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Theme II

Third Evaluation Round

Evaluation Report on San Marino Transparency of Party Funding

(Theme II)

Adopted by GRECO
at its 71st Plenary Meeting
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I. INTRODUCTION

1. San Marino joined GRECO in 2010. GRECO adopted the Joint First and Second Round Evaluation Report on San Marino (Greco Eval I-II Rep (20011) 2E) at its 53rd Plenary Meeting (9 December 2011). The aforementioned Evaluation Report, as well as its corresponding Compliance Report, is available on GRECO's homepage (www.coe.int/greco).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173)¹, Articles 1-6 of its Additional Protocol² (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to San Marino from 28 September to 2 October 2015, was composed of Mr Fernando JIMENEZ SANCHEZ and Ms Jane LEY, Senior Anti-Corruption Advisor, US State Department, former Deputy Director, US Office of Government Ethics (USA). The GET was supported by Ms Valentina D'AGOSTINO and Ms Laura SANZ-LEVIA from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2015) 2E REPQUEST, Theme II) as well as copies of relevant legislation.
4. The GET met, at the beginning of the visit, with the Minister of Internal Affairs and Justice and the Minister of Industry. Moreover, the GET met with representatives from the Institutional Secretariat, the General Accounting Office and the Auditing Committee responsible for the oversight of balance sheets of political parties/movements. The GET also held a joint interview with political parties, political movements and individual members of parliament (MPs). Finally, the GET met with representatives of NGOs, the media and academia.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the authorities of San Marino in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to San Marino in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme I – Incriminations, is set out in GrecoEval3Rep(2016)1, Theme I.

¹ San Marino signed the Criminal Law Convention on Corruption (ETS 173) on 15 May 2003; it has not yet been ratified.

² San Marino signed the Additional Protocol to the Criminal Law Convention (ETS 191) on 15 May 2003; it has not yet been ratified.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

Overview of the political/electoral system

7. San Marino is a parliamentary republic. Legislative power is exercised by a unicameral Parliament, i.e. the Great and General Council, which is composed of 60 members who are elected by popular vote for five-year terms. More particularly, the members are elected through a proportional representation system in a single nationwide constituency. The electoral system provides for preferential voting through open candidate lists. Using a single ballot paper, voters mark their choice of candidate list and may additionally specify the names of up to three preferred candidates from that list. Voters who permanently reside outside of San Marino may only cast a vote for a candidate list and are not entitled to specify their preferred candidates.
8. Executive power is vested in the State Congress, a collegial body consisting of a maximum of ten ministers who are appointed by the Parliament from among its members. The Head of State is a jointly held office, with two Captains Regent appointed for six-month terms by the Parliament.
9. San Marino is divided into nine administrative districts (so-called castles) and each one elects a local council and Captain every five years³.

Legal framework and registration of political parties

10. The legal framework governing parliamentary elections consists primarily of the 1974 Declaration on the Citizen's Right and Fundamental Principles of San Marino Constitutional Order (hereinafter: the Constitution), the Parliamentary Regulations (Qualified Law No.21/1981) and the 1996 Electoral Law (amended in 2007 and 2008), as supplemented by governmental decrees and regulations.
11. The legislation does not allow for individual independent candidates, but only for candidate lists composed of between 12 and 60 candidates. The right to register a candidate list is granted to any group, provided that their list is supported by 90 eligible voters and submitted 40 days before election day. Although a candidate list does not have to be submitted by a political party, in practice, lists are usually submitted by political parties or political movements, either separately or as part of a coalition. By way of encouraging women's political representation, the law provides that a minimum of one-third of candidates on a list must be from each gender. For the latest elections (2012), about 37% of a total of 364 candidates were women.
12. There is a minimum threshold to qualify for seat allocation, which ranges from 0.4 to 3.5% depending on the number of parties or movements that form a candidate list. Seats are allocated to candidate lists using the d'Hondt system. Candidates are then awarded seats according to the number of preference votes that they receive. In the event of a tie, preference is given to women candidates, followed by length of service as an MP, followed by seniority. Should an MP be appointed to the State Congress, his/her mandate is suspended and they are replaced by the next candidate on the list.
13. In order for representatives of a list to form a government, the winning list or coalition is the one that obtains 50% + 1 of the valid votes cast. In case this number is not reached, the winning list or coalition is the one that obtains at least 30 out of 60 seats within the Great and General

³ The districts are: San Marino City, Acquaviva, Borgo Maggiore, Chiesanuova, Domagnano, Faetano, Fiorentino, Montegiardino and Serravalle.

