

Strasbourg, 2 July 2009

Public
Greco Eval III Rep (2008) 10E
Theme II

Third Evaluation Round

Evaluation Report on Lithuania on Transparency of Party Funding (Theme II)

Adopted by GRECO
at its 43rd Plenary Meeting
(Strasbourg, 29 June - 2 July 2009)

I. INTRODUCTION

1. Lithuania joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 1E) in respect of Lithuania at its 8th Plenary Meeting (8 March 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 12E) at its 23rd Plenary Meeting (20 May 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption¹, Articles 1-6 of its Additional Protocol² (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team (hereafter referred to as the "GET") carried out an on-site visit to Lithuania from 26 to 30 January 2009. The GET for Theme II (28-30 January) was composed of Professor Ruud Koole, Professor in political science at the Leiden University (Netherlands) and Mr Alvis Vilks, Deputy Director of the Corruption Prevention and Combating Bureau (Latvia). The GET was supported by Mr Christophe Speckbacher from GRECO's Secretariat. Prior to the visit, the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval III (2008) 8E, Theme II). Additional research on Internet and extra time was spent during the visit to fill certain gaps.
4. The GET met with officials from the following state institutions: the Central Electoral Committee, Supreme Audit Office, State Tax Inspectorate, Special Investigation Service, Chief Institutional Ethics Commission, Registry Department under the Ministry of Justice, Prosecutor General's Office (Department on corruption and organised crime), and Chief Administrative Court. The GET met representatives of the following political (coalitions of) parties: Homeland Union - Lithuanian Christian Democrat Political Group, the Lithuanian Social Democratic Party Political Group, New Union, Liberals' Movement Political Group, Liberal and Centre Political Group. It also met with a representative of the Lithuanian Chapter of Transparency International, the Law Institute, the media, and the profession of auditors (a private audit firm).
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Lithuanian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Lithuania in order to improve its level of compliance with the provisions under consideration.

¹ Lithuania ratified the Criminal Law Convention on Corruption (ETS 173) on 8 March 2002. The Convention entered into force in respect of Lithuania on 1 July 2002. Lithuania did not make any reservations to the Convention.

² The Additional Protocol to the Criminal Law Convention (ETS 191) was not ratified by Lithuania.

6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2008) 10E-Theme I.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

Definition of political party

7. Pursuant to Article 2 of the Law on Political Parties (hereinafter, the LPP), a political party is “a public legal person who has its own name, has been established pursuant to this Law, and whose purpose is to meet the political interests of its members, to assist in expressing the political will of the citizens of the Republic of Lithuania, in seeking to implement state power and the right to self-government.” However, it should be emphasised that participation in elections is not the exclusive right of political parties: although registered political parties have the monopoly on fielding candidates for elections in the multi-member (nationwide) constituency, both political parties and independent candidates can participate in elections in the single-seat constituencies (see on this issue also below on ‘participation in elections’).

Founding and registration

8. Pursuant to article 5 of the LPP, a party may be founded by at least 1000 Lithuanian citizens aged 18 or over. The founders, who become members of the party after registration in the Register of Legal Persons, are to adopt a statute³, a programme and elect an executive body. In order to participate in elections as a political party, the party must be registered in the Register of Legal Persons and submit a list of their members to the Ministry of Justice at least 65 days before the date of the elections in question.
9. The political party has legal personality from the moment of registration in the Register of Legal Persons (Article 2.63, paragraph 1 of the Civil Code and Article 8, paragraph 7 of the LPP). From that moment on the party is liable for its obligations with all its assets. Members of the party are not liable for the obligations of the party, nor do they have any rights in respect of the assets of the party. In October 2008 there were 39 registered political parties in Lithuania. As the GET was told on site, 13 of these are considered to be “dormant” (they do not participate in elections, their leaders meet occasionally etc.).

Participation in elections

Seimas (Parliament)

10. Lithuania is a republic with a parliamentary multi-party system. The unicameral *Seimas* (Parliament) is composed of 141 members who are elected for four-year terms on the basis of direct elections by secret ballot (Article 55 of the Constitution). Of the 141 members of parliament, 71 are elected in single-seat constituencies and 70 members nationwide by proportional representation via party lists. Citizens with the right to vote each have one vote in a single-seat constituency and one vote in the multi-seat (nationwide) constituency (Article 3 of the Law on Elections to the *Seimas*).

³ Pursuant to Article 6 of the LPP, the statute is the founding document of the party and is to *inter alia* include information on the name, legal form, seat and objectives of the political party, as well as the procedure for establishing branches of the political party, for accountability of the management bodies of the political party to a congress and of control over their activities and for control over the property and funds of the political party.

11. All citizens of the Republic of Lithuania, who have reached the age of 18 years on the day of the elections and who have full legal capacity, have the right to vote (Article 34 of the Constitution, Article 2 of the Law on Elections to the *Seimas*). The right to be elected to the *Seimas* is granted to all citizens of the Republic of Lithuania who are “not bound by an oath or pledge to a foreign state, at least 25 years’ old on election day and permanently reside in Lithuania”, and who have full legal capacity and have (65 days before the elections) not yet to serve a prison sentence (Article 56 of the Constitution, Article 2 of the Law on Elections to the *Seimas*). Candidacy for a seat in the *Seimas* is furthermore incompatible with the position of a judge or official in a statutory institution and establishment and with military service. Former members of the *Seimas* having been impeached and persons who pursuant to special laws are prohibited from participating in the activities of political parties may also not stand for election to the *Seimas* (Article 2 of the Law on Elections to the *Seimas*).
12. Candidates for the *Seimas*, who stand for election in one of the 71 single-seat constituencies, can be nominated either by a political party registered pursuant to the Law on Political Parties or by him/herself (in which case s/he has to provide the signatures of 1000 voters of the constituency in question as prove of support of his/her candidacy). Candidates for the *Seimas*, who stand for election in the 70-seat (nationwide) constituency, can only be nominated by political parties (Article 39 of the Law on Elections to the *Seimas*). A person can only be nominated by one party in the multi-seat (nationwide) constituency, but may at the same time be nominated as a candidate in one single-seat constituency (Article 42 of the Law on Elections to the *Seimas*). At municipal level, parties have the monopoly for presenting candidates, a situation which was challenged before the Constitutional Court; after its decision of 3 April 2008, a draft law amending the Law on Municipal Elections was submitted to the *Seimas* to the effect that independent candidate may also run for municipal elections.
13. Candidate lists of the party, including the order in which the candidates are placed on this list, are to be approved by the congress of the party, unless the statutes of the party provide otherwise. The lists of candidates submitted by the party (whether for the single-seat or multi-seat constituency) and the application by the person nominating him/herself is – amongst other things - to include an extract of the information submitted for the income tax return of the candidate, a personal property declaration and a pledge to comply with the prohibition to bribe voters and person eligible to vote (Article 38 of the Law on Elections to the *Seimas*). Political parties have to also submit copies of their financial statement of the preceding year, as was presented to the State Tax Inspectorate pursuant to the Law on Political Parties (see further below under ‘reporting obligations’). The threshold for entering the *Seimas* is five percent of the total number of votes cast in Lithuania or seven percent in case of a joint list of parties.

Other

14. Lithuania’s head of state is the president, who is elected directly for a five-year term (with a maximum of two consecutive terms in office) through direct elections (Article 78 of the Constitution). Lithuanian citizens (by origin), who have lived in Lithuania for at least three years, who are at least 40 years’ of age, are eligible to be elected to the *Seimas* and have collected the signatures of at least 20,000 voters in support can become candidates for the post of President of the Republic

Party representation in Parliament

15. In the last elections for the *Seimas*, which were held on 12 and 26 October 2008, 16 political parties and coalitions of parties (joint lists)⁴ participated in the elections as well as a number of independent candidates. Ten political parties and coalitions of parties (joint lists), as well as four independent candidates obtained seats in the *Seimas*:

Party	Seats		
	Proportional	Constituency	Total
Homeland Union – Lithuanian Christian Democrats * (<i>Tėvynės sąjunga – Lietuvos krikščionys demokratai</i>)	18	27	45
Social Democratic Party of Lithuania (<i>Lietuvos socialdemokratų partija</i>)	10	15	25
National Revival Party * (<i>Tautos prisikėlimo partija</i>)	13	3	16
Order and Justice (<i>Tvarka ir teisingumas</i>)	11	4	15
Liberals' Movement of the Republic of Lithuania * (<i>Lietuvos Respublikos liberalų sąjūdis</i>)	5	6	11
Coalition Labour Party + Youth (<i>Koalicija Darbo partija + jaunimas</i>)	8	2	10
Liberal and Centre Union (<i>Liberalų ir centro sąjunga</i>)*	5	3	8
Electoral Action of Poles in Lithuania (<i>Lietuvos lenkų rinkimų akcija</i>)	-	3	3
Lithuanian Peasant Popular Union (<i>Lietuvos valstiečių liaudininkų sąjunga</i>)	-	3	3
New Union (Social Liberals) (<i>Naujoji sąjunga (socialliberalai)</i>)	-	1	1
Independents	-	4	4
Total	70	71	141

16. Four parties / coalitions of parties – indicated above by (*) – went on to form a coalition government, conducted by prime-minister Andrius Kubilius: the Homeland Union – Lithuanian Christian Democrats (45 seats), the National Revival Party (16 seats), the Liberals' Movement of the Republic of Lithuania (11 seats) and Liberal and Centre Union (8 seats).
17. The turn-out at the October 2008 elections was 48.54% (1,233,875 voters).

Overview of the political funding system

Legal framework

18. Before the year 1997, parties were obliged to declare their electoral expenses after the elections in accordance with the laws on elections. The laws on elections also provided the maximum possible amounts of electoral expenses; however, they did not provide any requirements related to specifying the sources of financing. The Law on Financial Control of Political Campaigns (passed in the year 1997) required to register and publish any donations as well as to specify the total income and expenses related to a political campaign. The size of such donations was not limited; however, the total sum of the donations could not exceed the maximum amount of expenses provided in the laws on elections. The *Law on Financing Political Parties and Political Organisations* (passed in the year 1999) was intended for regulating sources of financing of political parties and political organisations as well as for financial accounting and control. It

⁴ These political parties / coalitions of political parties were: (1) Homeland Union – Lithuanian Christian Democrats (*Tėvynės sąjunga – Lietuvos krikščionys demokratai*); (2) Social Democratic Party of Lithuania (*Lietuvos socialdemokratų partija*); (3) National Revival Party (*Tautos prisikėlimo partija*); (4) Order and Justice (*Tvarka ir teisingumas*); (5) Liberals' Movement of the Republic of Lithuania (*Lietuvos Respublikos liberalų sąjūdis*); (6) Coalition Labour Party + Youth (*Koalicija Darbo partija + jaunimas*); (7) Liberal and Centre Union (*Liberalų ir centro sąjunga*); (8) Electoral Action of Poles in Lithuania (*Lietuvos lenkų rinkimų akcija*); (9) Lithuanian Peasant Popular Union (*Lietuvos valstiečių liaudininkų sąjunga*); (10) New Union (Social Liberals) (*Naujoji sąjunga (socialliberalai)*); (11) Front (*Frontas*); (12) Young Lithuania (*Jaunoji Lietuva*); (13) Civic Democratic Party (*Pilietinės demokratijos partija*); (14) Union of the Russians of Lithuania (*Lietuvos rusų sąjunga*); (15) Lithuanian Social Democratic Union (*Lietuvos socialdemokratų sąjunga*); and (16) Lithuanian Centre Party (*Lietuvos centro partija*) as well as independent candidates.

provided that political parties and political organisations should submit their annual declarations on the financial activities to the Central Electoral Committee and the State Tax Inspectorate. It was also planned to provide subsidies to political parties and political organisations from the state budget in proportion to the number of votes obtained. In the year 2004, the above-mentioned Laws were consolidated and the new *Law on Financing and Financial Control of Political Parties and Political Campaigns* (hereinafter referred to as the LFP) was adopted on 23 August 2004. It has been amended since then. The LFP deals with the various election campaigns (for the Seimas, Presidential elections, European Parliament, municipal councils) as well as referendum and political advertising. The LFP organises a mixed system of public and private sources of financing. It comprises 7 chapters dealing with 1) general provisions including definitions, 2) sources of funding and political campaign expenditure, 3) political advertising including campaign advertising, 4) accounting requirements, 5) control and audit of funding, 6) sanctions and 7) final provisions.

