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Third Evaluation Round

Evaluation Report on the United Kingdom on Transparency of Party Funding

(Theme II)

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I. INTRODUCTION

1. The United Kingdom joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 8E) in respect of the United Kingdom at its 6th Plenary Meeting (10-14 September 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 2E) at its 20th Plenary Meeting (27-30 September 2004). The afore-mentioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (http://www.coe.int/greco).

2. GRECO's current 3rd Evaluation Round (launched on 1 January 2007) deals with the following themes:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption, Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to the United Kingdom from 3 to 5 October 2007, was composed of Mr David WADDELL, Secretary, Standards in Public Office Commission (Ireland), M. Jean-Christophe GEISER, Collaborateur scientifique, Office fédéral de la justice (Switzerland) and the scientific expert, Mr Marcin WALECKI, Senior Adviser for Political Finance, Max Weber Fellow, European University Institute (Poland). The GET was supported by Mr Wolfgang RAU, Executive Secretary of GRECO and Mr Björn JANSON, Deputy to the Executive Secretary. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2007) 6E, Theme II) as well as copies of relevant legislation.

4. The GET met with officials from the following governmental organisations: Ministry of Justice (Electoral Policy Division, Political Parties & Referendums Branch), Electoral Commission, Committee on Standards in Public Life (CSPL). The GET met with members of political parties represented in Parliament (the Labour Party and the Liberal Democrats). Moreover the GET met with representatives of civil society (Transparency International) and academics.

5. Theme I of the Third Evaluation Round (Incriminations) is dealt with in a separate document (Greco Eval III Rep (2007) 3E Theme I)

6. The present report on Theme II of GRECO's Third Evaluation Round -Transparency of party funding - was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the United Kingdom authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation and a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to the United Kingdom in order to improve its level of compliance with the provisions under consideration.

II. TRANSPARENCY OF PARTY FUNDING

GENERAL PART

Definitions

7. The *Political Parties Elections and Referendums Act 2000* (PPERA) does not provide a legal or other definition of political parties and there is nothing in legislation which binds political parties to be established with a particular status. However it places legal obligations on parties and recognises them in law.

Registration

8. The PPERA establishes the regulatory framework governing the registration and finances of political parties. The requirement to register ensures that the finances of all political parties are properly regulated. Groups or individuals who do not register with the Electoral Commission as a party can only describe themselves as 'independent' or have a blank entry against the candidate's name on the ballot paper.

9. Political parties that wish to put forward the name of a candidate for an election are required to register their party with the Electoral Commission. In order to register a political party, the following information must be submitted to the Commission:

    - an application form giving details of the party name, at least two party officers, where in the Country the party is to be registered, and whether the party will have any accounting units;
    - a copy of the party's constitution;
    - a financial scheme showing how the party will comply with financial controls;
    - a non refundable fee of £150 (201 Euros).

10. At the date of the visit of the GET there were 363 registered political parties in the United Kingdom. 123 political parties participated in the General Elections in 2005, 33 parties in the Scottish Parliamentary elections in 2007, 20 parties in the Welsh Assembly elections in 2007 and 17 parties in the Northern Ireland Assembly elections in 2007. In addition to the parties listed, in all of the elections, a number of people stood as independent candidates.

Party representation in elected assemblies

11. The House of Commons at Westminster, which has 646 seats, has representatives from 11 parties and one independent candidate, the three largest being the Labour Party, the Conservative & Unionist Party and the Liberal Democrats.

12. The Scottish Parliament has 129 members, 127 of which are drawn from five parties as well as two independent members.

13. The Welsh Assembly consists of 60 members, 59 of which belong to four parties and one independent member.

14. The Northern Ireland Assembly has 108 members, the large majority of which belong to one of the seven political parties represented plus two independent members.

Rules concerning participation in elections

United Kingdom parliamentary elections

15. In order to become a candidate at a general election the person must be eligible to stand (at least 18 years old, be a British citizen and/or a citizen of another Commonwealth country or a citizen of the Republic of Ireland and not disqualified for a particular reason). Moreover each candidate must submit a set of nomination papers, signed by 10 electors from the constituency, known as subscribers. One of these electors acts as a proposer and another as a seconder. In addition to this, a £500 (671 Euros) deposit for each candidate is required for a general election.

16. Persons who are subject to bankruptcy restrictions in England or Wales, who have been adjudged bankrupt in Northern Ireland, or who have their estate sequestered in Scotland are disqualified from standing to become a member of Parliament. Furthermore, a convicted prisoner who is serving a prison sentence of more than twelve months is disqualified under the Representation of the People Act 1983. Also, the Forfeiture Act 1870 disqualifies a person convicted of treason until the expiry of the sentence or the receipt of a pardon; certain officials (who hold offices under the Crown), such as civil servants, members of the police forces and of the armed forces, government-nominated directors of commercial companies, judges and members of the legislature of any country or territory outside the Commonwealth are disqualified from standing for election. A person standing for a registered political party must also submit a certificate authorising their candidature, issued by or on behalf of the Nominating Officer of the Party.

17. People found guilty of certain electoral offences (corrupt or illegal practices), peers who sit in the House of Lords by virtue of Section 2 of the House of Lords Act 1999, i.e. those who can vote in the House of Lords and bishops (known as the Lords Spiritual) who are entitled to sit and vote in the House of Lords are also disqualified from standing. A detailed list of people who are not allowed to become a Member of Parliament is set out in the House of Commons Disqualification Act 1975.

18. In accordance with section 67 of the Representation of the People Act 1983, every candidate for election must have an election agent (although candidates can act as their own agent). The election agent is the person responsible in law for the proper management of the election campaign. In particular, the election agent is responsible for the financial management of the campaign and for ensuring that the declarations and returns of election expenses are properly completed and delivered to the appropriate officer. In order to enter the United Kingdom Parliament, a candidate needs to win the most votes in a particular constituency. This is true for all United Kingdom elections, and not just those to the United Kingdom Parliament.

Scottish parliamentary elections

19. To stand for election, each constituency candidate and individual regional candidate must be nominated by a separate nomination paper, which must be signed by a witness. Eligibility to stand as a candidate for election to the Scottish Parliament is based mainly on citizenship. Those eligible to stand for election to the House of Commons (including Commonwealth Citizens and Citizens of the Irish Republic) are eligible to stand for election to the Scottish Parliament, as are citizens of European Union member states. A registered party's list of candidates to be regional members for a particular region must be submitted by the party's nominating officer to the

Regional Returning Officer. A person standing as a constituency candidate for a registered political party must also submit a certification authorising their candidature, issued by or on behalf of the Nominating Officer of the Party.

20. The Scotland Act 1998 provides that the system used for elections to the Scottish Parliament is a form of proportional representation known as the Additional Member System (AMS). Using this system, each voter has two votes. The first is cast for a constituency Member of the Scottish Parliament (MSP), via the same First Past the Post system. The second vote is used to elect the additional (regional) MSPs. In order to be elected as a constituency MSP, a candidate must receive the most votes in a particular constituency.

21. Electors' regional votes are used to elect 56 regional MSPs – seven MSPs from each of the eight electoral regions via AMS. Each elector votes for a political party, or individual candidate, with party candidates elected in order from the top of the party list. The political parties decide the order in which their candidates are ordered on their own party's list. Regional seats are allocated proportionally according to the number of votes cast for each party and individual candidate across the region, and the number of constituency seats (both constituency and regional) already won by each party in the region.

Welsh Assembly Elections

22. To stand for election, each constituency candidate and individual regional candidate must be nominated by a separate nomination paper which must be signed by a subscriber. A registered party's list of candidates to be regional members for a particular region must be submitted by the party's Nominating Officer to the Regional Returning Officer. A person standing as a constituency candidate for a registered political party must also submit a certificate authorising his/her candidature, issued by or on behalf of the Nominating Officer of the party. Independent candidates may be described on the ballot paper as 'Independent' and/or 'Annibynnol'; or will have no description at all.

23. As with elections to the United Kingdom and Scottish Parliaments, a candidate for election to the Welsh Assembly must deposit the sum of £500 (671 Euros) with the appropriate Returning Officer at the place and during the time for delivery of nomination papers. A registered party's Nominating Officer is required to deposit the sum of £500 (671 Euros) in relation to a regional list of that party for a particular region with the Regional Returning Officer at the place and during the time for delivery of regional lists.

24. Elections are held every four years and voters have two votes. Of the 60 Members, 40 represent constituencies and are elected by the 'first past the post' system, the system by which MPs are elected to the House of Commons. Another 20 Members represent regions that are coterminous with the European Parliament constituencies. The regional Members are elected by a form of proportional representation known as the Additional Member System (as in Scotland). This system goes some way towards ensuring that the overall number of seats held by each political party reflects the share of the vote that the party receives. To be elected as a constituency Member, a candidate must receive the most votes in a particular constituency and in order to be elected to the Assembly as one of the Regional members, a candidate would have to be high enough on the list and the party to receive enough votes.

