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**Theme II**

## **Third Evaluation Round**

### **Evaluation Report on Latvia on Transparency of Party Funding (Theme II)**

Adopted by GRECO  
at its 39<sup>th</sup> Plenary Meeting  
(Strasbourg, 6-10 October 2008)

## **I. INTRODUCTION**

1. Latvia joined GRECO in 2000. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 2E) in respect of Latvia at its 9<sup>th</sup> Plenary Meeting (13-17 May 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 4E) at its 19<sup>th</sup> Plenary Meeting (28 June – 2 July 2004). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption<sup>1</sup>, Articles 1-6 of its Additional Protocol<sup>2</sup> (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 (hereafter referred to as the "GET") carried out an on-site visit to Latvia from 21 to 25 January 2008. The GET for Theme II (22-25 January) was composed of Mr Christopher MAGRI, Programme Manager (Finance), Financial Management Monitoring Unit (FMMU), Ministry of Finance (Malta), Mr Jan OUTLÝ, Head of Department of Political Sciences, University of Hradec Kralové (Czech Republic) and Mr Jurij TOPLAK, Assistant Professor, Faculty of Law, University of Maribor (Slovenia). The GET was supported by Ms Tania VAN DIJK from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2007) 10E, Theme II), as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: the Corruption Prevention and Combating Bureau (KNAB), Register of Enterprises (registration of political parties), Central Election Commission, State Revenue Service (tax authorities) and National Radio and Television Council. In addition, the GET met with representatives of political parties and coalitions of parties: a governmental party, *Tautas Partija* (People's Party), an opposition party, *Jaunais Laiks* (New Era), an opposition 'coalition of parties', *Saskaņas Centrs* (Harmony Centre), as well as a party which had participated in the 2006 parliamentary elections but was not represented in Parliament, *Mūsu zeme* (Our Land). The GET also met with representatives of the Latvian Association of Certified Auditors, the media and researchers (the University of Latvia, the Centre for Public Policy 'Providus', the research institute 'Latvijas Fakti').
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 effectiveness of measures adopted by the Latvian 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

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<sup>1</sup> Latvia ratified the Criminal Law Convention on Corruption (ETS 173) on 9 February 2001. The Convention entered into force in respect of Latvia on 1 July 2002.

<sup>2</sup> Latvia ratified the Additional Protocol to the Criminal Law Convention (ETS 191) on 27 July 2006. It entered into force in respect of Latvia on 1 November 2006.

GRECO and addressed to Latvia in order to improve its level of compliance with the provisions under consideration.

6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2008) 1E-Theme I.

## **II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART**

### Definition of political party

7. Pursuant to Article 2 of the Law on Political Parties, which entered into force on 1 January 2007, a political party is “an organisation, which is established in order to conduct political activities, take part in the election campaign, propose candidates for elections, take part in the activities of the *Saeima* [the Parliament], municipal councils and the European Parliament, to implement the party programme through deputies, as well as take part in the creation of institutions of public administration”.

### Founding and registration

8. Pursuant to article 13 of the Law on Political Parties, a party may be founded by at least 200 Latvian adult citizens. Apart from the decision<sup>3</sup> to establish a party, the founders have to approve the programme of the party, its statutes<sup>4</sup>, elect a board and an internal body to audit the economic and financial activities of the party.
9. In order to be registered, the authorised representatives of the founders of the party are to submit an application to the Register of Parties (at the Register of Enterprises of the Republic of Latvia) within three months of having taken the decision to establish a party. The request for registration is to be signed by at least two of the authorised representatives and has to include information on the name and legal address of the party, details on the members of the board (indicating also whether they have the right to represent the party separately or together), the date of establishment of the party, the aim of the activities of the party and information on any territorial

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<sup>3</sup> This decision is to be included in the minutes of the foundation meeting and is to include information on the party's name, aims of its activities, the rights and obligations of its founders and the 2 founders who are authorised to sign the statutes.

<sup>4</sup> Pursuant to Article 14 of the Law on Political Parties, the statutes of the party include the following information:

- the name of the party and abbreviation of that name;
- the symbol of the party (a description or image), if any;
- the goals, mission and methods of the party's activities;
- the term of the party's existence (if the party has been established for a limited period of time);
- the procedures and requirements related to how members join, leave or are expelled from the party;
- the procedures for paying membership fees and joining fees;
- the rights and obligations of party members;
- the procedures for establishing territorial and other structural units of the party, as well as the rights and obligations of these units;
- the procedure for convening meetings of members, taking decisions and representing members;
- the term in office of the board and the number of board members, defining the rights of board members to represent the party individually or together, and defining the rights and obligations of the chairperson of the board;
- the structure, election procedure and mandate of the body that will audit the economic and financial activities of the party, the procedure for taking decisions, and the term in office of the members of this body, as well as the procedure for appointing a certified auditor and the term in office of this auditor;
- the procedures for amending the party's statutes and programme;
- the disciplinary measures which can be taken against members (if any) and the requirements and procedures for applying these measures;
- the procedure for nominating and confirming candidates for election to the *Saeima*, municipal councils and the European Parliament;
- the date upon which the statutes are approved.

structural units of the party, as well as the term of the party's existence if it is established for a limited period of time. In addition, the decision on the creation of the party, a list with the names and personal identification numbers of at least 200 founders of the party as well as their signatures (which are to be certified by a notary), the party statutes and programme, a list of members of the board of the party, proof of payment of the state fee and the costs of publishing the information in the official gazette, have to be appended to the application for registration.

10. After registering the party in the Register of Parties<sup>5</sup>, information on the name of the party, the aim of the party's activities, the date of founding the party, the members of the board (indicating if they have the right to represent the party individually or as a group), the period for which the party will exist (if the party has been established for a limited period of time), the party liquidator and insolvency administrator – with the exception of the personal identification numbers of natural persons – is published in the official gazette *Latvijas vēstnesis*.
11. From the moment of registration the political party has legal personality (article 3, Law on Political Parties) and can acquire rights and obligations. From that moment on the party is liable for its obligations with all its assets (article 4, Law on Political Parties). Members of the party are not liable for the obligations of the party. A registered coalition of parties is not responsible for the obligations of the parties that make up the coalition and the parties forming the coalition are not responsible for the obligations of the coalition, in as far as the law does not specify otherwise.
12. In July 2007 there were 72 registered political parties in Latvia. However, the Law on the Procedure for Entering into force of the Law on Political Parties required all political parties to re-register by 31 December 2007. By this date 44 political parties had re-registered.

#### Participation in elections

13. Latvia is a republic with a parliamentary multi-party system. The unicameral Parliament (*Saeima*) is composed of 100 members who are elected for four-year terms through direct elections by secret ballot, by proportional representation<sup>6</sup> (Chapter 2, Article 6 of the Constitution). Latvia's head of state is the president, who is elected by the *Saeima* for a four-year term (with a maximum of two consecutive terms in office). The powers of the president are limited: the position is largely ceremonial but not without influence. At local level, municipal councils,

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<sup>5</sup> Pursuant to Article 18 of the Law on Political Parties the following information is entered into the Register:

- the name and legal address of the party;
- the aim of the party's activities;
- the territorial structural units of the party, if any;
- the date of the decision to establish the party;
- the name, surname and personal identification numbers of each member of the board, indicating whether these members have the right to represent the party individually or as a group;
- the term of the party's existence (if the party has been established for a limited period of time);
- information about a ban on public or other activities of the party and about suspension, cancellation or continuation of the activities of the party, insolvency, liquidation or reorganisation of the party;
- information about the appointment of a party liquidator, his/her name, surname and personal identification number;
- the date of the registration;
- any other information if so required by law.

<sup>6</sup> Latvia uses the Sainte-Laguë method for the distribution of seats. It is similar to the D'Hondt method, but does not favour larger parties in the way the D'Hondt method appears to do. The Sainte-Laguë method distributes seats via a quotient. This quotient is calculated by doubling the number of seats a party has been allocated (initially 0 for each party) and adding one to it and then dividing the total number of votes a list has received by the outcome of the aforementioned calculation (double the number of seats plus 1). The party with the highest quotient is allocated a seat, after which the quotient is calculated anew: Votes for list divided by (2 x number of seats + 1) = quotient.

comprising 7 to 60 members (depending on the size of the municipality), are elected by proportional representation for a four year term.