19. The GET was informed on site that the LFP is being revised but it was difficult to obtain an overview of the ambition of the reform and the status of discussions.

Public funding

20. According to Article 7 of the LFP, Political parties are provided with direct public funding in the form of grants from the state budget and partial reimbursement of election campaign expenditures. Political parties which in the last elections of the *Seimas* (in the multi-seat constituency, single-seat constituencies and run-off elections) and municipal council have received more than 3 percent of the votes are eligible for state grants. In addition, in the context of election campaigns (only) political parties, including their candidates and lists of candidates, are entitled to partial reimbursement of their election campaign expenditures of up to 25 percent of campaign costs if they have received at least 3% of the votes and have no outstanding liabilities (loans, unpaid services etc.). For instance, public subsidies worth LTL 15 million (approx. 4,35 million euros) were allocated in 2007 to (eight) political parties. Donations represent the biggest part of the parties' income.
21. In addition, political parties and independent candidates are provided with indirect public support in the form of free broadcasting time. The CEC publishes the election programmes of the candidates' list and the electoral committee of that constituency publishes the election programme of a candidate in single-member constituency. The GET was told on site that political advertising on television and radio had recently been limited and these restrictions applied for the first time during the 2008 parliamentary elections. As a result, this broadcasting time can only be used for political debates and since advertising absorbed traditionally about 50% or more of the parties budget (84% during the 2007 municipal elections), the latter would have more money to spend on their structures and regular activities. According to electoral legislation, 30 days before elections there are several restrictions for outdoor political advertising that start to apply. These restrictions also include political advertising in cinemas. There were some attempts to use movies for political advertising during the 2008 parliamentary elections. The District Court decided that the film was a political advertising. This decision was appealed and the case is still pending. The replies to the questionnaire contained no information about other possible sources of indirect public funding. The GET was told on site that parties also establish organisations in a way that makes these formally independent from the party (youth organisation, women organisation, children organisation and so on) so that they can also collect state funding (however, this grant is provided subject to the organisation not being affiliated to a party); the CEC has not received any complaints showing that they participated in political campaigns or supported political parties to

date, and this has not appeared as an issue in the media. Parties also establish regional and local branches and sometimes sub-branches, as well as sports clubs, foundations, research institutes, charities, trusts etc. but the GET could not determine to what extent any possible public support to these benefits to the parties related although one party acknowledged that these structures do help the parties. The on-site discussions also showed that like in other countries, elected officials – in particular parliamentarians – do repay a certain percentage of their indemnities to their party, and that the parliamentary secretariat of the political groups do also work for the parties. Neither political parties nor their divisions have the right to obtain donations or grants from municipalities. However, pursuant to the Law on the Management, Use and Disposition of State and Municipal Property (Article 13), state and municipal property may be put at the disposal of political parties on the basis of criteria and in accordance with the procedure established by the Government.

Private funding

22. Pursuant to Article 7 combined with Article 14 of the LFP, political parties' regular activities can be funded by the following private sources: membership fees (parties are free to determine the type of fees in their statutory regulations), donations from natural and legal persons, grants paid by other parties represented in international organisations to which Lithuania is a member (a new draft amendment to the LFP eliminates this possibility), bank loans from banks registered in Lithuania and, in general, profit generated through other activities – as listed under Article 14 – of the political parties: “publishing, distribution of printed material and party symbols, management, use and disposal of owned by right of ownership, organisation of political and cultural events (lectures, exhibitions, etc.) and other activities. (...) Parties shall also be entitled to the interests on bank deposits”. Campaigns of political parties can be financed by the same means. The LFP specifies that only the above sources of funding can be used to finance political parties and election campaigns. The GET was advised on site that private donations constitute the major source of funding of political activities in Lithuania. The following information on the structure of funding of political parties (activity and political campaign) was provided after the visit:

	2007	2008
Membership fees	3,48%	3,06%
Donations from natural and legal persons*	48,12%	42,43%
Grants from the state budget	41,42%	52,21%
Other activities	6,98%	2,30%

* *personal funds of candidates counted as donation from natural persons.*

23. Both natural and legal persons may donate to political parties, in cash and in kind. Article 2 paragraph 2 of the LFP defines “donations” in broad terms as including any form of support in cash, equities and securities, movable or immovable property, information, property rights, results of intellectual activities, other material and non-material values transferred without remuneration, activities and voluntary work carried out without remuneration, as well as the result of these activities.
24. Monetary donations by natural persons exceeding LTL 1000 (approximately €290) as well as all monetary donations by legal entities are to be made by bank transfer (Article 10 paragraph 3 LFP).

25. As regards the amount/size/periodicity of donations, the LFP provides that *“One natural person (...) may, during a calendar year, donate for one political party a donation not exceeding 300 minimum living standards [LTL 39,000 / approximately € 11,300]. If a political campaign takes place the same year, a natural person may donate to one independent participant of political campaign during this political campaign a donation not exceeding 300 minimum living standards. If one natural person has donated to a political campaign participant (participants) during one political campaign more than 10 per cent of the revenue received during the last year, such donor and his donation (donations) must be declared in the opinion of the State Tax Inspectorate under the Ministry of Finance (hereinafter referred to as the State Tax Inspectorate).”*
26. A number of restrictions apply to the sources of private funding to parties, candidates and their campaigns. First of all, anonymous donations are prohibited. If such donations are received, they must be transferred to a charity or used for a charitable cause of their own chose, within five working days of receiving it. The same applies to the other “inadmissible” donations (donors not entitled to provide funds, donations exceeding the thresholds etc.). Pursuant to Article 12 of the LFP, only those legal entities in which the state or municipal authority does not have capital and which are controlled by natural persons who are allowed to donate to legal entities registered in Lithuania or private legal entities from NATO and EU member states, are allowed to donate to political parties and election candidates. The Lithuanian authorities indicate that as a result of this, donations by state and municipal enterprises are thus prohibited. Donations from abroad/foreigners are permitted subject to the following principles: permanent residents of Lithuania who are nationals of another EU member state can only donate to election campaigns (of political parties and candidates) for elections to the European Parliament and municipal councils; permanent residents of Lithuania who are non-EU country nationals or stateless persons have the right to contribute to the financing of campaigns for municipal council elections. The LFP prohibits donations to political parties and campaign participants through third persons (Article 11 paragraph 2 LFP).
27. The LFP contains provisions on the outcome of “inadmissible donations”: according to article 11 paragraph 1, it is prohibited to use for political parties or political campaigns donations that do not meet the requirements of the LFP mentioned above (as regards the amounts/size/periodicity, or other restrictions). If such donations have been received and the donor is identifiable, he/she must, within 5 working days of receipt of such a donation, be offered in writing the possibility to withdraw the donation with an indication of the reason for the refusal. If a donor is unidentifiable or if an identifiable donor does not take a donation back within 3 working days of a written notification to withdraw a donation, a political campaign participant must, within 5 working days, transfer it to a charity organisation (which should use these funds for charity purposes only). Similar provisions are contained in Article 16 paragraph 9 LFP: if during a political campaign period, a campaign participant (with the exception of political parties, and candidates or lists of candidates nominated by them) has accrued more funds than were used for covering the political campaign expenditures, unused funds must be transferred to a charity as well; political parties, and candidates or lists of candidates nominated by them, may retain unused funds and must transfer these to a regular account of the political party.
28. Donations to political parties by natural or legal persons are not tax deductible.

Expenditures

29. Limits and restrictions on the expenditure of political parties exist in the context of an election campaign. The Central Electoral Committee establishes annually a ceiling for campaign

expenditures, which is calculated according to the number of voters registered. In 2007, for parliamentary elections, the maximum amount of expenses in a single-member constituency was 75 197 Litas (approx. 21 800 Euros) per candidate on the average; for municipal elections, depending on the number of voters it varies between 20 000 and 860 000 Litas (between 5 800 and 249 300 Euros) per list of candidate. In the electoral constituency of the whole territory of Lithuania, the ceiling is about 4 million Litas (approx. 1.16 million Euros) per candidate to the post of President of Lithuania or per list of candidates. The total expenses for political campaigns has gradually increased in recent years as is shown in the table below :

Year	Elections	Income, EUR	Expenditure, EUR
2002	Elections of Municipal Councils	1 432 994	1 335 798
2004	Elections to European Parliament	1 272 332	1 551 693
2004	Elections of the President of the Republic	1 799 407	2 294 623
2004	Elections to Seimas	5 533 488	6 497 731
2007	Elections of Municipal Councils	4 618 681	5 621 707
2008	Elections to Seimas	8 497 815	9 590 932
2009*	Elections of the President of the Republic	491 732	488 877
2009**	Elections to European Parliament	~592 930	~494 025

* Income (21 781 EUR) and expenditure (21 722 EUR) of non-registered candidates are not included.

**according to initial reports submitted by participants 10 days before the elections. The total income and expenditures may be 2-2,5 times greater in final reports, which should be submitted on 9 July 2009.

30. As regards municipal elections, Article 16 of the LFP lays down the maximum amounts of political campaign expenditure in concrete constituencies (municipality). Every list of candidates has its ceiling of expenditure (the maximum amount of expenditure), depending on the constituency in which the candidate is running. Lists of candidates organise their own political campaigns within the established limit on expenditures. A political party, which nominates one or more list(s) of candidates, may organise a general political campaign. The maximum amount spent on a political campaign of a political party depends on how many lists of candidates the party has nominated. According to the LFP, a political party may spend for this political campaign no more than 10 per cent of the maximum amount of expenditures incurred by the lists of candidates nominated by this party.

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

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

Books and accounts

31. Accounting requirements are regulated under Chapter IV of the LFP, which comprises 3 articles.

Political parties

32. Political parties are required under Article 19 LFP to keep their accounts in accordance with the Accounting Law of 2001 (as amended last in 2008); this law requires i.a that accounting should cover all economic transactions and economic events related to changes of assets, equity, amount of liabilities or structure of assets (Article 6) and that all economic transactions and

economic events must be supported by accounting documents (Article 12). The LFP requires political parties to produce an annual financial statement (to be approved by the party's governing body) for the subsequent control of the Central Electoral Commission, accompanied by a certified copy of the "accounting journal". Documentary evidence justifying the data contained in the journal must be kept available for the CEC and provided upon request. The Lithuanian authorities explained after the visit that since a political party counts as one single legal entity, the annual declaration of financial activities reflects the situation of a given party as a whole, including all of its divisions.

