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Evaluation report on Andorra
Transparency of Political Party Funding

(Theme II)

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Secrétariat du GRECO
Conseil de l'Europe
F-67075 Strasbourg Cedex

www.coe.int/greco
☎ +33 3 88 41 20 00

GRECO Secretariat
Council of Europe
Fax +33 3 88 41 39 55

I. INTRODUCTION

1. Andorra joined GRECO in 2005. GRECO adopted the report on the joint first and second evaluation rounds (Greco Eval I Rep (2006) 1E) at its 31st plenary meeting (4-8 December 2006). The aforementioned evaluation report, and the corresponding compliance report, are available on the GRECO web site (http://www.coe.int/greco).

2. The current third evaluation round, which started on 1 January 2007, covers the following themes:

   - **Theme I – Incriminations:** articles 1a and 1b, 2 to 12, 15 to 17 and 19.1 of the Criminal Law Convention on Corruption (CETS 173), articles 1 to 6 of its Additional Protocol (CETS 191) and Guiding Principle 2 (incrimination of corruption).

   - **Theme II - Transparency of Political Party Funding:** articles 8, 11, 12, 13b, 14 and 16 of Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns and – more generally – Guiding Principle 15 on financing of political parties and election campaigns.

3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Andorra from 17 to 19 November 2010, comprised Mr Paul MULS (Secretary of the electoral expenditure supervisory commission, Chamber of Representatives, Belgium) and Mr Ivan VOLODIN (Head of section within the legal affairs department of the Ministry of Foreign Affairs, Russian Federation). The GET was assisted by Ms Sophie MEUDAL-LEENDERS and Mr Christophe SPECKBACHER of the GRECO secretariat. Prior to the visit the GET received replies to the evaluation questionnaire (Greco Eval III (2010) 13F, Theme II) and copies of relevant legislation.

4. The GET met the head of the Government and members of the following institutions: The anti-corruption unit (UPLC), the court of auditors, the electoral commission, the register of associations, the prosecutor's department and investigating judges, parliament, and the general inspection department. The GET also met representatives of the Social Democratic Party, the Liberal Party of Andorra, the Democratic Renovation Party, the Green Party, the Reformist Coalition, the *Andorra Pel Canvi* Coalition and *Segle 21*. Finally it met representatives of the Andorran order of economic and financial advisers and of a daily newspaper.

5. The current report on Theme II of GRECO's 3rd Evaluation Round - Transparency of Political Party Funding – is based on answers to the questionnaire and information supplied during the on-site visit. The main objective of the report is to assess the effectiveness of measures adopted by the Andorran authorities to comply with the provisions referred to in paragraph 2. The report presents a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Andorra on how to improve compliance with the provisions under consideration.

6. The report on Theme I – Incriminations – appears in Greco Eval III Rep (2010) 11E - Theme I.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

7. Andorra is a young democracy. The first written constitution was dated 14 March 1993. However, it has retained the title of Principality from the period of dual Franco-Spanish tutelage that preceded that date[1]. There are two geographical tiers of administration: at national level the government, led by the head of government assisted by several ministers, and parliament (*Consell General*)[2], and at local level the municipalities/parishes[3]. The parliamentary speaker is the second most senior figure in the state.

8. The need for regulations to govern political funding became clear shortly after the adoption of the Constitution. Parliament finally approved the electoral financing legislation on 15 December 2000 and it came into force in January 2001. It is only concerned with the financing of legislative and local campaigns and elections, not that of political parties, and is based on a mixed public/private model.

Elections

9. The basic electoral legislation is Act 28/2007 of 22 November amending the previous legislation governing the organisation of elections and referendums. This covers parliamentary and local elections and referendums. *the Consell General*, or parliament, may comprise between 28 and 42 *consellers generals*, or members of parliament (article 52 of the Constitution). There are currently 28. They are elected by direct universal suffrage for four years under a proportional list system. Parliament is intended to provide mixed and equal representation of the national population and the seven municipalities. Half the members are therefore elected from a national list and half from local lists, one for each municipality. The seven municipalities each elect two members. The lists are always "blocked", meaning that voters have to choose between lists as they stand and cannot change them.

10. Local councils themselves determine how many members shall be elected, but the figure must be 10, 12, 14 or 16. They are always elected for four years by direct universal suffrage on a single round mixed list system. The lists are also "blocked" and include the same number of candidates as there are councillors to be elected, plus two substitutes. The winning list is automatically allocated half the available seats. The other half are allocated proportionately between all the lists (including the winning one) according to the number of votes received.

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[1] Article 43 of the Andorran Constitution provides that the Co-Princes are jointly and undividedly the heads of state and its highest representatives. The Co-Princes are in their personal and exclusive capacities, the Bishop of Urgell and the President of the French Republic They arbitrate and moderate the functioning of the public authorities and exercise their duties with the countersignature of the head of government or of the *sindic*, the speaker of parliament. It is they who call general elections, accredit diplomatic representatives, authorise and promulgate legislation and express the consent of the state to honour international treaties under the provisions of the Constitution.

[2] Parliament and the government exercise legislative power. Three *communs* (municipalities) acting jointly or one-tenth of nationally registered voters may present draft legislation to parliament. The *Sindicatura* (speaker and deputy speaker) is the governing body of parliament. The speaker and deputy speaker may not stay in office for more than two consecutive full terms.

[3] Administratively, Andorra is divided into seven municipalities: Canillo, Encamp, Ordino, La Massana, Andorra la Vella, Sant Julià de Lòria and Escaldes-Engordany. These municipalities are represented and managed by town halls that approve and implement the local budget, draw up and implement public policies and manage and administer all the local authority's property and resources. They have their own resources and receive funding from the state budget, to guarantee their financial independence.

Definition of a political party

11. There is no legal definition of political parties in Andorra containing criteria to determine what sorts of bodies can be deemed to be parties. The notion of political party does appear in Article 26 of the Constitution, which states that "Andorrans have the right freely to create political parties. Their functioning and organisation must be democratic and their activities lawful. The suspension of their activities and their dissolution is the responsibility of the judicial authorities." Political parties are also referred to in the legislation on associations (*Llei qualificada d'associacions*) of 29 December 2000, whose provisions apply to parties - with a few distinctive features - for as long as they are not subject to specific legislation, which is still the case today. Although in principle Article 387 of the Andorran Criminal Code makes breaches of legislation on the financing of political parties an offence, such legislation again does not in fact exist.

Formation and registration

12. Political parties are currently governed by the associations legislation of 15 December 2000, which grants them legal personality. However associations, including political parties, are not obliged to be entered in the Register of associations . Andorran legislation recognises *de facto* associations and registration has purely declarative value, rather than granting a particular status. However, under section 16 of the legislation, the management of associations that are not registered is the personal and joint responsibility of the members and the association itself.

13. Under the special provisions of the associations legislation, a) political parties may only be founded by persons with Andorran nationality, b) political parties' statutes may provide for ordinary general meetings to be held more frequently than annually, and c) the statutes may provide for governing bodies different from those of other associations, though such bodies must function democratically.

14. The following four political parties are entered in the associations register: 1. *Sant Julià Segle XXI*; 2. *Renovació democràtica* (RD); 3. *Verds d'Andorra*; 4. *Unió Nacional Progrés* (UNP). The total number of parties currently in operation is not known. During the on-site visits it was stated that traditional major parties such as the *Partit Liberal d'Andorra* - PLA and the *Partit Socialdemòcrata* – PS, had already been constituted before the legislation of 15 December 2000 but because they had failed to complete the registration formalities within a year, involving the summoning of the party congress and the deposition of their statutes and an assets statement, they had not been entered in the register. This is also the case with bodies such as *Andorra pel Canvi* – APC (which considers itself to be not a party but a citizens' grouping)[4] and *Coalició Reformista* – CR, which as its name suggest is a coalition that at the 2009 elections included the PLA, the *Unió Laurediana*, the *Independents d'Ordino* and the *Nouveau Centre*, composed of former members of the Andorran Democratic Centre and of *Sant Julià Segle XXI*.