Northern Ireland Assembly Elections

25. To qualify as a candidate for a Northern Ireland Assembly election a person must be at least 21 years old and must be a British citizen, a citizen of the Irish Republic, the Commonwealth or another member state of the European Union.

26. To stand for election, each candidate must be nominated by a separate nomination paper which must be signed by a total of 10 electors from the constituency in which the candidate is standing. The names of the people signing the nomination paper must appear on the register of electors on the last day for the publication of the notice of election. Deputy Returning Officers will provide prospective candidates with the relevant register for this purpose. Prospective candidates must also pay a deposit of £150 (201 Euros) at the time of registering as a candidate.

27. There are a range of disqualifications which can prevent a person becoming a candidate at Northern Ireland Assembly elections. Many of these are set out in the Northern Ireland Assembly Disqualification Act 1975 (as amended). That Act includes disqualifications for the holders of certain judicial offices, employees of the Civil Service for Northern Ireland, employees of the Northern Ireland Court Service, members of the armed forces of the Crown or the police forces, convicted and sentenced prisoners, people found guilty of certain electoral offences (corrupt or illegal practices). In accordance with section 36 of the Northern Ireland Act 1998, the categories of persons who are disqualified from standing for election to the House of Commons will usually also be disqualified from election to the Northern Ireland Assembly.

28. Members of the Northern Ireland Assembly are elected under the Single Transferable Vote System (STV). Under this system the province is divided into eighteen constituencies (the same as for electing Westminster MPs). Each of these constituencies elects six Assembly Members, to make 108 in total.

29. Each party will put forward a list of candidates. There are no limits on how many candidates the parties can put forward. Independent candidates stand in whichever constituency they wish to contest.

30. Voters cast their votes by indicating the preferred candidates in order of priority. There is no minimum or maximum number of preferences that can be cast. In order to decide who gets elected to the Assembly from the lists of candidates, the number of ballot papers are counted. The total is then divided by the number of places to be filled, plus one. This gives a 'quota' which is the minimum number of votes a candidate needs to get elected. If any candidate has enough votes to reach the quota, they are declared elected.

Overview of the party funding system

Public Funding

Direct Public funding

31. The amounts of public funding available to political parties in the United Kingdom are small and are provided for very specific purposes.

32. Direct public funding for policy development is provided for in section 12 of PPERA. £2 million (2.685 million Euros) is distributed between political parties with two or more MPs. In addition,

legislative bodies have made arrangements to provide public funding to support elected representatives in their representative duties.

33. "*Short Money*" (introduced in 1975 by Edward Short) is provided to opposition parties in the House of Commons to help them discharge their parliamentary duties. Recipients must be represented in the House of Commons by two or more sitting MPs (that is, MPs who have taken the Oath of Allegiance to HM The Queen) or one sitting MP and more than 150,000 votes at the previous general election. "*Short Money"* has three components: 1) funding to assist an opposition party in carrying out its Parliamentary business; 2) funding for the opposition parties' travel and associated expenses and 3) funding for the running costs of the Leader of the Opposition's office. The funding is not available to the party of Government, as it is designed to assist opposition parties, which cannot draw on the advice of the civil service or special advisers, in their roles scrutinising the work of government in Parliament. In the financial year 2005-2006, the Conservative & Unionist Party received over £4 million (5.370 million Euros) in Short Money. The Liberal Democrats received around £1.5 million (2,013,750 Euros) (the Liberal Democrats do not receive any money in relation to the running of the office of their leader). Other eligible parties with representation at Westminster receive lesser amounts, dependent on votes cast and seats won. The House of Commons authorities administer Short Money.

34. Equivalent funding schemes exist for parties represented in the Scottish Parliament and the Northern Ireland Assembly.

35. The "*Cranborne Money"* is a similar scheme to "*Short Money"* for the House of Lords (introduced in 1996). It is to help opposition parties and Crossbenchers[1] to conduct parliamentary business. In 2005-06 the Conservative Group received around £435,000 (583,987 Euros) in Cranborne Money, the Liberal Democrats Group £210,000 (281,925 Euros), and the Convenors of the Crossbench Peers £38,000 (51,015 Euros). Cranborne Money is administered by the House of Lords authorities.

36. "*Policy Development Grants"* are specifically provided to enable parties to prepare policies for inclusion in their manifestos. They have been provided since 2002. A £2 million fund (2.685 million Euros) is distributed annually among political parties with two or more sitting MPs. It is divided according to a complex formula which seeks to benefit all eligible parties. The Conservatives, Labour and Liberal Democrats receive the same amount of money, approximately £458,000 (614,865 Euros). In Northern Ireland the eligible parties there, the DUP and the SDLP, receive the same amount of money, approximately £155,000 (208,087 Euros). The Scottish National Party receives approximately £162,000 (217,485 Euros) and Plaid Cymru approximately £151,000 (202,717 Euros). The Electoral Commission administers the Policy Development Grant.

Indirect public funding

37. When parties and candidates put themselves forward for election they become eligible for support in kind. Political parties do not have to pay for the air time they obtain for party political broadcasts. As a general rule, party political broadcasts are available to all parties that put candidates forward in at least one-sixth of the contested seats across the United Kingdom or one of its constituent countries. The terrestrial commercial broadcasters are under a statutory obligation to carry party political broadcasts, while the BBC has a formal obligation to carry them

[1] Crossbench peers are members of the House of Lords who are not affiliated to one of the political party groups in the House of Lords and are not Lords Spiritual.

under its Charter Agreement. It has been estimated that if the parties had to buy equivalent advertising time at commercial rates, their value would be in the region of £68 million (91.290 million Euros) for an election year, and £16 million (21.480 million Euros) in a non-election year[2]

38. Moreover, candidates are entitled to free postage for one election mailing to each elector in the constituency. This applies to elections to devolved bodies and the European Parliament as well as general elections. It is not available for local government elections in Great Britain although it is provided for local elections in Northern Ireland. For general elections the total cost of freepost is over £20 million (26.850 million Euros).

39. Candidates are also entitled to the free use of public meeting rooms, e.g. schools, town halls, for all elections in Great Britain. There is no such provision in Northern Ireland.

Private Funding

Generals

40. The general party funding regulatory regime is set out in the Political Parties, Elections and Referendums Act (PPERA) 2000. Political parties finance themselves from various sources, including party subscriptions and donations. Cash (and all direct donations of money via other means) are subject to eligibility and reporting requirements in PPERA. The PPERA defines a donation. As well as straightforward cash gifts or bequests, the provision of non-cash support to a party – such as providing free office space or supplies – must also be treated as a regulated donation. The legislation also classifies sponsorship of party events as a donation.

41. There are currently no limits in United Kingdom legislation to the amount that a registered political party can receive from a donor. Donations that exceed a certain threshold, however, are subject to transparency requirements through the submission of donation reports to the Electoral Commission. Any donation to a political party of over £200 (268 Euros) must come from a "permissible donor". A "permissible donor" is anyone on the electoral register, companies or organisations incorporated in the United Kingdom or in an EU member-state and carrying on business in the United Kingdom, trade unions and unincorporated associations.

42. Parties are required to submit reports of donations to the Electoral Commission on a quarterly basis. The registered treasurer is responsible for ensuring these reports are submitted accurately and on time. These reports must include details of the following donations:

- donations or aggregates of donations of more than £5,000 (6,712 Euros) accepted by the party headquarters from permissible donors in a calendar year
- donations or aggregates of donations of more than £1,000 (1,342 Euros) accepted by a party's accounting units (AUs) from permissible donors in a calendar year
- donations or aggregates of donations of more than £1,000 (1,342 Euros) from a donor from whom donations or aggregates of donations of more than £5,000 (6,712 Euros) have already been accepted in the same calendar year
- donations of more than £200 (268 Euros) received from an impermissible or unidentified donor.

[2] Tyrie, A, cited in Electoral Commission (2003) Background Paper: The Funding of Political Parties.

43. There are no limits with regard to the size or frequency of the contributions a private contributor can make. Contributions to political parties are not tax deductible, although donations to political parties are exempt from inheritance tax and capital gains tax. However, in practice, these current exemptions are rarely used.

Party membership subscriptions

44. There are no restrictions on the size of the membership fee that a registered political party may require of its members. However, individual membership fees would be reportable to the Electoral Commission if they were to exceed the reporting thresholds for donations as set out above.

