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**Public**  
**Greco Eval III Rep (2009) 4E**  
**Theme II**

## **Third Evaluation Round**

### **Evaluation Report on Ireland Transparency of Party Funding**

(Theme II)

Adopted by GRECO  
at its 45<sup>th</sup> Plenary Meeting  
(Strasbourg, 30 November – 4 December 2009)

## **I. INTRODUCTION**

1. Ireland joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 9E) in respect of Ireland at its 7<sup>th</sup> Plenary Meeting (17-20 December 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 9E) at its 26<sup>th</sup> Plenary Meeting (5-9 December 2005). The afore-mentioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption<sup>1</sup> (ETS 173), Articles 1-6 of its Additional Protocol<sup>2</sup> (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Ireland from 10 to 12 June 2009, was composed of Ms Elena MASNEVAITÉ, Vilnius University Law Faculty (Lithuania) and Mr. Fernando JIMENEZ SANCHEZ, Department of Political Science and Public Administration, University of Murcia (Spain). The GET was supported by 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 (2009) 4E, Theme II), as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: Department of Justice, Department of Environment, Heritage and Local Government, Department of Finance, Standards in Public Office Commission and Houses of the Oireachtas Commission. In addition, the GET met with representatives of the following political parties: Fianna Fáil, Fine Gael and the Green Party. Moreover, the GET also met with the media.
5. The present report on Theme II of GRECO's Third Evaluation Round – "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 Ireland 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 Ireland in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme I – "Incriminations" –, is set out in Greco Eval III Rep (2009) 4E, Theme I.

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<sup>1</sup> Ireland ratified the Criminal Law Convention on Corruption (ETS 173) on 3 October 2003. The Convention entered into force in respect of Ireland on 1 February 2004.

<sup>2</sup> The Additional Protocol to the Criminal Law Convention (ETS 191) was ratified by Ireland on 11 July 2005. It entered into force in respect of Ireland on 1 November 2005.

## II. TRANSPARENCY OF PARTY FUNDING - GENERAL PART

### Overview of the political/electoral system

7. Ireland is a parliamentary democracy. The Oireachtas (Irish Parliament) consists of the directly elected Dáil Éireann (the House of Representatives) and the indirectly elected Seanad Éireann (the Senate). Dáil Éireann consists of 166 members whose term of office is a maximum of five years; however, the Dáil may be dissolved by the President on the advice of the Prime Minister (Taoiseach) at any time. The election should be held within 30 days of the Dáil's dissolution. An indirect election to Seanad Éireann must be held within 90 days of the dissolution of Dáil Éireann. The 60 members of Seanad Éireann are composed as follows: 11 are nominated by the Taoiseach, 43 are elected by five panels representing vocational interests (Culture and Education, Agriculture, Labour, Industry and Commerce and Public Administration) and six are elected by graduates of the National University of Ireland and the University of Dublin (Trinity College).
8. Since 1922, the general electoral system is that of proportional representation by means of the single transferable vote (PR-STV). This system is used to elect members to the Dáil, local councils and the European Parliament. PR-STV is a system of preferential voting designed to minimise wasted votes and to provide proportional representation while ensuring that votes are explicitly expressed for individual candidates rather than for party lists. It achieves this by using multi-seat constituencies (voting districts) and by transferring all votes that would otherwise be wasted to other eligible candidates. PR-STV initially allocates an elector's vote to his or her most preferred candidate and then, should the candidate of first choice not need the vote (because he/she has already been elected or has lost the chance to be elected), transfers surplus or used votes according to the voter's stated preferences. The PR-STV system allows for intra-party as well as inter-party competition. The quota for election is established by dividing the total number of valid votes by the number of seats plus one and adding one to the result (so-called Droop quota).
9. Ireland has a decentralised system of election administration, whereby returning officers and registration authorities have the primary responsibility for the conduct of elections in its 43 constituencies. The Department of the Environment, Heritage and Local Government also has an important role in overseeing elections. The Standards in Public Office Commission (hereinafter Standards Commission) enforces political ethics legislation and is also responsible for overseeing campaign finance regulations, with the exception of local elections.
10. The 2007 Programme for Government<sup>3</sup> envisages the establishment of an independent Electoral Commission, which is to take responsibility, *inter alia*, for electoral administration and oversight, revision of constituency boundaries, compilation of a national rolling electoral register, research and awareness activities, etc. Moreover, the Electoral Commission would take over the functions

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<sup>3</sup> After the on-site visit, the authorities reported that, in October 2009, a revised Programme for Government was agreed between the political parties that form the Government. The revised Programme reaffirms the original commitment from 2007, and states that an Independent Electoral Commission will incorporate the functions of the Standards in Public Office Commission, with enhanced powers of inspection. The revised Programme sets out the responsibilities that it envisages an Electoral Commission being mandated to fulfil, including (i) decide the constituency boundaries; (ii) administer the voting registration process; (iii) run voter education programmes; (iv) advise on mechanisms to increase the participation of women in political life; (v) recommend revised guidelines on the declaration of donations for political purposes. The Revised Programme for Government also states that within 12 months, the Electoral Commission will propose reforms to the electoral system, including, *inter alia*, by considering the timing of elections for local authorities, Dáil, Seanad and European Parliament (e.g. by resorting to the possibility of mid-term elections and running some elections on a "staggered" or "rolled" basis so that elections do not fall on the same day for every candidate or chamber).

of the Standards in Public Office Commission relating to election spending and examine the issue of financing of the political system. To assist in consideration of the issues involved, the Department of the Environment, Heritage and Local Government commissioned a report by an expert group from University College Dublin<sup>4</sup>. The report was published for consultation in February 2009, with a closing date for submissions of 26 June 2009.

#### Legal framework and registration of political parties

11. The Electoral Act 1992 regulates the registration of voters and the preparation and conduct of Dáil elections, while the Electoral Act 1997 contains, inter alia, provisions on campaign spending limits and financial reporting and on the establishment of a Constituency Commission<sup>5</sup>. Both Acts were amended in 1996, 1998, 2001, 2002, 2005, 2006 and 2007, respectively.
12. A political party is defined in the Electoral Act 1997, as amended, as a political party registered in the Register of Political Parties. Unregistered parties are entitled to fight elections but the party's name will not appear on the ballot paper. Registration is performed by the Office of the Registrar of Political Parties. To be registered, a party has to satisfy the Registrar that:
  - it is organised to contest elections;
  - it does not have less than 300 recorded members aged 18 or over. A party that applies for registration as a party organised to contest elections in part of the State, local elections or elections to Údarás na Gaeltachta (the Gaeltacht Authority<sup>6</sup>) only needs 100 recorded members aged 18 or over, but it is also required that at least half of the party's recorded members are on the Register of Electors; or
  - the party has at least one member who, at the time of the application, is a member of the Dáil or a representative of the European Parliament and who certifies in writing to the Registrar that he or she is a member of the party;
  - in the case of a party that applies as a party organised to contest only local elections, the party has at least three members who, at the time of application, are members of a local authority and who each certify that he or she is a member of the party;
  - in the case of a party that applies as a party organised to only contest elections to Údarás na Gaeltachta, the party has at least one member who, at the time of application, is a member of Údarás na Gaeltachta and certifies that he or she is a member of the party.
13. In addition, the party must have a constitution, a memorandum or another document or set of rules that have been adopted by the party and that provide for: an annual or other periodic meeting or conference of the party; an executive committee or similar body elected by the party, which administers the business of the party.
14. A party will not be registered if its name is identical to the name, abbreviation or acronym of the name of any registered party or so closely resembles the name, abbreviation or acronym of the name of a party as to be likely to confuse the public; or consists of more than six words; or in the case of a party operating in relation to a particular part of the State, does not include sufficient reference to that part to make it clear that the party only operates in relation to that part.

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<sup>4</sup> A Preliminary Study on the Establishment of an Electoral Commission in Ireland, available at the website of the Department of the Environment, Heritage and Local Government ([www.environ.ie](http://www.environ.ie)).

<sup>5</sup> The Constituency Commission was created to depoliticise boundary delimitation. It is an independent body led by a High Court judge that is formed for a six-month period when census data is considered for the purpose of readjusting election boundaries.

<sup>6</sup> Údarás na Gaeltachta is the regional authority responsible for the economic, social and cultural development of the Gaeltacht.