Participation in elections and representation in Parliament

15. The Andorran elections in April 2009[5], - i.e. before the on-site visit - were contested by a) five parties standing for the national seats (APC; CR; PS; UNP and Verds d'Andorra) and b) the following groupings on the municipality lists: Canillo: CR; a joint PS + local independents list; Encamp: Verds d'Andorra; a joint PS + local independents list; a joint APC and

[4] However, the APC does have its own statute, a "youth" section and local branches.
[5] www.eleccions.ad/

Units per al Progrés (a local party) list; CR; Ordino: APC; a joint PS + Grup d'Unió Parroquial Independent (GUPI) list called the Alternativa; the independents of Ordino; La Massana: CR; a joint PS + local independents list; Andorra La Vella: Verds d'Andorra; a joint PS + local independents list; APC; CR; Sant Julià de Lòria: a joint PS + local independents list; a joint CR + Unió Laurediana list; APC; Escaldes Engordany: Verds d'Andorra, a joint PS + local independents list; a joint APC coalition + RD list; CR. The most recent, early, elections in April 2011 were contested by a) four parties standing for the national seats : DA, PS, APC and Verds d'Andorra (DA – Demòcrates per Andorra is a new coalition) and b) the following groupings on the municipality lists: **Canillo**: DA and a joint PS + local independents list; **Encamp**: DA and a joint PS + local independents list; **Ordino**: DA and a joint PS + GUPI + local independents list; **La Massana**: DA and a joint PS + local independents list; **Andorra La Vella**: DA and a joint PS + local independents list; **Sant Julià de Loria**: UL and a joint PS + local independents list; **Escaldes-Engordany**: DA and a joint PS + local independents list.

16. Following the 2009 elections, the 28 seats in the unicameral parliament were filled as follows; PS: 14 seats, CR: 11, APC: 3. Four persons at least are needed to form a parliamentary group. It was reported on site that as the APC only had three seats another member had recently become attached to it to form a third group, for the sake of equity and to avoid the need to form a coalition group. Following the early elections in April 2011, the 28 seats in the unicameral parliament are currently filled as follows; DA: 20 seats, PS: 6 seats and UL: 2 seats. There are two parliamentary groups; DA: 22 seats (the two seats held by UL joined the DA parliamentary group) and PS: 6 seats.

Political financing system

Legislation

17. The main legislation is the election financing law of 15 December 2000, which came into force on 6 January 2001. This is only concerned with election campaign financing, not that of parties or referendum campaigns. It establishes an election financing system under which, in principle, elections are primarily the responsibility of the candidates and not the parties. The financing is based on a mixed public-private model that authorises all sources of funding, with a few exceptions, but places a limit on the support a single donor can give to any one party. Sections 1 and 11 of the legislation were amended in February 2005 to, respectively, provide a technical clarification concerning election agents and expedite the payment of public funding following elections. In the absence of regulations on political party financing, the latter are subject to the general provisions of the legislation on associations. It should be noted that the electoral regulations include provisions of relevance to this report. The legislation in question is the election and referendum law of 3 September 1993 (hereafter the electoral law), as subsequently amended on a number of occasions and republished in the form of Act 28/2007 of 22 November (itself subsequently amended by Act 9/2008 of 12 June 2008).

Public financing of political parties and election campaigns

18. The election financing law only governs the financing of election campaigns and the on-site discussions confirmed that in principle parties receive no direct financial aid from the state or local authorities. However, the parliamentary groups do receive funding, which enables them to rent premises outside of parliament, pay consultants and finance other activities connected with their parliamentary duties. The on-site visit showed that these groups gave support to their political parties.

19. Under section 29 of the associations legislation of December 2000, registered associations – but not others – are eligible for public grants and material aid for activities of benefit to the public, for the use of which they must account to the donor body. Political parties do not appear to benefit from such funding, either directly or indirectly, for example in the form of support for parties' youth sections.

20. Under the election financing law, fixed sum payments are made to help cover the cost of national or local election campaigns. On request, candidates of parties that already have elected representatives at national or local level may receive an advance of 30% of the aid allocated at the previous elections. After the elections, and once the financial reports have been audited – and thus subject to the absence of irregularities in the accounts – the state pays a sum determined as follows, whether or not the list has won seats (see also footnote 34):
    - for general elections: € 300 for each seat won and € 10 for each vote received by the list;
    - for local elections: € 60 for each councillor elected and € 10 for each vote received.

21. The public funding is intended to finance election expenses. Under section 10 of the election financing law these are sums paid between the day the elections were called[6] and that when the results were announced, and concern a) propaganda and publicity directly or indirectly intended to create support for candidates, irrespective of the form and media used; b) the rental of premises for campaign events; c) salaries and fees of non-permanent staff providing services to candidates; d) means of transport and travelling expenses of candidates, party or coalition leaders and campaign staff; e) telecommunication and correspondence expenses; f) interest on loans raised for campaign finance (assessed on the date of receipt of the public funding); g) any expenditure necessary for the organisation and functioning of campaign offices and specific services linked to the elections.

22. The GET notes from information in the court of auditors' report on the April 2005 general elections that the total expenditure declared by the 17 lists of candidates (representing 5 parties) was about € 740 000. The total expenditure validated by the court was about € 24 000 less than that. Public funding accounted for less than half of the declared expenditure. For example, the budgeted amount approved by parliament for public funding for the April 2009 elections was € 284 150.

Other public aid

23. Finally, it should be noted that the 1993 electoral law, as revised by Act 28/2007 (sections 29 to 31) provides for public aid to candidates in the form of a) electoral advertising space provided by municipalities; b) public premises for election meetings, provided by municipalities; c) distribution of candidates' election addresses to the public by the government; d) free broadcasting time in the public media, the length of which is determined by the directors of the public broadcasting services, on the basis of equality between candidates; e) publicly funded opinion surveys.

24. To ensure that public bodies remain neutral in the electoral process, section 31 of the electoral law forbids the communication or broadcasting of any publicly financed institutional message between the date the election is called and the end of voting.

[6] According to the Constitution, between 30 and 40 working days before the election. The April 2009 elections were called on 2 March and held on 26 April.

Private financing of political parties and election campaigns

25. The replies to the questionnaire do not touch on the private financing of political parties, not even in practice or with reference to legislation or regulations other than the election financing law, which does not cover the financing of political parties. The GET notes that the section 1 paragraphs 2 and 4 of the December 2000 associations legislation authorises associations to carry out economic activities that are compatible with their statutes, so long as any financial surplus is not shared among the members. Subject to this general limit, the law does not lay down any strict rules on the financing of associations and section 6 invites them to decide on such matters themselves in their statutes.

26. By way of examples, the GET has consulted the statutes of several parties, which highlight the varied range of sources of finance provided for. The following list is a compilation of the various approaches adopted. Certain statutes provide for all of them, others only some: a) ordinary regular subscriptions from party members; b) special contributions from members performing paid public duties[7]; c) special contributions approved by the party bodies to cover exceptional expenditure; d) contributions from militants, members, sympathisers and others performing paid public duties, whose level and form is laid down in the statutes; e) the income from party publicity drives, whether political or other; f) income from party assets and/or other income bearing sources; g) grants, donations and legacies to the party, which are generally governed by the party's financial regulations. Party statutes sometimes refer to the financial regulations to provide more clarification, for example concerning the level of special contributions. The statutes of the two or three larger parties also specify specific rules for certain party bodies, such as the women's or youth sections, that are financially autonomous or, alternatively, included in the general accounts.