Contributions from trade unions

45. Different issues arise in relation to the funding of political parties by trade unions compared to other organisations because their political activities are regulated by employment law as well as by electoral law. *The Trade Union and Labour Relations (Consolidation) Act 1992* includes restrictions on the political activities trade unions can carry out, such as donating to a political party. An independent person, the Certification Officer, has responsibilities arising from this law, for example to hear complaints.

Contributions to/from elected representatives

46. Schedule 7 to the PPERA regulates donations made to *regulated donees* in connection with their political activities (i.e. members of any registered party, associations of such members and certain elective office holders.) Under schedule 7 any donation (or aggregate of donations from the same source within the same year) of more than £5,000 (6,712 Euros) to a members association or more than £1,000 (1,342 Euros) to an individual must be reported to the Electoral Commission within 30 days of acceptance. The same rules about permissible donors and forfeiture apply to these donations as they do to donations to parties themselves.

47. In respect of donations *from* elected representatives – general reporting requirements apply to the recipient of the donation where the donation exceeds the reporting threshold.

Income from property

48. Income that a political party gains from its private assets (e.g. property or the sale of other assets eg. office equipment) would not fall to be disclosed under the donations regime as long as the income arises from private commercial transactions conducted at commercial rates.

Loans

49. The loans regime came into force on 11 September 2006. Under the PPERA, registered political parties are subject to controls on the acceptance and reporting of donations. Additionally, the Electoral Administration Act 2006 (EAA) amended the PPERA to place controls on parties' participation in and reporting of regulated transactions. Regulated transactions include loans and other credit facilities. Currently, the controls only apply to parties registered on the Great Britain register of parties.

50. Similar controls as those described above with regard to donations relate to regulated transactions, eg. loans, credit facilities and the provision of security or guarantees on behalf of a

party. Parties cannot take part in a loan with a value of over £200 (268 Euros) unless all participants in the loan are authorised participants ('permissible lenders'). Parties must submit reports of loans to the Electoral Commission on a quarterly basis. These reports must include details of the following transactions:

- new loans entered into by the party in that quarter from permissible lenders
- loans whose terms have changed in that quarter, including loans that have ended, from permissible lenders
- loans entered into by the party in that quarter where one or more of the other participants is an impermissible lender.

Income from party business or fundraising activities

51. Any business transactions conducted by a political party at commercial rates would be treated under the same regulations that apply to any person conducting business. Transactions not conducted at commercial rates and resulting in income to the party would fall to be reported under the donations transparency regime as set out above.

52. Moreover, in respect of different fundraising activities that a political party could organise (e.g. dinner parties for which an admission fee is charged, "bring-and-buy / jumble" sales; auctioning of artifacts; cake-selling etc) the test as to whether the income raised would be reportable is whether or not a fundraising transaction is conducted on commercial terms. If it is, it would not fall under reporting obligations. For example, in the case of a fundraising dinner party where an admission charge applies, the Electoral Commission would take the view that, subject to the *de minimis* limit of £200 (268 Euros), any charge in excess of the actual cost of the plate itself represents a donation to the party. Therefore, if an organisation or individual purchases a table at a dinner, the value of the donation would be the cost of booking the table, less the actual value of the meal itself.

Income from private business

53. If a public listed company wants to give money to a political party the company has to ask its shareholders for their approval. Other companies are free to donate according to their own internal rules, as long as the companies are active and registered in the United Kingdom and incorporated in either the United Kingdom or another EU member-state.

Anonymous contributions

54. Anonymous contributions are only possible where the permissibility threshold is not exceeded. Contributions that exceed the permissibility requirements (£200 (268 Euros)) are not permitted to be anonymous. The details of impermissible donations are reportable to the Electoral Commission. Moreover, contributions exceeding £200 (268 Euros) from unidentified donors have to be handed over to the State treasury.

Foreign contributions

55. Any donation to a political party of over £200 (268 Euros) must come from a "permissible donor". These provisions require there to be a demonstrable link with the United Kingdom, for example through an individual being on the electoral register or a company being registered in the United Kingdom or EU and carrying out business in the United Kingdom. Accordingly, foreign

contributions over £200 (268 Euros) are not permitted except where they support international travel, accommodation or subsistence by party officers/staff. In such cases, the name and international address of the donor is published.

Regulations with regard to expenditure of political parties, affiliated organisations, election campaigns and candidates

Political parties

56. The PPERA introduced limits in 2001 placing a cap on campaign spending by registered political parties. Campaign expenditure in the United Kingdom is defined by reference to a list of specified expense in schedule 8 of PPERA, provided that expenses on those items are incurred "for election purposes". The limits were introduced with the aim of stopping the ever increasing rise of campaign spending by the major political parties. These limits are applied at general elections in the United Kingdom and to the European Parliament and devolved legislatures. The PPERA also sets out the rules governing expenditure at other elections. Campaign expenditure in the United Kingdom is defined as any expenses incurred by a political party used to promote them. These limits only apply when the party is contesting a 'relevant election' to either the United Kingdom or European Parliament and to any of the devolved legislatures. Outside of these periods there are no restrictions on what political parties may spend on campaigning.

"Third parties"

57. The PPERA defines any person or organisation which campaigns on behalf of one or more registered political parties or a particular category of candidates (for example those who hold or advocate a particular policy or opinion) as a *'Third Party'*. The PPERA restricts the amount that a third party can spend on campaigning for registered parties or candidates during the same time periods for which there are controls on campaign spending by political parties. Being registered as a third party with the Electoral Commission increases a third party's spending limits. Spending in support of, or to disparage, an individual candidate is subject to controls set out in the Representation of the People Act 1983 and is limited to £500 (671 Euros).

58. At any relevant election any third party which spends more than £10,000 (13,425 Euros) in England and £5,000 (6,712 Euros) in each of Scotland, Wales and Northern Ireland is required to register with the Commission. A registered third party is subject to the same rules for receiving donations, declaring donations and providing accounts as political parties and is prevented from spending over the prescribed amount. A third party must fall within the definition of a "permissible donor", which limits the involvement of foreign third parties in the United Kingdom.

Election campaigns

59. Under current legislation there is a formula for calculating the maximum limit a party can incur on campaign expenditure during a regulated period. For a *United Kingdom parliamentary election*, the regulated period is 365 days, ending with the date of the poll, although special rules apply when regulated periods for different elections overlap. A party's limit is dependent on how many seats it contests in relevant parts of the country. To calculate the limit, the constituency expenditure limit (see table 1 below) should be multiplied by the number of seats the party is contesting in that area of the United Kingdom. For a party that is contesting a general election there is an expenditure limit of £30,000 (40,275 Euros) per seat and a minimum limit £810,000 (1,087,425 Euros) for England, £120,000 (161,100 Euros) in Scotland and £60,000 (80,550

Euros) in Wales. Parties should use whichever is the maximum as the overall allowed limit. A party that contests all 646 seats in a general election would have an expenditure limit of £19.38 million (26.018 million Euros). In respect of a *European Election* the regulated period is 4 months and the limit is £45,000 (60,412 Euros) for each MEP to be returned for each region contested.

60. After the poll at a relevant election, participating parties must make a return to the Electoral Commission detailing their campaign expenditure. The return must give totals of how much was spent overall, a breakdown of expenditure in England, Scotland, Wales, Northern Ireland and a breakdown of each of the nine categories of expenditure. For all expenses of over £200 (268 Euros) an invoice or receipt for the goods/services must be submitted. Summaries of the expenditure reported will be published on the Commission's website. Registered parties who have spent £250,000 (335,625 Euros) or less on campaign expenditure have three months from the date of the poll to submit their return. Parties who have incurred expenses of more than £250,000 (335,625 Euros) have six months to submit an audited return in respect of all relevant elections. Following the receipt of the returns, the Commission will carry out compliance checks on all returns that have declared expenditure. The Commission will then use their findings and data to compile a report on campaign spending with an in-depth analysis of spending and common errors. Copies of these reports are available on the Electoral Commission's website.

61. Concerning elections to the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly, the regulated period for the election is four months to the date of the poll. As with general elections, there is a formula. A party's limit is dependent on how many seats it contests in relevant parts of the United Kingdom (see table 1 below). To calculate the limit, the constituency expenditure limit (and per region limit if applicable) should be multiplied by the number of seats (and/or regions) the party is contesting in that area of the United Kingdom. In elections to the *Scottish Parliament*, the limit is £12,000 (16 136 Euros) per constituency contested and £80,000 (107,576 Euros) per region. For elections to the *Welsh Assembly,* the limit is £10,000 (13,425 Euros) per constituency contested, and £40,000 (53,788 Euros) for each region contested, with a minimum limit for expenditure of £60,000 (80,550 Euros). In respect of elections to the *Northern Ireland Assembly*, the limit is £17,000 (22,860 Euros) per constituency contested.

62. As is the case with the General and European Elections, parties that contested seats must make a return to the Commission detailing their campaign expenditure.