15. Moreover, an application to register a political party emblem will not be granted if the emblem is likely to be confused by voters with a registered emblem used by another party; is obscene or offensive; is of such a character that its publication would be likely to amount to the commission of an offence; includes a word or expression, which if it was or was part of the party's name, would prevent the party from being registered.
16. The following details are entered in the Register of Political Parties:
- the name of the party, including any abbreviation or acronym;
  - the emblem, if an application for its registration has been granted;
  - the address of the party's headquarters;
  - the name or names of the officer or officers of the party who are authorised to sign certificates authenticating the party's candidates at elections;
  - the type or types of election that the party is registered as being organised to contest;
  - where the party is registered as organised to contest elections in a specified part of the State, a reference to that fact and to the part of the State concerned;
  - the name of any political group with which the party is affiliated.
17. Once the Registrar has considered an application for registration, applicants are notified of the decision. Notice of decision is published in the official journal *Iris Oifigiúil*<sup>7</sup>. In case of refusal, applicants are informed about the reasons for refusal and details of how to appeal the decision. Appeals can be made in writing, within 21 days of the decision, to the Clerk of the Seanad together with a deposit of 634.87 EUR. The appeal board consists of a Judge of the High Court acting as Chairman, and the Chairman of the Dáil and the Chairman of the Seanad. Anyone can inspect the register of political parties in Ireland by contacting the office of the Registrar and making an appointment.
18. At present, there are 19 registered political parties in Ireland. The following nine political parties contested the 2007 Dáil general election: Fianna Fáil; Fine Gael; Labour Party; Green Party; Sinn Féin; Progressive Democrats; Socialist Party; The Workers Party; Christian Solidarity Party. A number of candidates contested the election as members of an organisation "People Before Profit Alliance". This organisation was not a registered political party at the time of the Dáil general election. It has subsequently registered as a political party (as has Libertas).

#### Party representation in Parliament

19. Following the 2007 general elections and subsequent developments, the parties represented in Parliament are as follows:
- Fianna Fáil (76 members of the Dáil and 28 members of the Seanad)
  - Fine Gael (52 members of the Dáil and 14 members of the Seanad)
  - Labour Party (20 members of the Dáil and 6 members of the Seanad)
  - Green Party (6 members of the Dáil and 2 members of the Seanad)
  - Sinn Féin (4 members of the Dáil and 1 member of the Seanad)
  - Progressive Democrats (2 members of the Dáil and 2 members of the Seanad)

#### Participation in elections

20. Active voting rights (to be able to elect) and passive voting rights (to be eligible) are granted to Irish citizens having attained the age of 18 years, as well as British citizens who are ordinarily

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<sup>7</sup> *Iris Oifigiúil* is the official means used by the Irish Government to announce appointments to public offices and publish proclamations, statutory instruments, appointment of receivers to companies, etc.

resident in Ireland; citizenship is not a requirement for voting at local elections. People must be on a vote register to vote. Voter registers are compiled annually by the registration authorities. Irish citizens residing abroad cannot vote in the elections in Ireland, with the exception of civil servants on diplomatic missions and their spouses.

21. Persons precluded by the Constitution from Dáil membership are holders of the offices of President, Comptroller and Auditor General, and judges. Furthermore, the following categories of persons are not eligible for election: members of several EU bodies, including the Commission, Court of Justice and Court of Auditors; members of the Garda Síochána or full-time members of the Defence Forces; civil servants who are not by the terms of their employment expressly permitted to be members of the Dáil; persons of unsound mind, or undergoing a sentence of imprisonment for any term exceeding 6 months, or an adjudicated undischarged bankrupt.
22. Additional requirements are laid out in legislation with respect to candidacy; they depend on the basis of the election at stake. For example, for Dáil elections, candidates can nominate themselves or be nominated by another voter. Political party candidates have to present a "certificate of political affiliation," issued by the headquarters of the respective political party, to prove that the party has agreed to the candidacy. Independent candidates must have the assent of 30 voters in the constituency or else they must lodge a deposit of 500 EUR, for their nomination.
23. At national and European level elections (Dáil, Presidential, European Parliament), each political party must appoint a "national agent" who must account for and control all of the party's election expenses. As well as a national agent for each party, every candidate for election is to have an "election agent" (although candidates can act as their own agents). The election agent is the person responsible in law for the proper management of the election campaign. In particular, the election agent is responsible for the financial management of the campaign and for ensuring that the declarations and returns of election expenses are properly completed and delivered to the appropriate authority, i.e. the Standards Commission in the case of Dáil, European or presidential elections, and the relevant local authority in the case of local elections. The candidate's election agent is the only person who can incur expenses or make payments in connection with the candidate's election campaign. At local elections, a candidate is not required to appoint an election agent, but can do so. Under the Local Elections (Disclosure of Donations and Expenditure) Act 1999, as amended, candidates (rather than election agents) are responsible for the election expenditure that they incur and for submitting the appropriate statement and declaration.

#### Overview of the party funding system

24. The Electoral Acts 1997 to 2005 provide a statutory framework for dealing with political donations and sets out a detailed regulatory regime covering a range of issues such as the funding of political parties; the reimbursement of election expenses; the setting of election expenditure limits; the disclosure of election expenditure; the setting of limits on permissible donations; the prohibition of certain donations; the disclosure of donations; and the independent supervision of the regime by the Standards Commission. Legislative provisions in respect of local elections are set out in the Local Elections (Disclosure of Donations and Expenditure) Act 1999, as amended.

## Public funding

### *Direct public funding*

25. There are three main ways of public funding in Ireland: (i) exchequer funding for qualified political parties (Section 18(1) of the Electoral Acts); (ii) funding for qualified candidates for the reimbursement of their election expenses (Section 21, Electoral Acts); and (iii) funding for parliamentary leaders of qualified political parties in relation to expenses arising from parliamentary activities<sup>8</sup>, including research (Section 1.10(1), Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001, so-called Party Leaders Allowance Act). State subsidies are exempt from income tax and are not reckoned in computing the income of a party for the purposes of the Income Tax Acts.

### (i) Exchequer funding for qualified political parties

26. In order to qualify for exchequer funding a political party must be included in the Register of Political Parties and must have obtained at least 2% of the first preference votes at the last Dáil general election. Each qualified party is allocated a sum of 126,974 EUR annually (Section 17 (1) of the Electoral Act 1997, as amended). In addition to this, each qualified party is allocated a proportion of a fund, which increases in line with general pay increases in the civil service. As of 31 December 2008, that fund, which was originally capped at 3,809,214.20 EUR, stood at 4,948,201.69 EUR. The allocation for each qualified party is determined by expressing the first preference votes received by the candidates of each qualified party at the last Dáil general election as a proportion of the total first preference votes received at the election by the candidates of all qualified parties.

#### *Exchequer funding to qualified parties (2008)*

Qualified Political Party	Total funding received in 2008	Amount of funding brought forward from 2007	Overall total funding available for spending in 2008	Total expenditure of funding received in 2008	Balance of funding carried forward to 2009
	€	€	€	€	€
Fianna Fáil	2,284,872	1,124,781	3,409,653	1,674,453	1,735,200
Fine Gael	1,545,630	Nil	1,545,630	1,545,630	Nil
Labour Party	652,704	78,936	731,640	613,574	118,066
Sinn Féin	487,432	Nil	487,432	487,432	Nil
Green Party	370,592	Nil	370,592	370,592	Nil
Progressive Democrats	268,732	Nil	268,732	268,732	Nil
<b>Total</b>	<b>5,609,962</b>	<b>1,203,717</b>	<b>6,813,679</b>	<b>4,960,413</b>	<b>1,853,266</b>

<sup>8</sup> Section 1.10(14) of the Party Leaders Allowance Act provides that expenses arising from the parliamentary activities include expenditure on the following matters: (a) the general administration of the parliamentary activities of a qualifying party; (b) the provision of technical or specialist advice likely to be required in connection with legislative proposals or potential parliamentary initiatives; (c) research and training; (d) policy formulation; (e) the provision of consultant services, including the engagement of public relations services; (f) polling or public attitude sampling in connection with parliamentary debates or initiatives; (g) the purchase of support services for a parliamentary party from the party; (h) the payment to a parliamentary leader of any salary or honorarium in respect of duties arising from his or her activities as parliamentary leader as distinct from those of a member of Dáil Éireann or a holder of a Ministerial office; (i) the payment to another person of any salary or honorarium in respect of duties arising from the person's activities in a parliamentary party; (j) the provision for, or recoupment of, transport and personal expenditure incurred by a parliamentary leader, officers or a parliamentary party spokesperson as a result of their parliamentary party function; (k) entertainment.

27. In accordance with Section 18 of the Electoral Act 1997 (as amended), the funds received by qualified parties must be applied to the general conduct and management of the party's affairs and the lawful pursuit by it of any of its objectives and, without prejudice to the generality of the foregoing, any or all of the following purposes, namely: the general administration of the party; research, education and training; policy formulation; and the co-ordination of the activities of the branches and members of the party. The funding received is also deemed to include provision in respect of expenditure by qualified parties in relation to the promotion of participation by women and young persons in political activity. Public funding cannot be applied to, or be used to recoup, election or referendum expenses.
28. Political parties must furnish an Expenditure of Exchequer Funding Statement each year. If the statement is not received by 30 April in any year, payments may be suspended.

(ii) Funding for qualified candidates

29. Section 21(1) of the Electoral Acts provides that in order to qualify for a reimbursement of their election expenses a candidate at a Dáil, European or presidential election must have been elected or have received one quarter of the quota at any stage of the counting of the votes. At a Dáil by-election a qualified candidate must have been elected or received one quarter of what would have been a quota at a Dáil general election.
30. The maximum amount which may be reimbursed to qualified candidates is as follows: 8,700 EUR for Dáil elections; 38,092.14 EUR for European elections; and 260,000 EUR for Presidential elections.
31. Expenses incurred both by the candidate and by the party on the candidate's behalf, in the particular constituency he/she stood for election, are taken into account when determining the amount which may be reimbursed to the candidate. All relevant returns required from a candidate, his/her election agent and the national agent of his/her political party must have been received and correctly completed before the Standards Commission issues an Application for a Reimbursement of Election Expenses form.