Council, on the basis of the proportional D'Hondt system. If no candidate list meets this requirement, a second round takes place two weeks later between the two lists that obtained the highest number of votes. The candidate list that obtains the majority of valid votes cast in the second round is given the mandate to form a government. With a view to promoting stability, the government can only be formed by representatives of the candidate list that won the most seats in the election. To guarantee government majority, winners must have at least 35 seats in Parliament; as such, if the winning list does not obtain the minimum 35 seats required, it is assigned the required number of seats from the list or lists that obtained the lowest percentage of votes (amendments 2007-2008 introducing a "stability reward").

Participation in elections

14. All Sammarinese citizens who are at least 18 years old on election day are eligible to vote. The only exceptions are those who have been temporarily deprived of their right due to mental incapacity or as part of a judicial sentence. Votes can only be cast on election day at a polling station where a voter resides. Voters who permanently reside abroad (around 34% of the electorate) must travel to San Marino to cast their vote in person.
15. The law requires candidates to be at least 21 years old on election day and domiciled in San Marino. Those who have been temporarily deprived of their right due to mental incapacity or as part of a judicial sentence cannot stand for election. In order to prevent conflicts of interest, the law identified a broad list of governmental and non-governmental positions as being incompatible with candidacy, e.g. members of the police, diplomatic services, management positions in professional associations, trade unions, financial institutions, etc. (Articles 18 and 19 Electoral Law). In addition, candidates bound by kinship at first instance or through marriage or *more uxorio* cohabitation cannot simultaneously assume a mandate in the Parliament; in such a case, the candidate who obtains the highest number of votes is elected.
16. The last parliamentary elections took place in November 2012; the next elections are scheduled to take place in November 2017. Political parties are represented as follows (for current composition of *coalitions* in Parliament see footnote 4)⁴:

San Marino Christian Democratic Party – Noi Sammarinesi:	21 MPs
Party of Socialists and Democrats:	10 MPs
Socialist Party:	7 MPS
Union for the Republic:	5 MPs
Popular Alliance:	4 MPs
Civico 10:	4 MPs
United Left:	5 MPs
RETE Citizens' Movement:	4 MPs

17. In addition, at the time of the on-site visit, five independent parliamentarians sit in Parliament (since they left the respective list in which they had been initially elected). The political parties and movements that submitted electoral lists in the last 2012 general elections, but did not obtain any seat in Parliament are as follows: San Marino Moderates, San Marino 3.0 and For San Marino.

⁴ *San Marino Common Good* was the winning coalition in the 2012 elections; it includes the following parties: San Marino Christian Democratic Party (PDCS), Noi Sammarinesi (NS), Party of Socialists and Democrats (PSD), and Popular Alliance (AP). *Agreement for the Country* is composed of the Socialist Party and Union for the Republic (UPR). *Active Citizenship* is composed of United Left (SU) and Civic Movement 10 (Civico 10). RETE (Renewal, Equity, Transparency and Eco-sustainability) is not part of any coalition.

18. There are 11 women in Parliament; this represents around 18.3% of the total composition of Parliament.

Overview of the political funding system

Legal framework

19. Article 8 of the Constitution establishes the right of citizens to associate in political parties. The status of political parties is not defined by law in San Marino, but, pursuant to jurisprudence, a political party is a *de facto* association, whose operation (including internal organisation and general administration) is governed by its own statute, provided that the latter does not contain any provisions contrary to law, public order or morality.
20. A specific legal regime applies to political parties and movements having submitted electoral lists and represented in Parliament, as contained in the Law on Financing Political Parties and Political Movements (Law No. 170/2005), hereinafter LFPPM.

Public funding

(i) Direct public funding:

21. The State provides an annual subsidy to political parties, proportional to their parliamentary representation: 75% of this funding is allocated in proportion to the number of elected parliamentarians in the respective lists, while 25% is allocated in equal fixed shares among the parties and movements represented by at least three parliamentarians. Parties and movements whose lists have obtained less than three seats are entitled to a fixed funding of 12 000 € each. In 2015, the annual subsidy for political parties amounted to 1 059 177 €. The annual subsidy is a fixed proportional share of the State budget; it is doubled when in an election year (Articles 2 and 5, Law No 170/2005). The campaign period officially begins 20 days before the election and runs until midnight on the second day prior to election day. Direct election campaigning is prohibited before this period. Major parties generally spend less than what is given to them in elections and so return the funds in excess, smaller parties tend to spend more and resort to loans.
22. The conditions for receiving public funding, in addition to parliamentary representation, are the fulfilment of accounting, reporting and auditing obligations, as further elaborated later in this report. Political parties/movements have seen their funds cut by 10% since 2010 in the framework of the austerity measures implemented by the Government.
23. Regarding referenda, political parties do not receive any funding. However, they may form committees, pro or against the referendum purpose, which then receive up to a maximum of 5 000 € for documented propaganda expenses (Qualified Law No. 1 of 29 May 2013).
24. A fixed contribution is allocated to civic lists participating in local elections, notably, elections for the Head of the Township and the Township Council (local governments); the volume of the amount depends on their population, i.e. 3 800 € for townships with a population of more than 2,000 inhabitants, and 2 500 € for townships of less than 2,000 inhabitants, respectively.