14. All citizens of the Republic of Latvia, who have reached the age of 18 years, are not imprisoned and have full legal capacity, have the right to vote (Articles 1 and 2, *Saeima* Election Law). Pursuant to Articles 4 and 5 of the *Saeima* Election Law, the right to be elected to the *Saeima* is granted to all citizens of the Republic of Latvia who:
- are at least 21 years old;
  - are not imprisoned;
  - have full legal capacity;
  - have not been convicted for an intentional crime (or have had their conviction for such a crime overturned or their criminal record erased or annulled);
  - have not been subjected to compulsory medical treatment after the commission of a crime;
  - do not and have not belonged to the paid staff of the security, intelligence or counter-intelligence service of the USSR, the Latvian Soviet Socialist Republic (Latvian SSR) or another country;
  - have not been active since 13 January 1991 in the Communist Party of the Soviet Union (the Communist Party of the Latvian SSR), Working People's International Front of the Latvian SSR, the United Board of Working Bodies, the Organisation of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees; and
  - have not had a sanction imposed upon them depriving them of the right to be elected (or have had their conviction for such a crime overturned or their criminal record erased or annulled).

Candidacy for a seat in the *Saeima* is furthermore incompatible with the position of President of Latvia, Auditor-General, member of the State Audit Office's Council or Audit Department, ambassador, judge, prosecutor, police officer, career military staff and member of the European Parliament (Article 6, *Saeima* Election Law). A seat in the *Saeima* is ultimately also incompatible with membership of 'a city, district country or rural municipal council'<sup>7</sup>.

15. Candidates for the *Saeima* can be nominated by registered political parties or registered coalitions of political parties (Article 9, *Saeima* Election Law). Each party determines in its statute the procedure for nominating candidates to its list of candidates for elections to the *Saeima*, municipal councils and the European Parliament (Article 14, Law on Political Parties). Apart from the candidates' consent, declaration of his/her eligibility and support for the campaign platform (i.e. the campaign programme has to be signed by all candidates), and information identifying the candidate, his/her place of residence, proficiency in the Latvian language, education and employment, the list of candidates submitted to the Central Election Commission also has to include information on the assets<sup>8</sup> of each of the candidates (Article 11, *Saeima* Election Law). Candidates who are unaffiliated to a political party cannot stand for election.
16. Elections to the *Saeima* are held in 5 electoral districts: Riga, Vidzeme, Latgale, Kurzeme and Zemgale. A political party may submit a list of candidates for every electoral district or may choose to only submit a list for one or more specific electoral districts. From each electoral district a specific number of members of the *Saeima* are elected in proportion to the number of voters in the district.

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<sup>7</sup> If elected to the *Saeima* the person in question will lose his/her mandate as member of 'a city, district country or rural municipal council'.

<sup>8</sup> Real estate in the ownership or possession of the candidate, transport vehicles, real estate leased to or rented from other persons, debts and loans of the candidate or provided by the candidate of more than 20 minimum monthly wages, shares and securities, financial assets in an amount exceeding 500 LVL.

17. The threshold for entering parliament is five percent of the total number of votes cast in Latvia.

#### Party representation in Parliament

18. In the last elections for the *Saeima*, which were held on 7 October 2006, 19 lists of candidates (both political parties and coalitions/unions of parties/joint lists) were registered to participate<sup>9</sup>, of which 7 acquired seats in the *Saeima*:

- People's Party (*Tautas partija*; TP)\* - 23 seats
- Union of Greens and Farmers (*Zaļo un Zemnieku savienība*; ZZS)\* - 18 seats,
- New Era (*Jaunais laiks*; JL) - 18 seats
- Harmony Centre (*Saskaņas Centrs*; SC) - 17 seats
- Coalition of the First Party of Latvia (*Latvijas Pirmā partija*) and Latvia's Way (*Latvijas Ceļš*); LPP/LC\* - 10 seats
- For Fatherland and Freedom/Latvian National Independence Movement (*Tēvzemei un Brīvībai/LNNK*); TB/LLNK\* - 8 seats
- Coalition For Human Rights in United Latvia (*Par cilvēka tiesībām vienotā Latvijā*; PCTVL) - 6 seats

19. Four parties and coalitions ('unions') of parties (indicated above with \*) went on to form a coalition government: the People's Party (TP), the coalition of the First Party of Latvia and Latvia's Way (LPP/LC), For Fatherland and Freedom (TB/LNNK), and the Union of Greens and Farmers (ZZS). The government resigned in December 2007, but the same four parties and coalitions went on to form a new coalition government in the same month.

#### Overview of the political funding system

##### Legal framework

20. The rules governing funding of political parties and election campaigns are contained in the Law on the Financing Political Organisations (Parties). The law dates back to 1995, but the law has been significantly amended a number of times, *inter alia* in 2002 (tasking the Corruption Prevention and Combating Bureau – hereafter KNAB – with supervision over compliance with the law), in 2004 when the prohibition on donations from legal persons and the expenditure ceiling for the election campaign came into effect and as recently as August 2008 when the campaign expenditure ceiling and the annual limit of permissible donations (including 'joining' and membership fees) was raised and the reporting obligations of the parties were amended.

21. In addition, the Cabinet of Ministers has adopted a number of regulations (as envisaged by *inter alia* Article 4, paragraph 3 of the Law on the Financing Political Organisations), including Regulation No. 591 of 13 July 2004 as regards "Rules on annual reports of political organisations (parties)" and Regulation 196 of 22 March 2005 as regards "Rules on annual declaration of financial activities, declaration on expenditure of pre-election campaigns, notification about

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<sup>9</sup> These political parties were: People's Party (*Tautas partija*), Union of Greens and Farmers ( (*Zaļo un Zemnieku savienība*), New Era (*Jaunais laiks*), Centre of Union (*Saskaņas Centrs*), Union of elections of the Latvian First Party (*Latvijas Pirmā partija*) and the party Latvian Way (*Latvijas Ceļš*), Union for Fatherland and Freedom/Latvian National Independence Movement (*Tēvzemei un Brīvībai/LNNK*), Union of political organisations "For Human Rights in United Latvia" (*Par cilvēka tiesībām vienotā Latvijā*), Latvian Social Democrat Workers Party (*Latvijas Sociāldemokrātiskā strādnieku partija*), Political patriots party Fatherland (*Dzimtene*), Party "All for Latvia" (*Visu Latvijai*), New Democrats (*Jaunie Demokrāti*), Political organisation Party of Retired and Seniors (*Pensionāru un senioru partija*), Land of Mara („Māras zeme”), Political organisation (party) Eurosceptics (*Eiroskeptiķi*), Party Our Land (*Mūsu zeme*), Party of Social Justice (*Sociālā taisnīguma partija*), Union of National Force (*Nacionālā Spēka Savienība*), Party of Latvians (*Latviešu partija*) and Party Union of Fatherland (*Tēvzemes savienība*).

planned election expenditure, election expenditure declaration and reports about gifts (donations) of political organisations (parties)".<sup>10</sup> Finally, the Law on Pre-election Campaigning for the Saeima and European Parliament Elections and the Law on Pre-election Campaigning for Municipal Elections contain a few provisions on party funding, limited to indirect public funding.

22. Since the last major amendments to the Law on the Financing Political Organisations (Parties) in August 2008, which reduced the reporting requirements upon parties and raised the campaign expenditure ceiling and the annual limit of permissible donations (including 'joining' and membership fees), no elections have been held.

#### Public funding

23. Political parties are not provided with any form of direct public funding. Limited indirect public funding is provided to political parties (or coalitions of parties) for elections to the *Saeima*, European Parliament and municipal councils in the form of free broadcasting time. Pursuant to Article 5 of the Law on Pre-election Campaigning for the *Saeima* and European Parliament Elections, each list of candidates is provided with 20 minutes broadcasting time on the Latvian Radio and the Latvian Television<sup>11</sup>; pursuant to Article 5 of the Law on Pre-election Campaigning for Municipal Elections candidates of the same list are provided with 20 minutes broadcasting time (10 minutes in each round) from the 25<sup>th</sup> day to the last day before the day of elections.
24. The GET was informed that on 23 May 2007 the Cabinet of Ministers issued Decree no. 262 setting up a working group to assess the rules on party financing with the aim to examine the possibility of introducing direct public funding in Latvia. The conclusions of the working group outlining various possibilities for the provision of direct public funding and/or extending possibilities for indirect public funding have since been submitted to the Cabinet of Ministers, which – following the amendments to the Law on the Financing of Political Parties in August 2008 – has been tasked to draft legal amendments on the (partial) financing of political parties from the State budget by 1 May 2009.
25. In addition, the GET was made aware that the parties/coalitions represented in parliament receive certain support for their parliamentary work (one staff member for every five members of parliament, assistants for members of parliament, parliamentary offices and small reimbursement of copying and phone costs). Furthermore, the GET was informed that municipalities were not allowed to provide funding from the municipal budget to political parties at local level or to candidates for local elections.