Candidates for election

63. Candidates contesting a parliamentary general election are subject to separate limits on their personal expenditure incurred on items used in advance of an election. Section 90A of the Representation of the People Act 1983 makes clear that this limit applies to any expenses incurred in respect of property or services used for the purposes of the election after they have become a candidate. Limits for candidates at a general election can be calculated using the following formula: Candidates standing in a county constituency: £7,150 + 7p (9 615 Euros and 94 cents) per entry on the register of electors for the electoral area and candidates standing in a borough constituency: £7,150 + 5p (9 615 Euros and 67 cents) per entry on the register of electors for the electoral area.

64. The same limits apply to expenditure incurred in relation to elections concerning all candidates contesting elections in the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly and local elections.

Table 1 - Party Expenditure limits at a relevant election		
Legislature	**Expenditure limit per constituency contested**	**Expenditure limit per region contested**
United Kingdom Parliament	£30,000 (40 275 Euros)	N/A
European Parliament	N/A	£45,000 (60,412 Euros) for each MEP to be returned for each region contested
Scottish Parliament	£12,000 (16 136 Euros)	£80,000 (107 576 Euros)
National Assembly for Wales	£10,000 (13,425 Euros)	£40,000 (53,788 Euros)
Northern Ireland Assembly	£17,000 (22 860 Euros)	N/A

III. TRANSPARENCY OF PARTY FUNDING - SPECIFIC PART

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

Books and accounts

65. In the United Kingdom, registered political parties and their accounting units (AUs or sub units of a party) are required to keep accurate records of their income and expenditure. Parties are left to determine their own legal structure and register their AUs with the Electoral Commission. Some parties register all individual branches with the Commission whereas others register only larger units made up of several branches. Parties are required to register with the Commission a party leader, a nominating officer and a treasurer.

66. For parties and their AUs, the registered treasurer is required to keep the records. Records must be sufficient to allow the party to comply with its responsibilities regarding campaign expenditure returns, donation returns and annual statements of accounts (SOAs). This is regulated in PPERA, Sections 41 and 42.

67. The treasurer of a registered party must ensure that accounting records are kept with respect to the party which are sufficient to show and explain the party's transactions. The accounting records must be such as to disclose at any time, with reasonable accuracy, the financial position of the party at that time and enable the treasurer to ensure that any statement of accounts prepared under section 42 of PPERA complies with the requirements of regulations under subsection (2)(a) of that section. Moreover, the accounting records must in particular contain entries showing from day to day all sums of money received and expended by the party and the matters in respect of which the receipt and expenditure take place and a record of the assets and liabilities of the party.

68. Moreover, accounting records have to be preserved for at least six years from the end of the financial year. Where a party ceases to be registered within the period of six years, the obligation to ensure that those records are preserved in accordance with that subsection shall continue to be discharged by the last treasurer of the party unless the Electoral Commission consents to the records being destroyed or directs that the records may be otherwise disposed of. The PPERA requires similar record keeping by treasurers of AUs. There is no access to information by the public to financial information of political parties or others involved in the political process under any other legislation (e.g. freedom of information does not extend to political parties).

Donors

69. Sections 54(5) and (6) of PPERA require donors or their agents to supply political parties with the same information about themselves and their donations that the party is required to include in its donation returns to the Electoral Commission. A failure of a donor to comply with these requirements without reasonable excuse is a criminal offence under section 54(7). Further, it is an offence under section 61 of PPERA for any person to conceal deliberately the identity of a donor or the amount of a donation or to provide deliberately the party with false information about those matters. Those requirements are designed to ensure that donors (and those who act on their behalf) are subject to similar transparency requirements as the parties who accept donations, without duplicating the information that needs to be provided to the Commission. However, since the repeal of Section 68 of PPERA in 2006, there are no requirements on donors to report donations directly to the Electoral Commission. All reporting of donations is by the recipient (whether political parties, holders of elective office, members of political parties, members associations, third parties or referendum campaigners).

Reporting obligations

Political parties

70. Political parties make four types of statutory returns to the Electoral Commission. First, they must submit quarterly donation returns. These increase in frequency to weekly during a United Kingdom Parliamentary general election period (defined as the time between the dissolution of Parliament and polling day). Quarterly donation returns cover the central party and all of its AUs. They must include donations of over £5,000 (6,712 Euros) to a central party or £1,000 (1,342 Euros) to an AU. Where several AUs receive donations under £1,000 (1,342 Euros) from the same source which aggregate to over £5,000 (6,712 Euros) to various parts of the party, these must also be reported. Donations to be reported include donations of money and also goods/services provided to the party free of charge or at a discount of more than 10% from normal market rates. The definition of donations includes direct state funding (but not indirect state funding such as payment for the airtime of party political broadcasts). The names and addresses of donors must be included in the return.

71. For political parties (and also members associations, members of political parties and elected officials, for more on which see below) the reporting threshold operates over the course of a calendar year, i.e. multiple donations from the same source must be reported if their aggregate is in excess of the reporting threshold. Generally, all parties must file a quarterly return whether or not they have any donations to declare. Smaller parties not in receipt of regular donations can become exempt from this requirement if they submit four consecutive nil quarterly returns. From this point onwards, they only need to submit an annual statement that they have not received any reportable donations and do not need to submit a further quarterly return until they have donations to report.

72. Secondly, since 2006, parties also have to submit a quarterly return of loans to the Electoral Commission. These will also be required weekly during a general election period. The reports contain details of new loans, credit facilities or guarantees of security entered into by the party in that quarter. As with the donation returns, a single quarterly return is submitted by a central party including loans to the central party and to all of its AUs. The loan reporting thresholds and aggregation rules are the same as for donations. Moreover, parties must give details in their return of any substantial changes to existing loans. As since 2006, loans are reported separately

to donations; a previous requirement to register loans of a non-commercial nature as donations has been repealed.

73. Where a party receives loans and donations from the same source in a single calendar year, these must be aggregated. This is to prevent parties from getting around the reporting thresholds by accepting loans and donations from the same source.

74. Political parties and their AUs in Northern Ireland were in the past exempt from reporting donations and loans on the grounds that the security climate there could present a hazard for donors or lenders who were named publicly. The Northern Ireland (Miscellaneous Provisions) Act 2006 exempted parties on the Northern Ireland register from the PPERA donation and loan controls. However, as from 1 November 2007, Northern Ireland parties are subject to similar rules as parties registered in Great Britain, although donations are declared to the Electoral Commission but not made public and donations are permitted from Irish citizens.

75. The third type of return is an annual report of the party's Statement of Accounts (SOAs). These are required from all political parties, regardless of size and from parties' AUs if their income or expenditure in the year in question exceeds £25,000. The Electoral Commission can make regulations to prescribe the content or format of the SOA but has not yet used these powers. Instead they have published guidance as to what parties with different levels of income/expenditure should include and how they ought to format their SOA. SOAs are required of parties in Great Britain and Northern Ireland.

76. Fourthly, political parties contesting elections to the Westminster Parliament, European Parliament, Scottish Parliament, Welsh Assembly and Northern Ireland Assembly must submit a return detailing their spending on the campaign. The PPERA details the information to be included in the return (see section 88 below).

Third parties

77. Registered third parties, which are campaign groups or organisations that might or might not be associated with a political party, are required to submit donation and spending returns to the Commission after a relevant election. The return must give details of the amounts spent by the third party on their electoral activities as well as the sources of donations they received to pay for the campaign spending. The rules on reporting of loans as a separate category do not yet apply to third parties. At present they have to report loans received other than on commercial terms as donations so that they are subject to the same restrictions as donations. The GET was informed however, that it is anticipated that the loans reporting rules will be extended to third parties in 2008.

Others

78. At a referendum, similar rules apply as for elections. Permitted participants wishing to spend over £10,000 (13,425 Euros) have to register with the Electoral Commission. They are then subject to spending limits, donation controls and reporting requirements. In addition, two organisations will be designated by the Electoral Commission as lead campaign groups and subject to a higher spending limit.

79. Regulated donees, a category including members of political parties, holders of elective office and members associations, must report the donations and loans they receive in connection with

their political activities. Members associations are organisations wholly or mainly made up of the members of a political party but which are not part of the party. The reporting threshold for holders of elective office and members of political parties is £1,000 (1,342 Euros). The reporting threshold for members associations is £5,000 (6,712 Euros). Donations to be reported include donations of money and goods/services provided to the donee free of charge or at a discount of more than 10% from normal market rates. The names and addresses of donors must be included in the return. Donations must be reported to the Commission within 30 days of being accepted by the regulated donee.