(iii) Funding for parliamentary leaders of qualified political parties

32. The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001 (so-called Party Leaders Allowance Act) provides for the payment of an annual allowance to the parliamentary leaders of a qualified political party in relation to expenses arising from the parliamentary activities, including research, of the party. The aforementioned Act defines a qualified party as a party registered in the Register of Political Parties which contested the last preceding general election or any subsequent by-elections and which had a member or members elected to Dáil Éireann or elected or nominated to Seanad Éireann.
33. As of 31 December 2008, the allowance paid to parliamentary party leaders in respect of members of Dáil Éireann was as follows: 71,520 EUR per member for each of the first 10 members elected; 57,214 EUR per member for each member elected from 11 to 30 members; and 28,616 EUR for each member elected over 30 members (the original amounts provided for in the Act were 48,547 EUR, 38,837 EUR and 19,423 EUR, respectively).
34. As of 31 December 2008, the allowance paid to parliamentary party leaders in respect of members of the Seanad was 46,716 EUR per member elected or nominated for each of the first



five members and 23,383 EUR for each member elected or nominated over five members (the original amounts provided for in the Act were 31,743 EUR and 15,872 EUR, respectively).

35. As of 31 December 2008, non-party members of Dáil Éireann received an allowance of 41,152 EUR while non-party members of Seanad Éireann received an allowance of 23,383 EUR (the original amounts provided in the Act were 27,934 EUR and 15,872 EUR, respectively).
36. The parliamentary party leader must furnish a Statement of Expenditure of the Allowance each year. If the statement is not received by 30 April in any year payments may be suspended. Non-party members of Dáil or Seanad Éireann are not required to furnish to the Standards Commission a Statement of Expenditure in relation to the Allowance.

#### *Indirect public funding*

37. Candidates for election are entitled to send one free post item to the electorate. In addition, at elections, political parties get free airtime from the national broadcaster for their party political broadcast (i.e. three minute segments produced by parties and broadcast at no cost during the election campaign). This broadcast time is allocated to political parties on the basis of the first preference results from the previous general elections; independent candidates are also afforded some coverage in the news. No paid political advertising is allowed on TV and radio during the election campaign.
38. Some election candidates who were already public representatives (e.g. MEPs, Senators and local authority members) might be required to communicate with their constituents during the election period. Similarly, outgoing members of the Dáil (or Dáil candidates who are Senators) might also have residual constituency business to conduct. In such cases, it appears to be difficult to clearly distinguish what constitutes reckonable expenditure for electoral purposes and other public representative activity. Arising from Irish case law, where property, services or facilities are used for electoral purposes during the election period and the costs were originally met out of public funds, such costs must be accounted for as election expenses at their full commercial value. In accordance with the Oireachtas Commission (Amendment) Act of 2006, statutory guidelines on the use of Oireachtas facilities for outgoing members of the Dáil have been introduced in order to identify and notify to members the services and facilities which would or would not be available to them following a dissolution of the Dáil, as well as to set out how members would be required to certify (on the basis of their own self-assessment) and reimburse the Oireachtas Commission for the use of publicly funded services and facilities other than in respect of duties as a public representative. The aforementioned guidelines mainly concern those services and facilities which continued post-dissolution, i.e. secretarial staff, use of office and ICT equipment, access to Leinster House offices and use of telephone and copying facilities. The guidelines also cover the use of facilities which ceased to be available on dissolution but which could be retained for use following dissolution, e.g. material printed in the Leinster House printing facility, pre-paid envelopes and stationery.

#### Private funding

##### *General*

39. A donation is defined as any contribution given for political purposes by any person, whether or not the person is a member of a political party. A donation can include all or any of the following: a donation of money; a donation of property or goods; conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or

goods; the supply of services without payment or other consideration for it; the difference between the commercial price and the price charged for the purchase, acquisition or use of property or goods, or the supply of any service, where the price, fee or other consideration is less than the commercial price (this can include preferential loans from financial institutions or other individuals/organisations); a contribution made by a person to a fund-raising event. The donation is that proportion of the contribution which is attributable to the net profit, if any, deriving from the event.

40. A donation is deemed to have been made to a political party when it is made to: party headquarters; any branch or subsidiary organisation<sup>9</sup> of the party; any officer, member or agent of the party or of any branch or subsidiary organisation thereof; a member of Parliament or member of a local authority of the party who passes on the donation to the party and receives a written acknowledgement of the donation from the party; or a candidate of the party at a Dáil, Seanad, European or local election who passes on the donation to the party and receives a written acknowledgement of the donation from the party.
41. The maximum donation which can be accepted from the same person in the same year is 2,539.48 EUR for individual elected representatives and candidates at elections and 6,348.69 EUR for political parties and third parties<sup>10</sup>. Where a donation is received and is prohibited because its value is over the limit, the candidate/political party/third party is to notify the Standards Commission within 14 days of its receipt and remit the donation, or that part of a monetary donation which is over the limit, to the Standards Commission. As an alternative, the donation – or that part of a monetary donation which is over the limit – may be returned to the donor and a written record of that return must be kept by the candidate/political party/third party for the purpose of its being furnished to the Standards Commission, if required. There are no limits with regard to the frequency of the contributions a private contributor can make (as long as the permissible donation ceiling is respected).
42. Donations with a value, or donations from the same person with an aggregate value of more than 634.87 EUR (for candidates), or 5,078.95 EUR (for political parties) must be disclosed. Third parties are not required to disclose donations. Where the same person makes more than one donation in relation to the same election (in the case of unsuccessful candidates at elections), and in relation to the same calendar year (in the case of elected representatives and political parties), the value of the donations must be aggregated and treated as a single donation for disclosure purposes.
43. There are no rules in the Electoral Acts on how private funding raised by political parties or other organisations (whether through membership fees or donations) may be used. There are, however, rules on spending at elections (for details, see below under paragraphs 59 to 65).
44. Contributions to political parties are not tax deductible.

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<sup>9</sup> A subsidiary organisation of a political party is defined as a body or association which forms part of such political party, is established by or under the constitution of the political party, is effectively controlled by the political party or the officers thereof, has functions conferred on it by or under the constitution of the party.

<sup>10</sup> Third party means any person, other than a political party registered in the Register of Political Parties, or a candidate at an election, who accepts, in a particular year, a donation exceeding 126.97 EUR, which has been given for political purposes. Third parties must register with the Standards Commission and comply with the rules regarding the opening and maintenance of a political donations account and the non-acceptance of prohibited donations.

### *Membership subscriptions*

45. Normal membership subscriptions to political parties, trade unions, representative, lobby or campaign groups are not regarded as donations. However, if a member pays an additional contribution, whether voluntarily or by way of a levy, it could be regarded as a donation and therefore subject to the disclosure requirements and the monetary limits contained in the Electoral Acts.

### *Contributions to/from elected representatives*

46. The expenses incurred by a political party on behalf of a member of Parliament or a candidate of the party is not regarded as a donation by the party to the person concerned. However, if the contribution from the political party (whether party headquarters or a local branch) consists of money, it is considered to be a donation and subject to the relevant rules on disclosure and monetary limits.

### *Cash and in kind donations*

47. If a contribution is regarded as a donation, the rules attaching to the acceptance and disclosure of donations apply irrespective of whether the donation is a monetary one or not (the only exception to this rule being the non-monetary contributions of political parties to their individual candidates described above in paragraph 46).

### *Income from property*

48. Income from property owned by a political party or a candidate is not regarded as a donation provided the income received represents the normal commercial return/rental paid on the particular property.

### *Loans*

49. The legislation does not make specific provision in relation to loans. It does indicate, however, that goods, property or services provided free or at below market cost may be regarded as donations. The Standards Commission has issued legally binding guidelines which state that where a loan is provided to a political party/candidate/third party by a financial institution and the normal rules attaching to such loans apply, the loan is not regarded as a donation. However, where a loan is provided by a financial institution in circumstances where either the interest charged is less than the lowest rate available from the financial institution or the loan is not repaid in accordance with the terms and conditions under which the loan was issued or is only partially repaid, the benefit to the candidate may be regarded as a donation and may, therefore, be subject to the disclosure and maximum limits applying to the acceptance of donations.
50. Where an individual or body, who or which is not a financial institution, gives a loan to a political party/candidate/third party, it must be evident that the loan offered is a *bona fide* loan. In that regard, the following would apply:
- as with a loan from a financial institution, the terms and conditions applying to the loan and its repayment must be stated clearly in writing;
  - interest is chargeable on the loan at a rate (whether fixed or variable) which reflects the interest charged by financial institutions on loans of a similar amount and duration. Where the interest charged is less than the lowest rate available from a financial institution, the benefit accruing from the difference in rates is regarded as a donation;

- the Standards Commission may require sight of the terms and conditions, including the interest charge, applying to the loan and may require confirmation that the loan has been repaid in accordance with the terms and conditions, or if it is only partly repaid, the benefit of such non-repayment may be regarded as a donation.