Election campaigns

33. Article 20 requires independent campaign participants and political parties to appoint a campaign treasurer who is responsible for managing the funds of the campaign and to open a special account for this purpose. However, according to article 16 paragraphs 1 and 2, political parties may continue to use their regular bank account as a special bank account (although it would appear that in practice, political parties generally do not use their regular accounts as special campaign accounts). The campaign treasurer's tasks are as follows: *"1) sign donation sheets, the accounting record of the political party or political campaign funding, the political campaign funding report, the audit report on political campaign if it is mandatory, and submit them in accordance with the procedure laid down by this Law to the Central Electoral Commission and the State tax Inspectorate; 2) manage and store accounting-related documents of political campaign in accordance with the procedure laid down by this Law and the Accounting Law; 3) within 5 working days announce on the website of the Central Electoral Commission the data about donations received and contracts concluded during the period of political campaign (or within 30 days – during the period other than political campaign and upon having submitted the political campaign funding report); 4) control the amount of funds spent for political campaign and look after that the sum of funds spent for political campaign would not exceed the sum fixed in paragraphs 3 and 4 of Article 16 of this Law; 5) open and close the special bank account in the cases provided for by this Law."*
34. In principle, the treasurer has the monopoly of the management of the campaign funds. However, the campaign participant, i.e. the party or the candidate, may dispose of cash donations and non monetary donations not registered in donation sheets if the campaign treasurer has not filled out such sheets (article 20 paragraph 8). The LFP does not specify further the situations where this important derogation is applicable.
35. All regular and campaign donations to a party or a campaign participant must be individually registered in a special, official form/receipt issued by the Central Electoral Commission which makes them available as necessary to the parties/candidates/their treasurer. These forms must be used to record all monetary and non-monetary donations (as defined broadly, see paragraph 23 of the present report) and they must be drawn up on the day of a transfer-acceptance of a donation (or no later than the day after where the donation is made via bank transfer). The form indicates the amount of a donation (or its market value in the case of in-kind donations), the donator's name and surname, personal identification number, place of residence (for legal entities: the name and code of the company and its registered office address). The forms are drawn up in three copies: one is given to the donator, the second to the CEC and the third one remains with the recipient of the donation.

Reporting obligations

Political parties

36. Every year before the 1st of March, political parties submit, for verification purposes (see section ii below), annual financial statements of their activities to the Central Electoral Commission (CEC) and the State Tax Inspectorate (STI) where they declare their income and expenditures (article 22 paragraph 9 LFP). The political party's managing body must approve the annual financial statement before it is sent to the CEC and STI. The declarations include a list of donations (monetary and non monetary) with the indication of donors, as well as loans and other funds received. The declarations also indicate the way in which the grant from the state budget was used. Along with the statement, a copy of the accounting sheet on the funding of political party must be submitted where all donations received during a year are registered (monetary and non-monetary) as well as donations are "inadmissible".
37. The financial statement of political parties must indicate the expenditures related to:
 - the acquisition of movable and immovable properties, subject to registration, necessary for the functioning of the party;
 - acquisition of inventory necessary for party's operation and acquisition of other objects;
 - the establishment of branches of the party;
 - salaries and remuneration of work;
 - social insurance contributions;
 - the maintenance of buildings and premises;
 - other costs;
 - donations returned to the donor;
 - funds of the party donated for political campaign;
 - the repayment of loans.

Election campaigns

38. Participants in political campaigns submit a report on the funding of political campaign to the CEC where they indicate the donations received for political campaign or their amounts by the groups of donators, other funds used for political campaign, donators (submits a list of donators) and expenditure incurred as well as obligations undertaken (by expenditure groups). Together an accounting sheet for funding of political campaign is presented as well as the documents supporting expenditure and income. Furthermore, campaign participants, along with the political campaign funding report, must submit to the CEC a transcript of the bank account(s).
39. A political party and political campaign participant must indicate in the accounting sheet the name, surname or title of the donor or services provider, personal number or company code, municipality, the data about donation sheet (date, number), type of donation (monetary or non-monetary) and its value. Liabilities are also indicated in the registration of expenditure. Expenditure is grouped by their purpose and income – by source.
40. Financial statements concerning political campaigns must contain the expenditures and liabilities concerning:
 - the production of political advertising or other promotional material and distribution by any information public awareness means or any other public way;
 - the party treasurer's salary and the sums paid for the fulfilment of his/her functions;

- the rent of movable and immovable properties, meetings, concerts or other events and organisation of catering, parties or banquets;
 - the costs of transport associated with political campaign;
 - other costs specified in this law.
41. A separate income/expenditure statement of election campaigns is made. Repayment and writing-off of loans (the latter then are to be considered as in-kind donations) are accounted in the general procedure in the financial accounting documents of political parties and political campaigns.
 42. According to article 21 LFP, each political party or independent participant of political campaign must, not later than within 6 months from the end of the political campaign, fulfil the debt obligations to campaign service providers (which occurred during the political campaign or are related to it). Each year before the first of February, until the reimbursement of debts, a former political campaign participant must inform the Central Electoral Commission about the fulfilment of debt obligations and sources of fulfilment. A political party shall have the right to reimburse debt obligations only from the assets belonging to the party by the right of ownership and from received donations (liabilities of party candidates are borne by the party), whereas independent campaign participants may reimburse such debt obligations only from private (personal) funds.
 43. There is no obligation for private individuals to declare donations to political parties or for the financing of election campaigns; such an obligation is included in the new draft amendment to the LFP.

Third parties

44. There are no specific provisions dealing with third parties.

Access to, and keeping of accounting records.

45. Following article 27 of the Law, the STI officers have the right to access the accounting records on donations and other funds of political parties, candidates and applicants to candidates, referendum initiators, referendum opponents, political campaign, and to request additional documents and explanations.
46. In addition, the Law of the Republic of Lithuania on Tax Administration, Article 33(1) and 33 (7) provide that STI inspectors, when fulfilling their functions, are entitled to obtain the necessary data from persons, documents copies, computer medium data (copies), use own and other legal entities registers, database information also to give instructions on tax calculation, declaration and payment, declaration of property an income and administration of accounting issues. The information for the purpose of supervision of political parties financial activities and funding of political campaigns is provided to the STI in the manner laid down by laws.
47. Together with annual financial statement of the political party a copy of approved accounting records must be submitted and, upon request of the CEC, the documents supporting the statement of financial operations. After verification of the documentation and once certified copies have been made, the documents are returned to the political party.
48. The CEC keeps the annual financial statements of political parties and those concerning election campaigns for a period of 10 years.

Publication requirements

49. Strictly speaking, political parties and election candidates are not required to publish their regular and/or campaign accounts by themselves, but this is done on the website of the CEC which they are required to keep informed, including via a special IT tool designed to collect the data.
50. The publication requirements are rather complex and the replies to the questionnaire contain some contradictions. Financial statements of political parties and reports on financing of election campaigns are published on the CEC website after they have been verified. The CEC also publishes the STI's conclusions on controls carried out in respect of campaign accounts, but not its own conclusions on these or other financial statements. Besides, the CEC is also required to publish in real time the information about donations received (that campaign participants are required to submit within 5 days during campaigns and within 30 days outside this context – article 20 paragraph 6(2) LFP). The CEC also publishes the quarterly financial reports received from the parties. The final financial reports on election campaigns are also published in the Information supplement "Informaciniai pranešimai" to the Official Gazette ("Valstybės žinios").
51. As regards the identity of donors, the first name, the last name and municipality of residence of a donor (in case of a legal entity: the name of the entity, the municipality of its registered office) and the details of the campaign treasurer must be announced on the Internet site of the CEC in the publicly placed list of donors not later than within 5 working days during the political campaign and at the end of every quarter whether or not this concerns a year of elections. This contradicts the 30 days deadline under art. 20(6)3 of the LFP and the Lithuanian authorities indicated after the visit that the new draft LFP would solve this contradiction by requiring to publish the information every quarter.
52. Besides, every person who is entitled under the law to finance political parties, as well as any person who prepares public information or a representative of producers and disseminators of public information, upon submission of a document proving their quality shall have access to annual financial statements (of any political party or financial record of a political party, candidate, applicant candidate, referendum initiator, referendum opponent political campaign and publish on mass media their data); this does not extend to information about private individuals who have donated less than LTL 100 (EUR 29) and who have asked to remain undisclosed.

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

Auditing

53. According to Art. 24 of the LFP, political parties must perform an independent audit of their financial statements if within a calendar year the income exceeds 3,000 minimum standards of living (i.e. LTL 390,000 or approx. EUR 113,000). Likewise, independent campaign participants must have their campaign accounts audited if the total amount of donations (as defined broadly by the LFP) exceeded 1000 minimum standards of living (i.e. LTL 130,000 or EUR 38,000).
54. Political parties must submit the audit report to the CEC and STI within 3 months after the end of the financial year. The GET noted that the LFP does not specify clearly whether independent campaign participants are also required to submit any possible audit report (that may need to be produced pursuant to the above threshold): article 26 LFP only specifies that they have to conclude an audit agreement in the manner laid down by the Law on Audit and submit an original

copy of this agreement to the CEC not later than one month after the announcement of the results of elections or referendum. The Central Electoral Committee announces on its Internet site the consent of the auditor (or audit firm) to carry out the audit of the campaign, his/her name, surname (name of the company) and address. The Lithuanian authorities indicated after the visit that the draft amendments to the LFP provide that audit reports concerning independent campaign accounts should be submitted “within a reasonable period of time”.

55. Auditors are freely selected by the parties and other campaign participants. As seen earlier, the LFP requires that the audit must be independent but does not specify this further, with the exception that the functions of auditor and campaign treasurer cannot be carried out by the same person/entity (article 20 paragraph 4). Requirements applicable to auditors (qualification, impartiality etc.) are provided for in the Audit Law.

Monitoring

56. Article 22 paragraph 1 of the LFP names explicitly the Central Electoral Commission (CEC) and the State Tax Inspectorate (STI) as responsible for controlling the financial activities of political parties and the financing of election campaigns. It also refers to “other institutions” without listing them, but paragraphs 4 to 8 provide for the possibility of the prosecutor to order an investigation.

The State Tax Inspectorate (STI)

57. The State Tax Inspectorate is subordinated to the Ministry of Finance and funded from the general state budget. Its main purpose is tax administration. It consists of 10 county tax services and a central administration. Article 22 LFP defines the specific LFP-related competence as follows; the STI:
 - checks whether the data of annual financial statements of political parties, financing reports of political campaigns, the accounting sheets on funding of political party or political campaign comply with the data held on personal declaration income;
 - checks whether the financial activities of political parties, financing of political campaigns is administered in the manner established by the Law on Accounting and other legal acts;
 - provides its conclusions of verification to the Central Electoral Committee.
58. If the infringements of the Code of Administrative Law Violations are identified, an administrative violations’ protocol is drawn up within the competences delegated to the STI. In some cases (in particular for the violations under articles 172-1 and 173-1 of the CALV – see hereinafter, the developments on sanctions), the STI may directly impose sanctions for tax infringements. But the STI is not competent to investigate financial crimes. If features of a financial crime are identified, the material is transferred for further investigation to the law enforcement authorities.