80. Since 2006, regulated donees also have to report loans to the Commission. Loans need to be reported only if they are taken out with the intention that all or part of the loan will be used for the donee's political activities. This means, for example, that a personal credit card used on an occasional basis to pay for items related to the donee's political activities is not reportable; however an overdraft on an office account would be reportable. Each report covers the details of a single loan, credit facility or guarantee of security entered into by the donee within the previous 30 days. The loan reporting thresholds and aggregation rules are the same as for donations. Regulated donees must also make a report in respect of any substantial changes to existing loans. Changes must be reported within 30 days of the change taking place.

81. Where a regulated donee receives loans and donations from the same source in a single calendar year, these must be aggregated. This is to prevent donees from getting around the reporting thresholds by accepting loans and donations from the same source.

82. As loans since 2006 have to be reported separately to donations, a previous requirement to register loans that were given other than on commercial terms as donations has been repealed.

83. Election candidates must submit returns to their local Returning Officer who pass the returns on to the Electoral Commission. The returns must include details of all spending by candidates on items used during a particular regulated period and the sources of all donations received to support their campaign. Candidates are not obliged to report loans, however, the GET was informed that it was planned to introduce such reporting in 2008.

Publication of information

Political parties

84. The public register of donations (which is held by the Electoral Commission) is updated on a quarterly basis at all times (regardless of whether there is an election pending) and on a weekly basis during a general election period. The information in the party's return (subject to the exceptions, see below) is published on the Election Commission's website. It is also possible to request a paper copy of the information or to inspect the returns in person at the premises of the Election Commission. While the parties' returns include the full name and home/registered address of the individual/entity, addresses of individuals are not published. Where a donation comes from a company, the company registration number is also published.

85. The register distinguishes between cash and non-cash donations. Where donations are non-cash, the nature of the donation is published with the party's approximation of its value. All donations from the same donor can be aggregated and reported but donations from different donors are reported separately. The register also reports impermissible donations returned by

parties within the 30-day checking period allowed by law. Details of how and when an impermissible donation was returned are also published.

86. A separate public register of loans gives all the reportable details of loans entered into by parties. This is also updated quarterly at all times and weekly during a general election. All the information in a party's return is published on the Commission's website (again except for individuals' addresses). Names and addresses of lenders and details of the terms of the loan are published. The register distinguishes between loans, credit facilities and guarantees of security on behalf of the party. The register shows changes to loans, including when the loan arrangement has ended. Since 2006, if a loan is written off by the lender, it will appear as a donation to the party in the register of donations. The register also reports impermissible loans entered into by parties. This would include details of how the loan was cancelled and what steps the party took to void it. The GET was informed that no such loans have been reported to date.

87. There is a separate public register of party campaign expenditure. This contains a summary of the information contained in a party's return of campaign expenditure. It includes the total amount spent on specific categories of expenditure by each party.

88. Campaign expenditure returns cover any spending to promote the party at elections during the relevant period in advance of the election which is either four months or 365 days, depending on the type of election. Expenditure returns do not include staff costs or the free airtime granted to parties who can broadcast party political broadcasts at election time. The full breakdown of expenditure includes information for each item about the name and address of the supplier, the value of the item (and the amount the party paid for the item if this is different), the category to which the item belongs, the date the expense was incurred and paid for and other information relating to the purchase process. Invoices are included for any item (except for benefits in kind which count against spending limits but for which no invoice may be available).

89. All party campaign spending must be authorised by a registered officer of the party, whether it is spent by the central party or any of its AUs, and returns must be certified by an independent auditor (audit certificate included) if the party exceeded £250,000 (335,625 Euros) on reportable campaign spending. Statements of Accounts (SOAs) are published by the Commission (as scanned PDFs of the documents submitted by parties). There are currently no regulations on the format of SOAs although the Commission makes recommendations as to the form and content that parties should follow and the legislation allows the Commission to make such regulations. The Commission intends to make regulations on both quarterly returns and statements of account in the near future. SOAs are submitted and published on an annual basis.

Third parties (campaign groups) and referendum campaigners

90. Donations received and reported by third parties or referendum campaigners are published by the Commission on its website on the same terms as donations to political parties. The only difference is the frequency with which they are published; third parties only report donations after a relevant election and referendum campaigners after a referendum. Third parties are not obliged to report loans, see above. Spending by third parties or referendum campaigners on campaigns is published by the Commission on its website on the same terms as campaign spending by political parties.

Candidates

91. Returns by election candidates are received and made available for public inspection by local returning officers who are usually based in local government. Whoever wants to see a copy of a return of a candidate's election expenses must go in person to the relevant council's offices. Returns are held for two years after which they may be destroyed. Returns include details of the candidate's spending on their campaign, generally including the same level of detail as for political parties' campaign spending returns. They also include details of donations received by candidates over £50 (67 Euros) with the same details as are required for a party's donation return. As already mentioned above, candidates are not obliged to report loans. However, the GET was informed that it was foreseen to introduce such reporting in 2008.

Regulated donees

92. Returns from regulated donees are received on an ad hoc basis as they are only required in respect of reportable donations or loans. The Commission publishes the information in the returns received on the same basis as other donation and loan returns published (i.e. omitting the addresses of individual donors).

93. The Commission aims to publish on the Internet returns within 20 working days of having received them. However, for donations and loans related to party leadership contests, the Commission aims to publish returns within five working days due to the time sensitivity of the information. Paper copies of the relevant information are supplied at request.

94. In respect of campaign expenditure returns, and returns submitted following elections and referendums by third parties and referendum campaigners, the Commission must keep them for public inspection for a period of 2 years. The Commission may then destroy them or, if requested by the officeholder who submitted them, return them to the party or organisation.

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

<u>Auditing</u>

95. Political parties as well as their AUs must have their annual accounts and campaign spending returns externally audited if the value of the income or expenditure in the accounts or the spending in the return exceeds £250,000 (335,625 Euros). Auditors must be suitably qualified with the same qualifications that would be required for a company auditor. In particular auditors must be independent from the audited body. The audit report must accompany the return when it is submitted. According to Section 160(2) of PPERA, a person is not a qualified auditor in relation to any registered party or any other body or individual if s/he is a member of the party or body or the individual himself, or an officer or employee[3] of the party, body or individual. The Election Commission may make regulations about the selection of political parties' auditors but has not done so to date.

96. Similar requirements on auditors apply to campaign groups and referendum campaigners in respect of their spending returns when such returns exceed £250,000 (335,625 Euros) in value. There are no audit requirements for candidates or regulated donees.

[3] For this purpose "officer or employee" does not include an auditor.

Monitoring

97. The Electoral Commission is established by Parliament as an independent body. Its overall aim is to preserve integrity and public confidence in the democratic process. The Commission is responsible for a wide range of tasks, such as to register political parties, to set standards for elections and referendums and to provide public awareness on the democratic system, the importance to register for vote etc. In its monitoring function the Commission establishes accounting requirements for registered parties, controls donations to registered parties and their members, etc, controls campaign expenditure (by political parties), controls relating to third party national election campaigns.

98. The Commission is politically independent and there are strict rules as to recent political activity of Commissioners at the time of their appointment. Section 3(4) of PPERA states that a person may not be appointed as an Electoral Commissioner if the person:

(a) is a member of a registered party;
(b) is an officer or employee of a registered party or of any accounting unit of such a party;
(c) holds a relevant elective office (within the meaning of Schedule 7); or
(d) has at any time within the last ten years-
    (i) been such an officer or employee as is mentioned in paragraph (b), or
    (ii) held such an office as is mentioned in paragraph (c), or
    (iii) been named as a donor in the register of donations.

99. The Commission is accountable directly and only to Parliament through a Committee convened by the Speaker of the House of Commons. The number of Commissioners is between five and nine, however, beyond this the Commission has discretion over the structure and organisation of its activities. Commissioners are appointed by the Queen on recommendations by the House of Commons. The Commissioners' terms of office are fixed when they are appointed but there is no limit on the number of terms of office that may be completed by a Commissioner. The Commissioners, including the Chairperson, may be re-appointed an indefinite number of times.

100. At the time of the visit of the GET the Commission had 171 approved posts organised into five directorates, one of which covers party and election finance issues. The same requirements for political independence as apply to Commissioners apply to staff, except that staff, other than the chief executive may be members of political parties. There is no fixed term of office for staff members.

101. The Commission is funded directly by Parliament, the funding procedure being set out in PPERA (Paragraph 14 of Schedule 1). The Commission lays an annual five year plan before Parliament and the Speakers Committee may modify the plan. In 2005/6, the Commission's net outlay was £21.9 million (29.40 million Euros). Of this, £8.1 million (10.87 million Euros) was spent on the Commission's aim of "promoting integrity in the democratic process". This aim includes the regulation of party and election finance but also includes significant other activities (e.g. work on security of absent voting).

