media**

##### **1. General framework**

During electoral campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media.

With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover electoral campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service broadcasters as well as private broadcasters in their relevant transmission areas.

In member States where the notion of "pre-electoral time" is defined under domestic legislation, the rules on fair, balanced, and impartial coverage of electoral campaigns by the broadcast media should also apply to this period.

##### **2. News and current affairs programmes**

Where self-regulation does not provide for this, member States should adopt measures whereby public and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates.

No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures. As appropriate, member States might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.

### 3. Other programmes

Special care should be taken with programmes other than news or current affairs which are not directly linked to the campaign but which may also have an influence on the attitude of voters.

### 4. Free airtime for political parties/candidates on public broadcast media

Member States may examine the advisability of including in their regulatory frameworks provisions whereby free airtime is made available to political parties/candidates on public broadcasting services in electoral time.

Wherever such airtime is granted, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.

### 5. Paid political advertising

In member States where political parties and candidates are permitted to buy advertising space for electoral purposes, regulatory frameworks should ensure that:

- the possibility of buying advertising space should be available to all contending parties, and on equal conditions and rates of payment;
- the public is aware that the message is a paid political advertisement.

Member States may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space which a given party or candidate can purchase.

## **III. Measures concerning both the print and broadcast media**

### 1. "Day of reflection"

Member States may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting.

### 2. Opinion polls

Regulatory or self-regulatory frameworks should ensure that the media, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular :



- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member States forbidding the publication/broadcasting of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights.

Similarly, in respect of exit polls, member States may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

### 3. The right of reply

Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply under national law or systems should be able to exercise this right during the campaign period.

## **IV. Measures to protect the media at election time**

### 1. Non-interference by public authorities

Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections.

### 2. Protection against attacks, intimidation or other unlawful pressures on the media

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises, as this assumes a greater significance during elections. At the same time, this protection should not obstruct them in carrying out their work.

**Recommendation Rec (2003) 4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns**

*(Adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that political parties are a fundamental element of the democratic systems of states and are an essential tool of expression of the political will of citizens;

Considering that political parties and electoral campaigns funding in all states should be subject to standards in order to prevent and fight against the phenomenon of corruption;

Convinced that corruption represents a serious threat to the rule of law, democracy, human rights, equity and social justice, that it hinders economic development, endangers the stability of democratic institutions and undermines the moral foundations of society;

Having regard to the recommendations adopted at the 19th and 21st Conferences of European Ministers of Justice (Valetta, 1994 and Prague, 1997 respectively);

Having regard to the Programme of Action against Corruption adopted by the Committee of Ministers in 1996;

In accordance with the Final Declaration and the Plan of Action adopted by the Heads of State and Government of the Council of Europe at their Second Summit, held in Strasbourg on 10 and 11 October 1997;

Having regard to Resolution (97) 24 on the twenty guiding principles for the fight against corruption, adopted by the Committee of Ministers on 6 November 1997 and in particular Principle 15, which promotes rules for the financing of political parties and election campaigns which deter corruption;

Having regard to Recommendation 1516 (2001) on the financing of political parties, adopted on 22 May 2001 by the Council of Europe's Parliamentary Assembly;

In the light of the conclusions of the 3rd European Conference of Specialised Services in the Fight against Corruption on the subject of Trading in Influence and Illegal Financing of Political Parties held in Madrid from 28 to 30 October 1998;

Recalling in this respect the importance of the participation of non-member states in the Council of Europe's activities against corruption and welcoming their valuable contribution to the implementation of the Programme of Action against Corruption;

Having regard to Resolution (98) 7 authorising the Partial and Enlarged Agreement establishing the Group of States against Corruption (GRECO) and Resolution (99) 5 establishing the Group

of States against Corruption (GRECO), which aims at improving the capacity of its members to fight corruption by following up compliance with their undertakings in this field;

Convinced that raising public awareness on the issues of prevention and fight against corruption in the field of funding of political parties is essential to the good functioning of democratic institutions,

Recommends that the governments of member states adopt, in their national legal systems, rules against corruption in the funding of political parties and electoral campaigns which are inspired by the common rules reproduced in the appendix to this recommendation, – in so far as states do not already have particular laws, procedures or systems that provide effective and well-functioning alternatives, and instructs the "Group of States against Corruption – GRECO" to monitor the implementation of this recommendation.

## **Appendix**

### **Common rules against corruption in the funding of political parties and electoral campaigns**

#### **I. External sources of funding of political parties**

##### **Article 1 Public and private support to political parties**

The state and its citizens are both entitled to support political parties.

The state should provide support to political parties. State support should be limited to reasonable contributions. State support may be financial.

Objective, fair and reasonable criteria should be applied regarding the distribution of state support.

States should ensure that any support from the state and/or citizens does not interfere with the independence of political parties.

##### **Article 2 Definition of donation to a political party**

Donation means any deliberate act to bestow advantage, economic or otherwise, on a political party.

##### **Article 3 General principles on donations**

a. Measures taken by states governing donations to political parties should provide specific rules to:

- avoid conflicts of interests;
- ensure transparency of donations and avoid secret donations;
- avoid prejudice to the activities of political parties;
- ensure the independence of political parties.

b. States should:

- i. provide that donations to political parties are made public, in particular, donations exceeding a fixed ceiling;
- ii. consider the possibility of introducing rules limiting the value of donations to political parties;
- iii. adopt measures to prevent established ceilings from being circumvented.

**Article 4 Tax deductibility of donations**

Fiscal legislation may allow tax deductibility of donations to political parties. Such tax deductibility should be limited.

**Article 5 Donations by legal entities**

a. In addition to the general principles on donations, states should provide:

- i. that donations from legal entities to political parties are registered in the books and accounts of the legal entities; and
- ii. that shareholders or any other individual member of the legal entity be informed of donations.

b. States should take measures aimed at limiting, prohibiting or otherwise strictly regulating donations from legal entities which provide goods or services for any public administration.

c. States should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties.

**Article 6 Donations to entities connected with a political party**

Rules concerning donations to political parties, with the exception of those concerning tax deductibility referred to in Article 4, should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party.

**Article 7 Donations from foreign donors**

States should specifically limit, prohibit or otherwise regulate donations from foreign donors.

**II. Sources of funding of candidates for elections and elected officials****Article 8 Application of funding rules to candidates for elections and elected representatives**

The rules regarding funding of political parties should apply *mutatis mutandis* to:

- the funding of electoral campaigns of candidates for elections;
- the funding of political activities of elected representatives.

**III. Electoral campaign expenditure****Article 9 Limits on expenditure**

States should consider adopting measures to prevent excessive funding needs of political parties, such as, establishing limits on expenditure on electoral campaigns.

**Article 10 Records of expenditure**

States should require particular records to be kept of all expenditure, direct and indirect, on electoral campaigns in respect of each political party, each list of candidates and each candidate.

#### **IV. Transparency**

##### **Article 11 Accounts**

States should require political parties and the entities connected with political parties mentioned in Article 6 to keep proper books and accounts. The accounts of political parties should be consolidated to include, as appropriate, the accounts of the entities mentioned in Article 6.

##### **Article 12 Records of donations**

a. States should require the accounts of a political party to specify all donations received by the party, including the nature and value of each donation.

b. In case of donations over a certain value, donors should be identified in the records.

##### **Article 13 Obligation to present and make public accounts**

a. States should require political parties to present the accounts referred to in Article 11 regularly, and at least annually, to the independent authority referred to in Article 14.

b. States should require political parties regularly, and at least annually, to make public the accounts referred to in Article 11 or as a minimum a summary of those accounts, including the information required in Article 10, as appropriate, and in Article 12.

#### **V. Supervision**

##### **Article 14 Independent monitoring**

a. States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns.

b. The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.

##### **Article 15 Specialised personnel**

States should promote the specialisation of the judiciary, police or other personnel in the fight against illegal funding of political parties and electoral campaigns.

#### **VI. Sanctions**

##### **Article 16 Sanctions**

States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.

**Recommendation Rec (2007) 15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns**

*(Adopted by the Committee of Ministers on 7 November 2007 at the 1010th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe;

Noting the important role of the media in modern societies, especially at the time of elections;

Considering the constant development of information and communication technology and the evolving media landscape which necessitates the revision of Recommendation No. R (99) 15 of the Committee of Ministers on measures concerning media coverage of election campaigns;

Aware of the need to take account of the significant differences which still exist between the print and the broadcast media;

Considering the differences between linear and non-linear audiovisual media services, in particular as regards their reach, impact and the way in which they are consumed;

Stressing that the fundamental principle of editorial independence of the media assumes a special importance in election periods;

Underlining that the coverage of elections by the broadcast media should be fair, balanced and impartial;

Recalling the basic principles contained in Resolution No. 2 adopted at the 4th Ministerial Conference on Mass Media Policy (Prague, December 1994), and Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting;

Noting the emergence of public service media in the information society as elaborated in Recommendation Rec(2007)3 of the Committee of Ministers on the remit of public service media in the information society;

Considering that public service media are a publicly accountable source of information which have a particular responsibility in ensuring in their programmes, a fair, balanced and thorough coverage of elections, which may include the carrying of messages of political parties and candidates free of charge and on an equitable basis;

Noting that particular attention should be paid to certain specific features of the coverage of election campaigns, such as the dissemination of opinion polls, paid political advertising, the right of reply, days of reflection and provision for pre-election time;

Stressing the important role of self-regulatory measures by media professionals themselves – for example, in the form of codes of conduct – which set out guidelines of good practice for responsible, accurate and fair coverage of election campaigns;

Recognising the complementary nature of regulatory and self-regulatory measures in this area;

Convinced of the usefulness of appropriate frameworks for media coverage of elections to contribute to free and democratic elections, bearing in mind the different legal and practical approaches of member states in this area and the fact that it can be subject to different branches of law;

Acknowledging that any regulatory framework on the media coverage of elections should respect the fundamental principle of freedom of expression protected under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights;

Recalling Recommendation Rec(2004)16 of the Committee of Ministers on the right of reply in the new media environment which allows the possibility for easy-to-use instant or rapid correction of contested information,

Recommends that the governments of the member states, if they have not already done so, examine ways of ensuring respect for the principles stated hereinafter regarding the coverage of election campaigns by the media, and, where necessary, adopt appropriate measures to implement these principles in their domestic law or practice and in accordance with constitutional law.

### **Definition**

For the purposes of this recommendation:

The term “media” refers to those responsible for the periodic creation of information and content and its dissemination over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. This could, *inter alia*, include print media (newspapers, periodicals) and media disseminated over electronic communication networks, such as broadcast media (radio, television and other linear audiovisual media services), online news-services (such as online editions of newspapers and newsletters) and non-linear audiovisual media services (such as on-demand television).

### **Scope of the recommendation**

The principles of this recommendation apply to all types of political elections taking place in member states, including presidential, legislative, regional and, where practicable, local elections and referenda.

These principles should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address persons in the country where the election is taking place.

In member states where the notion of the “pre-election period” is defined under domestic legislation, the principles contained in this recommendation should also apply.

## Principles

### I. General provisions

#### 1. *Non-interference by public authorities*

Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections.

#### 2. *Protection against attacks, intimidation or other types of unlawful pressure on the media*

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises, as this assumes a greater significance during elections. At the same time, this protection should not obstruct the media in carrying out their work.

#### 3. *Editorial independence*

Regulatory frameworks on media coverage of elections should respect the editorial independence of the media.

Member states should ensure that there is an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence.

#### 4. *Ownership by public authorities*

Member states should adopt measures whereby the media which are owned by public authorities, when covering election campaigns, should do so in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate.

If such media outlets accept paid political advertising in their publications, they should ensure that all political contenders and parties that request the purchase of advertising space are treated in an equal and non-discriminatory manner.

#### 5. *Professional and ethical standards of the media*

All media are encouraged to develop self-regulatory frameworks and incorporate self-regulatory professional and ethical standards regarding their coverage of election campaigns, including, *inter alia*, respect for the principles of human dignity and non-discrimination. These standards should reflect their particular roles and responsibilities in democratic processes.

#### 6. *Transparency of, and access to, the media*

If the media accept paid political advertising, regulatory or self-regulatory frameworks should ensure that such advertising is readily recognisable as such.

Where media is owned by political parties or politicians, member states should ensure that this is made transparent to the public.

#### 7. *The right of reply or equivalent remedies*

Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply or equivalent remedies under national law or systems should be able to exercise this right or equivalent remedies during the campaign period without undue delay.



## 8. *Opinion polls*

Regulatory or self-regulatory frameworks should ensure that the media will, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular :

- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member states forbidding the publication/dissemination of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.

Similarly, in respect of exit polls, member states may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

## 9. *“Day of reflection”*

Member states may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting or to provide for their correction.