#### Private funding

26. Pursuant to Article 2 to of the Law on the Financing of Political Organisations (Parties), political parties can be funded by:
- membership (and so-called 'joining') fees;
  - gifts (donations) from natural persons (either Latvian citizens or persons who are entitled to a non-citizen's passport of the Republic of Latvia);

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<sup>10</sup> Although still in force this Regulation is now largely obsolete, due to the August 2008 amendments to the Law on Financing of Political Organisations (Parties), but the GET was informed that a new regulation taking into account the amended reporting requirements would be elaborated before the end of 2008.

<sup>11</sup> 10 minutes of broadcasting time from the 29<sup>th</sup> day to the 8<sup>th</sup> day before the day of elections, and 10 minutes of broadcasting time from the 7<sup>th</sup> day to the last day before the day of elections.

- revenues from economic activities of the respective political organisation (party)<sup>12</sup>;
  - other sources of funding not prohibited by law.
27. Gifts (donations) have been defined as “any property or other benefit gained without remuneration, including services, transfer of rights, exempting a political party from certain obligations, giving up rights to a certain benefit in favour of the party or other actions through which some benefit is given to a political party” (Article 2, paragraph 2, Law on the Financing of Political Organisations). In addition, it is provided that the “transfer of real estate or moveable property in the ownership of the party and the rendering of services to a political party against payment which is lower than the real market price of the respective real estate or moveable property or service” is also to be considered a gift (donation).
28. As regards the amount/size/periodicity of donations, Articles 3 and 4 of the Law on the Financing of Political Organisations (Parties), which were amended as recently as August 2008, provides that gifts/donations from a natural person may in a year not exceed 100 minimum wages. Pursuant to Regulation No 592 of the Cabinet of Ministers of 1 January 2008 a minimum wage is 160 Latvian Lats (hereafter LVL); gifts/donations from a natural person may currently in a year thus not exceed 16,000 LVL (approximately €22,800)<sup>13</sup>. Contributions by an individual member of the party in the form of membership fees, the ‘joining’ fee and donations may similarly not total more than 100 minimum wages in a year.
29. A number of restrictions apply to the sources of private funding. Political parties may not receive donations from legal persons, including state and municipal bodies, foreign<sup>14</sup> natural and legal persons and from anonymous donors. In addition, natural persons may not donate to political parties through intermediaries or by lending money from a third person (nor may the party itself take out loans or credits to finance its activities or provide any financial guarantee itself). Furthermore, pursuant to the August 2008 amendments to the Law on the Financing of Political Organisations (Parties), natural persons who have had a sentence imposed upon them, prohibiting them from being a candidate for elections to the *Saeima*, the European Parliament or local council (with the exception of persons who have had their conviction overturned or had their criminal record erased or annulled), are not permitted to finance political parties by gifts and donations.<sup>15</sup>
30. Donations to political parties by natural persons are not tax deductible.
31. The Latvian authorities indicate that neither the Law on the Financing of Political Organisations (Parties) nor other laws specifically regulate enterprises and organisations linked directly or indirectly to political parties or otherwise under the control of political parties.

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<sup>12</sup> Before the entry into force of the most recent amendments to the Law on Financing Political Organisations (Parties) in August 2008, political parties could also be funded by revenues (dividends) from investments in capital companies. However, this possibility has since been deleted from the law.

<sup>13</sup> Before the entry into force of the amendments to the Law on Financing of Political Organisations (Parties) in August 2008, gifts/donations (including membership and ‘entry’ fees) by a natural person was not permitted to total more than 10,000 LVL (approximately €16,000) annually.

<sup>14</sup> Foreign natural persons are understood to be non-Latvian citizens and persons not entitled to a non-citizen’s passport of the Republic of Latvia.

<sup>15</sup> Before the entry into force of the amendments to the Law on Financing of Political Organisations (Parties) in August 2008, natural persons who had been convicted for intentional crimes against property, the national economy or in public service and who have not completed their sentence (with the exception of persons who have been discharged), as well as former employees and informers of the State Security Committee were also prohibited from donating to political parties. This subsection of Article 6 of the Law on Financing of Political Organisations (Parties) has now been deleted.



## Expenditure

32. Limits and restrictions on the expenditure of political parties exist in the context of an election campaign. Before the 2008 amendments to the Law on the Financing of Political Organisations (Parties) a political party (or coalition of parties) which had submitted a list of candidates in all five electoral districts for Saeima elections was not allowed to spend more than 0.20 LVL (approximately €0.28) per person who had voted in the previous *Saeima* elections<sup>16</sup> in the period from the 270<sup>th</sup> day before to the day of the elections (irrespective of the moment at which the invoice or contract had been issued or payment was made) on the following items:
- advertising (on television, radio, internet – except for the party's own website –, in the press and in premises and public spaces);
  - use of mail services (including e-mail) to distribute election materials;
  - producing and distributing advertising and election materials;
  - the planning, preparation and organisation of the election campaign;
  - salaries of staff involved with the election campaign;
  - renting moveable property and real estate for the needs of the election campaign;
  - publications produced for the election campaign;
  - charity events connected to the election campaign, paying benefits and making donations, and;
  - other expenditures arising from the election campaign.
33. With the entry into force of the amendments to the Law on the Financing Political Organisations (Parties) in August 2008, the campaign expenditure ceiling has been raised significantly and is now "the average gross salary<sup>17</sup> of the year before the last year published by the Central Statistical Bureau, rounded up to full Lats, by applying a coefficient of 0.0008" per person who has voted in the previous *Saeima* elections (i.e. the expenditure ceiling is calculated on the basis of the number of voters who participated in the previous elections).<sup>18</sup> Furthermore, although parties still have to report on the abovementioned 'election campaign expenses' in their election income and expenditure declaration (see paragraph 40 below), the campaign expenditure ceiling has been limited to expenditures incurred by parties for advertising and use of mail services and charity events connected to the election campaign (paying benefits and making donations). There is thus no longer a cap on any of the other expenses mentioned in paragraph 32. Moreover, the expenditure ceiling now applies to costs incurred (for advertising and use of mail services and charity events) in the period from the 120<sup>th</sup> day before to the day of the elections (regardless of when the invoice or contract has been issued or payment has been made).
34. In the elections for the *Saeima* of 5 October 2002 there were 1,398,156 registered voters. The campaign expense ceiling for the most recent elections in 2006 was therefore 279,631 LVL (approximately €400,000)<sup>19</sup> per party (or coalition of parties) having submitted lists of candidates for all 5 electoral districts. The GET was informed that in the last (2006) *Saeima* elections most parties in parliament would meet (or even surpass) this campaign expenditure ceiling. However, under the new regime, if *Saeima* elections were to take place in 2009, the expenditure ceiling for

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<sup>16</sup> Similarly, before the 2008 amendments to the law, the campaign expenditure ceiling for municipal council and European Parliament elections was also 0.20 LVL per voter (on the basis of the number of voters having participated in respectively the previous municipal council elections and previous *Saeima* elections).

<sup>17</sup> The average gross salary in Latvia in 2007 was 398 LVL (approximately €570). Consequently, if there would be *Saeima* elections in 2009, the campaign expenditure ceiling would be 474,000 (approximately €675,000).

<sup>18</sup> Similarly, for municipal council elections the campaign expenditure ceiling is also based on the number of voters in the previous municipal council elections and the average gross salary using a coefficient of 0.0008; for European Parliament elections this coefficient is set at 0.0003 (although as a transitional measure for the forthcoming 2009 European Parliament elections a coefficient of 0.00015 is used).

<sup>19</sup> As indicated before, this ceiling was applicable to all expenditure mentioned in paragraph 32.

advertising costs, use of mail services and charity events alone would be 474,000 LVL (approximately €675,000).

