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Theme II

Third Evaluation Round

Evaluation Report on Malta on Transparency of Party Funding

(Theme II)

Adopted by GRECO
at its 44th Plenary Meeting
(Strasbourg, 6-8 October 2009)

I. INTRODUCTION

1. Malta joined GRECO in 2001. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 8E) in respect of Malta at its 12th Plenary Meeting (9-13 December 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 14E) at its 24th Plenary Meeting (27 June – 1 July 2005). 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, Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Malta from 22 to 24 April 2009, was composed of Mr Edmund DUNGA, Head of the Office in the Anticorruption Secretariat (RAI) (Albania) and Ms Katherine FOX, Foreign & Commonwealth Office (United Kingdom). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary of GRECO. Prior to the visit, the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2009) 2E, Theme II), as well as copies of relevant legislation.
4. The GET met with the following officials and representatives of state organisations: the Speaker of the House of Representatives, the Vice Prime Minister, the Electoral Commission, the Registry of Companies and the Commissioner of Inland Revenue. Furthermore, the GET met with representatives of the Nationalist Party ("Partit Nazzjonalista", in Government), the Labour Party ("Partit Laburista") and the Green Party ("Alternattiva Demokratika"). The GET also met with representatives of the Institute of Maltese Journalists.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of political funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Maltese authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Malta 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 (2009) 2E, Theme I.

II. TRANSPARENCY OF PARTY FUNDING - GENERAL PART

Introduction

7. Political parties have existed in Malta since 1880. As from 1921, general elections have been conducted using the “single transferable vote system” (STV) of proportional representation. STV is a system of preferential voting designed to minimise “wasted” votes and provide proportional representation while ensuring that votes are explicitly expressed for individual candidates rather than for party lists. It typically achieves this by using multi-seat constituencies (voting districts) and by transferring all votes that would otherwise be wasted to other eligible candidates. Parliament is unicameral with members of the House of Representatives being elected from multi-seat constituencies (voting districts).
8. Seven parties participated in the most recent parliamentary elections (2008) in Malta. Among them were only two dominant parties, the Nationalist Party and the Labour Party, the only parties represented in Parliament. Another particular feature of the Maltese system is the extremely high level of participation by the public at general elections; during the most recent elections in 2008 the turnout was some 93%. According to comparative studies, this places Malta as the country with the highest non-compulsory general election voting turnout in the world. The turnout at local council elections has been slightly lower.
9. The General Elections Act regulates the conduct of General Elections, but also defines the term ‘political parties’. Article 2 of this Act defines a political party as any person or group of persons contesting the election as one group bearing the same name or any person or group of persons who, having contested the general election under one name, is actually represented, by at least one member, in the House of Representatives, or who was so represented immediately prior to the dissolution of the House.
10. No legislation or particular formalities require the registration and regulation of a political party. What is required is that the body which purports to be a political party satisfies the requirements of the definition of “political party” referred to in Article 2 of the General Elections Act, referred to above.
11. As a main rule, political parties in Malta hold legal personality, which has been recognised by court judgments. Act III of 2007 introduced new legislation in respect of legal persons (Second Schedule to the Civil Code). That law has not, however, changed the position of political parties in so far as legal personality is concerned since political parties have been recognised as having legal personality through customary law and also in judgments delivered by the Courts. Furthermore, a large number of cases have been presented in Court by or on behalf of political parties and the Courts have always accepted these actions. Notwithstanding this, the GET was informed that sometimes small political parties are formed on an *ad hoc* basis, often only linked to one particular election. The GET was informed that it is unlikely that such parties, which would not necessarily have a constituting instrument and which would be likely to be dissolved once the election is over, would enjoy legal personality unless they fulfil the requirements of the Second Schedule of the Civil Code as any other organisation.
12. Income tax legislation relates to political parties and where political parties operate subsidiaries that are Limited Liability Companies, these are companies covered by the relevant company legislation and taxation legislation. However, apart from this, legislation concerning political parties relates primarily to candidate spending at elections.

