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Evaluation Report on Ukraine
Transparency of Party Funding

(Theme II)

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I. INTRODUCTION

1. Ukraine joined GRECO in 2006. GRECO adopted the Joint First and Second Round Evaluation Report (Greco Eval I/II Rep (2006) 2E) in respect of Ukraine at its 32nd Plenary Meeting (23 March 2007). The aforementioned Evaluation Report as well as its corresponding Compliance Report are both 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 (ETS 173)[1], 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 Ukraine from 13 to 15 April 2011, was composed of Mr Jean-Christophe GEISER, *Collaborateur scientifique, Office fédéral de la justice* (Switzerland), Mr Daimar LIIV, Judge, Tallinn Administrative Court (Estonia), and as scientific expert, Mr Yves Marie DOUBLET, Deputy Director, National Assembly, Legal Department, Unit of Legal Studies (France). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation Questionnaire (document Greco Eval III (2011) 1E, Theme II) as well as copies of relevant legislation.

4. The GET met with officials from the following governmental organisations: Ministry of Justice, Central Election Commission, Accounting Chamber, State Control and Revision Office, General Prosecutor's Office, Supreme Court, Parliamentary Committee on State and Local Government and State Tax Administration. The GET also met with representatives of political parties (All-Ukrainian Union "Fatherland", Party "Motherland defender", Party of regions, People's Party, Political party "People's self-defence", Political party "Strong Ukraine", Political party "UDAR") and of non-governmental organisations (Center of European Integration, Center for Political and Legal Reforms, Creative Union "TORO"/Contact group of Transparency International in Ukraine, Democratic Initiatives Foundation, Laboratory of Legislative Initiatives, Public Committee of national security of Ukraine, Ukrainian Center for Independent Political Research).

5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party 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 Ukrainian 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 Ukraine in order to improve its level of compliance with the provisions under consideration.

[1] Ukraine ratified the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol to the Criminal Law Convention (ETS 191) on 27 November 2009. These instruments entered into force in respect of Ukraine on 1 March 2010.

6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2011) 1E-Theme I.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

Legal framework

7. In Ukraine, political parties are governed by the Law on Civil Associations of 16 June 1992 (LCA) and the Law on Political Parties in Ukraine of 5 April 2001 (LPP). The LCA regulates both the activity of civil organisations (non-governmental organisations) and political parties and includes basic principles of political party finance; the more recent LPP introduces a more comprehensive regulatory framework for the functioning of political parties and elaborates on the principles and mechanisms of party finance first introduced in the LCA.

8. Specific rules on electoral campaign funding are established by the Law on Parliamentary Elections of 25 March 2004 (LParlE), the Law on Presidential Elections of 5 March 1999 (LPresE) and the Law on Local Elections of 10 July 2010 (LLocE).[2]

9. In addition, articles 36 and 37 of the Constitution set forth some general principles concerning political parties.[3] According to these provisions, citizens of Ukraine have the right to freedom of association as regards the formation of and participation in political parties and public organisations for the exercise and protection of their rights and freedoms and for the satisfaction of their political, economic, social, cultural and other interests, with the exception of restrictions established by law in the interests of national security and public order, the protection of the health of the population or the protection of rights and freedoms of other persons. Political parties promote the formation and expression of the political will of citizens and participate in elections. Only citizens of Ukraine may be members of political parties. Restrictions on membership in political parties are established exclusively by the Constitution and the laws of Ukraine.[4] The establishment and activity of political parties and public associations are prohibited if their programme, goals or actions are aimed at the liquidation of the independence of Ukraine, changing the constitutional order by violent means, violating the sovereignty and territorial indivisibility of the State, undermining its security, the unlawful seizure of State power, the propaganda of war and of violence, inciting inter-ethnic, racial, or religious enmity, threatening human rights and freedoms and the health of the population. Political parties may not set up paramilitary formations and the organisational structures of political parties can not be established or function within bodies of the executive and judicial power and executive bodies of local self-government, in military formations, in State enterprises, educational establishments and other State institutions and organisations.

Definition of political parties

10. A political party is defined by section 2 LPP as "a voluntary association of citizens supporting a certain national programme of social development, registered in accordance with the law, having as its objective the contribution to the formation and expression of the political will of the citizens and participation in the elections and other political events."

[2] The funding of referenda campaigns is not regulated in detail. The Law on National and Local Referenda of 3 July 1991 only provides that the preparation and holding of referenda are to be at the expense of funds of the State budget or of the relevant local budgets.

[3] See also sections 1 to 5 LPP.

[4] See section 6 LPP, according to which judges, officials of the public prosecutor's office, officials of bodies of the Interior, employees of the Security Service of Ukraine, military personnel, officials of the State tax authorities and staff of the State Penal Service of Ukraine may not be a member of a political party.

11. Similarly, section 2 LCA defines a political party as "an association of people who adhere to a certain national programme of social development, which have the main purpose of taking part in the development of the State policy, forming the central power bodies, the bodies of local and regional self-governments, obtaining representation in them."

12. Political parties acquire legal personality after their registration.[5]

Founding and registration of political parties

13. The decision on the founding of a political party is taken during its constituent assembly.[6] The decision must be supported by at least 10,000 signatures of Ukrainian citizens with the right to vote, to be collected in at least two-thirds of the districts of at least two-thirds of the administrative regions ("oblasts") of Ukraine and in the cities of Kiev and Sevastopol, and the Autonomous Republic of the Crimea. The constituent assembly of a political party adopts its statute and programme and elects its executive and supervisory-auditing bodies. A political party may start operating only after it has been officially registered.

14. A political party is registered by the Ministry of Justice after verification of the application, which includes the statute and programme of the party, the minutes of the constituent assembly, the requisite signatures, information about the structure of its executive bodies, proof of payment of the registration fee and the name and address of the bank with which the party has opened accounts. Within six months from the date of registration, the party has to complete the formation and registration of regional, city and district organisations in most regions of Ukraine. These party organisations and other structural subdivisions envisaged by the party statute are to be registered by relevant bodies of the Ministry of Justice after the political party has been registered. After registration, regional, city and district party organisations may obtain legal entity status, if it is foreseen in the party statute. Party units which according to the statutes are not granted legal entity status have to legalise their operation by written notification to the Ministry of Justice within ten days. The political party annually informs the Ministry of Justice about its regional, city and district organisations or other structural subdivisions envisaged by the statute and advises the Ministry of Justice of any changes in the name, programme, statute and executive bodies of the party, their address and location within a week.

15. The Ministry of Justice annually publishes a list of registered political parties and their legal addresses. In November 2010, the Uniform Register of Public Organisations kept under the responsibility of the Ministry of Justice included 185 political parties.

Participation in elections

16. Ukraine is a mixed semi-presidential, semi-parliamentary republic with a multi-party system and with separate legislative, executive and judicial branches. The current Constitution dates from 1996; constitutional amendments of 2004, which reduced the powers of the President in favour of the Parliament, were quashed by the Constitutional Court in October 2010. The President, MPs, members of local councils and mayors are elected by popular vote on the basis of equal and direct universal suffrage through secret ballot and in accordance with the rules established by the Law on Presidential Elections (LPresE), the Law on Parliamentary Elections (LParlE) and the Law

[5] Section 11, paragraph 4 LPP. See also section 3 of the Law on State Registration of Legal Persons and Physical Persons-Entrepreneurs, according to which all legal persons (and physical persons-entrepreneurs) and therefore political parties acquire legal personality after their registration in the State Registry of Legal Persons and Physical Persons-Entrepreneurs.
[6] Section 10 LPP.

on Local Elections (LLocE). All citizens of Ukraine of at least 18 years of age have the right to vote, except those recognised as legally incapable by court decision.

17. The Head of State is the President, who is the guarantor of the State's independence and national security, represents the State in foreign relations and is the Commander-in-Chief of the armed forces of the country. Under article 106 of the Constitution, the Head of State has a broad range of powers, including the appointment and dismissal of the Prime Minister (with the assent of Parliament) and of the Cabinet (upon proposal by the Prime Minister) and the right to veto laws adopted by Parliament (however, Parliament can override the President's veto with a 2/3rds constitutional majority vote). The President is elected for a term of five years and may be re-elected once. Ukrainian citizens of at least 35 years of age who have the right to vote, speak the national language and have lived in Ukraine during the ten years preceding election day may be elected President. Ukrainian citizens with the right to vote, have the right to nominate a presidential candidate. This right is exercised through political parties and electoral blocs of parties (the parties must have been registered at least one year before election day) or, for independent candidates, by self-nomination. Nominations start 89 days before and terminate 71 days before election day.

18. The unicameral national Parliament (the *Verkhovna Rada*) is composed of 450 members who are elected for a five-year term by party-list proportional representation with closed lists. Seats are divided among the parties and blocs of parties whose electoral lists obtain nationally at least 3 % of the vote. Every Ukrainian citizen of at least 21 years of age who has the right to vote, has resided in Ukraine during five years preceding the day of elections and has not been convicted of an intentional crime is eligible to be a deputy. Ukrainian citizens with the right to vote have the right to nominate candidates. This right is exercised through political parties and electoral blocs of parties (the parties must have been registered at least one year before election day). An electoral bloc may be formed by two or more parties upon decision of the assembly of each of those parties before expiry of the period for the nomination of candidates, which starts 119 days before and terminates 90 days before election day. The number of candidates nominated by a party or bloc of parties – party members or non-partisan persons – may not exceed the number of deputies defined by the Constitution and may not be less than 18. Candidates included in the electoral lists of parties and electoral blocs are registered by the Central Election Commission, provided that a monetary pledge of 2,000 monthly minimum wages[7] has been paid by the party or electoral bloc concerned.

19. Local self-government is guaranteed under Article 7 of the Constitution. Local elections include 1) elections of the deputies of the Parliament of the Autonomous Republic of Crimea and of the members of regional, district, town and municipal district councils – according to the mixed majority and proportional system (half of the number of deputies is elected on the basis of electoral lists of political parties in a common multi-mandate constituency,[8] the other half by relative majority in several one-mandate constituencies); 2) elections of the members of the village and rural councils – according to the majority system (relative majority in several one-mandate constituencies); 3) elections of village, rural and town governors – according to the majority system (relative majority in the common one-mandate constituency). The right to vote in local elections is restricted to residents of the relevant territorial communities. Ukrainian citizens having the right to vote have the right to nominate candidates. This right is exercised through the

[7] According to section 25 of the 2011 State Budget Law, the monthly minimum wage in Ukraine in 2011 is 941 UAH / approximately 86,57 EUR.