#### *Income from party business or activities*

51. Income from party business or activities is not regarded as a donation provided the income received represents a normal commercial transaction. Some political parties have produced newspapers, magazines etc. which are distributed to the party membership. The Standards Commission has advised that the income received by the party from advertisements placed in such newspapers, magazines etc., is not regarded as a donation provided the advertising fee paid represents the normal commercial fee for advertising in newspapers, magazines of similar type or circulation.

#### *Fundraising activities*

52. A contribution made by a person to a fund-raising event organised for the purpose of raising funds for a political party/candidate/third party is regarded as a donation. Such contributions are subject to the normal rules attaching to the acceptance and disclosure of donations.
53. For contributions to fund-raising events, the donation is that proportion of the contribution which is attributable to the net profit, if any, deriving from the event. In its published guidelines, the Standards Commission advises that the net value of a contribution to an event is arrived at by first calculating the net profit from the event (i.e. by deducting the cost of running the event from the total amount raised by the event). The net profit is then attributed to the number of people contributing to the event in proportion to the contribution made by each person. This gives the net value of each person's contribution to the fund-raising event.

#### *Income from private business*

54. Donations from private businesses are subject to the normal rules attaching to the acceptance and disclosure of donations. A donation from a private business and a donation from a director(s) of that business which is made in a private capacity are regarded as separate donations. The recipient must ensure that the director's donation is not drawn from company accounts.
55. Moreover, a corporate body and its subsidiary(ies) are regarded as the same person. Donations from a corporate body and its subsidiary(ies) must be aggregated for the purposes of observing the disclosure and maximum acceptance limits.
56. Some debate is currently ongoing as to whether corporate donations should be banned; no consensus exist in this respect<sup>11</sup>.

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<sup>11</sup> After the on-site visit, the authorities indicated that the revised Programme for Government agreed in 2009 envisages the possibility to put in place the necessary legal mechanisms to restrict direct political donations to political parties or candidates to individual Irish citizens and residents only and facilitate a system where donations from private bodies, including businesses and corporations, can be made to a political fund which will be distributed to political parties in accordance with their electoral performance in the previous Dáil election.

### *Anonymous contributions*

57. Anonymous donations in excess of 126.97 EUR may not be accepted. A donation is anonymous if the name and address of the donor is unknown. If a prohibited donation is received, the Standards Commission must be notified within 14 days of the receipt. The donation or its value must also be remitted to the Standards Commission.

### *Foreign contributions*

58. Foreign donations are not permitted. A foreign donation is defined as a donation from an individual who is not resident in the island of Ireland and is not an Irish citizen. A foreign donation also includes a donation from a corporate, or unincorporated, body of persons which does not keep an office in Ireland from which one or more of its principal activities may be redirected. A foreign donation must be notified and remitted to the Standards Commission within 14 days of its receipt. As an alternative, the donation may be returned to the donor within 14 days. If the donation is returned, a written record of such return is to be kept for the purpose of its being furnished to the Standards Commission, if required.

### Restrictions with regard to expenditure

59. Limits apply in relation to spending at Dáil and European elections. In particular, the following expenditure limits are provided in relation to candidates:
- European election: 230,000 EUR
  - 3 seat constituency at a Dáil general or by-election: 30,150 EUR
  - 4 seat constituency at a Dáil general or by-election: 37,650 EUR
  - 5 seat constituency at a Dáil general or by-election: 45,200 EUR
60. These limits are inclusive of VAT. Expenditure limits may be increased by ministerial order provided that such an increase is in line with the consumer price index (CPI). Increases in excess of the CPI require a legislative act of Parliament.
61. Only expenses incurred on goods, property or services which are used during the election period<sup>12</sup> are subject to the expenditure limit and must be accounted for. Expenses incurred on goods, property or services which are used prior to the commencement of the election period are not required to be accounted for. The exception to this is the cost of an opinion poll or other similar survey which is taken within the period of 60 days before polling day; such cost is regarded as an election expense and must be accounted for.
62. Statutory spending limits are not provided for political parties. A candidate contesting an election on behalf of a political party may assign a portion of his/her spending limit to the party. The candidate is not legally required to make any assignment to the party. If none of a party's candidates at an election agree to assign a portion of their spending limit to the party, the party itself would not be allowed to incur any expenses at the election. If, however, an assignment is made by a candidate to the party, the spending limit of the candidate's own election agent is reduced by that amount. The party's spending limit is the sum of the amounts which have been assigned to the party by its candidates from within the candidates' individual statutory limits. The national agent can, out of the amount which has been assigned by its candidates to the party, incur expenses or make payments on behalf of its candidates or on the party's national

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<sup>12</sup> The election period at a Dáil general election is from the date of the dissolution of the Dáil until polling day. The election period at a Dáil by-election is from the date of the moving of the writ until polling day. The election period at a European election is from the date of the Ministerial Order appointing polling day until polling day (Section 31(1), Electoral Acts).

campaign. Under no circumstances can total spending on a particular candidate (by either the election agent and/or the party's national agent) exceed the statutory spending limit for the candidate.

63. Where expenses at a Dáil or European election are incurred by a person or body which is established by, or on behalf of, a political party or candidate for the purposes of incurring election expenses; is a member of, or is a branch or subsidiary organisation of, a political party; or is associated with, connected to, or under the influence or control of, a political party or candidate at an election, the Standards Commission regards such expenses as expenditure incurred by the political party or candidate, as appropriate. The expenses must be accounted for by the party's national agent or the candidate's election agent as appropriate from within his/her expenditure limit.
64. A similar system operates at presidential elections. A political party, however, is not assigned a spending limit by its candidate. The party may only incur expenses if authorised to do so by the candidate's election agent. All expenses incurred on the candidate's behalf must be accounted for by his/her election agent. The statutory spending limit for a presidential election is 1,300,000 EUR inclusive of VAT.
65. No expenditure limits were set with respect to local elections until the latest local elections, which took place in June 2009; to this effect, legislative changes were introduced, in March 2009, to the Local Elections (Disclosure of Donations and Expenditure) Act 1999<sup>13</sup>. Pursuant to such amendments, legislation provides now for different spending limits for elections to county councils and town councils, respectively<sup>14</sup>; as well as a revised formula for determining the election period with a set number of days (between 50 and 60) prior to polling day.
66. There are no expenditure limits at referenda or in relation to "issue based" campaigns.
67. There are no limits on the amount of expenditure which may be incurred by a third party at an election.

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

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

##### Books and accounts

68. Political parties/candidates are not required under the Electoral Acts to keep proper books and accounts; nor to specify all donations received in these accounts or to make public their accounts. Moreover, political parties are not required to publish audited accounts of their income and expenditure in the same manner as limited liability companies are required to do. Some

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<sup>13</sup> At the local elections held in 1999 and 2004 there was a requirement for candidates and political parties to declare their expenditure, although there were no spending limits in place. Following the legislative changes introduced in 2009, the period for reckoning expenditure at a local election is set by ministerial order and must commence between 50 and 60 days prior to polling day. The spending period for the local elections held in 2009 commenced 60 days before polling day, the maximum possible under the revised legislation.

<sup>14</sup> The primary units of local government in Ireland are the 29 county councils and 5 city councils; in addition, there are 80 urban-based local authorities consisting of 5 borough councils and 75 town councils. For candidates contesting an election to the 34 county and city councils, four separate spending limits were fixed, based on the population within each individual electoral area. In particular, a top limit of 15,000 EUR applied in the most populated areas, with limits of 13,000 EUR, 11,500 EUR and 9,750 EUR applying to candidates in other county and city council electoral areas, depending on their population. For electoral areas in the 80 borough and town councils, a standard spending limit of 7,500 EUR applied.

political parties produce accounts for their members; however, these accounts are not subject to scrutiny by an independent body.

### Reporting obligations

69. Political parties and individual candidates receiving a monetary donation exceeding 126.97 EUR must open and maintain a political donations account and furnish a Donation Statement comprising the corresponding annual returns of such account to the Standards Commission every year (political parties by 31 March and elected representatives by 31 January, respectively; unsuccessful candidates must furnish a donation statement within 56 days of polling day). The Donation Statement, is accompanied by a Statutory Declaration stating that the information on the Donation Statement is correct and that all reasonable action has been taken to ensure its accuracy. The Donation Statement/Statutory Declaration must detail all donations over 5,078.95 EUR (for political parties) and 634,87 EUR (for elected representatives and unsuccessful election candidates), including information on their actual value and nature (i.e. cheque, cash or property/goods), as well as the name, address and description of the donor (i.e. whether the donor is an individual, company, etc.). Donation Statements do not include details on debts and assets of political parties/candidates. The Donation Statement/Statutory Declaration must be accompanied by i) a Bank Statement provided by the financial institution in which the bank account was opened and ii) a Certificate of Monetary Donations confirming that all monetary donations received during the year were lodged to the account and that all amounts debited from the account were used for political purposes.
70. Political parties/candidates (through their national/election agents) are also required to furnish Election Expenses Statements at Dáil and European elections; these must be delivered to the Standards Commission within 56 days of polling day. Election Expenses Statements must be accompanied by a Statutory Declaration on which the national/election agent declares that the information on the Election Expenses Statement is correct and that he/she has taken all reasonable action to ensure its accuracy. In particular, Election Expenses Statement must include the following information:
- details of authorised persons, including the amount each authorised person was permitted to spend and the amount actually spent;
  - confirmation of the portion of each candidate's spending limit which was assigned by the candidates to their political party;
  - the candidate's election agent's Election Expenses Statements are to include a breakdown of all expenditure incurred by the agent on the candidate's behalf, while the national agent's Election Expenses Statement will include a breakdown of spending by the national agent.
71. Invoices, receipts or vouchers for every payment of election expenses exceeding 126.97 EUR must be included with the Election Expenses Statement. The Standards Commission also reserves the right to request any invoice, receipt or voucher for an item of expenditure valued at less than 126.97 EUR appearing in an Election Expenses Statement.
72. Qualified political parties are also required to account for their expenditure of Exchequer funding received under the Electoral Acts and the Party Leaders Allowance Act; to that end, they must submit Statements of Expenditure of Exchequer Funding to the Standards Commission.
73. Statements of Expenditure of Exchequer Funding provided under the Electoral Acts and the Party Leaders Allowance Act must be audited. A copy of the auditor's report must be furnished.