### **III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART**

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

##### Books and accounts

35. Pursuant to Article 9.1 of the Law on the Financing of Political Organisations (Parties), political parties are required to keep books and accounts in line with existing laws and regulations. In accordance with Article 10 of the Law on Accounting, annual accounts and their appendices and the general ledger shall be kept for a period of 10 years (after which they shall be submitted to the state archives); inventories, accounting registers and documents on the organisation of the accounts shall be kept for 10 years; source documents regarding monthly salaries of employees shall be kept for 75 years and all other source documents for a period of 5 years.
36. With regard to account offences, failure to comply with the abovementioned provisions of the Law on Accounting is subject to administrative liability pursuant to the Administrative Violations Code. Section 166.6 of the aforementioned Code provides that failure to comply with the provisions on accounting in relevant regulations, failure to submit reports and statistical data within the time period specified in the relevant regulations and provision of incomplete information to the relevant state institutions is subject to fine of 150 LVL (approximately €210) in case of a natural person or 50 to 300 LVL (approximately €70 to €430) in case of a legal person. In case of non-submission of the aforementioned documents and/or information, a fine of 100 to 250 LVL (approximately €140 to €350) can be imposed on natural persons and 150 to 500 LVL (approximately €210 to €700) on legal persons. Furthermore, Article 217 of the Criminal Law provides for community service or a fine with a maximum of twenty times the minimum monthly wage<sup>20</sup> for repeated (within one year) violations of provisions on accounting procedures and a maximum of three years' imprisonment or a fine with a maximum of eighty times the minimum monthly wage for concealing and forging accounting documentation. These sanctions can be imposed on natural persons. However, in accordance with Chapter VIII<sup>1</sup> of the Criminal Law on Coercive Measures Applicable to Legal Persons, if a natural person has committed the accounting offence in the interest of the legal person/political party (and if the guilt of the natural person has been established), a fine can be imposed upon the political party in an amount of 1 to 10,000 times the minimum monthly wage. No criminal sanctions have ever been imposed upon a political party for failure to comply with accounting provisions, but political parties have been held (administratively) liable for violation of accounting provisions pursuant to the Administrative Violations Code.
37. Pursuant to Article 14 of the Law on Political Parties the statutes of the political party are to specify the structure of the body in charge of the economic and financial auditing of the party (as well as the procedure for election, competence, procedure for decision-making and the term of office of this body).<sup>21</sup> In addition, the statute is also to indicate the procedure for appointing a certified auditor and the term of office of this auditor. Furthermore, Article 11 of the Law on the Financing of Political Organisations (Parties) requires parties whose annual turnover exceeds 10 times the minimum monthly wage (in 2008, this would amount to 1600 LVL/approximately €2280)

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<sup>20</sup> By virtue of Regulation No 592 of the Cabinet of Ministers (1 January 2008), the minimum wage is 160 LVL (approximately €230).

<sup>21</sup> Article 33 of the Law on Political Parties specifies that an auditing body is elected and dismissed by the meeting of party members, unless otherwise stipulated in the statutes.

to undertake an internal audit<sup>22</sup>: their financial and economic activities are to be audited by a certified auditor at least once a year (and the auditor's statement is to be appended to the annual declaration of financial activities which is to be submitted to the KNAB: see further below). The political party bears the costs of the audit.

### Reporting obligations

38. The amendments to the Law on the Financing of Political Organisations (Parties), which entered into force in August 2008, brought some significant changes in the reporting obligations of political parties. Under the old regime political parties were required to provide to the KNAB (1) information on individual donations / gifts; (2) an annual declaration of financial activities; (3) a declaration on pre-election campaign expenditure; (4) a notification of planned election campaign expenditure; (5) an election expenditure declaration; and (6) their annual report. Under the amended reporting obligations political parties have to disclose individual (accepted and non-accepted) donations/gifts, as before, and submit an election income and expenditure declaration as well as their annual report. They are thus no longer required to provide the KNAB with an annual declaration of their financial activities, a declaration on pre-election campaign expenditure or a notification of planned election campaign expenditure.
39. First of all, as regards the first-mentioned form of disclosure – individual donations / gifts – Article 4, paragraph 3, of the Law on the Financing of Political Organisations (Parties) provides that a political party must, within 15 days of receiving a gift (donation), publish information about this gift (donation) on a separate internet page, indicating the nature, value, date of receipt and the identity of the natural person who has provided the gift (donation)<sup>23</sup>. In practice, the information on gifts (donations) is not published by political parties themselves, but by the KNAB in its Parties Finances Data Base on its web site.<sup>24</sup> The information in this database is publicly accessible and reportedly updated on a daily basis.
40. Secondly, within 30 days of the relevant *Saeima*, municipal council or European parliament elections, a political party having participated in the respective election is required to submit to the KNAB an election income and expenditure declaration (signed by the Board of the party or a person authorised by it). This declaration is to include all income and expenditure incurred over the period from 120 days before elections to the day of elections, regardless of when the payments have been made or when the document certifying that a transaction has been made (invoice, contract or other) has been issued. Pursuant to the (amended) Article 8.2 of the Law on the Financing of Political Parties this declaration is to explicitly include the following expenditure:
- advertising (on television, radio, internet with the exception of the party's own web-site, in written media and in premises and public spaces);
  - use of mail services (including e-mail) to distribute election materials;
  - producing and distributing the advertising materials;
  - planning, preparation and organisation of the election campaign;
  - salaries of staff involved with the election campaign;
  - rent of moveable property and real estate for the needs of the election campaign;

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<sup>22</sup> Before the 2008 amendments of the Law on Financing of Political Organisation (Parties) all political parties were required to carry out such an audit.

<sup>23</sup> Any donation not returned to the donor within 30 days of its receipt shall be deemed to have been accepted. Information about gifts (donations) which have not been accepted also has to be published on the internet.

<sup>24</sup> The information published by KNAB on gifts (donations) indicates the name and registration number of the party, which has received the gift (donation); the nature, value and date of receipt of the gift (donation); the name, surname and date of birth of the natural person who has provided the gift (donation); the name, surname and position of the person providing the information about the gift (donation) and the date of submission of information on the gift (donation) to the KNAB.

- costs of publications produced for the election campaign;
  - financing charity events connected to the election campaign, paying benefits and making donations, and;
  - other expenditures arising from the election campaign (which are to be disclosed under separate item headings).
41. Finally, political parties also have to submit a copy of their annual report, prepared in accordance with the Law on Accounting, to the KNAB (and the State Revenue Service) no later than by 31 March the following year (Article 8.5 of the Law on the Financing of Political Organisations (Parties), as amended in 2008). The Latvian authorities indicate that this is a comprehensive report that includes the most relevant information on party accounts. As already indicated above, if the party has an annual turnover of more than 10 times the minimum monthly wage (in 2008, this amounts to 1600 LVL/approximately €2280) the annual report is to also include a statement by a certified auditor, pursuant to Article 11 of the Law on the Financing of Political Organisation (Parties) (as amended).
42. Already before the 2008 amendments to the Law on the Financing of Political Organisations (Parties), a standardised format – in the form of a regulation of the Cabinet of Ministers – was in place (for the pre-election campaign expenditure declaration, notification of planned campaign expenditure and election expenditure declaration, as well as the annual declaration of financial activities, which also prescribed the procedure by which parties had to submit their declarations and notifications to the KNAB) as well as another Regulation about individual donations, stipulating that political parties were to inform the KNAB within 7 days of receiving such donations. These regulations are still in place for the election income and expenditure declaration and individual donations, but are expected to be replaced, by the end of 2008, by new regulations of the Cabinet of Ministers, taking into account the amended reporting requirements.

#### *Third parties*

43. There are no requirements placed on natural persons to report contributions made to political parties or their election campaign (legal persons are prohibited from donating to political parties and/or their election campaign).

#### Access to accounting records

44. The KNAB has full access to all the financial information and accounting records of *inter alia* political parties. To this end Article 10, paragraph 1 of the Law on the Corruption Prevention and Combating Bureau provides that the KNAB has the right to request and receive information, documents and other materials free of charge from state and municipal bodies, companies, organisations, officials and other persons, regardless of the level of confidentiality of the requested information. Article 2, paragraph 4 of the Law on the Financing of Political Organisations (Parties) furthermore stipulates that donors are also required to provide information at request of the KNAB about their income, savings and property. Moreover, pursuant to Article 2, paragraph 5 of the Law on the Financing of Political Organisations (Parties), if the KNAB deems it necessary a donor is obliged to provide documents attesting the legality of the sources of financing s/he has provided. Finally, the Director of the KNAB (or a person specially authorised by him/her) can apply to the Chief Justice of the Supreme Court (or a Justice of the Supreme Court authorised by him/her) to access (bank) account information of any natural person (Section 63, Paragraph 1 (7) of the Credit Institution Law).

45. Furthermore, the State Revenue Service (tax authorities) has the right to check books and accounts of natural and legal persons, as well as other documents related to accounting and budget matters and has the right to request annual reports from legal persons.
46. Moreover, the Office of the Prosecutor has the right to request and receive normative acts, documents and other information from state bodies, banks, local governments, enterprises, institutions and organisations, including political parties.

#### Publication requirements

47. Article 9 of the Law on the Financing of Political Organisations (Parties) stipulates that the financial and economic activities of political parties are public. In addition to providing the general public with the right to receive the relevant documentation from the KNAB, Article 9 also stipulates that information provided in the political parties' annual reports and election income and expenditure declarations will be published by the KNAB in the official gazette *Latvijas Vēstnesis* and on the web-site of the KNAB no later than 10 days after their submission. As mentioned before (see paragraph 39 above), information about individual gifts (donations) is also published on the website of the KNAB.