(ii) Indirect public funding

25. On the occasion of general elections, administrative elections or referenda, public spaces are provided for political parties/movements/committees/civil lists to affix, free of charge and on an equal basis, campaign posters and materials. Likewise, they are entitled to free use of State facilities, limited to specific time slots, beyond which a symbolic daily fee applies.
26. The State television and the media broadcast supplementary and complementary information programmes – whose slots are equally divided among contesting parties – and provide media access to political parties/movements at reduced costs.
27. Political parties pay only 50% of the usual postal charges.
28. Another means for indirect funding, is the right of an employee hired by a political party/movement to secondment from his/her job and to re-employment in the same positions at the end of the period of secondment, with legal and economic recognition of the service provided. At the time of the on-site visit, only one person was seconded to a political party; in the meantime, this person was re-employed in its former position. Therefore, at the time being, no employees are seconded to political parties.

Private funding

29. There is no ceiling on private contributions to political parties, or on how much the latter can raise from private sources.
30. Anonymous donations are prohibited (Article 13 LFPPM). That said, anonymous small contributions are allowed to be collected in transparent containers during conventions, festivals and events, and those amounts are reported under a relevant budget item.

Taxation regime

31. Political parties are exempted from taxes on profits earned in the course of the year. Donors are entitled to tax relief for contributions made to associations and non-profit entities, including political parties, up to a maximum of 1 600 € (Article 14(1)c, Law No. 166 of 6 December 2013 on General Income Tax).

Expenditure

32. Each list participating in elections is subject to a limit of expenses which should not exceed 100% of the contribution given to the largest group in Parliament (Article 20(1), Electoral Law). For example, in the latest elections, such a threshold totalled around 600 000 €.

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

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

Bookkeeping, record keeping and accounts

33. Political parties/movements are required to draw up clear and precise balance sheets, in accordance with general accounting principles, as established in Law No. 47 of 23 February 2006 (repealing and replacing Law No. 68 of 13 June 1990). More specifically,

balance sheets comprise (i) a statement indicating assets, liabilities and equity⁵; and (ii) a statement indicating expenditure and revenue on an accrual basis, highlighting the operating profit or loss. Balance sheets are to be accompanied by a report on operations and their relevant items, as well as by the approval decision of the competent body of the party/movement. Balance sheets must be signed by the administrative officer and/or by the secretary of the political leader of the party/movement, who are jointly and severally liable for their completeness and accuracy (Article 10, LFPPM). Accounting documents are to be kept for five years.

34. Identification data of each person providing a donation to a political party or movement, irrespective of the value of such a donation, must be entered in a specific register, which is to be kept together with accounting records.
35. Contributions amounting to over 3 000 € in a calendar year must be evidenced by a relevant document attached to the balance sheet and containing also the identification data of donors.
36. As highlighted before, it is possible to collect small amounts from individual donors during conferences, festivals, rallies and other events promoted by a political party/movement. In those cases, while it is not required to track the identity of the individual donor because of the low value of his/her respective contribution, it is nevertheless mandatory to specify the total amount of the anonymous donations collected in the parties' financial accounts (Article 13, Law No. 170/2005).
37. Accounting obligations for foundations, associations and non-profit organisations (whether related to political parties or not) are set forth in Article 37 of Law No. 129/2010 for associations and Law No. 101/2015 for foundations, respectively. In particular, they are required to register data and information related to their financing, including funds received, as well as to report on their use. This information is to be kept for five years.

Reporting and publication obligations

38. Political parties/movements are required to file their balance sheet with the Institutional Secretariat by 30 April of each year; the Institutional Secretariat is to make this information public through the press (Article 8, LFPPM). This is done in practice by the legal representative of the political party who hands the accounts to the Institutional Secretariat. The latter then attaches an attestation of its receipt to the balance sheet, whenever it is received, and provides it to the press office of Parliament for release to the press. The Institutional Secretariat is an administrative office which is part of public administration and provides administrative support to the Captains Regent, the Great and General Council (Parliament), the respective parliamentary commissions and the Constitutional Court. Regarding political funding responsibilities, it (i) registers, at the start of a legislature, those political parties and movements which have presented lists and are in Parliament (data on name of party/movement, address of headquarters, information on legal and administrative representatives) and updates such information, as necessary; (ii) acts as depositary of balance sheets; (iii) notifies auditors upon their appointment to the Auditing Committee (see paragraph xx); (iv) acts as depositary of the Auditing Committee annual reports.
39. As to foundations/associations related to political parties/movements, their balance sheets must be attached to the balance sheet of the relevant party/movement. Moreover, pursuant to money-laundering prevention obligations, each is required to file, on an annual basis before the Law

⁵ Political parties can only own real estate provided authorisation has been given by the responsible State body, i.e. the Council of Twelve.