The Central Electoral Commission (CEC)

59. The CEC is the permanent body responsible for organising and conducting elections and referendums. It operates on the basis of the Law on the Central Electoral Commission of 20 June 2002 (as last amended on 15 May 2009), guided by the principles of lawfulness, independence, collegiality, openness and impartiality (article 4). In the discharge of its duties, the CEC is independent and may not receive any instruction (article 5). The Chairman of the CEC is accountable to the Seimas (parliament) for the annual operation of the body.

60. The CEC is set up before every election to the Seimas. The Chairman of the Seimas proposes the chairman to the Commission and members are proposed by those political parties – one member each – that have obtained seats in the Seimas for multi-member constituencies. In addition, three members are proposed by the Minister of Justice and three by the Lithuanian Lawyers' Association. Under the LFP (article 22 paragraph 2), the CEC has the following duties:
- to control how political parties, applicant candidates (or nominees), candidates, initiators of referendum or opponents and other participants of political campaigns observe the requirements specified by this law;
 - to create conditions for, and ensuring that the financial statements of political parties, declarations on funding political campaigns, statements of a person preparing public information or its distributor, the initial and final records on financing political campaigns are announced on its Internet site immediately upon the receipt of data of these reports, they should be updated and the data comply with the information received;
 - to control the observation of the Law and to propose prosecutions for infringements to the Law or to address other relevant and competent institutions to check the observation of the requirements set forth by laws;
 - to set, every year, maximum amounts of expenditure for political campaign in specific constituencies and announces them before the start of a financial year;
 - to register and issue the donation sheets and to control their use;
 - to issue accounting forms for the declarations related to the funding of political parties and election campaigns.
61. The CEC is assisted by a Secretariat. 3 members of staff are dealing with the control of political financing.
62. The CEC publishes on its Internet site the various financial reports pertaining to political parties and election campaigns (see paragraph 50 of this report). A special IT tool was developed for transmitting the data to the CEC.
63. Besides, the CEC is also responsible for organising media monitoring during election campaigns. For this purpose, it involves a variety of media advertisers required to report to the CEC and it hires the services of external entities to act as monitoring groups. Each electoral committee in the constituencies is responsible for media monitoring in its area. All election laws stipulate that the constituency electoral committees shall in the manner prescribed by the CEC, during the period of election campaign collect, delineate and store the data about political advertising disseminated publicly within the constituency territory, and provide the data to the CEC.

Other authorities

64. The replies to the questionnaire indicated that if the STI, in the context of its controls, comes across a financial crime, the file is sent for investigation to the law enforcement institutions. If suspicion arises that the LFP has been violated or if such a claim is sent to the CEC, the CEC may carry out an investigation within its area of competence and notify the violation to the other competent state authorities for further investigation and evaluation.
65. If an administrative violations' protocol is drawn up under Article 22 of the Law, the CEC is obliged to transfer the claim regarding the investigation of a political party or political campaign participant activities to the geographically competent county court.

66. The prosecutor has the right to ask the court to appoint experts to investigate whether the political party, its management bodies or their members, participants of political campaign are acting in an "adequate manner"⁵. The LFP does not specify whether in this case, the prosecutor acts ex officio or upon a notification by the CEC or STI (the Lithuanian authorities indicate that in practice, the prosecutor acts on the basis of any of these hypotheses). Article 22 paragraph 6 specifies that investigations are to be carried out on the basis of the Civil Code (Book 2 contains a Chapter entitled Political Campaign and the LFP specifies that the provisions apply by analogy outside the context of election campaigns).
67. However, the replies to the questionnaire also indicate that if any financial or other violation for which the liability is specified in the Criminal Code, the law enforcement institutions are notified at any time.
68. According to the LFP, the CEC is informed of the results of examinations conducted in respect of annual financial statements of political parties and reports on funding political campaigns as well as of the violations of the LFP, and other laws more generally, by the relevant bodies (the STI, other public authorities, election campaign monitoring bodies, etc.). The CEC and the STI meet before every election.

Statistics

69. Insistence was required on site to obtain an overview of the concrete extent and results of control activities. The CEC finally acknowledged that their main focus so far has been on election rules *stricto sensu* and not the LFP. This being said, the CEC would have issued 10 protocols for late submission of financial reports in 2004 (when presidential, parliamentary and European elections took place). Information provided after the visit indicates that district courts sanctioned 7 political campaign participants and issued warnings to 3 further participants. It was the first time when no reports were submitted to the CEC. At present, it is reportedly rare that either interim or final reports are not submitted. After the 2008 Parliamentary elections, a final report was not submitted by one candidate only and this has triggered an administrative violation protocol (the case is still in court, pending the return from abroad of the candidate in question). The remaining administrative violation protocols were issued for violations of the rules applicable to the media, outdoor advertising and some other minor infringements. In 2007-2008, the total number of administrative violation protocols was around 20.
70. As far as the STI is concerned, there are reportedly many more protocols of violations issued; for instance 50 in 2007 during the local elections and about the same number in 2008 during the parliamentary elections. These dealt mostly with improper accounting of donations and expenditures. No information was available on their outcome and the GET was told that the number of proceedings to be initiated had not been decided yet (at the time of the on site visit). Prosecutorial and police bodies described a few major cases of serious fraud in relation with political financing (double accounting, bribery of voters, manipulation of donations and misuse of corporate entities and their employees to disguise donations etc.) including those involving former members of the government and the former mayor of Vilnius. The GET understood that most of these cases have not been triggered in the context of controls under the LFP.

⁵ Paragraph 5 of article 22 defines the expression as comprising two types of situations: a) a political party or political campaign participant who uses for the political campaign, donations received from donors or other sources not entitled to finance campaigns or parties; b) transactions made for campaign financing purposes by parties, their governing bodies or members, or by political campaign members in so far as they violate requirements of the LFP)

(iii) **Sanctions**

71. Chapter VI of the LFP entitled “liability” contains two articles only (article 30 and article 31) and provides for one type of sanctions applicable by the CEC. For the other possible infringements, it refers to the sanctions applicable by virtue of the Code of Administrative Law Violations (CALV) and Criminal Code, which are pronounced by the courts. Besides these sanctions, the other measures can be applied by the administrative courts on the basis of article 22 against a party and/or its governing bodies and members.

Sanctions and measures applicable by the CEC

72. The CEC can apply sanctions which impact on the financial support from the state. Article 30 of the LFP provides that in case of “gross violation of the Law”, a political party may be sanctioned by the CEC with the loss of the state grant equal to half-a-year amount. This amount is then allocated to other political parties. Only after the infringement has ceased and the situation has been corrected, may the party concerned continue to receive the state grant for the next half year. The concept of “gross violation” is defined by article 15 paragraph 3 of the LFP as follows: a) “inadequate activities” as referred to in article 22 paragraph 5 (see footnote 5 above); b) other acts that make it impossible to determine whether or not the financial statement of a political party is accurate; c) failure to submit documents; d) loss of documents; e) any other act that the CEC considers to be a gross violation. For the same reasons, the CEC may also decide that the beneficiary of a reimbursement of certain campaign expenditures does not benefit from this measure.
73. The above decisions can be appealed in court.

Sanctions applicable by the courts and the tax administration

74. According to article 22 paragraph 8 of the LFP, if it is established that activities of a political party, its governing bodies or members, political campaign participants are “inadequate” (according to article 22 paragraph 5 – see footnote 5 above), the court may: 1) temporarily suspend the powers of the members of the political party’s governing bodies or exclude a person from the party’s governing bodies; 2) oblige the political party, its governing bodies or their members to take certain measures or to refrain from certain actions; 3) revoke the registration of a political party.
75. A series of sanctions are provided under the Code of Administrative Law Violations (CALV), one of which is applicable specifically to the funding of election campaigns, namely Article 207-10 entitled “Violation of the procedure of funding of political campaigns”, sanctionable with fines from LTL 100 (EUR 29) to LTL 20,000 (EUR 5,792):

Article 207-10. Violation of the Procedure of Funding of Political Campaigns

Violation of the accounting procedure applicable to donations for political campaigns: the treasurer of a political campaign, the chairman of a political party or a political campaign participant incurs a penalty of LTL 100 (EUR 29) to LTL 3.000 (EUR 869).

Violation of the accounting procedure applicable to political campaign expenditures: a political campaign treasurer or political campaign participant incurs a penalty of LTL 2.000 (EUR 579) to LTL 10.000 (EUR 2.896).

The same act committed by a person who was already subject to an administrative penalty for the violations provided in Paragraph 1 and 2 of this Article is punishable with a penalty of LTL 3.000 (EUR 869)

to LTL 15.000 (EUR 4.344).

Receiving of donations for political campaign, assuming of property obligations with regard to expenses for political campaign without registering as an independent campaign participant: the chairman of the political party or the person concerned incurs a penalty of LTL 2.000 (EUR 579) to LTL 20.000 (EUR 5.792).

Any other violation of the procedure of funding of political campaigns: the campaign treasurer, the chairman of the political party or the campaign participant incurs a penalty of LTL 100 (EUR 29) to LTL 5.000 (EUR 1.448).

76. The other relevant sanctions provided by the CALV are of a more general nature: Article 173-1 on "Violation of Accounting Rules" provides for penalties from LTL 100 to LTL 40,000; Article 172-1 "Violation of the procedure of submitting statements and documents about the income, property, profit and tax of organisation and tax evasion" provides for a warning or a penalty from LTL 200 (EUR 58) to LTL 4,000 (EUR 1,158); Article 172-3 "Failure to fulfil the instructions given by managers of the State Tax Inspectorate or by other officers" provides for a penalty ranging from LTL 50 (EUR 14) to LTL 2,000 (EUR 579).
77. The sanctions provided under the above articles 172-1 and 173-1 of the CALV are applied by the STI itself. The other sanctions are applied by the court.
78. The provisions and sanctions of the Criminal Code (CC) which are relevant in the context of political financing are the following: 1) Article 205 on "Fraudulent Misrepresentation of the Activities of an Enterprise"; the act is punishable with deprivation of the right to work in a certain job or hold a certain position, or a fine, or restriction of liberty, or detention, or imprisonment for a term of up to 2 years; b) Article 220 "False Statements About Income, Profit or Property ": deprivation of the right to work in a certain job or perform certain activities, or a fine, or restriction of liberty, or imprisonment for a term of up to 3 years.
 - Article 222 "Fraudulent Accounting": a fine, or detention, or imprisonment for a term of up to 4 years.
 - Article 223 "Negligent Accounting": deprivation of the right to work in a certain job or hold a certain position, or a fine, or restriction of liberty, or detention, or imprisonment for a term of up to 2 years.
79. Subjects and entities related directly or indirectly to political parties or controlled by political parties in any other way (including organisations/groups taking part in elections campaigns, i.e. for specific issue in organised campaign) cannot be held liable under Article 207-10 of the CALV.
80. Legal persons (including political parties) can be held liable under Lithuanian criminal law and tax regulations, but not under general administrative law (penalties would be applied to the natural persons acting on behalf of a party).