[8] Deputies' mandates are divided among the parties whose electoral lists have obtained at least 3% of the votes, provided that the number of votes is at least equal to the electoral quota.

relevant officially registered local party organisations or – in the case of elections of local governors or members of village and rural councils – by self-nomination (independent candidates).

20. Elections are conducted by the Central Election Commission (CEC) and, in the case of local elections, by Territorial Election Commissions (TEC). They are tasked, *inter alia*, with ensuring the observance by electoral subjects i.e. individual candidates, political parties, electoral blocs or – in local elections – local party organisations of the election principles enshrined in the Constitution and election laws. Their decisions can be appealed in court.[9]

21. Election campaigning outside the officially designated time periods is prohibited. In parliamentary elections, the election campaign starts at the moment when the CEC adopts a decision to register candidates nominated by a political party or electoral bloc and ends at midnight of the last Friday before election day. In presidential elections, a candidate may start campaigning on the day following the decision by the CEC to register that person as a presidential candidate and s/he must finish campaigning by midnight on the last Friday before election day. In local elections, a candidate or local party organisation which nominated candidates for election may start campaigning on the day following the TEC decision to register a candidate/candidates. The election campaign in local elections ends at midnight on the last Friday before elections.

Party representation in Parliament

22. The last (extraordinary) parliamentary election was held on 30 September 2007. As of January 2011, the distribution of parliamentary seats was as follows:

Party / electoral bloc of parties	Number of registered deputies
Party of regions	175
"Bloc of Yulia Tymoshenko" (All-Ukrainian Union "Fatherland"; Ukrainian Social Democratic Party; Reforms and Order Party)	156
Our Ukraine–People's Self-Defence Bloc (People's Union "Our Ukraine" – since June 2009, the political party "Our Ukraine"; the political party "Vpered, Ukraino!" – since February 2010, the political party "People's Self-Defence"; People's Movement of Ukraine; Ukrainian People's Party; Ukrainian Republican Party "Sobor"; the party "Christian Democratic Union"; European Party of Ukraine; the party of the citizens "PORA"; Party "Motherland defenders")	72
Communist party of Ukraine	27
Litvin bloc (People's Party)	20

Altogether, 20 parties and blocs of parties participated in these elections.

Overview of the political funding system

Legal framework

23. Permitted and prohibited sources for the financing of political parties in general are regulated in sections 14 to 15 LPP and, in more detail, in sections 21, 22 and 24 LCA. Section 14 LPP sets forth the principle that political parties are non-profit organisations and have the right to have funds and other property to carry out their statutory tasks.

[9] Cf. paragraphs 61 to 64 below.

24. The financing of election campaigns of political parties (or blocs of parties) and election candidates is specifically regulated by the different election laws and is restricted to two sources,[10] namely 1) funds from the State budget and from local budgets; and 2) election funds which are set up by individual candidates (in presidential elections and local elections in one-mandate constituencies), by political parties (in parliamentary elections) or by local party organisations (in local elections in multi-mandate constituencies).[11] In parliamentary elections, the election fund must be established not later than 65 days prior to the day of elections and in presidential elections, within ten days from the candidates' registration with the CEC; in the case of local elections, candidates or local party organisations are not obliged but have the right to establish an election fund, with an account to be opened not later than 18 days before election day. The banking institutions concerned are to inform the CEC (in national elections) or the TEC (in local elections) about the opening of election fund accounts and their details and the CEC/TEC have to publish this information in specified press.

25. The financing of entities related, directly or indirectly, to political parties or otherwise under their control, as well as of organisations affiliated to political parties, is not specifically regulated by the LPP or the LCA or the election laws. Party structures may include local organisations as provided by the statute of the party, media as well as organisations and institutions founded by the party, the latter not being defined by law. The authorities indicate that local party organisations without legal personality are financed from the consolidated budget of the party – they have no independent accounts or other channels of cash flow –, whereas local organisations with the status of a legal entity are financed according to the general rules applying to political parties, taking into account the limitations prescribed in the party statute. Organisations affiliated to political parties include scientific and research departments, training centres and funds which formally do not belong to the parties but operate for them. Relations between parties and such affiliated groups are not legally regulated.

Direct public funding

26. Direct State funding of political parties was implemented by the Law "On Amendments to Some Legislative Acts of Ukraine in Connection with Implementation of State Funding of Political Parties in Ukraine" of 27 November 2003. This law introduced direct public funding of statutory party activities and provided for reimbursement of parliamentary election expenditure from the parties' election funds, through a new chapter IV.1 with sections 17.1 to 17.9 LPP and an amended section 98 LParlE. Both types of State funding had to be granted only to those parties which met the 3 % election threshold either independently or within electoral blocs. Public funding of statutory activities had to start in January 2007 and reimbursement of campaign expenditure after the 2006 parliamentary elections. The new LPP provisions also included specific reporting and disclosure obligations on political parties in respect of the amount and use of State funds as well as a monitoring function – to be exercised by the Accounting Chamber and the State Control and Revision Office – and sanctions. However, the State Budget Law for 2007 suspended the financing of statutory activities of political parties for 2007, and point 91 of part II of the Law "On the State Budget of Ukraine for 2008 and On Amendments to Some Legislative Acts of Ukraine" of 28 December 2007 repealed all the provisions on public financing of political parties introduced in 2003 (with regard to both their statutory activities and reimbursement of electoral campaign expenditures). Nevertheless, by decision of the Constitutional Court of 22 May 2008, point 91 of

[10] Section 37 LPresE, section 48 LParlE, section 60 LLocE.

[11] See the detailed regulations on the establishment and maintenance of election funds in sections 41-43 LPresE, sections 51-53 LParlE and sections 62-64 LLocE.

part II of this law was declared non-constitutional.[12] This led to a situation of legal uncertainty, described by the authorities as "legal collision". On the one hand, the decision by the Constitutional Court had direct effect and the provisions repealing State funding were thus repealed. On the other hand, however, it would appear that in the absence of a legislative act to restore the provisions on State funding – i.e. the new chapter IV.1 of the LPP (State financing of political parties) and section 98 LParlE in its amended form (reimbursement of parliamentary election expenditure by the State) – they remained void. Therefore, the present report does not take them into account.

27. Annual State funding of statutory party activities as foreseen by the (repealed) chapter IV.1 of the LPP has, in practice, never been granted. By contrast, before section 98 LParlE was repealed, the CEC twice passed decisions on reimbursement of election campaign expenditures to political parties. In fact, the political parties received reimbursement of their expenditure on the 2006 parliamentary campaign in 2007 – five parties and electoral blocs received, in total, 126,854,000 UAH / approximately 11,670,568 EUR –, whereas campaign expenses incurred in 2007 for the extraordinary parliamentary elections were never reimbursed as the 2008 State Budget Law did not provide for any funds for reimbursement.

Indirect public funding

28. Firstly, under section 157 of the Tax Code, which entered into force in April 2011, the income received by political parties in the form of funds or property transferred free of charge or provided as irrevocable financial aid or donations, as well as in the form of passive incomes (dividends, interest, royalties), and, furthermore, funds or property received from the main activities of the parties (including revenues from sale of social and political literature, other promotional materials and merchandising, organising festivals, exhibitions, lectures and other political events) and grants or subsidies received from State or local budgets are exempt from taxation. Moreover, section 196 of the Tax Code provides that transactions involving the payment of dividends, royalties in cash or in the form of securities made by the issuer, are not subject to value added tax. Finally, the accounts of election funds of parties, electoral blocs and candidates are exempt from corporate income tax and private income tax.

29. Secondly, certain types of election campaigning by candidates, parties and blocs are financed from the State budget or local budgets. For example, in parliamentary elections, the following activities are financed from the State budget: publication of the election programme of every party and bloc in the official journals "Voice of Ukraine" and "Governmental Courier", as well as in one regional newspaper; provision of airtime for election campaigning for each party and bloc (for each party: 60 minutes on national public television, 60 minutes on national public radio, 20 minutes on regional television channels in every region, and 20 minutes on regional radio channels in every region); and publication of information posters of parties and blocs with full programmes, complete lists of candidates and photographs of the first five candidates in the lists (2 copies of a poster of one party or bloc for every polling site).[13] Similar rules apply to presidential and local election campaigns.[14]

[12] Decision No. 10-рп/2008. The Court decided that the Law on the State Budget cannot amend, suspend, or abrogate other laws because such a possibility leads to discrepancies in laws and, therefore, restrictions of the existing rights and freedoms enshrined in the Constitution.
[13] Sections 67, 69 and 70 LParlE.
[14] See sections 59, 61-63 LPresE and sections 49, 50 and 52 LLocE.

Private funding

General funding of political parties

30. According to section 14 LPP, political parties are entitled, in order to carry out their statutory tasks, to movable and immovable property, funds, equipment, transport and other facilities the acquisition of which is not prohibited by law, and they may lease any such movable and immovable property as they require. Section 21 LCA contains similar but more detailed provisions on permitted property of civil associations and therefore political parties, which include assets and other property transferred to the parties by their founders, members or the State, including entrance and membership fees; property acquired at the parties' own expense or by other means, not prohibited by law; donations by citizens, enterprises, institutions and organisations; and property acquired from sale of social and political literature, other promotional materials and merchandising, and organising festivals, exhibitions, lectures and other political events.

31. Pursuant to section 15 LPP, the financing of political parties by bodies of State authority and local self-government is prohibited, except in cases envisaged by the law; by State and municipally owned enterprises, institutions and organisations, as well as by enterprises, institutions and organisations having government or municipal shares or with a foreign interest; by other countries and foreign nationals, enterprises, institutions and organisations; by benevolent and religious associations and organisations; by anonymous persons or persons using pseudonyms; by political parties other than members of the electoral bloc. The corresponding section 22 LCA makes it clear that financing of political parties by non-legalised civil organisations is also prohibited and that financing from mixed ownership enterprises is excluded only if the share of the State or a foreign partner is more than 20 %.

