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Group of States against corruption

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Evaluation Report on Moldova Transparency of Party Funding

(Theme II)

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I. INTRODUCTION

1. Moldova has been a member of GRECO since 2001. GRECO adopted its First Round Evaluation Report on Moldova (Greco Eval I Rep (2003) 3E) at its 15th Plenary Meeting (13-17 October 2003) and the Second Round Evaluation Report (Greco Eval II Rep (2006) 1E) at its 30th Plenary Meeting (9-13 October 2006). The aforementioned Evaluation Reports, and the corresponding Compliance Reports, are available on the GRECO web site (<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 and 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (GPC 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 on financing of political parties and election campaigns.
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which visited Moldova from 17 to 19 November 2010, was composed of Mr Guido HOSTYN, Premier conseiller de direction, Secretary to the Electoral Expenditure Oversight Committee of the Senate (Belgium) and Ms Laura STEFAN, Anti-Corruption Co-ordinator, Romanian Academic Society (Romania). The GET was assisted by Mr Michael JANSSEN from GRECO's Secretariat. Prior to the visit the GET received comprehensive replies to the Evaluation Questionnaire (Greco Eval III (2010) 14F, Theme II) as well as copies of relevant legislation.
4. The experts met representatives of the following government authorities: the Ministry of Justice, the Central Electoral Commission, the Court of Auditors, the Ministry of Finance and the prosecution service. They also had meetings with private auditors, independent candidates in elections and representatives of the following political parties: the Liberal Party, the Liberal Democratic Party of Moldova, the "European Action Movement" Party, the Christian-Democratic People's Party and the Republican Party of Moldova. The GET also had meetings with representatives of non-governmental organisations (the Anti-Corruption Alliance, the Association for Participatory Democracy "ADEPT", the East Europe Foundation, the Institute for Development and Social Initiatives "IDIS Viitorul" and Transparency International) and of the media.
5. The current report on theme II of GRECO's Third Evaluation Round – Transparency of Party Funding – is based on answers to the questionnaire and information supplied during the on-site visit. The main objective of the report is to assess the effectiveness of measures adopted by the Moldovan authorities to comply with the provisions referred to in paragraph 2. The report presents a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Moldova on how to improve compliance with the provisions under consideration.
6. The report on theme I – Incriminations – appears in Greco Eval III Rep (2010) 8E-Theme I.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

Legislative framework

7. In Moldova political parties' functioning is governed by the Law on Political Parties (hereafter the LPP) of 21 December 2007.¹ The legislation governing the activities of non-profit organisations is also applicable to political parties, except where the LPP provides otherwise.² The LPP contains provisions on the general funding of political parties, whereas the Electoral Code (hereafter the EC) of 21 November 1997³ lays down specific rules on the financing of parliamentary and local election campaigns. The most recent amendments of the EC concerning the rules on funding election campaigns were introduced by Law No. 119 of 18 June 2010, which entered into force on 29 June 2010. This law *inter alia* reinforced the disclosure obligations regarding the financing of election campaigns.⁴

Definition of a political party

8. Section 1 of the LPP defines political parties as "voluntary associations of Moldovan citizens entitled to vote; they have the status of legal entities and contribute, through joint activities and in accordance with the principle of freedom of participation, to defining, expressing and accomplishing their political objectives." The same section stipulates that political parties are democratic institutions of the law-based State which promote democratic values and political pluralism.
9. Under section 2 of the LPP political parties must be organised in accordance with the administrative territorial organisation of Moldova. The governing bodies, branches and structures of political parties must be established in territories coming under the territorial jurisdiction of the Republic of Moldova. Section 12 of the LPP provides that each party is organised and functions on the basis of its statute and political programme. Sections 13 and 14 of the LPP stipulate that political parties have central bodies and local branches and that it is obligatory for them to have governing bodies at central and local level – such as the General Assembly of the party's members or the meeting of party delegates (the Congress) and a management body – as well as an executive body and an auditing body. The authorities stated that parties could also establish affiliated organisations, such as young people's or women's movements, which are part of the parties and do not have separate legal personality.
10. Section 3 of the LPP sets out certain restrictions on political parties' activities, in particular the prohibitions on taking action counter to the sovereignty, territorial integrity, democratic values and public order of Moldova, on organising military or paramilitary activities, on basing their establishment on grounds of race, nationality, ethnic origin, language, religion, gender, wealth or social origin and on setting up parties of foreign States within Moldova.

Formation and registration of political parties

11. Article 41 of the Constitution guarantees Moldovan citizens freedom of association in the form of parties and other social and political organisations. Section 6 of the LPP provides that any

¹ Law on Political Parties No. 294-XVI of 21 December 2007, which entered into force on 29 February 2008 (date of publication in the Official Gazette ("Monitorul Oficial")).

² Section 33, paragraph 2 of the LPP

³ The Electoral Code, approved by Law No. 1381-XIII of 21 November 1997, entered into force on 8 December 1997 (date of publication in the Official Gazette).

⁴ See Section 38, paragraph 1 of the EC, as amended; see also paragraph 46 below.

Moldovan citizen who has the right to vote can become a member of a (single) political party, with the exception of persons prohibited by law from participating in political activities, particularly judges and prosecutors.⁵

12. Under section 8 of the LPP, to register a political party it is necessary to file an application with the Ministry of Justice, accompanied by the party's statute, its programme, its act of establishment – with a list of its members (numbering at least 4,000 and obligatorily resident in at least half of the second level administrative-territorial units of Moldova),⁶ the acts establishing its local branches and the list of delegates who attended the constituent Congress – a declaration of the party's legal domicile and documents certifying the opening of a bank account as well as the payment of taxes.
13. A political party acquires legal personality from the date of its registration in the Register of Political Parties kept by the Ministry of Justice. As at November 2010, 31 parties were registered. Under section 11 of the LPP, the information recorded in the register is public; announcements concerning parties' registration, their removal from the register or amendments to their statutes are published in the Official Gazette and on the web site of the Ministry of Justice .

Participation in elections

14. Moldova is a multipartite parliamentary republic founded on the Constitution of 1994. The Head of State is the President, who is elected by Parliament for a four-year term and must score at least a 3/5 majority (61 votes). Despite several attempts to elect a new President, no candidate has so far succeeded in scoring the number of votes required, and the country has accordingly been without a President since September 2009. The Head of Government is the Prime Minister, who is appointed by the President and is subject to a vote of confidence by Parliament, as are government members, themselves appointed by the Prime Minister. Parliament is unicameral and has 101 members elected for a four-year term under a proportional representation system and by "universal, equal, direct, secret and freely expressed suffrage".⁷ To enter Parliament, a party or other "socio-political organisation"⁸ must score 4% of the vote; an electoral bloc formed by two parties and/or socio-political organisations 7 %; an electoral bloc formed by three or more parties and/or socio-political organisations 9 %; and an independent candidate 2 %.⁹ Local self-government is managed by the mayors – elected for four years by a majority of votes cast – and by district, municipal and communal councillors – elected for four years under a proportional representation system. In December 1991 the "Moldovan Republic of Dniester" proclaimed its independence of Moldova, but its autonomous status is recognised neither by Moldova nor by the international community.
15. The principal rules on the organisation and conduct of parliamentary and local elections are laid down by the EC. Candidatures can be submitted by political parties, other socio-political organisations and electoral blocs (formed by political parties and/or other socio-political

⁵ Section 8, paragraph 1c, of Law No. 544 of 20 July 1995 on the Status of Judges; section 35, paragraph 2b, of Law No. 294 of 25 December 2008 on the Prosecution Service.

⁶ Law No. 764 of 27 December 2001 on the Administrative and Territorial Organisation of the Republic of Moldova distinguishes between first level administrative-territorial units (about 900 municipalities, villages and communes) and second level ones (numbering 35 in all and corresponding to the "districts", the municipalities of Chisinau and Balti and the administrative territorial entity of Gagauzia).

⁷ Section 61 of the Constitution.

⁸ According to the definition in section 1 of the EC, this term refers to political parties, fronts, leagues and political movements registered in accordance with the LPP.

⁹ Section 86 of the EC.

organisations), and Moldovan citizens who can come forward as independent candidates.¹⁰ For parliamentary elections, the period for registering candidates with the Central Electoral Commission starts 60 days before the election date and ends 30 days before the same date; for local elections, it starts 55 or 50 days before the election date.¹¹ The documents to be submitted for registration of candidates include a declaration of the candidate's assets (also stating his or her income over the two years preceding the election year) and, for independent candidates, a list of supporting signatures (candidates in parliamentary elections are required to produce 2,000 to 2,500 signatures).¹²

16. Moldovan citizens having reached the age of 18 have the right to vote, except for persons who have been declared incapacitated or deprived of this right by a final court decision.¹³ All citizens who are eligible to vote and meet the specific conditions for the different types of elections, as laid down in the EC – for parliamentary elections, permanent residence in Moldova is required¹⁴ – are also entitled to be elected, apart from military personnel, persons deprived of their liberty by a final court decision, persons convicted of intentional offences whose criminal records have not been expunged and persons deprived of the right to hold positions of responsibility by a final judicial decision.¹⁵
17. The election campaign runs from the date of registration of an "electoral contestant" to the date of the election or of the contestant's exclusion. Any form of campaigning before the registration of the "electoral contestant" or on election day itself and the day preceding the elections is prohibited.¹⁶
18. The Central Electoral Commission (hereafter "CEC") is a permanent public body with responsibility for organising and overseeing the electoral process. To organise and oversee parliamentary and local elections, it establishes District Electoral Councils (by no later than, respectively, 50 and 35 days before the date of the election).¹⁷

Representation of parties in Parliament

19. Following the most recent parliamentary elections, held on 28 November 2010, parliamentary seats are distributed as follows:

Party	Number of seats
Party of Communists of the Republic of Moldova (PCRM)	42
Liberal-Democratic Party of Moldova (PLDM)	32
Democratic Party of Moldova (PDM)	15
Liberal Party (PL)	12

Overall, 20 parties and 19 independent candidates participated in these elections.