Statistics

81. One political party was deprived from the state grant for the second half of 2006 (LTL 1,114,558 or EUR 323,060) for having submitted a fraudulent annual financial activity declaration to the CEC and the STI. The case was also examined in court and several party members were sentenced for false testimony (the Parliament has lifted the immunity of two parliamentarians) and several subsequently awarded donations (amounting to appr. 5 million Litas or 1.45 million EUR) were seized by the prosecutorial authorities as a deposit to secure a compensation for the

damage. The defendants challenged in the Constitutional Court the CEC decision not to allocate the state grant and the court has ruled that although political parties are public legal entities, they can also be held liable. The replies to the questionnaire also indicate without further explanations or details that the STI within its area of competence, has imposed fines and that courts have very often exercised their right under article 30 paragraph 1 of the CALV to apply less severe penalties than those normally provided for (this concerns 21 out of 64 offenders). The following table, with information provided after the visit, gives an overview of the penalties applied in practice by the courts on the basis of article 207-10 CALV ("Violation of the Procedure of Financing of Political Campaigns"), following violation protocols from the STI:

Type of election	Number of violation protocols issued by the STI	Sanctions imposed
2008 parliamentary elections	34	- 22 persons were issued penalties amounting to LTL 7,050; - 7 persons were issued warnings; - cases concerning 3 persons are still pending; - 2 cases were dropped.
2007 municipal elections	40	- 23 persons were issued penalties amounting to LTL 12,350; - 12 persons were issued warnings; - cases were dropped in respect of 5 persons.

Immunities

82. The general immunities from prosecution were examined in the First Evaluation Round Report ([http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2002\)1_Lithuania_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2002)1_Lithuania_EN.pdf)). Besides the judges, the following elected officials enjoy such immunities: a) members of Parliament (MP) enjoy immunity from criminal liability, arrest or any other restriction of personal freedom, except in case of *flagrante delicto*. This immunity may be lifted by Parliament (Art.62 of the Constitution and Art.22 of the Statute of the Seimas); b) the President of the Republic, may neither be arrested nor charged with criminal or administrative proceedings, while in Office (inviolability immunity). This immunity may not be lifted. The President may, however, be prematurely removed from Office for gross violations of the Constitution and dismissed following impeachment proceedings (Article 86 of the Constitution); c) the Prime Minister and ministers may not be prosecuted, arrested or have their freedoms restricted in any other way (inviolability immunity). This immunity may be lifted by Parliament, or if it is not in session, by the President of the Republic (Art.100 of the Constitution).
83. Besides these general regulations, electoral laws provide for the immunity of election candidates under the control of the CEC: a) during campaigning as well as until the first meeting of a newly elected Seimas (after the run-off elections or by election - until the announcement of the final election results), a candidate MP may not be held criminally liable or arrested, neither may his/her freedom be restricted in any other way in the course of campaigning (Law on Elections to the Seimas); b) during the election campaign and directly following the elections, candidates to the office of President of the Republic may not be held criminally responsible or arrested, and may not be subject to administrative penalties by a court for their actions during the election campaign (Law on Presidential Elections); c) during campaigning and until the first meeting of the newly elected parliament, a European Parliament candidate may not be held criminally liable or arrested, neither may administrative penalties be imposed on him/her by a court for the actions performed in the course of campaigning (Law on Elections to the European Parliament); d) without the consent of the CEC, during the election campaign as well as until the first sitting of a newly elected council, a candidate for councillor may not be held criminally liable or arrested, neither can administrative penalties be judicially imposed on him/her for acts carried out during

the election campaign (Law on Elections to Municipal Councils). In all the above situations, proceedings may be initiated only with the consent of the CEC.

Statutes of limitation

84. The law of 2004 contains no provisions on a statute of limitation. Article 30 paragraph 2 refers to the applicability of sanctions under the CALV and Criminal Code. Therefore, the statutes contained therein are applicable.
85. The CALV both contains provisions of a criminal and administrative nature. For criminal offences punishable by a penalty under the CALV, the prosecution time limit (when a decision to start a pre-trial investigation is taken) is 1 year after the offence was committed. The sanctions themselves are time bared after 6 months following the discovery of the offence. If the illegal acts constitute an administrative offence (e.g. if it was decided to terminate or not to start a pre-trial investigation), the administrative penalty may be imposed no later than 2 months after this decision. In some cases (e.g. offences committed continuously, offenders without a permanent place of residence or who have been residing abroad for a longer period of time), the above deadlines can be extended up to 1 year starting from the date of commission of the offence, or date of disclosure of the offence or the decision to refuse to start a pre-trial investigation.
86. Under the Criminal Code, a conviction may not be passed on a person who committed a criminal act after a period of a) two years from the commission of a misdemeanour; b) five years from the commission of a negligent or minor premeditated crime; c) eight years from the commission of a major premeditated crime; d) ten years from the commission of a grave crime; e) fifteen years of a very grave crime; f) twenty years from the commission of a crime connected with manslaughter. The statute of limitations shall be calculated from the day the offence was committed up to the day of the delivery of the judgement of conviction (it is suspended during the time the suspect is hiding from the investigation or trial and it is extended if the suspect has eventually committed other offences). For further information in this area, see the report on "Incriminations".

IV. ANALYSIS

87. The political scene in Lithuania is quite dynamic and characterised notably by new parties and political figures emerging at regular intervals, as well as variable and sometimes "unexpected" political alliances, according to observers of the domestic political life. Occasionally, integrity issues and the need to combat corruption in relation to political financing have been the reason for a party union or another to be dissolved after leaders disagreed about putting an end to certain practices such as making business entities getting public contracts in return for their financial support. Besides, like other countries, Lithuania has also experienced some financial political scandals⁶. Against this background, the GET welcomes the existence of the law of August 2004 *on Financing and Financial control of Political Parties and political Campaigns* (hereinafter, the LFP).
88. Overall, the legal framework set by the LFP provides for detailed regulations and definitions, a comprehensive list of the subjects of political campaigns and their responsibility, provisions aimed at ensuring a high level of transparency of funding of political parties and election campaigns, a

⁶ In April 2004, the President of Lithuania was impeached and removed from office on charges of giving favors in return for campaign funding, among other offences. The former mayor of Vilnius was involved in a case of vote-buying that eventually revealed underground political financing schemes; the case is now closed.

control mechanism as well as sanctions etc. At the same time, Lithuania has introduced a system of state support and ceilings for political campaign expenditures.

89. The GET acknowledges the ambition of the LFP in the area of transparency and control in particular and considers that the most striking shortcoming in the current system is insufficient enforcement. For instance, although it is strictly prohibited to make donations to political parties and campaign participants through third persons (Article 11 paragraph 2 LFP), the GET was told repeatedly that intermediaries are commonly used to dissimulate real donors (legal persons for instance), to circumvent the rules on ceilings on individual donations and on campaign expenditures (including via structuring, i.e. splitting amounts) and recent cases would have shown that there was no investigation because of lack of political or individual will within the control bodies.
90. In addition, a non negligible tolerance seems to exist in practice vis-à-vis the actual income and expenditures and a certain level of shadow financing is accepted: for instance, according to certain estimates, 15 to 20% of political advertising would – notoriously - remain undeclared and auditors themselves would accept a 30% deviation between the amounts declared in political financial accounts of the parties they are dealing with and the latter's more likely financial situation. According to some observers of the Lithuanian political life, it is also notorious that parties and candidates spend in reality more funds on campaigns than they formally received⁷ and this situation is sometimes analysed as an anomaly: parties would have debts whereas this is theoretically impossible (since one cannot spend more than what is on the campaign account and the account should normally be used for all incoming and outgoing sums)⁸. It would seem that debts are reimbursed with loans contracted after the campaign, and therefore they may only appear at a later stage in the financial statements. The GET was advised that the suppression of political advertising as from 2008 was likely to reduce the expenditures of parties and candidates but at the same time, other forms of questionable expenditures would have already appeared (e.g. parties would have started to “buy” the written media's support for instance by paying for press releases which are normally free).
91. Moreover, annual lists of donors should be sent to the Central Election Commission (CEC) and intermediate lists published at regular intervals (within 5 days of receipt of the donation in the case of campaigns, as well as every quarter of the year in any event). In practice, it would appear that political actors comply to a variable degree with this obligation⁹.
92. The GET also noted that provisions of the LFP are occasionally interpreted in a rather narrow way; for instance annual ceilings on donations are often understood by political parties as applying only to one-off donations (thus not preventing multiple donations from a given donor that would altogether exceed the ceiling). At the same time, there are inconsistencies in the legislation. For instance, the LFP provides that donations exceeding 10 % of the donor's total income for the last fiscal year are subject to special due diligence by the State Tax inspectorate (STI) since the later must be informed of these occurrences; but this duty is limited to donations

⁷ See the table at paragraph 29.

⁸ The GET noted that Article 9 paragraph 2 seems to confirm this since “All expenses designated for the funding of representative participants' political campaigns may be reimbursed only with the funds kept in the special bank account of the political party on behalf and in the interest of which the participants act.”

⁹ For instance, the GET was told that during the last elections one party only has complied with the requirement of intermediate reporting; the GET noted after the visit that for the first quarter of 2009, only 17 out of 38 parties have presented a list of donors; the Lithuanian authorities explain this situation by the existence of “dormant” parties that do not take part in elections (only 19 parties took place in 2008 Parliament elections and 15 – in elections to European Parliament); they also stress that if those parties do not submit financial statements, it is because they receive no donations.

from natural persons. In addition, special campaign accounts must be opened from which all campaign-related donations and expenditures are to be managed, only for the purposes of the campaign, but parties may use their regular account (which then becomes the special account); this exception for parties puts at question the real utility of these provisions, although according to the Lithuanian authorities, parties would generally use a special account

93. It would also appear that guidance and explanatory provisions are insufficient despite the information initiatives taken to date by the CEC and STI, whereas this is an important tool to ensure a greater acceptance and understanding of the rules. Some parties met on site complained that during the 2008 elections, guidance had been provided after the beginning of the campaign. They also regretted that the interpretation of certain LFP requirements was not consistent over the years and could vary from one election to another.
94. Finally, some political parties met by the GET complained about the level of detail and rigidity of the LFP to explain that this had pushed political financing into a “grey” area. On the other hand, other political parties expressed no particular difficulty in the implementation of the rules.
95. The GET was informed on site that the LFP is being revised but it was difficult to obtain an overview of the goals of the reform and the state of play of discussions. The GET believes that a revision is timely. It should ideally involve a general debate and broad consultations (with the involvement of state bodies, political parties, academia, civil society, and the media in particular) as regards ways to strengthen the implementation of the LFP, including by taking into consideration the areas for improvement mentioned hereinafter as regards the transparency of the financing of political parties and election campaigns, supervisory arrangements and the system of sanctions. This would also allow to take into consideration other principles contained in Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, such as the necessity to have special diligence measures applicable to all donations from abroad. In view of the above, it is recommended **to rapidly engage broad consultations about the need to strengthen the implementation of the law of 2004 on Financing and Financial Control of Political Parties and Political Campaigns, and to support the implementation of this legislation with guidance, awareness raising and training initiatives, as appropriate, for the benefit of political parties.**

Transparency

96. The LFP aims to ensure a high level of transparency of political financing in Lithuania. It covers equally political parties and election campaigns conducted both by parties (and their candidates) or non-affiliated candidates. Several measures have been taken to ensure transparency and the traceability of funds and expenditures, in particular the requirement to open a special campaign account devoted solely to the collection of donations and the payment of expenditures. This being said, there are various matters that require improvements, as further developed hereafter.
97. In accordance with the LFP, political parties are subject to the general requirements of the Accounting Law of 2002. Besides, the CEC has issued a specific, standardised format for the submission of financial statements by political parties and other campaign participants, including independent candidates. This would enable to detail sufficiently the various sources of income and expenditures of political parties and other campaign participants, and there have been

information efforts aimed at assisting them.¹⁰ In relation to this, political parties have established a variety of internal and external structures; but bearing in mind the requirements of article 11 of the Recommendation¹¹ the GET could not determine whether political parties are required to keep and submit consolidated accounts for control purposes that would take all of these various structures into account (bearing especially in mind that they too possibly benefit from public support). The Law on Political Parties (LPP) only establishes that a political party counts for one single entity and the Lithuanian authorities take the view that the implication of this is that annual financial statements of political parties should include the activity of their various divisions. In the GET's opinion, clarification would be desirable in the law, especially since the on-site discussions showed that parties have a broad freedom to determine to what extent their regional or local branches, and associated structures like clubs, foundations, research and charity organisations they set up would be part of their structures or at least under their control. The representatives of one party in particular alleged that they were the only ones in the October 2008 parliamentary elections who had consolidated the accounts in a way to include the various local branches and entities related to the party, whether or not they had a distinct legal personality; this statement is exaggerated and does not reflect the reality of the situation according to the Lithuanian authorities. Finally, the GET noted that the LFP is also silent about movements of funds between the parties' components.