Electoral Commission

13. The Electoral Commission is the sole entity charged with the general administration of General, Local and European Elections in Malta. It is responsible for the registration, transfer, correction and cancellation of voters, the compilation of the Electoral Register, the election of members of the House of Representatives and the administration of the Electoral Office, in terms of Article 7 (1) of the General Elections' Act. The Commission is established by Article 60 of the Constitution and is composed of the Chairman as the Chief Electoral Commissioner and 8 other commissioners. The Electoral Commission is a body corporate and has a distinct legal personality. It can enter into contracts, acquire or dispose of property and enter into transactions with third parties. The Members and chairman of the Electoral Commission are appointed by the President, acting in accordance with the advice of the Prime Minister, after s/he has consulted the Leader of the Opposition. The Constitution stipulates that a person shall not be qualified to hold office as a member of the Electoral Commission if s/he is a Minister, a Parliamentary Secretary, a member of, or a candidate for election to, the House of Representatives or a public officer. Moreover, Article 60(5) of the Constitution stipulates that a member of the Electoral Commission shall vacate his/her office when three years have expired from the date of appointment or earlier if specified in the instrument by which s/he was appointed; or (b) if any circumstances arise where, if s/he was not a member of the Commission, s/he would be disqualified for appointment as a member of the Commission. They may also be removed from office by the President acting in accordance with the advice of the Prime Minister on grounds of inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.
14. Article 60(9) of the Constitution stipulates that in the exercise of its functions the Electoral Commission shall not be subject to the direction or control of any other person or authority. Article 9(1) of the General Elections Act stipulates that in the execution of their duties, the Commissioners shall, in the absence of any express provision of the General Elections Act, do what appear to them to be necessary for the performance of their duties. In the execution of their duties, the Commissioners have the powers conferred by law on the Courts of Magistrates for the purpose of enforcing order at their sittings.
15. The General Elections Act also establishes the Electoral Office for the purpose of effecting the registration, transfer and cancellation of voters, the organisation required for the running of elections and connected administrative work as may be required by the Electoral Commission. The Electoral Office is staffed by some 60 persons in the public service and whilst serving in the Electoral Office these persons are only responsible to the Commission in matters concerning the preparation for and the running of general elections.
16. The Commission is also the depository of the returns of the election expenses of the candidates to elections, see below (“(ii) Supervision”).

Nomination to National elections

17. Article 53 of the Constitution of Malta stipulates that a person shall be qualified to contest the general elections to become a member of the House of Representatives if s/he has the qualifications for registration as a voter for such elections (see “Participation in elections”, below). However, Article 54 of the Constitution provides that a person does not qualify for election as a member of the House of Representatives if s/he is a citizen of another country than Malta, is a public officer or a member of the armed forces, plays a leading role in an entity contracted by the Government, is bankrupt, convicted or sentenced of a serious offence etc.

18. A person wishing to stand as a candidate for election to the House of Representatives must be nominated in writing on a particular nomination sheet provided by the Electoral Commission. The nomination form is to be signed by the candidate and at least four voters registered in the electoral division for which the candidate is nominated. The name of the person nominated is then published by the Electoral Commission. Article 51(3) of the General Elections Act stipulates that the nomination of a person may be objected to by any person, on the grounds that the candidate was not registered as a voter in the last published Electoral Register, that the description of the candidate is insufficient to identify the candidate, that the nomination paper does not comply with the provisions of the law, that the deposit prescribed (currently EUR 90) by article 52 has not been paid or that the candidate already stands nominated for more than two electoral divisions.
19. Article 56(1) of the Constitution stipulates that the members of the House of Representatives shall be elected upon the principle of proportional representation by means of the single transferable vote from “such number of electoral divisions, being an odd number and not less than nine and not more than fifteen, as Parliament shall from time to time determine”. Currently, Malta is divided into 13 electoral divisions each returning 5 elected members of the House of Representatives.
20. Article 8 of the thirteenth Schedule of the General Elections Act stipulates that the Electoral Commission is required to divide the total number of valid papers cast in each division by a number exceeding by one the number of vacancies to be filled. The end result is then increased by one, disregarding any fractional remainder. This number obtained, “the quota” shall be the number of votes sufficient to secure the return of a candidate. Article 9 of the schedule further stipulates that if at the end of any count the number of votes credited to a candidate is equal to or greater than the quota, that candidate shall thereupon be elected to the House of Representatives. This threshold, therefore, varies according to the number of valid votes cast in each electoral division.

Party representation in Parliament

21. There are 65-69¹ seats in the House of Representatives. The most recent national elections were held on 8 March 2008. Candidates belonging to two of the seven political parties received a significant majority of all votes cast and divided all the seats between them. The Nationalist Party won with a majority of one seat; 35 seats in the House of Representatives, with the President inviting the Leader of this Party to form the government, while the Labour Party won 34 seats and forms the Official Opposition. No other party gained any seats in Parliament.

Name of Political Party	Percentage of votes cast:
Partit Nazzjonalista	49.34%
Partit Laburista	48.79%
Alternattiva Demokratika	1.31%
Azzjoni Nazzjonali	0.5%
Imperium Europa	0.03%
Gozitan Party	0.01%
Alpha, Liberali Demokratiku	0.01%

¹ The number of seats may vary in order to reflect the election results as much as possible.

Participation in elections

National elections

22. A person shall be qualified to register as a voter for the election of members of the House of Representatives provided s/he is a citizen of Malta, has attained the age of eighteen years and is resident in Malta and has during the eighteen months immediately preceding registration, been a resident for a continuous period of six months or for periods amounting in the aggregate to six months (Article 57 of the Constitution). Article 58 of the Constitution stipulates the conditions which disqualify a person from being a registered voter, e.g. interdicted or incapacitated by court or otherwise of unsound mind, under a severe criminal sentence or convicted for an offence connected with elections etc. There are no provisions for anyone absent from the Island on polling day to vote².