Donation Statements, Bank Statements, Certificates of Monetary Donations or Election Expenses Statements are not required to be audited.

74. The Standards Commission is required to retain, for a period of three years, Donation Statements, Election Expenses Statements and Statements of Exchequer Funding which are furnished to it. In practice, the Standards Commission keeps these documents beyond three years.
75. Expenditure incurred by political parties at local authority elections is accounted for under the Local Elections (Disclosure of Donations and Expenditure) Act 1999. Candidates, national agents and designated persons of political parties and third parties are to submit details of election expenditure to their relevant local authority within 90 days of polling day.
76. Political parties/candidates are not required to account for expenses incurred at Seanad elections or at referenda.

#### *Accounting units of political parties*

77. The relevant accounting units<sup>15</sup> of the respective political parties are required to open political donations accounts and to deliver a Bank Statement and a Certificate of Monetary Donations to the Standards Commission. Accounting units are not required to furnish Donation Statements. The Standards Commission has, however, issued binding guidelines stating that accounting units must provide details of any significant donation (i.e. in excess of 100 EUR) to their party headquarters. This is to ensure that all donations to the party from the donor are aggregated; where the aggregate value of such donations exceeds 5,078.95 EUR, they must be disclosed in the party's annual Donation Statement.

#### *Associations and foundations related, directly or indirectly, to political parties with representation in the Parliament*

78. Third parties are required to open political donations accounts and to deliver a Bank Statement and a Certificate of Monetary Donations to the Standards Commission. Third parties are exempted from the obligation to furnish a Donation Statement.

#### *Unsuccessful candidates*

79. Unsuccessful candidates are under obligation to open special accounts, and to make a Donation Statement, together with a Bank Statement and a Certificate of Monetary Donations, disclosing all donations exceeding 634,87 EUR.

#### *Donors*

80. Individual donors who make donations exceeding an aggregate value of 5,078.95 EUR in the same year to two or more members of the same political party or to the party and one or more of its members are to submit a Donation Statement to the Standards Commission. The Donation Statement must provide details of all donations made by the donor to the party and/or any of its members during the preceding year, including information on the aggregate value of donations

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<sup>15</sup> An accounting unit is a branch or other subsidiary organisation of the party, which in any particular year receives a donation the value of which exceeds 126.97 EUR. Party headquarters is also regarded as an accounting unit.



made, the name of the political party concerned and the name, description and postal address of each person to whom the donations were made.

81. Companies, trades unions, building societies and other "friendly" societies must provide details in their annual report/return of all donations exceeding 5,078.95 EUR in value made by them. The report must identify the value of each such donation and the person(s) to whom the donation(s) was made. These reports/returns are not furnished to the Standards Commission, but to the Companies Registration Office or to the Office of the Registrar of Friendly Societies, as applicable.

#### Access to party funding documents

82. The Electoral Acts and the Party Leaders Allowance Act requires that party funding-related documents be available for inspection and copying. Moreover, material furnished to the Standards Commission under the aforementioned legislation is subject to the provisions of the Freedom of Information Act 1997 (as amended). There is however one exception to this, i.e. the disclosure of the contents of Certificates of Monetary Donations and bank statements is prohibited, unless a court orders disclosure or where disclosure is required in connection with a Standards Commission investigation. Details of the donations disclosed by political parties, candidates and individual donors are available in the Standards Commission website (<http://www.sipo.gov.ie/en/>).
83. With respect to local elections party/candidate funding records, local authorities are responsible for overseeing and enforcing the legislation. Pursuant to the recent legislative amendments to the Local Elections (Disclosure of Donations and Expenditure) Act 1999, which were adopted in March 2009, local authorities are required to include in their annual reports (which are generally published in the respective local authority website) the aggregate details of election expenditure in respect of each candidate, as well as details of donations received by candidates. This extends existing arrangements for publicising this information. Previously, the statements of election expenditure were circulated to members of the local authority and made available for public inspection.
84. The annual returns/reports by companies are available for inspection at the Companies Registration Office. Likewise, the annual returns/reports by trade unions and friendly societies are available for inspection at the Office of the Registrar of Friendly Societies. The information received by the Companies Registration Office and the Office of the Registrar of Friendly Societies is subject to freedom of information rules.
85. Law enforcement authorities have access to accounting records of political parties, in case of suspicion of a criminal offence, as do tax authorities for tax inspection purposes.

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

##### Internal control

86. There are no rules on internal audits of political accounts, since this issue is considered to be a matter for the political parties and the candidates. However, certain instruments are in place to allow for a better internal control of political finances, e.g. through the appointment of national/election agents who are responsible for managing party/candidate accounts and expenses. Moreover, several political parties indicated that they engaged external auditors to certify their accounts.

## External control

### *Standards in Public Office Commission*

87. The Standards in Public Office Commission (Standards Commission) is an independent body, which was established in December 2001 by the Standards in Public Office Act. It is composed of six members: a Chairperson who must be a judge or former judge of the Supreme Court or of the High Court, four ex-officio members and a person who must be a former Member of the Houses of the Oireachtas and who is not an MEP. In addition, the Standards Commission is assisted by a Secretariat composed of nine persons (with a civil servants status). The Office of the Ombudsman provides the Secretariat for the Standards Commission. Staff can be re-assigned to the Office of the Ombudsman on the instruction of the Director General of that office. The Standards Commission has a budget of 1,000,000 EUR.
88. The Standards Commission has a monitoring role under the Electoral Acts in relation to (i) the acceptance and disclosure of donations received by political parties, parliamentarians and candidates at Dáil, Seanad, European Parliament and presidential elections; (ii) the opening and maintenance of political donations accounts; (iii) the limitation, disclosure and reimbursement of election expenses; (iv) State financing of qualified political parties; (v) the registration of "third parties" (i.e. campaign / lobby groups or individuals which accept a donation for political purposes which exceeds 126.97 EUR in value) and other persons; and (vi) the publication of guidelines and the provision of advice on the above requirements. Guidelines and advice issued by the Standards Commission must be complied with.
89. Under the Party Leaders Allowance Act, the Standards Commission also receives Statements of Expenditure of the Allowance which are furnished by the parliamentary leaders of qualified political parties. It reports to the Minister for Finance on these statements.
90. As per the examining and investigative role of the Standards Commission, all of the statutory documentation furnished to the Standards Commission is reviewed. In general, unless there is evidence to the contrary, the documents are accepted as being accurate, subject to any amendments that may be required to correct minor errors or omissions. When suspected violations of political financing regulations exist, the Standards Commission may make enquiries, as it considers appropriate, and may require any person to submit any information, document or thing in the possession or procurement of the person for the purposes of carrying out its duties under the Electoral Acts. The Standards Commission carries out enquiries under the Electoral Acts in response to specific complaints received, issues arising in the media, or at the Tribunals of Inquiry, or on its own initiative. To date, the Standards Commission has received 11 complaints and has carried out multiple enquiries (over 200 enquiries concerning different issues, e.g. third parties' obligations, donation statements, possible breaches of legal provisions, etc.). Since the introduction of the Electoral Acts in May 1997, 42 files have been referred by the Standards Commission (or its predecessor: the Public Offices Commission) to the Director of Public Prosecutions(DPP)/Gardaí for offences committed under the Electoral Acts. The majority of these cases related to the non-return of statutory documentation. In relation to the non-return of statutory documentation, it is the practice of the Standards Commission where it has referred such an offence to the Gardaí to notify the Gardaí if the statutory documentation has subsequently been received. It is a matter for the Gardaí/DPP to decide whether to proceed with a prosecution. In most cases no prosecution takes place where the statutory documentation has been subsequently received.