¹⁰ Section 41, paragraph 2 of the EC

¹¹ Sections 41, paragraph 1, and 120 of the EC

¹² See sections 44 and 78 of the EC. To stand in local council elections, candidates must have the support of at least 2% of voters in the district concerned, divided by the number of councillors to be elected, and of at least 50 persons; to run for mayor, they must have the support of at least 5% of the district's voters and of at least 150 persons (but not more than 10,000). See section 127 of the EC.

¹³ Section 38, paragraph 2, of the Constitution; sections 11 and 13 of the EC

¹⁴ Section 75 of the EC – In the case of local elections, only persons living in the administrative-territorial unit concerned have the right to vote and to be elected. To be elected mayor, the minimum age is 25. See sections 123 and 124 of the EC.

¹⁵ Sections 12 and 13 of the EC

¹⁶ See sections 1 and 47 of the EC.

¹⁷ See sections 14, 16 and 22 of the EC. For more details, see paragraphs 53 and 54 below.

Overview of the party funding system

Legislative framework

20. The *authorised sources* of party funding are listed in section 25 of the LPP as follows: members' subscriptions; donations, including those collected during cultural, sports or other public events organised by the party; grants from the State budget; "other legally obtained revenues" under section 24, paragraph 3 of the LPP. The latter provision authorises parties to perform publishing activities, activities directly relating to the management of their property and any other economic activity which results directly from the objectives set out in their statutes. Any other source of funding is banned. Section 26, paragraph 5 of the LPP expressly prohibits any form of financing or other material support by other States, international organisations, enterprises or organisations financed by the State or with State or foreign capital, non-profit organisations, trade unions, charitable or religious organisations, Moldovan citizens who are minors or who are living abroad, foreign citizens and anonymous persons or persons acting on behalf of third parties.
21. In principle, parties can accordingly receive private and public funds, but, so far, no direct financing has been granted by the State. There are plans to introduce direct public financing in future, but this measure has twice been postponed. The new provisions of section 28 of the LPP on financing from the State budget should in principle enter into force on 1 July 2013 for parliamentary elections and 1 July 2011 for local elections.
22. Funding of election campaigns by "electoral contestants" is governed specifically by sections 36 to 38 of the EC and, in addition, by Regulation No. 3336 on the funding of election campaigns and political parties, which was approved by the CEC on 16 July 2010.¹⁸ This legislation does not contain a list of authorised sources of funding – although it is clear from it that electoral contestants can receive both private and public funds – but prohibits funding from the following sources: funding or material support of any kind by foreign countries, international or mixed organisations, foreign enterprises, institutions or organisations, foreign citizens, under-age Moldovan citizens, State funded organisations, anonymous persons or charitable or religious organisations.¹⁹
23. The funding of entities directly or indirectly related to political parties or otherwise under their control and of organisations affiliated to political parties is not specifically governed by the LPP or the EC. In this connection, the authorities underlined, firstly, that the funding of parties by non-profit organisations, trade unions, charitable or religious organisations or foreign entities is prohibited by law²⁰ and, secondly, that associations formed outside the legal framework applicable to parties – which are governed by the Law on Social Associations²¹ – are not authorised to engage in political activities.

Direct public funding

24. Firstly, as indicated above, the introduction of regular grants for political parties is planned.²² Under the new provisions of section 28 of the LPP – which are not yet in force – the annual

¹⁸ This legislation is also summed up and explained in greater detail in a practical guide to financing election campaigns, drawn up with a view to the parliamentary elections of 6 April 2009 under the joint Council of Europe and European Commission project, "MOLICO".

¹⁹ See sections 36 and 38, paragraph 5, of the EC. The CEC's Regulation No. 3336 contains more precisions.

²⁰ See section 26, paragraph 5, of the LPP; see also section 38, paragraph 5, of the EC.

²¹ Law No. °837 of 17 May 1996.

²² See paragraph 21 above.

allocations to the political parties from the State budget cannot exceed 0.2% of the cumulative total proposed for the budget year concerned and are to be distributed as follows:

- a) 50% to be distributed among political parties in proportion to the number of mandates obtained in parliamentary elections, as validated at the time of constitution of the new legislature – with effect from 1 July 2013;
- b) 50% to be distributed among political parties in proportion to the number of votes scored in local elections, provided they have obtained at least 50 mandates in representative bodies of second level territorial-administrative units²³ – with effect from 1 July 2011.

The corresponding sums are to be transferred to the parties' accounts by the CEC all year long in equal monthly instalments. In the event of a re-organisation of the parties concerned, the right to funding from the State budget will be transferred to their beneficiaries, that is the re-organised political parties.

25. Secondly, section 37 of the EC provides for State material support for election campaigns in the form of interest-free loans extended to candidates in parliamentary or local elections, repaid in full or in part by the State in accordance with a calculation method taking into account the result of the elections. The CEC established the following amounts of interest-free loans for campaigning in the parliamentary elections of 5 April 2009: MDL (Moldovan lei) 32 000 (about € 2 080) for political parties and MDL 5 000 (about € 325) for independent candidates; and for the parliamentary elections of 29 July 2009: MDL 25 000 (about € 1 625) for parties and MDL 3 000 (about € 195) for independent candidates. During the on-site visit, the GET was informed that few candidates had applied for these small loans in the past, as a result of which the CEC decided not to offer any such loans to cover the cost of campaigns for the elections held on 28 November 2010.

Indirect public support

26. Firstly, political parties benefit from tax advantages. Section 25, paragraph 5, of the LPP provides that their lawfully-obtained income is tax exempt or taxable according to the provisions of the Tax Code. Section 52, paragraph 4, of the Tax Code provides that, as non-profit-making legal entities, political parties may be exempted from tax by the local tax office at their request and subject to certain conditions.
27. Secondly, the EC provides for a number of advantages that may be accorded to electoral contestants in connection with election campaigns.
 - All electoral contestants participate in the election campaign on an equal basis and have the same rights, particularly regarding technical and material support for their campaigns and access to State funded media.²⁴ During parliamentary and local election campaigns public television and radio stations must grant electoral contestants free air time distributed on an equitable basis.²⁵
 - Candidates in parliamentary elections can use public transport free of charge to travel throughout the country; for candidates in local elections, this possibility is confined to travel within the district concerned.²⁶
 - Local authorities have to provide contestants with space for displaying electoral propaganda and with premises for holding public meetings.²⁷

²³ See paragraph 12 above.

²⁴ Section 46, paragraphs 1 and 2, of the EC.

²⁵ See sections 64 and 64.1 of the EC for further details.

²⁶ Section 46, paragraph 4, of the EC.

- Moreover, during campaigning, candidates are entitled to unpaid leave and cannot be fired or transferred to another job without their consent. They must also not be made subject to criminal proceedings, arrested, detained or have administrative sanctions imposed on them without the agreement of the electoral bodies that registered them, except if they are caught in flagrante delicto.²⁸

Private funding

General funding of political parties

28. As regards property, parties are authorised to own buildings, equipment, publishing houses, printing works, means of transport and other assets not prohibited by law, but such property may not be used for purposes other than the fulfilment of their statutory objectives. Political parties are also prohibited from opening bank accounts abroad.²⁹
29. Members' subscriptions are not subject to specific rules. There are no legally defined limits or restrictions on subscriptions, which may be calculated on a flat-rate or differentiated basis and which are determined by the parties' statutes.³⁰
30. Section 26, paragraph 1, of the LPP defines donations as "assets transmitted free of charge and non-conditionally to the political party and accepted by the latter." Natural persons or legal entities located within the country³¹ may make donations to one or more parties, subject to the following restrictions. Firstly, donations made to one or more parties during the same budget year must not exceed a multiple of the monthly average national wage calculated for the year in question, set at 500 times – for a natural person – or 1 000 times – for a legal entity, corresponding to ceilings of about € 107 500 and € 215 000 in 2011.³² Where the donor is a party member, the membership dues or subscriptions paid are included in this amount. Secondly, the intention is that in future – following the introduction of State grants – the annual revenue that a political party derives from donations may not exceed 0.1% of the total public financial support allocated in the national budget for the year in question. Lastly, anonymous donations are expressly prohibited by the LPP,³³ which also requires each party to keep a register of donations received, recording the donor's name and address (legal domicile) and the amount donated.³⁴ A party shown to have received an anonymous donation or a donation exceeding the limit established by the LPP is required to pay the amount concerned into the State budget within ten days.³⁵
31. There are no specific provisions governing the conclusion of loans by political parties. The authorities pointed out that borrowing is not included in the list of authorised sources of funding contained in section 25 of the LPP. However, other persons questioned by the GET asserted that parties are authorised to take out loans.