## **II. Measures concerning broadcast media**

### 1. *General framework*

During election campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media.

With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover election campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service media and private broadcasters in their relevant transmission areas.

Member states may derogate from these measures with respect to those broadcast media services exclusively devoted to, and clearly identified as, the self-promotion of a political party or candidate.

### 2. *News and current affairs programmes*

Where self-regulation does not provide for this, member states should adopt measures whereby public service media and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates.

No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures. In this connection, member states might examine whether, where practicable, the

relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.

3. *Non-linear audiovisual services of public service media*

Member states should apply the principles contained in points 1 and 2 above or similar provisions to non-linear audiovisual media services of public service media.

4. *Free airtime and equivalent presence for political parties/candidates on public service media*

Member states may examine the advisability of including in their regulatory frameworks provisions whereby public service media may make available free airtime on their broadcast and other linear audiovisual media services and/or an equivalent presence on their non-linear audiovisual media services to political parties/candidates during the election period.

Wherever such airtime and/or equivalent presence is granted, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.

5. *Paid political advertising*

In member states where political parties and candidates are permitted to buy advertising space for election purposes, regulatory frameworks should ensure that all contending parties have the possibility of buying advertising space on and according to equal conditions and rates of payment.

Member states may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space and time which a given party or candidate can purchase.

Regular presenters of news and current affairs programmes should not take part in paid political advertising.

## **Recommendation 1516 (2001)<sup>6</sup> of the Parliamentary Assembly of the Council of Europe - Financing of political parties**

1. Citizens are showing growing concern with regard to corruption linked to political parties gradual loss of independence and the occurrence of improper influence on political decisions through financial means. The Assembly, stressing that political parties are an essential element of pluralistic democracies, is seriously preoccupied by this situation.

2. A number of scandals linked to the financing of political parties in several Council of Europe member states in all parts of Europe over recent years has demonstrated that this issue must be addressed as a matter of urgency in order to prevent the loss of citizens interest in the political life of their respective countries.

3. In order to maintain and increase the confidence of citizens in their political systems, Council of Europe member states must adopt rules governing the financing of political parties and electoral campaigns.

4. The Assembly is of the opinion that the general principles on which these rules should be based must be formulated at European level.

5. In this connection, the Assembly takes note of the activities of the Council of Europe's bodies in this field, in particular of the guidelines for financing political parties, adopted by the European Commission for Democracy through Law (the Venice Commission) in March 2001, and of the ongoing work of the Council of Europe's Working Group on the Funding of Political Parties (GMCF) aimed at formulating recommendations to member states on common rules against corruption in the funding of political parties and electoral campaigns?

6. The conditions in which political parties exercise their activities have changed over recent decades and nowadays they need substantial financial resources to gain visibility and to obtain political support for their ideas. Therefore, the Assembly considers that the regulation mechanisms must take these realities into account and empower political parties to obtain sufficient resources to carry out their tasks and functions.

7. The Assembly believes that the rules on financing political parties and on electoral campaigns must be based on the following principles: a reasonable balance between public and private funding, fair criteria for the distribution of state contributions to parties, strict rules concerning private donations, a threshold on parties, expenditures linked to election campaigns, complete transparency of accounts, the establishment of an independent audit authority and meaningful sanctions for those who violate the rules.

8. Accordingly, the Assembly considers that:

A. *As regards sources of finance*

- i. States should encourage citizens participation in the activities of political parties, including their financial support to parties. It should be accepted that membership fees, traditional and non-controversial sources of finance, are not sufficient to face the ever increasing expense of political competition.

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<sup>6</sup> Text adopted by the Standing Committee, acting on behalf of the Assembly, on 22 May 2001 (see [Doc. 9077](#), report of the Political Affairs Committee, rapporteur: Mrs Stěpová).

- ii. Political parties should receive financial contributions from the state budget in order to prevent dependence on private donors and to guarantee equality of chances between political parties. State financial contributions should, on the one hand, be calculated in ratio to the political support which the parties enjoy, evaluated on objective criteria such as the number of votes cast or the number of parliamentary seats won, and on the other hand enable new parties to enter the political arena and to compete under fair conditions with the more well-established parties.
- iii. State support should not exceed the level strictly necessary to achieve the above objectives, since excessive reliance on state funding can lead to the weakening of links between parties and their electorate.
- iv. Besides their financial contributions, states may contribute indirectly to financing political parties based on law, for example by covering the costs of postage and of meeting rooms, by supporting party media, youth organisations and research institutes; and also by granting tax incentives.
- v. Together with state funding, private funding is an essential source of finance for political parties. As private financing, in particular donations, creates opportunities for influence and corruption, the following rules should apply:
  - a. a ban on donations from state enterprises, enterprises under state control, or firms which provide goods or services to the public administration sector;
  - b. a ban on donations from companies domiciliated in offshore centres;
  - c. strict limitations on donations from legal entities;
  - d. a legal limit on the maximum sum of donations;
  - e. a ban on donations by religious institutions.

**B. *As regards expenditure during election campaigns***

States should impose limits on the maximum expenditure permitted during election campaigns, given that in the absence of an upper threshold on expenditure there are no limits to the escalation of costs, which is an incentive for parties to intensify their search for funds.

**C. *As regards transparency***

Financing of political parties must be fully transparent, which requires political parties, in particular:

- i. keep strict accounts of all income and expenditure, which must be submitted, at least once a year, to an independent auditing authority and be made public;
- ii. to declare the identity of donors who give financial support exceeding a certain limit.

**D. *As regards control***

States should establish independent auditing bodies endowed with sufficient powers to supervise the accounts of political parties and the expenses linked to electoral campaigns.

**E. *As regards sanctions***

In the case of a violation of the legislation, political parties should be subject to meaningful sanctions, including the partial or total loss or mandatory reimbursement of state contributions and the imposition of fines. When individual responsibility is established, sanctions should include the annulment of the elected mandate or a period of ineligibility.

F. *As regards “third parties”*

The legislation on financing political parties and on electoral campaigns should also apply to entities related to political parties, such as political foundations.

9. The Assembly therefore recommends that the Committee of Ministers:
  - i. adopt “common rules against corruption in the funding of political parties and electoral campaigns”, taking into account the work of the Multidisciplinary Group on Corruption (GMC) pursuant to a proposal of its Working Group on the Funding of Political Parties (GMCF) and the above-formulated principles, as well as the guidelines adopted by the European Commission for Democracy through Law in March 2001;
  - ii. invite member states to adopt legislation on financing political parties and electoral campaigns based on the above-formulated principles reflected in Council of Europe guidelines.

**Recommendation 86 (2000)<sup>7</sup> of the Congress of Local and Regional Authorities of the Council of Europe on the financial transparency of political parties and their democratic functioning at regional level**

The Congress,

Bearing in mind the proposal of the Chamber of Regions,

1. Referring to the report submitted by Mr Haegi on “The democratic functioning and financial transparency of political parties at regional level”;
2. Mindful of the Criminal Law Convention on Corruption (ETS No. 73), signed on 21 January 1999, and the Civil Law Convention on Corruption (ETS No.74), signed on 4 November 1999, as well as Opinions 207 (of 23 June 1998) and 213 (of 26 May 1999) of the Parliamentary Assembly thereon;
3. Bearing in mind Resolution 79 (99) and Recommendation 60 (99) adopted during the plenary Session of the Congress in 1999, following the report of Mr Viorel Coifan on "The political integrity of local and regional elected representatives”;
4. Supporting Recommendation (99) 15 of the Committee of Ministers on measures concerning media coverage of election campaigns;
5. Welcoming the Venice Commission’s current work on constitutional and legislative provisions concerning political party financing, and the related work done some years ago by the Council of Europe Directorate of Legal Affairs;
6. Considering that, on the one hand, political parties, as an expression of democratic pluralism, are entitled to receive support whether from public or private funds, but, on the other hand, such financing must be clearly regulated and transparent to avoid the risk of distorting the democratic process and gradually discrediting politicians in general;
7. Convinced of the need to take measures to this end at regional as well as other levels;

Recommends that the Committee of Ministers:

8. Concern itself with the increasing incidence of “scandals” directly or indirectly related to political party financing, and their damaging impact on the public perception of democracy;
9. Initiate, as part of its work programme, research into the introduction of European-level regulations on transparency in politics and, as part of this process, collect all available information on transparency in party financing and public life;
10. Instruct the CDLR to draw up a draft charter containing the main principles making it possible to guarantee a minimum degree of transparency in the financing of political parties at local and regional levels, with a view to the better functioning of democracy;

Recommends that governments:

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<sup>7</sup> Debated and approved by the Chamber of Regions on 24 May 2000 and adopted by the Standing Committee of the Congress on 25 May 2000 (see Doc. CPR (7) 7, draft recommendation presented by Mr C. Haegi, rapporteur).

11. Ensure that their respective national laws include adequate provision for transparency in political party financing and for appropriate supervisory measures;
12. Submit their legislation on transparency in the financing of politics to critical scrutiny and draw on the positive and innovative experience of certain other countries and regions with a view to improving their own laws in this field;

Recommends that the Parliamentary Assembly:

13. Keep abreast of the CLRAE's work on political party financing at sub-state level, and co-operate closely with it on this theme;
14. Consider how to raise awareness of the issue at European, national and sub-national levels;
15. Initiate a detailed report on transparency in the financing of politics.

## **Appendix II: Case-law of the European Court of Human Rights**

### [CASE OF PARTI NATIONALISTE BASQUE - ORGANISATION REGIONALE D'IPARRALDE v. France](#)

See on the issue the *amicus curiae* of the Venice Commission, CDL-AD(2006)014.

The refusal to allow a French Basque Nationalist Party to receive financing from the Spanish Basque Nationalist Party is a restriction to Article 11 of the Convention (freedom of association). The legitimate aim is “prevention of disorder”/”*défense de l'ordre*”. Concerning the necessity in a democratic society, the issue falls within the residual margin of appreciation afforded to the Contracting States. The measure is not disproportionate since the party “to fund its political activities, ... would nevertheless be able to use membership fees and donations from individuals – including those from outside France – which it could collect through a financial agent or a funding association authorised on the basis of a fresh application” (paragraph 50).

### [CASE OF BOWMAN v. THE UNITED KINGDOM](#)

Limiting to GBP 5 the amount of money which unauthorised persons are permitted to spend on publications and other means of communication during the election period is a restriction to freedom of expression (Article 11) (paragraph 33).

Legitimate aim: the application of this law to Mrs Bowman pursued the legitimate aim of protecting the rights of others, namely the candidates for election and the electorate in Halifax and, to the extent that the prosecution was intended to have a deterrent effect, elsewhere in the United Kingdom (paragraph 38).

“47. In summary, therefore, the Court finds that section 75 of the 1983 Act operated, for all practical purposes, as a total barrier to Mrs Bowman’s publishing information with a view to influencing the voters of Halifax in favour of an anti-abortion candidate. It is not satisfied that it was necessary thus to limit her expenditure to GBP 5 in order to achieve the legitimate aim of securing equality between candidates, particularly in view of the fact that there were no restrictions placed upon the freedom of the press to support or oppose the election of any particular candidate or upon political parties and their supporters to advertise at national or regional level, provided that such advertisements were not intended to promote or prejudice the electoral prospects of any particular candidate in any particular constituency (see paragraph 22 above). It accordingly concludes that the restriction in question was disproportionate to the aim pursued.

It follows that there has been a violation of Article 10 of the Convention.”

### [CASE OF TV VEST AS & ROGALAND PENSJONISTPARTI v. NORWAY](#)

Case decided under Article 10 ECHR (freedom of expression)

Fine imposed on a TV channel for having broadcast paid political advertisements for the Pensioners Party in breach of the prohibition of political advertising on television laid down by the law.

“The Government pointed out that the ban had been limited to political advertising on television owing to the powerful and pervasive impact of this type of medium. Moreover, the prohibition had contributed to limiting election campaign costs, to reducing participants' donor dependence and ensuring a level playing field in elections. It was aimed at supporting the integrity of democratic processes, to obtain a fair framework for political and public debate and to ensure that those who could afford it did not obtain an undesirable advantage through the possibility of



using the most potent and pervasive medium. Also, it helped to preserve the political impartiality of television broadcasting. These are undoubtedly relevant reasons.” (paragraph 70).

“While the Pensioners Party belonged to a category for whose protection the ban was, in principle, intended, the Court... is not persuaded that the ban had the desired effect.” (paragraph 73).

“78. In sum, there was not, in the Court's view, a reasonable relationship of proportionality between the legitimate aim pursued by the prohibition on political advertising and the means deployed to achieve that aim. The restriction which the prohibition and the imposition of the fine entailed on the applicants' exercise of their freedom of expression cannot therefore be regarded as having been necessary in a democratic society, within the meaning of paragraph 2 of Article 10, for the protection of the rights of others, notwithstanding the margin of appreciation available to the national authorities. Accordingly, there has been a violation of Article 10 of the Convention.”