32. Membership fees are not further regulated. The law does not provide any limit or restriction on such fees.

33. Donations may be granted to political parties by domestic natural and legal persons, with the exceptions mentioned above, and take the form of cash or non-cash donations. There is no clear definition of donations, the laws refer to "funds" or "property" acquired by a party. The authorities explain that in accordance with section 14 of the Tax Code, "funds" are to be understood as money in UAH or foreign currency and "property" refers to the definition given by section 190 of the Civil Code i.e. separate things, sets of things and property rights and obligations. Furthermore, section 720 of the Civil Code defines "donations" as gifts, whether movable or immovable, including money and securities, to specified persons (natural and legal persons, the State etc.) for reaching certain agreed goals. Donations in kind – such as services rendered, execution of works, provision of free transportation or advertising etc. – are not foreseen by the laws, i.e. they are neither prohibited nor regulated. No value thresholds are fixed; section 8 LCA states that Parliament defines the maximum amounts of annual donations to political parties, but in reality no such restrictions have ever been established. Anonymous donations are explicitly excluded.

34. Political parties may acquire movable and immovable property in order to carry out their statutory tasks as non-profit organisations, but section 22 LCA makes it clear that they are prohibited from obtaining income from shares and other securities. Pursuant to section 24 LCA, parties may neither found enterprises, except in the media sector,[15] nor carry out economic and other commercial activities, except for selling social and political literature, other promotional materials

[15] See also section 12 LPP: Political parties have the right to set up their own media.

and merchandising, organising festivals, exhibitions, lectures and other social and political events. The authorities indicate that fundraising activities are allowed within these limits.

35. The taking out of loans by political parties is not prohibited or specifically regulated. The authorities indicate that the general banking legislation applies.

36. In accordance with section 166.3.2 of the Tax Code, which entered into force in January 2011, a taxpayer may claim a deduction from annual taxable income for donations to non-profit organisations and therefore political parties to an amount which does not exceed 4 % of the total taxable income relating to the reporting year.

Funding of election campaigns

37. In presidential elections, the election fund of a candidate can be formed from his/her own funds, the funds of the party that nominates him/her or the funds of parties that form a bloc to nominate a candidate, as well as from individual donations. In parliamentary elections, the election fund of a party or electoral bloc can be formed from the funds of the party (or funds of the parties that form a bloc) and from individual donations. In local elections, the election fund of a local party organisation that nominates candidates in a multi-mandate constituency is formed from its own funds and from individual donations. The election fund of a mayoral candidate or any other candidate nominated to a one-mandate constituency can be formed from the personal funds of the candidate, from the funds of the local party organisation that nominates the candidate and from individual donations. Legal entities (except the nominating parties), foreigners, stateless persons and anonymous contributors are prohibited from making donations to election funds of political parties, blocs and candidates in presidential, parliamentary or local elections. Voluntary contributions by individuals to election funds may be admitted by banking institutions or post offices only on the condition that contributors submit a document certifying their identity; the payment document must indicate the contributor's family name, first name, patronymic, date of birth and address of permanent residence.[16] The authorities indicate that due to the fact that only monetary contributions to election funds are permitted, donations in kind are excluded. Loans may be used for financing election campaigns only if they are transferred to the election fund concerned.

38. There are no quantitative restrictions on the total amount which can be accumulated in an election fund or the amounts which can be contributed by the parties or candidates to their own election funds. In contrast, the election laws set the following ceilings for donations which an individual can make – in total – to one election fund: in presidential and parliamentary elections, they must not exceed 400 times the monthly minimum wage (376,400 UAH / approximately 34,630 EUR), and in local elections, 10 times the monthly minimum wage (9,410 UAH / approximately 866 EUR). In case of receipt of donations exceeding these ceilings, the exceeding amount is returned by the banking institution to the donor or, if this is impossible, to the relevant State or local budget.

Expenditure

39. There are no quantitative but only qualitative restrictions on expenditure of political parties in general or on expenditure of electoral subjects from their election funds. Parties may spend their funds only on statutory objectives and activities. Capital from election funds can be spent only for purposes related to campaign activities in relevant elections and relevant constituencies. Payments from current accounts of election funds can not be made in cash. Expenditure must

[16] Section 43 LPresE, section 53 LParlE, section 64 LLocE.

cease at 15h00 on the last day before election day and election fund accounts must be closed by banking institutions on the fifteenth day after the official announcement of election results. Funds that have not been used by a candidate are to be transferred, after the elections, to the current account of the party or electoral bloc which nominated him/her or, in the case of a self-nominated candidate, to the State budget.

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

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

Books and accounts

General funding of political parties

40. Section 17, paragraph 5 LPP provides that "political parties keep accounting records in the established order." The authorities indicate that conducting of account books, records, financial accounts and auxiliary documents concerning income and expenses of political parties are kept according to the stipulations in accounting regulations for non-profit organisations. Pursuant to section 3, paragraph 2 of the Law on Bookkeeping and Financial Reporting, bookkeeping is the obligatory type of accounting, regulated by national standards of bookkeeping. All donations to political parties – including information on their nature and value and on the identity of the donor[17] –and their expenditure – including information on their value, purpose and the recipient – must be registered in the party accounts. The authorities indicate that party bookkeeping must be entrusted to certified bookkeepers.

41. The main objective of accounting requirements on political parties is to control their observance of tax legislation. Therefore, political parties have to establish quarterly tax reports on the basis of the primary accounting documents, in the manner defined by the State Tax Administration Order No. 233 of 11 July 1997. These "financial statements on the use of funds by a non-profit organisation" are composed of two parts which contain 1) all tax-exempt income and use thereof; and 2) all other income, for the calculation of profit tax. More particularly, party reports must indicate, in a generalised and aggregated way, the sum of funds or property transferred free of charge or provided as irrevocable financial aid or donations; passive income; funds or property received from the main activities of the party (including revenue from sale of goods/services which promote the principles and ideas of the party and are closely connected with its main activity); assets transferred to the party after the liquidation of another organisation; grants or allowances received from the State budget; expenses incurred by a party for fulfilment of its statutory tasks; and the sum of expenses for other needs provided by the statutory documents (expenses have to be included only in so far as the party can prove that funds have been spent for the statutory activity of the party).

42. In addition, section 17, paragraph 1 LPP obliges political parties to prepare a yearly income and expenses statement as well as a property statement in view of their publication. Neither the LPP nor the legislative acts of the Government and the Ministry of Justice contain any specific requirements on the form and content of these statements. The authorities indicate that, as a rule, the statements show the total sum of financial receipts, the total sum and purpose of expenses and information on property of the party (such as real estate etc.).

[17] In accordance with section 9, paragraph 2 of the Law on Bookkeeping and Financial Reporting.

43. The above-mentioned accounts and reports of political parties are not required to include information on the activity of organisations connected with them, except for local and other party organisations which are integrated into the party structure. Party organisations which have been established by the party but have the status of a legal entity (e.g. organisations at local level, media etc.), are subject to the same accounting obligations as the party itself.

Funding of election campaigns

44. The election laws require electoral subjects to open for their election funds 1) a cumulative account in a banking institution in the city of Kiev, for accruing funds assigned for financing the election campaign; and 2) current accounts, for covering costs needed for the campaign; funds may be accrued exclusively from the cumulative account. The electoral subjects have to assign 1) managers of election funds (cumulative account managers), who bear an exclusive right to credit funds remitted to the accounts and to distribute funds between current accounts and who keep financial records with regard to the cumulative account; and 2) administrators of current accounts responsible for ensuring observance of financial regulations (in particular, they are obliged to refuse prohibited donations), target the use of means of the election fund and keep financial records with regard to the current accounts. Financial records are kept on the basis of the information provided regularly by the banking institutions concerned.

45. After elections, the fund managers have to submit financial statements on the receipt and use of election funds to the relevant election commissions in accordance with forms established by the CEC specifically for each election. The requirements as to the content of these statements are not defined by law but by CEC decisions[18] which regulate in detail as follows: 1) primary reports are to be prepared by current account administrators (reports on receipts in the current account and their use); and 2) financial statements are to be prepared by the fund managers and to be submitted to the election commissions (report on formation of the election fund; consolidated reports on receipts in the current account and their use, on the basis of the reports mentioned under 1; report on the transfer of unused means of the election fund). These financial statements are to contain information on all operations carried out via cumulative and current accounts within the entire period of their functioning, including a description of each financial operation and explanatory notes. In particular, they must specify each individual donation (indicating its date; number of payment order; name, surname, patronymic, date of birth, place of residence and address of the donor; and value of donation) and each item of expenditure from the current accounts (indicating the date of payment; number of payment order; the beneficiary's full name and code in the State Register of Enterprises and Organisations or in the State Register of Individual Taxpayers; purpose of payment; and amount of expenditure). However, in the case of donations by political parties or self-nominated candidates to the candidates' election funds, only the date of payment, number of payment order and value of the donation must be specified. The authorities explain that the registration of donations in kind (e.g. services granted free of charge or at a discount) is not regulated as the election fund can not be financed from such sources. They furthermore indicate that there is no mechanism to deal with cases where donations exceeding the legal thresholds are split into several smaller donations, and that organisations connected with political parties are not subject to financial reporting requirements.

[18] See the current CEC decisions: No. 72 of 5 January 2001 (for parliamentary elections); No. 148 of 9 October 2009 (for presidential elections); and No. 338 of 3 September 2010 (for local elections).

Preservation of records

46. The authorities indicate that in the absence of specific regulations on the storage of records of party finances and election funds, the general rules of the Law on Bookkeeping and Financial Reporting apply. In accordance with section 8, paragraph 3 of this law such documentation must be kept for at least three years.

Reporting obligations

General funding of political parties

47. Political parties have to submit quarterly tax reports (see STA Order No. 233, "financial statements on the use of funds by a non-profit organisation") to the local tax inspectorates. By contrast, there is no reporting obligation with regard to the more detailed primary accounting records (see section 17, paragraph 5 LPP and the Law on Bookkeeping and Financial Reporting) which are drawn up by the parties for the purpose of bookkeeping.