²⁷ Section 47, paragraph 7, of the EC.

²⁸ Section 46, paragraph 5, of the EC.

²⁹ Section 24, paragraphs 1 and 3, and section 25, paragraph 8, of the LPP.

³⁰ See section 25, paragraph 3, of the LPP.

³¹ Subject to the exceptions set out in paragraph 20 above.

³² Government decision No. 968 of 18 October 2010 fixed the average monthly wage for 2011 at an amount of MDL 3 300, or about € 215.

³³ Sections 25, paragraph 5, and 27, paragraph 2, of the LPP.

³⁴ Section 27, paragraph 1, of the LPP.

³⁵ Section 27, paragraph 3, of the LPP.

32. The authorities informed the GET that it follows from section 36 of the Tax Code that donations to political parties are not tax deductible.

Funding of election campaigns

33. The relevant provisions of the EC are confined to the restrictions on funding of contestants' election campaigns referred to above³⁶ – including the prohibition of funding by foreign citizens, under age Moldovan citizens, State funded organisations, anonymous persons or charitable or religious organisations, and to the obligation to open a special "electoral account". The maximum amount that can be deposited in this account is established by the CEC.³⁷

Expenditure

34. With regard to the general funding of political parties, section 29, paragraph 1 of the LPP provides that, by decision of the parties' governing bodies, it will be possible to use the regular grants from the State budget to meet the following expenses: maintenance of premises; staff expenditure; advertising and media coverage; travel expenditure incurred in Moldova and abroad; telecommunications expenditure; expenditure incurred in organising political activities; expenditure on receiving visiting delegations from abroad; subscriptions payable to international organisations of which the party is a member; investments in property and equipment and expenditure on movable assets necessary for the party's activities; protocol expenses; expenditure on office supplies and expenditure on election campaigns.
35. Concerning contestants' campaign spending, section 38, paragraph 7, of the EC provides that sums paid into the "electoral fund" account must not be used to further candidates' personal interests. In addition, paragraph 2 of the same section provides that the CEC establishes a limit for total transfers to such accounts. The authorities stated that, for the parliamentary elections held on 5 April 2009, the CEC established ceilings of MDL 12 million or about € 780 000 per political party and MDL 500 000 or about € 32 500 per independent candidate, and that, for the early parliamentary elections of 29 July 2009, the respective ceilings were MDL 7.5 million or about € 487 500 per political party and MDL 500 000 MDL or about € 32 500 per independent candidate.

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

(i) Transparency (Articles 8, 11, 12 and 13b of Recommendation Rec(2003)4)

Accounts

General funding of political parties

36. The authorities explained that the general accounting rules laid down in Law No. 113 on Accounts – which is dated 27 April 2007 and entered into force on 1 January 2008 – apply to political parties. Section 7 of this law requires the entities listed in section 2 – including non-profit organisations and hence political parties – to keep accounts and issue financial reports in accordance with the standards established by this law and other legal instruments. Parties must accordingly keep full and detailed books of account.

³⁶ See paragraph 22 above.

³⁷ See paragraph 35 below.

37. The above accounting obligations should be distinguished from the requirements of the LPP, namely:
- a) the obligation to submit an annual financial report in accordance with the regulations adopted by the Ministry of Justice, to be verified by the supervisory bodies and published by the Ministry of Justice;³⁸ this report contains only summary data on a party's income and expenses;³⁹
 - b) the obligation to keep a register of donations received, recording the name and address (legal domicile) of donors and the amounts of their donations; this is a separate document, not included in the annual financial report.⁴⁰

Funding of election campaigns

38. The law does not lay down any specific rules relating to campaign accounts. However, section 38 of the EC requires that campaign funding be disclosed using a form specifically devised for this purpose. Contestants are required to inform the CEC of the name of their campaign funds manager (treasurer) and to open a bank account, designated the "electoral fund", to which they must transfer their own funds and any amounts donated – with the candidate's prior consent – by natural persons or legal entities (in the latter's case solely by bank transfer, to be accompanied by a statement to the effect that no foreigners hold a stake in the entity's capital). All uses made of funds received by electoral contestants for their campaigns are subject to the reporting and publication requirements laid down in section 38 of the EC.⁴¹
39. The above-mentioned CEC regulation also determines the conditions of transfer of sums of money to a contestant's electoral fund account. Each transfer requires the contestant's prior consent, to be recorded on a form drawn up by the CEC. For transfers by natural persons, their personal identification data, identity card number, year of birth, home address and the amount transferred must also be recorded, and the signature of the person making the transfer is required. Legal entities can make donations to electoral fund accounts only via bank transfer and must confirm that there is no foreign-owned stake in their capital.
40. Moldovan legislation does not impose any specific disclosure requirements on donors.

Reporting requirements

41. Concerning general party funding, section 30, paragraph 1 of the LPP provides that parties are to submit their annual (summary) financial report to the Court of Auditors, the Ministry of Finance and the Ministry of Justice by no later than 31 March. The regulation on financial reporting by political parties of 30 December 2008⁴² determines the content, format and layout of financial reports and a standardised reporting form is appended thereto. The first part of the financial report states the party's full and abridged names; its headquarters address; tax code; telephone and fax numbers and email address; the name of the head of the party's executive body; the names of the representative of the party structure and the chief accountant; and the year concerned. The second part includes four sections, the first of which gives information on the party's revenues, including grants from the State budget; income (including donations) received from natural persons and membership subscriptions, with a breakdown of donations received

³⁸ See section 30 of the LPP.

³⁹ See paragraph 41 below.

⁴⁰ See section 27 of the LPP.

⁴¹ See paragraphs 43 and 46 below.

⁴² Regulation adopted by Order No. 559 of the Ministry of Justice.

from party members and from other natural persons; income received from natural persons in breach of section 26, paragraph 3, of the LPP (exceeding the statutory limits); donations by legal entities; donations by legal entities in breach of section 26, paragraph 4 of the LPP (exceeding the statutory limits); income from publishing activities, activities directly linked to the administration of party property and other economic activities following directly from the party's statutory objectives; and other income. The second section contains data on party expenditure, namely expenses incurred for maintenance of premises; staff expenditure; advertising and media coverage; travel expenditure incurred in Moldova and abroad; telecommunications expenditure; expenditure incurred in organising political activities; expenditure on receiving visiting delegations from abroad; subscriptions payable to international organisations of which the party is a member; investments in property and equipment and expenditure on movable assets necessary for the party's activities; protocol expenses; expenditure on office supplies; expenditure on election campaigns and other expenditure. The third section contains information on the party's treasury balance at the beginning of the year, and the fourth section concerns the treasury balance at the year end. The financial report must be submitted in both printed and electronic formats and must be signed by the representative of the party decision-making body and the representative of the party structure who have responsibility for accounting matters under the party's statute. During the on-site visit, the GET was informed that these annual financial reports contain only total figures, without listing individual items of income and expenditure. Nor do they include a list of donations. They are filed without supporting documents.

42. In the case of the funding of parliamentary or local election campaigns, section 38, paragraph 8 of the EC requires electoral contestants to file fortnightly financial reports with the competent electoral bodies. The CEC's Regulation No. 3336 on funding of election campaigns and political parties stipulates that such reports must be filed from the date of registration by the electoral bodies to the close of polling and two days before the election date. In the case of political parties participating in elections, this obligation also derives from section 31, paragraph 2 of the LPP, which additionally requires them to submit a similar financial report covering the entire election campaign to the CEC within one month of the publication of the results. Electoral contestants must notify the CEC of the identity of their campaign funds manager (treasurer), who is responsible for filing the financial reports within the above time-limits. Reports must include information on income broken down by source – in particular any membership subscriptions; donations by natural persons or legal entities; other income from parties' own activities (publishing, activities directly linked to the administration of party property and other economic activities following directly from the party's statutory objectives); or State loans – and expenditure incurred in connection with the campaign. All this information must be individually itemised.
43. In addition, section 38 of the EC contains other reporting requirements concerning election campaigns. Firstly, paragraph 1b requires electoral contestants to report any funds or contributions in kind received from natural persons or legal entities to the district electoral councils, before making use of them. Secondly, paragraph 9 requires banks to notify the CEC and the electoral councils concerned within 24 hours of any transfers made to contestants' electoral accounts.
44. The authorities stated that, under section 43, paragraph 2 of the Law on Accounts, political parties are required to keep their accounting documents for the periods determined by the State Archives Department. Under the relevant rules, financial reports must be kept without limit and supporting documents for a period of five years.⁴³ According to the authorities, these general

⁴³ Section 229 of Order No. 137 issued by the Director of the State Archives Department on 3 December 1997, as subsequently amended.

principles also apply to other electoral contestants and to the authorities exercising oversight regarding the funding of political parties and electoral contestants.