Local elections

23. Local government in Malta was established in 1993 under the Local Councils Act, which made it possible for local councils to be established and provides the legal framework for their operation. This Act was mainly modelled on the European Charter of Local Self Government of the Council of Europe. Local government has since been further strengthened and is since 2001 regulated in the Constitution.
24. Currently, Malta has 68 local councils. The inhabitants who are registered elect the Council every three years, as voters in the Local Councils' Electoral Register. Similarly to the general elections, the system of proportional representation using the single transferable vote (STV) is applied in local council elections.

Overview of the political funding system

Public funding

25. There is no provision of general direct public funding to political parties in Malta. This question is, however, subject to debate in Malta. A select parliamentary committee on constitutional matters aiming at strengthening democracy in Malta was established in 2008. The Select Committee, which is chaired by the Speaker of the House of Representatives and consists of members of the two parties represented in Parliament. The GET was informed by the Maltese Authorities that this Committee deals with issues such as parliamentary autonomy, broadcasting and public funding of political parties. At the time of the visit by the GET, the Committee was still in its initial stages, although a public hearing had been organised. No concrete results as to the issue of public funding of political parties had yet been taken, however, the GET was informed that the introduction of public financing to political parties was one important issue to be dealt with by the Committee and that such proposals were pending.
26. This being said, a specific direct public grant is provided to each parliamentary group by the House of Representatives initially³ for the purpose of developing relations with the European

² The Maltese Government drafted an amendment to the Electoral Law in May 2009, (Act VII of 2009) in order to permit those persons eligible to vote and who confirm on oath that they will not be in Malta on the polling day to cast their vote on a different day as specified by the Electoral Commission.

³ The GET was told that the initial purpose of this grant had been extended and that the parties could use it for whatever purpose.

Union and the Mediterranean region. For this purpose, the House of Representatives grants annually the sum of €100,000 to each of the parties represented in Parliament.

27. There is no other direct public funding to political parties or entities related to political parties, to electoral campaigns or to candidates for election.
28. Political parties benefit, however, from indirect public funding in the form of tax exemption and media access. The law also provides for a fiscal exemption applying to political parties. Article 12(1)(f) of the Income Tax Act (Chapter 123 of the Laws of Malta) stipulates that the income of any political party, including the income of clubs adhering to political parties are exempt from taxation. A second tax exemption is provided by the Value Added Tax Act (Chapter 406 of the Laws of Malta) i.e. that non-profit making organisations, such as political parties, are exempt from Value Added Tax for the supply of services for the benefit of their members in return for a subscription fixed in accordance with their rules.
29. Maltese Law provides other instances where political parties benefit from indirect public funding. Although the aim of these instances is to inform the public and guarantee the various rights of the electorate, the political parties indirectly benefit from such activities. One such activity is the regular publication in the local media of information relating to the elections such as the dates, times and places of the polling booths. Although such adverts are directed towards the public, the political parties indirectly benefit since they serve to raise the electorate's interest in voting and the different political parties. Another activity from which political parties indirectly benefit is the holding of political debates and political spots on national television or private television stations. Article 13(4) of the Broadcasting Act (chapter 350 of the Laws of Malta) stipulates that it is a duty of the broadcasting authority to organise from time to time schemes of political broadcasts (including political spots) which fairly apportion facilities and time between the different political parties represented in Parliament. In order to fulfil its duty, the authority has the right to order any person providing broadcasting services in Malta for reception in Malta to provide, free of charge, the recording and other facilities necessary for the production of the programmes for radio and television, as well as to transmit, free of charge, on days and at times to be decided by the authority, the same programmes provided that this exercise is reasonably justifiable in a democratic society. The parties are also able to broadcast via their own terrestrial channels, meaning that they do not need to rely on purchasing broadcasting time from other providers.

Private funding

30. There are no restrictions on who can make donations to political parties, including donations from legal persons or organisations with or without close links to the party, such as trade unions and other interest groups. Although foreign donations are, in principle, not allowed the Monitoring Committee established by the Foreign Interference Act (Cap. 300) may authorise receipts of foreign donations.
31. There are no limits with regard to the amount/size/periodicity of private donations. There are no restrictions on membership fees from party members. Donations to political parties can take any form and they can be made anonymously.
32. The two major political parties in Malta have commercial arms and the GET was informed that they have substantial financial interests in the form of business and property of various kinds; they own a number of companies. They run their own media companies and operate their own TV stations on similar premises as the state broadcasting channel, however, these appear to be run at a loss. Both parties organise annual telethons to solicit donations from supporters. The

general financial structure of the major political parties is very similar. Both parties have subsidiary centres (clubs, local committees) at different localities within Malta and each centre organises its own fundraising activities and generally runs a commercial activity (such as a bar). The profits generated from these centres are then forwarded to the central administration of the party through various channels. Apart from the above activities, political parties also organise various fundraising activities inviting the public directly to provide financial support to the parties. Parties also have a membership fee system which generates income.