102. The supervisory powers of the Electoral Commission are provided in the PPERA (Section 146). The Commission has particular powers to, by notice, require within a reasonable time, the relevant person in the case of any supervised organisation or individual (or former supervised organisation or individual) to produce, for inspection by the Commission any books, documents or other records or information or explanation relating to the income and expenditure of the

organisation or individual. Moreover, the Commission may make copies or records of any information contained in any books, documents or other records produced. The powers also include requiring any person on the premises in question to give the inspector reasonable assistance to enable the inspection. These powers can be exercised by the Commission, provided that it is necessary for it to do so in order to perform its functions.

103. The Commission's investigations can be triggered through a variety of circumstances, such as complaints raised with the Commission, identification of issues through scrutiny of returns etc. There are no statutory procedures or reporting requirements to guide the Commission in case of suspected infringements. However, the GET was informed that the Commission was in the process of developing internal procedures in this respect. The GET was also told that the Commission was about to establish co-operation agreements with other agencies, such as the police and prosecuting authorities for investigative purposes.

104. Since it came into force 29 people have been prosecuted under the PPERA, leading to 23 convictions. A range of sanctions have been applied including fines and custodial sentences. There had been prosecutions under the Representation of the People Act 1983 which covers the financial regulation of candidates.

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

105. There is both criminal liability and civil liability for infringements of the rules in the PPERA concerning funding of political parties, electoral campaigns etc. The PPERA sets out in each offence which individual or, where appropriate, organisation may be held liable. Further, according to section 152, offences committed by corporate bodies or unincorporated associations may also be committed by individual officers if the offence can be attributed to their neglect. However, individual proceedings may not be brought against individual members of unincorporated associations.

106. For offences related to the activities of political parties the legal responsibility for keeping adequate records and making returns about regulated expenditure or income is generally on the party's registered treasurer. In turn, it is the registered treasurer who is potentially liable if those rules are breached. Some parties have a registered campaigns officer who is responsible for compliance with the rules on campaign spending (while the registered treasurer retains responsibility for donations and general accounts) but for parties without such a registered office, the responsibility rests with the treasurer. It is possible, however, in the case of forfeiture of an impermissible donation, that the party as an entity could be held accountable. Moreover, sanctions on a party and individual are not mutually exclusive.

107. In the case of an election candidate, the accountability would be on the part of the candidate and/or the election agent.

108. In the case of a third party, who is an individual, s/he is responsible for any sanction. When the third party is an organisation, it must at the time of registration, specify a 'responsible person' who is legally liable for the activities of the third party. This ensures that someone within a third party has legal responsibility regardless of the organisation's status.

109. Schedule 20 of the PPERA sets out the penalties for political parties, their accounting units, third parties and referendum campaigners for the criminal offences PPERA established. The criminal offences cover actions, such as false statements in various respects, failure to provide

information or accounts, failure to provide information on donors, failure to return donations, false declarations about donations, various misgivings in respect of campaign expenditure etc. The sanctions range from fines "level 5" (£5,000 (6,712 Euros)) and up to one year imprisonment. A detailed list of 88 offences is included in Schedule 20 of the PPERA.

110. Section 147 of the PPERA clarifies which of the PPERA offences carry civil penalties. This is a much smaller category of offences and generally refers to parties and organisations that submit notifications, accounts and returns late. The level of penalty is determined depending on the delay as follows: up to 3 months delay £500 (671 Euros); between 3 and 6 months £1,000 (1,342 Euros); and between 6 and 12 months £2,000 (2,689 Euros). If the requirements are not complied with by the end of the period of 12 months a penalty of £5,000 (6,712 Euros) is possible. Another sanction available is deregistration of a party but only for the non-submission of an annual confirmation of the party's registered details.

111. Section 58 of PPERA empowers the Commission to seek a court order requiring a registered party to forfeit an amount equivalent to the value of impermissible donations which have been accepted or retained by the party in breach of PPERA controls. Forfeiture provisions are also applicable where a court is satisfied that any failure to comply with reporting requirement in relation to donation to a registered party is a result of a person attempting to conceal the existence or true amount of the donation.

112. Offences and penalties in respect of election candidates are set out under the Representation of the People Act 1983. These cover for example, provision of campaign money to persons other than the candidate or the election agent, incurring expenses without authority, false declarations, failure to submit a return or declaration, giving false information about donations etc. The authorities submitted a detailed list of 88 offences to the GET. The sanctions range from fines "level 5" (£5,000 (6,712 Euros)) up to one year imprisonment.

113. As a main rule, sanctions are imposed by the courts and the Electoral Commission has no powers to apply sanctions directly but for some sanctions it can apply directly to the court. Appeal is through normal court proceedings except in the case of forfeiture where special rules are set out in PPERA (Section 59).

114. In respect of civil penalties, these are imposed on the organisation of which the individual at fault is a member rather than against the responsible individual. Where such a penalty is imposed according to the statutory sliding scale the Commission recovers the penalty as if it were a debt owed to them through the courts.

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

116. There are no statutory limitations for proceedings regarding political funding offences where they are triable on indictment in a Crown Court. For offences triable only in a Magistrates court (i.e. summary only offences) the statutory limitation is 2 years after the commission of the offence in respect of criminal offences related to candidates and 3 years in respect of political parties, third parties or referendum campaigners. This is longer than the general limitation period for summary only offences (which is 6 months (section 127(1)) of the Magistrates Court Act 1980).

IV. ANALYSIS

117. The United Kingdom has a longstanding tradition of representative democracy and the political parties form the fundamental basis of the system. The funding of political parties in the United Kingdom comes to a large extent from private sources (between 50-80 per cent of their income comes from donations), whereas state subsidies are comparably modest. This is the result of the origin of the political parties and their evolution. Regarding the larger parties, the Labour Party, which was founded by trade unions, has traditionally received the majority of its funds from the unions. The Conservative Party has traditionally relied on local constituency associations, individual and corporate donations for much of its income and the Liberal Democrats on sources such as trusts, companies and other private entities. The information provided by the parties to the Electoral Commission shows that the average yearly income, for the national party, of the Labour Party between 2002 -2005 was in the region of £28 million (37.59 million Euros) and the average expenditure £32 million (42.96 million Euros). For the Conservative Party these figures were respectively £17 million (22.82 million Euros) and £23 million (30.87 million Euros) and regarding the Liberal Democrats, £5 million (6.71 million Euros) and £5 million (6.71 million Euros), respectively.

118. The debate on the financing of political parties has been going on for decades in the United Kingdom. One issue of concern is about financial difficulties of the political parties caused by, for example, increasing campaign costs, decrease in memberships and decreasing incomes from membership fees. This situation, although not undisputed, appears to have resulted in rising needs for other forms of financing (private donations, loans etc.). To this description should be added that there appears to be an increasing concern that a significant proportion of donations are large scale donations originating from few sources. Risks of political influence being bought - or at least perceived in such a way by the wider public - and a generally low level of public trust in the parties and the political system lie at the heart of this debate.

119. The GET conducted its visit at a time of intensive public discussion about political funding. Several attempts to reform the system have been considered through the years; the "*Houghton Committee*" (1976) recommended (through a majority) that state funding should be increased and the Home Affairs Select Committee (1994) dealt with measures against the possibility that donors may be able to buy political influence. A comprehensive proposal on general reforms came with the report of the Committee on Standards in Public Life (CSPL's 5th Report, the "Neill Committee" at the time) on the funding of political parties (1998). The Committee aimed at developing more openness about the sources and the spending of party funds and at preventing political influence from being bought. It hoped its proposals would result in parties relying more on small and medium-sized donations. The Neill Committee recommended, *inter alia,* that donations should be fully disclosed, that donations from blind trusts and foreign donations be forbidden, anonymous donations limited, auditing and accounting rules be introduced and an independent mechanism to monitor the system be established. The Government at the time accepted a majority of the recommendations of the Neill Committee, which subsequently led to the adoption of *the Political Parties Elections and Referendums Act 2000* (PPERA) as the first comprehensive legislation on party funding in the United Kingdom. Rules concerning financing of election candidates had been laid down since 1883 and consolidated in the Representation of the People Act 1983.