Publication requirements

45. The LPP does not require political parties to publish their annual financial reports, but the Justice Ministry's Regulation No. 559 requires that they be published on the Ministry's web site within ten days of their date of issue.
46. Section 38 of the EC makes it obligatory for both electoral contestants and the CEC to publish financial information on election campaigns.
 - Firstly, paragraph 1a requires electoral contestants to publish information on financial or other contributions received on a weekly basis,⁴⁴ with effect from the opening of the election campaign, in a nationwide daily newspaper, for parliamentary elections, or a regional daily newspaper of the district concerned, for local elections.
 - Secondly, paragraph 1c provides that information on contestants' income and expenditure is to be published on the CEC's web site within 24 hours of its receipt, specifying the identity of contributors, whether natural persons or legal entities, the amounts concerned and the relevant accounting/financial document data.⁴⁵
 - Paragraph 10 of this section also provides that the CEC or the district electoral councils concerned have to keep on file all the electoral contestants' financial data and make this file accessible to the public for information purposes. They are to gather this information on a weekly basis and issue weekly reports on the amount of contributions received by each electoral contestant and their sources. They are also required to submit pre-election reports to the CEC two days before polling day and also to issue a final report compiling all the information transmitted to them.

In addition, section 31, paragraph 5 of the LPP provides that the CEC is to publish on its web site, within two months of the date of the elections, the expenditure of each political party as calculated and reported by the parties.

Access to accounting records

47. The various bodies competent for verifying political parties' annual reports – the Court of Auditors, the Ministry of Finance and the Ministry of Justice– and campaign financing information – the CEC, the district electoral councils and possibly the Tax Inspectorate at the Ministry of Finance and the Court of Auditors – have access to parties' and electoral contestants' accounting records. The authorities also stated that police bodies, the Centre for Combating Economic Crime and Corruption (CCECC) and the prosecution service can access these records if the above-mentioned supervisory bodies refer possible breaches of the law to them.

⁴⁴ Introduced by Law No. 119 of 18 June 2010, which entered into force on 29 June 2010; the financial information previously had to be published on a monthly basis.

⁴⁵ This provision was added to section 38 of the EC by Law No.119 of 18 June 2010.

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

Accounting audits

48. Section 13, paragraph 1n of the LPP provides that political parties' statutes are to determine "the modalities of internal financial audits". In this connection, the authorities stated that the parties' statutes provided for the establishment of an internal audit board responsible for controlling the management of the party's finances and property, performing accounting and financial audits in accordance with professional auditing standards at both national and local level, presenting the results of audits to the party's executive bodies and submitting reports to the General Assembly. The authorities also pointed out that the Justice Ministry's Regulation No. 559 on financial reporting by political parties also requires parties to appoint a person responsible for accounting evidence. The EC requires electoral contestants to appoint a campaign funds manager (treasurer),⁴⁶ but does not impose a professional financial audit of their accounts and financial reports.

Supervision

49. Concerning general party funding, section 30, paragraph 2 of the LPP provides that political parties' annual financial reports are to be verified by the Court of Auditors in relation to the grants to be received from the State (in future) and by the Ministry of Finance, through its subordinate bodies, in relation to other income (and the corresponding expenditure). In this connection, it should be noted that the use of income received in the form of grants from the State budget must be clearly itemised in political parties' accounts.⁴⁷ Under the Justice Ministry's Regulation No. 559 the Court of Auditors and the Ministry of Finance are entitled to request, within three months of the submission of the party's financial report, supporting documents substantiating the sources of income and the expenditure items mentioned in the report. At the time of the visit the GET was informed that, for the time being, only the Ministry of Finance (to be precise, the Tax Inspectorate) performs verifications of annual reports, since the introduction of State grants has been postponed to July 2011/2013. The Ministry of Justice also receives parties' financial reports for publication purposes, but the LPP confers no control functions on it. The GET was nonetheless informed that, in practice, the Ministry performs a formal control on the completeness of reports submitted.

50. During the visit the GET was told that the above-mentioned supervisory authorities have no specialists in political party financing on their staff. In the case of the Tax Inspectorate, it is the section that organises tax inspections which is responsible for verifying the accounts of non-profit organisations. In this connection, it also verifies the taxation of political parties' economic activities and donations made by natural persons and legal entities. The Court of Auditors, which has sole competence for verifying the use made of public funds, will be responsible for performing a control of parties' public funding and the expenditure financed with income from such sources. Following a reorganisation that took effect on 1 January 2009, the Court of Auditors became the supreme external audit body with regard to uses of public funds. Its audits are conducted in accordance with international standards (INTOSAI).

51. In the case of funding of election and referendum campaigns, it is the CEC and the district electoral councils that are responsible for collating in a comprehensive file all the financial information⁴⁸ supplied by electoral contestants (reporting of all contributions in kind before use is

⁴⁶ Section 38, paragraph 3, of the EC

⁴⁷ Section 29, paragraph 3, of the LPP

⁴⁸ Section 38, paragraphs 1b, 8, 9 and 10 of the EC. – See paragraphs 42 and 43 above.

made of them and fortnightly financial reports) or by banks (notification within 24 hours of transfers made to electoral accounts) and for preparing – and publishing – fortnightly reports on the amount and sources of contestants' income along with a pre-electoral report and a final report.⁴⁹ In order to verify the sources of income, the accuracy of financial reports and electoral contestants' spending, these bodies can request the Court of Auditors or the Tax Inspectorate at the Ministry of Finance to verify the proper keeping of the accounting registers and the utilisation made of funds.⁵⁰ In this connection, the CEC's Regulation No. 3336 on the funding of election campaigns and political parties provides, firstly, that the CEC has to request the Tax Inspectorate to verify the origins of financial contributions in excess of MDL 100 000 (about € 6 500) received by electoral contestants and, secondly, that it may ask the Court of Auditors to control electoral contestants' sources of income and spending.

52. At the same time, under section 31 of the LPP, the CEC itself may, in the event of incomplete information supplied by a political party on its election campaign, seek additional information from the party concerned concerning the amount of each accounting entry and the source of the corresponding funds. If a contestant has made use of unreported financial contributions or contributions from abroad, the CEC (for parliamentary elections) or the district electoral council (for local elections) must request the Chisinau Court of Appeal or the relevant district court to annul the registration of the electoral contestant concerned.⁵¹
53. The Central Electoral Commission ("CEC") is a permanent public body with responsibility for organising and overseeing the electoral process.⁵² To organise and oversee parliamentary and local elections, it establishes District Electoral Councils. Electoral contestants are entitled to appoint a representative to these bodies for the duration of the election campaign, who has the right to vote in a consultative capacity. Apart from these temporary representatives, the CEC has nine members appointed for a five-year term, one by the President of the Republic and the eight others by Parliament in accordance with the principle of proportional representation of the parliamentary majority and opposition.⁵³ Members must be citizens of Moldova, reside in the country and have an excellent reputation as regards their personal integrity and competence in electoral matters. During their term of office they may not be a member of a political party or undertake political activities. They cease to hold office on the expiry of the five-year term, upon their resignation or inability to perform their duties, upon their death or in the event of dismissal on the ground of a final conviction of a serious criminal offence, loss of nationality, legal incapacity, serious violations of the Constitution or the EC, or conduct incompatible with their position. The President, Vice-President and Secretary of the CEC are elected by a simple majority of the members' votes and work on a permanent basis as "holders of a public office"; other members of the CEC are summoned as necessary by the President. The CEC has a secretariat and can hire extra staff during election periods. At the time of the GET's visit, the CEC's finance and audit department had a staff of five, including one person in charge of verifying electoral contestants' financial reports.

⁴⁹ Section 38, paragraph 10 of the EC.

⁵⁰ Section 38, paragraph 9 of the EC.

⁵¹ See Sections 26, paragraph 1p, and 36, paragraph 2, of the EC, as amended by Law No. 119 of 18 June 2010. The authorities indicated that the corresponding amendments to section 31 of the LPP have not yet been drafted. The GET was informed that, following the amendments to the EC, section 31, paragraph 3 of the LPP was no longer applicable.

⁵² See sections 14 to 26.1 of the EC. The CEC's activity is also governed by its rules of procedure, which it approved by Decision No. 137 of 14 February 2006.

⁵³ On 11 February 2011, Parliament appointed the eight new members of the CEC, namely three on behalf of the PCRM, three of the PLDM, one of the PL and one of the PDM. A further member was designated by the President a.i. of Moldova. On 15 February, the new members of the CEC elected the President, the Vice-President and the Secretary of the CEC.

54. The district electoral councils function along the same lines as the CEC but do not have legal personality and are formed on a temporary basis for the elections.⁵⁴ They have an uneven number of members – at least seven and not more than 11 – at least three of whom, in the case of second level districts, must have a university level education in law or public administration.
55. Concerning the procedure to be followed in the event of suspected infringements of political financing regulations, the authorities stated that there were no specific provisions and, in practice, the supervisory bodies refer such matters to the police or the prosecution service either of their own motion or in response to citizens' complaints, and the bodies concerned then launch an investigation.

