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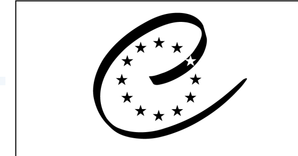

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING

Strasbourg, 1 April 2011

Public
Greco RC-III (2010) 4E
Interim report

Third Evaluation Round

Interim Compliance Report on Luxembourg

"Incriminations (ETS 173 and 191, GPC 2)"

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"Transparency of Political Party Funding"

Adopted by GRECO
at its 50th Plenary Meeting
(Strasbourg, 28 March – 1 April 2011)

I. INTRODUCTION

1. GRECO adopted the Third Evaluation Round Report on Luxembourg at its 38th Plenary Meeting (13 June 2008). This report was made public on 25 August 2008, following authorisation from Luxembourg (Greco Eval III Rep (2007) 6E, Theme I and Theme II).

2. As required by GRECO's Rules of Procedure, the Luxembourg authorities have submitted a situation report on measures taken to implement the recommendations. GRECO selected Moldova and Switzerland to appoint rapporteurs for the compliance procedure. Ms Cornelia VICLEANSCHI, Prosecutor, Head of the General Division, Office of the Principal State Prosecutor, was appointed on behalf of Moldova, and Mr Ernst GNÄGI, the Head of the International Criminal Law Unit of the Federal Office of Justice, was appointed on behalf of Switzerland. They have been assisted by the GRECO secretariat in drawing up the report.

3. In the Compliance Report it adopted at its 47th plenary meeting (Strasbourg, 7-11 June 2010), GRECO concluded that Luxembourg had satisfactorily implemented or dealt with only three of the seventeen recommendations in the Third Evaluation Round Report. As a result, it found the currently very low level of implementation of the recommendations to be "globally unsatisfactory", within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations in the mutual evaluation report and asked the head of the Luxembourg delegation to submit a report on progress in implementing the outstanding recommendations (namely recommendations i, ii, iii, vi and vii in respect of Theme I, and recommendations i to iv and vi to x in respect of Theme II) by 31 December 2010 at the latest, in accordance with paragraph 2(i) of this rule. This information was submitted on 21 and 23 December 2010, then on 2 and 22 February and on 9 and 14 March 2011, together with appendices.

4. This Interim Compliance Report assesses progress, since the adoption of the Compliance Report, in the implementation of the outstanding recommendations and provides an overall appraisal of the extent to which Luxembourg has complied with these recommendations.

II. ANALYSIS

Theme I – Incriminations

5. In its evaluation report, GRECO made seven recommendations to Luxembourg concerning Theme I. In June 2010 the Compliance Report concluded that recommendations iv and v had been implemented satisfactorily and recommendations i, ii, iii, vi and vii had been partly implemented.

Recommendations i, ii, iii and vi.

6. *GRECO recommended that appropriate measures be taken to ensure that the various offences of active and passive bribery are understood as including the notions of "giving" and "receiving" (an undue advantage), without involving an automatic requirement for an agreement between the parties (i).*

7. *GRECO recommended that, in order to harmonise the provisions in this area, the wording of article 250.2 CC be aligned with that of article 250.1 CC by adding the words "indirectly", "grant" and "unlawfully" (ii).*

8. *GRECO recommended that article 252 CC on the bribery of foreign public officials and international staff be extended to include the various categories of staff of international organisations (iii).*

9. *GRECO recommended that the necessary steps be taken to ensure that various additional penalties, particularly ineligibility, can be applied in corruption cases even as regards lesser offences and circumstances in which recategorisation of the offence occurred ("correctionnalisation" and "contraventionnalisation") (vi).*

10. GRECO points out that the Luxembourg Ministry of Justice has prepared draft legislation (Bill No. 6104) *to strengthen anti-corruption measures*, which would amend both the Criminal Code and other legal instruments (the Labour Code, the amended Act of 16 April 1979 establishing the general status of state officials, the amended Act of 24 December 1985 establishing the general status of municipal officials and the Code of Criminal Investigation), since the aim is also to introduce a system for the professional protection of whistleblowers in the public and private sectors, as was already recommended in GRECO's Second Round report but was still outstanding after the closure of that round. The bill was tabled in parliament on 25 January 2010. As stated in the Compliance Report, various sections of the draft legislation take account of GRECO recommendations i, ii, iii and vi, but pending the final adoption of the law, GRECO could conclude only that the recommendations had been partly implemented.