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

#### Monitoring

48. The main actor in monitoring compliance with political finance regulations is the KNAB for both political parties' routine financial activities and election campaigns. Article 2, paragraph 1, of the Law on the Corruption Prevention and Combating Bureau provides that the KNAB is "an institution of state administration under supervision of the Cabinet of Ministers". In practice, this supervision is exercised by the Prime Minister, who – pursuant to Article 7 of the State Administration Structure Law – can check the legality of decisions taken by the Bureau, cancel decisions which s/he perceives as illegal and can give orders to take a decision in case of an unlawful failure to act. Pursuant to Article 19 of the same Law, the Prime Minister can however not revoke administrative acts (i.e. decisions regarding administrative infringements included in the Administrative Violations Code or regarding the funding of political parties). Furthermore, the Prime Minister does not have the power to supervise criminal cases investigated by the KNAB. The KNAB's budget is decided on by the *Saeima* on the basis of a proposal by the Cabinet of Ministers.
49. Article 9 of the Law on the Corruption Prevention and Combating Bureau provides that the KNAB is to carry out a broad array of tasks in the area of party funding, which apart from supervising compliance with the Law on the Financing Political Organisations (Parties) includes investigative activities, enforcement, awareness raising and data analyses.<sup>25</sup> The work on party finance is

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<sup>25</sup> Article 9 of the Law on Corruption Prevention and Combating Bureau provides that the KNAB is to:

- monitor compliance with the party financing regulations of political organisations (parties);
- in cases foreseen by law, hold persons administratively liable and impose penalties;
- carry out investigations and operational activities to detect those offences foreseen in the Criminal Code that are related to violation of the rules related of financing of political organisations (parties) and their union and which according to the law are not in the field of competence of security institutions;
- within its competence check complaints and reports, as well as conduct enquiries on proposal of the President, the *Saeima*, Cabinet of Ministers or the Prosecutor General;
- centralise and analyse information on declarations of financial activities of political organisations (parties)/unions, violations detected in the submission of these declarations and failure to respect the limits imposed by the law;

carried out by the Division of Control of Financing of Political Organisations, which has a staff of eight persons. Pursuant to Article 13 of the aforementioned law the staff of this division (and the rest of the KNAB) cannot be a member of a political party or one of their associations.

50. More specifically as regards supervision over compliance with party funding rules, Article 8.2 of the Law on the Financing of Political Organisations (Parties) (as amended) provides that the KNAB is to verify the election income and expenditure declarations. In addition, pursuant to Article 8.5, paragraph 4, of the Law on the Financing Political Organisations (Parties), the KNAB – within the scope of its competence – is also to examine the annual reports of political parties (including the statement by the certified auditor on the financial and economic activities of the party for those parties with an annual turnover of more than 10 times the minimum monthly wage). As regards the latter statement, the Latvian authorities indicate that the responsibility of the certified auditor is quite limited (ethical aspects, confidentiality etc.) and that there have been cases in which the KNAB detected violations even when the report had been approved by a certified auditor. The KNAB is required to inform the public about all breaches of party finance regulations it has identified in the aforementioned election income and expenditure declaration and annual report and on measures carried out for the prevention of these breaches respectively within six months after the deadline for submission of the election declarations and (for the annual reports) by 1 April the following year.
51. In carrying out its tasks, the KNAB has extensive powers: it can *inter alia* carry out criminal investigations; use various special investigative techniques in these investigations; obtain documents from state and municipal bodies, companies, organisations, officials and other persons, regardless of their secrecy regime; enter premises; impose administrative sanctions and arrest persons (Article 10, paragraph 1 of the Law on the Corruption Prevention and Combating Bureau).

(iii) **Sanctions**

52. Political parties are subject to administrative liability if they do not comply with the obligations laid down in the Law on the Financing of Political Organisations (Parties) and criminal liability for criminal offences committed in the context of campaign or party funding.
53. As regards administrative liability, pursuant to Article 10, paragraph 1, of the Law on the Financing of Political Organisations (Parties) the KNAB may impose administrative fines (in line with Article 166.34 of the Code of Administrative Violations of Latvia) on a political party in an amount of 250 to 10,000 LVL (approximately €350 to €14,200) for the following violations of the law:
- failure to submit the annual report and the election income and expenditure declaration on time;
  - failure to include all the information required by law in the aforementioned declarations and notification;
  - provision of false information in the aforementioned declarations and notification;
  - financing parties from non-permitted sources (for example, by accepting donations from legal persons, Article 2, paragraph 1);

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- analyse normative acts and draft normative acts, as well as propose amendments, submit proposals for development of new legal acts;
  - conduct opinion polls and analyse public opinion;
  - educate society in the area of financing of political organisations (parties) and their unions;
  - inform the public about detected violations of rules on financing of political organisations (parties) and their unions as well as about measures taken to prevent these violations.

- acceptance of membership fees, 'joining' fees and donations made by an individual member in excess of 100 times the minimum monthly wage in a given year (Article 3, paragraph 1)
  - acceptance of donations made by an individual donor in excess of 100 minimum monthly wages in a given year (Article 4, paragraph 2);
  - failure to respect the rules on publication of gifts (donations) which have been received (including those which have not been accepted by the party) (Article 4, paragraph 3)
  - failure to transfer gifts (donations) in excess of 100 LVL to the bank account of the party (Article 6, paragraph 2);
  - acceptance of a loan (Article 6, paragraph 5);
  - giving any kind of loan or guarantee (Article 6, paragraph 6);
  - financing a party through anonymous donations (Article 7, paragraph 1);
  - failure to transfer anonymous donations to the state budget (Article 7, paragraph 3);
  - exceeding the campaign expenditure ceiling (Article 8 (4))
  - failure to maintain accounting records in accordance with accounting regulations (Article 9(1)).
- These administrative sanctions can be imposed by officials of the KNAB on political parties.

54. Furthermore, pursuant to the new paragraph 1.1 of Article 10 of the Law on the Financing of Political Organisations (Parties), the Director of the KNAB can order a political party to return illegally acquired financial assets to the donor within a period of 30 days, if the donation:
- does not come from the donor's income over the previous 3 years in accordance with Section 8 and 9 of the Law on Personal Income Tax, or if the membership or 'joining fee' does not derive thereof (Section 2, paragraph 3);
  - is from a non-permitted donor (for example, a foreign citizen) (Section 4, paragraph 1);
  - is a gift or loan of another person or by someone who has been disqualified from being a candidate in elections for the *Saeima*, the European Parliament or local council (new Section 6, paragraph 1).
55. Moreover, pursuant to Article 10 (paragraph 2 and 3), a political party can be ordered by the Director of the KNAB to transfer assets acquired in violation of the law to the State, in case of the following infringements of the Law on the Financing of Political Organisations (Parties):
- funding from non-permitted sources (Article 2, paragraphs 1 and Article 6, paragraph 1);
  - receiving donations/memberships fees/'joining' fees) from an individual donor or member in excess of 100 minimum monthly wages in a calendar year (Article 3, paragraph 1 and Article 4, paragraph 2);
  - failing to transfer a donation in excess of 100 LVL directly to the bank account of the party (Article 6, paragraph 2);
  - receiving donations through an intermediary (Article 6, paragraph 3) or in the form of a loan (Article 6, paragraph 5);
  - giving any kind loan or guarantee (Article 6, paragraph 6);
  - accepting an anonymous donation or failing to transfer an anonymous donation to the state budget (Article 7, paragraph 1 and 3);
  - exceeding the campaign expenditure ceiling (Article 8.4);
  - failing to disclose a received donation in the annual report or in information on gifts to be submitted to the KNAB.
56. Moreover, if a political party repeatedly fails to submit its annual report or election income and expenditure declaration, the Director of the KNAB will issue a written warning to the Board of the political party (within two weeks of the deadline for submission of the annual report/election income and expenditure declaration). If in spite of the warning, the political party still does not submit the aforementioned report and/or declaration, within the deadline set by the KNAB or if it fails to comply with the abovementioned order of the Director of the KNAB to transfer illegally

acquired assets/property to either the State or the donor, the Director of the KNAB is to apply to the court to suspend the activities of the political party in question. If the court orders a suspension of the activities of the political party, but the party nevertheless continues its activities, the Director of the KNAB is to apply to the court to abolish the party.