48. The law does not require political parties to submit their yearly income and expenses statements and property statements (see section 17, paragraph 1 LPP) to any State body.

Funding of election campaigns

49. All election laws require managers of election funds to submit the financial statements on the receipt and use of election funds to the relevant election commissions in accordance with forms established by the CEC. For parliamentary and presidential elections, the financial statements must be submitted to the CEC not later than the fifteenth day after the election and in local elections, they are to be submitted to the relevant TEC not later than the fifth day after the election.[19] The authorities indicate that fund managers are not obliged to also submit source documents such as payment orders, invoices etc. as the CEC and TEC receive detailed information directly from the banking institutions concerned, via weekly bank statements on the accounts of election funds.

Publication requirements

General funding of political parties

50. Whereas the LPP does not contain any disclosure obligations in relation to the general party accounts (or the tax reports), section 22 LCA provides that political parties must publish their annual budgets. The law, however, does not describe the method and terms for the publication of such budgets or their form. Section 26 LCA furthermore requires that, on the basis of financial declarations, the official journal "Voice of Ukraine" publishes annual lists of persons whose donations to political parties exceed the ceiling set by Parliament, but in reality no such restrictions have ever been established.

51. Pursuant to section 17, paragraph 1 LPP political parties are obliged to publish their yearly income and expenses statements and property statements in the national press. No timeframe for publication is stipulated.

[19] Section 52 LParlE; section 42 LPresE; section 63 LLocE.

Funding of election campaigns

52. Financial statements on the receipt and use of election funds are to be published 1) in presidential elections, by the CEC in the official journals "Voice of Ukraine" and "Government Express" not later than on the eighteenth day after the day of elections;[20] and 2) in local elections, by the relevant TEC in the local press within five days from the date of receipt of the statement.[21] However, only general information on income and expenses from election funds is published, namely the total value of individual donations, of the candidate's or the party's own funds and of the campaign expenditure. The more detailed descriptive information contained in the reports is submitted to the election commission concerned but not made public.

53. In parliamentary elections, the financial statements on the receipt and use of election funds are not subject to publication.

Access to accounting records

54. Firstly, section 18, paragraph 2 LPP sets forth the general principle (not specifically in respect of party finances) that political parties must provide any such documents and explanations as may be required by the control authorities (Ministry of Justice, Central Election Commission, Accounting Chamber and State Control and Revision Office).

55. Secondly, the authorities indicate that the accounting records of political parties are accessible to law enforcement bodies, including bodies of the Public Prosecutor's Office and tax authorities[22] on the basis of general legal principles. They have the right to receive the reports and other documents that are necessary for the performance of their functions.[23] In case a crime is suspected, the grounds for access to accounting records are stipulated in the Criminal Procedure Code. The authorities indicate that the aforementioned rules do not only apply to general accounting records of political parties but also to information on election funds (however, the State Tax Administration can be involved only at the initiative of the CEC).

56. In addition, according to the authorities, citizens have the right to access financial information of political parties in general and in relation to electoral campaigns, given that such information is not included in the categories of confidential, bank, commercial or secret information as defined by sections 29 and 30 of the Law on Information.

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

Auditing

57. Neither the LPP nor the election laws require political parties or election candidates to ensure that professional independent auditing of their accounts and financial reports is performed. At the same time, the authorities stress that general party bookkeeping must be performed by certified bookkeepers. Concerning the financial statements on the receipt and use of election funds, the sole responsibility for comprehensiveness, reliability and timeliness of the statements rests with

[20] Section 43, paragraph 14 LPresE.
[21] Section 64, paragraph 13 LLocE.
[22] According to section 25, paragraph 4 LCA the control over sources and volume of financing and tax payments of civil associations and therefore political parties is carried out by the financial organs and the tax inspection.
[23] See, in particular, section 11 of the Law on the State Tax Administration; section 20 of the Law on the Public Prosecutor's Office; section 10 of the Law on the Police.

the managers of the election funds (who are to be selected from a list of certain categories of persons but are not required to possess any specific education or experience in the field of auditing or bookkeeping).

Monitoring

General funding of political parties

58. Firstly, the State Tax Administration (STA) is entrusted with control over the observance by non-profit organisations and therefore political parties of tax legislation.[24] To this end, political parties have to submit quarterly tax reports (see STA Order No. 233, "financial statements on the use of funds by a non-profit organisation") to the tax inspectorates of the locality where the party is registered.[25] On this basis, the local tax inspectorates check the sources and amounts of revenue, the correct calculation and timely payment of taxes (if the party performs taxable activities). By contrast, the more detailed primary accounting records[26] and the annual income and expenses statements and property statements[27] of political parties are not submitted to or controlled by any State body.

59. The STA is an executive body whose head is appointed by the President of Ukraine. The head of the STA appoints and dismisses the heads of local tax authorities who, in turn, select staff inspectors. Decisions of the STA and its local branches are made by the head of the tax authority concerned. The tax authorities have extensive powers, including the right to launch and hold investigations and to impose administrative fines for violations of tax regulations (for example, if the party fails to submit a report in time or if the report contains incorrect information). Any person may lodge a complaint with the local tax authority concerning the violation of laws on the financing of non-profit organisations and reporting by a political party, on the condition that the complaint contains evidence that can be verified. Local tax authorities have the staff to conduct investigations (controllers, inspectors, and tax police officers).

60. Secondly, the Ministry of Justice is competent for supervising the observance by political parties of the requirements of the Constitution and laws of Ukraine in general.[28] During the interviews held on site, it was stated that this may include the issue of publication of financial statements by the parties and that in case of infringements of the applicable rules, the Ministry may issue warnings or report to the law enforcement authorities. The same applies in cases where the Ministry is informed of the receipt of prohibited funds by political parties. The relevant banking institutions are obliged to inform the Ministry about the receipt of such funds on party accounts,[29] but the Ministry has no competence to check such practices itself. In practice, no such cases have so far occurred.

Funding of election campaigns

61. State oversight of the funding of election campaigns of electoral subjects (parties, electoral blocs and independent candidates) is exercised by the Central Election Commission (CEC) in national elections and the Territorial Election Commissions (TEC) in local elections. The CEC or TEC and

[24] Section 25, paragraph 4 LCA.
[25] See paragraph 47 above.
[26] See section 17, paragraph 5 LPP and the Law on Bookkeeping and Financial Reporting.
[27] See section 17, paragraph 1 LPP.
[28] Section 18, paragraph 1 LPP.
[29] See section 15, paragraph 2 LPP.

the bank that keeps the election fund of an electoral subject – and, in presidential elections, the STA – are to control the receipt, accounting and use of the fund.[30] They also supervise observation by the electoral subjects of the prohibition to finance their campaign from other sources than their election fund and the State budget. The authorities indicate that the election commissions check exclusively compliance by electoral subjects with election laws. They check the financial statements on the receipt and use of election funds within timeframes specified by law, namely within 18 days from their submission in presidential elections and within 10 days in local elections.[31]

62. The election laws do not directly determine the procedure for the CEC and TEC to oversee the funding of election campaigns. The main role in ensuring that the relevant prohibitions are observed is entrusted to the election participants (including voters, in case of violation of their rights) who, should any facts of illegal funding come to their knowledge, may lodge complaints about the violation of election legislation to the election commission concerned, which may apply sanctions provided by law such as warnings, deregistration etc. The election commissions have the right to consider all issues falling under their authority and to take decisions if they obtain knowledge about violations of election legislation as a result of their controls or from other lawful sources (e.g. from the media). Control mechanisms are specified in more detail in the Procedure for Monitoring the Receipt, Accounting and Use of the Election Funds approved by joint decisions of the CEC and the National Bank of Ukraine. The current procedure for the cooperation between the CEC and banking institutions enables the CEC to exercise on-going operational control over all transactions on the election fund accounts (banks are obliged to provide the CEC on a daily basis with information on the relevant transactions in the form of coded files and, weekly, with account statements). In presidential and parliamentary elections, complaints or other notifications of violations of the requirements of specified provisions of the election laws are to be forwarded by the election commission concerned to the law enforcement authorities in view of their verification and legal examination.[32] During interviews on site, it was stated that the election commissions could also request financial information from other relevant authorities and carry out inspections, e.g. at party headquarters. In practice, no such cases have so far occurred.

63. The Law on the Central Election Commission declares the CEC an independent State agency. It is a permanent body and consists of 15 members who are appointed (for a seven year term of office) and dismissed (for reasons exhaustively defined by law) by Parliament on proposal of the President. The CEC elects from among its members a Chairman, a Vice-Chairman and a Secretary. A member of the CEC cannot be a member of a political party. Membership in the CEC is incompatible with any representative mandate, membership in other electoral commissions, business activities, part-time work (with the exception of teaching, research, and other creative work), holding positions in the executive bodies of business institutions and enterprises, acting as the representative of authorised persons of the electoral subjects. CEC decisions are taken by a majority vote of the Commission. The activities of the CEC and its Secretariat are financed from the State budget. Control over the financing of elections and fulfilling reporting obligations is exercised by the CEC members themselves and by a special department of the CEC Secretariat. At the time of the on-site visit, the competent department consisted of two persons (not auditors, but economists). During election campaigns, additional staff can be engaged. For example, during the most recent elections the department was supported by two or three experts. The CEC Secretariat employs altogether some 300 persons.

[30] See section 53 LParlE, section 43 LPresE and section 64 LLocE.
[31] See section 43 LPresE and section 63 LLocE. In presidential elections, the law enforcement authorities have to report back to the election commission within three days.
[32] Section 71 LParlE, section 64 LPresE.

64. The TEC are formed on several levels upon proposal of the local organisations of political parties represented in Parliament. They consist of a maximum of 15 members. Each TEC can recruit specialists for the examination of the financial reports of electoral subjects.

Reporting, publication, statistics

65. The authorities indicate that current legislation does not impose any reporting or disclosure requirements on authorities exercising control over the financing of political parties and election campaigns. They added that in practice, the CEC has never refused to submit activity reports requested by Parliament and such reports can be found in meeting transcripts placed on the website of Parliament.