98. Moreover, the LFP does not address the matter of so-called "third parties" which *de facto* take part in political campaigns although they are not formally "participants in political campaigns" according to the definition of Article 3 of the LFP¹². As it is well known from the experience of other countries, "third parties" can play a significant role in political campaigns and influence the results of campaigns. In an increasing number of domestic laws, provisions have been adopted to regulate this area and to determine, for instance, circumstances under which the support of third parties is to be included in the consolidated accounts of the parties or candidates who benefit from this support. In the absence of an adequate legal framework, there is a risk that the activities of third parties be misused as additional illegal political campaigning, and that the even very detailed and strict rules in place be circumvented. Little information was available during the visit about the role and scope of third party involvement in Lithuania. Nevertheless, this issue cannot be discarded since in Lithuania, like in other countries, there seems to be a tendency for some parties to mobilise for election purposes certain resource-institutions such as civil society organisations, trade unions or charities.
99. The GET strongly believes that to ensure a proper level of transparency of parties' activities, but also to guarantee a fair democratic competition between them and enable citizens to know for

¹⁰ The Lithuanian authorities indicated after the visit that the STI has appointed contact persons who can be consulted orally or in writing by the party treasurers. In addition, the STI together with the CEC provide training to the party treasurers.

¹¹ Article 11 Accounts: States should require political parties and the entities connected with political parties mentioned in Article 6 to keep proper books and accounts. The accounts of political parties should be consolidated to include, as appropriate, the accounts of the entities mentioned in Article 6.["all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party".]

¹² Article 3 of the LFP divides political campaign participants into independent participants and representative participants (paragraph 1). Can be registered as independent participants: 1) a political party, 2) a nominee, 3) a candidate who has nominated himself, 4) referendum initiators, 5) referendum opponents (paragraph 2). Can be registered as representative participants: 1) a candidate nominated by a political party, entered on the list of candidates; 2) a candidate or a list of candidates, when there is no proposal (application) of the party which nominated them to register as an independent participant in a political campaign (paragraph 4). Furthermore, there is a condition which knits together the status of independent participant and the right to take a part in a political campaign – only political parties, nominees, a candidate or a list of candidates, as well as candidates who nominated themselves, referendum initiators or opponents (their groups), who have been registered as independent political campaign participants and announced as independent participants of political campaign on the website of the Central Electoral Commission.

whom they vote, the applicable rules need to ensure a level playing field for all parties in the above matters. The GET therefore recommends **(i) to provide for criteria defining the scope of the annual consolidated accounts of political parties (as well as those concerning elections) that would clearly take into account the structures and activities related directly or indirectly to political parties or which are otherwise under their control, including movements of assets involving the various components and entities; (ii) to introduce rules that would address the activity of third parties.**

100. As indicated in the descriptive part (see paragraph 27), articles 11 paragraph 1, and article 19 paragraph 9 LFP require that “inadmissible” donations (e.g. anonymous donations, donations exceeding the ceilings etc.), as well as unused campaign funds must in principle be transferred to a charity or a legal person using these funds for charity purposes. In the absence of further criteria or restrictions, it seems that nothing prevents a party or candidate to transfer the funds to a charity linked to the party or created deliberately to “recycle” such funds. In the GET’s view, this issue needs to be addressed urgently: there is room for abusing the system since the LFP relies a lot on the self control of donors and political beneficiaries as regards “inadmissible” donations. Furthermore, the parties’ accounting scope and the issue of third parties are not adequately dealt with and controls show significant weaknesses. The GET was not informed of the existence of any cross-checks carried out in respect of charities with a view to examining the real destination of funds transferred to them, nor possible links with the donor party or campaign candidate, but as sometimes indicated during the visit, there would be many charities and other non profit organisations around the parties. Another possibility would be to require that the assets be transferred to the state budget for social welfare projects. In light of this situation, the GET recommends **to take appropriate measures to ensure that the requirement of “inadmissible” donations and unused campaign funds being transferred to charity organisations is not misused to recycle the funds via charities linked to the party or candidates concerned.**
101. Article 2 paragraph 2 of the LFP defines donations in broad terms. As it follows from the interviews with the representatives of state institutions and political parties the provisions of the law are unclear regarding the declaration of non-material values, for example – activities and voluntary work carried out without remuneration, specifically – how to value non-material benefits/services. The LFP (Article 10 paragraph 8) foresees that a procedure for assessing non-monetary donations should be laid down by the government or an institution designated to that effect, but this has not been done so far. Interviews with political parties have shown that some of them sometimes receive significant in-kind support (for instance voluntary work) but that they would not declare it in order not to exceed the thresholds. Researchers who are used to work with the financial documentation of political parties also confirmed that so far, they have never seen any in-kind donations (whatever their form) reported in a financial declaration. Whereas self-involvement is essential in a democracy and the political life, including by providing support to parties (and candidates) in the form of voluntary work, the provisions of the law must at least be clear for everyone as to the kind of support that is permitted or encouraged, what needs to be declared and - where this is relevant - how the relevant support should be accounted for. This is particularly important since the various forms of sponsoring from business entities including services and other benefits granted below market value, would in principle have to be dealt with as in kind donations. Clarification in this area is clearly needed. The GET recommends **to issue guidelines (in the form of accounting rules or instructions adopted by the appropriate authority) concerning the valuation and declaration of in-kind donations.**

102. The GET also noted that although the LFP seems strict and prohibits any other sources of funding of political parties and election campaigns other than those mentioned in Article 7, the cross reference to Article 14 which allows parties to engage in any “other activities” without further precisions potentially undermines the effectiveness of the prohibition contained in Article 7. On the occasion of a future revision of the LFP, it might be advisable to make more specific provision on the activities political parties may engage in /draw benefit from.
103. The role of campaign treasurers is another area which deserves clarification since, in principle, all donations in connection with a campaign must be recorded by the treasurer and lead to the delivery of a donation receipt. As indicated in the descriptive part (paragraph 34), article 20 paragraph 7 of the LFP leaves the possibility for campaign participants to use directly un-registered donations where a receipt has not been filed. The GET believes that some flexibility is indeed required to deal with minor amounts of donations in cash (for instance those collected spontaneously on the occasion of events), but the way this provision is drafted leaves room for possible abuses especially since the exception of Article 20 paragraph 7 is not limited to cash donations. The GET was told on site that Lithuania’s economy involves, to a non negligible extent, undeclared funds which are then used for partial payments including of salaries in the private sector. In the context of political financing (which ultimately concerns the functioning of state institutions), the GET believes that this kind of practices should not be accepted. Furthermore, although the campaign treasurer was given in legislation a central role for the overall management of the campaign accounts, s/he is not responsible for centralising/issuing the payments related to campaign expenditures. Other countries that have introduced the institution of a campaign treasurer (in the form of a “funding association” or “financial agent” etc.) have usually given this institution also a central role, and s/he is the one dealing also with expenditures. Furthermore, since the LFP has conferred some kind of control functions to campaign treasurers, it would increase consistency and the traceability of funds if this institution played a more prominent role in respect of expenditures and used as much as possible the special campaign account; this would require that political parties too (and not just independent candidates) are required to open a special campaign account instead of using their regular account for such purposes. Finally, the involvement of this special treasurer is limited to the financing of campaigns whereas in practice, it may be difficult to make a clear-cut distinction between the financing of regular party activities and that of campaigns. It would thus be appropriate to extend the role of campaign treasurers. The GET therefore recommends **to strengthen the role and control function of campaign treasurers (i) by limiting un-registered donations (and their use) to the largest possible extent and by requiring the centralisation of campaign expenditure payments under the campaign treasurer’s responsibility; (ii) by considering entrusting the treasurer with the exclusive responsibility for the collection and registration of regular donations and state grants to political parties; (iii) by making it mandatory also for political parties to open special campaign accounts.**
104. The duration of political campaign periods is an important element of any system aimed at ensuring the transparency of political financing as it may entail several important consequences; in Lithuania, it has an impact on certain definitions included in the LFP, the scope of campaign accounts and reports, control of funding, campaign advertising etc. The replies to the questionnaire contained no overview of the various election campaign periods provided for in the respective laws; the GET noted that under the Law on Elections to the Seimas (article 45), for instance, campaigns for parliamentary elections start normally with the publication of the lists of candidates, i.e. no later than 30 days prior to the election day. This is also more or less the deadline for candidates/parties to file their application documents with the Central Electoral Commission (CEC) – 34 days before the election according to article 38 – which means that the

formal election campaign period is about 30 days in practice. This being said, the LFP (article 5) provides for a different registration deadline (12 days before the election) for all elections and referenda and the Lithuanian authorities take the view that parties and candidates include in practice the income and expenditures incurred before the formal registration as campaign participants. During the on-site discussions, the 30 days campaign duration was criticised on a few occasions and it was indicated that one month was much too short for the financial reports to take into account also any possible pre-campaign financial activity. The GET noted in this respect that the LFP (article 2 paragraph 15) provides for a definition of the election period in a way that extends it in certain cases to approximately 6 months¹³, for instance for the regular parliamentary elections. Finally, the LFP applies to “nominee” campaign participants (those who have announced their candidacy but have not yet registered) only insofar as s/he is an independent candidate. The GET shares the opinion that under the present circumstances, the official election campaign periods are too short for campaign accounts to reflect sufficiently the financial results of campaign activities. Besides, there are apparent contradictions between the LFP and the electoral laws when it comes to registration deadlines. It therefore recommends **(i) to extend the financial reference period applicable to election campaigns, so that the financial activity during election campaigns is more properly accounted for in light of the law of 2004 on Financing and Financial Control of Political Parties and Political Campaigns (LFP); (ii) to remove possible inconsistencies between the LFP and other laws as to registration deadlines.**

105. Political parties are not required to publish themselves their accounts at regular intervals, including the identity of major donors. Instead, they are required to provide the CEC with this information and the Commission publishes the data comprehensively on its website, including quarterly reports of donations submitted by the parties as well as information about campaign donors and the final financial statements related to election campaigns. As indicated earlier, the information is not always provided, or not provided in time, to the CEC but in principle, the parties' annual reports are available on-line for the years 2006-2008 and before¹⁴, and are easily accessible (this also applies to the various other reports: intermediate and final financial statements related to political campaigns, quarterly reports of donors, lists of donors who must be notified within 5 days, media and monitoring group reports). The existing publication arrangements are overall in line with the principles enounced in article 13 of Recommendation Rec(2003)4.
106. The GET has misgivings about the application of article 12 paragraph 4 of the LFP, which provides for the possibility to make campaign funding agreements which confirm property and non-property (political) obligations between a donor and a beneficiary. These agreements must be drawn up in writing and be signed by the political campaign participant, the political campaign treasurer and the donor. On the one hand, these provisions of the law can be assessed positively from the point of view of openness and transparency, the prevention of illegal lobbying and of buying of future decisions by business entities. On the other hand, the current wording of article 12 paragraph 3 can be misinterpreted easily despite the existence of certain safeguards¹⁵ and it

¹³ According to the LFP (article 2 paragraph 15), “election period” means a “*period which starts upon the announcement of an election date (...)*.” Besides, Article 6 (“Announcement of the Date of Elections to the Seimas”), paragraph 2 of the Law on Elections to the Seimas establishes that regular elections to the Seimas shall be announced by the President of Republic not later than six months prior to the expiration of the powers of the Seimas members.