[\(CASE OF PIERRE-BLOCH v. FRANCE\)](#)

(Article 6 not applicable to proceedings before the Constitutional Council, sitting as body that adjudicates election disputes in respect of members of Parliament – *in casu* excessive campaign expenses according to French legislation)

[\(CASE OF SARUKHANYAN v. ARMENIA\)](#)

(Inexact declaration of property – candidate disqualified – violation of Art. 3 Add. Prot.)

### Appendix III: Extracts of relevant documents of the Venice Commission

**CDL-AD(2002)023rev - Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report - Adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002) in English** [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf)

*Explanatory report*

#### 3.5. Funding

107. Regulating the funding of political parties and electoral campaigns is a further important factor in the regularity of the electoral process.

108. First of all, funding must be *transparent*; such transparency is essential whatever the level of political and economic development of the country concerned.

109. Transparency operates at two levels. The first concerns campaign funds, the details of which must be set out in a special set of carefully maintained accounts. In the event of significant deviations from the norm or if the statutory expenditure ceilings are exceeded, the election must be annulled. The second level involves monitoring the financial status of elected representatives before and after their term in office. A commission in charge of financial transparency takes formal note of the elected representatives' statements as to their finances.

The latter are confidential, but the records can, if necessary, be forwarded to the public prosecutor's office.

110. In unitary states, any expenses incurred by local authorities in connection with the running of a national election, the payment of election commission members, the printing of ballot papers, etc, should normally be borne by the central state.

111. It should be remembered that in the field of *public funding* of parties or campaigns the principle of equality of opportunity applies ("strict" or "proportional" equality). All parties represented in parliament must in all cases qualify for public funding. However, in order to ensure equality of opportunity for all the different political forces, public funding might also be extended to political formations that represent a large section of the electorate and put up candidates for election. The funding of political parties from public funds must be accompanied by supervision of the parties' accounts by specific public bodies (e.g. the Auditor General's Department). States should encourage a policy of financial openness on the part of political parties receiving public funding.

*No specific provisions on financing of electoral campaigns.*

**CDL-INF(2001)008 - Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001)** [http://www.venice.coe.int/docs/2001/CDL-INF\(2001\)008-e.pdf](http://www.venice.coe.int/docs/2001/CDL-INF(2001)008-e.pdf)

**B. Electoral Campaigns**

8. In order to ensure equality of opportunities for the different political forces, electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of voters concerned.

9. The State should participate in campaign expenses through funding equal to a certain percentage of the above ceiling or proportional to the number of votes obtained. This contribution may however be refused to parties who do not reach a certain threshold of votes.

10. Private contributions can be made for campaign expenses, but the total amount of such contributions should not exceed the stated ceiling. Contributions from foreign States or enterprises must be prohibited. This prohibition should not prevent financial contributions from nationals living abroad.

Other limitations may also be envisaged. Such may consist notably of a prohibition of contributions from enterprises of an industrial or commercial nature or religious organisations.

11. Electoral campaign accounts will be submitted to the organ charged with supervising election procedures, for example, an election committee, within a reasonable time limit after the elections.

12. The transparency of electoral expenses should be achieved through the publication of campaign accounts.

**CDL-AD(2009)021 - Code of Good Practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008) and Explanatory Report adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)** [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)021-e.pdf](http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.pdf)

*This document is addressed at political parties and not at public authorities.*

**C. Funding**

38. Party funding must comply with the principles of accountability and transparency. The Venice Commission has extensively dealt with the issue of party financing in its Guidelines on financing of political parties.

**1. Sources**

39. A political party may ask its members to pay dues, the amount of which it is free to fix, although the latter must not be discriminatory in nature. Non payment of dues may constitute grounds for expulsion from the party.

40. A party may receive donations within the limits of domestic law, which may prohibit donations from certain sources. By no means may parties interpret private donations as granting any possibility to influence and/or alter the party programme and/or party policies. Parties must adhere to laws that require disclosing the origin of private donations to parties.

41. Where legislation foresees public funding, political parties must have access to it subject to possible minimum requirements. The latter must be reasonable and non-discriminatory. Apart from different forms of funding provided for by law, any party must refrain from receiving assistance, financial or in kind, from any public authorities, particularly those directed by its members.

## **2. Restrictions**

42. No party may receive clandestine or fraudulently obtained financial aid.

43. For the purposes of financing electoral campaigns, parties must make sure that their candidates comply with current regulations, particularly where there is a ceiling on electoral expenditure.

## **3. Supervisory mechanisms**

44. Every political party should include in its statutes mechanisms for audits of its accounts at the national level and for supervising accounting on any regional and local levels. It must also be subject to the State authorities' audit, especially in the field of financing.

*No specific provisions on financing of electoral campaigns.*

**CDL-AD(2010)024 - Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010) [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)024-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)024-e.pdf)**

## **XII. FUNDING OF POLITICAL PARTIES**

### **1. Campaign and Political Finance**

#### **a. Definition and Guidelines of Campaign and Political Finance**

159. Political parties need appropriate funding to fulfill their core functions, both during and between election periods. The regulation of political party funding is essential to guarantee parties independence from undue influence created by donors and to ensure the opportunity for all parties to compete in accordance with the principle of equal opportunity and to provide for transparency in political finance. Funding of political parties through private contributions is also a form of political participation. Thus, legislation should attempt to achieve a balance between encouraging moderate contributions and limiting unduly large contributions.

160. In the development of legislation OSCE states might adopt several important guidelines for political finance systems. These include :

- Restrictions and limits on private contributions
- Balance between private and public funding
- Restrictions on the use of state resources
- Fair criteria for the allocation of public financial support

- Spending limits for campaigns
- Requirements that increase transparency of party funding and credibility of financial reporting
- Independent regulatory mechanisms and appropriate sanctions for legal violations.

161. The funding of political parties refers both to the way in which parties fund their routine activities and campaign finance, which refers specifically to funds allocated by a party during the election process. Both routine party funding and campaign finance must be considered in legislation relevant to political parties to ensure a transparent and fair financing system. Many issues (such as limits on the allowable sources of funding) apply to both types of financing and others (such as the provision of free media time) may apply only during the election period.

162. Many OSCE states provide public support to parties at all times, making the distinction between political and campaign finance largely moot. However, if relevant legislation distinguishes between party and campaign financing, it should include clear and precise guidelines for the appropriate use and allocation of funds for these different reasons. For example, if regulations define general public support which may be used for any party function as separate from money appropriated specifically for campaign purposes, the definition and restriction on what constitutes a 'campaign purpose' must be clearly laid out. Guidance should also be given with regards to how to classify expenses which are necessary for a campaign but still required outside of electoral periods (for instance the rental of party headquarters or employee salaries). If funds are earmarked only for use during the campaign period, the beginning, duration, and end of such a period must be clearly defined in law and reasonable.

## **2. Private Funding**

### **a. Membership Fees**

163. Political parties may require the payment of a membership fee. While such fees should not be of such a high level as to restrict membership unduly, they are a legitimate source of political party funding. Legislation should ensure that membership fees are not used to circumvent contribution limits. This can be accomplished by treating membership fees as contributions.

164. Membership fees are not inherently counter to the principles of free association. Any membership fee should be of a reasonable amount. It should be encouraged that any membership fee requirement include a waiver provision in case of financial hardship should be used to ensure that political party membership is not unduly limited to the wealthy. This waiver could also be based on a sliding scale to take into consideration the factors of each individual case. At a minimum, where fees are required, the creation of a distinct level of membership for those unwilling or unable to pay a membership fee would allow such persons to still associate with or participate in the party's functions on a limited basis.

165. While parties may enact "taxes" from their sitting parliamentarians, such 'taxes' must be subject to contribution laws to ensure they do not contravene contribution limits. Further, such "funding" can create the impression that elected parliamentarians have "purchased" the mandate from the party or paid for a higher position on the electoral list.

### **b. Intra-Party CONTRIBUTIONS AND INCOME**

166. Legislation should generally allow political parties at the national level to provide support for their regional and local offices and vice versa. Such support should be considered an internal party function and generally not be limited through legislation. However, parties can be reasonably expected to report their internal distribution of funds. In addition, legislation should

ensure that total spending for an electoral contest, including funds allocated by different party branches, is in compliance with relevant spending limits.

167. Parties that produce an income through the sale of merchandise or party-related materials should be able to utilize these proceeds for their campaigns and operations. While the use of such proceeds must respect disclosure and spending requirements, it should not be otherwise limited by relevant legislation

#### **c. Candidate's Personal Resources**

168. Candidates may apply personal resources to their election campaigns. Within a party system, such personal contributions may be added to the party funds allocated to a candidate's campaign.

169. Although a candidate's own contributions are often perceived to be free from the negative impact of possible corruption or undue influence, legislation may limit such contributions as part of the total spending limit during the campaign period and require the disclosure of such contributions. It is also appropriate to require that candidates file a public disclosure of assets and liabilities. However, errors in disclosure reports should not be used as a basis for denial of candidacy.

#### **d. Private Contributions**

170. Funding of political parties is a form of political participation and it is appropriate for parties to seek private financial contributions. In fact, legislation should require that all political parties be financed, at least in part, through private means as an expression of minimum support. With the exception of sources of funding which are banned by relevant legislation, all individuals should have the right to freely express their support of a political party of their choice through financial and in-kind contributions. However, reasonable limits on the total amount of contributions may be imposed.

171. In practice, parties and candidates may be allowed by legislation to also take a loan to finance (part of) their campaign or activities. It is important that rules on transparency deal consistently with this form of resources. Taking a (bank) loan normally requires that steps be taken by the creditor and debtor well in advance, before the beginning of the campaign. The repayment takes normally some time after the end of the campaign. Thus, there is a risk that loans may not be reflected well enough in the financial reports of parties and candidates. This is all the more important since loans which are granted at particularly advantageous conditions or even possibly written-off by the creditor should in principle be treated as a form of in-kind or financial contribution, depending on the case and subject to legislation permitting donations and support from commercial entities. It may also happen that a loan is not reimbursed (partly or in whole) by the party or candidate themselves, but by a third person, in which case the loan also becomes a form of contribution.

#### **e. Contribution Limits**

172. Contributions from foreign sources are generally prohibited. This is consistent with the Council of Europe's Committee of Ministers Recommendation to member states on common rules against corruption in the funding of political parties and electoral campaigns, (Rec(2003)4), which provides that "States should specifically limit, prohibit or otherwise regulate donations from foreign donors". This restriction, practiced in many OSCE states, is in the interest of avoiding undue influence of foreign interests in domestic political affairs. However, this is an area that should be regulated carefully to avoid infringement of free association in the case of political parties active at an international level. Such careful regulation may be particularly important in light of the growing role of European Union Political parties as

set out in the Charter on the Fundamental Rights for the European Union, Article 12(2).<sup>60</sup> Additionally, such a regulation might allow some support from the funds of a foreign chapter of a political party, in line with the intent of paragraphs 10.4 and 26 of the Copenhagen Document, which envision external cooperation and support for individuals, groups and organizations promoting human rights and fundamental freedoms. Dependent on the regulation of national branches of international associations, financial support from such bodies may not necessitate the same level of restriction. However, it should be recognized that the implementation of this nuanced approach to foreign funding may be difficult, and legislation should carefully weigh the protection of national interests against rights of individuals, groups, and associations to cooperate and share information.

173. Limits have historically also been placed on domestic funding in an attempt to limit the ability of particular groups to gain political influence through monetary advantages. It is central to a system of democratic governance that parties and candidates are accountable to the citizenry, not to wealthy special interest groups. As such, a number of reasonable limitations on funding have been developed. These include limitations on state owned/controlled companies and anonymous donors.

174. Anonymous contributions should be strictly regulated, including a limit on the aggregate amount of all anonymous contributions. Legislation should limit the aggregate maximum amount to a reasonable level designed to ensure anonymous donors cannot wield undue influence free from public scrutiny.

175. Reasonable limitations on private contributions may include the determination of a maximum level that may be contributed by a donor. Such limitations have been shown to be effective in minimizing the possibility of corruption or the purchasing of political influence. Legislation mandating contribution limits should be carefully balanced between ensuring that there is no distortion in the political process in favour of wealthy interests and in encouraging political participation, including through contributing to the parties of their choice. It is best that contribution limits are designed against inflation, for example based on a form of indexation such as minimum salary rather than absolute amounts.