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

56. Concerning general party funding, section 30, paragraph 3 of the LPP provides that "any violation of the rules on political party funding or the use of party funds is to be sanctioned in accordance with law."⁵⁵ However, Moldovan legislation makes no provision for any criminal or administrative sanction in the event of a breach of the funding rules laid down in the LPP, apart from the following:

a) Section 26, paragraph 6 of the LPP

The share of donations received by political parties that exceeds the ceiling and any sums received in breach of paragraph 5 (financing or other material support by other States, international organisations, enterprises or organisations financed by the State or with State or foreign capital, non-profit organisations, trade unions, charitable or religious organisations, Moldovan citizens who are minors or who are living abroad, foreign citizens and anonymous persons or persons acting on behalf of third parties) must be transferred to the State budget by court order.

b) Section 28, paragraph 3 of the LPP – not yet in force

The intention is that parties receiving funds in breach of the provisions of the LPP will lose their entitlement to grants from the State budget. This right may be restored to the parties concerned after the next elections.

c) Section 295 of the Code on Minor Offences provides for different levels of "contraventional" fines, ranging from between 5 and 10 conventional units (MDL 100 to 200 or about € 6.5 to 13) to between 50 and 70 conventional units (MDL 1 000 to 1 400 or about € 65 to 91), for offences against the rules on the organisation and keeping of accounts and the preparation and submission of financial reports. These offences include:

- "failure to comply with legal requirements concerning the choice of an accounting system, form of accounts and the application of accounting policies and failure to exercise control over the documentation of financial transactions and their recording in the accounts" (paragraph 1),
- "failure to comply with the rules laid down by law on reflection of financial transactions in accounts and accounting registers" (paragraph 2),
- "failure to prepare the primary documents or the primary documents covered by special rules or failure to observe the requirements relating to their preparation, incomplete or inadequate preparation of primary documents or primary documents covered by special rules or their late inclusion in the accounts" (paragraph 3),

⁵⁴ For more details, see sections 27 and 28 of the EC.

⁵⁵ See also section 25, paragraph 7 of the LPP, which provides "violations of the legal provisions on political party funding and on the use made by parties of their funds and tangible assets shall be sanctioned in accordance with law."

- "filing with the authorised body of financial reports that do not correspond to the format required by law or do not reflect all the data required there under, or filing of incomplete or erroneous financial reports or failure to file them within the time-limit prescribed by law" (paragraph 4),
- "inclusion of certain erroneous indications in financial reports" (paragraph 6) and
- "loss, theft or destruction of accounting documents before the expiry of their conservation period according to the rules laid down by the State Body for the Supervision and Administration of the Archives Fund of the Republic of Moldova, or their non-restitution, pursuant to law, within a maximum of three months from the date on which the event concerned came to light" (paragraph 7).

According to the authorities, these provisions of the Code on Minor Offences apply to everyone subject to the Law on Accounts and hence to political parties and their obligation to prepare and file annual reports. Fines may be imposed on accountants, those responsible for accounting supporting documents and executive officers (leaders) of the parties concerned.

57. The EC, the LPP and the Code on Minor Offences provide for the following sanctions and measures in the event of breaches of the rules on funding of election campaigns:

a) Section 69, paragraph 2 of the EC

In the event of a breach of the provisions of the EC – including the rules on transparency of campaign funding – the CEC and the district electoral councils may issue a warning to the electoral contestant concerned.

b) Section 36, paragraph 2 of the EC⁵⁶

If an electoral contestant uses undeclared fund or funds from foreign sources, the CEC (for parliamentary elections) or the competent district electoral council (for local elections) must request, respectively, the Chisinau Court of Appeal or the relevant district court to annul the contestant's registration. The court concerned is required to examine this application and give its decision within five days and at the latest the day preceding the elections.

Section 31, paragraph 3 of the LPP provides for the same sanction where – more generally – a political party has obtained or used funds in breach of the provisions of the LPP. However, the GET was informed that, following the recent amendment of the above-mentioned more specific provision of the EC, this rule of the LPP is no longer applicable.

c) Section 28, paragraph 3 of the LPP – not yet in force

The intention is that political parties whose campaign spending exceeds the ceiling laid down by law will lose their entitlement to State grants. It will be possible to restore this right to the parties concerned after the elections have taken place.

d) Section 48 of the Code on Minor Offences

The penalty for using funds obtained from foreign sources or undeclared funds during an election campaign is a contraventional fine of 30 to 40 conventional units (MDL 600 to 800 or about € 39 to 52) for natural persons and 300 to 500 conventional units (MDL 6 000 to 10 000 or about € 390 to 650) for persons holding positions of responsibility. The authorities explained that this fine may be imposed on the treasurers appointed by electoral contestants to manage their electoral funds and on other persons managing campaign funding as well as on a contestant's executive officers.

⁵⁶ See also sections 26, paragraph 1p, and 69, paragraph 4, of the EC.

Lastly, the authorities stated that the contraventional fines provided for in section 295 of the Code on Minor Offences for breaches of the accounting regulations also apply to electoral contestants and their accounting obligations in relation to election campaigns. However, this standpoint was clearly refuted by legal practitioners questioned on the subject during the on-site visit.

Immunities and the statute of limitations

58. During election campaigns candidates cannot be dismissed or transferred to other positions or jobs without their consent. They cannot be detained, arrested, prosecuted or subjected to administrative sanctions without the approval of the electoral body that registered them, except if they are caught in flagrante delicto.⁵⁷
59. The limitation period concerning questions of contraventional liability – including breaches of the regulations on political funding and accounting sanctioned under the Code on Minor Offences, as described above – is three months from the date of commission of the offence; in the event of an ongoing offence, the time-limit begins to run from the date of the most recent act or failure to act. The time-limit for executing the sanction is one year.

Statistics

60. To date no sanction has apparently been pronounced for breaches of the rules on the transparency of party funding or campaign funding, apart from a number of warnings issued by the CEC to electoral contestants (for example, concerning inaccurate or incomplete financial reporting).

IV. ANALYSIS

61. The political scene in Moldova is dominated by the parties. Independent candidates can also participate in elections, but due to the electoral system no independent candidate has ever been elected to Parliament. After the country declared its independence in 1991 a number of significant parties were rapidly established and formed governments of alternating political tendencies. The balanced composition of Parliament – with the liberal leaning parties of the Alliance for European Integration coalition on the one hand, and the Communist Party on the other hand – reflects the two dominant trends in current-day Moldovan society. However, in April 2009 this situation triggered a constitutional crisis that has endured for three parliamentary elections, and to date no contestant has been able to attain the 3/5 of votes in the legislature required to be elected President of the Republic.
62. At present the parties depend entirely on private funding, that is to say members' subscriptions and donations by natural persons or legal entities.⁵⁸ The funding of political parties and election campaigns is governed by two different sets of rules, laid down by the Law on Political Parties (hereafter the LPP) of 2007 and the Electoral Code (hereafter the EC) of 1997. The latter code, which lays down specific rules on the financing of parliamentary and local election campaigns, has been amended on several occasions, most recently in June 2010, notably so as to reinforce the publication obligations. The provisions of the LPP and the EC are supplemented by

⁵⁷ Section 46, paragraph 5 of the EC.

⁵⁸ Apart from the interest-free State loans offered to "electoral contestants" – and therefore also to political parties – for funding their election campaigns. This instrument is nonetheless little used in practice and was not proposed for the campaign prior to the elections held on 28 November 2010.

legislation applicable to non-profit organisations in general⁵⁹ and by the regulations of the Ministry of Justice and the Central Electoral Commission (hereafter the CEC) clarifying the rules on transparency of party funding. The rules prohibit, *inter alia*, contributions by State funded organisations or those with foreign capital and anonymous contributions. They also provide for a limit on the amount that can be donated to political parties each year (in 2011, about € 107 500 for natural persons and € 215 000 for legal entities). In addition, the LPP obliges parties to set up a register of donations and to file their annual financial reports with a number of public bodies with a view to their verification and publication. The EC imposes a number of reporting and publication requirements on "electoral contestants" – that is political parties, "other socio-political organisations and electoral blocs" and independent candidates. Campaign spending must be met solely out of the electoral fund, which is subject to a ceiling set by the CEC (for the parliamentary elections held on 29 July 2009 this was about € 487 500 for political parties and about € 32 500 for independent candidates) and all uses of funds received by electoral contestants for their campaigns have to be reported and published.