66. No information concerning the number of investigations, prosecutions and convictions or the types of cases dealt with within the framework of political funding supervision is available. According to the authorities, no irregularities in the use of electoral funds have so far been detected.

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

General funding of political parties

67. The LPP and the tax legislation provide for several types of measures and sanctions on political parties themselves, as outlined below. As concerns individual party members or officials, the authorities indicate that they may be held liable on the basis of party statutes, for violation of the statutes, or if they commit offences defined by the Criminal Code or other legislative acts, e.g. embezzlement (section 191 CC).

a) Section 20 LPP: Warning

A warning notice is to be issued by the relevant controlling authority against an unlawful activity which has been publicly announced by the leadership of a political party, together with an instruction to correct the transgression (unless the act entails other kinds of responsibility). The leadership of the party has to promptly correct the transgression and, within five days, notify the authority of the measures taken. Furthermore, a party can be dissolved by court decision in case of violation of the requirements as to the formation and activity of political parties[33] but it was explained on site that this sanction does not apply to violations of financing regulations.

b) Section 15 LPP: Transfer of funds to the State budget

Funds of political parties which derive from illicit sources listed in this section (e.g. from public entities, except in cases envisaged by the law, from foreign or anonymous persons)[34] are to be transferred by the party concerned to the State budget or seized by a court of law for the benefit of the State. The banks have to notify the Ministry of Justice of any entries of such prohibited funds on party accounts.

[33] Section 21 LPP.
[34] See paragraph 33 above.

c) Tax legislation: Deregistration, fines

- If a party violates provisions of the tax legislation or financing regulations provided by other laws, e.g. by using funds exempt from taxation for carrying out business activities or by accepting funds from illegal sources, the tax inspectorate of the locality where the party is registered can decide to remove the party from the Register of Non-Profit Organisations, resulting in the loss by the party of its non-profit status and in its submission to the common taxation regime (which implies an obligation to pay corporate profit tax, other taxes and mandatory charges).[35]
- In addition, the tax legislation provides for other sanctions for infringements of tax regulations, in particular fines, including in cases of late or non-submission of tax reports (170 UAH / approximately 16 EUR).[36]

Funding of election campaigns

68. a) Section 64 LParlE, section 56 LPresE and section 45 LLocE: Warning and cancellation of registration

A warning can be issued by the CEC or the TEC (in local elections) to an electoral subject for violation of specified regulations of the election laws, including the use of funding sources other than election funds (and funds from the State budget). The registration of an electoral subject can be cancelled by the CEC or TEC in parliamentary or local elections but not in presidential elections in the case of repeated violation of election legislation (i.e. the same kind of infringement) in respect of which a warning has been previously issued. In the case of parliamentary elections, such a decision can be taken not later than three days before the ballot and in local elections, not later than 10 p.m. on the day preceding the election.

b) Section 159.1 of the Criminal Code: Criminal sanctions

- Provision of gross financial (material) aid to the election campaign of a candidate or political party/bloc in violation of the pertinent rules, through provision of funds or material values free of charge or at unreasonably low prices, production or dissemination of campaign materials which have not been paid for from the election fund or paid for at unreasonably low prices, or payment for the production and dissemination of such materials, and
- deliberate use by a candidate, political party/bloc, their authorised representative, trustee of the candidate or an authorised person, of gross financial (material) support to the election campaign in violation of the pertinent rules

are punishable by a fine ranging from 1,700 to 5,100 UAH / approximately 156 to 468 EUR, or corrective work for a period of up to two years, or limitation of freedom for up to two years, or imprisonment for the same period. A note to section 159.1 of the Criminal Code indicates that the amount, values or advantages are considered to be gross if they exceed 400 monthly minimum wages (376,400 UAH / approximately 34,630 EUR). Where the above-mentioned acts are committed in a planned and concerted manner (collusion), the penalty is imprisonment for five to ten years. Such criminal sanctions can only be imposed on individual persons.

[35] Paragraph 5.1. of the Regulation on the Register of Non-Profit Organisations and Institutions, approved by STA Order No. 232 of 7 November 1997.
[36] Section 17 of the Law on the Procedure of Liquidation of Taxpayers' Obligations to Budgets and State Funds.

c) Section 212.15 of the Code of Administrative Offences: Fines

- Violations of the pertinent rules on the provision of financial (material) support to an election campaign, provided such violations have no criminal component, entail a fine ranging from 850 to 1190 UAH / approximately 78 to 109 EUR for citizens and from 1,190 to 1,700 UAH / approximately 109 to 156 EUR for officials. Such administrative sanctions can only be imposed on individual persons (i.e. donors).

Immunities and time limits

69. None of the above-mentioned categories of persons who may be held criminally liable for infringements of party financing regulations – party officials, party candidates, donors etc. – enjoy immunities, except for the President and MPs (and judges). The immunity of MPs (and of judges) can be lifted in accordance with the Rules of Procedure of Parliament approved by Law No. 1861-VI of 10 February 2010.

70. The general statutes of limitation provided by the Code of Administrative Offences[37] and the Criminal Code[38] apply to the above-mentioned administrative and criminal offences and are as follows:
- violation of section 212.15 of the Code of Administrative Offences: two months from the day when the offence was committed, or where the offence is ongoing, two months from the day when it was detected;
- violation of section 159.1 of the Criminal Code: two years or, in aggravated cases (collusion), ten years from the date of commitment.

Statistics

71. No cases of sanctions imposed on political parties or electoral subjects for breaching political financing regulations were reported by the authorities. They indicate that during the period 2006 to 2010, no violations concerning the formation and use of election funds or the use of funds allocated from the State budget to electoral subjects were found by the CEC or the AC and that no sanctions were imposed for violation of section 212.15 of the Code of Administrative Offences or section 159.1 of the Criminal Code.

IV. ANALYSIS

72. Ukraine is a semi-presidential, semi-parliamentary republic with a multi-party system. Small parties often form multi-party coalitions (electoral blocs) for the purpose of participating in parliamentary elections. Independent candidates can only participate in presidential elections and certain local elections. The funding of political parties and election campaigns is governed by two different sets of legislation, laid down by the 2001 Law on Political Parties (LPP) and the 1992 Law on Civil Associations (LCA) on the one hand and the different election laws on the other, i.e. the 2004 Law on Parliamentary Elections, the 1999 Law on Presidential Elections and the 2010 Law on Local Elections. Currently, political parties and "electoral subjects" (i.e. candidates, parties and blocs of parties) depend almost entirely on private funding, that is to say members' subscriptions and, more importantly, voluntary contributions. Some State support for certain types of election campaigning such as publication of the election programme in official journals and regional newspapers, publication of information posters and provision of airtime is also provided.

[37] Section 38 of the Code of Administrative Offences.
[38] Section 49 in conjunction with section 12 of the Criminal Code.

73. Overall, the system of transparency in political financing falls short of the standards established by Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (hereafter: the Recommendation). Before examining more in detail the major gaps, the GET wishes to point to some overarching concerns. First of all, the current system of numerous laws – i.e. the LPP, the LCA, the different election laws as well as tax and accounting legislation – is highly complex and contains inconsistencies, especially since the relevant laws were passed at different times and on different conceptual bases. Secondly, there is a situation of legal uncertainty with respect to direct State funding of political parties and reimbursement of parliamentary election expenditure. Based on political consensus at the time, such State aid was introduced in 2003 – together with a reporting, monitoring and enforcement mechanism – but repealed by Parliament in 2007. In 2008, the Constitutional Court ruled the repeal unconstitutional but no legislative initiative was taken to reinstate the provisions of the LPP and the Law on Parliamentary Elections. Although the authorities claimed that the relevant provisions could be considered as having been automatically restored, the majority of interlocutors took the opposite view. The fact is that in practice, no direct State aid is granted at present. Thirdly, during the GET's interviews, various forms of shadow financing were reported – e.g. contributions to election campaigns made in cash or in excess of the legal limits, use of party resources not included in the election funds, support by third parties etc. – on which it has so far not been possible to shed sufficient light. It was also pointed out that the political class was heavily influenced by powerful business interests that formed a type of oligarchy. The GET was seriously concerned to hear from a number of interlocutors that there was some resignation and a pervasive sense among Ukrainians that political parties are established and used for private gain, that politicians have not served them well and that democracy has failed to deliver on its promise. Therefore, it is clear that the lack of public funding might induce parties and election candidates to seek funding from hidden or even prohibited sources.

74. During the on-site visit, the GET noted with interest a number of proposals aimed at improving transparency – for example, the extension of caps on donations beyond the election campaign period, the introduction of campaign expenditure ceilings and, above all, of State grants to political parties. While the latter was considered by a number of interlocutors as the key and essential first step towards more transparency, party representatives stressed that in times of financial crisis the introduction of State aid to parties and election campaigns would certainly not secure a majority in Parliament and within the electorate and was presently not on the political agenda. What is more, the GET was concerned to learn that in the framework of the current reform of the election legislation, it is planned to even further reduce the limited State support to certain types of election campaigning, mentioned above. In this connection, the GET wishes to draw the attention of the authorities to Article 1 of the Recommendation, according to which the State should – within reasonable limits – support political parties.

75. The GET was furthermore informed of additional reform projects initiated by the President's Decree on the Action Plan on Honouring Ukraine's Commitments and Obligations to the Council of Europe, according to which a draft law on general party financing is to be prepared by mid 2013. The GET, while principally welcoming such plans, wishes to stress the need for rapid improvements – before 2013, if possible – to the transparency in both party and election campaign funding, taking into account the above-mentioned concerns as well as the specific shortcomings detailed below. The GET is of the firm opinion that the current situation calls for the swift establishment of an effective transparency regime enforced by a powerful and independent monitoring mechanism. Moreover, the GET wishes to stress that such a mechanism needs to be complemented by actively encouraging public scrutiny of political financing. In this connection, it

shares the opinion expressed by various interlocutors that significant measures need to be taken to raise public awareness of the importance of transparency in political financing for the strengthening of democracy.