27. The GET notes that section 4 of the election financing law (see below) requires political parties, as donors, to specify the source of funds that they allocate to election accounts, which suggests that parties may themselves receive funds during and outside of campaigns.

28. Section 8 of the election financing law lays down fairly generous rules on the private financing of election campaigns since it only specifies sources that are forbidden. Contributions to election accounts are not allowed from a) public service bodies; b) parastatal and public law bodies and public companies; c) individuals and legal persons currently fulfilling contracts to provide services or materials to or work for public bodies; d) contributions from foreign bodies or individuals (the on-site discussions confirmed that this included the numerous foreign residents in Andorra). Section 9 of the legislation also imposes a general limit in so far as individuals and legal persons may not contribute more than € 6 000 to the accounts of any particular party or coalition to subsidise candidates' election expenses (via the campaign and election agents' accounts, see below).

29. The election financing law only covers financial contributions and makes no reference to contributions in kind, for example in the form of services.

30. In principle, candidates finance their campaigns from their personal resources, support and/or donations from their parties and other donors and, possibly, loans. In practice, it appears from the financial reports of the court of auditors that there is frequent resort to borrowing.

[7] It emerged from the on-site discussions that the percentage is generally 10% of the emoluments received. Sometimes this rises to 100% for short periods, particularly for the purposes of repaying loans.

31. According to the replies to the questionnaire it is not possible to make anonymous donations under section 4 of the election financing law. However, the act does not establish any general obligation for recipients to identify donors. From a strict reading of section 4 it appears that donors can only make their contributions through banks and as such must identify themselves in the payment order, irrespective of whether the payment is made directly or through an intermediary, including cases where the payment is made by a party:

> ***Section 4 of the election financing law***
>
> *1. Persons making financial contributions to the accounts referred to in the previous sections must record in the transfer document their name, address and passport number, to be presented to the employee of the depositing institution.*
>
> *2. If sums are transferred to the account of or on behalf of another individual or legal person, the latter's name shall appear. In the case of political parties, the origin of the sums deposited shall be specified.*

32. The bank identification concerns the person's name, address and passport number. Beyond the financial institution, the information is intended for the election agent (see paragraph 36 below), the Electoral Commission and the Court of Auditors.

Other aspects

33. The replies to the questionnaire indicate that political donations are not eligible for tax deductions.

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

i. Transparency (articles 11, 12 and 13b of Recommendation (2003) 4)

Accounts

Political parties

34. The replies to the questionnaire do not cover the rules of transparency and accounting applicable to political parties and are confined to those set out in the election financing law relating to the financing of election campaigns. However, as associations, whether or not registered, parties are in principle required by section 28 of the 2000 associations legislation to maintain, in particular, an inventory of their assets and accounting books corresponding to their activities[8]. These records, and any additional accounting material that the government may require associations receiving public financing to maintain, may be consulted by all the members of the association.

35. According to the replies to the questionnaire, the source of sums deposited as contributions to election campaigns by political parties must be specified, and where necessary justified with reference to the general accounts.

[8] To which should be added a register of members and a book of minutes.

Election campaigns

36. From a practical standpoint, section 1 of the election financing law adopts the principle of financial agents used in other countries. It requires each candidate to appoint an election agent, who may not be the candidate, to manage the campaign income and expenditure and the accounts in general. Agents must open one or more accounts in Andorra to receive all the funds used to finance their campaign. Agents may appoint other persons with authority to disburse funds to cover the aforementioned expenditure. Opinions apparently differed on the interpretation of the requirement in section 1 of the election financing law to appoint an election agent. Initially, in 2001, when asked to rule on the matter the electoral commission issued a recommendation that this provision be interpreted strictly to mean one sole agent per candidate. However, in 2005, the election financing law was finally amended to allow several candidates nominated in different constituencies by the same party to combine their expenses (and only their expenses, but in practice all their accounts are merged) and appoint a single joint agent. It appears though that the court of auditors continued to stress the divergence in practice with the wording of the legislation after 2005, but it told the GET on site that in principle when the accounts were properly prepared and maintained it was possible to apportion the corresponding sums to each candidate.

37. Sections 2 and 3 of the election financing law require election agents to report to the electoral commission all the accounts specifically opened in banks in Andorra for the purpose of raising campaign funding. Such reports must be made within 24 hours of the accounts' being opened. All the funds intended to cover election expenditure, whatever their origin, must therefore be deposited in election accounts. Election agents and persons whom they have authorised to disburse funds from these accounts are responsible for the sums spent and for ensuring that they are used for the specified purpose. Under the election financing law, at the end of campaigns the balance of these accounts may only be used to settle, within the fifty days following the election, electoral expenditure previously contracted.

38. The requirement for candidates, meaning their agent, to maintain campaign accounts is an indirect consequence of the electoral commission's duty to monitor campaigns and the obligation that section 11.4 of the electoral law places on "candidatures" to submit a financial report after the elections. According to the law, between 60 and 80 days after the election, candidatures that fulfil the required conditions for receiving state funding or that have requested advances on such funding shall present a detailed and documented set of accounts of their respective income and expenditure to the court of auditors. Within the same period, financial establishments that have granted loans to candidatures shall send detailed information about these loans to the court of auditors. Undertakings that have invoiced candidatures for election expenses in excess of one million pesetas (€ 6010.12) shall also inform the court of auditors of this fact.

39. The standard form drawn up by the court of auditors is appended to the replies to the questionnaire. In page 72 of its report on the 2005 general elections, the court referred to major variations in the way this accounting information was presented. In order to harmonise the criteria and secure as standardised a presentation as possible, and in the absence of more specific rules applicable to this case, it recommended that the accounts be presented in accordance with the model prepared by the court, and that the general public accounting plan should be used as a reference standard. The model includes two distinct columns showing the balance sheet and the financial results, with the consolidated positive and negative outcomes concerning a. short-term loans from credit establishments/parties/other lenders, income (in particular transfers from political parties and private contributions); b. expenditure on staff, rentals, election material and

publicity, communications and correspondence, equipment and public relations, debt repayments and other expenditure.

Donors

40. The replies to the questionnaire show that apart from the obligation under the election financing law to identify themselves (or the ultimate donor) when making payments into election accounts, individuals and legal persons have no other obligations regarding the registration or declaration of their donations, or the publication of their accounts.

41. There is no information on what access supervisory bodies such as the electoral commission or the court of auditors, or the judicial authorities in the event of judicial inquiries, have to any accounting or financial documents of donors.

Other reporting requirements

42. As noted above, section 11.4 of the election financing law requires the court of auditors to be provided, between 60 and 80 days after the elections, with a) detailed information from financial establishments that have granted loans to candidates; b) information from undertakings that have invoiced candidatures for election expenses in excess of one million pesetas (€ 6010.12).

Requirement to communicate and publish accounts

43. Political parties are under no obligation whatever to communicate and publish their financial accounts, on a regular basis, that is outside of election periods or periods of election activity. They do not do so on their own initiative and generally speaking few if any financial documents are available on line[9].

44. As noted earlier, the election financing law requires candidates to notify the electoral commission of the appointment and identity of election agents. The latter must then notify the commission within 24 hours of any campaign accounts opened in Andorra. Section 11.4 of the election financing law requires "candidatures" to submit financial reports after elections. Between 60 and 80 days after the election, candidatures that fulfil the required conditions for receiving state funding or that have requested advances on such funding shall present a detailed and documented set of accounts of their respective income and expenditure to the court of auditors.

45. It is not clear whether the lists of donors are communicated by the candidates or whether the court of auditors must receive this information from the banks. The Andorran authorities indicate that in practice, it is the Electoral Commission who communicates the lists to the Court of Auditors, the latter comparing the data with the campaign accounts submitted to it.