63. The GET considers that Moldova has thus – gradually – put in place a legal framework on political funding that is of a fairly good level and incorporates many of the principles of Committee of Ministers Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns (hereafter "the Recommendation"). In particular, the GET welcomes the authorities' recent efforts to reinforce transparency during election campaigns. At the same time, it notes that the series of reforms has resulted in certain disparities between the various legal instruments, of which the most significant – for instance concerning disclosure of donations – are discussed in detail below. In general, the GET invites the authorities to take steps, during a future reform of the legislation, to enhance harmonisation and improve co-ordination of the rules applicable.⁶⁰ Furthermore, the GET noted a number of malfunctions in the political funding system, which is also criticised by certain civil society organisations. The GET gained the impression that most of the criticisms levelled at the current system, which is still changing, are due to the only partial implementation of the existing legal and regulatory provisions and to certain gaps in the law, in particular concerning the system of sanctions applicable in the event of breaches of the rules. It is therefore above all necessary to improve the supervisory mechanism and the implementation of the rules already laid down.
64. During the on-site visit, the many persons with whom the GET had meetings informed it of their concerns about various forms of covert financing of parties and election campaigns, notably contributions from foreign sources or in excess of the legal limits, on which it has so far not been possible to shed sufficient light. It was also pointed out that the political class currently lacked a genuine "political culture" and was too heavily influenced by a narrow circle of private individuals and undertakings. The GET was unable to confirm these assertions, but noted with interest a number of proposals aimed at improving transparency – for example, a decrease in the limits on donations (which are clearly too high in the light of Moldova's social and economic situation) or the introduction of tax advantages for donors and of State grants for political parties. In this connection, the GET was informed that the introduction of ordinary State support for political parties was envisaged, but the measure had twice been postponed for budgetary and political reasons. As things stand at present, the provisions of the LPP on State grants should enter into force in July 2011 for local elections and July 2013 for parliamentary elections. The GET welcomes these plans, while drawing the authorities' attention to Article 1 of the Recommendation, which encourages States to grant support to political parties within reasonable

⁵⁹ In particular the Law on Social Associations (Law No. 837 of 17 May 1996) and the Law on Accounting (Law No. 113 of 27 April 2007).

⁶⁰ For example, the list of prohibited sources of funds in section 26, paragraph 5 of the LPP is not fully reproduced in the EC; the CEC's regulation on this subject rectifies matters but it does not have the same legal force as a law.

limits. Apart from these concerns and suggestions specifically relating to the funding of parties and election campaigns, the GET identified a number of specific inconsistencies and deficiencies in the system of transparency, which need to be remedied as set out below.

Transparency

65. The Law on Accounting *inter alia* requires non-profit organisations and hence political parties to keep accounts in accordance with the standards established by this law and other legal instruments. The GET was informed that parties are accordingly required to keep full, detailed books of account but, at present, there is no disclosure requirement concerning these accounts. However, the LPP requires political parties to file annual financial reports with the Court of Auditors, the Ministry of Finance and the Ministry of Justice, with a view to their verification and publication. These annual reports are prepared in accordance with the Justice Ministry's regulation on the subject⁶¹ and contain summary information on the parties' income and expenditure. The GET notes that a standard form for annual reports is appended to the above-mentioned regulation, which facilitates year on year comparisons and comparisons between parties and is therefore to be welcomed. However, the general nature of this standard form decreases the level of detail of the information made public. It contains very general information on the total amounts received by category of contributor and the total sums paid by type of expenditure. The GET underlines that, to guarantee full transparency and improve supervision of political financing, it is essential to have more detailed annual reports including an itemised breakdown of the figures and supplemented by supporting documents. The fact that political parties are permitted to own buildings, equipment, publishing houses, printing works, means of transport and other assets and that they are authorised to carry on economic activities deriving directly from their statutory objectives is all the more reason to require the submission of an annual financial report similar to those published by business undertakings including a statement of financial position (assets and liabilities), a statement of financial performance (income and expenses) and notes to the accounts (comments on these two statements). Consequently, the GET recommends **to make it obligatory for political parties' annual financial reports destined for publication and submission to the supervisory authorities to include more precise information, guaranteeing a full overview of the party's assets and its income and expenditure.**
66. More specifically, concerning information on donations to parties, the GET notes that, at present, the financial reports coming under the LPP also do not indicate the identities of donors and the amounts of their donations or the identity of the person or entity to whom the payment was made. This type of information is therefore not accessible by the supervisory bodies or the public, except during election campaigns, when the CEC is required to publish on its web site regularly updated information on electoral contestants' income and expenses, specifying donors' identities, the amounts of donations and the corresponding accounting and financial documents data. While welcoming these disclosure rules, introduced in the Electoral Code in June 2010, the GET is concerned about the absence of similar rules outside the official election campaign period (which begins 60 to 30 days before polling day). In this connection, it should be noted that section 27 of the LPP requires parties to draw up a register of donations received but, despite being entitled "Public character of donations for political parties", this section contains no obligation to make the information recorded in this register accessible by the supervisory bodies or the public. During the on-site meetings, the opinion was voiced that the legislation on public information⁶² would apply to the register of donations and it would therefore be mandatory for parties to provide

⁶¹ Justice Ministry Regulation No. 559 of 30 December 2008.

⁶² Law No. 982 of 11 May 2000 on Access to Information

information on its contents on request, but a number of other people with whom the GET spoke disagreed with this opinion and the representatives of a number of parties said that no such practice existed and that it would be unmanageable. For this reason, the GET is firmly convinced that the rules on transparency of donations outside election campaign periods must be improved, for example by requiring parties to submit their registers of donations to the supervisory bodies and to make them public or to include information on donors and donations in the financial reports published by the Ministry of Justice. The GET accordingly recommends **to require that all donations received by political parties outside election campaigns that exceed a given amount, as well as the identity of the donors, are disclosed to the supervisory authorities and are made public.**

67. Although donations to political parties are subject to fairly strict rules and must, in particular, be recorded in the donations register, the GET notes that these regulations – which still need to be further improved regarding the disclosure requirements⁶³ – do not apply to party members' subscriptions. In this connection, it should be noted that the legislation does not set limits or restrictions on such subscriptions (apart from their inclusion in the maximum amount that a natural person can contribute to a party), which may be flat-rate or differentiated and which are determined by the parties' statutes. This means that the parties themselves can decide which contributions qualify as donations or subscriptions. The representatives of a number of parties informed the GET that their statutes provided for flat-rate subscriptions, whereas in other cases the amount is variable. Parties are therefore able to permit members to pay subscriptions exceeding the statutory amount and to record the total income received in this way as a subscription rather than a donation – at least with regard to the excess amount. For this reason, the GET fears that the regulations on donations may be circumvented through the payment of excess subscriptions and it accordingly recommends **to take appropriate measures to limit the risk that members' subscriptions received by parties may be used to circumvent the transparency rules applicable to donations.**
68. Another field in which Moldovan law fails to ensure sufficient transparency is that of in-kind donations and services provided on advantageous terms to political parties and election candidates. Neither the relevant provisions of the LPP nor those of the EC expressly address the question whether and how such forms of funding must be included in the annual financial reports and reports on election campaign funding. The authorities nonetheless stated that all the reports must include this type of information, on the basis of the provisions of the Law on Accounting and the guidelines set out in a practical guide to funding of election campaigns. However, the GET is not fully convinced by these explanations, since neither the LPP, the EC, the additional regulations or the forms drawn up by the Ministry of Justice and the CEC expressly refer either to these contributions or to the rules and (very brief) guidelines mentioned by the authorities. In this connection, the GET wishes to point out that the parties' representatives themselves indicated that the various financial reports in practice contained no information on this type of contributions. At the same time, it was clear from the discussions with party representatives and other persons with whom the GET had meetings that support provided in kind (in-kind donations, services provided free of charge) or on preferential terms constitutes a not insignificant source of funding for parties and electoral contestants. For example, the GET was informed that the supply of offices, staff, advice, means of transport or telecommunications facilities to parties by private persons or the purchase of equipment at discount prices were common practices, and that no mention was made of any of these types of financing in either the campaign financing reports, the parties' annual reports or their donations registers. For this reason, the GET is concerned that a significant share of political funding takes place entirely outside the scope of the transparency

⁶³ See paragraph 66 above.

rules laid down by law. It accordingly considers that the recording of all kinds of donations in kind and free services rendered to parties and candidates and all purchases made at preferential prices must be covered by express, specific rules so as to guarantee transparency of political funding as a whole and to limit the possibilities of concealing donations to parties and candidates.

69. The GET moreover notes that loans to political parties are not clearly governed by law. While the authorities underlined that loans were not explicitly included in the LPP list of permitted sources of party funding, other persons with whom the GET spoke during the on-site visit – including party representatives – stated that they are not ruled out by the current legislation. The GET considers that loans, in particular those extended on more advantageous terms than are available in the market, can constitute an important source of private income for political parties and that the adoption of legislation and/or additional guidelines on this subject is accordingly necessary, with regard to both the acceptability of loans and the manner in which they are to be recorded in the various financial reports. In the light of the above, the GET recommends **to take appropriate measures (i) to ensure that all donations and services provided to parties or candidates in kind or on advantageous terms are properly identified and recorded in full, at their market value, in both parties' annual reports and campaign funding reports; and (ii) to clarify the legal situation regarding loans.**
70. With regard to the conditions governing collection of donations and expenditure by political parties, the GET welcomes the fact that the EC requires electoral contestants to open an electoral account through which all transfers of sums for the election campaign must transit. It nonetheless regrets that only legal entities are obliged to make payments into this account by bank transfer, while nothing is said about the conditions under which natural persons make payments. In addition, the GET notes that the LPP contains no comparable rule regarding party donations and expenditure outside of election campaigns. The law does not systematically require that use be made of traceable means of payment (cheques, bank cards, bank transfers, direct debits). Donations – including those collected during public events held by the party, which are expressly authorised by the LPP – can therefore potentially leave little trace, making it hard to reconstitute the financial transactions that have actually taken place in the event of verifications by the competent authorities. Given donations' importance as a source of funding for political parties in Moldova and the fact that, according to the information obtained by the GET, significant amounts are frequently donated in cash, thereby hampering verifications, the GET recommends **to promote the use of means of payment for donations to political parties and for political party spending involving, notably, recourse to the banking system in order to make them traceable.**
71. Under Article 11 of the Recommendation political parties' accounts should be consolidated so as to include, where appropriate, the accounts of entities directly or indirectly related to political parties or entities otherwise under a party's control. The GET notes that neither the LPP nor the EC makes express reference to such entities in the provisions on accounting and disclosure obligations. The GET was informed that, in Moldova, political parties' accounts and financial reports solely have to include information on their integrated sub-structures – the LPP permits the creation of "structures that will address particular problems of certain social or professional groups"⁶⁴ such as young people's or women's movements – but not the accounts of other organisations. The authorities maintained that this was due, firstly, to the fact that the law prohibits the funding of parties by non-profit organisations, trade unions, charitable or religious organisations or foreign entities⁶⁵ and, secondly, to the ban on the pursuit of political activities by

⁶⁴ See section 1, paragraph 3 of the LPP.