Taxation regime

33. Donations (financial contributions) received by parties/election candidates are not subject to taxation. However, a party carrying out business activities is subject to taxation for such income, but this does not apply in respect of the social clubs and bars run by the parties.
34. A donor may not make deduction in his/her tax return for contributions to political parties.
35. The Income Tax Act stipulates that personal expenses incurred by candidates who, to the satisfaction of the Commissioner of Inland Revenue, are connected with an election campaign, may be deducted from their annual computation. Contributions to candidates for elections and election campaigns are, however, not exempted from taxation, unless the candidate has been elected to the House of Representatives and the amount is within the limit of personal expenditure permitted in general elections, see below.

Expenditure

36. There are no restrictions regarding what political parties and entities related or affiliated to the parties may use their funds for and there are no restrictions on the amount of expenditure political parties may incur. The GET was informed that campaigning immediately prior to an election was mainly carried out by candidates and not by the party as more than one candidate from a party may be contesting a seat.
37. There are, however, restrictions as regards the expenditure of individual candidates in electoral campaigns for general elections, local council's elections and referenda. The General Elections Act and the Local Council's Act stipulate particular conditions that have to be met by all candidates to an election, irrespective of whether such candidates form part of a political party or whether they are contesting independently.
38. As regards General Elections, Article 46(1) of the General Elections Act provides that no sum shall be paid and no expense shall be incurred by a candidate or his/her election agent at an election, whether before, during, or after an election on account of or in respect of the conduct or management of such election, in excess of EUR 1,400. No expenditure incurred by the candidate for personal expenses, nor the fee, if any, paid to the election agent not exceeding EUR 235 shall be included in the amount. Article 45(1) of the Act stipulates that a campaigning candidate may pay any personal expenses incurred by him/her on account of or in connection with or incidental to the elections to an amount not exceeding EUR 27,95, but any further personal expenses incurred shall be paid by his/her election agent.
39. By virtue of Article 56(1) of the Constitution, the members of the House of Representatives are elected upon the principle of proportional representation from a number of electoral divisions, determined by Parliament. Each political party may nominate a number of candidates for each electoral division. The General Elections Act, Article 46(2), regulates funding of candidates in

such circumstances. It holds that the expenses of candidates may be added together and this article will not be deemed as having been contravened unless the aggregate expenses of such candidates, when added together, exceed either the sum of EUR 1,400 multiplied by the number of such candidates or the sum of EUR 7,000, whichever is the smaller amount.

40. As regards Local Council's Elections, Article 97 of the Local Council's Act establishes a limit of Euro 1,165 as a main rule (that may be increased by the Minister). In this case, unlike the General Elections' Act, there are no candidate agents.

III. TRANSPARENCY OF PARTY FUNDING - SPECIFIC PART

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

Books and accounts

41. Political parties are not specifically obliged to keep books and accounts and they are not subject to any reporting requirement in respect of their income and expenditure, however, there is a general obligation for them to keep proper and sufficient records for income tax purposes so that income and allowable deductions can be readily ascertained. Article 19 of the Income Tax Act establishes a list of records which are to be kept by any person (whether physical or legal) carrying on a trade, business, profession or vocation, which, in principle, includes political parties. Such records are to include proper accounts with respect to income and expenditure, sales, purchases as well as any other transaction, acts or operation pertaining to the trade, business, profession or vocation, a profit and loss account, and a statement of the assets and liabilities and justifications.
42. General accounting regulations apply to any commercial entity including commercial companies owned by the parties. The same disclosure obligations as on other commercial companies also apply. The Companies Act, Article 163, stipulates that a company shall be required to keep proper accounting records in respect of all sums received and expended and the matters in respect of which the receipt and the expenditure takes place. The details of what constitutes proper accounting records are laid down in law, based on international accounting standards.
43. There are no particular reporting requirements in respect of organisations affiliated to political parties.
44. There are no reporting obligations in respect of electoral campaigns of political parties; however, election candidates -- at general as well as local council elections -- are required to submit a return of their election incomes and expenses to the Electoral Commission. Article 50 of the Fourteenth Schedule of the General Elections Act provides that the election agent of every candidate is required to transmit a return of the election expenses of the candidate to the Electoral Commission within 31 days from the publication of the result of the election. Every such return, signed by the candidate and his/her agent and signed before a Magistrate, is to contain a statement of all payments made by the candidate or by the election agent, or by any persons on behalf of the candidate, or in his/her interest, for expenses incurred on account of, or in respect of, the conduct and management of the election, and a further statement of all unpaid claims in respect of such expenses.
45. It follows from the Twelfth Schedule of the General Elections Act that the return is to show the name and description of every person (including the candidate), club, society or association from whom any money, security, or equivalent of money was received in respect of expenses incurred

on account of or in connection with or incidental to the election, and the amount received from each person, club, society or association separately. Under expenditure is to be reported the personal expenses of the candidate incurred or paid by him/her or the election agent, the name, the rate, and total amount of the pay of each person employed as an agent (including the election agent), clerk or messenger, travelling expenses and any other expenses incurred by the candidate or his election agent, for example, printing, advertising etc. The same principle apply to candidates for Local Councils Elections and for the European Parliament Election.