46. Candidates themselves do not appear to publish their accounts or lists of any donors to their campaigns. The publication of accounts is done in practice by the publication of the court of auditors' final report in the official journal of the Parliament, apparently some six to seven months after the elections. Moreover, the court's reports on election expenditure for the March 2001 and April 2005 parliamentary elections are available on line, on the site of the court of auditors as are those relating to the December 2003 and December 2007 local elections. However, at the time the on site visit was being prepared – August 2010 – there was no report available on the April

[9] For example, in August 2010 one of the parties' site included the attestation certifying the 2007 accounts and (with password) the expenditure for 2007 and 2008.

2009 parliamentary elections (the latter was, as indicated by the authorities after the visit, published in the official journal of the Parliament in February 2010).

47. These court of auditors reports do not include lists of donors. There do not appear to be any arrangements to publicise the identity of donors or otherwise make them known to the general public, either during election campaigns or afterwards, when the court of auditors publishes campaign accounts in its election report.

Third parties

48. In the absence of specific accounting obligations for political parties, the precise extent to which party bodies such as horizontal groupings and local sections need or need not be included in the accounts remains undecided. The election financing law does not deal with how to take account of possible third party involvement – for example financial and material contributions from groups of sympathisers - in candidates' election accounts. The standard format for campaign accounts is also restricted to direct financial contributions.

Retention of documents

49. The replies to the questionnaire indicate that, in accordance with Andorran accounting rules, all accounting documents and related correspondence, documentation and supporting documents must be registered and retained in an orderly fashion for six years following the closure of the previous year. In accordance with these principles and in the absence of specific regulations candidates must therefore retain documents relating to their election accounting for six years following closure. This is a consequence of article 7 of Law 30/2007 on accountancy, which has introduced important changes in this field. This is also the period that the court of auditors itself applies for the retention of documents used in its audits.

ii) Monitoring (Article 14 of Recommendation (2003) 4)

50. The legislation provides for external supervision. The various individuals and groups concerned, such as parties, bodies directly or indirectly linked to parties, affiliated organisations and candidates, are not required to establish specific forms of internal audit, checking or monitoring, although certain parties do provide for such procedures in their statutes or rules of procedure, and have sometimes adopted ethical codes or rules of conduct and/or detailed disciplinary procedures[10]. Nor is there any obligation for parties (under the associations legislation) or candidates (under the election financing law) to have their accounts certified by an independent external auditor.

51. Under the associations legislation and the court of auditors Act of 13 April 2000[11], monitoring is the responsibility first of the electoral commission and then of the court of auditors. The replies to the questionnaire are mainly concerned with the second stage. The court of auditors' supervision comes into force once there has been a request to reimburse campaign expenses. Otherwise it only applies to candidates or bodies seeking state assistance.

[10] This is the case with two parties – the Liberal and Social-Democratic parties – previously taken as examples.

[11] Section 9 of the court of auditors Act:

1. The competent body shall inform the court of auditors of the results of its activities to supervise financing and electoral expenditure, within two months of the completion of the elections.

2. The court of auditors shall transmit to parliament the final report on the monitoring of electoral activity and the granting of subsidies within two months of receipt of the report of the corresponding body.

52. The GET notes that sections 11 and 12 of the election financing law authorise the two supervisory bodies to refer cases to the prosecution service, which means that a third body is potentially involved in the process.

a) First stage: supervision by the electoral commission

53. Like its counterparts in other countries, the electoral commission ensures that elections are properly conducted. The commission produces recommendations, resolutions and general provisions published in the Andorran official journal. The resolutions and general provisions are immediately enforceable by all the public authorities and members of the public and the commission may take any interim measures required by the urgency of the situation. It acts in response to complaints or on its own initiative. Its functioning and status are governed by sections 26 ff of the 1993 electoral law, as revised in 2007. The members of the commission are appointed at the start of each parliament and take up their duties on the day elections or referendums are called. It has six members, three of whom must be Andorran judges (*Batlles*), chosen by lot by the judicial service commission, the body that manages the judiciary. The other three must be lawyers or other experts, appointed by the parliamentary speaker (*Sindicatura*) on the joint proposal of the parliamentary groups and non-registered members of parliament. Substitute members must be appointed in the same way. The judicial service commission appoints the chair and vice-chair of the electoral commission from the judicial members. If their votes are tied the chair has a casting vote. At least four members must be present at discussions, including two judges. The commission may be convened by the chair or two members and it can meet at any time if the matter is urgent. Parliament provides the secretariat of the commission, with the secretary general of parliament acting as its secretary, and must provide it with all necessary resources, such as premises, expert and technical assistance, per diems and payment of members.

54. Under section 11 of the election financing law, the commission's powers of scrutiny extend from the date an election is called until 50 days after the election is held. Under electoral law 28/2007, the government must call an election at least five days before the end of the parliamentary term of office and at the same time it decides on the length of the election campaign, which is 10 to 15 days. The length of campaigns is similar for local elections. However, these are always called between 30 and 40 days before the election date, which has to be in the first 20 days of the election year.

55. Section 11 of the election financing law makes the commission explicitly responsible for enforcing the election financing rules.

> ***Section 11 of the election financing law***
>
> *1. From the announcement of the date of the elections until the 50th day after the election the electoral commission shall ensure that the electoral financing regulations are applied. For that purpose, when it considers it appropriate, it shall ask the banks for any information on the state of election accounts, the identity of donors and operations that it considers necessary to carry out its supervisory functions. It shall also ask election agents for any financial information it considers necessary. If it finds evidence that an offence may have been committed it shall inform the prosecutor's office within one month.*
> *2. The electoral commission shall inform the court of auditors of the results of its activities within two months of the date of the elections.*

3. [new paragraph introduced in 2005] At this stage, at the request of their agent and if the electoral commission has no grounds for refusal, candidatures may receive 70% of the grant to which they are entitled on the basis of the final results of the election, less any advances made in accordance with section 7.
4. Between 60 and 80 days after the election, candidatures that fulfil the required conditions for receiving state funding or that have requested advances on such funding shall present a detailed and documented set of accounts of their respective income and expenditure to the court of auditors. During this same period, financial bodies that have granted loans to candidatures shall provide the court of auditors with detailed information on these loans. Undertakings that have invoiced candidatures for election expenses in excess of one million pesetas (€ 6010.12) shall also inform the court of auditors of this fact.

56. To that end, and when it considers it appropriate, it should a) ask the banks for any information on the state of election accounts, the identity of donors and operations that it considers necessary to carry out its supervisory functions, and b) ask election agents for any financial information it considers necessary.

57. If its investigations reveal that any offence has been committed it must inform the prosecutor's office within one month. In all circumstances, it must inform the court of auditors of the results of its supervisory activities within two months of the date of the elections.

b) Second stage: supervision by the court of auditors

58. The court of auditors (*Tribunal de Comptes*) is required to rule on the validity of accounts, in other words identify irregularities and breaches of the restrictions concerning electoral income and expenditure.

59. The court is first informed by the electoral commission of the results of its supervision within the two months following the elections. At the same time the court must receive from the agents of candidates who meet the conditions for a state subsidy or who have requested advances detailed and documented accounts of their income and expenditure. Between 60 and 80 days after the election, all the financial establishments that have granted loans and the most important suppliers of services (those valued at around € 6 000 or over) must also inform the court of the details. There then follows a period of 30 days for the court to request any explanations or documentation it considers necessary.

60. The sequence of the procedure is laid down in section 12.1 of the election financing law:

Section 12 election financing law

1. In the four months following the elections, the court of auditors, in carrying out its supervisory functions, shall rule on the validity of election accounts. If it identifies any irregularities or breaches of the restrictions concerning electoral income and expenditure, it can recommend that the state grant to the candidature be reduced or not allocated. If it finds evidence that an offence may have been committed it shall inform the prosecutor's office within one month.
2. Within the period specified in the previous paragraph, the court of auditors shall submit to parliament a detailed report on its scrutiny and after approving this report parliament shall forward it to the government for information.

