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Evaluation Report on Portugal Transparency of Party Funding

(Theme II)

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I. INTRODUCTION

1. Portugal joined GRECO in 2002. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2003) 4E) in respect of Portugal at its 14th Plenary Meeting (7-11 July 2003) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 11E) at its 28th Plenary Meeting (9-12 May 2006). The afore-mentioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption, Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Portugal from 19 to 21 May 2010, was composed of Ms Maria GAVOUNELI, Assistant Professor in International Law, Faculty of Law, University of Athens, (Greece) and Mr Inam KARIMOV, Chief Advisor, Administration of the President of the Republic (Azerbaijan). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary of GRECO. Prior to the visit, the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2010) 6E, Theme II), as well as relevant legislation.
4. The GET met with officials representing the Ministry of Justice, the Constitutional Court, the National Entity responsible for the oversight of the funding of political parties, the 1st Commission of the Assembly of the Republic – Constitutional Affairs, Rights, Freedoms and Guarantees, the National Elections Commission. The GET also met with representatives of the following political parties: the Socialist party, the Social Democratic Party, the Democratic and Social Centre / Popular party, the Left Block, and the Communist party. Moreover, the GET met with representatives of the academia and with journalists.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of political funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Portuguese authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Portugal in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2010) 6E, Theme I.

II. TRANSPARENCY OF PARTY FUNDING - GENERAL PART

Introduction

7. The basic and general legal framework regarding political parties in Portugal is to be found in the Constitution (article 51) and in Organic Law no. 2/2003, amended and republished in Organic Law no. 2/2008. While there is no legal definition of political parties as such, the regulatory framework provides that political parties are aimed at contributing to the free formation and plural expression of the popular will and to the organisation of political authority, while respecting the principles of national independence, the unity of the State and political democracy (article 1 of Law no. 2/2008).
8. Moreover, political parties are, according to Law no. 2/2008, to pursue, freely and without interference of public authorities the following purposes: (i) contribute to the pluralist enlightenment of citizens and to the exercise of their civil and political rights and freedoms; (ii) study and debate the problems of political, economic, social and cultural life at national and international level; (iii) present political programmes and prepare election manifestoes; (iv) submit candidatures for democratically elected representative bodies; (v) from an opposition standpoint, criticise the activities of the various bodies that belong to the State, the autonomous regions, local authorities and international organisations to which Portugal is a Party; (vi) participate in the clarification of issues which are submitted to national, regional or local referenda; (vii) promote the training and political preparation of citizens for a direct and active participation in democratic public life; and (viii) to promote fundamental rights and freedoms and the development of democratic institutions. These purposes are to be pursued publicly and the political parties must publicise their activities concerning their statutes, their identity and representatives, their declarations of principles and their general activities, at national and international level.
9. While the establishment of political parties is free and does not require authorisation (article 4 (1) Law no. 2/2008), their recognition, the attribution of legal personality and the beginning of their activity depend upon registration with the Constitutional Court (article 14 of Law no. 2/2008). However, there are some limitations in this respect, provided for in the Constitution and in law: Groups/parties that are armed, military or paramilitary in nature, racist or which display a fascist ideology cannot be registered as parties. Furthermore, parties with only a regional scope or nature cannot be constituted (article 51 of the Constitution and articles 8 and 9 of Law no. 2/2008). This prohibition reflects the need to guarantee the unity of the State, avoiding movements for independence.

Registration

10. The registration of a political party requires that at least 7500 voters have given their consent in writing. Such a justification (including the identity of each voter; identity card and voting card and signatures) accompanied by the draft statutes of the party, the declaration of principles or a political programme, the name and the acronym of the party (article 15 of Law no. 2/2008) has to be submitted to the Constitutional Court, which is the registration authority.
11. Upon the acceptance of a request for registration, the Constitutional Court sends an excerpt of its decision, which includes the verification of the legality and the statutes of the political party for publication in the Official Journal (cf. Article 16 (1) and (2) of Law no. 2/2008). Political parties are established for an indefinite period of time and they hold legal personality and capacity, appropriate to the achievement of their purposes (article 3 of Law no. 2/2008).

12. It should also be noted that, at the request of a Public Prosecutor, the Constitutional Court may, at any time, examine the legality of the norms and the statutes of the political parties, and declare them or the party illegal.
13. There are in total 18 political parties registered in Portugal:

Denomination	Abbreviations	Date of registration
Partido Comunista Português	PCP	26-12-1974
CDS - Partido Popular	CDS-PP	13-01-1975
Partido Social Democrata	PPD/PSD	17-01-1975
Partido Socialista	PS	01-02-1975
Partido Comunista dos Trabalhadores Portugueses	PCTP/MRPP	18-02-1975
Partido Popular Monárquico	PPM	17-02-1975
Partido Operário de Unidade Socialista	POUS	23-08-1979 [ex-MUT]
Partido Democrático do Atlântico	PDA	05-11-1979
Partido Ecologista "Os Verdes"	PEV	15-12-1982 [ex-MEP-PV]
Partido Nacional Renovador	P.N.R.	10-07-1985 [ex-PRD]
Partido da Terra	MPT	12-08-1993
Bloco de Esquerda	B.E.	24-03-1999
Partido Humanista	P.H.	07-04-1999
Nova Democracia	PND	18-06-2003
Movimento Mérito e Sociedade	MMS	29-05-2008
Movimento Esperança Portugal	MEP	23-07-2008
Partido Trabalhista Português	PTP	01-07-2009
Portugal pro Vida	PPV	01-07-2009

Elections

Presidential elections

14. Since 1974, the President of the Republic is elected by universal direct secret suffrage for a five year term, which can be renewed once. The presidential elections are, opposed to all other elections in Portugal, based on individual candidates, and their nominations are submitted to the Constitutional Court. In order to be nominated, the candidate must be suggested by at least 7500 and at maximum of 15.000 identified citizens (Article 121 of the Constitution of the Portuguese Republic) . The candidate who receives more than half of the valid votes is elected President or, if none of the candidates obtains this number of votes, a second ballot is to take place between the two most successful candidates. The most recent presidential elections were held in 2006. Political parties are not directly involved in the campaigns, meaning they are not candidates whatsoever. Nevertheless political parties can make contributions to the campaign they support (in the same way as they provide contributions to campaigns in other elections), however, only financial representatives of the candidates and, subsidiarily, the candidates themselves are responsible for possible violations of the rules on campaign funding, according to Article 22 (1) and (2) of Law. No. 19/2003.

Parliamentary elections

15. The parliamentary elections are held every four years. Members of Parliament (Assembly of the Republic) are elected by popular vote from the country's twenty-two constituencies (eighteen in mainland Portugal corresponding to each district, one for each autonomous region, Azores and Madeira, one for Portuguese living outside Portugal but in Europe and a last one for those living in the rest of the world). Except for the constituencies for Portuguese living abroad, which are fixed at two members each, the number of voters registered in a constituency determines the number of its members in the assembly, using the d'Hondt method of proportional representation. Constituencies vary greatly in size; from as large as the district of Lisbon, which has 48 representatives, to the smallest which elects just two.
16. The rules of parliamentary elections do not foresee individual candidates for election; these elections are based on closed lists of candidates submitted by political parties as only political parties are allowed by law to submit list of candidates).
17. The electoral system does not foresee conditions for the attribution of mandates based on minimum percentage of votes; the Portuguese electoral system, based on the principles of proportional representation and party pluralism, does not admit any restrictions to the application of its electoral formula; article 152 of the Constitution explicitly determines that the law shall not limit the conversion of votes into seats by requiring a minimum national percentage of votes cast.
18. According to the Constitution, members of Parliament represent the entire country, not the constituency from which they are elected. This directive is reinforced in practice by the strong role of political parties in regard to members of the assembly. Party leadership may, for example, determine in which constituencies candidates are to run for office, which may weaken members' ties to their constituencies.
19. The fact that there are no legal threshold clauses in the electoral system does not mean that there are not natural thresholds which derive from the system itself, like the size of the constituencies. The constituencies elect a predetermined number of representatives – calculated

proportionally to the number of electors in that constituency. This means that the d'Hondt method is applied in each electoral constituency and not in relation to the total votes in the entire country. In fact, in the constituencies with few mandates attributed, the political forces that usually attract fewer voters have less probability in obtaining representation in Parliament. Consequently, the size of the constituencies may translate into a natural barrier, which favours the existence of two main political factions.