Commissioner, its balance sheet and a summary of funding and its use; this information is public and can be obtained upon request. Moreover, financial information is to be provided to the Law Commissioner, as well as to the Financial Intelligence Agency, if so requested. Each is also required to indicate the initial contributions constituting the endowment fund and to file with the Commercial Registry all pertinent documents which certify such contributions within 60 days of the date of reception, as well as any further acts related to increases in the endowment fund within the same 60 days' time-limit. Likewise, the Commercial Registry must be kept informed of details on membership, including updated information on names of associates and members.

40. Candidates in the general elections are required to submit, upon their candidature, a copy of their tax returns relative to the tax period preceding that of the elections, as well as a statement about their possible additional income or shareholdings in companies. These documents, together with the candidature, must be submitted to the Vital Statistics Office; the documents can be accessed at the aforementioned Office and online (www.elezioni.sm).

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

41. There is no legal requirement for political parties/movements/related entities to provide for internal audits. It is at their discretion to hire auditors or to provide for any other mechanism enhancing financial discipline. Generally, the most represented and historical parties in San Marino have a board of auditors or an auditor, whose powers and duties are governed by Law No. 162 of 19 November 2004.
42. Regarding the system of public oversight for political parties/movements laid out in Article 11 of the LFPPM, each year the balance sheets of parties/movements are audited in order to determine whether they have been drafted clearly and accurately and are completely consistent with the financial position, as well as with the costs and revenue incurred during the year. Such audit is carried out by an Auditing Committee composed of three auditors who are enrolled in the Register of Auditors kept at the Ministry of Industry (there are around 100 registered auditors). The members of the Auditing Committee are chosen in the month of May of each year by a majority vote of the Bureau of the Great and General Council; the Bureau must represent at least two thirds of the members of the Great and General Council. The Bureau is composed by the presidents of the different parliamentary groups and headed by the Captains Regent.
43. The Committee is entitled to obtain, for auditing purposes, all necessary or useful information and documents from the administrative managers and political leaders of parties and movements, or from any other person within the party holding such information and documents. Moreover, the Committee may carry out assessments, inspections and controls at the headquarters of parties or movements. The Auditing Committee must report to the competent authority (court) any alleged offence identified following the examination of accounting records. It generally takes around 20 work days over an eight month period for the auditors to supervise political accounts.
44. The authorities underscore that, since the adoption of the LFPPM a decade ago, the Committee has been focusing on helping those subject to the law in understanding and meeting their respective obligations. To this aim, it has provided guidance and issued information circulars and instructions, in a climate of mutual cooperation, in order to achieve substantial uniformity in the compilation of balance sheets and a substantially equal degree of specificity in accounting records.
45. The final report of the Committee is notified to the Institutional Secretariat and to the party or movement concerned, which is entitled to lodge an appeal to the Commission for the Control of

Public Finance within 10 days. The latter Commission adopts a decision, without any possibility of appeal, within the following 20 days. No appeal has ever been filed with the Commission.

46. The final report of the Committee and the decision, if any, of the Commission for the Control of Public Finance are made public by the Institutional Secretariat. The State Press Office distributes at once (generally around the 10 May of each year) a copy of all the political parties' balance sheets and their annexes to the press.

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

47. If the Auditing Committee identifies serious violations of the law or establishes that the balance sheet does not faithfully and accurately reflect the financial position and the costs and revenue incurred during the year, public funding can be reduced by half for the following 12 months. In case of repeated breach during the same legislature, the funding shall not be granted during the 12 months following notification of the final report of the Auditing Committee. The Committee itself is empowered to impose the aforementioned sanctions. The lodging of an appeal entails suspension of the application of the sanction until the Commission for the Control of Public Finance decides on the appeal (Article 12, LFPPM).
48. In addition, violations of the ban on anonymous donations are subject to criminal sanctions consisting of: third degree daily fine, from twenty to sixty days⁶, and fourth degree disqualification from political rights, from two to five years. In case of spontaneous admission of guilt by the person offering the contributions or benefits in violation of the provisions on anonymous contributions, the punishment is reduced to second degree daily fine, from ten to forty days (Article 15, LFPPM).