Transparency

76. The funding of election campaigns is regulated by quite detailed and comprehensive provisions of the different election laws. Election campaign activities of political parties and candidates can be solely financed from State and local budget funds and from election funds which must be held in special election accounts opened in banking institutions within specified timeframes and administered by designated fund managers. The rules specify the permitted and prohibited funding sources. They require donors to make use of the banking system and to submit a document certifying their identity. They lay down donation ceilings and prohibit payments in cash from election fund accounts. They require election fund managers to keep financial records on the basis of regular information provided by the banking institutions and to submit financial statements on the receipt and use of election funds to the relevant election commissions. In the view of the GET, this transparency regime is of quite a good standard. That said, the GET notes that the current system of very detailed and specific regulations governing presidential, parliamentary and local elections is unnecessarily complicated and contains some incoherencies. The election laws differ with regard to certain specific aspects such as the start of the election campaign period, timeframes for the establishment of election funds, the submission of financial statements to the election commissions, the publication of these statements and for their verification by the election commissions, the establishment of election funds – which is mandatory in national elections but not in local elections, and the regime of sanctions (for example, the registration of an electoral subject can be cancelled in parliamentary or local elections but not in presidential elections). The GET must stress that for the sake of best possible transparency and clarity the different regulations on election campaign financing clearly need to be accorded in order to create a more cohesive and simple legal framework. The GET therefore recommends **to harmonise the provisions on campaign financing contained in the Law on Parliamentary Elections, the Law on Presidential Elections and the Law on Local Elections.**

77. The GET is furthermore concerned about the risks of circumvention of the transparency regime under the election laws in their present form. Firstly, it is to be noted that the transparency regulations only apply to payments made directly to the election funds but not to contributions made to parties or candidates themselves, who may then transfer them as part of their "own funds" to the election fund account. A party or candidate can therefore, for example, receive donations exceeding the ceiling applicable to donations paid directly into election funds, or donations made in cash without using the banking system, or contributions from sources prohibited for the financing of election funds – e.g. from legal persons – and then transfer them to the election fund account, without recording their origin in the financial statements. The GET is therefore of the strong opinion that measures need to be taken in order to limit the risks of abuse of the current system. For example, such measures could include a prohibition on parties and candidates to receive during election campaigns contributions which are not directly paid into the election fund account, or an application of the transparency regulations on election fund accounts to other accounts of parties and candidates.

78. Secondly, the GET repeatedly heard allegations that election campaigns are, in practice, to a large extent financed from external sources which do not pass through the election funds at all – e.g. in the form of advertising by third parties, donations in kind or services provided on

advantageous terms to political parties and election candidates, or financing of campaign activities directly from the parties' or candidates' own accounts. Although the authorities emphasise that such campaigning outside the election funds was excluded by law, the GET is concerned that such practices may nevertheless occur, without being recorded or supervised. Moreover, observers pointed to the fact that campaigners may also take advantage of certain legal gaps, e.g. by campaigning before the start of the official campaign period (i.e. before the registration of an electoral subject), by using premises and media owned by electoral subjects or by carrying out campaign activities for free and without direct use of mass media. Such practices are not subject to any regulations, they are not reflected in the financial statements and they are therefore beyond the control of the monitoring bodies. It is thus quite obvious that the election commissions, which only check the statements on the receipt and use of election funds, can only have a rather narrow picture of campaign funding. It will therefore be necessary to provide for transparency regulations which would allow to also capture forms of support which do not pass through the election funds but are, nevertheless, *de facto* related to election campaigns. For example, such regulations could grant the election commissions during the campaign period access to information on the parties' and candidates' own accounts or on accounts of third parties, or require parties and candidates to submit financial information before the opening of the election fund accounts. Consequently, in light of the preceding paragraphs, the GET recommends **to find ways to ensure that transparency regulations of the election laws are not circumvented by indirect contributions to election funds, via parties' or candidates' "own funds", or by contributions which do not pass through the election funds, including funding by third parties and donations in kind.**

79. After elections, the fund managers have to submit, within specified timeframes, financial statements on the receipt and use of election funds to the relevant election commissions in accordance with forms established by the Central Election Commission (CEC) specifically for each election. According to the pertinent CEC decisions, these statements must contain information on all operations carried out via election fund accounts within the entire period of their functioning, including a description of each financial operation and explanatory notes, specifying each individual donation (with identification of the donor) and each item of expenditure. Moreover, financial statements are to be published by the election commissions, within specified timeframes, in official journals (in the case of presidential elections) or in the local press (in the case of local elections). However, the GET is seriously concerned, firstly, about the fact that only general information on income and expenses from election funds is published, namely the total value of individual donations, of the candidate's or the party's own funds and of the campaign expenditure. The more detailed descriptive information contained in the complete financial statements is submitted to the election commission concerned but not made public. The GET is of the opinion that credible disclosure cannot rely on aggregate figures concerning income and expenses. Secondly, the GET very much doubts that the current regime – which foresees, in particular, publication in the official journals (in presidential elections) – is sufficient to guarantee easy access by the public to financial information of parties and candidates. The GET shares the opinion expressed by various interlocutors that the auditing exercised by the CEC needs to be complemented by public control of political financing, and the information collected by the GET clearly indicates that such an involvement of the public needs to be actively encouraged. This can only be achieved by disclosure of detailed and comprehensible reports in an easily accessible manner, e.g. on the CEC website. Thirdly, a significant shortcoming resides in the fact that in parliamentary elections, the financial statements on the receipt and use of election funds are not subject to any publication at all. This lacuna urgently needs to be addressed. Finally, the GET is of the opinion that transparency in election financing would benefit significantly from more frequent reporting, which goes beyond the *ex-post* reporting by parties and candidates required

by existing legislation. For reporting to be effective, it has to be timely. In this connection, frequent reporting (e.g. through interim reports during election campaigns) enhances the openness of political funding during the crucial period of campaigns as it allows a candidate/party's opponent, the authorities or the electorate to detect questionable transactions that may take place during elections. In light of the foregoing, the GET recommends **(i) to require that in all elections the complete campaign accounts are made easily accessible to the public, within timeframes specified by law; and (ii) to explore ways of sharing campaign finance information with the public prior to the election (e.g. through interim reports).**

80. Turning to the regular funding of political parties, covering the parties' day-to-day operating costs, the GET deems, firstly, that the approach to regulate this issue in two distinct laws – namely the LPP and the LCA which governs both the activity of so-called civil organisations (non-governmental organisations) and political parties – is scarcely convincing. The two laws contain many similar but not always compatible provisions, resulting in a lack of legal clarity and coherence and putting at risk the very enforcement of the rules. For example, both laws contain lists of permitted and prohibited funding sources which are not exactly aligned, since they use different concepts and are in a different degree of detail – *inter alia*, section 15 LPP prohibits party financing by enterprises, institutions and organisations having government or municipal shares or with a foreign interest, whereas section 22 LCA excludes financing from mixed ownership enterprises only if the share of the State or a foreign partner is more than 20 %. Another example is section 26 LCA which requires that, on the basis of financial declarations, the official journal "Voice of Ukraine" publishes annual lists of persons whose donations to political parties exceed the ceiling set by Parliament. This requirement, which is not at all reflected in the LPP, is completely ineffective as in reality no such donation caps have ever been established. The GET therefore takes the strong view that it is necessary to establish a more coherent, clear and enforceable legal framework and it was interested to hear that as part of the planned draft legislation on party funding referred to above, it is expected that this issue will be regulated exclusively in the LPP and that political parties will be removed from the scope of the LCA (or a succeeding law). Such moves are clearly to be supported.

81. Secondly, the GET is concerned about different transparency standards applicable to general party funding and election campaign funding. As described above, under the election laws, campaign activities may only be financed from election funds held in special bank accounts. Contributions by individuals must be accompanied by a document certifying their identity submitted to the banking institution. Donations are subject to value thresholds, contributions by legal person are prohibited and expenses may not be paid in cash. By contrast, the LPP and the LCA do not provide for any comparable restrictions in the area of general party funding.[39] Such discordance between standards can only hamper the practical implementation of the transparency provisions of the election laws, as it is difficult if not impossible to clearly separate election campaign activities of political parties and their routine activities. In this connection, it is to be recalled that under current legislation election funds may be financed from the party's own funds, which are not subject to the restrictions applicable to the election funds themselves. In the absence of comparable regulations in the LPP and the LCA, there is a clear risk of circumvention of the transparency provisions applicable to election funds. Finally, the GET wishes to stress its particular misgivings about the lack of any requirement in the LPP or the LCA to make use of traceable means of payment (cheques, bank cards, bank transfers, direct debits). Donations – including those collected during public events held by the party, which are expressly authorised by the LCA – can therefore potentially go unrecorded, making it hard to reconstitute the financial

[39] It is to be noted though that section 8 LCA states that Parliament defines the maximum amounts of annual donations to political parties, but in reality no such restrictions have ever been established.

transactions that have actually taken place in the event of verifications by the competent authorities. This state of affairs is all the more worrying given the importance of donations as a source of funding for political parties in Ukraine and the fact that, according to the information obtained by the GET, significant amounts are frequently donated in cash, thereby hampering proper verification. In light of the preceding paragraphs, the GET recommends **to adopt a comprehensive and consistent legal framework for general party funding that would be in line with the transparency standards set by the election laws – promoting in particular recourse to the banking system in order to make party income more traceable.**