20. The most recent parliamentary elections took place in 2009 and the following parties/coalitions participated:

- PCP – PEV - Coligação Democrática Unitária (coalition)
- BE – Bloco de Esquerda
- MEP - Movimento Esperança Portugal
- MMS – Movimento Mérito e Solidariedade
- PND – Nova Democracia
- PCPT/MRRPP – Partido Comunista dos Trabalhadores Portugueses
- MPT – Partido da Terra
- PNR – Partido Nacional Renovador
- POUS – Partido Operário de Unidade Socialista
- CDS-PP – Partido Popular
- PPM – Partido Popular Monárquico
- PPD/PSD – Partido Social Democrata
- PS – Partido Socialista
- PTP – Partido Trabalhista Português
- PPV – Partido pró Vida
- MPT-PH – Frente Ecologia e Humanismo (coalition)

Regional and Local elections

21. The regional and local elections are governed by specific legislation. Autonomous Regions of Azores (Decree-Law no. 267/80¹) and Madeira (Organic Law no. 1/2006), elect their own regional assembly for a four year term. The first regional elections were held in 1976. In the local elections, 308 Municipalities and Municipal Assemblies, and more than 4000 Parish Assemblies are elected for a four year term in separate elections (Organic Law no. 1/2001).

Election to the European Parliament

22. Elections to the European Parliament are governed by Law no. 14/87 as amended by Law no. 3/94. Lists of candidates are submitted only by political parties and the whole territory of Portugal is considered a single election constituency. The seats (22) are allocated to the different lists in the order in which candidates appear on the lists, using the d'Hondt system, in accordance with the provisions of the general election regulations.

¹ As amended by Law no. 28/82, of 15 November, Law no. 72/93, of 30 November, Organic Law no. 2/2000 of 25 August and Organic Law no. 5/2006 of 31 August through which Decree-Law no. 267/80 was republished in the annex.

Party representation in Parliament

23. Portugal has a unicameral Parliament with 230 seats. Following the 2009 general elections, 6 political parties (PCP-PEV is a coalition) are represented in Parliament. The political parties were represented as follows:

Party	Percentage	Number of Seats
PCP – PEV	7.86	15 (PCP=13 / PEV=2)
BE	9.81	16
CDS-PP	10.43	21
PPD-PSD	29.11	81
PS	36.56	97

Overview of the political funding system

24. The Portuguese system on political party funding is to be built on a principle of transparency, enshrined in the Constitution (article 51 (5) and (6)). The accompanying legal framework is mainly contained in Law no.19/2003 concerning the funding of political parties (articles 2-14). This law also comprises a set of more specific rules, concerning the financing of electoral campaigns (articles 15-22). The only sources of funding permissible are those explicitly mentioned in these articles and any other form of funding is considered illegal.

Sources of founding

25. Pursuant to article 2 in conjunction with article 3 of Law no. 19/2003 the sources of the financing of political parties are:
- Quotas and contributions by affiliated members of the political party;
 - Contributions of elected candidates;
 - Public subventions;
 - Collective fund raising of the political party;
 - Income from the assets of the political parties, namely financial investment;
 - Loans;
 - Inheritances and legacies;
 - Donations by individuals (natural persons).
26. The revenues have to be entitled in a form other than cash (check or other banking form) which allows for the identification of the amount and the source and have to be deposited in bank accounts exclusively created and used for that purpose (article 3 Law no. 19/2003). It should be noted that the law allows for in kind contributions such as transfer of goods as loans. In these cases, the contributions are to be considered at their current market value and have to be disclosed in a specific list (article 3 (4) in conjunction with article 12, (7), paragraph of Law no. 19/2003).
27. Political parties may only receive donations from natural persons and are prohibited from receiving anonymous contributions (article 8 (1) of Law no. 19/2003). It is also prohibited to political parties to purchase goods or services at prices below market prices; to receive payments for goods or services provided by them at prices substantially higher than the market value; and to receive or accept any indirect contributions or donations (article 8 (3) of Law no. 19/2003).

28. In accordance with article 16 of Law no. 19/2003, electoral campaigns (European, presidential, parliamentary, regional or municipal) can only be funded by 1) State subventions (public funding), 2) contributions from political parties to candidates they support, 3) private donations from natural persons, or 4) income from fundraising directed at election campaigns.
29. In accordance with Article 71 of Law no. 15-A/98², referenda with national character are to be financed in accordance with the principles and rules for the funding of electoral campaigns to Parliament (i.e. in accordance with Law no. 19/2003) with one exception; public funding is not foreseen for the campaigns pertaining to referenda. Therefore, the only sources of campaigns for referenda with national character are contributions of political parties, coalitions or groups of registered electors that intervene in the campaign. The general rules on the prohibition of anonymous donations etc as well as expenses apply also in respect of referenda.
30. In respect of referenda with local character, article 61 (2) of Organic Law no. 4/2000 establishes that in general terms the campaigns are to be financed in accordance with the principles and rules for the funding of electoral campaigns at local level, i.e. in accordance with the Law no. 19/2003, however, with the exception that public funding is not foreseen for such referenda.

Direct public funding

31. The public funding is, in general, provided to the political parties themselves; for the development of the purposes of the political parties and their activities (articles 3-5 of Law no. 19/2003), as well as for the financing of election campaigns (articles 4 and 16-18 of Law no. 19/2003). Public funding may be obtained by political parties which have participated in the elections (alone or in a coalition) and gained representation in Parliament or gained more than 50 000 votes. Public funds are granted on an annual basis and the request is to be made to the President of Parliament (Article 5 of Law no. 19/2003).
32. Public funding in respect of the activity of political parties, corresponds to the equivalent of 1/135 of the national monthly minimum wage per vote obtained in the most recent elections and, in case of a coalition, the subsidy is distributed in accordance with the number of seats elected by each party, unless otherwise agreed in the terms of the coalition (article 5:2 and 5:3 Law 19/2003). In 2010, EUR 8,520,000 was the total amount of public funding.
33. In respect of electoral campaigns, public funding is granted only to the political parties that run for: 1) the European Parliament; 2) for at least 51 per cent of the seats of the National Parliament or 3) regional assemblies and gain representation in one of these assemblies. Moreover, public funding is provided to election candidates to President of the Republic who gain at least 5 per cent of the votes. In local elections, political parties, coalitions and groups of registered electors are entitled to public funds provided they run for election to both municipal bodies simultaneously and gain at least one seat in one of the organs or at least 2 per cent of the votes in each organ.
34. The overall amount of the subsidy depends on the campaign and will be divided either equally or in proportion to the electoral results of each party. However, the overall amounts as established in law (article 17 of Law no. 19/2003), are equivalent to 20.000 national minimum wages in

² "Article 71 – "Proceeds from campaign"

1 – The financing of the campaigns is subordinated, with the necessary adaptations, to the principles governing the financing of electoral campaigns to *Assembleia da República* [Parliament], except in what concerns public subventions.