46. Contributors/donors are not subject to any specific reporting obligation.

Access to accounting and tax records

47. Article 163 of the Companies Act provides that accounting records are to be kept by the company for a period of ten years. Article 183 of the Companies Act stipulates that the company directors are to deliver to the Registrar for Companies a copy of the company's annual accounts together with a copy of the auditors' report thereon, and the directors' report accompanying the annual accounts, for registration.
48. The return for candidate election expenses submitted to the Electoral Commission are made available to the public upon request. The general public may view the returns of expenses after they are published by the Electoral Commission in the Malta Government Gazette, a few days after the closing date for submission of these same forms. These returns are available at the Electoral Office. As there are no other political instances that are obliged to report to the Commission, there is only access in respect of election candidates.
49. Tax records should be maintained for a period of at least 9 years and are not accessible to the public (Tax Management Act).

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

50. There is no particular mechanism or authority established for the monitoring of political parties' financing/accounts. There is no general requirement under the law for the parties to have their accounts scrutinised by an auditor.
51. The Electoral Commission⁴, which is the sole entity charged with the general administration of General, Local and European Elections in Malta, is responsible, *inter alia*, for the registration of voters, the compilation of the Electoral Registry and the administration of the Electoral Office. The Commission is also the depository of the returns of the election expenses of election candidates in respect of general, local council and European elections.
52. As mentioned above, election candidates (and, when required, agents) are to submit to the Electoral Commission returns of their election expenses, including income and expenditure and a further statement of all unpaid claims in respect of such expenses. It was explained to the GET that these forms were often not considered to reflect the reality of candidates income/expenses as the limit of allowed expenditure was so low that the limits were easily exceeded. As a result most candidates would only report on income and expenses up to the allowed value. Moreover, the Commission has no means at its disposal when candidates do not submit their returns other than to inform the Attorney General's Office who, in turn, may authorise criminal proceedings against the particular defaulting candidate.

⁴ The Election Commission is described in more detail under paragraphs 13-16.

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

53. Leaving aside ordinary penal sanctions in respect of criminal offences and sanctions which apply to any commercial company as foreseen in the Companies Act, there are no particular sanctions or measures available in respect of financing of political parties. However, there are sanctions in respect of violations of financing rules by election candidates and their agents. Article 52(1) of the General Elections Act stipulates that any person found guilty of an illegal practice (including spending more than the stipulated limit by a candidate) shall be liable to a fine not exceeding €465 and is also incapacitated from being on the electoral register for a period of 4 years. If before that date, s/he has been elected a member; his election shall, be vacated from the date of such conviction and shall therefore lose his position within the House of Representatives.
54. As regards election candidates to the Local Councils, the fine for illegal practice is up to EUR 1,164.69.
55. The prosecution for an illegal practice at general elections may only be instituted with the authorisation of the Attorney General. The same measures are applicable to local council elections and elections for the European Parliament. So far no such proceedings have ever been initiated in respect of candidates to general elections but proceedings have been taken against various candidates to local council elections who either did not submit the return of expenses or had submitted it after the closing date.
56. Sanctions can only be imposed by the courts of law and no such measures are available to the Electoral Commission. An appeal from the decision may be made by the accused in all cases and by the Attorney General in the cases provided by law, essentially on points of law.

Immunities

57. There are no immunities provided for under Maltese Law.

Statutes of limitation

58. The proceedings under the General Elections Act are time barred within a lapse of 2 years, in terms of Article 688 (c) of the Criminal Code.