Statutes of limitation

49. Violations for political financing offences become time barred three years after the commission of the offence.

Immunities

50. No system of immunities is provided for political parties or related entities, nor for candidates for election or parliamentarians, which would allow them to avoid proceedings or sanctions for violating laws and regulations, including in respect of political funding. As a matter of fact, in the San Marino legal system, only the Heads of State (called Captains Regent) benefit from immunities. During their six-month mandates, the Captains Regent are not subject to prosecution under any form or for any reason whatsoever. Such immunity ceases at the end of their mandates, when the Captains Regents may be subject to prosecution by the ordinary Court.

⁶ The amount of money corresponding to a daily fine is established by the judge on the basis of the money the convict can save everyday living parsimoniously and fulfilling his/her family maintenance obligations (Article 85 of the Criminal Code).

IV. ANALYSIS

51. San Marino adopted the Law on Financing Political Parties and Political Movements, hereinafter LFPPM, in 2005. In the intervening ten years, important steps have been taken to put in place accounting systems and to manage dedicated accounts, thereby enabling financial rigour in the day-to-day functioning of political parties. In the interviews carried out on-site by the GET, no single interlocutor identified political party/electoral funding as a conduit for questionable payments to public officials, and this matter ranks low in the list of priority concerns of Sammarinese citizens⁷. Interlocutors, and recent prosecutions, support the perception of direct payments to public officials and vote-buying as being more problematic, particularly given the context of a recent large criminal inquiry (so-called *Conto Mazzini*).
52. In San Marino, the principal source of party financing is public funding, followed by membership fees. Private donations are rare, and in most cases, non-existent. To put things into context, at the time of the GET's visit, public funding of political parties with representation in Parliament constituted some 80% to 90% of their revenue. It is to be noted that the smaller parties without seats in Parliament do not receive public funds. Although the issue of fairness concerning the criteria for the distribution of state support is outside the scope of the present evaluation, the GET wishes to draw the attention of the Sammarinese authorities to Recommendation 1516 (2001) of the Parliamentary Assembly of the Council of Europe on Financing of Political Parties according to which state financial contributions should, on the one hand, be calculated in ratio to the political support which the parties enjoy, evaluated on objective criteria such as the number of votes cast or the number of parliamentary seats won, and on the other hand enable new parties to enter the political arena and to compete under fair conditions with the more well-established parties. The issue of equality of opportunities in the field of public funding of parties or campaigns has also been repeatedly recognised by the Venice Commission, e.g. Guidelines for Financing of Political Parties (CDL-PP (2000) 6), Code of Good Practice in Electoral Matters (CDL-AD (2002) 23), which stress that public financing cannot only be limited to those parties represented in Parliament, but must rather be extended to political bodies representing a significant section of the electoral body and presenting candidates for election.
53. As it carried out the evaluation on-site, the GET was impressed with the seriousness with which the political parties met were taking their bookkeeping responsibilities. Several party accountants and individual representatives indicated that they were actually providing (including on their respective websites) much more detailed information about their income and expenses than the law requires for their official financial reports. This proactive attitude of political parties and individual representatives is to be commended and encouraged. The GET was also impressed with the openness of the representatives from the responsible institutions for implementing the LFPPM (i.e. the Institutional Secretariat and the Auditing Committee) who were willing to share experience and lessons learned in a most constructive environment, as well as to identify shortcomings for due improvement. The GET believes that the positive mindset displayed on-site is certainly an asset for effective implementation of the recommendations included in this report.
54. Whilst recognising that party funding is currently not a burning topic in San Marino, since it is the potential criminal conduct of individual political appointees rather than the political parties themselves that constitute the most immediate and public concern, the GET still believes that the current legislative framework merits review; particularly given the lessons learned over the last ten years. Adequate and responsive political funding rules are important to help safeguard the

⁷ The outcome of the questionnaire received ample media coverage and has been published on the website of the Ministry of Foreign Affairs (<http://www.esteri.sm/on-line/home/news/articolo1009214.html> and <http://www.esteri.sm/on-line/home/news/documento1080716.html>).

honesty of political institutions, composed of honest individuals, as well as to prevent feeding the perception that the entire political class is corrupt.

55. Finally, the GET wishes to note that San Marino has the smallest population in Europe and, thus, while the basics for transparency of political financing need to be in place, the administrative structure has to be proportionate to the circumstances. The recommendations which follow below are made and are to be understood having the aforementioned consideration in mind; they reflect on the comments made by the authorities regarding currently perceived gaps and propose several changes that could be made, without adding a disproportionate expense, to the benefit of a more agile and forward-looking system.