> *3. In accordance with the report of the court of auditors, the government shall, within two months of receiving the report, order the payment of grants to candidatures.*

61. The court has a total of four months to complete its task (and at least ten days to confirm its checks and findings) and prepare a draft report. According to the replies to the questionnaire, this draft is sent to candidates for their comments, after which the report is finalised. The report must then be approved by parliament, which finally forwards it to the government for the payment of public aid.

62. Under the Court of Auditors Act of 13 April 2000, the court is institutionally linked to parliament. It is an independent technical body with responsibility for supervising public spending and ensuring the transparency of central and local government economic and financial management and accounting. It also publishes reports on the accounting and financial management of the Andorran public service.

63. The Court of Auditors Act includes statutory safeguards of its independence, for the institution itself and for its president and two members who form its full membership, *vis-à-vis* both parliament and the bodies and agencies subject to its supervision. These include an irrevocable and non-renewable six year term of office for the three members, freedom for the court to determine its work programme plus specific tasks assigned to it by parliament and various incompatibilities with other functions, such as those of the public service, parliament and political parties. Although as noted in the first and second round evaluation report, dated December 2006, the court carries out checks via private audit firms and individuals recruited by competition, the GET was told on site that the supervision of campaign accounts is carried out by the members themselves.

64. In connection with its scrutiny of electoral financing, section 12.1 of the election financing law authorises the court to recommend that public funding be reduced or not allocated. However, the final decision rests with parliament when it approves the report. The government simply orders the payment of the subsidy.

c) The prosecution service

65. Under sections 11 and 12 of the election financing law the commission and the court must notify the prosecution service within one month of any evidence that a crime has been committed (this relates to offences categorised as "lesser offences" or *délits*, such as the ones mentioned in paragraph 72 hereinafter). The court's rules of procedure reflect this approach[12].

d) Information and statistics on the supervisory activities in practice

66. The replies to the questionnaire do not contain any relevant information for any of the three authorities. The GET notes that the Andorran official bulletin reports decision and positions taken by the electoral commission on electoral disputes but that of the dozen or so decisions or

[12] Section 3.6 of the court of auditors Act:
(…)
6. The court of auditors shall specify, in all its reports and other relevant documentation, all the offences and unreasonable or irregular practices that may have been identified, and indicate where, according to its criteria, responsibility might lie and the measures that need to be taken. If its activities uncover evidence of financial, disciplinary or criminal liability, the report must be submitted to the relevant authority.

opinions handed down on electoral matters only one – in 2001 – appears to have concerned the application of the election financing law, and that on a technical point relating to the appointment of election agents. The on-site discussions confirmed that, to date, the commission has never been confronted with a real case of illegal campaign financing. The rare problems arising have always received clarifications and explanations from those concerned, which the commission has judged satisfactory.

67. The reports published so far by the court of auditors, on the 2001 and 2005 general elections and the 2003 and 2007 local ones, give a more practical insight into the scope of its oversight. As it states at the start of its reports, its checks whether a. each candidate appointed an election agent; b. each candidature had a special bank account for the receipt and disbursal of funds; c. these funds were used in accordance with the law; d. the origin of these funds has been properly identified; e. the restrictions on the origin of funds have been complied with; f. the maximum levels of contributions have been complied with; and g. candidates' expenditure, as electoral expenditure in accordance with the criteria in section 10 of the election financing law, was made between the date the election was announced and the announcement of the results.

68. The conclusions of the reports also reveal inadequacies of varying seriousness. For example, the 2005 general election report referred to inadmissible expenditure of varying importance and the general problem of major differences in the way candidates presented their accounts. The 2007 local election report pointed to accounts not submitted but replaced by other supporting documents, difficulties of identifying the income and expenditure of individual candidates belonging to a national party and using a single election agent who failed to separate out the financial situations of the various candidates, and sometimes significant delays in submitting accounts that had even led to several months' delay in the production of the court's report.

69. In the case of these two most recent reports, when the court of auditors failed to approve expenditure, for example because the absence of supporting documentation meant that it did not meet the conditions for reimbursement, it then adjusted the figure for the total level of expenditure. It considered however that, overall, the deficiencies were not sufficiently serious to justify sanctions as such, in terms of public funding.

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

a) Administrative and criminal sanctions imposed in connection with the supervision exercised by the court of auditors

70. Section 12 of the election financing law provides for a reduction in or loss of the state subsidy: "*If the court of auditors identifies any irregularities or breaches of the restrictions concerning electoral income and expenditure in the accounts* [of the lists of candidates]*, it can recommend that the state grant to the candidature be reduced or not allocated*. As noted earlier, this measure is proposed by the court to parliament, which approves it when it accepts the supervision report. In accordance with Section 1 of the law, only the election agent is (can be held) liable for the income and expenditures of his/her list of candidates. Beyond that, the other actors' possible responsibility (party, member of a list, donor) is not provided for.

71. Article 387 of the Criminal Code (CC), which is itself the subject of a section following the one on bribery offences, makes the illegal financing of political parties an offence (where there is a breach of the "financing of political parties legislation") punishable by three months' to three years' imprisonment and a fine of up to three times the amount received.

Criminal Code: Article 387 – Illegal financing of political parties

Persons who receiving financing for a political party in serious contravention of the financing of political parties legislation shall be liable to three months' to three years' imprisonment and a fine of up to three times the amount received.

72. The on-site discussions confirmed that since such legislation has not (yet) been enacted, this Article 387 is not applicable. Moreover, neither the election financing law nor the criminal code provide for an offence specifically related to the financing of election campaigns. The replies to the questionnaire indicate that existing general provisions relating to "commercial trafficking" might apply, but offered no further details. Reference was also made in the on-site discussions to forgery and using forged documents, undue appropriation of funds, and swindling (articles 208, 213 and 435 CC) as relevant offences – which could be committed by the election agent as indicated earlier.

b) Immunities

73. The replies to the questionnaire provided no information on applicable immunities. The joint first and second round report had considered this issue from a general standpoint[13] and had not seen any need for improvements.

c) Statute of limitation

74. Although this is not a statute of limitation as such, it is worth noting that in accordance with article 11 of the election financing law, the court of auditors has one month to notify to the prosecutor's office a suspicion of crime arising from its analysis of financial reports submitted in the context of the law.

75. As stated in the other part of this report on incriminations, which includes more details, in criminal cases the criminal code distinguishes between major, minor and petty offences. The time limit for prosecution is four years for minor and ten years for major offences. The means of calculating this is laid down in articles 82 and 83 of the criminal code. For petty offences specified in an appendix to the code, and for the offences of common abuse and defamation, the time limit is six months.