2 – The groups of registered electors are subjected to a regime equivalent to the political parties' regime with the necessary adaptations."

parliamentary elections; 10 000 national minimum wages for presidential elections and elections to the European Parliament; 4000 national minimum wages in relation to regional elections; and 150 per cent of the established limit of expenses allowed for the campaign of municipal elections.

35. In the case of the local elections, 25 percent of the funds are equally divided among the political parties, coalitions and groups of registered electors who run for at least 2 local bodies and gain one seat or at least 2 per cent of the votes for each body. The remaining 75 per cent is divided between the political parties, coalitions and groups of voters, in proportion to the results of the elections to the municipal assembly.
36. In any case, the public subsidy cannot go beyond the expenses which were presented by each party in the budget prior to the election and effectively used, after the deduction of the amount of other funds raised by the party itself (article 18 of Law no. 19/2003).

Indirect public funding

37. The Portuguese system provides only for direct public funding, as indirect such funding is explicitly prohibited, be it public or private funding (article 8 of Law no. 19/2003). This Article furthermore prohibits parties to acquire goods or services at costs lower than the market price and similarly is it forbidden to receive payments for goods or services at prices higher than the market value. Free broadcasting is not considered indirect funding as it is free of charge and governed by special legislation.

Private funding

38. As indicated above, the only sources of funding that can be accepted by the political parties are those prescribed in the law and the private funds may only come from quotas and contributions by affiliated members of the political party; contributions of elected candidates; collective fund raising of the political party itself; income from the assets of the political parties, such as financial investments; loans when granted; inheritances and legacies; and donations by individuals (natural persons). As also mentioned above, political parties are not allowed to receive anonymous donations or donations or loans in cash money. Neither are political parties allowed to purchase goods or services at prices below or higher than market prices or accept any indirect contributions or donations (cf. Article 8 (3)).
39. Moreover, while loans are admissible by law (article 8 of Law no. 19/2003), the general rules on the activities of the financial markets apply and they should in principle be requested before established financial institutions. However, the Constitutional Court has admitted the possibility of private loans, provided these are based on a written contract specifying the schedule of payment and interest rate. If these conditions are not met, the loan will be considered as a donation, and, as such, the limits concerning donations will apply. The GET was informed that these precautions have been taken to avoid forgiven or written off loans and the same principles apply to forgiven credits.
40. Funds raised by political parties cannot go beyond, annually, per party, 1500 times the national monthly minimum wage (EUR 426) (article 6 of Law no. 19/2003). This limit does not include donations, which are dealt with in the following paragraph.
41. Furthermore, donations by natural persons to political parties can only be provided by identified natural persons and cannot go beyond, annually, 25 times the national monthly minimum wage

per donor (25xEUR 426=EUR 10,650). Moreover, such donations have to be done by check or bank transfer (article 7 of Law no. 19/2003). In these cases, and, in accordance with the general regime for the revenues of political parties, these donations have to be deposited in bank accounts created exclusively for deposits of such origin. Donations in kind by natural persons are also admissible to the same limit, calculated at their market value.

42. The law (no. 19/2003) also provides for specific limits concerning donations by natural persons in respect of election campaigns. In this case, the law only provides for donations by natural persons who support candidates for President of the Republic or groups of registered electors that run for the organs of local authorities. However, the Constitutional Court has interpreted Article 16 of Law no. 19/2003 in the sense that it is applicable to all types of elections; these donations cannot go beyond 60 times the national monthly minimum wage per donor (60xEUR 426=EUR 25,560) in any election and have to be given by check or another banking form that allows the identification of the amount and its source (article 16).
43. The activities related to electoral campaigns can also be financed by contributions from the political parties that present or support the candidates in the elections to the National Parliament, the European Parliament, the local authorities and those who take part in elections to the President of the Republic (article 16(1) b) of Law no. 19/2003). The contributions from political parties to support the activities of electoral campaigns are sometimes used, in practice, to guarantee the payment of electoral expenditures until the time of payment of the subvention. When closing the electoral account, if there is a superavit it will be returned to the party. On the other hand, if there is a deficit it will be up to the party to cover such deficit..

Taxation

44. According to the Portuguese system, the contributions to political parties, entities affiliated with political parties, elected representatives, candidates for election and election campaigns are not deductible from the income in respect of taxation.
45. Political parties are not subject to corporate income taxes and benefit from several other tax exemptions in areas, such as inheritance and gifts and are exempted from value added taxes (article 10 of Law no. 19/2003).

Expenditure

46. There are no limits as to what political parties may spend in respect of their “ordinary activities”. However, Law no. 19/2003 determines the regime of expenditure limits concerning election campaigns. Expenditures incurred by candidates and/or parties (depending on whether the particular election allows personal candidatures or groups of elector citizens), subject to electoral benefits or such purposes, made within 6 months immediately preceding the election are to be covered as campaign expenditure (article 19 of Law no. 19/2003). The definition of the campaign period is included in the respective electoral law on each type of election.
47. The following caps on expenditure have been established in respect of political parties, coalitions or groups of registered electors that present a candidature (article 20 of Law no. 19/2003):
 - Presidential elections: 10 000 national monthly minimum wages plus another 2500 national minimum wages in case the candidate goes to the second round;

- Parliamentary elections: 60 national monthly minimum wages for each candidate presented to the National Parliament ;
- Regional elections: 100 national monthly minimum wages for each candidate presented to the Regional Assemblies; 300 national monthly minimum wages for each candidate presented to the European Parliament;
- Local elections (Lisbon and Porto): 1350 national monthly minimum wages;
- Local elections (100 000 or more inhabitants): 900 national monthly minimum wages;
- Local elections (50 000 – 100 000 inhabitants): 450 national monthly minimum wages;
- Local elections (10 000 – 50 000 inhabitants): 300 national monthly minimum wages;
- Local elections (10 000 or less inhabitants): 150 national monthly minimum wages.

48. In case of candidates presented only to assemblies of parishes (“assembleias de freguesia”), the limit is of 1/3 of the national monthly minimum wage per candidate, see above.
49. The caps on expenditure of referenda with national character or referenda with local character are similar to those of general elections at respective national and local levels.

III. TRANSPARENCY OF PARTY FUNDING - SPECIFIC PART

(i) Transparency (Articles 11, 12 and 13 b) of Recommendation Rec(2003)4

Accounts, books and access to such information

Political parties

50. Every income in “cash” has to be entitled in check or other banking form, as to allow identifying the amount and its origin. Moreover, it has to be deposited in a bank account created to that effect and used exclusively for that purpose (article 3, (2) of Law no. 19/2003). The only exception to this rule concerns revenues which are 25% below the national monthly minimum wage (EUR 106,50) and only if, in a period of one year, they do not go, overall, beyond 50 times the national monthly minimum wage (50 x 426 = EUR 21.300) (Article 3 (3) of Law no. 19/2003). Revenues in kind and the loans of goods are to be accounted for at the current market value (article 12 of Law no. 19/2003).
51. Pursuant to article 9 of Law no. 19/2003, all the expenditures incurred by political parties are to be made by banker’s check or any other banking form which allows identifying the amount of the payment and the person/entity to which it was submitted. The exception to this rule concerns the payments of amounts under national monthly minimum wage (EUR 426) (per payment) provided that they do not exceed, per one year, the percentage of 2% of annual State financial subvention.
52. The revenues and expenses of the political parties are to be disclosed in accounts which are presented annually, according to article 13, in conjunction with Articles 12 and 23 (1) of Law no. 19/2003. Political parties are required by article 12 of the same law to have their books and accounts organised, following the general accounting rules of the “Plano Oficial de Contas” (Official Auditing Rules/Official Plan of Account). The same accounting rules as apply to any legal person (company) apply “*mutatis mutandis*” to political parties. In addition they have to follow the specific rules established in article 12 of Law no. 19/2003, which prescribe that the parties must carry out an annual inventory of the immovable assets of the party, regarding all the property which is subjected to real estate registration (article 12 (3) paragraph a); all the expenses