### **3. Public Funding**

#### **a. Importance of Public Funding**

176. Public funding and its requisite regulations (including spending limits, disclosure, and impartial enforcement) has been designed and adopted throughout the globe as a potential means of preventing corruption, to support the important role played by political parties and to remove undue reliance on private donors. Such systems of funding are aimed at ensuring that all parties are able to compete for elections in accordance with the principle of equal opportunity, thus strengthening political pluralism and helping to ensure the proper functioning of democratic institutions. Generally, legislation should attempt to create a balance between public and private contributions as the source for political party funding. In no case should the allocation of public funding limit or interfere with the independence of a political party.

177. The amount of public funding awarded to parties must be carefully designed to ensure the utility of such funding while not eradicating the need for private contributions or nullifying the impact of individual donations. While the nature of elections and campaigning in different states makes it impossible to identify a universally applicable amount of funding, legislation should put in place review mechanisms aimed at periodically determining the impact of public finance systems and the need (as such exists) to alter financial allocation amounts. Generally, subsidies should be set at a meaningful level to fulfill the objective of support, but should not be the only source of income and should not create conditions for over-dependency on state support.

### **b. Financial Support**

178. Legislation should explicitly allow that state support for political parties may be financial. The allocation of public money to political parties is often considered integral to respect the principle of equal opportunity for all candidates, in particular where the state's funding mechanism includes special provisions for women and minorities. Where financial support is awarded to parties, relevant legislation should develop clear guidelines to determine the amount of such funding, which should be allocated to recipients in an objective and unbiased manner.

### **c. Other Forms of Public Support**

179. In addition to direct funding, the state may offer support to parties in a variety of other ways, including tax exemptions for party activities, the allocation of free media time, or the free use of public meeting halls for the purposes of campaign activities. In all such cases, both financial and in-kind support must be given on the basis of equality of opportunity to all parties and candidates (including women and minorities). While 'equality' may not be absolute in nature, a system for determining the proportional (or equitable) distribution of state support (whether financial or in-kind) must be objective, fair and reasonable.

180. To support women's participation in elections, the state may also consider the provision of free child-care or similar measures and the implementation of funding mechanisms to support candidates with family duties. Such non-traditional forms of in-kind contributions may be necessary to allow for the full participation of women in political life. Other such contributions aimed at supporting female or disadvantaged candidates may be considered in light of obligations to rectify historical inequalities in political life.

181. The allocation of free airtime to candidates running for elections is one of the easiest and most effective means of state support available. In addition, airtime on mass media can help to ensure a state meets its requirements to provide for an informed electorate. Furthermore, the media – as well as all communication systems - plays a crucial role in combating gender stereotypes. It contributes to presenting a realistic picture of the skills and potential of male and female candidates, as well as to the portraying of men and men in a non-stereotypical, diverse and balanced manner. As such, any system of public funding should carefully consider adopting a requirement for the allocation of airtime to eligible candidates. Where available, such airtime must be given on the basis of equal treatment before the law (distribution may reasonably be made either on the basis of absolute equality or equitably, dependent on proven level of support). Equality refers both to the amount of time given and the timing and nature of such allocations.

182. A good practice is to provide tax credits for individuals who give in-kind contributions, whether in the form of labour or goods and services. State legislation may allow tax deductibility of such contributions, including in-kind contributions to political parties. However, in accordance with the Council of Europe's Committee of Ministers Recommendation to member states on common rules against corruption in the funding of political parties and electoral campaigns, Rec(2003)4, it is best that legislation appropriately limit such tax deductibility.

### **d. Allocation of Funding**

183. The system for allocating public support to political parties should be determined by relevant legislation. Some systems allocate money prior to an election based on the results of the previous election or proof of minimum levels of support. their systems provide payment after an election based on the final results. Generally, a pre-election disbursement of funds, or a



percentage of funding, best ensures the ability of parties to compete on the basis of equal opportunity.

184. When developing allocation systems, careful consideration should be given to pre-election funding systems, as opposed to post-election reimbursement which can often perpetuate the inability of small, new, or poor parties to compete effectively. A post-election funding system may not provide the minimum initial funding needed to fund a political campaign. Thus, systems of allocating funds in the post-election period may negatively impact political pluralism. Further, allocation should occur early enough in the electoral process to ensure an equal opportunity throughout the period of campaigning. Delaying the distribution of public funding until late in the campaign or after election day can effectively undermine electoral campaign equality and works against less affluent political parties.

185. The allocation of funding may either be fully equal ("absolute equality") or proportionate in nature based on a party's election results or proven level of support ("equitable"). There is no universally prescribed system for determining the distribution of public funding. Some have argued that legislation for public funding is generally most effective at achieving political pluralism and equal opportunity by providing a combination of both absolute and equitable equality. Where minimum thresholds of support are required for funding, it should be considered that an unreasonably high threshold may be detrimental to political pluralism and small political parties. Further, it is in the interest of political pluralism to have a lower threshold for public funding than the electoral threshold for the allocation of a mandate in parliament.

186. Legislation determining systems for allocation may also include a system of incentives to foster political participation. For instance, matching grants, in which the state provides an equal amount of funding to that donated to the party by supporters, may foster increased political engagement by the public. However, such systems do require strong oversight to ensure reported donation amounts are not inflated and that all such private donations are made with due respect to the regulatory framework governing private donations.

187. Legislation should ensure that the formula for the allocation of funding does not provide a monopoly or disproportionate amount of funding to one political party. Nor should the formula for allocation of funding allow the two largest political parties to monopolize the receipt of public funding.

#### **e. Requirements to Receive Public Funding**

188. At a minimum, some degree of public funding should be available to all parties represented in parliament. However, to promote political pluralism, some funding should ideally be extended beyond parties represented in parliament to all parties representative of a minimum level of the citizenry's support and presenting candidates in an election. This is particularly important in the case of new parties, which must be given a fair opportunity to compete with existing parties.

189. The level of available public funding should be clearly defined in the relevant statutes and regulations. The rights and duties of the body with legal authority to set and revise the maximum level of support should also be clearly defined in law. Public funding of political parties must be accompanied by supervision of the parties' accounts by specific public bodies.

190. Public funding, by providing increased resources to political parties, can increase political pluralism. As such, it is reasonable for legislation to require a party to be representative of a minimum level of the electorate prior to receipt of funding. However, as the denial of public funding can lead to a decrease in pluralism and political alternatives, it is an accepted good practice to enact clear guidelines for how new parties may become eligible for funding and to

extend public funding beyond parties represented in parliament. A generous system for the determination of eligibility should be considered to ensure that voters are given the political alternatives necessary for a real choice.

191. Allocation of funds based on party support for women candidates may not be considered discriminatory and should be considered in light of the requirement for special measures as defined by CEDAW (Article 4). As articulated in the Council of Europe Committee of Ministers Recommendation 2003/3 on balanced participation of women and men in political and public decision making, allocation of public funds can be contingent on compliance with requirements for women's participation. While it is important to respect the free internal functioning of parties with regard to candidacy selection and platform choices, public funding may be reasonably restricted based on compliance with a set of basic obligations.

192. It is reasonable for states to legislate minimum requirements which must be satisfied for the provision of public funding. Such requirements may include:

- Registration as a political party
- Proof of a minimum level of support
- Gender balanced representation
- Proper completion of financial reports as required (including for the previous election)
- Compliance with relevant accounting and auditing standards.

#### **4. Regulation of Party and Campaign Finance**

##### **a. Spending Limits**

193. The regulation of party and campaign finance is necessary to protect the democratic process, including spending limits where appropriate. As noted by the United Nations Human Rights Committee in General Comment No. 25, "Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented." One of the key components of such a framework is the requirement for transparency. All systems for financial allocation and reporting, both during and outside of official campaign periods, should be designed to ensure transparency, consistent with the principles of the United Nations Convention Against Corruption and relevant Council of Europe recommendations.

194. Transparency in party and campaign finance, as noted above, is important to protect the rights of voters as well as prevent corruption. Transparency is also important because the public has the right to receive relevant information and to be informed. Voters must have relevant information as to the financial support given to political parties in order to hold parties accountable.

195. Reasonable limitations on campaign expenditures might be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or political party.

196. It is reasonable for a state to determine a maximum spending limit for parties in elections in order to achieve the legitimate aim of securing equality between candidates. However, the legitimate aim of such restrictions must be balanced with the equally legitimate need to protect other rights such as rights of free association and expression. This requires that spending limits to be carefully constructed so that they are not overly burdensome. The maximum spending limit usually consists of an absolute sum or a relative sum determined by

factors such as the voting population in a particular constituency and the costs for campaign materials and services. Notably, the Council of Europe Committee of Ministers has supported the latter option, with maximum expenditure limits determined regardless of which system is adopted in relation to the voting population of the applicable electorate. Whichever system is adopted, such limits should be clearly defined in law.

197. In addition, the state body with power to develop and review such limits should be clearly defined and the scope of its authority specifically determined in relevant legislation. Limits should be realistic to ensure that all parties are able to run an effective campaign, recognizing the high expense of modern electoral campaigns. It is best that limits are designed against inflation. This requires that the legal rules for limits are based on a form of indexation rather than absolute amounts.

### **b. Campaign Finance Reporting Requirements**

198. States should require political parties to keep records of all direct and in-kind contributions given to all political parties and candidates in the electoral period. Such records should be available for public review and must be in line with the pre-determined expenditure limit.

199. Parties should also be required to file basic information with the appropriate state authority (generally an election management body or predetermined regulatory authority) prior to the beginning of campaigning. Such information should include the party's bank account information and the personal information of those persons accountable for a party's finances.

200. Reports on campaign financing should be turned into the proper authorities within a timely deadline of no more than 30 days after the elections. Such reports should be required not only for the party as a whole but for individual candidates and lists of candidates. The law should define the format of reports so that parties provide standard reports that disclose all categories of the required information and so that reports of parties can be compared. In an effort to support transparency, it is good practice that such financial reports are made timely and publicly available on the internet.

### **c. Political Finance Reporting Requirements**

201. Article 7(3) of the United Nations Convention against Corruption (UNCAC) obligates signatory states to make good faith efforts to improve transparency in election candidate and political party financing. Political finance disclosure is the main policy instrument for achieving such transparency. While other forms of regulation are available for controlling the role of money in the political process, such as spending limits, bans on certain forms of income, and the provision of public funding, effective disclosure is required for other regulations to be implemented effectively.

202. Political parties should be required to submit disclosure reports to the appropriate regulatory authority at least on an annual basis even in the non-campaign period. These reports should require disclosure of incoming contributions and an explanation of all expenditures. While transparency may be increased by requirements to report the identity of donors, legislation should balance such a requirement with considerations of privacy and protection from intimidation. All disclosure reports should be on a consolidated basis that includes all levels of party activities.

203. Reports should clearly distinguish between income and expenditure. Further, reporting formats should include the itemization of donations into standardized categories as defined by relevant regulations. The nature and value of all donations received by a political party should be identified in financial reports.

204. Reports should include (where applicable) both general party finance and campaign finance. Reports must also clearly identify which expenditures were used for the benefit of the party and which were for an individual candidate.

205. A party might attempt to circumvent campaign finance requirements by conducting activities during a “pre-electoral” period or through use of others as conduits for funds or services. The use of others as conduits is known in some countries as the use of “third parties”. To limit this abuse, strong systems of political party financial reporting outside of elections must be enacted. Legislation should provide clear guidelines regarding which activities are not allowable during the pre-election campaign, and income and expenditures used for such activities during this time should be subject to proper review and sanction. Legislation should clearly state to whom political party funds may be released in the pre-election period and the limitations upon their use by third parties not directly associated with the party.

206. Transparency in reporting, which is an accepted good practice, requires the timely publication of parties’ financial reports. The fulfillment of this requirement necessitates that reports contain enough details in order to be useful and understandable for the general public. While publication of financial reports is crucial to establishing public confidence in the functions of a party, reporting requirements must also strike a balance between necessary disclosure and the privacy concerns of donors.

#### **d. Abuse of State Resources**

207. The abuse of state resources is universally condemned by international norms. While there is a natural and unavoidable incumbency advantage, legislation must be careful to not perpetuate or enhance such advantages. Incumbent candidates and parties must not use state funds or resources (i.e. materials, work contracts, transportation, employees) to their own advantage. Paragraph 5.4 of the OSCE Copenhagen Document provides, in this regard, that member states will maintain “a clear separation between the State and political parties; in particular, political parties will not be merged with the State”.

208. To allow for the effective regulation of the use of state resources, legislation should clearly define what is considered abuse. For instance, while incumbents are often given free use of postal systems (seen as necessary to communicate their acts of governance with the public), mailings including party propaganda or candidate platforms are a misuse of this free resource. Legislation must address such abuses.

209. The abuse of state resources may include the manipulation or intimidation of public employees. It is not unheard of for a government to require its workers to attend a pro-government rally. Such practices should be expressly and universally banned by law.