[13] "As with most national legal systems, there are two sorts of immunity in Andorran law: non-liability (freedom of speech) of members of parliament for votes and opinions they express in the course of their duties (article 53.2 of the Andorran Constitution) and of the ombudsman for opinions expressed or agreements reached, also in the course of his or her duties (section 6.2 of the legislation establishing and governing the *Raonador del Ciutadà*), and inviolability (immunity from arrest other than *in flagrante delicto*) of members of parliament (article 53 of the Constitution), the Head and members of Government (article 74 of the Constitution), members of the High Judicial Council (section 55 of the Judiciary Act), batlles and judges (section 77 of the Judiciary Act), members of the prosecution service (subject to the same responsibilities as batlles and judges under section 90 of the Judiciary Act and section 23 of the Prosecution Act) and members of the Constitutional Court (Constitutional Court Act). The Criminal Court (*Tribunal de Corts*) sitting in full session may order the arrest of the aforementioned persons. (…)
The Criminal Court is the only body that can lay charges against or investigate members of parliament, the head of government or ministers, members of the High Judicial Council, *batlles* and judges and members of the prosecution service, and the high court has special jurisdiction to hear cases against them at first and final instance. The president of the court acts as investigating judge, a bench of five judges hears such cases and the full court hears any appeals."

d) Statistics

76. The replies to the questionnaire contain no information on this subject. The on-site discussions and the reports of the court of auditors showed that the latter regularly revises the declared expenses of candidate lists when these cannot be validated, for example because invoices are missing or payments were not made from the campaign account, were outside the time limit or did not correspond to the officially recognised list of expenses in section 10 of the election financing law. The court of auditors has stated that it has never had to order the total loss of the amount allocated as state subsidy. For its part, the electoral commission says that it has never been confronted with payments that it has eventually found to be inadmissible or with non-authorised sources, since it has always received satisfactory explanations from the beneficiaries and/or banks. Neither body has found it necessary to refer cases to the judicial authorities on suspicion that a general criminal offence – such as those mentioned in paragraph 72 – has been committed (and the special offence specified in Article 387 of the criminal code is not at present applicable, in the absence of legislation on the financing of political parties).

IV. ANALYSIS

General considerations

77. Political life in Andorra is based on still relatively young democratic institutions, since the first written constitution dates from 1993. The parties themselves are fairly new since until that date politics and the moulding of public opinion were largely in the hands of certain influential families. The size of the Principality and the tiny number of citizens with political rights - about 20 000, or a third of the total population - means that parties and political movements are limited in size, with apparently fairly uncomplicated structures. In general, as well as their central bodies, the three or four major parties have geographical branches in each of the seven municipalities and possibly one or two sections aimed at particular groups of the population, such as young people and/or women. The others generally only have a central body, or a group of persons of varying permanency, at national and/or local level. Andorran political parties are most visible during elections to the monocameral parliament (the *Consell General*) and the town halls of the seven municipalities. The larger parties whom the GET met on site confirmed that, as in other countries, as well as financing campaigns they had to meet the costs associated with their ongoing activities, premises and equipment, working and discussion groups, advice on legislation and research, official journeys and so on.

78. The election financing law of 15 December 2000, which came into force in January 2001, is currently the basic legislation on political financing. It needs to be emphasised that its first and avowed purpose is to ensure that the financing of political life is based on the principles of transparency, equality and fairness. This at least partially reflects the aims of Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns, since it both ensures and regulates the financing of the election campaigns of candidate lists (other than in the case of referendums, but these are very rare). However, it does not regulate the financing of political parties. As indicated in the descriptive part, Andorra has a mixed public-private system of campaign financing, involving *ex post* reimbursement by the state and regulations governing the (purely) financial contributions of individuals and legal persons, which are subject to a € 6 000 limit. Supervision is exercised jointly by the electoral commission and the court of auditors, with the possible sanction of a reduction in or loss of state reimbursement of expenses. To date, Andorra has not experienced any major scandals relating to political financing, though this does not exclude occasional controversies. For example at the

parliamentary elections in 2009 one of the candidate lists spent what was considered to be a considerable sum – about € 400 000 according to the published accounts – on its campaign, without either the public or the other parties really understanding the origin of these funds. The representatives of the media and business whom the GET met on the first part of the visit said that traditionally it was accepted that business people entered into politics to assist their or their families' commercial prospects, and that Andorra's distinctive features encouraged conflicts of interest[14].

Transparency

79. As indicated in the descriptive part of the report, the political parties, whether or not registered, are governed by the associations legislation. The latter is fairly permissive and parties are in principle free to undertake whatever activities they choose, so long as income is not redistributed directly or indirectly to members. Unlike the election financing law the law on associations does not establish any specific rules, for example regarding bans on certain sources of funding or maximum donations.

80. The regular financing of parties is therefore unregulated, even though as in all countries there is always the risk of inappropriate links between politics and money outside of elections. It is also easy to circumvent the limits prescribed in the election financing law since, as was confirmed on site, political parties retain the right to raise funding, whether or not for campaigns, which outside the context of campaigns is not regulated at all (unless this funding is included voluntarily in the accounts of a given list). Nor is there anything to prevent parties from themselves meeting part of their candidates' electoral expenses, and as noted above the election financing law only provides for one embryonic form of sanction that is ill-suited to the range of possible situations. As the GRECO evaluation team (hereinafter: the GET) was told, the political parties receive support from the business sector, particularly at election time. They are sometimes loaned premises for their headquarters or other activities. This support may come from other parties or from commercial enterprises. In practice it is also provided by the parliamentary groups, which have their own specific and fairly generous publicly funded budgets[15] to pay for such outgoings as expert advice, office rental and the hiring of secretarial support, all of which are in short supply within the parliament building. These groups are supervised exclusively by the parliament itself – though the court of auditors monitors parliament's use of public funds – and even though in principle they must account to parliament for their use of public resources some of them do not do so and are not apparently called to task for this. Moreover, although the election financing law imposes certain strict limits on campaign financing, such as forbidding donations from certain sources and the ceiling of € 6 000 for donations from the same sources, the fact that at the same time the level of financial activity outside of election periods remains unknown means that it is easy to circumvent the existing limits[16]. Finally, there are numerous question marks concerning the financial transparency of the component parts of and interests represented by certain political groupings that sometimes form political coalitions or platforms rather than conventional parties and do not have their own status and legal personality. It is difficult to apply the existing

[14] The risk is increased by the fact that there continue to be significant gaps in the regulations governing public procurements at local level. Thus, whereas central government is required to invite tenders for contracts in excess of € 20 000, this is not always the case with the local authorities, which lay down their own rules.

[15] The total annual grant to parliamentary groups is about € 1 million, half of which is divided equally between the groups. The division of the other half is proportionate to the number of members of parliament in each group.

[16] Even though parliament had the wisdom to extend the election campaign accounting period from the two weeks of the campaigns themselves to the whole period from the announcement of the elections, which thus includes at least part of the financial activity of the pre-campaign period linked to such early preparatory steps as the production and printing of documents and the signing of contracts.

legislation governing associations and accounting practices to such groupings (see also paragraph 82 below). There must be legislation on political party funding to remedy this and generally speaking those to whom the GET spoke, including most of the parties and the government itself, were broadly in favour. One parliamentary working group has apparently already started discussions on the subject. Bearing in mind the problem of the occasional failure to present campaign accounts (see paragraph 91), the GET considers it axiomatic that the future legislative framework needs to ensure that the various political parties, whatever their form and status and whether or not they benefit or seek to benefit from public funding[17], are placed on an equal footing with regard to the various aspects of these regulations, both during and outside election periods. For the reasons referred to in the preceding paragraphs, the GET recommends that **(i) regulations be introduced to ensure transparency in the financing of political parties, on an equal basis, consistent with the regulations on campaign financing and in accordance with Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns; (ii) the relations between, on the one hand, the financing of parliamentary groups and, on the other, that of political parties and election campaigns be regulated.**

81. The introduction of legislation on political party funding and the numerous other improvements arising from this report will lead to significant changes in Andorra. The legislation probably would need be gradually refined and supplemented over time by measures to explain and clarify the application of these regulations, such as explanatory guides, standardised financial forms, definitions of certain notions, training and so on. Andorra therefore needs to establish a system for identifying what measures are needed, particularly in the light of checks carried out. The experience of other countries has already highlighted the value of such an approach. The GET therefore recommends that **machinery be established to evaluate the overall system of political financing, with a view, over time, to determining with political parties the extent and nature of their obligations and what changes and clarifications are required to the relevant legislation and regulations.**

82. An accounting form already exists for candidate lists to record and submit their campaign accounts. The form is currently quite succinct and the improvements proposed in the recommendations that follow would logically lead to the expansion and clarification of this form. However, under Andorran legislation there are no satisfactory accounting obligations, forms or rules governing political parties[18], even though in principle the election financing law requires all political parties to justify, with appropriate financial information, the origin of contributions to their campaign accounts and the court of auditors can carry out relevant checks. These are therefore futile requirements that cannot be satisfied under the current regulations and it is clear that

[17] Under the current April 2001 legislation, the court of auditors' supervision only extends to government departments and other bodies that receive public funding, which means that this legislation may also have to be changed if a) the future regulations on political financing do not provide for public funding of political parties or b) such funding is provided for but would only benefit certain parties.