82. Furthermore, the GET notes that under the LPP and the LCA permitted funding sources are listed but not defined and regulated in detail. They include, *inter alia*, the rather vague concepts of "funds, equipment, transport and other facilities the acquisition of which is not prohibited by law", which need to be clarified and precisely defined. The concept of donations is mentioned only in the LCA and it is not defined either. According to the authorities, donations are to be understood by reference to section 720 of the Civil Code as gifts, whether movable or immovable, including money and securities, to specified persons for reaching certain agreed goals. Donations in kind – such as services rendered, execution of works, provision of free transportation or advertising etc. – are not addressed by the LPP and the LCA, i.e. they are neither prohibited nor regulated. According to observers interviewed on site, the transparency regulations of these laws – e.g. the prohibition on receiving funds from public bodies, foreign persons etc., or the obligation to record information on party income in the annual financial statements – only apply to contributions that are directly received by the party in the form of property (assets) or financial resources and not to indirect financing such as donations in kind, services provided free of charge or on preferential terms. At the same time, it was clear from the discussions that such forms of support were common practices. For this reason, the GET is concerned that a significant share of political funding takes place entirely outside the scope of the transparency rules laid down by law. Similarly, the GET notes that loans to political parties are not explicitly included in the list of permitted funding sources. Several persons with whom the GET spoke stated that they are not ruled out by the current legislation. The GET considers that loans, in particular those extended on more advantageous terms than are available on the market, can constitute an important source of private income for political parties and therefore need to be regulated. In the view of the GET, a clear definition of the permitted funding sources would be needed in order to determine without any doubt which sources of income are covered by the transparency regulations and to ensure that donations in kind and loans are also covered and are to be accounted for at their commercial value. At the same time, membership fees need to be regulated to prevent that political parties could themselves define which contributions are to be regarded as a donation or a membership fee and that transparency regulations on donations might be circumvented by paying higher membership fees. In light of the above, the GET recommends **to clearly define and regulate donations – including indirect contributions such as donations in kind, to be evaluated at their market value –, loans and other permitted sources of political party funding and to ensure that membership fees are not used to circumvent the rules on donations.**

83. Moreover, the GET is concerned that the LPP and the LCA do not regulate party accounts in a detailed manner. The LPP only provides that parties are obliged to "keep accounting records in the established order". The authorities indicate that in addition to the provisions of the LPP, the general accounting regulations for non-profit organisations apply. However, the GET has misgivings about the fact that no reference is made in the LPP to the applicable accounting legislation and takes the strong view that detailed and clear accounting regulations aimed particularly at political parties are required in order to ensure proper books and accounts in line with Article 11 of the Recommendation. For example, such regulations would have to include an

obligation to produce receipts for donations or other comparable source documents, the requirement to include the accounts of local party branches and entities related to the parties or otherwise under their control – such as media or organisations and institutions founded by the party referred to in the LPP, scientific and research departments, training centres and funds operating for the party – as well as clear rules on how to record donations in kind, membership fees and loans. As regards the identification of donors in the party accounts, the GET acknowledges the need – expressed by some interlocutors – to protect individuals' legitimate right to privacy in respect of their political affiliation. However, these interests need to be balanced with the legitimate interest of the public, in particular the voters, to know the sources of financial support to a party or a candidate they might wish to vote for. Such a balance is, in accordance with Article 12 of the Recommendation, established through a threshold, i.e. that donations above a certain value[40] are to be disclosed together with the names of the donors. The GET can only conclude that, currently, Ukraine is not in line with this rule. Moreover, transparency of party finances would certainly benefit from the introduction of a standardised format for party accounts (preferably accompanied by appropriate guidelines), which would be conducive to ensuring a sufficiently high level of detail in all reports and would facilitate comparisons over the years and between the parties. Finally, it is to be noted that in addition to the fragmentary regulations of the LPP, the tax legislation obliges political parties to submit quarterly tax reports to the local tax inspectorates. However, these reports only contain aggregate figures on party income and expenditure and they are not consolidated to include local party branches and related entities.

84. When it comes to disclosure obligations, the GET notes that contrary to Article 13 of the Recommendation, party accounts are not submitted to a monitoring body and made public. Only the summary tax reports are submitted to State agencies – i.e. the tax inspectorates which merely check compliance with tax legislation. In this connection, it is to be noted that the LPP requires political parties to publish statements of yearly income and expenses and of property in the national press. However, the law does not contain any specific requirements on the form and content of these statements nor any obligation to submit them to a monitoring body for verification, nor does it describe the timeframe, method and terms for publication. According to the authorities, the statements generally show the total sum of financial receipts, the total sum and purpose of expenses and information on property of the party. During the visit, the GET had the opportunity to examine such statements which were extremely short and did not appear to provide any valuable data. The GET furthermore learned on site that some parties publish their reports only in their own magazines and others do not comply with this disclosure obligation at all. To conclude, the GET underlines that, to guarantee full transparency and improve supervision of political financing, it is essential to have detailed annual reports, including an itemised breakdown of the figures, to be submitted to a monitoring body and to be made public within specified timeframes in an easily accessible manner, ideally on the party websites and also on the website of the monitoring body. In light of the preceding paragraphs, the GET recommends **to (i) clearly define the content and form of annual accounts of political parties, following a uniform format and accompanied by adequate source documents; (ii) ensure that income (specifying, in particular, individual donations above a certain value together with the identity of the donor), expenditure, debts and assets are accounted for in a comprehensive manner; (iii) consolidate the accounts to include local party branches as well as other entities which are related directly or indirectly to the political party or under its control; and (iv) require that the annual accounts are subject to the scrutiny of an independent**

[40] In case there are several donations from the same person, the total amount of the donations should be the decisive amount.

monitoring mechanism and made easily accessible to the public, within timeframes specified by law.

Supervision

85. Neither the LPP nor the election laws oblige political parties or election candidates to ensure professional independent auditing of their accounts and financial reports. They only require general party book-keeping to be performed by certified book-keepers as well as financial statements on the receipt and use of election funds to be prepared by the managers of the election funds (who are not required to possess any specific education or experience in the field of auditing or book-keeping). The GET notes that, in practice, party accounts are not audited by independent outside professionals. It nonetheless considers that appropriate verification of the accounts of political parties and electoral subjects by independent auditors – who would, ideally, be selected by an independent body outside the party structure – constitutes an important means of supervision, in particular in systems where there are serious weaknesses in other supervisory arrangements. The introduction of mandatory audits by independent experts which are consistent with accepted international auditing standards would unquestionably enhance party and candidate financial discipline and reduce the risks of corruption. The GET consequently recommends **to introduce independent auditing of party and election campaign accounts by certified auditors.** It acknowledges that there is a need to reconcile the audit requirements with the need for flexibility arising from the diversity of the resources and needs of parties and candidates, in particular so as to avoid imposing unnecessarily heavy constraints on small parties and election candidates with few or no administrative resources.

86. Furthermore, the current regime suffers from the lack of effective external supervision of the legal regulation of political funding. As concerns campaign funding of parties and candidates, supervision is entrusted to the CEC and, in local elections, to the Territorial Election Commissions (TEC). Together with the bank that holds the election fund of an electoral subject, they have to control the receipt, accounting and use of the fund as well as the observance of the prohibition on financing campaigns from sources other than election funds and the State budget. However, it would appear that this control is a rather formalistic exercise and does not go beyond the information that banks and electoral subjects themselves provide. The information gathered by the GET strongly suggests that the financial scrutiny exercised by the election commissions may satisfy accountancy standards but there is no sufficient verification of whether an election campaign could have been financed by non-declared funding – in particular, by cash donations, donations exceeding the legal thresholds or donations in kind. The fact that no breaches of the rules have so far been detected in the course of this supervision and that no sanctions have been imposed on parties or election candidates is telling in this respect, especially as the GET heard many allegations that political funding to a large extent originates from covert or unlawful sources. A number of examples can be cited, notably campaign funding by parties from their own resources not included in the election fund, the use of public property in election campaigns, failure to record in-kind services or the submission of contradictory information in statements on election funds and in tax statements.

87. In the view of the GET, the inefficiency of supervision over campaign funding may be explained by several deficiencies in the current regime, first and foremost by the lack of a clear mandate for the election commissions to investigate possible infringements of the transparency regulations. At present, their role appears to be mainly that of an intermediary between banks and other possible sources of information on the one hand and law enforcement or other competent authorities on the other. The election commissions thus depend on the co-operation of other bodies, yet no

established system for efficient cooperation or exchange of information with such bodies exists. Further areas of concern are related to the fact that the mandate of election commissions is limited to observance of electoral legislation and, furthermore, that they have to operate within very short timeframes specified by law, namely within 18 days from their submission in presidential elections and within 10 days in local elections. Moreover, the GET was concerned to note that resources of the election commissions are very limited. At the time of the visit, the CEC's competent control department had a staff of two and did not include any auditors. To conclude, measures clearly need to be taken in order to ensure a more comprehensive, pro-active and in-depth monitoring of campaign funding.

88. General party finances may be checked only by the tax authorities, whose competence is limited to controlling the observance by political parties of tax legislation. The GET understood from the interviews that in practice, the activities of political parties are rarely checked in depth as they are non-profit organisations benefiting from far-reaching tax exemptions. Besides, the LPP stipulates that the Ministry of Justice is competent for the control of compliance by political parties with the law in general, but it was explained to the GET that in the area of party financing such control is limited to checking whether parties publish their annual financial statements. The LPP also provides that banks are to inform the Ministry of the receipt of prohibited funds by political parties. It was explained that in such cases, the Ministry would inform the law enforcement authorities but, in practice, no such cases have so far occurred. According to several interlocutors of the GET, the enforcement of this mechanism suffers from a lack of specific expertise and interest within the banking system as regards tracing the origins of contributions. Finally, it should be noted that the 2003 amendments relating to State funding for political parties provided for a monitoring mechanism involving the Accounting Chamber and the State Control and Revision Office but, as mentioned further above, the relevant provisions are currently not in force. It is clear that at present, there is no monitoring body with a clear mandate and the necessary resources – including personnel specialised in party financing – in order to comprehensively check party accounts and parties' compliance with transparency regulations deriving from the various relevant laws such as the LPP, the LCA, accounting and tax legislation. To conclude, the current monitoring over general party financing is highly fragmentary and in addition, it is exercised by the tax authorities and the Ministry of Justice which do not satisfy the requirement of independence under Article 14 of the Recommendation.