IV. ANALYSIS

59. There appears to be a broad common view and practice in Malta to leave political parties out of any legal framework or state control to the extent possible. The GET was informed that until 1987, the concept of political party was not even recognised by the Constitution and the electoral law. To date, political parties remain vaguely defined in law, there is no specific obligation to register, they are not subject to general direct public funding and they are not under any particular reporting obligations, supervision or monitoring by any state authority or other mechanism. The GET also notes that Malta has the highest level of participation in non-compulsory elections in the world; during the most recent general elections (2008) the turnout was as high as 93 per cent.
60. The general election system in Malta of proportional representation by means of a single transferable vote (STV) introduced in 1921, is based and largely remains focused on individual election candidates rather than on political parties. Consequently, there is almost no legislation regarding political parties and only some limited reporting obligations in respect of income and expenditure of individual election candidates. Since the introduction of STV in Malta there have been some modifications of the system. Constitutional amendments adopted in 1987 and 1996 seek to correct distortions and assure "governability" by providing one-party legislative majorities as much as possible and over the years, Malta has moved from a multi-party to a two-party system. Since 1971 the two major parties (the Nationalist Party and the Labour Party) have dominated the electoral arena at all levels with no serious competition from any other party. As a result, the individual candidate election system co-exists with a two-party system. Political competition in Malta is marked by a high degree of partisanship; notwithstanding the personalised nature of voting and the competition, even intra-party, among individual candidates, election campaigns are to a large degree very much a party affair in Malta. In the current situation, it appears extremely difficult for candidates not belonging to the two big parties to have any substantial influence in the political process, in particular, at the national level.
61. Despite the wide supporter base and mass participation in political parties and elections in Malta, which appear to be in contrast to trends in other parts of Europe, party representatives described how gaining sufficient funds to keep parties operating at their current level was becoming increasingly difficult. Election results are close between the two largest parties, making running effective campaigns all the more important to those parties. Smaller parties described the difficulties they face given how well established the two largest parties are in the current system. The increasing difficulties in gaining sufficient funds for the big as well as for the small parties has triggered the debate on public funding of political parties in Malta. The GET notes in this context that while there are caps on expenditure for candidates, there are no caps on expenditure in respect of political parties. However, the caps on candidate expenditure are considered so low that the returns of expenses made by candidates are often not considered to reflect the reality and there was confusion about whether donations to candidates were reported and what counted as a donation for these purposes.
62. The political parties and election candidates are heavily dependent on private sources for their existence and not on public funds. The GET learned that political parties, in particular the two big parties, have commercial arms; they own business companies; they have their own newspapers and their own television and radio stations. Apart from donations from foreign entities, which are in principle prohibited in Malta, with the exception of donations authorised by the Monitoring Committee as stated above, there are no restrictions in respect of financial contributions to political parties or election candidates; physical and legal persons may provide contributions without any limits and if they so wish, anonymously. At a local level, there are networks of

political party clubs and local committees which organise social functions and where supporters give contributions on a regular basis. Furthermore, political parties organise various fundraising activities where the public is directly invited to submit donations to the party. Traditionally, political parties use their media and communication channels in order to encourage donations. For example, public collections of funds ("Telethon") are organised every year. The GET was also informed by some interlocutors that political parties receive important contributions from private sources, including companies. Separately, the GET heard of occasional unsubstantiated reports in the media of links between financial contributions and political decision making.

63. While the issue of public funding was topical during the general elections in 2008, it is an issue that has been debated for decades in Malta but attempts to introduce such funding have failed in the past. Following the last general election, a Select Committee, chaired by the Speaker of the House of Representatives was established by the House of Representatives in July 2008. Among the issues to be addressed within the overall objective of strengthening parliamentary democracy and transparency by reinforcing the resources and procedures of Parliament, the Select Committee is also mandated to deal with the public funding of political parties, conflicts of interest of Members of Parliament, public broadcasting, including regulation of the political party TV stations and the participation of political parties in local media. The GET understood, however, that several issues on the Committee's agenda remain controversial among the political parties, including that of public funding and transparency of political parties. The controversy is focused on two potential alternatives: adoption of direct public funding of political parties or extension of indirect public funding. The Select Committee, which regularly meets and has organised public hearings, has so far not produced any concrete results or proposals. This Committee is expected to present conclusions in 2010.
64. The Select Committee, currently discussing matters of concern to all parties in Malta, has only representatives from the two big parties represented in the House of Representatives. In this respect, the GET wishes to draw the attention of the Maltese authorities to Recommendation 1516 (2001) of the Parliamentary Assembly of the Council of Europe on Financing of Political Parties according to which state financial contributions should, on the one hand, be calculated in ratio to the political support which the parties enjoy, evaluated on objective criteria such as the number of votes cast or the number of parliamentary seats won, and on the other hand enable new parties to enter the political arena and to compete under fair conditions with the more well-established parties. The issue of equality of opportunities in the field of public funding of parties or campaigns has also been highlighted by the Venice Commission, e.g. in its Guidelines for Financing of Political Parties (CDL-PP (2000) 6) and the Code of Good Practice in Electoral Matters (CDL-AD (2002) 23), which stress that public financing cannot only be limited to those parties represented in Parliament, but should rather be extended to political bodies representing a significant section of the electorate and presenting candidates for election.