11. The Luxembourg authorities state that the discussions on the whistleblower protection mechanism delayed the vote, but the part relating to the recommendations from GRECO's third round has never been in dispute or been rediscussed. The law was eventually adopted by unanimous vote on 27 January 2011; it entered into force with its promulgation in the *Mémorial* (the official journal) on 18 February 2011.

12. GRECO is pleased to note that the draft Bill No. 6104 *to strengthen anti-corruption measures* was finally adopted and that it entered into force in February this year, thus fully implementing recommendations i, ii, iii and vi.

13. GRECO concludes that recommendations i, ii, iii and vi have been implemented satisfactorily.

Recommendation vii.

14. *GRECO recommended that a) the requirement of dual criminality for lesser offences ("délits") committed by Luxembourg citizens abroad be abolished in all circumstances, including those in which recategorisation of the offence occurs ("correctionnalisation"), and b) Luxembourg consider withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173).*

15. It points out that the outstanding measures relate to the first part of the recommendation. The recommendation was found to have been partly implemented for the following reasons: (1) section IV of the draft Bill No. 6104 *on strengthening anti-corruption measures* aimed to amend Article 5-1 of the Code of Criminal Investigation to give Luxembourg courts jurisdiction to hear cases involving offences committed abroad without the dual criminality requirement[1]; however, in

[1] Draft revised Article 5-1 [in its original version of January 2010]:
"All Luxembourg nationals, persons whose normal residence is in the country and foreign nationals apprehended in Luxembourg who have committed abroad one of the offences specified in articles 163, 169, 170, 177, 178, 185, 187-1, 192-

the initial version of the draft legislation, Article 252 of the Criminal Code[2] appeared to be missing from the list of offences to which the dual criminality principle would no longer apply (this article relates in particular to persons employed by international organisations, members of international public assemblies and judges and officials of international courts); (2) in any case, Bill No. 6104 still had to be enacted.

16. The Luxembourg authorities state that following GRECO's comments above, an amendment to the draft Bill No. 6104 was tabled in November 2010 for the provisions of Articles 245 (unlawful receipt or acceptance of an interest and trading in influence) to 252, and Articles 310 and 310-1 (corruption in the private sector) to be added to Article 5-1 of the Code of Criminal Investigation. Accordingly, where the offences concerned are committed abroad, there is no longer a dual criminality requirement and there is no longer any need for a complaint. Consequently, all Luxembourg nationals, all persons whose normal residence is in Luxembourg and all foreign nationals apprehended in Luxembourg who have committed the offences concerned abroad may be prosecuted in the Grand Duchy without the need for dual criminality or a complaint from the foreign authorities. As indicated earlier in paragraph 11, the draft Bill No. 6104 was adopted – by unanimous vote – and entered into force last February.

17. GRECO takes note of the general information provided above and welcomes the Luxembourg authorities' responsiveness since they inserted a last amendment to the new wording of Article 5-1 of the Code of Criminal Investigation, which leads to the full implementation of the present recommendation (given the fact that draft Bill No. 6104 was adopted and entered into force).

18. GRECO concludes that recommendation vii has been implemented satisfactorily.

Theme II - Transparency of Political Party Funding:

19. In its evaluation report, GRECO made ten recommendations to Luxembourg concerning Theme II. In the Compliance Report of June 2010 it was found that recommendation v had been dealt with in a satisfactory manner and recommendation i had been partly implemented. Recommendations ii, iii, iv, vi, vii, ix and x had not been implemented.

20. The Luxembourg authorities point out firstly that political finance regulation is primarily a matter for the parties themselves and hence for the Chamber of Deputies (as any government action could be perceived as interference in the affairs of political parties); with a view to transposing GRECO's recommendations, the government has therefore relied to a large extent on the parties and the parliament, particularly its Institutions and Constitutional Review Committee (CIRC). The latter continued to discuss the Compliance Report at its various meetings held between 7 July 2010 and 8 March 2011. The CIRC finally decided to make various amendments to the Act of 21 December 2007 regulating the funding of political parties; a legislative proposal was finalised on 14 March and tabled shortly after with a view to its discussion and adoption in Parliament.

1, 192-2, 198, 199, 199bis, 246 to 250, 310, 310-1, and 368 to 384 of the Criminal Code, may be prosecuted and have their case heard in the Grand Duchy, even if the actions were not offences under the legislation of the country where they took place and the Luxembourg authorities have not received a complaint from the injured party or from the authorities of the country where the offence was committed."