¹⁴ The CEC website publishes declarations as of 2006 and the website's former version, which is also accessible from the current one, contains the declarations for the period 2003-2005.

¹⁵ These agreements must be announced publicly and may not contradict public policy or good morals. A copy of such agreement must be sent to the CEC together with the election campaign financial report, for publication on the website of the CEC. Secret clauses are prohibited, agreements related to commitments representing personal, private or group interests

can be difficult in practice to draw a clear line between legitimate and illegitimate obligations between political campaign participants and donors. In particular, the agreements concerned can also contain some indirect provisions for a more personal benefit or that of a small group (as opposed to the general interest of Lithuanian society), or it can be difficult to uncover secret obligations in practice. Little information was available during the on-site discussions with representatives of state institutions and political parties about the importance and possible risks connected with these provisions of the law, and there was sometimes a confusion with other provisions (the agreement between the campaign participant and political campaign treasurer). Bearing in mind the multiple forms that bribery and trading in influence can take in the context of political financing, the Lithuanian authorities might wish to review the wording of article 12 paragraph 3 LFP with a view to defining more precisely the limits between lawful and unlawful agreements.

Supervision

107. The LFP provides for a control mechanism to supervise the financing of political activities in Lithuania, as recommended in article 14 of Recommendation Rec(2003)4. This being said, the supervision arrangements are probably the weakest element of the LFP in practice. Observers of the Lithuanian political life and various representatives of the political parties and state institutions referred to a number of occasions in recent years where the responsible control bodies failed to take measures even where violations of the rules were blatant or the subject of strong allegations in the media. This has given rise to the perception that controlling institutions are too passive. The discussions held on site have shown that Lithuania has a real capacity to uncover and bring to trial cases that involve financial manipulations of parties and elected officials (a number of these are still before the courts); but these cases – with one exception (see paragraph 81) – have been triggered/detected by the criminal police in connection with their own investigations, and not in the context of the LFP monitoring system. The CEC, with 3 staff members involved in political financing control (out of total of 12 secretariat members), relies basically on the STI to carry out financial controls and it has limited itself to the following activity: checking whether political parties and election candidates submit their financial reports, checking whether donations and expenses do not exceed the thresholds, and compiling/storing the information for comparative purposes and possible future use by other bodies that could possibly need that information. On its side, the STI is checking whether income and expenditures are correctly recorded under the appropriate heading and it is doing some random consistency checks during which the income declared by parties is compared with the information submitted by donors in their tax declaration (these are in fact the requirements of article 22(3) of the LFP). The STI resources allocated to this area allow to perform these random checks in respect of a certain percentage of all political parties every year. The end result is that the data available about the number of proceedings initiated in the context of the LFP does not reflect a real control activity in respect of serious and more hidden violations of the LFP. The GET discussed the reasons for the above situation and various explanations were given: the GET was told that in-depth controls are not carried out because the law does not spell it out explicitly, lack of determination in a sector which is very sensitive, the control function is perceived as an additional burden to the main task (organisation of election campaigns for the CEC, tax collection for the STI). It was also stressed that although the CEC and STI have in principle enough powers to obtain information from the parties and candidates, the CEC has no investigative powers as such nor intelligence gathering capacity; in addition, a real control function would be expensive because of the need for additional means.

are also prohibited, and persons elected to state or municipal institutions are prohibited from representing donors' personal or group interests and taking decisions which are exceptionally favourable to them.

108. The option chosen by Lithuania which consisted in splitting the control function between the CEC and the STI, two pre-existing state institutions, instead of creating a new specialist body seems reasonable in a country the size of Lithuania. This being said, this option has also diluted responsibilities and none of the aforementioned institutions has taken the leadership for the overall control process. Besides these two bodies, the criminal justice bodies and law enforcement agencies (the Special investigation Service and the State Security Department) are also involved in the process although their role is not always clear. Diverging views were expressed during the discussions about the level of cooperation among the various institutions involved and it was sometimes argued that conferring the lead responsibility to a single body, be it the CEC or the STI, or another one (for instance the Special Investigation Service), would be a better alternative to the current system. Creating a new specialist body, entirely devoted to the financial control of political activities might also be a useful option.
109. Article 14 of Recommendation Rec(2003)4 is also putting emphasis on the independence of supervision. As mentioned above, the most important institutions exercising control in respect of political financing are the CEC and the STI. The Law on the Central Electoral Committee provides for a composition which includes not just representatives of the political parties. It also establishes that the Chairman and members of the CEC are independent when performing their duties and must suspend their membership in any party of which they are members. However, representatives of the CEC regretted themselves that some Committee members keep too many links in practice with their political parties. Besides, the position of the Chairman of the CEC, his/her deputy and the other Committee members subjects them to the authority of the parliament and they can individually be dismissed by a vote of non-confidence initiated by the member's political party or coalition (the CEC is renewed every 4 years, when the parliament is re-elected). In the opinion of the GET, additional guarantees of independence would be needed; this would also contribute to ensure objective (perceived) impartiality. As far as the STI is concerned, this institution is a classical administration, subordinated to the Ministry of Finance which is headed by a political figure. On paper, the STI offers less statutory guarantees of independence than the CEC although the latter relies on the STI for the financial control work in practice.
110. The GET acknowledges that as regards the CEC, some safeguards have been taken in favour of the independence of the institution vis-à-vis the political parties. But in the present domestic context, these appear insufficient for the time being and above all, there is a clear and widely recognised need in Lithuania to revise the arrangements for the supervision of the financing of political parties and election campaigns. The GET therefore recommends **(i) to provide a leading body, possibly to be assisted by other appropriate services, with a mandate and adequate powers and resources to supervise effectively the implementation of the law of 2004 on Financing and Financial Control of Political Parties and Political Campaigns, including the ability to investigate possible infringements, and (ii) to ensure that this body is in a position to exercise its functions in an independent and impartial manner.**
111. As indicated in the descriptive part (see paragraph 53), parties and candidates are required to have their "activity" verified by an independent auditor if their income or donations in a year exceeds a certain threshold (approx. EUR 113,000 for political parties and EUR 38,000 for independent campaign participants). Political parties must submit the audit report to the CEC and STI within 3 months after the end of the financial year but the LFP does not specify whether independent campaign participants must do the same; the draft amendments to the LFP would partly fill this gap by requiring that independent candidates too must submit the audit report to the control bodies, and this within a reasonable period of time (see paragraph 54) but in the GET's opinion, a specific deadline would certainly be preferable. Furthermore, the GET learned that in

practice, only the – usually very short – conclusions of the audit report are in fact sent to the CEC and STI; it is anticipated that the revised LFP will specify that the entire audit report is to be submitted although until now, it would seem that the CEC and the STI have never had difficulties to obtain the audit report *in extenso* upon request. The GET was not in a position to draw a clear picture of the current Lithuanian regulatory and other requirements placed upon auditors as regards their independence and the extent of the audits performed. The GET was informed that in practice, the auditor used by a certain party is often the one who is auditing the party's main donor companies and that specific and clear auditing standards in the area of party and campaign financing would indeed be desirable. Currently, the profession seems to show a certain level of tolerance vis a vis the correctness of party and campaign accounts: in particular, auditors would accept a tolerance of 30%, which is considerable and not likely to contribute to improvements in an area where it is already alleged that accounts do not reflect the reality of the situation. In view of the above, the GET recommends **i) to ensure adequate standards are in place as regards the independence of auditors entrusted with the certification of party and campaign accounts and to raise the level of requirements vis-à-vis the audited entity or candidate; ii) to issue, in consultation with the competent body(ies) auditing standards specific to party and election campaign financing.**

112. Finally, the GET regrets that the Lithuanian Supreme Audit is not involved at all, even indirectly, in the control of public resources that ultimately support political activities, and that it has never put this matter on its audit agenda. Its representatives could not provide the GET with any information about possible links – from the point of view of the financing of political life – between state administrations, parliamentary institutions, local authorities or other public entities on the one hand, and political parties or candidates (including elected officials standing for elections) on the other hand.

Sanctions

113. The system of sanctions provided for violations in the area of political financing is quite comprehensive and covers in principle the various possible infringements, whether they are committed by a party, its leaders, campaign participants etc. (it remained unclear, however, how violations by a component or entity related to a party would be dealt with). Besides the loss of public aid (and other measures that can be imposed under the LFP), a broad range of specific and non specific offences are available in the Code of Administrative Law Violations (CALV) and the Criminal Code (CC). Sometimes they seem to overlap as regards accounting offences whereas, obviously, the application of administrative or criminal law entails different consequences for the type of sanctions applicable, the standard of proof, the statute of limitations, liability regimes (legal persons cannot be held liable under administrative law); the Lithuanian authorities consider, however, that in practice there is no difficulty in distinguishing between administrative or criminal liability. Furthermore, the sanctions contained in the CALV do not provide for professional or other disqualifications, although such measures can be imposed by the courts under criminal law provisions and the LFP provisions (for violations of the general requirements of the LFP). The GET was not in a position to determine on the basis of which criteria control bodies would opt for administrative law or criminal law¹⁶ proceedings and ultimately how priorities are set in practice when a case should be handled by administrative

¹⁶ One interlocutor referred to the possible existence of a general principle in the CALV that would state that administrative law applies where criminal law does not.

courts or by penal courts. Besides, the GET noted that article 22 paragraph 6 of the LFP¹⁷ requires in principle that all proceedings have to be carried out according to civil law (and thus civil law standards of proof and guilt apply, as opposed to criminal law standards), which can lead to further confusion. Practitioners involved in prosecutorial work expressed no complaints about the current situation; on the contrary, they stressed that an adequate legal basis can always be found to carry out proceedings for any offence. But the GET considers this situation not entirely satisfactory, particularly since the offences have sometimes been defined in very general terms in order to capture the various possible offences. For instance, Article 207-10 paragraph 5 of the CALV establishes administrative liability i.a. for “any other violation of the procedure of funding of political campaigns”. Similarly, article 15 paragraph 3 of the LFP defines the concept of “gross violations” as including i.a. “any other act that the CEC considers to be a gross violation”. The GET was told that the CEC has had to seek guidance from the Supreme Administrative Court on this matter. The GET wishes to stress that according to fundamental principles and the rule of law, the relations between state institutions and private individuals (regarding administrative rights, obligations and especially liability) have to be clear and predictable enough for everyone. Furthermore, there is a risk that this kind of provisions dissuade the designated control bodies from initiating proceedings and it lead to inconsistent practice in the application of legal norms. Last but not least, unclear sanction mechanisms and offences do not promote confidence in state institutions. The GET recommends **to review the system of sanctions applicable in case of violation of the law of 2004 on Financing and Financial Control of Political Parties and Political Campaigns, in order to spell out precisely which type of proceedings and sanctions are applicable to a given infringement, and to ensure that the various possible infringements actually attract sanctions.**