57. Decisions taken by officials of the KNAB imposing administrative sanctions can be appealed to the Director of the KNAB. Decisions taken by the Director of the KNAB can be appealed in court.
58. Finally, the Criminal Law provides for certain criminal sanctions in the context of party financing. Pursuant to Article 288.2 of the Criminal Law a maximum of 2 years' imprisonment, custodial arrest, community service or a fine of between 30 and 200 minimum monthly wages can be imposed upon a natural person for financing a political party through an intermediary. Article 217 and 275 provides for sanctions with a maximum of 3 or 2 to 4 years' imprisonment respectively, or custodial arrest or community service or a fine of a maximum of respectively 20 to 80 or 40 to 60 minimum monthly wages for violation of accounting regulations or forgery of documents. If during the course of these criminal proceedings against a natural person it becomes apparent that the offence in question was committed in the interest of a legal person (in this case the political party) and if the natural person had the right to represent, exercise control within or take decisions on behalf of the legal person, sanctions may be taken against the legal person (political party). Legal persons (political parties) can thus also be held liable for these criminal offences, but only under the aforementioned conditions and always within the framework of criminal proceedings against a natural person.

#### Statistics

59. In the period 2003-2006 the KNAB checked approximately 300 declarations and 2093 reports about donations and has issued 85 warnings in this context.

	2003	2004	2005	2006
Decisions imposing administrative sanction on a political party	1	15	57	46
Decisions asking to pay to the state budget illegally acquired funding	15	22	8	17
Administrative fines imposed on political parties	-	4,295.00 LVL	21,050.39 LVL	36,570.00 LVL
Administrative fines paid by political parties	-	2,875.00 LVL	6,100.00 LVL	22,395.39 LVL
Detected illegal funding of political parties	166,891.02 LVL	133,231.90 LVL	15,418.99 LVL	58,305.62 LVL
Illegal funding paid to the state budget by political parties	114,586.02 LVL	13,374.19 LVL	113,244.66 LVL	16,958.92 LVL

60. Furthermore, in the period 2003 to May 2007, the KNAB has applied to the court to suspend or terminate the activities of political parties in 30 cases; in 16 cases the court decided to suspend the activities of the political party and in 8 cases the activities of the political party were terminated altogether.



## Immunities

61. Members of the *Saeima* enjoy immunity for possible (criminal and administrative) offences committed in the context of party funding or election campaign funding: they cannot be prosecuted (nor arrested, have their residence searched or have their personal freedom restricted in any other way) – unless caught in the act of a crime – or have administrative charges brought against them without consent of an absolute majority of the *Saeima*.

## Statutes of limitation

62. Article 37, paragraph 4 of the Administrative Violations Code of Latvia provides that sanctions for violations of the Law on the Financing of Political Organisations (Parties) are to be imposed no later than 4 months after the day the violations of the law have been detected but no later than 1 year after the violation has been committed. The Latvian authorities indicate that for other administrative violations the statutory limitation period is much shorter: 4 months from the day the violation was committed and/or 4 months from the day when it was discovered. As for the obligation to transfer assets acquired in violation of the law to the state, there is no limitation period.
63. As regards the criminal offences of financing a political party by use of an intermediary (Article 288.2 CC), violation of accounting provisions (Article 217 CC) and forgery of documents (Article 275 CC), the Criminal Law provides that these are “misdemeanours” and so-called “less serious crimes”. The limitation period for misdemeanours is 2 years from the day of commission of the offence and 5 years for a less serious crime.

## **IV. ANALYSIS**

64. Despite its relatively short tradition of representative democracy, Latvia has a well-developed legal and institutional framework regulating financing of political parties and election campaigns and supervision thereof. Already in 1995, a few years after Latvia regained independence, the *Saeima* adopted the Law on the Financing of Political Organisations (Parties). This law has since been amended and reinforced several times, *inter alia* in 2002 when the task of supervision over political finance was transferred from the State Revenue Service to the then newly-established Corruption Prevention and Combating Bureau (hereafter: KNAB), in 2004 when a ban on donations by legal persons and a campaign expenditure ceiling was introduced, in light of significant resources spent in the 2002 *Saeima* elections, in 2006, when the Director of the KNAB was given the right to order parties to transfer to the State the amount by which campaign expenditure ceilings were exceeded, and most recently in August 2008, when the campaign expenditure ceiling was raised, the annual limit of permissible donations (including ‘joining’ and membership fees) was increased and the reporting obligations were reduced.
65. One of the main characteristics of the Latvian party finance system is that political parties and their election campaigns are almost entirely financed by private means: besides 20 minutes broadcasting time on Latvian Radio and TV in the context of an election campaign and financial support to parliamentary groups, no public funding is provided to political parties. The private funding parties receive is in turn strictly regulated: as already indicated above, political parties may not accept funding from legal persons, foreign and anonymous donors, donations (and membership and ‘joining’ fees) by any natural person may not exceed 100 times the minimum monthly wage in a given year (in 2008, this amounts to 16,000 LVL / approximately €22,800, compared to a limit of 10,000 LVL / approximately €14,200 before August 2008) and donating through an intermediary is prohibited.

66. Despite the detailed regulatory framework in place, political parties and coalitions of such parties in Latvia appear to have been very resourceful in finding loopholes or ways around the law entirely. Several of the interlocutors the GET met on site commented in this respect that whereas compliance with the letter of the law was already not something to boast about, compliance with its spirit was lacking entirely. The GET was told that whichever party was most successful in finding a loophole in the law would have a considerable advantage in the elections, as elections are greatly influenced by advertising; or more bluntly, in the words of one interlocutor, “the party who spends the most on its advertising campaign wins the elections”. Each election in Latvia appears to have given rise to debates on perceived lacunae in political finance regulations, often leading to further amendments of the law; the most recent elections of 2006 being no exception in this regard.
67. Although the abovementioned massive electoral campaigns coupled with the prohibition on donations by legal persons and especially the ban on financial support of more than 10,000 LVL (approximately €14,200) – as it was in force at the time of the Evaluation Visit (which has since been raised to 16,000 LVL / approximately €22,800) – by a natural person in a year presuppose the existence of a large group of relatively small donors, the GET learned that the group of individuals willing and able to express their political support financially was in effect not all that large. On the contrary, many interlocutors stressed that there were strong suspicions that the funding of a few parties in fact originated from a few wealthy persons. Whether these suspicions are founded or not, reluctance of ordinary citizens to donate money to political parties and low party membership appeared to be given. A few interlocutors indicated that the scrutiny by the KNAB had contributed to this reluctance (i.e. that people would fear being questioned or having their finances investigated by the KNAB merely for having given a donation); most interlocutors pointed to the general low level of public trust in politics.
68. A consequence of the (perceived) low level of public trust of citizens in political parties is that funding scandals and/or violations of the law brought to light by the KNAB do not seem to influence voting behaviour, as they merely seem to confirm the public’s low opinion of political parties. Although the media report extensively on this topic, the GET heard that the public was tired of hearing about it. Consequently, the most effective sanction in any political finance regulatory system, the punishment of parties at the ballot box (‘political sanctions’) is not operational in Latvia. However, there are certain indications that the public attitude may be shifting (if the unprecedented mass protests against the decision by the Prime Minister to dismiss the Director of the KNAB in the autumn of 2007 are anything to go by).
69. Against this background the following analysis focuses on three distinct areas of concern for the present evaluation, namely transparency of political financing, the supervision of such financing, the sanctions applicable when funding rules are violated as well as their enforcement. As indicated above, the GET is of the opinion that Latvia has a well-developed legal and institutional framework regulating financing of political parties and election campaigns, which overall is in line with the provisions of 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. However, that is not to say there are no issues of concern.

### *Transparency*

70. At the time of the on-site visit of the GET the Law on the Financing of Political Organisations (Parties) imposed a large variety of reporting requirements on political parties/coalitions: in the context of an election campaign, parties were required to provide the KNAB with an interim report

on their campaign expenditure, a notification of their planned campaign expenditure 30 days before the elections and a report on their election campaign expenditure. In addition, parties had to annually submit a declaration on their financial activities to the KNAB, including information on membership fees, donations (both monetary and in-kind, indicating its value, date of receipt and the identity of the donors), inheritances and any other income, as well as expenditure, and provide their annual report. Since August 2008, parties are no longer required to submit an interim report on their campaign expenditure or a notification of their planned campaign expenditure, but instead have to report to the KNAB within 30 days of the elections in question on all income and expenditure incurred in the period of 120 days before the elections to the day of the election in question. Furthermore, the requirement upon parties to submit an annual declaration on their financial activities to the KNAB has been cancelled; the GET was informed that the most relevant financial information would be included in the annual report of the parties which – as before – has to be provided to the KNAB. Although it does seem regrettable that the requirement to submit an interim report in the context of an election campaign is no longer in place, the GET appreciates that these amendments to the Law on the Financing of Political Organisations (Parties) have eased the administrative burden on parties. Furthermore, the GET is satisfied that the financial information to be included in the annual report of political parties is sufficiently detailed and comprehensive to allow for genuine oversight of the KNAB and that a new Regulation of the Cabinet of Ministers on the format and content of the annual reports – which should ensure that the information made available to the public is coherent, meaningful and comparable to the greatest extent possible – will be elaborated before the end of the year.