210. Public employees (civil servants) should not be required by a political party to make payments to the party. This is a practice the law should prohibit as an abuse of state resources.

#### **5. Regulatory Authority**

211. As stated by the Council of Europe Committee of Ministers in their Recommendation 2003(4):

*“States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns. The independent monitoring should include supervision*

*over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.”*

212. Monitoring can be undertaken by a variety of different bodies, including a competent supervisory body or state financial bodies. Whichever body is tasked to review the party's financial reports, effective measures should be taken in legislation and in state practice to ensure its independence from political pressure and commitment to impartiality. Such independence is fundamental to this body's proper functioning and should be strictly required by law. In particular, it is strongly recommended that appointment procedures be carefully drafted to avoid political influence over members.

213. Legislation should define the procedure for appointing members to the regulatory body, clearly delineate their powers and activities, specify the types and scope of violations requiring sanction, and provide clear guidance on the process for appeal against regulatory decisions.

214. The regulatory authority should be given the power to monitor accounts and conduct audits of financial reports submitted by parties and candidates. The process for conducting such audits should be stated in relevant legislation. Financial regulation is an area too often susceptible to discriminatory or biased treatment by regulatory bodies, which should be avoided. Therefore, legislation should specify the process and procedures determining how and which party reports are selected for auditing. In all cases it is necessary that audits be non-discriminatory and objective in their application.

#### **a. Sanctions for Finance Violations**

215. Irregularities in financial reporting, non-compliance with financial reporting regulations or improper use of public funds should result in the loss of all or part of such funds for the party. Other available sanctions may include the payment of administrative fines by the party. As noted by the Council of Europe's Committee of Ministers, political parties should be subject to 'effective, proportionate and dissuasive sanctions' for violation of political funding laws. Sanctions for violations of law are more fully discussed below in paragraph 200.

216. As noted below in paragraph 200, all sanctions must be proportionate in nature. In the area of finance violations, this should include consideration of the amount of money involved, whether there were attempts to hide the violation, and whether the violation is a reoccurring violation.

217. While criminal sanctions are reserved for serious violations that undermine public integrity, there should be a range of administrative sanctions available for the improper acquisition or use of funds by parties.

**CDL-AD(2006)014 Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources (amicus curiae opinion for the European Court of Human Rights) adopted by the Venice Commission at its 66th Plenary Session (Venice, 17-18 March 2006)**

**V. CONCLUSIONS**

32. With regard to the different approaches in member States to the problem of the financing of political parties in general, there cannot be only one answer to the question to what extent the prohibition of a foreign political party financing a political party may be considered “necessary in a democratic society”. Old legislative decisions imposing too many restrictions on political parties – taken between the World Wars and during the Cold War – have to be reconsidered in the light of the situation in Europe as it has developed over the last 15 years. One argument for a much less restrictive approach is the experience of the co-operation of political parties within the many supranational organisations and institutions of Europe today. Co-operation of this kind is “necessary in a democratic society”. It is not obvious that the same can be said about the raising of obstacles to co-operation by restricting or prohibiting reasonable financial relations between political parties in different countries or at the national level on the one hand and at the European or a regional level on the other. With regard to the European Convention on Human Rights the mere fact that there are financial relations between political parties cannot as such, justify a reduction of human rights protection.

33. There could be a number of reasons for the prohibition of contributions from foreign political parties. Such prohibition may be considered necessary in a democratic society, for example, if financing from foreign sources:

- is used to pursue aims not compatible with the Constitution and the laws of the country (for example, the foreign political party advocates discrimination and violations of human rights);
- undermines the fairness or integrity of political competition or leads to distortions of the electoral process or poses a threat to national territorial integrity;
- is part of international obligations of the State;
- inhibits responsive democratic development.

34. In order to establish whether the prohibition of financing from abroad is problematic in the light of Article 11 of the European Convention on Human Rights every individual case has to be considered separately in the context of the general legislation on financing of parties as well as of the international obligations of a State and among these the obligations emanating from membership of the European Union.



**DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS**  
**DIRECTORATE OF MONITORING**

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**Appendix IV:**  
**Political financing: GRECO's first 22 evaluations**  
**Third evaluation round**

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## 1. INTRODUCTION

1. By the end of 2009, in its third evaluation round, on the transparency of political party funding, the Group of States against Corruption (GRECO), established by the Council of Europe, had examined the legislation of 22 of the Group's 47 member states<sup>8</sup>. The data collected by the GRECO evaluation teams (hereafter GET), which had hitherto been the preserve of academics, are first of all a unique source of information on what is a fairly recent body of regulations in the history of European democracies. These evaluations look at all aspects of the funding of political activities, including the transparency of the resources of parties and candidates, how the regulations are enforced and what penalties may be imposed. They use a common analytical approach, based on the answers to written questionnaires and interviews on the spot, and reveal a wide variety of policies and practices in the different member states, in response to which GRECO has made various recommendations.
2. It now seemed appropriate to move beyond this country by country approach and try to draw some more general lessons. This study does not attempt to rank member states or award them good and bad marks, according to how well they comply with Committee of Ministers' *Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns*<sup>9</sup> (hereafter "the Recommendation"). This would be a pointless exercise. By no means all the mature democracies can claim to have long had such rules. Some, such as France and the United Kingdom, have only recently taken this path. The more recent democracies generally enacted legislation on political funding at the same time as their new institutions were established. Sometimes the resulting rules go further than the principles set out in the Recommendation, but the evaluations also show that there can be a considerable gap between the letter of the law and how it is applied in practice.
3. This report is much more concerned with identifying weaknesses that are common to several political systems and problems that arise in numerous member states. This then makes it possible to suggest – implicitly – the transposition of positive practices that can help to improve countries' systems. Although political systems, including their historical, social and cultural contexts and their voting arrangements, can differ significantly from one member state to another, the principles set out in the Recommendation are common to all these countries and are of critical importance to them, whatever the form of their institutions, because they share the same democratic values. This study does not cover all the member states and in certain respects national regulations have already changed since the GRECO visit, bringing domestic law into line with its recommendations<sup>10</sup>. Nevertheless, the evaluation reports of the 22 countries concerned merit further attention, as a contribution to a debate that is far from over, to enable the Council of Europe to develop further the content of its Recommendation and to inform discussion in the countries that are trying to implement it.

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<sup>8</sup> The following countries are covered by this study: Albania, Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden and United Kingdom. For more information, see [www.coe.int/greco](http://www.coe.int/greco) under "Evaluations" in the left-hand column.

<sup>9</sup> Links to the [French version](#) and the [English version](#)

<sup>10</sup> At the end of the third evaluation round, a total of 47 member states will have been evaluated. By 19 May 2010, six of 22 countries covered by this study (Estonia, Finland, Iceland, Slovakia, Slovenia and the United Kingdom) had already been the subject of a so-called compliance report, that is an assessment – after 18 months – of action taken on the recommendations of the evaluation report. See the GRECO site (footnote 2) for the most up-to-date information.



4. Any examination of these evaluation reports must focus on three key aspects of this topic, namely the transparency of political funding, monitoring compliance with existing regulations and the penalties for those who breach the latter.

## **2. THE TRANSPARENCY OF POLITICAL FUNDING**

5. The status of those involved in political activities, and the rules governing gifts and donations and political party accounts, are all aspects of the transparency of political funding that the Council of Europe seeks.

### **2.1. The status of those involved in political activities**

6. The legislation on political financing is concerned with political parties and candidates for election. To be fully comprehensive, therefore, the legislation must apply to both groups and establish a legal status for political parties that applies to all their component parts. However, these two conditions are not always met.

#### **2.1.1. Similar obligations for political parties and candidates for election**

7. Some countries have legislation on political party funding but no equivalent regulations on the financing of election campaigns. To ignore the latter is to open up the possibility of direct and totally legal donations to candidates, which carries a dual risk. Firstly, it undermines the principle of equal opportunities between parties, since donations to candidates can be a source of additional income for certain parties. Secondly, it breaches the principle of the transparency of political funding. This is not just a theoretical point. It can apply just as much to countries like Germany that pioneered the regulation of political funding (§ 105 of the evaluation report and recommendation iv) as to ones such as Croatia where this is a more recent development (§ 65 of the evaluation report and recommendation i). In Germany, party candidates and elected members of parliament may receive donations. However donations to candidates are not covered by the German legislation on parties and donations to members are the subject of an appendix to the Rules of Procedure of the *Bundestag*, breach of which carries much less harsh penalties than those attached to unlawful donations to parties. In Croatia, the law governing donations to political parties and independent lists and candidates makes no reference to individual donations to party candidates.
8. Article 8 of the Council of Europe Recommendation extends the rules on the funding of political parties to candidates at elections. In the interests of equal opportunities and transparency, which should underlie the relevant legislation, it would be desirable for candidates to hand over donations that they receive to the party, or for such donations to be completely proscribed and only given to parties.

#### **2.1.2. Applying the legal status of political parties to bodies performing the same functions**

9. Most of the member states that have been evaluated have opted to define political parties in their legislation. There are a few rare exceptions such as Spain, the United Kingdom and Slovakia that do not have such a definition. Sometimes, as in France, the definition comes from case-law. However, defining political parties in law does not necessarily end the discussion since the definition may be inadequate if local sections or branches of parties are excluded from its scope. In Belgium, for example, the definition of political parties does not include local branches, even though the latter may be fairly large in the major cities and take part in election campaigns, finance candidates' individual campaigns and collect funds, a portion of which in certain parties is paid directly or indirectly into the central coffers (§ 71 of the evaluation report and recommendation ii).

10. Similarly, in Germany a recent political development has been the growing part played by associations of voters in public affairs. In practice they do not have the status of political parties, which brings with it obligations of transparency and properly audited accounts, but can still claim tax concessions on donations they receive (§ 102 of the evaluation report and recommendation i).

## **2.2. Donations**

11. Anonymous donations, threshold effects, contributions in kind, sponsorship, loans and rewards for public contracts show just how much the problem of donations varies.

### **2.2.1. Anonymous donations**

12. Article 12 of the Council of Europe Recommendation requires donations to political parties to be registered. The nature and value of donations must be specified and for donations over a certain value, donors should be identified.
13. A few rare states allow anonymous donations, including Albania (§ 71 of the evaluation report and recommendation iii); Denmark (§ 58 of the evaluation report and recommendation i) and Malta (§§ 31 and 66 of the evaluation report and recommendation i).
14. However, bans on anonymous donations may be thwarted by other provisions. They are prohibited, for example, in Estonia but this does not apply to membership fees and parties themselves may define which contributions are to be regarded as donations and which as membership fees (§ 66 of the evaluation report and recommendation ii).

### **2.2.2. Threshold effects**

15. The publication of donations and donors above a certain level is applied in Germany, Spain, Ireland, Luxembourg, Norway, Poland and the United Kingdom.
16. The choice of this threshold can have considerable significance. Setting too high a threshold creates the risk of encouraging donations below this legal level to avoid publication. The GRECO evaluation teams have commented on this adversely on a number of occasions. For example, they found the threshold in Germany to be too high. Parties must report the identity of donors in their published accounts if their total donations over a year exceed € 10 000. Individual donations of over € 50 000 must be reported immediately to the President of the Bundestag. GRECO recommended a reduction in the € 50 000 minimum for immediate reporting and disclosure and a significant reduction in the threshold for the disclosure of donations and donors (§ 104 of the evaluation report and recommendation iii).
17. GRECO adopted the same approach with Finland, by asking it to consider lowering the threshold of donations above which the identity of the donor was to be disclosed. According to the compliance report, this part of recommendation iv has been implemented. Irish legislation has also been criticised on this point, since GRECO considered that the current disclosure threshold of € 5 078.95 for donations received by political parties was too high (§ 105 of the evaluation report and recommendation iii).
18. The protection of privacy argument is often cited to justify domestic legislation that does not fully comply with the principle in the Recommendation according to which donations above a certain level should be made public. For example, this has been put forward by Belgium (§ 77 of the evaluation report and recommendation vii) and Iceland (§ 73 of the

evaluation report and recommendation ii). On the other hand it can also be argued, as GRECO does in its evaluation reports on these two countries, that one of the main purposes of transparency is to highlight undesirable influences on political funding.

19. Protection of privacy may also be used to justify certain shades of difference in the legislation on the publicising of donations. In Denmark, political party accounts must include the names and addresses of individuals and legal persons who have made donations in excess of € 2 700, but not the amounts each contributor has given (§ 59 of the evaluation report and recommendation ii).
20. Because it may be subject to interpretation, the effectiveness of the legislation on publication will depend on how precisely it is worded. GRECO has concluded that simply requiring Albanian parties to publish the list of persons making donations above a certain level was not sufficient. The relevant legislation did not specify the form and timeframe in which it should be published (§ 70 of the evaluation report and recommendation ii).