Transparency

65. In the light of what has been stated above, it follows that financing of political parties remains a strictly private sphere in Malta and transparency *vis-à-vis* the wider public in respect of political financing is almost non-existent. Although the GET noticed that there was general agreement among interlocutors on the lack of transparency, it was not made aware of any inter-party initiatives, such as voluntary agreements between the parties concerned to alter the current situation. It therefore appears that the Select Committee has a crucial role to play in order to change this situation, which is contrary to the principles of the Council of Europe Recommendation on common rules against corruption in the funding of political parties and electoral campaigns (Rec(2003)4), which aim at ensuring a high degree of transparency. It may

be argued that regulation concerning transparency appears particularly important in systems - like the Maltese - with a high degree of private funding. Nevertheless, a possible introduction of public funding of political parties in Malta ought to be conditioned on a regulatory framework designed to provide for public insight into political financing, private as well as public. However, any new system needs to be carefully designed in order not to deter people and institutions from contributing to political parties and participating in elections and politics.

66. Given the context of Malta as a small country, several interlocutors met by the GET recognised the difficulty to enforce rules on transparency, in particular in respect of private donations (amounts as well as donor identity). The GET acknowledges the need to protect individuals' legitimate right to integrity and secrecy in respect of their political affiliation, however, these interests need to be balanced with the legitimate interest of the public, in particular the voters, to know the sources of financial or other in-kind support for a candidate or party they might wish to vote for. Such a balance may, in line with Article 12 of Recommendation Rec(2003)4, be established through a "threshold", i.e. that donations above a certain value⁵ are to be disclosed together with the names of the donors. The GET concludes that, currently, Malta is not in line with this rule. The GET also notes in this respect that there is already an obligation upon election candidates and their agents, to report income and expenditure in general election campaigns. However, the GET understood that these returns often do not reflect the reality, which was well known by many of those directly concerned. The GET was informed that part of the reason for this was that the limit on candidate spending was so low that if a candidate adhered to it, they would be unable to run an effective campaign. At present, the limit could only be raised through primary legislation which had meant it had not been increased overtime to keep pace with inflation etc. Obviously, the reporting needs to cover all contributions and the current rules need to be reconsidered to avoid that the submission of these reports becomes a meaningless bureaucracy with no real impact in respect of transparency. Moreover, the GET noted with concern that anonymous donations (where the donor is unknown to the receiver) are allowed without any restrictions. Such a situation makes it easy to circumvent any possible future rules on transparency regarding political financing. The GET recommends **(i) to introduce a general requirement for both political parties and election candidates to disclose all individual donations (including of a non-monetary nature) they receive above a certain value together with the identity of the donor and to revise spending limits in respect of election candidates; and (ii) to introduce a general ban on donations from donors whose identity is not known to the party or candidate.**
67. There is no accounting legislation in Malta aimed particularly at political parties. Companies owned by the parties are covered by the accounting regulations and parties are obliged to keep accounts for tax purposes. In addition, there are no provisions for keeping books and accounts for political parties, organisations affiliated to political parties or in relation to electoral campaigns. Only election candidates/agents are required to submit a return of their income and expenses during the campaign to the Electoral Commission. Political parties' representatives informed the GET that despite the lack of rules concerning accounts and their publication, balance sheets have been made available to the party delegates on occasions. The GET is of the firm opinion that the present situation calls for appropriate measures and that the current legislation does not provide a sufficiently comprehensive framework for political parties to keep full and transparent books and accounts. Consequently, the GET recommends **(i) to introduce rules for political parties to keep proper books and accounts (including in connection with election campaigns); (ii) to ensure that income and expenditure, assets and debts are accounted**

⁵ In case there are several donations from the same person, the total amount of the donations should be the decisive amount.

for in a comprehensive and coherent manner and reported on at appropriate intervals; and (iii) to seek ways to consolidate the accounts to include entities which are related directly or indirectly to a political party or otherwise under its control.

68. The GET wishes to stress that the above recommendations are closely interrelated and contain basic criteria for developing the Maltese system towards more openness and transparency. However, it goes without saying that these measures would not bring full effect into the system if the required information is not made public or easily accessible to the public. Currently, no such obligations exist, except in respect of the returns submitted by election candidates, which can be made public upon request. A centralised or coordinated system where accounts and returns and reported donations etc could be retrieved in an easy way, is necessary to enhance the transparency. The GET recommends **to develop a co-ordinated approach for the publication of political financing accounts and/or reports (including party and election campaign financing) in order to facilitate the public's access to such documents.**