(including costs related to personnel, acquisition of goods and services³, etc) and revenues of the party, as well as the operations regarding credits, investments, debtors and creditors (article 12(3), paragraphs a), b) c) and d)); in the annexes to the accounts of the parties are to be included all the bank statements concerning the flow of money in bank accounts, including the use of credit cards (article 12 (7) paragraph a); in annexes to the accounts are also to be indicated all the revenues concerning fund raising, including the identification of the type of activity and date (article 12 (7) paragraph b), as well as, and without prejudice to the obligation of the annual inventory above mentioned, a list of the immovable assets of the party (article 12 (7) paragraph c) of Law no. 19/2003). These accounting requirements have been established in order to require a high degree of detail in the account records. All revenues are required to be individually reported. In practice, however, sometimes, political parties present them in an aggregated form, but can be asked to present the details.

Foundations and third parties

53. Organisations, such as foundations related to a political party, are normally separate entities, and, as such, legal persons with separate accounts. Moreover, because they are not political parties, these entities follow different rules regarding their accounts, in accordance with their specific nature and statute. This situation is different from other structures which, although with some autonomy, belong to the party⁴ and are required to have aggregated accounts. According to 12 (4) of Law no. 19/2003, the accounts of the political parties shall include, enclosed as annexes, the accounts pertaining to their regional, district and local structures, in order to allow for a comprehensive analysis of the overall revenues and expenses of the political parties; as an alternative, the political parties may present consolidated accounts.

Electoral campaigns

54. In principle expenses connected to an electoral campaign have to be submitted together with justifications (article 19 (2) of Law no. 19/2003). As in other cases, these expenses have to be done in check or other banking form that allows for the identification of the amount and entities concerned. In addition, the revenues and expenditures of each electoral campaign are to be recorded in separate books concerning that specific campaign and are done in accordance with articles 12 and 15 of Law no. 19/2003; each electoral campaign account is to correspond exclusively to one bank account where all the revenues are deposited and from where all the expenditures are paid. It should be noted, in this context, that in local elections, the accounts are done on a municipal basis, without prejudice for having a national account through which common expenses are made. Until the last day to present candidatures to an election, the parties, coalitions, candidates or groups of registered electors have to present their budget of the electoral campaign to the Constitutional Court, which publishes it on its website (article 17 of Law no. 2/2005). The accounting rules for campaigns are the same as those pertaining to parties, with some adaptations.
55. In the electoral campaigns, the law foresees the national financial representative (“mandatário financeiro nacional”) who has the exclusive responsibility for the fulfilment of the law. She/he can

³ Specifically, it is required to include the details of the purpose and the amount of expenditure and identification of the vendor or provider of a service (article 8(3) in articulation with Article 12(3) paragraph c) of Law no. 19/2003).

⁴ The political parties are normally built both in a vertical, hierarchical and decentralized way and in a horizontal one. In the vertical system, they have several levels, reporting the lowest to the centre decision, at national level. Regarding the horizontal system, the various structures, dealing with specific matters, such as, workers, women and youth's issues, with self-decision making, are included in the general framework of the political party.

appoint local representatives who will be responsible for local accounts in the local elections (articles 21 and 22 of Law no. 19/2003). The local financial representative is mandatorily appointed in the case of candidatures presented by electoral registered groups.

Reporting obligations

56. Political parties have to submit their annual accounts in respect of their ordinary activities to the Constitutional Court on 31 May concerning the previous year.
57. Moreover, the political parties, in their electoral activity, as well as the electoral coalitions, the candidates for Presidency of the Republic and the electoral registered groups are obliged to present the budgets of the electoral campaigns and subsequently the accounts to the Constitutional Court. Each candidature is to submit the campaign account within 90 days of the date of the official proclamation of the results (article 27 of Law no. 19/2003). In addition to this, there are no particular reporting requirements.
58. The political parties do not publish their accounts, but the Constitutional Court publishes all political financing accounts on its web site and the following information is included: The budget of the electoral campaigns on the day after its presentation in the Constitutional Court (articles 17 and 20 (2) paragraph b) of Law no. 2/2005); the accounts of the political parties and the accounts of the electoral campaigns are published by the Entity for Accounts and Political Financing (hereinafter "EAPF") as soon as possible after their submission to the Constitutional Court. Furthermore, the accounts are also published in the Official Journal, following the decision of the Constitutional Court. The GET was told that, currently, this may take some three years; however, the procedure is improving and will provide for much shorter delays in 2011.
59. Moreover, the public, including the media, can access the information which is not available on-line (not everything is in the Internet because of the huge dimension of the documents involved) by a request addressed to the President of the Constitutional Court; the accounts of the political parties and the accounts pertaining to the electoral campaigns are integrated in files of the Constitutional Court.
60. The accounts pertaining to the respective referenda campaigns are public. Regarding referenda of national character, the National Commission of Elections (which is the monitoring body for referenda) publishes its statement on the accounts of political parties or the groups of registered electors in the Official Journal (Cf. Article 75 (1) of Law no. 15-A/98). Likewise, the decisions on the accounts presented by the political parties or the groups of registered electors are published, also by impetus of the National Commission of Elections, in the Official Journal (Cf. Article 65)1) of Organic Law no. 4/2000).

(ii) Supervision (Article 14 of Recommendation Rec(2003)4)

Auditing

61. The political parties are not legally bound to have their accounts internally audited; however, the Law no. 19/2003 states that supervision and control bodies of the parties and electoral campaign accounts must be foreseen in the political parties' statutes in order to ensure the compliance with the accounting legislation (article 13 (1) of Law no. 19/2003). Nevertheless, it should be noted that some of the major political parties have introduced new internal regulations and have submitted themselves, recently, to internal audits conducted by independent auditing companies.

Monitoring political parties and election campaigns

62. The Constitutional Court is empowered to monitor the accounts of political parties and election campaigns (article 23 (1) of Law no. 19/2003). The Constitutional Court is an independent organ of the State, regulated in the Constitution (articles 221-224) and in Law no. 28/82, as amended. This Court is composed of 13 judges, 10 of which appointed by Parliament and 3 elected of those 10 judges, for a period of 9 years, non renewable. Judges are subject to rules to prevent conflicts of interest; they cannot have any duties in party organs, political associations or foundations connected to them, nor be involved in any political or party activity of a public nature; duties in autonomous regions or in local authority, as well as holding any other office of a public or private nature is incompatible with the fulfilment of the duties of judges of the Constitutional Court. Furthermore, judges are irremovable except in case of death or permanent physical incapacity, renunciation, acceptance of a position or practice of an act which is incompatible with the fulfilment of the duties as defined by the law or dismissal or compulsory retirement as a result of a disciplinary or criminal procedure.
63. The Constitutional Court has the competence to assess the regularity and the legality of the accounts of political parties and election campaigns, according to the law. To this end it is empowered to applying corresponding sanctions (cf. article 223 (3) of the Constitution in articulation with article 9, paragraph e) of Law no. 28/82 and article 23 of Law no. 19/2003). In the accounting, the Constitutional Court is assisted by the Entity for Accounts and Political Financing (EAPF).
64. The legal framework of the EAPF is contained in Law no. 19/2003 and Law no. 2/2005. The EAPF is an independent body which operates within the sphere of the Constitutional Court. The EAPF is composed of a president and two other members, at least one of them being a chartered accountant auditor. They are elected by the Constitutional Court for a 4 years term of office, renewable. The members of the EAPF are subject to strict rules on incompatibilities and are disciplinarily accountable to the Constitutional Court (articles 7-9 of Law no. 2/2005).
65. The EAPF is, responsible for the technical examination and control of the accounts of the political parties and electoral registered groups and of the accounts of all the election campaigns. In this context, it performs the audits and submits its reports and opinions to the Constitutional Court (cf. Articles 27 to 32 of Law no. 2/2005 and Articles 36 to 43 of Organic Law no. 2/2005), i.e. the first technical analysis is done by the EAPF, but the Constitutional Court makes the final decision. However, the EAPF is also empowered to issue decisions on standard procedures and general recommendations directed to the entities subject to its powers of control and inspection. Thus it has a proactive mandate to take administrative initiatives independently of the Constitutional Court.
66. Political parties have a duty to cooperate and communicate with the EAPF the actions of political publicity and of electoral campaign that they have developed and also the means used (as well as their costs), when the cost incurred is higher than the amount of the national monthly minimum wage. The non fulfilment of the duties of communication and cooperation may be subject to a fine (see Sanctions below). The EAPF may also request any public or private entity to submit information etc. The EAPF is competent to apply the sanctions foreseen in the Law no. 2/2005, such as for non compliance with articles 15 (cooperation duties) and 16 (communication of data). However, infringements of Law no. 19/2003 are judged solely by the Constitutional Court and criminal offences are judged by judicial criminal courts.