### **2.2.3. Contributions in kind**

21. Article 2 of the Council of Europe Recommendation defines donations in fairly broad terms as "any deliberate act to bestow advantage, economic or otherwise, on a political party". This therefore includes financial donations and donations in kind. British regulations, for example, consider that the free supply of office space or equipment to a party and the sponsorship of events amount to contributions in kind. When donations to parties from companies are authorised, they may largely take the form of contributions in kind. The Latvian legislation on the funding of political organisations defines donations as "any property or other benefit gained without remuneration, including services, transfer of rights, exempting a political party from certain obligations, giving up rights to a certain benefit in favour of the party or other actions through which some benefit is given to a political party". The evaluation of Slovenia refers in this context to employing people who then go to work for a party or directly paying its bills (§ 117 of the evaluation report).
22. However, contributions in kind are dealt with in various ways in member states' legislation. In France, there is a ban on contributions in kind to parties at prices below the market rate (§ 109 of the evaluation report) and candidates must take them into account for the financing of election campaigns in the campaign accounts. Legislation may also be strict, but only be applied in a very limited fashion. For example, section 2 of the Lithuanian legislation on political parties defines donations to parties in very broad terms. It includes cash, shares and other securities, moveable and immovable property, property rights, intellectual activities, goods and services provided free of charge, voluntary work and activities and the products of these activities. In practice though such forms of donation appear not to have been declared to avoid exceeding the thresholds (§ 101 of the evaluation report and recommendation iv). The same reaction seems to apply to the party representatives in Norway whom the GET questioned about the actual declaration of contributions in kind received by political parties (§ 82 of the evaluation report and recommendation ii).
23. In the absence of clear guidelines in the legislation, there can also be doubts about whether declarations of such contributions reflect their real value. Such guidelines are lacking in Albania (§ 70 of the evaluation report and recommendation iii) and Denmark (§ 60 of the evaluation report and recommendation iii). GRECO invited Finland to ensure that contributions in kind to political parties, other than voluntary work by non-professionals, were assessed and valued at market rates (§ 69 of the evaluation report and recommendation iii). The country's compliance report shows that new legislation takes full account of such contributions to candidates for election but that as far as political parties are concerned there is still only draft legislation.

24. Some member states treat the assignment of any goods, services, proprietary or non-proprietary rights to a political party as prohibited concealed donations under their domestic law (§ 30 of Estonia's evaluation report).
25. However, it may be difficult to reconcile compliance with the Council of Europe Recommendation with encouragement for voluntary work.

#### **2.2.4. Sponsorship**

26. The problems associated with the sponsorship of political parties are quite similar to those of donations in kind. There are a number of possible examples:
27. sponsorship may be seen as an alternative to the ban on donations from legal persons, which it then renders ineffective. In Belgium, for example, the ban on donations from businesses to political parties does not prevent sponsorship, a practice moreover that is accepted by the federal control commission (§ 74 of the evaluation report and recommendation iv);
28. in countries such as Germany where donations from legal persons are allowed, sponsorship constitutes an additional form of assistance from businesses to political parties, though the legal and tax arrangements are not very clear, since sponsorship cannot be treated as a donation, and therefore subject to publication requirements in excess of € 10 000 (§ 109 of the evaluation report and recommendation vi). Although such assistance does not offer any tax benefits for the donor company, it does offer it publicity if the details are made public.

#### **2.2.5. Loans**

29. This problem is not properly dealt with in legislation, even though this may be a considerable source of political party funding (Spain, Poland) and be seen as a means of avoiding the thresholds on donations to political parties (§ 74 of the evaluation report on Spain and recommendation i).
30. British legislation might be considered to be the most highly developed in this respect. British parties are required to make a quarterly declaration of their loans to the Electoral Commission, and in election periods this obligation becomes weekly. However the rule does not apply to candidates, or above all to third parties that intervene in election campaigns (§ 126 of the evaluation report and recommendation ii).
31. Sometimes loans are not mentioned in the legislation. In Slovenia they are covered by the law on election campaigns but not by the legislation on political parties (§ 107 of the evaluation report and recommendation i). However, simply mentioning this form of funding in political parties' financial reports is no guarantee, by itself, of transparency. For example, Spain's Organic Law 8/2007 on the financing of political parties requires the conditions of contracted loans to be specified in parties' financial reports. However the law does not specify the terms and conditions for granting loans, including their maximum value, permissible lenders, terms of repayment and so on (§ 74 of the evaluation report and recommendation i). The GET found that the same applied to Polish legislation, which did not specify in any detail the conditions governing the maximum value of loans, permissible lenders, registration of loans, last date for contracting loans before an election, the terms of repayment and so on (§ 80 of the evaluation report and recommendation iii).

#### **2.2.6. Rewards for public contacts**

32. In states that allow business donations such generosity may be rewarded with public contracts, unless donor companies are refused access to such contracts (§ 111 of the evaluation report on Slovenia and recommendation v). Some countries' legislation prevents business donors from bidding for public contracts. However, although it is possible to prohibit donations from businesses that have entered into public contracts and to prevent undertakings that have previously made donations to parties from bidding for such contracts, the relevant legislation is sometimes incomplete. Thus, in Spain the ban on receiving donations from firms involved in public contracts only applies to current contracts. It no longer applies once the contract is terminated. Nor does it apply to donations from firms that are bidding for public contracts to bodies such as political associations and foundations that are linked to parties (§ 71 of the evaluation report).

### **2.3. Party accounts**

33. Several points require particular attention: maintaining accounts, their standardised presentation, their content, their scope, their presentation and their publication.

#### **2.3.1. Maintaining accounts**

34. British legislation is probably the most detailed in this regard. The registered party treasurer must ensure that accounting records are kept in a way that is sufficient to show and explain the party's transactions – at any time – with reasonable accuracy (§ 125 of the evaluation report). The same applies in Spain, where records of income and expenditure must be maintained in sufficient detail to show and explain the party's transactions – at any time – with reasonable accuracy (§ 73 of the evaluation report). The Spanish legislation also requires political parties to establish a system of internal supervision of their accounts (§ 77 of the evaluation report).

#### **2.3.2. Standardised presentation of accounts**

35. A standardised presentation of accounts makes it possible to compare them over time and between different entities. However, such a tool is not always available. In Spain, in the absence of a uniform reporting format, the financial reports of political parties vary considerably in their content (§ 76 of the evaluation report and recommendation iii). GRECO has urged the establishment of a single computerised format for the accounts of Luxembourg parties, on which the court of auditors can exercise its oversight functions (§ 56 of the evaluation report and recommendation ix). The same concern has been expressed with regard to Ireland (§ 104 of the evaluation report and recommendation ii), Norway (§ 79 of the evaluation report and recommendation i), the Netherlands (§ 78 of the evaluation report and recommendation ii), the United Kingdom (§ 125 of the evaluation report) and Slovakia (§ 89 of the evaluation report and recommendation iv).

#### **2.3.3. Content of accounts**

36. Countries also vary in the amount of detail parties provide. In Slovenia, for example, this information is limited to the total amount of donations received by the party or for an election campaign, with no details as to their nature or the value of cash donations (§ 107 of the evaluation report and recommendation i).
37. When it examined the Finnish system, the GRECO team had found that the level of detail required for election financing reporting was too low to provide meaningful information. According to the compliance report, the new legislation and accompanying disclosure forms that followed this evaluation appear to remedy this shortcoming in respect of

election candidates. The government has also proposed new regulations with similar effect in respect of political parties (paragraph 49 of the compliance report).

#### **2.3.4. Scope of accounts**

38. GRECO has criticised the failure to consolidate political party accounts on a number of occasions. Under Article 11 of the Council of Europe Recommendation, states should require political parties and the entities connected with them to keep proper books and accounts. The accounts of political parties should be consolidated to include, as appropriate, the accounts of their directly or indirectly related entities.
39. Several countries fail, in whole or in part, to comply with this provision, with regard to entities coming within parties' sphere of activity, local party bodies or third parties. This also raises questions about the distinction between ongoing expenditure on political activities and electoral expenditure and about parties' links with foundations with which they have close connections.

##### ***2.3.4.1. Entities directly or indirectly in parties' sphere of activity***

40. Spanish law says nothing about the consolidation in political parties' financial records of the accounts of entities related directly or indirectly to those parties or otherwise under their control (§ 75 of the evaluation report and recommendation ii).
41. In Estonia, political parties are not obliged to include the accounts of connected entities in their own accounts and records, the only exception being the election funding reports which must include expenses incurred and funds used by non-profit associations of which the political party is a member (§ 65 of the evaluation report and recommendation i).
42. In Norway, neither the Accounting Act nor the Political Parties Act require political parties to present consolidated accounts. So when a party comprises some 300 different entities it is impossible to secure an overview of its finances (§ 85 of the evaluation report).
43. The financial reports supplied by Slovenian political parties contain no information on the various entities associated with those parties, be they organisations within the party structure, such as youth, women's, labour and agricultural organisations, or societies and associations that actively participate in election campaigning and funding. Moreover, campaigning or fundraising by associations and societies set up separately from parties is not regulated (§ 108 of the evaluation report and recommendation ii).
44. The fact that political parties and bodies directly or indirectly linked to them are organisationally quite distinct is quoted in Slovakia to justify the lack of financial information from political parties about these entities, even though some of them appear to be deeply involved in party activities (§ 88 of the evaluation report and recommendation iii).
45. However, what has persuaded GRECO in some cases that such entities need not be included in the scope of political party accounts is less their organisational separation than the fact that there is no financial relationship between them. In the case of Poland, it considered that since the party financing system was largely based on public funding and contributions by legal persons were prohibited, no reference to entities related, directly or indirectly, to political parties was necessary in the latter's accounts (§ 82 of the evaluation report).
46. On the other hand, there are more grounds for scepticism about the relationship between parties and other bodies in their sphere of activity when the criteria for determining which

bodies should be included in this sphere are not objective but are for the parties themselves and alone to decide. This is the case in France. Under French law, parties' financial records must not only set out the accounts of the party itself, but should also include the accounts of all the organisations, companies or businesses in which the party or group holds half of the share capital or half of the seats on the management board or exercises preponderant decision-making or managerial authority. But as the GET notes, apart from the objective criterion of holding half the capital, the margin of appreciation is significant and it is for the political parties themselves to determine how much influence they have over such entities (§ 109 of the evaluation report and recommendation ii).

#### **2.3.4.2. Local party bodies**

47. Many countries' legislation either ignores local parties or considers that they are in some ways self-governing in practice, though they may well be more exposed to corruption than their central counterparts.
48. The first category includes countries such as Ireland and the Netherlands. Irish parties are not required to include financial data of local branches in their accounts (§ 107 of the evaluation report and recommendation v). Similarly, in the Netherlands, neither the 1999 Political Parties Subsidisation Act nor its planned successor, the Financing of Political Parties Act, apply the transparency principles to the regional or local levels (§§ 23 and 83 of the evaluation report and recommendation vii).
49. There are several examples of the second category of member states. The GET visit to Lithuania showed that parties are largely free to decide whether or not to incorporate their regional or local branches and the legislation has nothing to say about movements of funds between parties' components (§ 97 of the evaluation report and recommendation ii). The Spanish Organic Law 8/2007 requires political parties to consolidate in their accounts the finances of federations, coalitions and voter groups, but they do not include the financial data of local branches of political parties and parties themselves decide how to organise the accounts of their respective local units. This is not insignificant when local branches of parties are in highly populated areas and when over 25% of public funding goes to political parties at local level (§ 75 of the evaluation report and recommendation ii).
50. The Slovakian Act No. 85/2005 does not distinguish between the central party organisation and local branches. The latter are therefore obliged to include all income and expenditure of local regional branches in their central accounts. In practice, though, local and regional branches of the party apparently use and administer their own funds independently, and not all information on income and expenditure in connection with local elections is disclosed by the parties (§ 87 of the evaluation report and recommendation ii).

#### **2.3.4.3. Third parties**

51. Article 10 of the Council of Europe Recommendation covers the situation of third parties. Member states are required to ensure that records are kept of all expenditure, direct and indirect, on electoral campaigns in respect of each political party, each list of candidates and each candidate.
52. It seems likely that there will be a correlation between the maximum set for election expenses and the existence of third parties. Setting a ceiling for party spending on election campaigns is not likely to be effective if, at the same time, other groups such as interest groups, trade unions and associations can spend unlimited amounts of money on behalf of or to oppose a particular political cause.