Regulatory framework

56. The LFPPM has a few basic features to address some of the various challenges which may emerge in the financing of politics. Virtually all interlocutors met by the GET conceded that the time had come to move forward in this area. Both supervisory authorities and supervisees (political parties and individual candidates) themselves seem to be well aware of the gaps that exist in the legislation, some of which were obvious from the start and others which have been learned with experience in implementing the law. In this connection, while many procedural gaps have been filled through the activity of the Auditing Committee, there remain substantive law points that need to be addressed. It appeared to the GET that there is a good basis to develop consensus in the country around the changes needed to address the current legislation.
57. The LFPPM includes very few restrictions on the sources and amounts of political donations: anonymous donations are banned (only small cash amounts are allowed if gathered in the course of a party event and the total amounts effectively tracked in the respective party accounting system) and electoral spending is capped at the total contribution given by the State to the largest group in Parliament. As mentioned above, virtually all moneys coming into political parties' coffers come from public funding and the limited moneys received from private funding almost exclusively come from membership fees, party events and contributions of members of Parliament to their respective parties. All political parties have detailed rules in their statutes on how monetary contributions of members are fixed and accounted for. Many have also hired external auditors to verify their accounts. The GET understands that private funding is not an issue at the moment, but that does not mean that it won't constitute a challenge in the future. The Auditing Committee, which is in charge of monitoring party funding, has undertaken laudable efforts to raise the awareness of political parties regarding their legal obligations, and more particularly their book-keeping and accounting requirements, but the representatives met conceded that there were several provisions in the law that were vague and necessitated further clarification.
58. More particularly, the LFPPM lacks provisions on how donations, other than those consisted of money, are to be accounted for. There is nothing, for example, on in-kind donations, loans at preferential terms, media discounts, etc. When exploring this state of affairs on-site, the GET did not gather unequivocal responses from its interviewees; for example, most political parties were valuing in-kind contributions as cash contributions, which rendered it impossible for the Auditing Committee to be aware of the mere existence of in-kind contributions being received by parties. Another issue that has proved to be challenging for the Auditing Committee when performing its supervisory task is that of how to account for the moneys of parties/political movements that cease their activity but are incorporated or merge with other parties, as well as how to account for the moneys of parties/political movements that cease their activity, but still have some remaining public subsidies at their disposal. There are no rules addressing these situations and the actual

responses given by political parties to such events was varied in practice, with some of them donating to charity, others bringing those moneys into the merger, etc. The Auditing Committee, through its annual reports, has been recommending that this matter be specifically addressed in the law, but no action has yet been taken. While Article 9 of the LFPPM states that it also covers individual representatives who sit in Parliament (MPs who left the respective list in which they had been initially elected—currently 5), the terminology used in other provisions “parties and movements” makes the actual application of those provisions to these individual representatives unclear. It emerged from the on-site interviews that the individual representatives were indeed keeping books and opening dedicated accounts in practice, if only at the (non-binding) advice of the Auditing Committee.

59. In point of fact, the Auditing Committee does not have the authority to provide binding interpretative guidance through regulations, circulars, etc. To date, it has noted its findings and issued guidelines for many of the aforementioned issues in its annual report, but the latter has a non-binding nature. In the GET’s view, this is a situation that calls for prompt improvement; the GET believes that the Auditing Committee should have authority to issue systematised guidance (if it is not added to the law) on how to value in-kind contributions, how to show preferential rates for advertising or loans, steps to be taken when there are mergers, splits or shutdowns of political parties/movements, and what reports should be provided by independent members of Parliament. That guidance should be written, and publicly available on a website. In light of the gaps identified above, **GRECO recommends providing the legal authority that would allow for: (i) developing systematised binding interpretative guidance/rules on how to account for (a) private funding, other than monetary donations (e.g. in-kind donations, loans at preferential rates, media discounts, etc.), (b) moneys of parties/political movements that cease their activity but are incorporated or merge with other parties, and (c) moneys of parties/political movements that cease their activity, but still have some remaining public subsidies at their disposal; and (ii) clarifying the application of the record keeping and financial reporting requirements of the legislation on political financing to the individual members of Parliament.**
60. The GET notes that, although there is no requirement to provide for consolidated accounts of related entities, it is possible to access such accounts, which contain itemised details on income and expenditure, and are subject to strict requirements on transparency of their operations, beneficial ownership and funding sources, by virtue of recent anti-money laundering rules. The GET was also made aware that donations to foundations need to be authorised by the Council of Twelve⁸; as a result many foundations have closed down.

Transparency

61. Currently, there is a lack of practical public transparency of the financial reports of the parties. The LFPPM requires that the reports be made available to the press (not the public, interestingly enough). As the Institutional Secretariat receives the relevant reports from the different parties, these are distributed to the press all at once through the State’s Press Office⁹. The Institutional Secretariat explained that if a member of the public would like to get a copy of any party’s report,

⁸ The Council of Twelve, "Consilium duodecim virorum", is a collegial body, composed of twelve members. It is appointed at the beginning of each legislature by the Great and General Council from among its members in proportion to the Parliamentary Groups that compose it. It is presided by the Captains Regent.