89. Clearly, Ukraine must itself assess which body could be entrusted with the task of monitoring regular party funding. The GET wishes to stress, however, that any such body needs to enjoy an appropriate level of independence and be given sufficient resources – financial resources and specialised staff – to carry out pro-active and substantial control including material verification of the information delivered, as well as investigative powers and the mandate to impose sanctions in case of violation of political financing regulations. Moreover, the GET again draws attention to the fact that a transparency regime for political financing can only be effective if it regulates election campaign funding and regular party funding in a consistent manner, as it is difficult if not impossible to clearly separate campaign activities of political parties from their routine activities. Therefore, measures need to be taken to streamline the existing supervision of campaign funding and the yet to be established supervision of regular party accounts in such a way as to ensure oversight of the whole range of political financing as well as genuine complementarity of the supervisory authorities. In the GET's view, this could be achieved by formalising the coordination of the monitoring mechanisms, by giving a leading role to one single independent institution or, preferably, by assigning all the supervisory functions to one single agency. In light of the preceding paragraphs, the GET therefore recommends **to ensure that an independent mechanism is in place for well coordinated monitoring of the funding of political parties**

and election campaigns which is given the mandate, the authority, as well as the financial and personnel resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.

Sanctions

90. Concerning the general funding of political parties, the GET notes that the LPP only provides for warnings in case of unlawful activities of parties and for the transfer of funds received from illicit sources to the State budget. During the interviews it was indicated that the Ministry of Justice had never applied such measures. It was explained that warnings could be issued, for example, against a party which omits to publish its financial statements. As concerns the receipt of illegal funds, it was further explained that the relevant banking institutions are obliged to inform the Ministry about the receipt of such funds on party accounts and that the Ministry would in these cases inform the law enforcement authorities. In practice, however, no such cases have so far occurred. The LPP also provides for the dissolution of a party in case of violation of the requirements as to the formation and activity of political parties, but it was explained to the GET that this sanction is not applicable in the area of party financing. Moreover, the tax legislation provides for sanctions in case of violation of tax or financing regulations provided by other laws, namely (1) deregistration of a party resulting in the loss of its non-profit status, e.g. if it uses funds exempt from taxation for carrying out business activities or accepts funds from illegal sources, and (2) fines, in particular in cases of late or non-submission of tax reports (170 UAH / approximately 16 EUR). The GET is concerned about the lack of a clear, precise definition of the offences against the rules on transparency and the very limited range of sanctions provided for, in particular under the LPP, which have never been applied in practice. It considers that the sanctions could, for example, include criminal penalties and significant administrative fines, proportionate to the seriousness of the offence. In this connection, it needs to be ensured that such penalties may also be applied to individual party representatives such as chairpersons and executive body members in order to be effective. The GET is of the opinion that mere warnings issued by the Ministry of Justice to the party or confiscation of illicit funds fail to have the desired dissuasive effect. It considers that additional measures need to be taken to extend the range of sanctions in force for breaches of the rules on party funding, so as to guarantee that the penalty is proportionate to the seriousness of the offence (i.e. through a flexible system of criminal/administrative/civil sanctions).

91. Regarding funding of election campaigns, the election laws solely provide for the election commissions to issue a warning to an electoral subject who uses funding sources other than election funds and funds from the State budget and, in the case of a repeated breach and after pronouncement of a warning, to cancel its registration as an electoral subject (not applicable in presidential elections). In addition, the Criminal Code provides for a fine of about 156 to 468 EUR in case of provision of "gross" financial (material) aid (about 34,630 EUR or more) to the election campaign of a candidate or political party or bloc in violation of the pertinent rules, or deliberate use of such support by a candidate, political party or bloc, their authorised representative, trustee of the candidate or an authorised person. In cases not involving a "gross" amount, the Code of Administrative Offences provides for a fine of about 78 to 109 EUR (about 109 to 156 EUR for officials) on the donor. Here again, the GET is concerned about the limited range of sanctions available – which have never been applied in practice – and about the obvious deficiencies in the system of sanctions. For instance, no penalty is laid down in the event that an electoral subject fails to file its financial statement with the supervisory authorities. The GET very much doubts that the above-mentioned warnings and very low fines can have a dissuasive effect and it finds the

rules on cancellation of an electoral subject's registration relatively ineffective, since this sanction can only be imposed until one or three days before the ballot (depending on the type of elections). This therefore leaves very little time for the supervisory bodies to verify campaign funding and to sanction any breaches of the rules. Finally, the GET draws attention to the fact that the current regime places the responsibility for the proper use and accounting of election funds on the designated fund managers, with the result that election candidates and parties (or party representatives) themselves are not liable for irregularities. Such a state of affairs is not satisfactory with respect to Article 16 of the Recommendation which calls for effective, proportionate and dissuasive sanctions. There is accordingly a need to remedy these deficiencies and to introduce sanctions supplementing the existing regime – for example, criminal penalties and administrative fines proportionate to the seriousness of the offence concerned, suspension or loss of mandates – applicable also to election candidates and party representatives themselves.

92. At the same time, it will be necessary to lay down sufficiently long limitation periods for offences – whether already established or to be introduced in future – against the political funding rules. The current time-limit, in particular with regard to administrative offences in this field – merely two months from the date of commission (or from the date of detection, when the offence is ongoing) – is extremely short having regard to the supervision to be exercised over political (campaign) financing and the difficulty of investigating such offences. To ensure that the bodies assigned responsibility for supervising the financing of political activities can perform effective oversight, they must be allowed sufficient time to conduct their enquiries and investigations in this complex, sensitive field. In addition, to be effective, these bodies must be able to open, or re-open, a file some years after information or relevant data have been reported and be able to compare data over a number of years. In light of the above, in accordance with the principles set forth in Article 16 of the Recommendation, the GET recommends **to ensure that (i) all infringements of the existing and yet to be established rules on financing of political parties and election campaigns are clearly defined and made subject to an appropriate range of effective, proportionate and dissuasive sanctions; (ii) any party representatives and election candidates themselves are liable for infringements of party and campaign funding rules; and (iii) the limitation periods applicable to these offences are sufficiently long to allow the competent authorities to effectively supervise and investigate political funding.**

V. CONCLUSIONS

93. Ensuring transparency of political funding is a relatively new concern in Ukraine. The country has gradually introduced legislation on political funding which is still evolving. There are plans, *inter alia*, to prepare new legislation on general party financing by mid 2013. The GET, while principally welcoming such plans, wishes to stress the need for rapid improvements – before 2013, if possible – to transparency in both party and election campaign funding, taking into account the present report and its recommendations. At present, the system of transparency falls short of the standards established by Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. The current regulations, which are dispersed in numerous laws, lack coherence and clarity. In the area of regular party funding, permitted funding sources are not precisely defined and regulated. Such important areas as donations in kind and financing by entities related to a party are not addressed. No detailed and comprehensive information is made available to a monitoring body and to the public at large. While the transparency regulations applicable to election campaign funding are more precise, they still show some important gaps and can at present easily be circumvented. Moreover, the disclosure obligations in this area are insufficient and the current monitoring mechanism lacks the necessary powers and resources to

carry out in-depth, proactive supervision and to effectively detect and disclose any case of undue influence in connection with campaign funding. To conclude, in both areas there is a need to take significant measures to enhance transparency and ensure supervision by an independent monitoring mechanism and by the public. Under the present regime, virtually no irregularities have been brought to light and led to the imposition of – scarcely regulated – sanctions, despite a prevalent belief that significant portions of political financing stem from hidden or even prohibited sources – e.g. contributions to election campaigns made in cash or in excess of the legal limits, use of party resources not included in the election funds, support by third parties etc. In this context, it is a matter of great concern that parties and election candidates rely entirely on private funding, that is to say their own funds, subscriptions and donations – as they are currently not entitled to any direct State aid, which after being officially introduced in 2003 was abolished in 2007. In the current situation, there is a clear risk that parties and election candidates become highly dependent on powerful businesses or on shadow financing. For the sake of transparency, the authorities are urged to put the introduction of State aid high on the political agenda again. To conclude, determined action in the area of political financing is certainly required in order to foster citizens' trust in Ukraine's democratic system, in its politicians and political parties.

94. In view of the above, GRECO addresses the following recommendations to Ukraine:

i. **to harmonise the provisions on campaign financing contained in the Law on Parliamentary Elections, the Law on Presidential Elections and the Law on Local Elections** (paragraph 76);

ii. **to find ways to ensure that transparency regulations of the election laws are not circumvented by indirect contributions to election funds, via parties' or candidates' "own funds", or by contributions which do not pass through the election funds, including funding by third parties and donations in kind** (paragraph 78);

iii. **(i) to require that in all elections the complete campaign accounts are made easily accessible to the public, within timeframes specified by law; and (ii) to explore ways of sharing campaign finance information with the public prior to the election (e.g. through interim reports)** (paragraph 79);

iv. **to adopt a comprehensive and consistent legal framework for general party funding that would be in line with the transparency standards set by the election laws – promoting in particular recourse to the banking system in order to make party income more traceable** (paragraph 81);

v. **to clearly define and regulate donations – including indirect contributions such as donations in kind, to be evaluated at their market value –, loans and other permitted sources of political party funding and to ensure that membership fees are not used to circumvent the rules on donations** (paragraph 82);

vi. **to (i) clearly define the content and form of annual accounts of political parties, following a uniform format and accompanied by adequate source documents; (ii) ensure that income (specifying, in particular, individual donations above a certain value together with the identity of the donor), expenditure, debts and assets are accounted for in a comprehensive manner; (iii) consolidate the accounts to include local party branches as well as other entities which are related directly or indirectly to the political party or under its control; and (iv) require that the annual accounts**

are subject to the scrutiny of an independent monitoring mechanism and made easily accessible to the public, within timeframes specified by law (paragraph 84);

vii. **to introduce independent auditing of party and election campaign accounts by certified auditors** (paragraph 85);

viii. **to ensure that an independent mechanism is in place for well coordinated monitoring of the funding of political parties and election campaigns which is given the mandate, the authority, as well as the financial and personnel resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions** (paragraph 89);

ix. **to ensure that (i) <u>all</u> infringements of the existing and yet to be established rules on financing of political parties and election campaigns are clearly defined and made subject to an appropriate range of effective, proportionate and dissuasive sanctions; (ii) any party representatives and election candidates themselves are liable for infringements of party and campaign funding rules; and (iii) the limitation periods applicable to these offences are sufficiently long to allow the competent authorities to effectively supervise and investigate political funding** (paragraph 92).

95. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Ukraine to present a report on the implementation of the above-mentioned recommendations by 30 April 2013.

96. Finally, GRECO invites the authorities of Ukraine to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.