53. British legislation undoubtedly takes this approach to transparency and limits on third party expenses further than any other. Under British law, individuals or organisations that campaign for or against one or more registered political parties or for a certain category of candidates are considered to be third parties. The law limits the amount these third parties can spend on promoting candidates or parties during periods when there is a maximum limit on election expenditure. Third parties spending more than £ 10 000 in England or £ 5 000 in Wales, Scotland or Northern Ireland are required to register with the Electoral Commission.
54. There are no such rules in Ireland. There is a ceiling on expenditure on the election of members of parliament and Irish MEPs but third parties are not required to disclose donations or expenditure (§ 107 of the evaluation report and recommendation v).
55. The evaluation of Latvian legislation offers a good illustration of the perverse effect of the absence of a ceiling on electoral expenditure by third parties. Campaigns organised by third party organisations on behalf of certain parties have apparently enabled them to get round the ceiling on election expenditure (§ 73 of the evaluation report and recommendation i). The same applies to Denmark (§ 62 of the evaluation report and recommendation v), France (§ 109 of the evaluation report and recommendation ii) and Lithuania (§ 98 and § 99 of the evaluation report and recommendation ii).
56. Although there is a particular risk of abuse when the law sets maximum levels of election expenditure, even in the absence of such a ceiling third parties can still play a significant role, from the standpoint of transparency. In a country like Finland, which sets no limit on election expenditure, the GET's attention was drawn to the threat to the transparency principle posed by the funnelling of "interested" money from associations and foundations linked to political parties (§ 73 of the evaluation report and recommendation vii).

#### ***2.3.4.4. Distinction between ongoing party expenditure and electoral expenditure***

57. This is an area where it becomes particularly difficult to ensure that political expenditure is accounted for accurately and transparently. Drawing a distinction between a party's current, or ongoing, activities and its electoral activities, as the German federal constitutional court did in its famous decision of 19 July 1966, can be a very artificial process. In practice, it may be very difficult to distinguish campaign spending from other political party expenditure. Election campaigning really starts immediately after the previous campaign ends. This in turn raises the question of how to define election or campaign periods. If they are too short, it becomes possible to attribute election expenditure to the preceding period. In Latvia the period of four months is considered to be reasonable (§ 40 of the evaluation report). The requirement to account for candidates' income probably lasts longest in France, where candidates' agents have to include the campaign funds over the year preceding the first day of the month in which the election takes place and up to the date of filing of the candidate's campaign accounts (§ 45 of the evaluation report). The same period applies to election expenditure.
58. Nevertheless, neither the relevant supervisory bodies nor the public always have a clear picture of what constitutes electoral expenditure when this is buried in political parties' accounts. This is why GRECO has asked France to ensure that political parties that have funded a candidate's election campaign or have supported him or her via the media be required to submit to the competent supervisory body details of their involvement, financial or otherwise, during the campaign, and that this statement be verified and made public (§ 110 of the evaluation report and recommendation iii). Similar recommendations have been made to Germany (§ 103 of the evaluation report and recommendation ii) and Denmark (§ 61 of the evaluation report and recommendation iv).



#### **2.3.4.5. Foundations linked to parties**

59. The issue of foundations with close links to political parties only concerns a limited number of member states, above all Germany. In 1986, the federal constitutional court ruled that foundations were to be considered as organisations independent from the political parties. However the GET thought that this still raised certain questions (§ 106 of the evaluation report) that had to be resolved (§ 108 and Recommendation v.ii). At all events, in the interests of a more comprehensive approach to party financing in Germany there should be an official document setting out the various forms of state support effectively granted or available (Recommendation v.i).

#### **2.3.5. Presentation of accounts**

60. This obligation, as embodied in Article 13 of the Council of Europe Recommendation, is essential for ensuring the transparency of party and election campaign financing. However, the evaluation reports show that this requirement is not yet systematically fulfilled. For example, the Irish election laws do not require political parties to keep proper books and accounts, to specify all donations received in these accounts, or to make the accounts public (§ 104 of the evaluation report and recommendation ii). The same applies to Malta, where political parties and organisations affiliated to political parties or involved in electoral campaigns are not required to maintain accounts (§ 67 of the evaluation report and recommendation ii).
61. Moreover to meet the objective set in Article 13 of the Recommendation, accounts must be presented within sufficient time to be of use. In Iceland, for example, the law does not specify any deadline for such presentation (§ 74 of the evaluation report and recommendation iii). However, once the GET had drawn this to the Icelandic authorities' attention, a deadline was set of 31 May of the year following the accounting year concerned.

#### **2.3.6. Publishing accounts**

62. Countries cannot lay claim to transparency of party accounts, if these are not published and are therefore inaccessible. Article 13 of the Recommendation therefore calls on member states to "require political parties regularly, and at least annually, to make public [their] accounts".
63. Practice varies however, as an examination of the relevant legislation shows. Certain countries do not require publication at all. This applies to:
- Belgium (§ 77 of the evaluation report);
  - Malta, other than the returns submitted by election candidates, which can be made public upon request (§ 68 of the evaluation report and recommendation iii);
  - Norway (§ 83 of the evaluation report), though information on political party funding is available on an official site;
  - Poland (§ 83 of the evaluation report and recommendation v);
  - United Kingdom. Although some parties publish on a voluntary basis, political parties' statutory returns are published by the Electoral Commission (§ 125 of the evaluation report and recommendation i).

64. It has also emerged that the principle of access to parties' financial reports is not always translated into practice:
- GRECO has welcomed the fact that in Slovakia the annual party reports are published on the web-site of the National Council, or parliament, and the reports on election campaign finances on the finance ministry site. It regretted, however, that the reports published on the website of the National Council were very hard to find (§ 89 of the evaluation report and recommendation iv);
  - In Slovenia, only very rudimentary information is available for public scrutiny, in the form of abridged versions of the annual party reports, and ordinary citizens are unable to obtain the required information on party financing because the relevant reports do not contain sufficient detail (§ 109 of the evaluation report and recommendation iii). In Sweden, the voluntary joint agreement between the parties in the *Rigstag*, or parliament, states that it is reasonable that voters know how the parties finance their activities and how single candidates finance their personal campaigns. However, these principles are not binding on individual candidates, even when they are members of one of the contracting parties (§71 of the evaluation report and recommendation ii).

### 3. MONITORING THE APPLICATION OF THE LEGISLATION

65. One of the great lessons to emerge from these evaluation exercises is that in this field, perhaps more than in others, legislation and regulations can only be judged in terms of their application and their associated monitoring machinery. In Denmark, such machinery does not exist. Party accounts to parliament only need to be signed by the leadership of the party. Declarations to the interior ministry of party accounts and prospective expenditure, in order to receive the annual public funding, must simply be audited by a state authorised or registered accountant (§ 64 of the evaluation report and recommendation vii). There is a similar lack of mandatory audit in Malta (§ 69 of the evaluation report and recommendation iv) and Sweden, where only parties seeking state funding are required to have their accounts audited (§ 74 and § 75 of the evaluation report and recommendation v).
66. Most of the countries considered require party or candidate accounts to be certified by auditors, who may operate under a variety of names. However, in some cases there may be no obligation for the accounts of political parties or affiliated organisations to be certified by an independent auditor. This is the case with Malta (§ 69 of the evaluation report and recommendation iv). It is understandable then that GRECO should call for proper auditing of political financing accounts by independent auditors if no other means of supervision exists.
67. However it needs to be borne in mind that Article 14 of the Recommendation calls for a system of independent monitoring in respect of the funding of political parties and electoral campaigns. This should include scrutiny of the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.
68. The effectiveness of this monitoring may be judged with reference to the status of the competent body, the content and scope of its oversight and the means at its disposal.

#### 3.1. The status of the supervisory body

69. While there is probably agreement on the need for a – preferably single – supervisory body, this will only be able to carry out its duties to the full if it is independent.

### **3.1.1. Independence of the supervisory body**

70. This independence must apply both to auditors and to public supervisory bodies, whether they be one or several.

#### **3.1.1.1. Independence of auditors**

71. There are some countries where membership of a party is not automatically incompatible with the role of auditor (§ 111 of the evaluation report on Germany; § 78 of the evaluation report on Iceland and recommendation vi; § 86 of the evaluation report on Norway and recommendation iv).

#### **3.1.1.2. Independence of the public supervisory bodies**

72. GRECO has concluded that the public supervisory bodies meet the criteria of independence in France (§ 122 of the evaluation report), Ireland (§ 108 of the evaluation report), Poland (§ 85 of the evaluation report) and the United Kingdom (§ 129 of the evaluation report). Whatever legal form such supervisory bodies take, their independence is open to question when they have an exclusively political membership and when they are very unwilling to exercise their authority:

- Belgium provides one example. The federal control commission is a commission of the federal parliament with ten members each from the Chamber of Representatives and the Senate, and is chaired by the presidents of the two chambers. The equivalent regional commissions have a similar composition. The GET concluded that the existing system gave political parties a predominant, or even exclusive, role. It called for a supervisory body that would be as independent as possible from the political parties (§ 79 and § 82 of the evaluation report and recommendation viii);
- the same applies to Albania, where the members of the electoral commission are elected by members of parliament (§ 55 of the evaluation report), and Estonia, where a parliamentary select committee is responsible for monitoring election campaign financing (§ 75 of the evaluation report and recommendation vi). Lithuania provides a similar example. The members of the central electoral commission are answerable to parliament and can be individually dismissed by a vote of non-confidence initiated by the member's political party or coalition (§ 109 of the evaluation report and recommendation vii).

73. Supervisory bodies' independence may be open to doubt when they are parliamentary bodies, but nor is the independence requirement satisfied when the supervisory body is controlled by the executive, whatever the possible variations in its status:

- in Finland, for example, the GET found that the election unit of the ministry of justice was responsible both for drawing up legislation on political financing and for exercising control and imposing any sanctions. The unit's hierarchical relationship with the executive posed a problem, since by definition the executive was composed of members of the party in power, but in addition there was always a risk of a conflict of interests (§ 79 and § 81 of the evaluation report and recommendation ix). To take account of GRECO's comments, Finland has decided to make the national audit office responsible for overseeing the system of financing of election candidates and political parties, while general supervision of compliance with the legislation on political parties will remain with the justice ministry (recommendation ix, as considered in the compliance report);

- in the Netherlands, under draft legislation supervision of the legislation on party financing would become the responsibility of a body independent of the government, the electoral council, but for the time being the ministry of the interior and kingdom relations was the main institution responsible for monitoring party funding. It was responsible for determining the subsidies to be provided to each of the political parties on the basis of their annual financial and activity reports and checks on whether state subsidies had been properly used (§ 89 of the evaluation report and recommendation viii);
- In Latvia, the corruption prevention and combating bureau is responsible for monitoring compliance with party finance regulations, but it is answerable to the cabinet, which as the GET comments, places it in the awkward position of having to supervise its supervisors (§§ 76, 77 and 79 of the evaluation report and recommendation ii);
- when assessing the supervision of Irish political party funding at the local level, the GET expressed concerns that this task was carried out by local government officials, who might be subject to the influence of local elected councillors/politicians (§ 109 of the evaluation report and recommendation vi).

### **3.1.2. A single public supervisory body**

74. In certain countries, such as Albania, Belgium, Lithuania and Slovakia, oversight is the responsibility of several bodies, in response to which GRECO has called for a single supervisory body.
- The GET was told that in Albania there were several supervisory bodies: The supreme state audit body for party finances in general, the central electoral commission for the campaign financing of political parties, coalitions and independent candidates, and the tax authorities for parties' and candidates' tax declarations (§§ 50 and 73 of the evaluation report and recommendation vi);
  - Belgium's institutional arrangements explain why there are a federal and four regional control commissions, but GRECO did not consider this situation entirely satisfactory and argued for the establishment of a unified supervisory body (§§ 81 and 82 of the evaluation report and recommendation viii);
  - in Lithuania as well, supervisory responsibilities are shared, between the central electoral commission and the state tax inspectorate. The GET thought that this diluted responsibilities and that neither institution had taken the lead in the control process (§ 108 of the evaluation report and recommendation vii).
  - finally in Slovakia these functions are carried out by the committee on finance, budget and currency of the National Council and the finance ministry (§§ 92, 93 and 94 of the evaluation report and recommendation v).