Monitoring referenda

67. The monitoring in respect of the campaigns pertaining to referenda, is the responsibility of the National Commission of Elections, as regulated in Law no. 71/78 as amended by Law no. 4/2000. The Commission is an independent body and it is composed of a judge of the Supreme Court of Justice, nominated by the Supreme Judicial Council, and by citizens of recognised merit, designated by Parliament and a technical adviser by each governmental department responsible for the Interior, the Foreign Affairs and the media. The members of the Commission are, furthermore, irremovable and independent and lose their mandate if they run in to the bodies that exercise sovereign power, of the Autonomous Regions or of the local authorities (cf. article 4(1) and (2) of Law no. 71/78, as amended by Law no. 4/2000).
68. In certain situations, the Court of Auditors decides upon persistent irregularities which the Commission of Elections has found and which could not be eliminated immediately (cf. Article 75 (3) of Law no. 15-A/98 and Article 65 (3) of Organic Law no. 4/2000).
69. The Court of Auditors is regulated by the Constitution (article 214) and by Law no. 98/97 as amended by Law no. 35/1007 and Law no. 48/2006) The Court of Auditors is an independent body and its independence is guaranteed by self-government, irremovability, exemption from liability of its judges and in that its members are exclusively subject to the law. The Court of Auditors is composed of a president, with a term in office of four years appointed by the President of the Republic, upon proposal of the Government and 16 Judges, recruited via a competitive examination, held before a jury presided over by the President of the Court of Auditors.

(iii) Sanctions (Article 16 of Recommendation Rec(2003)4)

70. The Portuguese system of specific sanctions and measures regarding violations of the political financing rules are contained in the Law on the Financing of Political parties (no. 19/2003) and in the Organic Law no. 2/2005 relating to the EAPF.

Party accounts and elections

71. Firstly, there are criminal sanctions contained in article 28 (2) to (4) of Law no. 19/2003, which prescribes that the leaders of political parties, natural persons or the administrators of legal persons who participate in allocation and raising of prohibited funds are punishable with imprisonment from 1 to 3 years. The same sanctions are applied in respect of financial agents, candidates to the elections to President or first proponents of electoral registered groups who go beyond the stipulated limits for expenditure in the campaigns or accepts prohibited revenues or uses forms of income that are not prescribed by law. In such cases, the leaders of political parties, natural persons or administrators of legal persons who personally participate in those acts are subject to the same sanction of imprisonment of 1 to 3 years. These sanctions are applied without prejudice to the general rules on criminal responsibility and are imposed by the competent criminal courts and they follow the criminal procedure. Confiscation of proceeds of the crime is also possible.
72. The second layer of sanctions (only non criminal fines), contained in Articles 29-32 of Law no. 19/2003, are under the exclusive competence of the Constitutional Court. Pursuant to Articles 29 and 30 fines can be applied in respect of political parties, their leaders, natural persons, the legal persons and the administrators of the legal persons who violate the rules on the financing of

Parties. Articles 31 and 32 of Law no. 19/2003 prescribe the fines that are applied to the financial agents, the first candidates of each list or first proponents of groups of citizens, as well as to political parties as such, which do not differentiate or substantiate the revenues and expenditures of an electoral campaign or do not present the accounts of the electoral campaigns as set by Article 27 of this law. The sanctions range between 1 and 400 NMMW (EUR 426 – 170,400). Confiscation of the gain from the act is also possible.

73. Thirdly, Article 47 of Law no. 2/2005 prescribes sanctions which are under the jurisdiction of the EAPF (but which may be appealed to the Constitutional Court). These include fines that may be imposed on political parties, financial agents, candidates to the elections to President, first candidates of each list or first proponents of groups of citizens in cases of violations of their duties to communicate and cooperate with the EAPF. These sanctions range between 2 -32 NMMW (EUR 853 – 13,632) in respect of natural persons and 6 – 96 NMMW (EUR 2,556 – 40,896).

Referenda

74. Concerning sanctions relating to referenda, the National Commission of Elections is competent to issue fines (“*coimas*” – administrative sanctions) for the cases of illicit revenues, non-discrimination of revenues or expenses or no presentation of the accounts pertaining to the referenda. Such decisions can be appealed to the Supreme Court of Justice.

Immunities

75. No elected representatives or candidates for election, entities (political parties or related entities) benefit from immunities allowing them to avoid proceedings or sanctions for violating political funding laws and regulations.

Statutes of limitation

76. The general rules of the Criminal Code are applicable in respect of statute of limitations. As the criminal sanctions are between 1 and 3 years of imprisonment, it follows from article 118(1) paragraph of the Criminal Code that the limitation period is 5 years.
77. With regard to the non criminal sanctions, the statute of limitation is between 1 and 3 years (Decree-Law no. 433/82, as amended by Decree-Law no. 356/89, Decree-Law no. 244/95 and Law no. 109/2001).
78. The statutes of limitation will be interrupted in the cases of the general framework and, in particular, until the advice of the EAPF is issued, on the non presentation of accounts, on the accounts presented, on the non compliance with the obligation to present the accounts of electoral campaigns and on the accounts presented pertaining to electoral campaigns (Article 22 of Organic Law no. 2/2005, in conjunction with Articles 28, 31, 39 and 42 of Law no. 19/2003).

Practice/statistics

79. The substantial assessment of the regularity and legality of the accounts of the political parties and the reports on the electoral campaigns is always the object of a decision of the Constitutional Court (which is published in the Official Journal). With regard to the accounts of the political parties, between 1996 and 2009, the Constitutional Court issued 54 Decisions (“*Acórdãos*”), of

which 12 concern fines (“*coimas*” – administrative sanctions) and multiple decisions pertain to procedural matters. Since 2005, the Constitutional Court has competence to review the accounts concerning electoral campaigns. In this regard, and since then, there have been 11 decisions of the Constitutional Court.