91. When the Standards Commission is of the opinion that a contravention may have taken place, it must inform the person who has furnished the documentation of the possible contravention and afford him/her 14 days to provide comments on the matter. The Standards Commission must have regard to any such comments. If, having regard to the person's comments, the Standards Commission is still of the opinion that a contravention of the Act has taken place it must furnish a report on the matter and any other relevant information to the DPP. Where the Standards Commission is of the view that an offence has occurred it will refer the matter to the Gardaí for investigation of the offence. The Standards Commission does not have prosecutorial/enforcement powers; all offences under the Electoral Acts must be prosecuted by or with the consent of the DPP.
92. Finally, the Standards Commission plays an advisory role with respect to party funding requirements: it publishes guidelines and provides advice on compliance to persons who are subject to the provisions of the Electoral Acts. The Standards Commission does not have a statutory advice function under the Party Leaders Allowance Act. However, in practice, it receives requests from political parties for advice as to whether the use of the monies from the allowance for a particular purpose is appropriate or not.
93. The Standards Commission does not have a supervisory role in relation to the disclosure of donations and election expenditure at local elections. This is provided for in the Local Elections (Disclosure of Donations and Expenditure) Act 1999. Returns are furnished to the relevant local authority (in which the candidate/party concerned stood for election).
94. At the time of the on-site visit, discussions were ongoing as to whether certain oversight functions concerning party funding rules should be attributed to a to-be-created Electoral Commission (see paragraph 10 for further information on this point).

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

#### **Sanctions**

95. The Electoral Acts set out in each offence which individual or, where appropriate, organisation may be held liable for infringements of the Electoral Acts rules concerning funding of political parties, electoral campaigns, etc. The authorities nevertheless indicate that certain obligations of the law are not coupled with sanctions in the event of infringement, e.g. failure to open a political account, failure to comply with a request for information by the Standards Commission.
96. For offences related to the activities of political parties, the legal responsibility for keeping adequate records and making returns about regulated expenditure or income is on the "appropriate officer" appointed by the party and on the "responsible person" of the political party (i.e. the treasurer or any other person responsible for dealing with donations to the relevant accounting unit). Sanctions consisting of the withdrawal/deduction of public funds are also possible in respect of the political party as an entity (i.e. overspending in election campaigns). In the case of an election candidate, the accountability would be on the part of the candidate and/or the election agent. In the case of a third party, who is an individual, he/she is responsible for any sanction. When the third party is an organisation, it must specify a "responsible person" who is legally liable for the activities of the third party (i.e. the person or persons responsible for the organisation, management of financial affairs of the third party).
97. The available penalties for infringements of party funding rules consist of monetary fines (for delays to submit required documents to the Standards Commission, failure to take appropriate

action for prohibited donations, failure to provide information, failure to return donations) or/and imprisonment of up to 3 years (in the event of false or misleading declarations). Fines range from 1,269.97 EUR to a maximum of 25,394.76 EUR. In addition, there can be an ongoing fine of up to 126.97 EUR per day if delays in the fulfilment of a given obligation persist. The authorities provided details and examples of the types and total amounts of the sanctions imposed to date for infringements of party funding provisions (i.e. including examples of community service - or imprisonment if community service not completed, monetary fines and temporary suspension of public funds).

#### Statutes of limitation

98. Offences relating to knowingly furnishing false or misleading documentation are indictable offences. All other offences are summary offences. In relation to summary offences, Section 4A of the Electoral Acts provides that summary proceedings in relation to an offence must be commenced within 12 months of the date on which the offence was committed or within 6 months from which it is evident to the Standards Commission that an offence has been committed. No proceedings in relation to a summary offence can be commenced later than 5 years from the date on which the offence was committed. There are no statutory limitations for proceedings regarding political funding offences which are triable on indictment.

#### Defences

99. There are three different defences from prosecution concerning offences under the Electoral Acts, in particular:
- defence in relation to the acceptance of prohibited donations, if the appropriate officer of a political party or the responsible person on an accounting unit did not know and could not reasonably have known of the receipt of the prohibited donation;
  - relief in relation to the failure to furnish an Election Expenses Statement or the furnishing of a false or misleading Election Expenses Statement, (a) in the case of illness of a party to the proceedings, death, illness, absence or misconduct of a national/election agent, or due to inadvertence or other reasonable cause not involving negligence of the party/candidate; (b) where it is proved to the court that any act or omission by the national/election agent or any other "responsible person" was without the approval or knowledge of the party/candidate, and all reasonable action was taken by the former to prevent the act or omission; (c) when the national/election agent proves his/her *bona fides*;
  - defence in relation to an overspend, if the person did not know and could not reasonably have known that he/she had incurred an overspend.

#### Immunities

100. There are no immunities allowing for any persons to avoid proceedings or sanctions for violating political funding regulations.

#### **IV. ANALYSIS**

101. Ireland has been developing a thorough system of regulation of party finance since 1994. In this reform process, the country has made important achievements in ensuring some transparency in respect of the sources of both private and public funding, as well as accountability regarding how money is spent by political parties and candidates. The current system has several strong features. For example, foreign donations are banned, restrictions apply to income obtained and

expenditure incurred (in connection with elections), disclosure criteria have been established. Furthermore, the definitions of political parties and donations are sufficiently broad to cover the largest possible range of institutions or entities connected with, or coming under the influence of, a political party (e.g. local branches, companies, trade unions, building societies and other people or groups “friendly” to political parties or candidates), as well as the possible sources of funding (including all below market price services, in-kind donations, as well as loans). In addition, a number of requirements apply to better guarantee accounting discipline and internal control of political finances, including through the establishment of special campaign accounts or the appointment of national and election agents responsible for keeping accounts in order. A key strength of the current system is the overseeing and advisory role played by the Standards in Public Office Commission (hereinafter Standards Commission), which has proved to be decisive in improving both the regulatory framework and practice in this field. In this connection, the Standards Commission has identified in its annual reports a number of areas where room for improvement exists; furthermore, the monitoring of party funding, which the Standards Commission has performed since 2001, has also helped to reveal malpractice instances ultimately resulting in sanctioning action being taken. In this regard, the broad range of available penalties in cases of infringements (including, the possibility to impose aggravated sanctions in the event of false or misleading declarations) appears to have worked quite effectively in practice.

102. Having highlighted those which, in the GET’s view, are some of the strongest features of the current system, the paragraphs below further reflect on several fundamental measures, which are yet to be developed in order to further increase transparency and to enhance control over political finances. In the GET’s opinion, the introduction of such measures would be an important step forward not only to minimise corruption risks, but also to strengthen public trust in political parties and political representation in Ireland. The GET further notes that the country has currently embarked on a broad consultation process which could lead to important changes concerning the way in which electoral matters and local government currently operate (see paragraphs 10, 108 and 109 for further details). Moreover, following a recent survey of Transparency International (which was carried out in June 2009), there appears to be some consensus among political parties that regulations need to be tightened up. The GET trusts that the issues raised and the recommendations made in this report come as a timely contribution to the ongoing debate/reform process.
  
103. At the start, the GET notes that the regulatory framework on political financing is very fragmented; the electoral code in Ireland being dispersed in the Electoral Act of 1997 and the relevant Election Amendments from 1998, 1999, 2001, 2002, 2005 and 2006. Further provisions are contained in the House of the Oireachtas Commission (Amendment) Act 2006 and associated guidelines (with respect to the use of public funds for electoral purposes by outgoing members of the Dáil or Dáil candidates who are Senators). Moreover, the legal framework in respect of local elections is set out in the Local Elections (Disclosure of Donations and Expenditure) Act 1999, as amended. The GET discussed this state of affairs with the interlocutors met during the on-site visit who shared the view that, due to the piecemeal approach taken to the amendment of party funding legislation, its accessibility and usefulness has diminished in the last few years. The GET considers that the current situation is far from ideal and impinges on proper implementation and effectiveness of the law since it makes it cumbersome for actors subject to obligations, and also for the general public, to understand the applicable rules in this area. For example, the GET was told that this was one of the reasons explaining why it was difficult to find election agents (who are subject to significant obligations and sanctions in cases of infringements). The guidelines developed by the Standards

Commission and the Department of Environment, Heritage and Local Government have proved to be crucial in assisting with interpretation of the existing legal requirements; however, there can be no doubt that greater clarity could be achieved through consolidation of the applicable rules in a single comprehensive piece of legislation, which is clear, up-to-date and accessible. Moreover, the GET notes that election agents have been entrusted with some primary control tasks in respect of candidates' funding which are particularly relevant in the context of Dáil and European Parliament elections (i.e. they are responsible for the financial management of the campaign and for ensuring that the declarations and returns of election expenses are properly completed and delivered; they are the only ones who can incur expenses or make payments in connection with the candidate's election campaign). These agents are generally not party financing professionals and while some political parties organise training for the agents concerned on a random/sporadic basis, the training is not mandatory, nor does it ensure that all relevant persons are indeed being covered. Similar training needs apply to other persons/entities who are bound to a number of obligations under the law (for example, national agents, political parties and candidates themselves, third parties). Finally, a consolidation of the currently dispersed legislative provisions in this domain will also help to enhance clarity concerning the use of public funds for electoral purposes by candidates who are currently public representatives or outgoing members of the Dáil; an area which is at present also covered by the House of the Oireachtas Commission (Amendment) Act 2006. In this respect, the Standards Commission has repeatedly stressed the need to have such provisions come within the ambit of the electoral code rather than be part of other legislation which patently has a separate purpose. In the light of the foregoing considerations and in order to enhance the accessibility and effectiveness of the applicable rules on party funding, the GET recommends **that (i) legislation be consolidated in a comprehensive, clear and up-to-date manner within the electoral code; and (ii) adequate training be provided thereafter for those who are subject to legal obligations in this area, so that they can better understand their rights and duties.**