[2] Article 252 of the Criminal Code concerning the bribery of foreign or international public officials or elected office holders.

Recommendation i.

21. *GRECO recommended that the Luxembourg authorities ensure that adequate training on the new political party funding legislation is provided, particularly as regards its financial and accounting aspects, and that this training is available to local officials.*

22. GRECO points out that this recommendation was found to have been partly implemented as the measures described were clearly inadequate and lacking in precision ("in the last two years [2008 and 2009], training initiatives have been taken for party structures at both national and local level") and even the political parties themselves recognised that more efforts were needed. GRECO also noted that numerous inadequacies and errors had already been identified in party accounts in the course of the first verification exercise carried out by the Court of Auditors, as indicated in its report of January 2010 (relating to 2008). This confirmed the relevance and importance of the recommendation.

23. According to the Luxembourg authorities, the political parties which attended the meetings between June and December 2010 said that many training sessions had been held, particularly between October 2009 and March 2010. It was mainly in response to the first report by the Court of Auditors on political party funding that the parties made sustained, structured training efforts, giving local officials precise instructions on the law's financial and accounting aspects. Luxembourg refers to the documentation (appended to the situation report to GRECO) which was forwarded to the CIRC by the political parties. However, given the recent adoption of the Grand Ducal Regulation on the uniform chart of accounts applicable to political parties – see recommendation iv, paragraphs 34 et seq. hereinafter – the Chamber of Deputies proposes to organise in 2011, in cooperation with the "Minister of State" (the Prime Minister's Office), training sessions for all political parties (and their components) interested in attending, including those which do not received public subsidies and those which are not represented in Parliament; this would indeed increase the correct application of accounting rules by all political parties and their components.

24. GRECO takes note of the new information concerning initiatives taken by political parties represented in Parliament; the annexes provided by Luxembourg do show, indeed, that two or three parties refer to internal and on-going initiatives for treasurers and other central or local parti managers in the area of training, awareness-raising and information. Under such circumstances, and given the recent adoption of the Grand Ducal Regulation of November 2010, the intention of the Parliament to organise activities for a wider audience (whether or not the parties concerned are represented in Parliament / the CIRC) is an important proposal which goes along the lines of the present recommendation. For the time being, in the absence of a final decision and further information on the agenda and content of the activities envisaged, GRECO cannot conclude that this recommendation has been fully implemented.

25. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

26. *GRECO recommended to set up a mechanism to undertake an evaluation of the overall system of political financing, with a view to gradually establishing with political parties the extent and nature of their obligations, determining what changes and clarifications are required to the relevant legislation and regulations, and maintaining a statistical record of breaches of obligations and any sanctions imposed.*

27. The Luxembourg authorities point out that two parliamentary bodies are responsible for the follow-up to reports from the Court of Accounts (the body responsible for supervising the financing of political parties), namely the Budget Implementation Monitoring Committee (CCEB) and the Institutions and Constitutional Review Committee (CIRC) mentioned earlier. The CCEB exerts a classical function of parliamentary *ex post* control over the way the State budget is implemented by the Government; this is done through the Court of Auditors and on the basis of the latter's reports. The CCEB may initiate exchanges with members of Government about observations formulated by the Court of Accounts and draw any useful conclusion from this work as regards the implementation of the party financing legislation; it may issue criticise the system in place and, thus, trigger reforms or punctual initiatives to be taken by Parliament or Government. As for the CIRC, at the meeting of 14 September 2010 it was decided that the system to evaluate political party funding would be run primarily by the CIRC, which held three meetings in 2010, attended by representatives of the political parties, a representative of the Court of Auditors and government representatives. It further met several times after December 2010 in order to examine how to implement the recommendations addressed by GRECO and amending the Act of 21 December 2007 regulating the funding of political parties. As the legislation on political party funding is the result of a legislative initiative by the Chamber of Deputies, the CIRC is itself well placed to propose any adjustments to the legislation in force; it may also consult the Government in such a matter. If necessary, the Committee will invite the President of the Court of Auditors, which is a subordinate body of the Chamber of Deputies, to look closely into any breaches and determine what penalties may be appropriate. As indicated in paragraph 20, the Committee has decided to amend the Act of 21 December 2007 regulating the funding of political parties and a legislative proposal was therefore finalised on 9 March 2011.