[18] The law on associations creates minimal obligations with which most of those whom the team met on site were unfamiliar. There is also too much uncertainty about how far the rules of the recently introduced accounting legislation apply to political parties. At the most, they only apply to legal persons with total annual receipts of at least € 100 000 (excluding loans, letters of credit and so on) and that in the case of associations are formally registered. They are therefore indirectly applicable to political parties, but in practice very few, since the largest ones did not revise their statutes and lodge them for re-registration following the entry into force of the 2001 associations legislation. According to an information booklet and the wording of the accounting legislation, the latter appears to apply not only to business undertakings but also to any legal person or association. The order of economic and financial advisers states that it has questioned the relevant minister on the subject, who replied that all associations meeting the € 100 000 of receipts condition were covered by the legislation. Nevertheless, most of the institutional and party representatives whom the GET met did not know what the current legal situation was regarding political parties' accounting obligations.

appropriate accounting obligations are needed for all the parties, including an appropriate accounting system[19] for both keeping accounts and presenting them to the supervisory body. Finally, the rules must also specify clearly how long accounting documents must be retained since this is not always currently the case. This applies equally to political parties and to candidates. The GET recommends that **(i) the necessary steps be taken to ensure that appropriate accounting rules and forms clearly apply, outside of election periods, to the financing of all political formations and (ii) rules be established on the retention of accounting documents and supporting material by these formations and election candidates.**

83. The second major technical flaw in the election financing law is that donations are interpreted strictly to mean financial payments into candidates' election accounts. The result is a failure to take account of other forms of support, for example assistance in kind such as the loan of offices and goods and services given or lent free of charge or at preferential rates. The GET wishes to stress that such services and facilities are themselves a form of aid and must in all logic be included in the accounts and assessed at their true value, as part of a policy of transparency. The latter would imply uniform accounting criteria, clarifications on what constitutes volunteer activity and need not therefore be accounted for and so on. The election financing law prohibits donations from foreign sources to finance election campaigns[20]. Nevertheless, there is concern about the fact that the major parties benefit from various forms of support – not necessarily financial – from abroad in the context of the international relations that traditionally exist between parties of the same political colour[21]. This is another reason why the legislative framework needs to be improved. For the moment sponsoring and/or third parties seem to be little known, but this is a matter that should still be considered in due course. On the other hand, because campaign accounts are intended to register donations candidates' personal contributions are not systematically included in them. The regulations on the various forms of loans taken out by or on behalf of candidates[22] could be tightened up. They also appear to ignore certain similar financial facilities offered by Andorran banks, such as advances and authorised overdrafts, which were apparently the subject of controversy in 2009. Once again, adequate regulations need in principle to require such sources of finance to be included in the published campaign accounts, and be scrutinised by the supervisory body, to ensure for example that they are not converted into financial support in the event of subsequent partial or total remission of the debt. The GET recommends that **the regulations be amended to include in campaign and (in the future) political party accounts (i) contributions in kind, other than voluntary work by non-professionals – whether these be donations or services provided free of charge or at preferential rates - with a uniform system for estimating and recording their commercial value; (ii) candidates' personal contributions and (iii) the loans and similar financial services available in practice in Andorra, including when they are granted under**

[19] As GRECO has emphasised on numerous occasions in its evaluations of other countries, such an accounting system should be sufficiently broad in scope to include local branches and horizontal sections of parties, since otherwise it cannot provide a proper picture of party finances and the movement of funds to, from and within parties.

[20] The GET was told that this applied equally to the numerous foreign residents, who are thus totally excluded from participation in local political affairs.

[21] Local media outlets that are close to certain parties and belong to foreign groups reputedly provide certain forms of material support or services at preferential rates. The major parties that belong to transnational political alliances also apparently receive by no means negligible logistical and other forms of support.

[22] Under the election financing law, financial bodies must inform the court of auditors of any loans granted on behalf of the lists of candidates, but the court only takes note of this under the heading of general information. Candidates and their agents are not required to pay separate, individual loans into the campaign accoun or include them in the financial statements of the list (loans granted on behalf of the list are logically paid into the campaign account). The law does not require from financial institutions to communicate personal loans to the court of auditors and financial agents have no responsibility in respect of personal bank accounts. Neither does the court have access to those personal accounts.

advantageous conditions or free of charge and can thus be considered as a form of donation.

84. Most of the parties met by the GET said that donations were fairly rare, although one of the formations stated that during election periods it made widespread appeals, including door-to-door approaches, for financial support. In addition, it seems to be general practice among elected members to hand over 10% or one or more months' worth of their allowances and most of the parties said that they benefited from this when they had elected members. Such contributions are not currently covered by the regulations. Certain parties said that they did not receive - or have to seek – any donations as the income from membership subscriptions was sufficient. However, to finance a campaign parties may also have occasion to ask for higher membership subscriptions or even contributions from sympathisers or supporters, as certain statutes confirm[23]. Logically, these ought to be treated as donations. The various practices described – which also occur in other countries – raise a number of issues, since the regulations make no provision for identifying them and assessing their value, which would reduce the risk of circumventing the rules and legal limits on donations. The GET therefore recommends **that current and future regulations on the financing of election campaigns and on political parties take appropriate account of the various forms of support from members and sympathisers.**

85. The GET has given considerable thought to the general spirit that underlies the election financing law and in particular the real targets of the obligations in the legislation, and the responsibilities and possible sanctions associated with it. In particular, although only "candidatures" (in other words lists of candidates) are eligible for public funding and – in principle - election agents manage campaign income and receipts and accounts as a whole (section 1.1 of the election financing law), both parties and their various components are directly involved in collecting funding[24], as well as in paying or meeting the cost of expenses. The court of auditors has only rarely recorded cases of parties making contributions to their candidates' accounts but it is common knowledge that they pay suppliers directly. This raises many questions about how to treat contributions and support from parties, particularly if the € 6 000 contribution ceiling applies to them. In this regard, and that of parties' role in general, section 6 of the election financing law would benefit from less ambiguous wording[25]. The on-site discussions clearly showed that in practice, despite being a formal condition for entitlement to reimbursement, it is not necessary for all the financial flows to pass through these accounts. Besides, the way in which the financing and monitoring arrangements are designed and the fact that it is easy to determine the level of public funding well before the closure of the election accounts may be an incentive to particular parties not to declare all their expenditure (and thus perhaps their income) since this would in any case exceed the reimbursable amount[26]. Several of those to whom the GET spoke confirmed the relevance of its concerns. It therefore recommends **that the regulations specify (i) the arrangements for taking account of the various forms of financial support and support in**

[23] See paragraph 26.

[24] As the meetings with the parties showed and section 4.2 of the election financing law shows indirectly (see paragraphs 27 and 31). Parties may make contributions but they must, in principle, indicate the source of the funding if it comes from donors.

[25] Section 9 of the election financing law: individuals and legal persons may not contribute more than € 6 000 to the accounts of any particular party or coalition to subsidise candidates' election expenses.