120. The adoption of the PPERA has been described by many as a significant improvement of the regime of party funding in the United Kingdom, in particular in respect of the transparency of party income and of donations over a certain value. Moreover, the PPERA provides for the banning of foreign donations and introduces restrictions on anonymous donations. While the law does not

set any cap on the value of donations that parties are entitled to receive, it limits party election spending at national level. The PPERA also established the Electoral Commission as an independent statutory oversight body. The GET has no doubt that the adoption of the PPERA marked a significant achievement in the area of party funding in the United Kingdom and that the existing legal and organisational framework for making party financing transparent and subject to control is generally of a high standard which, to a large degree, is in line with the requirements of the Recommendation Rec (2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns. This being said, the GET is fully aware that the PPERA and, in particular, the implementation of that legislation, since its entry into force almost six years ago, has not been without criticism and has been subject to a number of amendments. The public debate in relation to political funding in general and the PPERA in particular, was reinforced by the extensive media interest in respect of loans given to the two largest political parties in the 2005 general elections ("Cash for Peerages affair"), which have been alleged were intended to circumvent the transparency requirements of the PPERA. Following a police inquiry, no charges were brought. In this particular context, the law was changed in 2006, in order to provide for broader accounting and transparency of loans to parties, similar to those of donations, however, the relevant rules in this respect are still not fully harmonised. Another area of great concern is the future role of the Electoral Commission as the supervisory body and regulator of the system.

121. Three major reviews of the present system have recently been published. First, the Constitutional Affairs Committee concluded, *inter alia*, in its unanimous report on party funding (December 2006) that there is a need for an overall cap on spending, for greater transparency of all sources of funding and that voluntarily agreed binding limits on donations leading to an increase in state funding should be considered. The 11th report adopted by the Committee on Standards in Public Life (CSPL, January 2007) provides a critical review of the mandate, governance and accountability of the Electoral Commission and makes a number of recommendations with a view to strengthening that institution as a regulator (further commented on below). The third survey on party funding, initiated by the Prime Minister, was carried out by Sir Hayden Phillips (March 2007) with the overall objective to seek as much agreement as possible between the political parties about changes to the party funding system. Hayden Phillips' report advocates, *inter alia*, reforms in respect of caps on donations, spending limits and a larger degree of public funding and improved access to the sources of public funding. Sir Hayden Phillips chaired inter-party talks between the three largest political parties seeking a consensus on reforms of the present system, however, these were suspended without agreement in October 2007. The Government has since announced its intention to bring forward proposals on party finance and expenditure.

122. The GET notes that the three abovementioned reports – although issued independently from each other - show a remarkable coherence in how the present system of political financing needs to be further developed. This view appears to be shared by all stakeholders, including civil society representatives and academics met by the GET. Consequently, the United Kingdom Government has a solid basis for the strengthening of the political funding system, preferably with a high degree of consensus. What is less clear, however, is whether such consensus is possible in respect of all the main parties and how the interests of the smaller parties will be taken into account.

123. The reflection on possible reforms of the political funding system in the United Kingdom is triggered by concerns to consolidate the fundamental values of the present political system. This wide ranging debate is also important for the understanding of the particular areas under scrutiny in the present GRECO evaluation, even if many of the political questions under debate are not

specifically covered by this evaluation. Nevertheless, the GET recalls that the Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns, which provides for European standards in this area, offers valuable guidance and support to the ongoing reform debate in the United Kingdom, for example, in respect of public and private support to political parties while maintaining their independence (Articles 1 and 3), rules limits/caps on donations to political parties (Article 3b) and limits on party spending in particular in relation to election campaigns (Article 9).

124. The following analysis focuses on the three distinct areas of concern for the present evaluation, namely transparency of political financing, the supervision of such financing, the sanctions applicable when funding rules are being violated and their enforcement.

Transparency

125. Regarding the obligations of political parties to keep books and accounts, the law is clear: the registered party treasurer must ensure that accounting records are kept in a way that is sufficient to show and explain the party's transactions - at any time - with reasonable accuracy (PPERA, Section 41). Similar requirements apply to the accounting units (AUs) of a party. Parties and their local AUs must provide the Electoral Commission with different types of statutory returns, subsequently made public by the Electoral Commission. Political parties are under no obligation themselves to make their accounts public, however, some of them do so on a voluntary basis. . The statutory returns include quarterly donation returns (weekly, during a general election period), quarterly returns of loans, annual reports of the party's statement of accounts (SOA) and returns concerning campaign spending. The GET is of the opinion that with the inclusion of returns concerning loans in 2006, the reporting obligations provided in the PPERA appear to be rather complete, both in respect of detail and timing. However, the GET was also aware of concerns raised in respect of the way in which this information is made public. The transparency of party accounts is negatively affected by the fact that party accounts are presented in very different ways; some parties register all individual branches with the Commission whereas others register only larger units made up of several branches. This problem is, *inter alia*, highlighted by the Constitutional Affairs Committee which in its report states that the "current reporting methods fail to provide adequate transparency in the way accounts are presented". Moreover, the GET heard that the publication of party accounts is often late. The GET does not see these problems as related to the law, which is sufficiently clear, but rather to the implementation of the law. In respect of the need to make the annual statement of accounts of political parties more coherent, the Electoral Commission has provided some guidance but it does not seem to be sufficient to address the current discrepancies. In the GET's view, the Electoral Commission could clearly do more to make the parties present their accounts in a coherent and more meaningful way and therefore **recommends that a common format be established for parties' accounts and returns with a view to ensuring that such information to be made available to the public is coherent, meaningful and comparable to the greatest extent possible.**

126. The current legislation is more advanced in respect of the transparency of political parties than it is in relation to election candidates and third parties. There is a particular issue in relation to loans where the legislation needs to be extended to include candidates and third parties within the reporting requirements for loans. It was explained to the GET that this was due to the fact that the rules have evolved in order to deal with particular gaps in the system. The stricter rules on loans were enacted as late as in 2006 following the so-called "Cash for Peerages Affair" referred to above. As a result the PPERA was amended in that the previous obligation to report loans -

granted on other than commercial terms - as donations, was replaced by a general rule on parties to report all loans separately. However, the new rule does not apply to election candidates and third parties which still only have to report loans as donations when these are received other than on commercial terms. The GET learned that it is difficult in practice to draw the line between what should be considered commercial and not commercial loans. Moreover, these entities, which may be campaign groups associated or not with a political party, only send their returns after the election. The GET was pleased to learn that the rules on reporting of loans in respect of parties are likely to be extended also to third parties and election candidates. The GET could only support such a move and **recommends that to the greatest extent possible, election candidates and third parties be subjected to transparency standards in respect of loans which are comparable to those applying to political parties.**

127. The GET noticed that the regulations and practices in respect of political financing at the national level differ considerably from the requirements pertaining to the local level. There is a disconnection between the PPERA, which deals with political parties, and the Representation of the People Act 1983 which applies to election candidates. Donations to a central party organisation at a general election have to be disclosed during the official election campaign period, that is the four to five week period after the intention to dissolve parliament has been announced to the date of the poll. All other donation returns are made after the date of the poll. The authorities have explained that the reporting obligations provided for in the PPERA, which go further than those in the Representation of the People Act, are the result of a deliberate policy, as similar reporting requirements upon election candidates would be too burdensome for the donees to comply with in practice and for the Electoral Commission to monitor. The GET acknowledges the explanations given by the authorities, however, it notes, for example, that the current system makes it possible to channel resources to local branches of political parties or candidates which are not subject to the weekly reporting obligation during election campaigns as provided for under the PPERA, although the donations received are still published after the date of the poll. It appears that the required level of transparency in political funding at the local level (including election candidates) is not as well developed as it is at the national level through the PPERA. The GET takes the view that on the one hand, it is advantageous to establish uniform standards for political financing, but on the other hand, there are different conditions and needs at the national and local levels. Indeed, a heavy administrative burden at constituency level may be difficult to comply with in practical terms and difficult to monitor. A basic principle of effective regulation is that the regulatory framework be as simple and coherent as possible in order to ensure its effectiveness in practice. In light of this, the GET **recommends that consideration be given to increasing the transparency of political financing at constituency level and in respect of parliamentary election candidates, bearing in mind the particular conditions and needs at the local level.**

Supervision

128. The Electoral Commission is responsible for the monitoring of political financing in the United Kingdom. However, this institution has a wide range of other tasks as well, including party registration, standard setting and public awareness raising. As mentioned above, the Electoral Commission was subject to a thorough review by the Committee on Standards in Public Life (CSPL) in 2006 as well as by other bodies. While the important role of the Electoral Commission has been generally stressed, it appears to be a common view that the Commission's rather broad tasks as laid down in the PPERA need to be refocused on two main functions: those of regulating political funding and electoral administration, including assistance to parties and other stakeholders to observe the rules, and, to act rigorously when rules are not been adhered to. In

carrying out these main tasks the various reviews indicate that the Electoral Commission needs to apply a pro-active approach. The GET fully shares this view. Mindful of the opinions expressed in a number of inquiries, including the review by the CSPL, the GET **recommends that the regulating function of the Electoral Commission be reinforced, and that the Electoral Commission adopt a pro-active approach to the investigation of financing irregularities.**