71. The GET appreciates in particular that, as before, both the annual report and election income and expenditure declaration are published, pursuant to Section 9 of the Law on the Financing of Political Organisations (Parties), in the official gazette and on the website of the KNAB and that further (amended) regulations on the procedure for submitting the reports/declarations, including a standardised format for the declarations, is (soon to be) adopted, which will not only help parties in complying with their reporting requirements but which will greatly facilitate comparison across the years and between parties.
72. In addition to the annual report and election income and expenditure declaration, political parties are (and were already before the 2008 amendments to the Law) also required to report on individual monetary and in-kind donations – both donations they have accepted and those they have not (because they came from an anonymous donor or exceeded the ceiling of 100 minimum monthly wages<sup>26</sup>) – within fifteen<sup>27</sup> days of receiving them. This information is entered by the KNAB in a publicly searchable data base on its web-site ([www.knab.gov.lv/db](http://www.knab.gov.lv/db)), listing information on the party to which the donation has been made, its nature, value and date of receipt and the name of the donor. Detailed information on donations is thus made available to the public within a very short time, which – although supporting documentation is not available – has the potential of greatly facilitating oversight by civil society and the media.
73. Despite this largely positive assessment of, in particular, the transparency requirements regarding individual donations made to political parties, the Law on the Financing of Political Organisations (Parties) suffers from an important shortcoming: it fails to address the involvement of third parties (i.e. entities outside the party structure) in election campaigns, an issue which resurfaced in all the interviews the GET held on site. In the 2006 *Saeima* elections it became evident that this lacuna in the law could easily be abused. As already indicated above, the Law was amended in 2004 to introduce campaign expenditure ceilings. The 2006 *Saeima* elections

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<sup>26</sup> As indicated above, before the 2008 amendments to the Law this was 10,000 LVL (approximately € 16,000).

<sup>27</sup> As indicated above, before the 2008 amendments to the Law this was ten days.

were the first elections held since the introduction of this ceiling, placed at approximately 280,000 LVL (circa €400,000) for parties/coalitions participating in all five electoral districts<sup>28</sup>. However, two parties/coalitions benefited considerably from publicity campaigns conducted by third party front organisations, allegedly set up specifically for this purpose by persons closely linked to the parties in question. The campaign conducted for the benefit of the two parties/coalitions allowed them to circumvent the aforementioned expenditure ceiling – reportedly by three times the campaign expenditure ceiling in one case – as well as the cap on donations. The two parties in question went on (together with two other parties/coalitions) to form the current coalition government. The issue cast a long shadow over the outcome of the 2006 elections (which was contested by two parties up to the European Court of Human Rights). Moreover, court proceedings challenging the decision of the Director of the KNAB – which asked the two parties/coalitions to pay to the state budget the amount by which the campaign expenditure ceiling had been exceeded – have to date not yet been concluded (further hampered by the fact that one of the parties/coalitions had been deregistered as a legal entity in the meantime, see paragraph 81 below). In light of this controversy, which greatly undermines the transparency of party funding and the level playing field between parties, the GET recommends **to take measures to ensure that the involvement of entities outside the party structure, related directly or indirectly to political parties/coalitions, in election campaigns is made transparent and does not undermine the requirements of the Law on the Financing of Political Organisations (Parties).**

#### *Supervision*

74. As regards internal control, the GET welcomes that the recently enacted Law on Political Parties promotes internal supervision of party accounts by requiring parties to lay down in their statutes the structure of the body that will audit their economic and financial activities (including the procedure for the appointment of its members and for taking its decisions as well as the term in office of its members). The law does not require the declaration by this audit body to be submitted as part of the annual report (although such a requirement could perhaps add another layer of responsibility as to the veracity of the financial information submitted). Furthermore, the Law on the Financing of Political Organisations (Parties) requires parties whose annual turnover exceeds 10 minimum monthly wages to appoint a certified auditor who is to examine the party's economic and financial operations at least annually. The conclusions of the auditor are to be attached to the annual report to be submitted to the KNAB. As already indicated before, the GET was told that the responsibility of the certified auditor was rather limited and that there have been cases in which the KNAB has detected clear infringements of the law even when the report concerned had been approved by a certified auditor.
75. As regards external control, since it became fully operational in February 2003 the KNAB is the key institution responsible for monitoring compliance with party finance regulations, having taken this task over from the State Revenue Service. Pursuant to the Law on the Corruption Prevention and Combating Bureau, supervision of political funding is merely one of the many tasks the KNAB – which has a staff of 144 persons – is to carry out: its mandate also includes criminal investigations of corruption offences (in the public sector), prevention of conflicts of interest, risk assessments, awareness-raising and educational activities. Monitoring compliance with the party finance regulations is the responsibility of the relatively small Division of Control of Financing of Political Organisations (which is staffed by eight people), assisted in appropriate cases by the Legal Division. The GET took note of the powers at the disposal of the KNAB in supervising party

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<sup>28</sup> With the 2008 amendments to the Law this ceiling has been raised significantly and would – if *Saeima* elections were to be held in 2009 – amount to circa 474,000 LVL (approximately €675,000).

finance regulations, including the possibilities to apply to the Chief Justice of the Supreme Court (or another Supreme Court Justice authorised by him/her) to access (bank) account information and to have a party dissolved or to suspend its activities (which apparently had been done in respect of 30 parties in recent years). Although the GET was not made aware of any misuse and it appreciates that access to bank information and requests to suspend or terminate the activities of a party are subject to judicial review, it did have some concerns as to whether these powers would not impede upon the right to privacy and freedom of association. However, in spite of these concerns and criticism expressed by several interlocutors<sup>29</sup>, it should be noted that the professionalism and commitment of the KNAB to enforcing political finance laws appeared to be beyond any doubt. The GET welcomes this.

76. The importance of the independence of the supervisory mechanism and the impartial enforcement of political finance regulations is something that cannot be stressed enough. However, the GET has serious concerns about various factors (potentially) undermining the independence of the KNAB. The Law on the Corruption Prevention and Combating Bureau provides that the KNAB is an administrative body under supervision of the Cabinet of Ministers. The Prime Minister in effect carries out this supervision. The GET was informed that, pursuant to Article 7 of the State Administration Law, the Prime Minister is authorised to check the legality of decisions taken by the KNAB, cancel any decision deemed to be illegal and give orders to take a decision in case of an unlawful failure to act. However, the GET was also made aware that the Prime Minister would nevertheless not be able to revoke so-called ‘administrative acts’ (which reportedly include decisions taken by the KNAB as regards the Administrative Violations Code or the financing of political parties, for example a decision to impose an administrative fine upon a party or to order it to return illegally acquired funding) and would have no authority to supervise criminal investigations of the KNAB. The GET welcomes this, but nevertheless finds – also bearing Article 7 of the State Administration Law in mind – that the positioning of the KNAB under the Cabinet of Ministers places it in the awkward position of having to supervise its supervisors.
77. Furthermore, the Director of the KNAB can only be appointed and dismissed by the *Saeima* upon the recommendation of the Cabinet of Ministers. That this procedure is not without flaws became apparent in the autumn of 2007, when a decision by the Prime Minister to suspend the Director led to unprecedented demonstrations and eventually led to the resignation of the government. The GET is concerned that the current appointment and dismissal procedure cannot be seen to be sufficiently non-partisan (despite the rule that the Director cannot be a member of a party). As at the time of writing this report the position of the Director of the KNAB has become vacant, the appointment procedure has again become a contentious issue. The GET finds it would be advisable if the appointment and dismissal procedure for the position of Director of the KNAB is revised as soon as possible to remove any impression that the directorship is a political appointment, which is crucial for the public’s trust in the impartiality of the KNAB and the non-partisan credentials of its Director.<sup>30</sup>

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<sup>29</sup> The most frequently heard criticism of the KNAB in the context of party financing was that it concentrated on checking every small detail in the declarations rather than dealing with serious breaches of the law (and, related to this, that it was too focused on compliance rather than enforcement) and that its activities increased reluctance of donors to donate to parties (i.e. even if they have nothing to hide, donors might not want to risk being examined by the KNAB). The GET was not in a position to assess whether this criticism is justified, but the fact that from November 2007 to April 2008 the Director of the KNAB ordered parties to transfer more than 1 million to the State budget for exceeding campaign expenditure ceilings rather suggests that at least the first part of the criticism is not or no longer valid.