104. A significant shortcoming of the existing system relates to the lack of provisions to account for the total annual finances of political parties. In this connection, political parties are not required under the Electoral Acts to keep proper books and accounts, to specify all donations received in these accounts, or to make the accounts public. The Standards Commission has repeatedly warned in its annual reports that, due to these significant loopholes, it is not possible to know the annual income of political parties, nor to have a full picture of how elections are funded. The various statements submitted to the Standards Commission by political parties show details of donations exceeding the statutory disclosure thresholds, details of expenditure of exchequer funding and details of expenditure by the party at Dáil and European elections. There is little or no correlation between these statements; a full set of income and expenditure, debts and assets, is not required to be furnished. No other details are provided as to how campaigns are funded (e.g. own resources, loans, donations received below the disclosure threshold, etc.). For example, the GET learned that, according to the figures gathered by the Standard Commission in its 2008 report, from the 10,100,000 EUR spent by parties and candidates in the 2007 general elections, only 1,300,000 EUR were disclosed (no information was therefore available as to the origin of income sources of the remaining 8,800,000 EUR). The GET explored this issue on-site, including by interviewing representatives of political parties on their practice in this regard, and found that although not strictly legally required, political parties were keeping books and accounts and had established internal controls, as well as external audit processes, to increase their financial discipline. The GET was also told that details on political accounts were available to party members and to the general public upon request; this statement was confirmed by a media representative who had been given access to party accounts. The GET was also provided during the on-site visit with some financial statements of political parties (handled by the political parties themselves). The GET takes the view that, although political parties tend to keep their books in

order and provide access to their accounts to party members or upon request, the system would clearly benefit from a mandatory legal requirement to maintain proper books and accounts, and to present and make public these accounts, in line with Articles 11, 12 and 13 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. More particularly, the transparency of party funding would be notably enhanced if the relevant financial reports of political parties were to follow a common accounting format, and if the information included (or at least a summary) would be made publicly available in a timely and accessible fashion. In light of the aforementioned considerations, the GET recommends **(i) to introduce a legal requirement for political parties to keep proper books and accounts and to have them independently audited; (ii) to ensure that income, expenditure, assets and debts are accounted for in a comprehensive manner following a uniform format; and (iii) to see to it that the annual accounts are made public in a way which provides for easy and timely access by the public.**

105. Another key aspect concerning transparency of party funding is for the public to be in a position to identify the sources of income. The funding of Irish political parties was, until recently, at a much lower level than that found in other European countries; this situation has somehow changed with membership drastically declining (not even 3% of the electorate are party members) and the GET was made aware during the on-site visit that political parties now rely more heavily on public funding (around 70%). Donations from an individual donor (whether a physical or legal person<sup>16</sup>) in a given year are capped at 6,348.69 EUR (for political parties and third parties) and 2,539.48 EUR (for individual candidates). Donations over a certain threshold, i.e. 5,078.95 EUR for political parties and 634.87 EUR for candidates, respectively, are to be disclosed. The GET was told that donations for political parties are often pitched at a level which is below the disclosure thresholds. In this connection, the Standards Commission has signalled that the relatively small difference between the maximum donation which can be accepted by a political party (6,348.69 EUR) and the amount to be disclosed (5,078.95 EUR) may well prompt parties and donors to accept and make donations which are below the disclosure threshold. There appears to be a practice adopted by political parties to disclose lower amounts: figures released by the Standards Commission, in June 2009, show that political parties disclosed donations worth 96,523 EUR for 2008; this is the lowest figure disclosed since the introduction of the disclosure requirement in 1997. There is at present some ongoing discussion as to whether disclosure thresholds should be brought down. Finally, anonymous donations are only possible where the permissible threshold (126.97 EUR) is not exceeded. In such a case, anonymous donations below 126.97 EUR will neither have to be registered nor disclosed. To safeguard the right to privacy of donor and diminish the administrative burden on parties, the GET accepts that donations below this threshold are not disclosed. However, in theory, there could be concerns about the fact that these donations do not even have to be registered; for example, in extreme cases, large donations (even those above the permissible thresholds) could be split in amounts of 126.97 EUR to evade the registration and disclosure requirement. The GET has no evidence that this is an issue in practice. In light of the foregoing considerations, the GET recommends **(i) to consider lowering the current disclosure threshold of 5,078.95 EUR (donations received by political parties) to an appropriate level; and (ii) to introduce a legal obligation for political parties and candidates to register donations of less than 126.97 EUR.** Any proposals for further regulation by Ireland with respect to the last part of the recommendation will need to take fully into account possible undesirable impacts on ordinary fundraising activities

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<sup>16</sup> After the on-site visit, the authorities indicated that the revised Programme for Government agreed in 2009 envisages the possibility to put in place a system where donations from private bodies, including businesses and corporations, can be made to a political fund which will be distributed to political parties in accordance with their electoral performance in the previous Dáil election.

(such as public collections, lotteries, small scale selling, “rallies”, etc.) and the interrelationship with the regulatory controls in the adjoining UK jurisdiction.

106. In so far as expenditure is concerned, some restrictions already apply to spending during election campaigns. In particular, public funding received by political parties cannot be applied to, or be used to recoup, election or referendum expenses; public funding for electoral purposes is possible in respect of candidates. Likewise, monetary limits apply to expenditure incurred by candidates at Dáil, European and, since June 2009, local elections. Total election expenses for a party and all of its candidates are limited to the total expenses allowed for all of the candidates of the party in question; the legislation also includes provisions to prevent expenditure by people or groups “friendly” to political parties and candidates from escaping the regulatory net (see paragraphs 62 and 63 for details). Election expenditure limits only come into play when the election date is officially announced, i.e. some three weeks prior to the election date; however, practice reveals that actual campaign spending begins long before the stipulated period. Some concerns were raised by interlocutors met on-site that expenditure limits could easily be circumvented by concentrating spending in the period prior to the official announcement of the relevant election. The GET was told that there was much evidence of “front-loading” of campaign expenditure at both the 2002 and 2007 general elections. In this context, the Standards Commission has pointed out in its reports on each of these elections that such front-loading diminished the effectiveness of the expenditure limits; for this reason, it recommended to extend the election period by 2 to 3 months. This state of affairs has been recently improved with respect to local elections, following the amendments to the Local Elections (Disclosure of Donations and Expenditure) Act 1999, where the period for reckoning expenditure at a local election commences between 50 and 60 days prior to polling day. The GET is of the opinion that the current situation is bound to breed public cynicism regarding the effectiveness of legislation and the thoroughness of the scrutiny performed in this field, since it becomes no more than a paper exercise which is not a true representation of the total resources and expenditure devoted to electoral campaigns. This state of affairs can only undermine the transparency and openness of the party funding system as a whole and cast justified doubt on political accountability. Consequently, the GET recommends **to examine the advisability of extending the financial reference period applicable to election campaigns so that the financial activity during this period is properly accounted for, thereby reflecting more closely the resources and expenditure devoted to the electoral process.**
107. Furthermore, there is no obligation for political parties (nor current practice in this respect) to consolidate in their accounts the financial data of local branches of political parties or that of so-called third parties in Irish legislation<sup>17</sup>. The latter are not required to disclose donations, or expenditure, under the existing legislation. There has been much debate about this lack of transparency in the context of the role played by third parties in the referendum on the Treaty of Lisbon, which was held in 2008, and the Standards Commission has recently released a report which examines this matter in detail<sup>18</sup>. Moreover, although third parties must maintain a political donations account and furnish a bank statement and a certificate of monetary donations to the Standards Commission, these documents do not come under public disclosure rules. With respect to local branches of political parties, the GET was told that, although guidelines were issued by the Standards Commission to ensure that all donations in excess of 100 EUR are reported by the relevant accounting unit to the party headquarters with a view to ensuring that all donations to the party from the same donor in a particular year be aggregated, local accounting units did not always notify the party’s head office of donations received; this lack of

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<sup>17</sup> See footnote 10 for a definition of third party in Irish legislation.