129. Currently, the Electoral Commission is clearly a non-partisan body. There are a number of safeguards in place in order to provide for its independence, *inter alia*, that the Commissioners cannot be members of any political party and that they have not been employed by a party in the previous 10 years. There are equally strict rules for the appointment of staff members. The GET notes that the Commission's level of independence at present is indisputable and in full compliance with Recommendation Rec(2003)4. This being said, the GET cannot disregard the fact that the Electoral Commission, after six years of existence, has been subject to thorough scrutiny and that in order to comply with its proposed new tasks as regulator and facilitator to parties, the Commission would benefit from access to practical expertise and knowledge about political work and difficulties encountered by parties in relation to financing rules. The present system does not allow for the introduction of political practitioners among the Commissioners or staff, due to the strict rules on who can become a commissioner or staff member. The GET noted that both the CSPL and Sir Hayden Phillips have suggested that a minority of the Commissioners should have a political background and that such experience should be allowed among the staff as well. The present debate is about what would constitute an acceptable balance in order to maintain the independent approach of the Commission. The GET is of the opinion that it is very important to avoid either a partisan approach, or the perception of such an approach, on the part of any agency in charge of monitoring political financing. At the same time it appears to be important that the Electoral Commission be provided with practical expertise. That may, however, be ensured in different ways. If Commissioners with more recent political experience are to be appointed in the future, they would need to represent only a minority in the Commission and be subject to clear conflict of interest rules. Moreover, the GET believes that politically experienced staff could possibly be recruited, subject to similar safeguards and controls. Another possibility, however, would be to use consultants or associates with political experience as advisors to the Commission, in order to maintain its present high degree of independence. Regulation of political party funding is ultimately in the hands of those subject to regulation. The politicians themselves determine the statutory basis for the regulatory authority and also approve any relevant secondary legislation. It is therefore of significant importance that the monitoring system not only operates in an impartial manner but is also seen to be operating in such a way. This is crucial for the public's trust in the system.

Sanctions

130. In addition to the general criminal liability regulations, the PPERA provides for a detailed list of "tailor made" criminal offences, such as "false statements" in various forms, "failure to return donations" and penalties (including fines and imprisonment) and civil sanctions (fines) for submitting returns too late. Offences and penalties (fines and imprisonment) in respect of election candidates are provided for in the Representation of People Act 1983. It was pointed out to the GET by some interlocutors that the present sanctions were not sufficient and that there should preferably be more substantial criminal penalties for individuals who knowingly breach the rules. The GET acknowledges that breaches of the funding rules are serious matters which have an impact on democracy and public trust. The GET did not come across substantial information indicating that the criminal sanctions, including those of the general criminal law would not be proportionate and dissuasive as such. It did, however, receive information indicating that the

enforcement of the existing sanctions - criminal or civil - was not carried out in an effective manner. Several interlocutors suggested that the Electoral Commission had not been sufficiently active and pro-active in investigating breaches of the law and submitting suspected cases to the police for investigation. The CSPL recommended in its report that the PPERA should be amended to provide for a more pro-active investigative role of the Electoral Commission. The Commission itself signaled that its approach in the future should be underpinned by a pro-active and comprehensive risk assessment approach. The Commission had already established an investigation unit at the time of the visit by the GET. This should allow the Commission to concentrate resources on areas of greatest risk where it can have most impact and avoid unnecessary interference in low risk areas. Such a development was much welcomed by the GET as it believes that a determined pro-active approach is necessary in order to provide for effective sanctioning of those who violate the rules.

131. While there are criminal and civil sanctions provided for in law, a clear weakness of the present system is that there are no flexible and proportionate sanctions available for violations of the political financing rules and that the Electoral Commission has no powers to apply any sanctions directly[4]. As the majority of the offences are criminal, the Electoral Commission would have to refer these cases to the law enforcement agencies for investigation. The available civil sanctions can also only be imposed by a court of law. This system appears to be unnecessarily cumbersome and leads to a slow process. The GET therefore concurs with the proposals made by a number of stakeholders, including the CSPL and Sir Hayden Phillips, to provide the Electoral Commission with the powers to impose sanctions. Such powers would fit well with a more pro-active approach of the Commission in investigating less serious cases at the same time as the present possibility of submitting the more serious cases for investigation to the law enforcement authorities remains at its disposal. Introducing more flexible sanctions and ensuring that they apply to a wider range of offences under PPERA will complement the existing criminal and civil sanctions and provide for a system in line with Article 16 of Recommendation Rec(2003)4 regarding effective, proportionate and dissuasive sanctions. Consequently, the GET **recommends that – as a complement to the current (mainly criminal) sanctions – more flexible sanctions be introduced in respect of less serious violations of the political financing rules and that the Electoral Commission be provided with the necessary powers to investigate such cases and to apply the appropriate sanctions.**

132. The GET was initially not provided with any statistics on the number of cases investigated and adjudicated in respect of violations of the existing financing rules. However, it understood that only relatively few such cases had been investigated under the Representation of the People Act and was informed subsequently that there had been a total of 29 prosecutions under PPERA resulting in 23 convictions. Various sources indicated that, in addition to the lack of a pro-active approach on the part of the Electoral Commission, there was a general reluctance on the part of the police to initiate investigations in respect of political financing, i.e. that the level of enforcement of the legislation was more of a problem than the legislation itself. These credible allegations, even if not fully substantiated, clearly need to be taken seriously by the authorities. The GET was informed at a later stage that a joint guidance note between the Association of the Chief Police Officers (ACPO) and the Electoral Commission had been issued on 18 January 2008. The note addresses the respective roles of the Commission and the Police in dealing with political financing crimes. The GET welcomes the initiative, which highlights the importance of improving the co-operation between the Electoral Commission and the Police in detecting violations of the political financing rules. As already mentioned, there appears to be a clear trend

[4] There are special rules in relation to forfeiture, where the Commission has some powers.

towards strengthening the investigative powers of the Electoral Commission. Against this background, the GET wishes to stress that the role and the efficiency of the Police and the Prosecution service in investigations/prosecutions concerning political financing could be explored further. The GET therefore **recommends that objective research be carried out concerning future police investigation and prosecution in respect of political funding offences.**

V. CONCLUSIONS

133. The existing legal system and organisational framework regarding the transparency of political financing, its supervision and the available sanctions for infringements of financing rules is generally of a high standard in the United Kingdom and is, to a large degree, in line with the relevant provisions of the Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns. The piece of legislation of the greatest importance in this respect, the Political Parties Elections and Referendums Act 2000 (PPERA), provides a solid framework in respect of transparency and control of party funding. However, the PPERA and, in particular, its implementation, since its entry into force almost six years ago, has not been without criticism and debate. Public debate was further fuelled by extensive media interest in respect of controversial party loans in the 2005 general elections. This has resulted in a number of amendments to the legislation. Moreover, inquiries, studies and proposals on how to further improve the system of transparency and supervision have recently been issued aiming at - ultimately - consolidating the fundamental values of the democratic system and at reinforcing public trust and participation therein. Just and transparent political financing is critically important in this respect. GRECO's findings indicate, *inter alia*, that the transparency of party accounts could be improved if more standardised formats for financial reporting were applied; that third parties should, to the extent possible, be subject to transparency requirements comparable to those of the parties; and that the transparency requirements at constituency level as well as in respect of election candidates needs to be further considered. Moreover, the Electoral Commission has a high degree of independence, but needs to adopt a more pro-active approach. Research should be carried out into future police investigation and prosecution of these offences. Finally, as a complement to the current (mainly criminal) sanctions, more flexible sanctions should to be introduced for less serious violations of the political financing rules.

134. In view of the above, GRECO addresses the following recommendations to the United Kingdom:

i. **that a common format be established for parties' accounts and returns with a view to ensuring that such information to be made available to the public is coherent, meaningful and comparable to the greatest extent possible** (paragraph 125);

ii. **that to the greatest extent possible, election candidates and third parties be subjected to transparency standards in respect of loans which are comparable to those applying to political parties** (paragraph 126);

iii. **that consideration be given to increasing the transparency of political financing at constituency level and in respect of election candidates, bearing in mind the particular conditions and needs at the local level** (paragraph 127);

iv. **that the regulating function of the Electoral Commission be reinforced, and that the Electoral Commission adopt a pro-active approach to the investigation of financing irregularities** (paragraph 128);

v. **that – as a complement to the current (mainly criminal) sanctions – more flexible sanctions be introduced in respect of less serious violations of the political financing rules and that the Electoral Commission be provided with the necessary powers to investigate such cases and to apply the appropriate sanctions** (paragraph 131);

vi. **that objective research be carried out concerning future police investigation and prosecution in respect of political funding offences** (paragraph 132).

135. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the United Kingdom to present a report on the implementation of the above-mentioned recommendations by 31 August 2009.

136. Finally, GRECO invites the authorities of the United Kingdom to authorise the publication of this report.