⁶⁵ See section 26, paragraph 5 of the LPP and also section 38, paragraph 5 of the EC.

associations established outside the scope of the legislation on parties, which are governed by the Law on Social Associations. However, the GET notes that, according to a number of observers whom it met during the on-site visit, there are in fact links between such organisations and parties, including forms of indirect financing in some cases. For example, mention was made of foundations or satellite bodies, which admittedly do not seem to fund parties directly but provide training for party executives and have their headquarters at the same address as the party. In other cases non-profit organisations seem to have incurred, in a third-party capacity, electoral expenditure on behalf of parties without these expenses being charged to the parties' electoral funds or to have transferred forbidden contributions of foreign origin. This means that, from an organisational standpoint, political parties have offshoots or links with other organisations that escape the authorities' control both with regard to their financing and their financial relations with a party and to their participation in election campaigns. In this context it is clear that it would be desirable, for transparency's sake, to require that parties' accounts include information on other entities that are directly or indirectly related to them or under their control, so as to give a full, reliable picture of the realities of party financing. As things stand at present, there is a risk that the rules on transparency of party funding could be circumvented by using associations or foundations linked to political parties as conduits for the contributions concerned. For this reason, the GET recommends **to explore the possibilities of consolidating political parties' annual reports and campaign funding reports so as to include entities which are directly or indirectly related to them or otherwise under their control.**

Supervision

72. Political parties are required to perform internal audits of their finances. However, no specific auditing mechanism is prescribed and parties are free to make their own arrangements for internal auditing of their financial operations. In this connection, the GET was informed that the parties' statutes provide for the establishment of an internal audit board with responsibility for verifying the management of the party's funds and property and conducting accounting and financial audits. The GET notes that, in practice, parties' accounts are not audited by independent outside professionals. It nonetheless considers that appropriate verification of political parties' accounts by independent auditors constitutes an important means of supervision, in particular in systems where there are serious weaknesses in other supervisory arrangements.⁶⁶ The introduction of mandatory audits by independent experts which are consistent with accepted international auditing standards would unquestionably enhance political parties' financial discipline and reduce the risks of corruption. The GET consequently recommends **to introduce independent auditing of party accounts by certified experts.** It acknowledges that there is a need to reconcile the accounting audit requirements with the need for flexibility arising from the diversity of parties' resources and needs, in particular so as to avoid imposing unnecessarily heavy constraints on small parties with few or no administrative resources.
73. As mentioned above, the fact that there is no effective external supervision of the legal regulation of political funding is presently the key issue arising in this sphere. The current supervisory arrangements call for a number of comments, in particular regarding the quantity of bodies involved, their respective powers and resources and their independence. During the on-site visit the GET met five different bodies, each having some role in supervising the financing of political parties and election campaigns: the Ministry of Justice, which publishes parties' annual financial reports and in practice also performs a formal verification of these reports;⁶⁷ the Central Electoral

⁶⁶ See paragraphs 73 to 75 below.

⁶⁷ See paragraphs 45 and 49 above.

Commission (CEC), which collects financial information on election campaigns with a view to its publication and summary verification;⁶⁸ the Tax Inspectorate at the Ministry of Finance, which is responsible for verifying parties' annual reports (apart from information on the State grants to be introduced in future) and which the CEC can also call upon to verify candidates' financial reports and the uses made of their campaign funds;⁶⁹ the Court of Auditors, which will in future be responsible for monitoring the public funding of parties and which may – like the Tax Inspectorate – be called upon by the CEC during election campaigns⁷⁰ (according to the representatives of the Court of Auditors with whom the GET held discussions during the visit, this latter function serves no purpose since the Court is solely competent for auditing public spending); and lastly the prosecution service, to which any suspected breach of the political funding rules can be referred, as is the case with the other competent law enforcement authorities.⁷¹ For the GET there is no doubt that such a dispersion of responsibilities can but detract from the effectiveness and efficiency of external supervision of political funding. The GET is of the firm opinion that the multiplicity of bodies has adverse effects in so far as it prevents a single body from assuming effective responsibility for the process. As a result, each body depends on the others and awaits their reports or findings. The outcome is that none of the bodies seems to have a comprehensive global picture of political financing. In the same vein, the GET deems that Parliament's decision to divide the supervision of parties' annual reports into two parts in future and to entrust each part to separate bodies (the Court of Auditors and the Tax Inspectorate) is scarcely convincing.

74. In addition, the various bodies do not have sufficient powers and resources to exercise effective supervision. With regard to regular funding of political parties, the Ministry of Justice performs a purely formal verification of their annual financial reports; the same will apply in future to the Court of Auditors' supervision of State grants and the use made of them by parties, since the amounts will be below the threshold for a detailed audit (0.2% of the State budget). The Tax Inspectorate verifies the parties' reports in the same way as those of other entities subject to tax requirements and has no specialists in the political financing field on its staff. With regard to campaign financing, the CEC admittedly plays an important role, but its resources and powers are also very limited. At the time of the visit, the CEC's finance and audit department had a staff of five, and only one person was responsible for verifying electoral contestants' reports; in the event of suspected breaches of the political financing rules, in order to carry out more detailed investigations the CEC depends on the co-operation of other bodies – belonging to the executive branch – such as the Tax Inspectorate or the police. The GET also notes that, even when performing the supervisory functions effectively devolving to them, the various bodies do not adopt a proactive approach, as the examination of the financial reports and accounts submitted to them rarely extends beyond the information supplied by the parties and election candidates. The fact that only minor breaches of the rules have so far been detected in the course of this supervision and that no sanctions (apart from warnings) have been imposed on parties or election candidates is telling in this respect, especially as the GET heard many allegations that political funding to a large extent originates from covert or unlawful sources. A number of examples can be cited, notably the use of bogus invoices to conceal donations, the use of public property (such as cars or offices) in election campaigns,⁷² failure to record in-kind services, or contributions made via NGOs organising events sponsored with funds of foreign origin.
75. In this connection, the problem also arises of the supervisory bodies' independence, as required under Article 14 of the Recommendation. Although the Court of Auditors and the CEC can be

⁶⁸ See paragraphs 51 and 52 above.

⁶⁹ See paragraphs 49 to 51 above.

⁷⁰ See paragraphs 49 to 51 above.

⁷¹ See paragraph 55 above.

⁷² Prohibited under section 47, paragraph 6 of the EC

qualified as independent, the Ministry of Justice and the Tax Inspectorate at the Ministry of Finance, which both belong to the executive branch of power, do not satisfy this requirement. This state of affairs is all the more unsatisfactory since the current monitoring arrangements to a large extent depend on the Tax Inspectorate, as regards supervision of both the general financing of political parties and campaign funding. It would be desirable for this monitoring to be performed by an independent mechanism with the requisite powers and sufficient resources to carry out full, substantive supervision and to impose administrative sanctions where appropriate. Many of those with whom the GET spoke concurred that supervision of political parties' general funding and of financing of election campaigns should be entrusted to a single body, for example the CEC, provided additional measures were taken to reinforce its powers, its resources and its independence (it was suggested, *inter alia*, that it be given its own specific budget). Determining which body could be given such a task is naturally a matter for Moldova. However, the GET underlines the need to take steps to improve co-ordination between the bodies concerned, under the leadership of an independent body with sufficient resources and powers, and to implement more proactive, specialised, in-depth supervision. Consequently, the GET recommends **to mandate an independent central body, endowed with sufficient powers and resources and assisted by other authorities where necessary, so as to allow the exercise of effective supervision, the conduct of investigations and the implementation of the regulations on political funding.**