IV. ANALYSIS

80. Portugal has in place a rather solid legal framework for political parties; the Constitution of Portugal (article 51) on freedom of association, establishes the very basis of political parties, *inter alia*, that they are to be governed by the principle of transparency. The first law on political parties, adopted in 1974, was an important milestone in the democracy process at the time. This law established the detailed regulations of political parties and provided some basic rules for parties’ financing and accounting. The legal framework of political parties and political financing have ever since been subject to numerous reforms and amendments.
81. The political process in Portugal is dominated by the political parties. In recent elections, Portugal has moved into a *de facto* situation where two large political parties compete for government powers. Apart from the presidential candidates, election candidates are not really recognised in their individual capacity at national, regional or local level elections. They are nominated exclusively by the parties to the election lists at parliamentary elections and may appear as groups of candidates at local level.
82. The GET came across research indicating that citizens’ confidence in representative institutions in general, and in political parties in particular, is very low in Portugal. As in many other European countries, political parties in Portugal have experienced a general decline in political activity by the citizens in recent years and party incomes from membership fees now play a less important role than in the past. This situation, in conjunction with the ever increasing costs of election campaigns, have made political parties more dependent on public funding and private donations; the current limits of private funding and spending caps are under debate. In April 2009, Parliament voted almost unanimously in favour of new legislation, which in essence included substantial increases in the limits and means of obtaining private funding. The Decree (285/X) adopted by Parliament, was, however, vetoed by the President of the Republic for a number of reasons, *inter alia*, that the amendments were made without introducing the necessary safeguards in terms of control mechanisms in order to ensure required transparency regarding the sources of private funding in the context of a system which is traditionally based on considerable public financing. Consequently, the President sent the Decree back to Parliament. On 2 November 2010, Parliament approved a similar law, which at the time of the adoption of this report was still pending before the President of the Republic, who has the power to veto the law. The GET was not in a position to review this law prior to the adoption of the current report.
83. The GET learned that the current public funding to the established political parties is estimated to amount to between 70 and 90 per cent of their total income. The GET notes in this respect that the system benefits mostly the larger parties as state subsidies are allocated in proportion to the votes received and only to those parties represented in Parliament or which have obtained more than 50,000 votes in the national elections. Similarly, the public funding to election campaigns favours the larger parties. However, the GET also came across information indicating that the ratio between public and private contributions, was not reliable for several reasons; for example, that indirect public subsidies were not accounted for and that there were numerous possibilities to circumvent the accounting rules concerning various forms of private contributions to parties and/or election candidates; several interlocutors alleged that actual funding from private sources

is greater than the “official” figures indicate. As a result, the GET could not estimate the real income and expenditure of parties and candidates, especially during election campaigns.

Transparency

84. The most relevant legislation concerning political financing currently consists of the Law on Political Parties (no. 2/2003), the Law on the Financing of Political Parties (no. 19/2003) and the Law on the Organisation and Functioning of the Entity for Accounts and Political Financing (no. 2/2005). The GET notes that the adoption of this rather comprehensive legislation has been the result of a step by step approach over three decades towards more transparency and accountability in this area. The Portuguese authorities should be commended for having created such a system, which includes many of the principles contained in Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral campaigns. This said, the GET discovered some shortcomings of the system of political financing, which is also subject to criticism by various groups of civil society — academics, journalists and representatives of non governmental organisations — as well as by politicians and public officials, for not being sufficiently comprehensive and the political financing is considered to be lacking in transparency. The GET understood that much of the criticism in relation to the current system, which is still developing, is not mainly due to incomplete legislation but rather to a lack of full implementation of the existing laws and regulations.
85. The Law governing the financing of political parties (no. 19/2003) is exhaustive in terms of what constitutes permissible income of a party as well as what is prohibited. In addition to public funding, the law regulates various forms of private sources; *inter alia*, fundraising by the party which cannot exceed 1500 times the national monthly minimum wage (hereinafter “NMMW”) (EUR 639,000) per party and year, *donations by individuals*, which cannot exceed 25 times NMMW (EUR 10,750) per donor annually and can only be made by cheque or bank transfer which must be deposited in a special bank account for donations. Furthermore, *donations in kind* have to be considered at market value and such transactions above the market value are to be considered as donations. Among the prohibited funding, listed in the same Law, are *anonymous donations*, *donations and loans from legal persons* (except loans from credit institutions). Parties are not allowed to acquire goods or services or receive payments at a cost/price lower/higher than the market price. *Third party contributions* benefiting the party are also illegal. Furthermore, the GET notes that the regime of income and expenditure in relation to *election campaigns* is also regulated in Law no. 19/2003 on the same model. However, donations from individuals are limited to 60 times NMMW per donor (EUR 25,560). The prohibition of donations from anonymous persons and the obligation to identify donors are in line with Article 12 of Recommendation Rec(2003)4. However, there is an exception to this rule in respect of some forms of party income, in particular such as individual contributions during fundraising events, which can be accepted in cash of a value up to 25 per cent of the national monthly minimum wage (EUR 106,50), provided that the party does not exceed in total 50 times NMMW (EUR 21,300) in respect of such funding per year. The GET considers that this exception, which in practice appears to be limited exclusively to fundraising events, may on the one hand be seen as opening up for possibilities to circumvent the main rule of prohibition of anonymous donations, however, on the other hand, it allows parties to collect limited amounts of money during fundraising events without a too burdensome bureaucracy and this possibility does not go beyond a total annual amount of EUR 21,300 per party. In these circumstances, the GET takes the view that the exception to the main rule of donations in the form of cheques and bank transfers does not limit the transparency in this respect to an unacceptable extent.

86. Law no. 19/2003 obliges political parties to keep *annual accounts* in accordance with the principles laid down in the “Official Plan of Accounts”, with certain amendments in respect of parties. Election campaign financing is to be accounted for separately by the parties, by the candidates in Presidential elections and by parties or groups of candidates concerning local elections. Organic Law no. 2/2005 (Article 10) empowers the Entity for Accounts and Political Financing (EAPF) to define, through regulation, the necessary rules to give a common standard to the proceedings regarding expenditure by political parties and electoral campaigns, regulations that are published in the Official Gazette. Pursuant to this legal basis, EAPF has issued a large number of regulations, including in respect of a common format on annual accounts of political parties and recommendations on electoral campaigns. The Regulations on annual accounts are applicable to all political parties, which have to comply with those formats. However, recommendations are applicable to the stakeholders in various elections but are not binding. The GET understood that the political financing accounts vary considerably in practice, although the conformity appears to have improved in recent years. The GET wishes to stress that the way in which this information is presented is crucial for any form of public scrutiny at a later stage. It is therefore of utmost importance that detailed accounting regulations are understood and implemented as intended by the political parties and others responsible for the accounting. Furthermore, the GET is pleased to note that the Law no. 19/2003, contains a provision that party accounts are to include the accounts of the regional or local branches of the party, either as an appendix or in the form of consolidated accounts, which is in line with Article 11 of Rec(2003)4. However, it is up to the parties how this accounting is organised and the GET was told that party accounts are not very informative in relation to their local branches. The GET understood that the larger parties do have accounting structures for these levels; however, in practice, the accounting at regional or local levels was generally less developed and there was a need to enhance such reporting. Moreover it should be noted in this respect that the political parties have been convicted by the Constitutional Court for not having consolidated accounts. In the light of the above, the GET recommends **to further enhance the implementation of a common format of the accounts of political parties and election campaigns and to take measures relating to the accounting requirements of income and expenditure of regional and local level branches of political parties in order to increase the accuracy and transparency of such accounting and its presentation in the party accounts.**
87. The GET notes that there are no obligations upon parties to make their accounts public and it understood from civil society representatives that it is generally difficult to obtain any such information directly from political parties. Instead the accounts are published by the monitoring mechanism and, officially, by the Constitutional Court. The annual party accounts are to be submitted by 31 May of the year following the year concerned and the accounts, often only the main documents, are accessible on the website of the Constitutional Court (EAPF) some three weeks later. The election accounts are to be submitted within 90 days of the date of the official election result; they are also made public by the Constitutional Court (EAPF). However, the GET learned that in practice the accounts are often much delayed and, as a consequence, so is their publication. It should be added that only the accounts, but no information on the process of the monitoring mechanism (i.e. EAPF’s report to the party, the reply by the Party, the opinion by the EAPF etc) is made public until a final decision has been taken by the Constitutional Court, and as is mentioned below (under “Monitoring”), this is a cumbersome and rather time consuming process, which may take several years. In conclusion, the GET firmly believes that the transparency of party and election accounts needs to be considerably strengthened in order to allow for scrutiny by the wider public in addition to the institutionalised monitoring. This could in principle be achieved either through an obligation upon the parties to make their accounts public at an early stage or to improve the transparency as provided for by the monitoring institutions,

including its own process. Consequently, the GET recommends **to take measures to ensure that appropriate information contained in the annual party accounts and the accounts of election campaigns is made public in an expedient way which provides for easy and timely access by the public.**

