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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 states¹. 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*² (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 recommendations³. 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

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¹ 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 under "Evaluations" in the left-hand column.

² Links to the [French version](#) and the [English version](#)

³ 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.

of Europe to develop further the content of its Recommendation and to inform discussion in the countries that are trying to implement it.

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.