28. GRECO takes note of the fact that the CIRC now has the leading role and task of evaluating legislation on the transparency of political funding. GRECO is also glad to hear that the CIRC has taken concrete steps to amend the Act of 21 December 2007 and to implement the recommendations contained in the Evaluation Report. GRECO is pleased to see that the key issue of the publication of the parties' accounts and financial statements, has finally been solved recently[3] and it hopes that the same will go for the publication of the lists of donors (whose contributions exceed a certain threshold)[4], which is an important requirement of Recommendation (2003)4 *on common rules against corruption in the funding of political parties and electoral campaigns.* It is clear that the CIRC will need to be more proactive in future, but overall, GRECO concludes that this recommendation was followed-up in a meaningful way.

29. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

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[3] Parties' accounts and financial statements are not included in the Court of Auditors' reports but must in principle be published in part B of the Official Gazette, as required by section 17 of the Act. However, no measure had been taken until recently to implement this provision and the said accounts and statements only began to be published in the beginning of 2011 (on the Parliament's website), after the initial draft of the present report had drawn the attention of Luxembourg on the absence of publication. Thus, on 22 February 2011, the accounts and financial statements for the years 2008 and 2009 became publicly available on-line.

[4] In accordance with the Act of December 2007, the political parties are required to register and identify all donations, and to communicate to the Government and the Parliament the list of donors whose contributions exceed 250€; since this is the same procedure as the one for the presentation of their financial statements by political parties, GRECO had assumed that these lists of donors would be published together with the said financial statements; but apparently, this is not the case in practice. The Luxembourg authorities currently take the view that the Law of December 2007 did not provide for the publication of these lists of major donors.

Recommendation iii.

30. *GRECO recommended that political parties be granted a clear status that would be recognised by the Luxembourg society, would entail full legal capacity and which could, for instance, be structured around objective criteria such as participation in legislative and European elections or the presentation of full lists of candidates, etc.*

31. The Luxembourg authorities emphasise that the CIRC has discussed this recommendation at length with representatives of the political parties; during the early discussions, the latter were receptive to the idea of granting a specific status provided that it complies with the Luxembourg Constitution (under which all voters are entitled to stand in legislative and European elections without having to establish a political party). However, in the additional information of 22 February, the Luxembourg authorities refer to the persistence of objections from political parties, which prevent any progress in the immediate although it is admitted that the introduction of a statute for political parties is inevitable in the medium turn. The CIRC will continue to look into this matter, particularly in connection with the overall revision of the Constitution which is foreseen to take place in the near future.

32. GRECO notes that, apart from the discussions referred to above, there have still not been any tangible developments along the lines of the recommendation. GRECO recalls that a consequence of the absence of legal status for political parties is that the latter make use in practice, of legal entities (non-profit organisations) for managing their activities, and that this has negative consequences, for instance it dilutes responsibilities/liabilities and it affects the overall financial transparency of the political parties as such. This is therefore an important matter for the purposes of the implementation of the party financing regulations as a whole and GRECO strongly encourages Luxembourg to actively pursue efforts for the implementation of this recommendation.

33. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

34. *GRECO recommended that the regulation provided for in section 13 of the 2007 law be introduced and that the current provisions be supplemented by one or more instruments that would a) clarify the applicable accounting obligations and the exact scope of political parties' accounting duties; b) establish uniform arrangements for determining which services and other benefits in kind should be included in parties' income accounts; c) specify the arrangements for dealing with election expenses, clarifying their precise nature, the time period concerned etc.*

35. The Luxembourg authorities report that a Grand Ducal Regulation of 23 November 2010 (published in the Official Gazette of 30 November) establishes the uniform chart of accounts with which the parties will be expected to comply from the 2011 financial year onwards. This chart of accounts specifies the form of accounts and financial statements and how they should be drawn up. Concerning part a) of the recommendation, the authorities stress that the Regulation is applicable in respect of all party components, without distinction, that for the purposes of consolidation of balance sheets and profit and loss statements at central level, all components – territorial sections and organisational structures – are required to submit a financial report of their situation (including donations received) to the central bodies which are responsible for the overall consolidation. Concerning element b), the Luxembourg authorities mainly recall that since the Act of 2007 makes no distinction, donations in kind (goods, services, advantages such as a

preferential prices) must normally be declared and accounted for just like monetary donations. The legislative proposal on amending the Act of 2007 (which provides for a new article 9 paragraph 3) would introduce a threshold of 250€ below which donations in kind need not be declared in a public statement. Finally, concerning part c) of the recommendation, the legislative proposal finalised by the CIRC on 14 March 2011, proposes to include a definition of electoral expenditures (content, period concerned) in the electoral law of 18 February 2003.