88. Currently, the legislation on accounting for election campaign financing as well as the annual party accounting is limited to the above-mentioned *ex-post* notification by political parties, independent candidates and election coalitions. In this connection, it should be added that political parties are also obliged to maintain a register of donations. However, there is no disclosure obligation during the election campaign period (6 months) itself. The transparency in election financing would benefit significantly from reporting on campaign funding at regular intervals, in particular during the election campaign as it would allow the public to be better informed and the authorities to uncover potential irregularities in the funding of elections at an early stage. The GET therefore recommends **to consider introducing more frequent reporting on income – including donations – and expenditure relating to election campaigns by political parties, independent candidates and candidate groups at appropriate intervals during the electoral campaign period.** Such an obligation appears particularly important should the current limits be increased in respect of donations and expenditure.
89. On a more general note, the GET also wishes to draw attention to the fact that individual candidates in elections as well as third parties are not covered by the regulations relating to transparency for the obvious reason that the financing rules do not allow direct contributions to individual election candidates – contributions must be channelled through the parties – and donations from legal persons are prohibited as such. Thus, it is in a way logical that these categories are not covered by the accounting rules, nor by the current monitoring. Yet, the GET was constantly made aware that there is a common belief in Portugal that there are considerable financial flows outside the regulated area, where for example candidates and various forms of private donations may play a crucial role. The GET believes that the 2009 attempt by Parliament to increase the level of the limits for donations as well as the caps on expenditure may indicate that the current system does not really reflect the reality of the financial flows, or at least the need for additional funding. In the view of the GET, the alleged situation cannot be solved within the framework of the current legislation. If, for example, the level of private donations were to be raised considerably, there might be a need for additional controls and transparency, should the exclusive right of parties to receive donations be altered in favour of candidates; there would also obviously be a need to monitor the candidates etc. The GET is concerned that it appears to be generally understood in Portugal that various forms of financial flows in politics, in particular, in relation to election campaigns are not covered by the current system. For these reasons, the GET recommends **that a study be carried out on political financing in respect of financial flows outside the regulated area, in particular, concerning various forms of third party contributions to various political stakeholders, including election candidates and to seek ways to increase the transparency concerning political financing from third parties.**

Supervision

Internal auditing

90. Political parties are not obliged themselves to have their accounts audited; the law only stipulates that parties are to establish internal supervisory mechanisms - there is no reference to the "independence" of such mechanisms. The GET was informed that most parties have their own accountants and some parties employ auditing firms; however, this is not common practice. The

GET reiterates what has been highlighted in previous GRECO reports, ie that the possibilities for manipulating party and election campaign accounts would decrease and that the credibility of such accounts would be considerably strengthened if the accounts were to be audited by independent auditors. In addition, such audits would also provide a better basis and thus facilitate the subsequent monitoring of parties' accounts at the level of State control. However, in the case of Portugal, the State monitoring mechanism (see below) employs external auditors from the commercial market to carry out the actual auditing on its behalf. In this particular situation, the GET does not find it necessary to recommend that party and election accounts should be subject to an internal audit by independent auditors, which would no doubt provide an unnecessary duplication of such auditing.

Monitoring

91. As noted above, the legal framework of political parties and election campaigns and their financing has been subject to numerous consecutive changes in Portugal since 1974. This is particularly true in respect of the external control of political financing; in fact, new legislation was adopted in 1993, 1998, 2000, 2003 and 2008, establishing various regulations aimed at increasing the control over private money flows in the political context. Currently, the Constitutional Court, which is also the registration authority of political parties, has the overall power to monitor the accounts of political parties and election campaign accounts⁵. The Constitutional Court is clearly an independent institution, which examines the regularity and the legality of the accounts of political parties and election campaigns and is assisted in this by the Entity for Accounts and Political Financing (EAPF). The EAPF is according to Law no. 19/2003 and Law no. 2/2005 also an independent body that “operates near the Constitutional Court”. It is composed of a President and two other members, at least one of them being a chartered accountant. They are elected by, and accountable to, the Constitutional Court. However, the actual audit of the accounts, whether related to annual party accounts or election accounts is done by external auditing companies, chosen on public procurement basis; these companies may change from year to year. While the law provides that the Constitutional Court is the “gatekeeper” of the submitted accounts and the ultimate decision maker on the substance of the accounting, the EAPF is responsible for the technical examination and control of the accounts; however, its control and opinion is based on the audit reports of their contracted private auditors. The GET finds this whole procedure rather cumbersome and noted that there are considerable delays in the process; for example, the annual accounts of political parties of 2007 (submitted in May 2008 to the Constitutional Court) had not at the time of the on-site visit (May 2010) been finally concluded by the Constitutional Court. However, the GET understood that this situation was extreme as the EAPF was a rather recently established body (2005) and that within a year, these delays would decrease significantly. The GET notes that despite the responsibilities conferred on the Constitutional Court in the Law no. 19/2003, only limited additional resources were provided to the Court. Moreover, the EAPF, as the expert body under the “aegis” of the Constitutional Court and responsible for the audits, is only composed of three executive staff (one of whom a part time accountant) and two assistants. However, this situation must be seen in light of the fact that the actual audits are carried out by subcontracted auditing firms on behalf of the EAPF. Moreover, the GET understood that the appropriateness of the organisation of the monitoring mechanism was subject to debate in Portugal and although the GET would favour a less cumbersome structure, it is of the firm opinion that the current model is fully in line with the requirements of an independent monitoring mechanism as foreseen in Article 14 of the Recommendation Rec(2003)4. However, the GET has doubts about the appropriateness of the

⁵ Before 2003, the monitoring was shared by the Constitutional Court (party accounts) and the National Election Commission (campaign accounts). The National Election Commission, monitors campaigns pertaining to referenda.

resources available to this mechanism and recommends **(i) to ensure that the Constitutional Court and the Entity for Accounts and Political Financing (EAPF) are provided with appropriate resources for carrying out their tasks in an efficient and expedient manner; and (ii) to reduce considerably the time of the monitoring process of annual party accounts and election accounts.**

92. The GET received information from several interlocutors that the EAPF, in carrying out its audits is bound to rely on the audit reports as submitted by the subcontracted auditing firms. As long as the auditing firms are well instructed by the EAPF on the particularities of political financing auditing, the GET has no objection to such a system; however, if this is not the case, there is an obvious risk that the auditing will be superficial. The GET recognises however from the information received from the EAPF that the auditors subcontracted by the Entity for Accounts and Political Financing (EAPF) are receiving precise instructions and pertinent training concerning political financing and the particularities of corrupt behaviour and infringements of regulations in this respect.
93. According to party representatives met on site, the legislation on party financing is in some cases ambiguous and unclear; there are often problems of interpretation and thus, the application becomes burdensome. The EAFP has the power to issue regulations on procedures and to address general recommendations for this purpose and do so on a regular basis. Nevertheless, the GET believes that the pro-active role of the EAPF in the current system as a regulator could be improved, in particular, as the legislation of political financing in Portugal is relatively new and likely to develop further. The implementation of the legislation in practice appears to be critical now and in the future and several interlocutors mentioned the need to “foster” and train parties and other stakeholders. The GET also notes the recommendations issued by the EAPF are not legally binding, which is a weakness of the system. The GET therefore recommends **to consider reinforcing the regulatory function of the Entity for Accounts and Political Financing (EAPF), and to develop its proactive advisory function, in particular, vis-à-vis political parties.** Such a measure would necessarily require adequate resources, as has been stressed above.