<sup>30</sup> In this regard, it could for example be considered to still have the *Saeima* appoint and dismiss the Director, but on recommendation of a non-partisan independent commission of wise (wo)men, for example the Prosecutor General, judges the ombudsman etc.

78. Moreover, the activities of the KNAB are financed from the State budget, which is decided on by the *Saeima*, as part of the Law on the State Budget, on the basis of a proposal by the Cabinet of Ministers. The GET was informed that in 2007 the KNAB had a budget of approximately €5 million. While nothing in the information received by the GET suggests that the budget is or would be used as a means of exerting undue pressure by the Government, the fact that the budget is proposed and decided by the same people the KNAB might potentially investigate is not a very fortunate situation.
79. To conclude on this issue, in the view of the GET, it is of vital importance to strengthen the independence of the KNAB without creating impunity or compromising the accountability of this institution and its Director. Finding the right balance between these two extremes is a delicate task, but in the case of the KNAB there is certainly room for strengthening its independence without compromising its accountability. In light of this and paragraphs 76, 77, and 78 above, the GET recommends **to take measures to strengthen the independence of the KNAB (including as regards the supervision of its activities, the procedure for appointing and dismissing its Director and deciding on its budget), thus ensuring that it can exercise its functions in an independent and impartial manner.**
80. As regards the appointment of staff other than the Director of the KNAB, although the Law on the Corruption Prevention and Combating Bureau includes a comprehensive list of criteria with which candidates are required to comply (absence of a criminal record etc.), it does not provide for a transparent recruitment procedure. Decisions on appointing staff are made by the Director of the KNAB, who has a wide discretion in this area. Although the GET was not made aware of any problems in this regard, it considers it important that the recruitment procedures of an anti-corruption agency are beyond reproach. In light of this, the GET recommends **to design and implement rules for the transparent, impartial and competitive recruitment of the KNAB's staff.**

#### *Sanctions*

81. The Law on the Financing of Political Organisations (Parties) provides for administrative fines ranging from 250 to 10,000 LVL (approximately €350 to €14,000). These fines can be imposed by the KNAB itself. The GET initially had some reservations whether the fines imposed in practice were in proportion to the severity of the offence: for example, the GET noted that fines ranging from 500 to 700 LVL (approximately €700 to €1000) were imposed for exceeding the campaign expenditure ceiling by only 1.2 to 1.6 percent, whereas exceeding the ceiling by 144 to 190 percent seemed to lead to the imposition of fines of only 5,000 LVL (approximately €7000). However, with the amendment of the law in May 2006 providing for the possibility to order parties to pay to the State the amount by which campaign expenditure ceilings were exceeded and the subsequent use in practice<sup>31</sup> of this provision by the KNAB seems to ensure that the amount parties have to pay are in direct proportion to the severity of their offence. The aforementioned administrative sanctions are imposed upon political parties as legal entities. However, the sanctions imposed in the aftermath of the 2006 *Saeima* elections brought a problem to light in this context. One of the parties ordered by the KNAB to pay the amount with which the campaign expenditure ceiling had been exceeded had in the meantime been deregistered from the Register of Political Parties and was thereafter no longer registered as a legal entity thus making it impossible to impose sanctions.

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<sup>31</sup> In November 2007 one party paid 2,087.16 LVL (the amount by which the expenditure ceiling was exceeded) back to the budget; subsequent orders were made in February and April 2008 to three parties to pay back 9,810.42 LVL, 11,626.89 LVL and 1,027,366.67 LVL (amounts by which the expenditure ceiling was exceeded and illegal donations). Appeals against these decisions by the Director of the KNAB are pending.

82. Unlike administrative fines for violations of political finance regulations, which pursuant to Section 10, paragraph 1 of the Law on the Financing of Political Organisations (Parties) are imposed on political parties, certain criminal sanctions can also be imposed on natural persons (and political parties, but only if the criminal offence has been committed in the interest of the legal person and always within the framework of criminal proceedings against a natural person: see paragraph 58 above). These criminal sanctions can however only be imposed for a narrow range of offences: financing a party through an intermediary (or for acting as an intermediary), accounting offences and forgery of documents, pursuant to Articles 288.2, 217 and 275 of the Criminal Law. The GET is of the opinion that the present situation allows the actual perpetrators of violations of political finance regulations to shield too much behind the façade of the party. In light of this and the aforementioned paragraph, the GET would find it advisable if due consideration could be given to introducing the possibility of either imposing administrative sanctions on persons who commit violations of political finance regulations or to broaden the range of offences in the Criminal Law relating to party funding practices. The GET recommends **to take measures to further enhance the liability of natural persons for violations of political finance regulations.**
83. Furthermore, the GET has some concerns about the statutory limitations for violations of the party funding regulations. Whereas the limitation period for the abovementioned criminal offences committed in the context of party funding is two to five years (depending on the offence) from the day of commission of the offence, for the administrative offences it is one year from the day of commission of the offence. Although the GET appreciates that the aforementioned limitation period is longer than for other administrative violations (4 months), it finds the one-year limitation period for these administrative offences still too short, considering in particular the complexity of some of these offences and the difficulties in investigating them. The GET therefore recommends **to increase the limitation period for administrative violations of the Law on the Financing of Political Organisations (Parties).**

#### *Other issues*

84. Public funding is currently limited to the provision of free broadcasting time on Latvian Radio and TV and certain forms of support to parliamentary groups. From the discussions the GET held on site it would seem that most interlocutors supported the provision of more (direct) public funding to political parties. There were however also interlocutors vehemently opposed to such funding, recalling the quote “adding clean water to poisoned water makes no sense: the water will remain poisoned anyway”. Indeed, the GET is aware that introducing public funding brings about its own difficulties. Nevertheless, considering that such funding would enhance the diversification of funding sources and thus reduce the alleged reliance of certain parties on a few big donors<sup>32</sup>, enhance the creation of a level playing field between parties and provide a more stable funding basis for parties, the GET welcomes that the various possibilities for the introduction of such funding are being explored.

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<sup>32</sup> As mentioned before, the number of individuals willing and able to express their political support through financial means is very small in Latvia. In light of the perceived reluctance of citizens to donate to political parties (whether out of fear of having their finances exposed to the KNAB's scrutiny or for other reasons), it would be advisable to explore whether further incentives can be built into the system to encourage donations to political parties. Introducing indirect public funding in the form of tax deductibility of donations would be such an incentive.

## V. CONCLUSIONS

85. The existing legal and institutional framework in Latvia regulating financing of political parties and election campaigns, in particular regarding transparency, supervision and enforcement, is well-developed and overall in line with the provisions of 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. However, despite this positive assessment, several issues have been identified which necessitate further amendments to the current legal and institutional framework. First of all, as became evident in the 2006 *Saeima* elections, the failure of the Law on the Financing of Political Organisations (Parties) to regulate the involvement of entities outside the party structure in election campaigns is an issue of serious concern, which undermines the transparency requirements of the aforementioned Law and thus needs to be addressed before the next elections. Furthermore, as regards supervision of political finance regulations, further measures need to be taken to strengthen the independence of the KNAB, in particular and as a matter of priority, regarding the procedures for appointing and dismissing its Director. Finally, as regards enforcement and sanctions, the rather short limitation period for administrative violations of party funding rules needs to be increased and measures need to be taken to enhance liability of natural persons for violations of political finance rules.
86. In view of the above, GRECO addresses the following recommendations to Latvia:
- i. **to take measures to ensure that the involvement of entities outside the party structure, related directly or indirectly to political parties/coalitions, in election campaigns is made transparent and does not undermine the requirements of the Law on the Financing of Political Organisations (Parties) (paragraph 73);**
  - ii. **to take measures to strengthen the independence of the KNAB (including as regards the supervision of its activities, the procedure for appointing and dismissing its Director and deciding on its budget), thus ensuring that it can exercise its functions in an independent and impartial manner (paragraph 79);**
  - iii. **to design and implement rules for the transparent, impartial and competitive recruitment of the KNAB's staff (paragraph 80);**
  - iv. **to take measures to further enhance the liability of natural persons for violations of political finance regulations (paragraph 82);**
  - v. **to increase the limitation period for administrative violations of the Law on the Financing of Political Organisations (Parties) (paragraph 83).**
87. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Latvian authorities to present a report on the implementation of the above-mentioned recommendations by 30 April 2010.
88. Finally, GRECO invites the authorities of Latvia 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.