36. GRECO takes note of the above information and the text of the regulation submitted by Luxembourg as an appendix to their situation report. It appreciates the quality and the degree of detail of the accounting format that has been adopted. It also notes that the new law stipulates that the various types of supporting documents (or at least copies thereof) must be kept and archived for at least ten years after the close of the financial year. GRECO also takes note of the assurances given by Luxembourg concerning the consolidation of accounts (part a. of the recommendation); however, these do not answer as yet the various concerns expressed in the Evaluation Report (paragraph 43) since no new measure is reported to address the situation of entities linked with political parties without being explicitly part of these (press companies). As for part b) of the recommendation, there are no further initiatives reported either and arrangements with common criteria are still missing for the valuation of non-financial contributions; in its last report pertaining to the exercise 2009, the Court of Auditors has expressed doubts about the fact that until now, none of the political parties had ever declared a single non-financial contribution. Finally, concerning the last part of the recommendation, the legislative proposal finalised on 14 March, of which a copy was provided to GRECO, adopts the principle of the “ongoing election campaign” and does not provide for a specific duration – see also paragraphs 39 and 40 hereinafter. This does not pose any particular problem as long as the rules applicable to the regular financing of political parties are the same as those applicable to election campaign financing (especially in respect of authorised sources of funding) and since Luxembourg has not introduced ceilings on campaign expenditures (which could be circumvented by engaging expenses outside the accountancy criteria of the electoral period). This being said, there are still no plans to define electoral expenditures other than by a reference to the type of election to which they refer (parliamentary and European elections – see recommendation vi hereinafter): political parties have therefore room not to declare certain expenditures, although these would constitute useful data from the perspective of overall transparency and information of the public, but also for supervisory purposes (ensuring, for instance, that expenses are not borne directly by donors or sponsors). Overall therefore, there are still various provisions which need to be introduced or complemented for it be considered that recommendation iv has been fully implemented.

37. GRECO concludes that recommendation iv has been partly implemented.

Recommendation vi.

38. *GRECO recommended that the financing of campaigns, including of candidates for elections, be subject to rules on transparency, accounting obligations, control and sanctions similar to those applicable to political parties.*

39. In the information submitted on 22 February 2011, the Luxembourg authorities state that following the various consultations held in recent months with the political parties represented in Parliament, it was finally decided to amend the Act of 21 December 2007 regulating the funding of political parties as well as the Electoral Act of 18 February 2003 in order to extend the applicability of rules on transparency, supervision and sanctions also to the financing of electoral campaigns. The legislative proposal mentioned in paragraph 20, which was finalised on 14 March

by the CIRC, goes in this direction. GRECO notes that the draft in question aims at inserting in the Electoral Act of 2003 a new article 93bis which provides that: a) to obtain the public grant (partial reimbursement of postal costs for the dissemination of propaganda material), the party is required to submit a report on campaign expenditure; b) are to be considered as campaign expenditure those made by the political parties in direct relation with legislative or European elections; c) the expenditures in question, as well as income, must be included in the report mentioned in paragraph 13 of the Act of December 2007; d) articles 8, 9 and 17 of the Act of December 2007[5] are applicable, safe adaptation of terms, to all political parties, groups of candidates or individual candidates standing for legislative or European elections.

40. GRECO takes note of the general information provided above. It recalls that under the current legislation in force, independent candidates are not subject to the regulations of 2007 and that the financing of election campaigns conducted by political parties is not regulated in a sufficiently detailed manner. GRECO takes note of the legislative proposal sent in March. If it was adopted, this piece of legislation would lead to improvements, but they would remain too modest: the financing of campaigns for local elections would not be regulated at all, nor would the financing of electoral campaigns of independent candidates / lists of candidates (there is even a risk of inconsistency since the legal provisions on sanctions would be the only ones applicable in their respect). It is provided that political parties must present a financial report on the financing of their election campaign, but it remains unclear whether this leads to a control or publication of the content (including the identity of major donors – see also paragraph 19 for the current problems in practice); moreover, it seems that nothing obliges a political party to submit a financial report in case it does not apply for the partial reimbursement of postal expenses. Several additional matters need still to be addressed such as: the format for the presentation of election campaign reports; whether bank accounts are to be used to collect donations and thus to facilitate the tracing of funds in the context of supervision or of a possible criminal investigation; rules applicable to certain sources of funding such as loans etc. GRECO urges Luxembourg to reconsider these various aspects.

41. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

42. *GRECO recommended that a clear separation be made between the financing of parliamentary groups and that of political parties, or that the Court of Auditors' jurisdiction be extended to parliamentary groups, as far as is necessary for the proper application of the control system established in the 2007 legislation.*

43. In the information submitted last February, the Luxembourg authorities indicate that the Conference of the Presidents of the Chamber of Deputies intends to amend the Chamber's Rules of Procedure (article 16) and to include stricter requirements along the lines of recommendation vii.

[5] **Article 8**: prohibition of donations from legal persons and of anonymous donations; **article 9**: recording of the donors' identity, duty for the party components to declare donations received and for the parties to keep and submit a record of donations in excess of 250€; **article 17**: false declarations in relation to article 6 paragraphs 2 and 3, and infringements to the provisions of articles 8 and 9 paragraph 3 are subject to the sanctions of articles 496-1, 496-2 and 496-3 of the Criminal Code; applicability of article 23 paragraphs 2 and 3 of the Code of Criminal Investigation (obligation for public officials to report criminal offences to the prosecutorial authorities).

44. GRECO repeats its comments concerning the uncertain situation in which parliamentary groups find themselves, both in theory and in practice, in their relations with the parties: "*…the expenditure of parliamentary groups falls outside the court's jurisdiction.*[6] *Moreover, as members of parliament themselves have stated parliament does not monitor such financing and expenditure either and groups do not have to justify how they use their resources. This constitutes a gap in the Luxembourg situation since the financial resources and other facilities of these groups benefits the parties considerably and there are currently no criteria for distinguishing between their different activities, as is the case in neighbouring countries with a similar situation. Members of parliament indicated that they wanted the new legislation to make a clear distinction between the financing of political groups and that of parties, something the Council of State has also supported.*[7] *However, the GET has not found this in any provisions of the new legislation.*[8] *Some of the political party representatives whom the team met thought that the system of aid passed on by the groups would continue to be a third source of state funding*" (paragraph 54 of the Evaluation Report). In this context, GRECO takes note with interest of the Chamber of Deputies' intention to amend its Rules of Procedure in order to address the present recommendation. In the absence of any more concrete measure, GRECO cannot conclude that it has been implemented, even partially.

45. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

46. *GRECO recommended to clarify the action to be taken in response to irregularities identified by the Court of Auditors in the course of its monitoring of political financing, making it clear that it is required to report suspected offences, including corruption, directly to the law enforcement authorities.*

47. In the information provided very recently, the Luxembourg authorities state that there are two types of situations: a) cases where the Court of Auditors would come across infringements that constitute a criminal offence: whether these would be general criminal offences of the Criminal Code or specific criminal offences provided for under the Act of 2007 (for instance those which would be included in accordance with recommendation x hereinafter), the Court is required to report these directly and immediately to the prosecutorial authorities in accordance with Article 23 of the Code of Criminal Investigation, which provides as follows: "All constituted authorities, public officials or civil servants who, in the course of their duties, become aware that an offence has been committed shall immediately report the fact to the public prosecutor and supply him or her with all relevant information, reports and official documents"; it is clear that the Court is a constituted authority and, moreover, its members are civil servants. In order for this to be clear for everyone, the CIRC has included in the legislative proposal amending the Act of 2007 (see paragraph 20), an explicit reference to the applicability of the above article 23 also in respect of the officials of the Court of Auditors; b) as for the other financial and administrative sanctions to

[6] This is the opinion of the Court's representatives, but is not unanimously accepted by the Luxembourg authorities. In as far as the evaluation team could determine on the basis of the legal provisions, the Chamber's Rules of Procedure (Rules 163 and 164) do not refer to direct control by the Court but to supervision by an "Accounts Committee" of the Chamber (assisted by an auditor) and the Chamber's decision concerning the Committee's report is sent to the Court of Auditors for registration purposes only.

[7] In its opinion of 6 November 2007, the *Conseil d'Etat* said that given the legal basis for these parliamentary grants, it was clear that they could only be used to finance parliamentary activities and must not be diverted to fund other party political activities.