### **3.2. Focus of the supervision**

75. Many of the evaluation reports show that the oversight exercised by the relevant public body often fails to extend beyond the information supplied by the political institutions, parties and candidates themselves. This applies to:

- Croatia: the state audit office does not, for example, check whether an election campaign might have been financed by non-declared funding (§ 75 of the evaluation report and recommendation v);
  - Spain: the Court of Audit may, in cases of doubt about the accuracy of financial reports, ask parties to submit further explanations but in practice reports are rarely scrutinised beyond the information that parties themselves provide (§ 78 of the evaluation report and recommendation v);
  - Estonia, because there is no comprehensive legislation providing the select committee with a precise mandate and the authority to carry out substantial monitoring (§ 72 of the evaluation report and recommendation vii);
  - Finland: GRECO states in its report that the existing system of public financial control is purely formalistic. There is no requirement to ensure that financial statements accurately reflect political parties' financial situation and checks are only carried out on information provided by the parties themselves (§ 80 of the evaluation report and recommendation ix). Handing over responsibility to the national audit office may change the situation (paragraph 78 of the compliance report).
  - France: it appeared that supervision carried out by the national commission for campaign accounts and political funding primarily concerned compliance with formal requirements and enabled it to detect only the most flagrant breaches of the law, since it relied heavily on the prior work of auditors. It cannot demand certain documents and has no authority to verify supporting documents or conduct on-site checks, the auditors' duty of confidentiality cannot be waived, and it cannot call on the assistance of the judicial investigation services (§ 123 of the evaluation report and recommendation ix);
  - Norway: neither "Statistics Norway" nor the Political Parties Act committee, the two main bodies for monitoring party financing, are legally authorised to check the accuracy of political parties' reports, accounts or accounting practices. GRECO considered that exclusive reliance on the media and party members to ensure that the rules were applied was not compatible with Article 14 of the Council of Europe Recommendation (§ 87 of the evaluation report and recommendation v);
  - Poland, because auditing is outsourced to private accountancy firms, which lack the requisite skills to investigate possible breaches in respect of donations and expenditure (§ 86 of the evaluation report and recommendation viii);
  - Slovakia, where there is no supervisory body able to investigate whether the auditors' financial statements accurately reflect the money raised and spent (§ 93 of the evaluation report and recommendation v);
  - Slovenia: the court of auditor's role is confined to checking whether political parties' annual reports are complete and submitted on time (§ 115 of the evaluation report and recommendation vi).
76. On the other hand, GRECO has found that the Irish Standards Commission, which monitors payments to political parties, political donations and election expenditure, has real supervisory powers. The law authorises it to carry out inquiries *ex officio* or following an individual complaint, and cases may then be referred to the Director of Public Prosecutions or the police for further action (§ 108 of the evaluation report).

### **3.3. Scope of the supervision**

77. The scope of the supervisory body's oversight will of course vary according to whether it covers all or just part of the political funding process. A more limited scope will fail to meet the requirements of Article 14 of the Council of Europe Recommendation.
78. In Belgium, for example, only political parties' accounts need to be verified by a company auditor. Reports on electoral expenditure and individual candidates' reports are not subject to audit (§ 83 of the evaluation report and recommendation ix). In Estonia, in contrast, supervision only extends to reports on election campaign funding submitted by political parties and independent candidates (§ 70 of the evaluation report and recommendation vi). In the Netherlands the interior ministry's audit service covers political parties' financial reports, but in practice mainly checks whether state subsidies have been properly used and relies heavily on the work of the party-appointed auditors (§ 89 of the evaluation report and recommendation viii).
79. Sometimes, the financing of certain campaigns is not subject to any controls. This includes the presidential elections in Croatia (§§ 73 and 75 of the evaluation report and recommendation iv) and Iceland (§ 69 of the evaluation report and recommendation i).

### **3.4. Resources of the supervisory body**

80. GRECO has expressed concern on a number of occasions about the resources allocated to supervisory bodies. This has applied particularly to the German, Belgian, Spanish, Estonian and Polish systems. For example, monitoring compliance with the relevant German legislation is the responsibility of a unit of the Bundestag composed of eight persons (§§ 112-114 of the evaluation report and recommendation viii). In Belgium, both the federal and the regional control commissions lack human resources (§ 80 of the evaluation report and recommendation viii). In Spain the court of audit's monitoring team comprised 18 persons (§ 79 of the evaluation report and recommendation v) and in Estonia the select committee is supported by just two officials (§ 73 of the evaluation report and recommendation vii). The staffing of Poland's national election committee eight persons – was considered by representatives of the Commission itself to be inadequate, bearing in mind the number of parties, election committees and elections (§ 85 of the evaluation report and recommendation vii).
81. This problem of supervisory bodies' resources can have an effect on the monitoring process. For example, the report on political party funding issued by the Spanish court of audit in 2008 refers to the 2005 financial year (§ 76 of the evaluation report).

## **4. SANCTIONS**

82. Article 16 of the Council of Europe Recommendation calls on states to require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions, three terms that traditionally appear in the wording of international documents. Consideration of the sanctions adopted by member states shows that these generally display at least one of two characteristics, namely that they are inappropriate or not applied. GRECO does not interfere in member states' choice of sanctions, which may be financial, administrative, criminal or electoral. It merely has to ensure that the three criteria are satisfied in domestic law.

### **4.1. Inappropriate sanctions**

83. Some countries' legislation may not provide for sanctions, as in the case of Albania with regard to political party funding (§ 75 of the evaluation report and recommendation vii) and Malta (§§ 53 and 71 of the evaluation report and recommendation vi).
84. There were few examples of a significant range of sanctions, exceptions being France (§ 126 of the evaluation report), Lithuania (§ 113 of the evaluation report) and Poland (§ 87 of the evaluation report). However, as GRECO noted in connection with Lithuania, a wide range of sanctions does not necessarily equate with clarity.
85. Several factors may help to make sanctions inappropriate, namely their weakness, their lack of flexibility and their limited scope.

#### **4.1.1. Weak sanctions**

86. GETs' attention has been drawn to this problem on a number of occasions, particularly in connection with Belgium, France and Slovenia:
  - according to GRECO, many observers of Belgian politics believe that the current system of sanctions is not always sufficiently dissuasive or proportionate. In particular, deprivation of state financial aid, which is limited to four months, may be a very light penalty for a serious violation, particularly if the party can continue to receive other forms of direct or indirect public assistance (§ 89 of the evaluation report and recommendation xi);
  - the same fear has been expressed concerning France, where GRECO considers that the maximum fine of € 3 750 may be of little effect in penalising a significant benefit (§ 126 of the evaluation report);
  - similarly in Slovenia the fine is potentially less than the illegal contribution received (§ 121 of the evaluation report and recommendation viii).

#### **4.1.2. Sanctions that are insufficiently flexible**

87. While some countries apply very weak penalties, too narrow a range of or excessively severe sanctions may also be inappropriate to deal with relatively minor breaches of the law. This shortcoming has often been identified, as has the fact that where both are applied administrative sanctions are used more frequently than criminal ones (§ 87 of the evaluation report on Poland).
88. Croatia, for example, provides for several criminal penalties, but there are no administrative or civil ones (§ 77 and § 78 of the evaluation report and recommendation vi). The same applies in Estonia (§ 77 of the evaluation report and recommendation viii). Iceland provides for criminal penalties of up to six years' imprisonment, which leads the GET to fear that such a sentence would never in fact be handed down (§ 84 of the evaluation report and recommendation ix).
89. Under Norwegian law, the only type of sanction is withdrawal of state aid. There are no mild penalties for minor breaches of the law, in particular the incorrect disclosure of party income (§§ 88 and 89 of the evaluation report and recommendation vi). This absence of flexible penalties is also a feature of British (§ 131 of the evaluation report and recommendation v) and Swedish (§ 77 of the evaluation report and recommendation vii) legislation.

90. The strictness with which sanctions are applied may be a function of the types of penalties available, but another factor may be the type of body chosen to impose them. For example, by opting solely for what is inevitably a more cumbersome criminal procedure Denmark, which punishes breaches of the law with fines or imprisonment, has deprived itself of any form of administrative sanction (§ 67 of the evaluation report and recommendation ix). In the United Kingdom penalties, whether criminal or civil, can only be handed down by the courts. This could hinder proceedings and might justify devolving powers to impose sanctions to the Electoral Commission (§ 131 of the evaluation report and recommendation v).

#### **4.1.3. Sanctions with a limited scope**

91. Sanctions may be imposed when political parties are in breach of their obligations but not when candidates are (§ 78 of the evaluation report on Croatia and recommendation vi; § 78 of the evaluation report on Estonia and recommendation ix).
92. In Finland, the previous legislation did not provide for sanctions for non- or incorrect disclosure of candidates' election accounts (§ 83 of the evaluation report and recommendation x). This gap has been filled and the national audit office is now empowered to impose administrative penalties in such cases (§§ 81, 82 and 83 of the compliance report).
93. Although Irish law authorises a wide range of flexible sanctions, penalties are not applicable to every possible breach of the law. This applies, for example, to failure to comply with a request by the Standards Commission to provide information or documentation, failure to open a political donation account or the ban on using public funds for electoral purposes (§ 110 of the evaluation report and recommendation vii).
94. The criminal sanctions in the Latvian legislation on political party funding only apply to a limited number of offences (§ 82 of the evaluation report and recommendation iv). Nor do the penalties provided for in Norwegian law cover all types of offences (§ 89 of the evaluation report and recommendation vi), and the same criticism is made about the sanctions applicable to parties in the Netherlands (§ 94 of the evaluation report and recommendation xi).
95. Slovakia provides for fines and suspension of public funding for deficiencies in parties' annual reports but they cannot be held to be criminally liable, so GRECO considered that the legislation was incomplete (§ 95 of the evaluation report and recommendation vi).
96. In Slovenia, the Elections and Referendums Campaigns Act does not specify penalties for all of the infringements listed in the act. For example, it does not appear to be possible to fine election campaign organisers for accepting funds from non-permitted sources or for accepting individual donations in excess of 10 average monthly salaries (§ 122 of the evaluation report and recommendation ix). The same criticism is levelled at Spain, where Organic Law 8/2007 does not specify penalties for all the possible infringements included in its provisions (§ 83 of the evaluation report and recommendation vi).

#### **4.2. Sanctions not applied**

97. Some might consider that the non-application of sanctions means that they are sufficiently dissuasive, as specified in the Council of Europe Recommendation. Others, in contrast, will believe that it merely reflects their ineffectiveness. Be that as it may, reference has often been made to the failure to apply sanctions, even though their application should serve to strengthen public confidence in elected members and political parties.



98. Criminal penalties are rarely applied in practice in Belgium (§ 89 of the evaluation report), Estonia (§ 77 of the evaluation report), Finland (§ 84 of the evaluation report), France (§ 130 of the evaluation report), the United Kingdom (§ 130 of the evaluation report, which notes that the same applies to civil penalties) and Slovakia (§ 96 of the evaluation report and recommendation vii). Excessively severe criminal penalties may be a disincentive to their application. Thus, opting for six years' imprisonment creates the risk that this sentence will never be handed down (§ 84 of the evaluation report on Iceland and recommendation ix). Nor does the existence of a limitation period for political financing offences encourage the use of sanctions (§ 83 of the evaluation report on Latvia and recommendation v).

## 5. CONCLUSIONS

99. A number of lessons emerge from this analysis:

- member states still have much to do to come into line with the Council of Europe Recommendation, though there has certainly been considerable progress in numerous areas, particularly in defining what exactly constitutes parties' sphere of activity, the presentation and publication of their accounts, the independence of the relevant supervisory bodies, the focus of that supervision and the flexibility of the available sanctions; the wording of recommendations relating to the above issues is often the same from one country to another;
- the hoped-for improvements to legislation following these recommendations (see footnote 4) are naturally the responsibility of individual governments, but not only governments. They require an input from all those involved in political activity, including parties and candidates. Moreover, this is also a practical issue so any follow up to these recommendations requires states to do more than simply ensure that their domestic legislation has been brought into line;
- the problems identified are clearly highly interdependent.

100. It is possible, as we have done here, to analyse individually the approaches adopted in legislation in terms of the transparency of sources of funding, the supervisory arrangements and the available sanctions, in the light of the Council of Europe Recommendation. Such an exercise helps to identify gaps and weaknesses in existing provisions. For example, giving priority to comprehensive central party accounts while ignoring local branches is likely to offer only a partial view of these accounts. Granting the body responsible for applying the legislation full independence, but without real investigative powers, is not the most effective way of proceeding. Opting for severe criminal penalties to punish breaches of the legislation could in certain cases be disproportionate.

101. Interesting and instructive as it is, this analytical approach also calls for a more general discussion that highlights the interdependence of these different problems, which are so closely linked. A system that fails to ensure that sources of income and accounts are properly disclosed makes it much harder to monitor the application of the law and impose any necessary sanctions.

102. A full range of legal sanctions serves little purpose if the supervisory body is not empowered to apply them. At the same time, that body's authority may be totally illusory if it is unable to penetrate the fog surrounding the financing of a particular party or electoral campaign, if the sources of this income are not sufficiently publicised. Full disclosure of

accounts is therefore the precondition for the effective application of the law by any supervisory body.

103. The Council of Europe Recommendation is the only international document setting down these key elements of a smoothly running democracy. This is why a comprehensive and overall approach to these problems is so important.