<sup>18</sup> Third Parties and the Referendum on the Treaty of Lisbon. Report of the Standards in Public Office Commission to the Minister for the Environment, Heritage and Local Government. March, 2009.



communication may result, in practice, in breaches of the existing ceilings on donations from an individual donor. The GET addressed these problems during the on-site visit and was pleased to note that most interlocutors, including political parties, shared the opinion that more determined steps had to be taken to provide for consolidated accounts. The GET recommends **to seek ways to consolidate the accounts so as to include local branches, as well as other entities related directly or indirectly to political parties or under their control.**

108. As regards oversight of party funding rules, the Standards Commission has been given the main responsibility for monitoring payments to political parties, political donations and election expenditure (with the exception of donations received and expenditure incurred at local elections). The Standards Commission also has responsibility for enforcing the rules relating to standards in public office. In discharging its functions, the Standards Commission has its own secretary and personnel, but it can also draw on the resources of the Office of the Ombudsman, as necessary. The independence of the Standards Commission is beyond any doubt. Moreover, the GET was pleased to note that the Standards Commission is well regarded among both governmental and non-governmental bodies. The GET was repeatedly referred, in the course of the interviews on-site, to the proactive advisory role played by the Standards Commission to promote transparency of party funding, including by identifying critical areas where further improvements are needed. In addition, the supervisory authority conferred on the Standards Commission allows it to carry out inquiries *ex officio* or following an individual complaint; if irregularities are identified, the case is then referred to the Director of Public Prosecutions or the Gardai for further action. At the time of the on-site visit, discussions were ongoing as to the establishment of an Electoral Commission which would be empowered with key responsibilities for electoral administration, possibly including the monitoring of party funding rules. Different alternatives have been proposed to this end, including by transferring the responsibilities of the Standards Commission in the field of party funding to the to-be-created Electoral Commission, but the GET was not made aware of any final agreement/decision being taken to date regarding the most suitable model. The GET is confident that if a new body is to monitor party funding in Ireland, its independence (in terms of both powers and resources) will be ensured and the experience developed by the Standards Commission will be taken on board as a credible tool to increase political transparency and accountability.
109. As already mentioned, the Standards Commission does not have any supervisory function in relation to local elections. It is the local authorities themselves to which statements of donations or expenditure are made in the context of a local election. The GET was referred to the advantages of this separate monitoring regime for local elections, in particular, given the number of candidates and the scale of administration involved (in excess of 3,100 candidates contested the 2009 elections in the 258 local electoral areas), as well as the local nature of campaigns and the opportunity to have a local point of contact for candidates to assist and advise them on their duties in respect of compliance with the relevant legal obligations. Moreover, the GET was informed of a number of reforms which have been introduced recently in this area to better align the applicable rules concerning national and local elections, notably, through the establishment of expenditure limits and financial reference periods for local elections, as well as the introduction of a requirement for local authorities to publish details of donations disclosed and expenses incurred in their respective annual reports (which are generally available in the relevant local authorities' websites). Furthermore, a Green Paper on Local Government Reform to, *inter alia*, increase transparency and efficiency of local administration has been prepared by the Government and is currently undergoing public consultation; the Green Paper proposes to entrust the Standards Commission with enhanced coordination, investigative and advisory functions regarding compliance at local level. These are all steps/proposals in the right direction; however, the GET wishes to stress that more needs to be done to strengthen the existing

oversight mechanisms at local level. In particular, the GET was troubled to hear some of the interlocutors met during the on-site visit casting doubts as to the independence and the rigour of the monitoring of political finances being performed at local level. Although the local managers supervising party funding are civil servants in the relevant municipality, the GET heard concerns as to the possible vulnerability of these (executive) officials and the influence which could be exerted in practice by (political) local councillors. The Standards Commission has rightly pointed out in its Submission to the Minister for the Environment, Heritage and Local Government concerning Spending Limits at Local Elections (September 2007) that disclosures of donations and election expenditure should be made to a body which not only is, but also is seen to be, independent in the performance of its functions; for this reason, the Standards Commission advised the Minister to reconsider to whom statements of expenditure at local elections should be submitted. In addition, and despite the guidance developed by Department of the Environment, Heritage and Local Government, it would appear that practice concerning the type of scrutiny (material-substantial) performed over party finances significantly varies from one local authority to another. No uniformity exists at present, in practice, in this regard and questions have been raised as to the level of compliance with the relevant obligations concerning monitoring of local elections in some local authorities. Likewise, the GET was told that practice varied in the past with respect to publication of/access to donation and election expenditure statements. The GET trusts that the new requirements placed on local authorities to include details of donations and expenditure in their annual reports will lead to tangible improvements with respect to an easy and immediate access to such information. In the light of the above, the GET recommends **to better harmonise the monitoring of political funding at local level, in particular, (i) by reinforcing its independence and the control performed, as necessary; and (ii) by considering the advisability of entrusting the Standards in Public Office Commission (or the yet-to-be created Electoral Commission) with an additional oversight role in this field.**

110. Irish legislation provides for a broad and flexible range of sanctions when infringements of party funding rules occur, including monetary fines, withdrawal of public funds, disqualification penalties and imprisonment in the event of serious breaches of legislation. That said, a significant problem of the system is that not all legal requirements are coupled with effective sanctions in case of non-respect. For example, the law is silent as to sanctions for failure to comply with a request by the Standards Commission to provide information or documentation (including by third parties), or failure to open a political donation account, or the prohibition to use funds from the exchequer for electoral purposes, etc. As far as the practical use of sanctions is concerned, the GET was provided with a number of examples of penalties imposed for infringements of party funding rules. However, it was also brought to the GET's attention that the current enforcement/sanctioning mechanisms could be further improved if the institutions performing control were to be vested with greater investigative and sanctioning authority. At present, the Standards Commission is to refer all infringement cases – even those of a less serious nature – to the law enforcement agencies for investigation. In this connection, the GET was made aware of cases of disagreement over the interpretation of legislation between the Standards Commission and the Director of Public Prosecutions, resulting in a prosecution not being brought in respect of what the Standards Commission deemed to be a breach of legislation. Moreover, sanctions are to be imposed by a court of law, since the Standards Commission has no powers to apply any sanctions directly. The same concerns apply at local level. In the GET's view, the issues raised on-site as to how to make the current enforcement system more efficient and effective may well merit further reflection. In particular, the current system of criminal investigations and enforcement measures could be combined with a more flexible and graduated approach when dealing with less serious violations of the political financing rules. The GET therefore recommends **(i) to ensure that all violations of political funding rules are coupled with effective, proportionate and dissuasive sanctions; and (ii) to consider providing the**

monitoring body/ies in this area (i.e. Standards in Public Office Commission, local managers, yet to-be-created Electoral Commission, as applicable) with greater investigative and sanctioning powers in respect of less serious violations of the political financing rules.

## V. CONCLUSIONS

111. Ireland has developed a thorough system of regulation of party finance, which has been coupled, in practice, with the proactive and independent monitoring and advisory role played by the Standards in Public Office Commission. That said, further steps need to be taken in order to further increase transparency and to enhance control in this area. In particular, although donations (over a certain threshold) and expenditure (exchequer and election spending) statements are published, it is crucial that full party accounts, including itemised information on the total annual income and expenditure, debts and assets of political parties, are also made publicly available. Full transparency and openness in relation to party funding is key not only to minimising corruption risks, but also to increasing public trust in political representation. Moreover, it is important that party accounts are consolidated to provide financial details on local branches and entities, which are, directly or indirectly, connected to a political party or otherwise under its control. In addition, monitoring of political funding at local level, which is entrusted to local authorities, needs to be reinforced in order to remove any doubts as to the independence and the rigour of the control performed. As regards enforcement of the existing rules, not all legal requirements are matched with sanctions in case of infringement; this state of affairs is to be remedied as a matter of priority. All the aforementioned recommendations for improvement would additionally benefit from a consolidation of the currently dispersed/fragmented rules on party funding in a comprehensive, clear and up-to-date legislative instrument. Since Ireland has recently embarked on a broad consultation process, in the context of a Government commitment to establish an Electoral Commission, which is intended to lead to important legislative and institutional changes concerning the way in which electoral matters and local government currently operate; the present report should be seen as a timely contribution to the ongoing reforms.
112. In view of the above, GRECO addresses the following recommendations to Ireland:
- i. **that (i) legislation be consolidated in a comprehensive, clear and up-to-date manner within the electoral code; and (ii) adequate training be provided thereafter for those who are subject to legal obligations in this area, so that they can better understand their rights and duties** (paragraph 103);
  - ii. **(i) to introduce a legal requirement for political parties to keep proper books and accounts and to have them independently audited; (ii) to ensure that income, expenditure, assets and debts are accounted for in a comprehensive manner following a uniform format; and (iii) to see to it that the annual accounts are made public in a way which provides for easy and timely access by the public** (paragraph 104);
  - iii. **(i) to consider lowering the current disclosure threshold of 5,078.95 EUR (donations received by political parties) to an appropriate level; and (ii) to introduce a legal obligation for political parties and candidates to register donations of less than 126.97 EUR** (paragraph 105);

- iv. **to examine the advisability of extending the financial reference period applicable to election campaigns so that the financial activity during this period is properly accounted for, thereby reflecting more closely the resources and expenditure devoted to the electoral process (paragraph 106);**
- v. **to seek ways to consolidate the accounts so as to include local branches, as well as other entities related directly or indirectly to political parties or under their control (paragraph 107);**
- vi. **to better harmonise the monitoring of political funding at local level, in particular, (i) by reinforcing its independence and the control performed, as necessary; and (ii) by considering the advisability of entrusting the Standards in Public Office Commission (or the yet-to-be created Electoral Commission) with an additional oversight role in this field (paragraph 109);**
- vii. **(i) to ensure that all violations of political funding rules are coupled with effective, proportionate and dissuasive sanctions; and (ii) to consider providing the monitoring body/ies in this area (i.e. Standards in Public Office Commission, local managers, yet to-be-created Electoral Commission, as applicable) with greater investigative and sanctioning powers in respect of less serious violations of the political financing rules (paragraph 110).**

113. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Ireland to present a report on the implementation of the above-mentioned recommendations by 30 June 2011.

114. Finally, GRECO invites the authorities of Ireland 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.