[8] The initial draft included a section 2 which stated that the financial aid to groups must not be used to cover the expenditure of the political parties that made up these groups, but this did not appear in the final version.

be applied, as appropriate, following facts of a non criminal nature established by the Court of Auditors, it is the State Ministry (Prime Minister) who is responsible for ensuring that the provisions of the 2007 Act are implemented by the political parties. Therefore, non-compliance with the regulations on the submission of accounting documents mentioned under article 6 of the Act of 2007 shall trigger the suspension of the state subsidy until the situation is corrected (article 7). The same shall apply following infringements of article 15, i.e. when political parties refuse to provide documentation requested by the Court of Auditors. In these cases, the Court of Auditor shall inform immediately the Chairman of the Chamber of Deputies who shall refer the matter to the Prime Minister; the latter shall ensure that the sanctions contained in the Act of 2007 are applied.

48. GRECO reiterates the comments made in paragraph 55 of the evaluation report to the effect that the action to be taken in response to irregularities identified by the Court of Auditors needs to be rapidly clarified.[9] It welcomes the explanation provided by Luxembourg, including that the Court of Auditors must send directly the case to the prosecutor's office when an infringement constitutes a criminal offence; the legislative proposal finalised in March follows this line and Luxembourg has thus implemented this part of the recommendation since sufficient assurances have been given. As for the other sanctions and measures contemplated by the Act of 2007 (suspension or reduction of the public contribution), the authorities underline that the decision rests with the Prime Minister (and not with the parties represented in Parliament or in the CIRC as also the penultimate sentence in paragraph 27 suggested until recently); the fact that the Parliament is only referring the matter, and that it is the Prime Minister who decides, seems to offer certain guarantees of impartiality[10]. These matters will need to be re-examined by Luxembourg depending on lessons from the practice but also in the context of the introduction of further infringements and sanctions implementing recommendation x hereinafter. To conclude, GRECO is globally pleased with the clarification and precisions provided, in the current context.

49. GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

Recommendation ix.

50. *GRECO recommended that a) steps be taken to ensure that accounting and financial information submitted by party sections and bodies to their central organisations is in a form that facilitates the Court of Auditors' oversight functions; b) the Court of Auditors or the government specify the rules applicable to the first audits, particularly regarding the manner in which assets are to be accounted for.*

[9] "The representative of the Court of Auditors also told the GET that section 4 of the amended legislation of 8 June 1999 establishing the court required it to ensure that its investigations remained confidential and to report any irregularities of a disciplinary or criminal nature. This general arrangement would also apply to its oversight responsibilities under the 2007 law, which appears to contradict the authorities' point of view as expressed in the answers to the questionnaire (…) according to which the Court of Auditors simply forwards its observations to the recipient of the report. Whatever the case, under section 4 of the Court of Auditors legislation it must inform the Chamber of Deputies and the other bodies concerned of any such irregularities. The GET has been told that these notions have not been clarified. One way or another, the 2007 law does not appear to be sufficiently clear about the relationship between the court's monitoring activities and the application of administrative or criminal sanctions, for example, in the case of corruption involving an elected representative. Section 16 of the legislation simply sets out – in a way that is sometimes difficult to understand – the arrangements for presenting its audits, and any observations by the parties, to the various bodies concerned, including the Prime Minister. The GET considers that clarifications are rapidly required and that it should be clearly stated that the court retains its general power to contact the criminal authorities directly, if necessary."

[10] GRECO wishes to point that, under Article 14 of Recommendation Rec(2003)4, the monitoring system must include sufficient guarantees of independence to prevent any undue interference (by parties or other political bodies) in its decision-making processes.

51. The Luxembourg authorities state that the application of a uniform chart of accounts as from the financial exercise 2011 (see recommendation iv, paragraphs 35 et seq.) entails the following consequences: a) financial information to be presented will become uniform as from this exercise; b) all political parties are required automatically to present an opening balance-sheet in which they shall necessarily assess all their existing assets.

52. GRECO takes note of the information provided and agrees that the uniform chart of accounts will logically contribute to the implementation of the second part of the recommendation; the chart in question comprises, indeed, a broad range of categories of liabilities and assets of the political parties – both movable and immovable. Luxembourg has not taken more active measures concerning the first part of the recommendation (requesting for instance that all information is to be submitted to the central bodies of the parties in a specific electronic format); this being said and as already indicated in paragraph 35, the Grand-Ducal Regulation is to be implemented by all components of political parties, without any distinction, and with a view to consolidation at central level, all territorial or organisational components need to submit a balance sheet related to their own situation (including donations received) to the central bodies responsible for consolidating the accounts. The main concern underlying recommendation ix has thus been addressed and it is reasonable to expect that in practice, party components use IT tools to compile and submit / transfer the data.

53. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

Recommendation x.

54. *GRECO recommended to a) ensure that all political parties - whether or not benefiting from public funding - which fail to comply with the various requirements of the 2007 legislation are subject to sanctions that are effective, proportionate and dissuasive and b) extend the range of sanctions available, beyond the suspension or reduction of public funding.*

55. The Luxembourg authorities state that the legislative proposal referred to in paragraph 20, provides that explicit reference be made in the Act of December 2007 to the dispositions of articles 496-1 to 496-3 of the Criminal Code, which concern certain offences specifically connected with the obtaining of state subsidies. The sanctions contemplated (on the basis of cross references made by the above articles to articles 496 and 508 of the said Code) are as follows: in the case of article 486, imprisonment from one month to 5 years and a fine of 251 to 30,000 Euros; in the case of article 508, imprisonment of 8 days to 2 years and a fine of 500 to 5000 Euros. The behaviour which constitutes criminal offences is the following: a) the establishment of false declarations or deliberately incomplete declarations with a view to obtain or keep the benefit of a subsidy (articles 491-1 and 496-2 paragraph1; b) spending a subsidy for purposes other than those for which it was granted (article 496-2 paragraph 2); accepting or keeping a subsidy knowing that there is no entitlement to it (article 496-3). Moreover, it was also decided to adjust the wording of the administrative sanction currently provided for in article 7 paragraph 2 of the Act of 2007, and to increase the level of penalty: the new wording would provide for the duty to reimburse to the State Treasury an amount of money representing three times the amount received illicitly.

56. GRECO takes note of the information provided above and welcomes the stated desire to supplement the provisions of the 2007 Act with regard to the range of possible sanctions. However, these proposals remain very insufficient and sometimes, one may even wonder about

their real purpose: for instance, for article 496-2 paragraph 2 CC to be fully applicable, the competences of the Court of Auditors would need to be extended since article 4 of the Act of 2007 explicitly excludes its ability to monitor the use of the public grant. The gaps identified in the Evaluation Report therefore remain, even if the legislative proposal finalised in March seems to go beyond what is indicated by Luxembourg[11]: only certain parties can be sanctioned and the Act does not clearly make it an offence, or it does not sanction, non-compliance with the various requirements (in particular all those concerning donations, book-keeping and accounts – articles 8 to 13 of the Act). Therefore, GRECO encourages strongly Luxembourg to complement the legislative proposal also in respect of the above.

57. GRECO concludes that recommendation x has been partly implemented.

III. CONCLUSIONS

58. **In view of the above, GRECO concludes that Luxembourg has now implemented satisfactorily or dealt with in a satisfactory manner eleven of the seventeen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations – (all the) recommendations i to vii have been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding – recommendations ii, v, viii and ix have been dealt with in a satisfactory manner, recommendations i, iv, vi and x have been partly implemented and recommendations iii and vii remain non-implemented.

59. GRECO is pleased that Luxembourg has adopted a number of provisions, especially legal ones, which enable it to comply with all recommendations addressed in the context of Theme I (incriminations of corruption). As regards Theme II (Transparency of Party Funding), the efforts accomplished so far are less decisive but GRECO notes with satisfaction that certain issues have been clarified, that a standardised chart of accounts for political parties was adopted and, above all, that draft legislation is being prepared to amend the Act of December 2007 on the financing of political parties, as well as the electoral law of 2003 insofar as financing of election campaigns is concerned. However, the draft legislation finalised in March takes a minimalist approach and even if it were adopted, significant gaps and uncertainties would remain. GRECO urges Luxembourg to pursue actively the work undertaken to fully implement the various recommendations concerning Theme II.

60. In view of the above, GRECO therefore concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the evaluation report.

61. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO requests the Head of the Luxembourg delegation to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i, iii, iv, vi, vii and x regarding Theme II) by 31 December 2011.

[11] The draft seems to provide also for the applicability of the sanctions of articles 496-1 to 496-3 CC in case of false declaration made in respect of article 8 (which prohibits anonymous donations and donations from legal persons – but strangely enough, failing to record the identity of donors – article 9 paragraph 1 – is not punishable) and part of article 9 (paragraph 3 of which requires to keep and submit a register of donors who have made contributions of more than 250€). The Luxembourg authorities underline that since political parties are required to register all donations received together with the donors' name, not recording the name of a given donor would lead to the production of an incomplete list and thus to a sanctionable, false declaration.