⁹ Following the on-site visit, the Institutional Secretariat is making the financial reports of political parties available on-line (<http://www.consigliograndeegenerale.sm/on-line/home/composizione/bilanci-partiti.html>). So far, the reports from 2013 to 2015 have been uploaded, but the Institutional Secretariat intends to put online all available reports dating back to the time of enactment of the LFPPM in 2010. All reports will stay online on a permanent basis for public consultation purposes.

it would be provided with the payment of a copying fee. Many of the parties indicated they published their accounts on their own websites, some providing more detail than that required in the financial report submitted to the Institutional Secretariat. However, there appears to be no guidance to the public about how to obtain a copy from the Institutional Secretariat or that there is any reference on the Institutional Secretariat's website that copies may be available on the political party's website. It emerged from the interviews held on-site that there was little public awareness (i.e. from the press, the NGO sector) on the issue of financial reports submitted by political parties to the Institutional Secretariat. If this information is distributed to the press only once a year and even the press is not aware of what might be on the report, the information about party financing is not much in a practical sense, public. The same situation occurs with respect to the annual reports issued by the Auditing Committee regarding its supervision of party finances. It has rarely occurred in practice that an individual has turned to the Institutional Secretariat to ask for the financial report of a political party.

62. The GET also considers that, in an effort to bring further transparency into the system, it would be useful for the Institutional Secretariat to provide exact details on the spending limit for political parties, as soon as that figure is determined following approval of the State annual budget and the Annual Law on Budget Adjustments. In the GET's view, it should not be left to each party (and the public) to figure out that amount for themselves, as it is currently the case. Therefore, **GRECO recommends (i) providing legal authority and direction to the Institutional Secretariat to publish, in a timely fashion, the financial reports of political parties, as well as the Auditing Committee reports (and guidelines), on its website and finding suitable ways to ensure that the public is made aware that such reports are effectively available; and (ii) publishing, upon its determination, details on the spending limit for political parties.**

Oversight

63. While the Auditing Committee structure seems to initially have worked generally in getting the parties accustomed to making reports on their finances, it is clear that that this system does not provide the individual auditors of the Auditing Committee with the type of authorities they need in order to provide for sufficient material oversight, nor does it ensure that the auditors that are chosen are sufficiently independent.
64. With regard to their actual auditing, the auditors working in the Auditing Committee have no power to access banking information or other information in order to check the accuracy of the reports; they are relegated to the information on the report. They also lack the means to assure enforcement of all possible infringements of the LFPPM, for example, there is nothing they can do for missed reporting deadlines. As for the selection of the auditors of the Auditing Committee, San Marino has tried to establish a reasonable procedure in context: the three auditors that compose the Auditing Committee are chosen every year, from among the list of auditors enrolled in the Register of Auditors, by the Bureau of Parliament, with a majority representing at least two thirds of the members of Parliament. This means that agreement of 39 members of Parliament is needed to select the auditors of the Auditing Committee; while the GET understands that this is indeed a qualified majority that aims at introducing neutrality, it is also true that at the end of the day it is the members of the political parties who are the ones who choose the persons supervising them. As a matter of fact, the only requirement for auditors to be chosen as members of the Auditing Committee is to be certified and registered; there is no provision in the LFPPM preventing potential conflicts of interest due to a direct or indirect relationship of the auditor with a political party. The GET was assured that the deontological provisions of the code of the auditing profession would apply in this respect; the GET does not consider this a matter to fall exclusively

under deontology, it must be backed in the law itself. Further, the annual appointment of all three members, rather than, for example, multi-year, staggered appointments, does not support much continuity of approach of the Auditing Committee on political funding supervision. While currently, there is no limitation in law as to the number of consecutive appointments an auditor may accept and indeed past practice shows that at least one of the three auditors has been reappointed to ensure some continuity in the approach of the Auditing Committee on political funding supervision, that is just practice that need not be observed going forward. That, as well as other factors discussed above, show the risks to both independence and continuity in such a system. The GET considers that the very nature of the current system does not provide sufficient safeguards to ensure, to the extent possible, that the monitoring system is free, and seen to be free, of improper external influence which, ultimately, can undermine the credibility of the system itself. **GRECO recommends (i) taking further measures to safeguard the independent and impartial functioning of the Auditing Committee; and (ii) ensuring it has appropriate powers and resources to investigate irregularities and to enforce political funding rules, as appropriate.**