Sanctions

94. There are three sets of sanctions available under the legislation on political financing: criminal sanctions, sanctions for irregularities in relation to the accounting and administrative sanctions in respect of non-compliance with the auditing process. Firstly, the leaders of political parties, natural persons etc may be subject to criminal proceedings for offences, such as raising of prohibited funds which are to be sanctioned with imprisonment from 1 to 3 years. Such sanctions may only be applied by the competent criminal courts following prosecution. Secondly, according to the monitoring procedure, the EAPF will, as a final measure in respect of the auditing of party accounts and election campaign accounts, issue a draft opinion for possible adoption by the Constitutional Court on the presentation of the accounts and whether any irregularities have been identified. In case of irregularities, sanctions are available in Articles 29-32 of Law no. 19/2003 the application of which may only be decided by the Constitutional Court upon a proposal by the public prosecutor. Pursuant to Articles 29 and 30, fines can be applied in respect of political parties, their leaders, natural persons, the legal persons and the administrators of the legal persons who violate the rules on the financing of Parties. Articles 31 and 32 contain sanctions that are applied to the financial agents, the first candidates of each list or first proponents of electoral registered groups, as well as to political parties as such, which do not differentiate or substantiate the revenues and expenditures of an electoral campaign or do not present the

accounts of the electoral campaign. The sanctions range between 1 and 400 NMMW (EUR 426 – 170 400). Thirdly, Article 47 of Law no. 2/2005 on the EAPF, includes sanctions which are under the jurisdiction of the EAPF (but which may be appealed to the Constitutional Court). These are fines that may be imposed on political parties, financial agents, candidates to the presidential elections, first candidates of each list or first proponents of groups of citizens in cases of violation of their duties to communicate and cooperate with the EAPF in the auditing process. These sanctions range between 2-32 NMMW (EUR 853 – 13 632) in respect of natural persons and 6 – 96 NMMW (EUR 2 556 – 40 896) in relation to parties.

95. The GET takes the view that the legislation provides for a wide variety of sanctions which can be applied in respect of pertinent persons, party representatives, election candidates, legal persons etc. These cover criminal sanctions of imprisonment (to be applied by courts), fines for irregularities in the political financing and accounting (to be applied by the Constitutional Court) and, in addition, fines of a clear administrative nature that can be applied by the National Elections Commission and the EAPF in its auditing work. This said, the GET was informed that in the auditing process the Constitutional Court (as advised by the EAPF) has wide discretionary powers in accepting or rejecting accounting reports and that the rules allow for rejection of reports even for minor errors. Moreover, various interlocutors complained that the sanctions are applied in a rigid manner without concern for the particularities of the individual parties, for example, the fines are not proportional to the size of the parties; sanctions for certain types of irregularities may be insignificant to a large party and extremely heavy in respect of a small one. The GET takes the view that the legislation provides for a vast variety of sanctions, which appear to be rather flexible. The GET has not studied the practical implementation of the rules, but it goes without saying that factors, such as the size and economic situation of a particular party are relevant in relation to the effectiveness, proportionality and dissuasive character of the sanctions as applied. The GET recommends **to ensure that the sanctions in relation to political financing available in law – and as implemented – are effective, proportionate and dissuasive, taking into account factors such as the economic circumstances of natural and legal persons, including parties subject to such sanctions.**

V. CONCLUSIONS

96. The legal framework in place in Portugal on the financing of political parties and election campaigns is relatively developed. The political process is dominated by the political parties and the state funding to the parties and in relation to election campaigns provides a substantial part of the total political funding. In addition, there are detailed rules establishing the basis for and limits of private financing of political parties and election campaigns; contributions from legal persons are prohibited and anonymous donations are banned as well. Financing to individual candidates is also prohibited, except in relation to presidential elections. Private donations are only allowed in the form of bank transfers or cheques and the donors are identified in the accounting, above a certain value donated. Portugal should be commended for having established such a detailed legal framework in this area and many of the principles contained in Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns are reflected in the law. Notwithstanding this, the system of political financing has developed rather rapidly in recent years. Criticism of the system is to a large extent relating to the perception that the current legislation is not fully applied and implemented as intended. Moreover, citizens' trust in political parties and politicians appears to be declining. In the light of cost increases, in particular in relation to election campaigns, there is a debate on allowing for more private funding, and this debate is connected to the proper supervision of the system. A major problem in relation to transparency of political financing in Portugal is the fact that accounts are

generally made public at a late stage. This is particularly striking in relation to election campaigns. Moreover, overall transparency would benefit from a more coherent format in respect of the presentation of the accounts of political parties and election campaigns. The monitoring mechanism under the responsibility of the Constitutional Court, a clearly independent body, relies on technical expertise from the Entity for Accounts and Political Financing (EAPF), which in turn relies on external auditing, is a structure which appear rather cumbersome and as a result, the monitoring, although thorough, is very time consuming. Consequently, the results of the monitoring are presented at a very late stage. The need for assistance in implementing the legislation in practice to those who are obliged to apply the law appears necessary and a more proactive role of the EAPF to this end would serve such a purpose.

97. In view of the above, GRECO addresses the following recommendations to Portugal:

- i. **to further enhance the implementation of a common format of the accounts of political parties and election campaigns and to take measures relating to the accounting requirements of income and expenditure of regional and local level branches of political parties in order to increase the accuracy and transparency of such accounting and its presentation in the party accounts (paragraph 86);**
- ii. **to take measures to ensure that appropriate information contained in the annual party accounts and the accounts of election campaigns is made public in an expedient way which provides for easy and timely access by the public (paragraph 87);**
- iii. **to consider introducing more frequent reporting on income – including donations – and expenditure relating to election campaigns by political parties, independent candidates and candidate groups at appropriate intervals during the electoral campaign period (paragraph 88);**
- iv. **that a study be carried out on political financing in respect of financial flows outside the regulated area, in particular, concerning various forms of third party contributions to various political stakeholders, including election candidates and to seek ways to increase the transparency concerning political financing from third parties (paragraph 89);**
- v. **(i) to ensure that the Constitutional Court and the Entity for Accounts and Political Financing (EAPF) are provided with appropriate resources for carrying out their tasks in an efficient and expedient manner; and (ii) to reduce considerably the time of the monitoring process of annual party accounts and election accounts (paragraph 91);**
- vi. **to consider reinforcing the regulatory function of the Entity for Accounts and Political Financing (EAPF), and to develop its proactive advisory function, in particular, vis-à-vis political parties (paragraph 93);**
- vii. **to ensure that the sanctions in relation to political financing available in law – and as implemented – are effective, proportionate and dissuasive, taking into account factors such as the economic circumstances of natural and legal persons, including parties subject to such sanctions (paragraph 95).**

98. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Portuguese authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2012.
99. Finally, GRECO invites the authorities of Portugal to authorize, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.