Sanctions

76. Concerning the general funding of political parties, the LPP provides, firstly, that the share of donations received by parties exceeding the limit laid down and any sums of unlawful origin (for example sums received from foreign or international sources, State funded entities, non-profit organisations, trade unions or anonymous donors) must be transferred to the State budget by court order.⁷³ Secondly, in future, following the introduction of public funding for parties, the intention is that parties funded in violation of the LPP rules will lose their right to State grants.⁷⁴ Lastly, in general, the LPP provides that any breach of the rules on party funding or on use of party funds is to be "sanctioned according to law".⁷⁵ The GET was, however, informed that the sole criminal or contraventional penalties stipulated by law at present are the contraventional fines ranging from € 6.5 – 13 to € 65 – 91 for the various breaches of accounting rules covered by the Code on Minor Offences⁷⁶ – which are paltry amounts compared with the financial thresholds stipulated in the regulations on political funding (for donations, for example). The GET is concerned about the lack of a clear, precise definition of the offences against the rules on transparency, the obvious deficiencies in the system of sanctions – for instance, no penalty is laid down in the event that a party fails to file its annual report with the supervisory authorities – and the limited range of sanctions provided for. It considers that the sanctions could, for example, include criminal penalties and far greater contraventional fines, proportionate to the seriousness of the offence. The GET is of the opinion that, in fairly serious cases, mere confiscation of illicit funds or the imposition of modest fines could fail to have the desired dissuasive effect. It considers that additional measures must be taken to enhance the range of sanctions in force for breaches of the rules on party funding, so as to guarantee that the penalty is proportionate to the seriousness of the offence (a flexible system of criminal/contraventional/civil sanctions must be put in place).

⁷³ Section 26, paragraph 6, of the LPP

⁷⁴ Section 28, paragraph 3, of the LPP

⁷⁵ Section 30, paragraph 3, of the LPP

⁷⁶ Section 295 of the Code on Minor Offences

77. Regarding funding of election campaigns, the EC solely provides for the CEC to issue a warning to an electoral contestant who fails to comply with the rules on transparency and for the annulment, by the competent court at the request of the CEC or the district electoral council, of the registration of a contestant who has used funds that are undeclared or of foreign origin.⁷⁷ In the same circumstances, the Code on Minor Offences provides for a fine of about € 39 to 52 (about € 390 to 650 for persons holding a position of responsibility)⁷⁸ – here too, the amounts involved are insignificant, to say the least. Lastly, the LPP provides that, in future, following the introduction of public funding of parties, parties whose campaign spending exceeds the limit laid down by law will lose their right to State grants.⁷⁹ The GET reiterates its concern about the lack of a clear, precise definition of all the offences in this field and about the very limited range of sanctions provided for. It very much doubts that the above-mentioned warnings and fines can have a dissuasive effect and it notes that the rules on cancellation of an electoral contestant's registration have also proved relatively ineffective, since this sanction can no longer be imposed after the Constitutional Court has confirmed the election results,⁸⁰ which therefore leaves very little time for the supervisory bodies to verify campaign funding and sanction any breaches of the rules. In addition, the GET notes that not all the breaches of the rules on transparency of campaign funding incur penalties, an example being the financial disclosure requirements imposed on parties and other electoral contestants. There is accordingly a need to remedy these deficiencies and to introduce sanctions supplementing the existing regime, for example criminal penalties and contraventional fines proportionate to the seriousness of the offence concerned.
78. At the same time, it will be necessary to lay down sufficiently long limitation periods for offences, whether already established or to be introduced in future, against the political funding rules. The current time-limit with regard to contraventional offences in this field – merely three months from the date of commission – is extremely short having regard to the supervision to be exercised over party funding, especially in view of the complexity of certain of these contraventional offences and the difficulty of investigating them. To ensure that the bodies assigned responsibility for supervising the financing of political activities can perform effective oversight, they must be allowed sufficient time to conduct their enquiries and investigations in this complex, sensitive field. In addition, to be effective, these bodies must be able to open, or re-open, a file some years after information or relevant data have been reported and be able to compare data over a number of years. In the light of the above, in accordance with the principles set forth in Article 16 of the Recommendation, the GET recommends **to ensure that (i) all infringements of the rules on party funding in general and financing of election campaigns are clearly defined and made subject to effective, proportionate and dissuasive sanctions, which can, if necessary, be imposed after the Constitutional Court has validated the elections; and (ii) the limitation periods applicable to these offences are sufficiently long to allow the competent authorities effectively to supervise political funding.** In this connection, the links between the different types of sanctions provided for in the LPP, the EC and the Code on Minor Offences need also to be clarified. At present, it is not absolutely clear whether these sanctions can be applied cumulatively, so that a number of sanctions can be incurred for a single offence.

⁷⁷ See sections 26, paragraph 1p; 36, paragraph 2; and 69, paragraph 4, of the EC, as amended by Law No. 119 of 18 June 2010. – Section 31, paragraph 3, of the LPP provides for the same penalty if a political party obtains or uses funds in violation of the provisions of the LPP. However, the GET was informed that, following a recent amendment of the above-mentioned more specific provision of the EC, this rule of the LPP is no longer applicable.

⁷⁸ Section 48 of the Code on Minor Offences. – The authorities stated that the contraventional fines provided for in section 295 of the Code for breaches of the accounting regulations also apply to electoral contestants and their obligation to report on the funding of their election campaigns. However, the legal practitioners questioned on this matter during the on-site visit clearly refuted this viewpoint.

⁷⁹ Section 28, paragraph 3, of the LPP

⁸⁰ Ten days following the submission of the results by the CEC (which takes place seven days after the elections); see sections 60 and 89 of the EC.

V. CONCLUSIONS

79. Ensuring transparency of political funding is a relatively new concern in Moldova. The authorities are nonetheless to be commended for the progress achieved in recent years. Moldova has gradually introduced legislation on political funding which incorporates many of the principles of Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns (hereafter "the Recommendation"). This legislation is still evolving and there are plans, *inter alia*, to bring in State grants for political parties, which is a welcome initiative. At present, the fairly detailed rules of the Law on Political Parties and the Electoral Code establish the basis and the limits of private funding of parties and election campaigns, as well as the reporting and publication requirements. Nonetheless, there are still significant shortcomings in the legislation and, above all, in practice, which are linked *inter alia* to the low level of the disclosure requirements relating to ordinary party funding, outside election campaigns; the limited nature of the various financial reports to be filed by parties and candidates (in particular as regards the information on donations and services provided in kind or on advantageous terms and on related entities or entities under a party's control); the lack of in-depth, proactive supervision; and the very restrictive range of sanctions – scarcely applied so far – for infringements of the rules on political financing. These inadequacies can foster abuses and, as it stands at present, the legislation does not provide sufficient means of effectively detecting and disclosing any case of undue influence in connection with political financing. Further improvements to the current system, so as to enhance transparency and responsibility in the political financing sphere and, ultimately, public confidence in the political process, are accordingly clearly necessary. Above all, the Moldovan authorities must seek to ensure that the existing rules – and those to come – are applied in practice. In the process it is of vital importance to establish an independent mechanism having sufficient powers to supervise the financing of election campaigns and political parties in general, rather than the current ineffective system based on sharing of responsibility among a number of bodies. The Moldovan authorities are encouraged to pursue their efforts to introduce and implement a detailed system to guarantee transparency of political funding.

80. In the light of the above, GRECO addresses the following recommendations to Moldova:

- i. **to make it obligatory for political parties' annual financial reports destined for publication and submission to the supervisory authorities to include more precise information, guaranteeing a full overview of the party's assets and its income and expenditure** (paragraph 65);
- ii. **to require that all donations received by political parties outside election campaigns that exceed a given amount, as well as the identity of the donors, are disclosed to the supervisory authorities and are made public** (paragraph 66);
- iii. **to take appropriate measures to limit the risk that members' subscriptions received by parties may be used to circumvent the transparency rules applicable to donations** (paragraph 67);
- iv. **to take appropriate measures (i) to ensure that all donations and services provided to parties or candidates in kind or on advantageous terms are properly identified and recorded in full, at their market value, in both parties' annual reports and campaign funding reports; and (ii) to clarify the legal situation regarding loans** (paragraph 69);

- v. **to promote the use of means of payment for donations to political parties and for political party spending involving, notably, recourse to the banking system in order to make them traceable (paragraph 70);**
 - vi. **to explore the possibilities of consolidating political parties' annual reports and campaign funding reports so as to include entities which are directly or indirectly related to them or otherwise under their control (paragraph 71);**
 - vii. **to introduce independent auditing of party accounts by certified experts (paragraph 72);**
 - viii. **to mandate an independent central body, endowed with sufficient powers and resources and assisted by other authorities where necessary, so as to allow the exercise of effective supervision, the conduct of investigations and the implementation of the regulations on political funding (paragraph 75);**
 - ix. **to ensure that (i) all infringements of the rules on party funding in general and financing of election campaigns are clearly defined and made subject to effective, proportionate and dissuasive sanctions, which can, if necessary, be imposed after the Constitutional Court has validated the elections; and (ii) the limitation periods applicable to these offences are sufficiently long to allow the competent authorities effectively to supervise political funding (paragraph 78).**
81. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the Moldovan authorities to submit a report on implementation of the above recommendations by 31 October 2012.
82. Finally, GRECO invites the Moldovan authorities to translate the present report into the national language and to make this translation public.