Sanctions

65. The Auditing Committee, in its annual reports, has repeatedly advocated for greater clarity and detail in the sanctioning regime regarding party financing. The GET deems this to be a key aspect of any future legislative reform in this domain. The LFPPM provides for a reduction in the amount of public subsidies received for “serious” breaches of its provisions; the reduction increases if the breach reiterates in time. However, nothing is said as to what can be considered a serious breach. The same sanction applies in the event of false accounting for political financing. The Auditing Committee is empowered to impose sanctions in such cases. In addition, criminal sanctions apply if violations of the ban on anonymous donations occur, subject to their application by a court of law. The GET notes that it is clear, from the description above, that the LFPPM does not specify penalties for all the possible infringements included in its provisions, and that the existing wording is far too vague to make the sanctioning system workable in practice. This state of affairs was indeed proving to make difficult the monitoring tasks of the Auditing Committee. For example, as mentioned before, there is no sanction for late reporting and the Institutional Secretariat then finds itself having to remind parties of their filing obligations, which is both tedious and cumbersome. The GET was not surprised, given these circumstances, that no sanction has ever been imposed on political parties/movements or related entities for violation of political financing rules.
66. Moreover, interlocutors highlighted that the statute of limitations for this type of offences is short, i.e. three years. The GET concurs with such a view, as it fears that this could indeed be a very short lapse of time, considering, in particular, the complexity of some of these offences and the difficulties in investigating them. Moreover, the GET notes that sometimes information about financing irregularities does not come to light until the next election which is, generally, held five years later. Infringements of legislation can thus go unpunished because of the expiry of the relevant time limit specified in the statute of limitations. In light of the aforementioned considerations, **GRECO recommends (i) clearly defining infringements of political finance rules and coupling them with effective, proportionate and dissuasive sanctions; and (ii) ensuring that the corresponding limitation periods are sufficiently long to allow for the effective supervision and investigation of political funding.**

V. CONCLUSIONS

67. San Marino adopted the Law on Financing Political Parties and Political Movements in 2005. Ten years have passed since then, with important steps being taken to put in place accounting systems in all political parties. In this connection, the Auditing Committee, which is in charge of monitoring party funding, has undertaken laudable efforts to raise the awareness of political parties regarding their legal obligations, particularly their book-keeping and accounting requirements. This in turn has resulted *de facto* in sound financial discipline in the day-to-day operations of political parties. That said, it is now time to move further forward in this area; the law is due for reform in order to address recognised shortcomings and provide needed clarity.
68. At present, the main income from parties comes from public funding and the limited moneys received from private funding arise almost exclusively from membership fees, party events and MPs contributions to their parties, all of which are regulated in the respective party statutes. That said, the sources of financing may well vary in the future and, for that reason, it will be necessary to introduce criteria on how to account for other potential private funding sources, including in-kind donations, loans at preferential terms, media discounts, etc. Many of the shortcomings of the current law have been addressed through practice: nothing is said, for example, on how to account for the remaining funds of political parties/movements when mergers, splits or shutdowns occur. Further clarification is needed as to how the accounting and reporting obligations of the law specifically apply to individual members of Parliament. More can also be done to provide for greater publicity of, and easier access to, party accounts, notably through website publication. Likewise, there must be greater assurances of independence (structure, powers and resources) of the body responsible for overseeing political accounts. Finally, the sanctioning system needs a complete overhaul, including by better defining infringements and coupling them with appropriate sanctions and by reviewing the current statute of limitations, which can prove to be too short to allow for the effective investigation of complex cases of illegal financing.
69. In view of the above, GRECO addresses the following recommendations to San Marino:
- i. **providing the legal authority that would allow for: (i) developing systematised binding interpretative guidance/rules on how to account for (a) private funding, other than monetary donations (e.g. in-kind donations, loans at preferential rates, media discounts, etc.), (b) moneys of parties/political movements that cease their activity but are incorporated or merge with other parties, and (c) moneys of parties/political movements that cease their activity, but still have some remaining public subsidies at their disposal; and (ii) clarifying the application of the record keeping and financial reporting requirements of the legislation on political financing to the individual members of Parliament (paragraph 59);**
 - ii. **(i) providing legal authority and direction to the Institutional Secretariat to publish, in a timely fashion, the financial reports of political parties, as well as the Auditing Committee reports (and guidelines), on its website and finding suitable ways to ensure that the public is made aware that such reports are effectively available; and (ii) publishing, upon its determination, details on the spending limit for political parties (paragraph 62);**

- iii. **(i) taking further measures to safeguard the independent and impartial functioning of the Auditing Committee; and (ii) ensuring it has appropriate powers and resources to investigate irregularities and to enforce political funding rules, as appropriate (paragraph 64);**
 - iv. **(i) clearly defining infringements of political finance rules and coupling them with effective, proportionate and dissuasive sanctions; and (ii) ensuring that the corresponding limitation periods are sufficiently long to allow for the effective supervision and investigation of political funding (paragraph 66).**
70. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of San Marino to present a report on the implementation of the above-mentioned recommendations by 30 September 2017.
71. Finally, GRECO invites the authorities of San Marino to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.