114. The Criminal Code (CC) foresees criminal liability for fraudulent accounting (Article 222), negligent accounting (Article 223), false statements about income, profit or property (Article 220) and fraudulent misrepresentation of the activities of a legal person (Article 205) which can be applied for violations linked with breaches of the rules on political financing (however, there is no specific, separate criminal law provision regarding the illegal financing of political parties and election campaigns). It is important to ensure the involvement of criminal law bodies to deal with these criminal offences and, at the moment, it would appear that the CEC has the possibility to report a case to the prosecutorial authorities according to general principles of cooperation between administrative authorities, but there is no such obligation under the LFP. The GET therefore recommends **to spell out clearly that the body/bodies responsible for monitoring the implementation of the law of 2004 on Financing and Financial Control of Political Parties and Political Campaigns are required to refer cases of suspected violations to the prosecutor.**
115. During the on-site discussions, several interlocutors took the view that the sanctions have no real impact on the behaviour of political parties and candidates, especially because they are too low. The range of penalties contained in the CALV goes from LTL 100 (EUR 29) in case of violations of the procedure for accounting of campaign donations (article 207-10, paragraph 1) up to LTL 40 000 (EUR 11 585) for false accounting aimed at evading taxation (article 173-1, Paragraph 5). Under article 207-10, which is specific to the funding of election campaigns, the maximum fine is LTL 20 000 (EUR 5 800). Although the GET agrees with the Lithuanian authorities that criminal proceedings and sanctions are likely to be a stressful experience for individual party treasurers, the amount of fines are unlikely, indeed, to have a little dissuasive effect in case of manipulation

¹⁷ “Investigation of activities of a political party or political campaign participant shall be performed in compliance with the provisions of the Chapter “Political campaign” of the Civil Code, which shall apply in so far as investigation of a political party or political campaign participant is not regulated otherwise by this Law.”

of accounts or disguising illicit donations that would involve much larger amounts. In this respect, it is to be mentioned that no sanctions are foreseen for donors specifically, although they can be co-responsible for certain infringements (e.g. disguising and structuring of donations). Furthermore, neither the CALV nor the LFP seem to provide for the possibility to apply professional disqualifications that would enable – even for a certain period of time – to exclude an elected official or party leader from holding an elected position. As regards the criminal sanctions available, the many alternatives to imprisonment (such as professional disqualifications, restriction of liberty and detention¹⁸), and the level of criminal fines¹⁹ under articles 205, 220, 222 and 223 CC raise certain doubts as to whether these penalties are effective, proportionate and dissuasive enough in respect of natural persons in particular, but this is not specific to political financing-related offences. In addition, as indicated in the descriptive part, courts have sometimes used in practice their power to apply milder penalties than those provided for given administrative or criminal offences. Finally, as regards the financing of political parties, the state aid can be withdrawn for a period of 6 months; this penalty cannot be reduced nor increased. A broader formulation (withdrawal of state support up to one year for instance) would enable the CEC to adapt the measure to a greater variety of situations and the parties' varying financial capacities. Considering that there is room for improvement as regards the level of sanctions applicable to the financing of political parties and election campaigns, the GET recommends **i) to increase the level of administrative fines for infringements in the area of transparency of party and campaign funding and to provide for the possibility to disqualify persons found guilty of such infringements from holding an elected office; ii) to introduce wider possibilities for suspending the state grant to political parties.**

Other matters

116. As indicated in the descriptive part (see paragraph 83), besides the general system of immunities applicable to elected officials, electoral laws provide specifically for the immunity of candidates running for a presidential, domestic or European parliamentary, or municipal election, under the control of the CEC. This form of protection is granted both against administrative and penal proceedings (only against criminal proceedings in the case of candidates in domestic parliamentary elections). Only the CEC may authorise their initiation. The GET understands the historical reasons for which a young democracy like Lithuania is willing to protect opposition candidates against the risk of unjustified measures being initiated by the ruling party(ies). But in the present circumstances, this immunity regime prevents any proceedings against candidates who would then be elected and protected eventually by the general immunities applicable to elected officials (unsuccessful candidates may be subject to proceedings after the elections). Practitioners from the criminal justice system had mixed feelings about the current situation and although they generally acknowledged that they had not experienced major difficulties to obtain the lifting of immunities, some of them found the immunity of candidates to be an unnecessary constraint in the current context. Immunities do not strictly fall within the scope of the current evaluation; this topic was addressed in the context of the first round and the immunity of candidates was not raised as an issue at that time. The Lithuanian authorities may wish to examine whether the immunity of candidates standing for parliamentary (at domestic and European level), presidential or local elections is still justified.

¹⁸ Detention is a form of short term imprisonment (up to three months) in facilities other than a prison – see the report on incriminations.

¹⁹ For legal entities the amount of the fine may be up to 10,000 MSL (1 MSL is about 29 EUR). For natural persons: a) up to 100 MSL under article 205 CC; b) up to 100 MSL under article 220 CC; up to 200 MSL under article 222 CC and up to 100 MSL under article 223 CC.

117. The statute of limitation under criminal law was discussed in the report on incriminations (Greco Eval III Rep (2008) 10E Theme I). Under the general administrative provisions, the statute of limitation according to the CALV is one year after the offence was committed (the sanctions themselves are time bared after 6 months following the discovery of the offence). These periods are rather short in the context of the control of political financing, given the deadlines for the submission of annual financial reports by the parties and the delays observed sometimes in practice as regards the submission of certain intermediate reports. Further, it remained unclear to the GET whether under the LFP, the control of the CEC is subject to a statute of limitation (in case of gross violations and the possible suspension of the state grant, in particular), and whether the provisions of the CALV or other pieces of legislation (civil law provisions) apply. If the bodies designated to control the financing of political activities are to exert an effective supervision, they require sufficient time to conduct their enquiries and investigations in a complex and sensitive area as the control of political financing can be. Furthermore, in order to operate in an effective manner, supervisory bodies must have the possibility to start or reopen a case also a few years after relevant information and data have come to light, including on the basis of data comparison across the years (as indicated earlier, the CEC itself described its main function as the accumulation of data for comparison purposes and its possible use by other agencies). The GET therefore recommends **to extend the statute of limitation applicable to violations of the law of 2004 on Financing and Financial Control of Political Parties and Political Campaigns, including related violations under other relevant laws.**

V. CONCLUSIONS

118. With the adoption of the Law on the Financing and Financial Control of Political Parties and Political Campaigns in August 2004, Lithuania has consolidated earlier provisions that existed in this area. The measures currently in place to ensure transparency of political financing and its supervision as well as the sanctions applicable to violations of the relevant legal rules, meet to a large extent the relevant principles contained in the Recommendation (2003)⁴ of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns. The legislation of 2004 is ambitious but further improvements need to be achieved. For instance the scope of the parties' consolidated accounts should systematically take into consideration their various components and structures, and certain links with charity organisations and third parties in general should be reviewed or clarified. Precisions are required on the valuation of in-kind donations, and there is room for strengthening the role of campaign treasurers. Currently, the supervisory arrangements are clearly the weakest element of the control system. The responsibility in this area is split between the Central Electoral Commission and the State Tax Inspectorate and the control activity of both these institutions is more of a formalistic nature; it is doubtful that they can contribute in a meaningful manner to uncovering major financial and accounting manipulations or illegal sources of funds. This is all the more worrying since parties and candidates notoriously handle more money than what is officially declared. Broad consultations are therefore needed to address the lack of effectiveness of the law of 2004.

119. In view of the above, GRECO addresses the following recommendations to Lithuania:
- i. **to rapidly engage broad consultations about the need to strengthen the implementation of the law of 2004 on Financing and Financial Control of Political Parties and Political Campaigns, and to support the implementation of this legislation with guidance, awareness raising and training initiatives, as appropriate, for the benefit of political parties** (paragraph 95);

- ii. (i) to provide for criteria defining the scope of the annual consolidated accounts of political parties (as well as those concerning elections) that would clearly take into account the structures and activities related directly or indirectly to political parties or which are otherwise under their control, including movements of assets involving the various components and entities; (ii) to introduce rules that would address the activity of third parties (paragraph 99);
- iii. to take appropriate measures to ensure that the requirement of “inadmissible” donations and unused campaign funds being transferred to charity organisations is not misused to recycle the funds via charities linked to the party or candidates concerned (paragraph 100);
- iv. to issue guidelines (in the form of accounting rules or instructions adopted by the appropriate authority) concerning the valuation and declaration of in-kind donations (paragraph 101);
- v. to strengthen the role and control function of campaign treasurers (i) by limiting un-registered donations (and their use) to the largest possible extent and by requiring the centralisation of campaign expenditure payments under the campaign treasurer’s responsibility; (ii) by considering entrusting the treasurer with the exclusive responsibility for the collection and registration of regular donations and state grants to political parties; (iii) by making it mandatory also for political parties to open special campaign accounts (paragraph 103);
- vi. (i) to extend the financial reference period applicable to election campaigns, so that the financial activity during election campaigns is more properly accounted for in light of the law of 2004 *on Financing and Financial Control of Political Parties and Political Campaigns (LFP)*; (ii) to remove possible inconsistencies between the LFP and other laws as to registration deadlines (paragraph 104);
- vii. (i) to provide a leading body, possibly to be assisted by other appropriate services, with a mandate and adequate powers and resources to supervise effectively the implementation of the law of 2004 *on Financing and Financial Control of Political Parties and Political Campaigns*, including the ability to investigate possible infringements, and (ii) to ensure that this body is in a position to exercise its functions in an independent and impartial manner (paragraph 110);
- viii. i) to ensure adequate standards are in place as regards the independence of auditors entrusted with the certification of party and campaign accounts and to raise the level of requirements vis-à-vis the audited entity or candidate; ii) to issue, in consultation with the competent body(ies) auditing standards specific to party and election campaign financing (paragraph 111);
- ix. to review the system of sanctions applicable in case of violation of the law of 2004 *on Financing and Financial Control of Political Parties and Political Campaigns*, in order to spell out precisely which type of proceedings and sanctions are applicable to a given infringement, and to ensure that the various possible infringements actually attract sanctions (paragraph 113);

- x. **to spell out clearly that the body/bodies responsible for monitoring the implementation of the law of 2004 on *Financing and Financial Control of Political Parties and Political Campaigns* are required to refer cases of suspected violations to the prosecutor (paragraph 114);**
 - xi. **i) to increase the level of administrative fines for infringements in the area of transparency of party and campaign funding and to provide for the possibility to disqualify persons found guilty of such infringements from holding an elected office; ii) to introduce wider possibilities for suspending the state grant to political parties (paragraph 115);**
 - xii. **to extend the statute of limitation applicable to violations of the law of 2004 on *Financing and Financial Control of Political Parties and Political Campaigns*, including related violations under other relevant laws (paragraph 117).**
120. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Lithuanian authorities to present a report on the implementation of the above-mentioned recommendations by 31 January 2011.
121. Finally, GRECO invites the authorities of Lithuania 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.