Supervision and sanctions

69. The accounts of political parties or organisations affiliated to them, are not subject to any mandatory audits. The same lack of rules exists for auditing of electoral campaigns of political parties or referenda. However, accounts of commercial companies owned by political parties have to be audited as applies in respect of any commercial company. The control of the only existing public funds provided to the parties represented in Parliament for EU purposes (€200,000) is exerted by the National Audit Office. The GET is of the opinion that although the current system of political party funding is mainly focused on private sources, the present situation needs to be improved. A proper auditing of political financing accounts by independent auditors is an important means of monitoring, in particular if no other means of supervision exist. Such a procedure would in principle apply to all political parties, however, a flexible approach is necessary in order to avoid unreasonable burden upon, for example, small parties with limited resources. The GET recommends **to ensure independent auditing, as appropriate, in respect of political parties obliged (or yet-to-be obliged) to keep books and accounts.**
70. As explained above, the situation in Malta is that some limited supervision of election income and expenses is vested with the Electoral Commission, but only in so far as individual election candidates are concerned and this monitoring was heavily criticised for its inefficiency (as a consequence of the inaccuracy of legal provisions) by the various stakeholders met by the GET. There is no monitoring mechanism or body in respect of the financing of political parties. The GET does not find it advisable to express any preference as to where such a task should be placed. It takes the view, however, that any supervision or monitoring mechanism must, above all, enjoy an appropriate level of independence and be given sufficient resources to carry out its tasks. It should have appropriate resources to be able to properly to fulfil these new functions. Consequently, the GET recommends **to effectively ensure independent monitoring of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4.**
71. To ensure that the legislation on election candidates and the recommended new provisions on transparency are properly enforced, the Electoral Commission, or any other appropriate body, should be vested with proactive powers and mandated to use effective means, including sanctions, to carry out its new responsibilities. To the extent that Malta will establish a coherent framework for providing a more transparent system of political financing in the future, any such rules need to be complemented with effective, proportionate and dissuasive sanctions, in line with Article 16 of the Recommendation Rec(2003)4. It should be added that GRECO has held on

several occasions that in addition to ordinary criminal sanctions, which may be cumbersome to apply in practice, more flexible sanctions ought to be introduced in respect of less serious violations of the political financing rules, which do not necessarily require a criminal court procedure. The GET recommends **that existing and yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by appropriate sanctions, which are effective, proportionate and dissuasive.**

V. CONCLUSIONS

72. All political parties and election candidates in Malta are heavily dependent on private sources for their financing. There is no direct general public funding of political parties and election candidates in Malta apart from some limited funds provided to parties represented in Parliament for EU related activities. Political parties are under no transparency requirement or supervision whatsoever in respect of their income and expenditure. The situation is slightly different in respect of election candidates, who are obliged to submit declarations to the Electoral Commission stating their income and expenses following elections, however, these rules appear ineffective for reasons of very low limits allowed in respect of expenses that can be incurred and the system needs to be updated.
73. The general election system in Malta is that of proportional representation by means of the single transferable vote (STV) and elections focus traditionally on candidates rather than on political parties, which explains to some degree why there is no supervision in respect of the funding of political parties. However, Malta has progressively become a two-party system, where the two major parties (the Nationalist Party and the Labour Party) dominate the electoral arena at all levels and it appears that politics in Malta are marked by a high degree of party loyalty. Consequently, the personalised nature of elections campaigns are also to a large degree party orientated. The current situation would call for the introduction of regulations to provide for reasonable transparency and monitoring in respect of the funding of political parties and election candidates, whether direct general public funding is introduced or not. The possible introduction of such funding could, however, be the necessary impetus for developing the transparency of political funding, in line with Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, the principles of which Malta currently falls short of. This being said, the introduction of new standards need to be carefully designed in order not to deter people and institutions from contributing to political parties and participating in elections, where Malta has a leading position in the world.
74. In view of the above, GRECO addresses the following recommendations to Malta:
- i) **(i) to introduce a general requirement for both political parties and election candidates to disclose all individual donations (including of a non-monetary nature) they receive above a certain value together with the identity of the donor and to revise spending limits in respect of election candidates; and (ii) to introduce a general ban on donations from donors whose identity is not known to the party or candidate (paragraph 66);**
 - ii) **(i) to introduce rules for political parties to keep proper books and accounts (including in connection with election campaigns); (ii) to ensure that income and expenditure, assets and debts are accounted for in a comprehensive and coherent manner and reported on at appropriate intervals; and (iii) to seek ways to consolidate the accounts to include entities which are related directly or indirectly to a political party or otherwise under its control (paragraph 67);**

- iii) **to develop a co-ordinated approach for the publication of political financing accounts and/or reports (including party and election campaign financing) in order to facilitate the public's access to such documents (paragraph 68);**
 - iv) **to ensure independent auditing, as appropriate, in respect of political parties obliged (or yet-to-be obliged) to keep books and accounts (paragraph 69);**
 - v) **to effectively ensure independent monitoring of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4 (paragraph 70);**
 - vi) **that existing and yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by appropriate sanctions, which are effective, proportionate and dissuasive (paragraph 71).**
75. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Maltese authorities to present a report on the implementation of the above-mentioned recommendations by 30 April 2011.
76. GRECO invites the authorities of Malta to authorise, as soon as possible, the publication of this report.