[26] It is easy to calculate the level of subsidies when the results are announced and the accounts only have to be submitted to the court of auditors 60 to 80 days after the elections. A candidate list may therefore confine itself to including in its campaign accounts expenditure equivalent to the reimbursement level. The GET notes that this is not necessarily hypothetical. Thus, rather strangely the total expenses recorded in all eight (!) campaign accounts presented by the various national and local party lists standing in the April 2009 elections were almost exactly equal – with less than 1% variation – to the public reimbursements for which these lists were eligible.

kind from parties to their candidates and, where relevant, the need to include corresponding amounts in candidates' accounts and (ii) the requirement that as far as possible all support and expenditure must pass through election agents and thus the relevant campaign accounts.

86. Campaign accounts are officially maintained and presented by candidate lists, through the intermediary of their election agents. Although the appointment of joint agents for several lists would appear to be a secondary problem (see paragraph 36), real problems of transparency arise from the fact that a significant proportion of candidate lists stand under labels that in fact represent coalitions or alliances of several formations or parties, sometimes in association with independent candidates[27]: a) it becomes difficult to attribute the origin of funding, including personal contributions, the borrowers and so on, to any particular candidate or party member of such a list; b) the beneficiaries of any private contributions are no longer identifiable and it is no longer possible to determine who is supporting whom; c) one or more generous contributors with no real political ambitions could be registered as candidates on the list of a political party or alliance or an existing coalition, to give their support and possibly circumvent the ceiling on donations, and then withdraw their candidatures. The GET believes that transparency calls for a clearer picture of the individual accounts of members of coalition lists[28]. The GET recommends **that adequate measures be taken to ensure that the campaign accounts of lists presented by coalitions clearly reflect the financial situation of each candidate, or group of candidates, on these lists.**

87. The system for ensuring the transparency of political financing in Andorra requires publication of the financial reports of candidate lists in the months following the announcement of the results (however, important delays occur sometimes – see paragraphs 46 and 91). They are published on the occasion of the publication of the court of auditors' own report because candidate lists and parties are not required themselves to publish their financial report (and they have no established policy of publishing campaign accounts, or annual accounts). The regulations also require all donations and donors to be registered in the accounts and the supervisory body is informed of the names of all the donors. The relevant account details on these donors are also supplied by the banks. The election financing law does not, however, stipulate the publication of the names of major donors, as required by Article 13 combined with Article 12b of the Recommendation. Information to the public on the most important private sources of party or candidate funding is an important element of any transparency policy. Such a measure has a preventive role by limiting undue influence by business on the political sphere. Even though donations are subject to a € 6 000 maximum and in absolute terms the level of contributions is theoretically fairly low, which limits the risk of undue influence, this has to be seen in the context of Andorra[29]. Campaign costs are naturally much lower than in larger countries, so contributions below the ceiling are the equivalent of much larger contributions in other countries. Publishing the names of major donors, that is for donations above a certain level, is therefore also justified in Andorra, in connection with both campaign and regular political party financing. Finally, in connection with the introduction of regulations on political party funding, provision needs to be made for the publication, at least

[27] The system for reimbursing campaign expenses offers no indication of how the respective expenditures and receipts within coalition lists are broken down because public aid is allocated to the whole of any particular list. Its components then apportion that sum in accordance with their own internal arrangements.

[28] Possibilities might be to include in the accounts form sub-headings for each component of or candidate on the list, to abolish the very principle of consolidated accounts and require accounts to be presented for each candidate on the list, and so on.

[29] For example, parties' (declared) campaign expenses for the April 2009 elections ranged from just € 11 000 to € 135 000 for the national constituency. The expenses at municipality constituency level were significantly lower. More than half of them reported expenditure below € 20 000 in any particular constituency.

annually, of party accounts, or at least an adequate summary of them, in accordance with Article 13b of the Recommendation. The GET recommends that **(i) parties and/or candidates be required to publish individual donations above a certain minimum level, together with the identity of donors; (ii) the future regulations on the financing of political parties provide for the regular and timely publication of political party accounts, accompanied by the identity of major donors.**

Supervision

88. The GET has considered whether it would be appropriate for the future regulations on political party financing to provide for regular audits of accounts, prior to their submission for inspection by the authorities. As noted in the descriptive part, parties are limited in size, with apparently fairly uncomplicated structures, and apart possibly from the two largest ones do not seem to be involved in a sufficiently diversified range of activities to justify certification of their annual accounts, as is often the case in other countries. The authorities may wish to bear these points in mind in connection with future changes to the legislation.

89. The election financing law makes the electoral commission and the court of auditors responsible for its implementation. The two bodies have a general reputation for professionalism and resources do not appear to be much of an issue in the context of the present and future monitoring of political financing; the court's members have expressed confidence that they have the means to undertake the annual supervision of political party accounts, once the previously recommended regulations on this are introduced.

90. The electoral commission has a very marginal role and the main burden of supervision rests with the court of auditors[30], whose own oversight remains fairly restricted and somewhat formal in nature[31]. In addition, the court of auditors depends largely on parliament when it comes to deciding on infringements/sanctions. The court's monitoring report, and thus its contents, with any findings of violations and proposed adjustments to or loss of public funding, must be formally approved by parliament. The parliamentary representatives said that in principle it was not parliament's job to do the court's detailed work over again. If it did not approve the court's conclusions this would *de facto* block the reimbursements, which would be a disincentive to rejecting the report and thus interfering with the court's activities. However, these representatives did confirm that logically if this did happen the court would eventually be forced to amend the report. Finally, the supervisory function and capacity of initiative of the court is also limited by the

[30] The wording of section 11 of the electoral law appears to give the commission an extensive role. The on-site discussions showed that in reality the electoral commission confines itself to monitoring compliance with sections 8 and 9, which concern the limits on donations (prohibition of donations from public persons and foreign nationals and ceiling of € 6 000), based solely on the information it receives. It does not therefore try to establish the real extent of campaign financing. This would require it, for example, to observe what really happens in campaigns, to ask whether in practice a particular candidate list is receiving alternative funding or support or whether support given is actually recorded in the campaign accounts and so on. It also appears that the commission does not, or cannot, act on its own initiative, but must first receive a prior complaint. The result is that the electoral commission is seen in Andorra as having a very limited role in practice, or at all events much less than that of the court of auditors, to whom it transmits its conclusions for information and whose scrutiny covers all the activities of candidate lists (or at least of those that have submitted their campaign accounts in order to obtain reimbursement of electoral expenses).

[31] The court of auditors also confines itself strictly to the information it receives, that is relating to the use of campaign account funds. It does not cross-check this information against other sources and in any case is not concerned with the financial activities of parties. Nor does it make any real efforts to follow up what happens to the various forms of loans and credits and other debts contracted during campaigns, after the event. These can thus be easily transformed into forms of support if the lender grants partial or total remission. In reality, the court's supervision does not extend beyond the four-month deadline imposed by the legislation, which moreover does not set a deadline for closing and certifying the accounts.

fact that the court has only one month to inform the prosecutor of a possible criminal offence (which prevents any form of on-going or extended control, the reopening of a case following the availability of new information or evidence etc.). With the introduction of more ambitious regulations and the strengthening of sanctions, supervision would become an even greater challenge. The GET considers that the court of auditors' supervision definitely did not meet all of the requirements of Articles 14 and 15 of Recommendation (2003) 4. If it is to continue to be responsible for supervising political financing it will need to be more effective, have greater authority, which would extend to its powers to propose sanctions (which the second round evaluation report had already called for in the context of public finances) and be given more guarantees of its independence at operational level. The GET therefore recommends **that a mechanism be established to supervise the financing of election campaigns, and – following future amendments – political parties, and that this machinery be as independent as possible of the political parties and have the necessary authority and resources to ensure proper substantial supervision.**

Sanctions

91. The election financing law gives the court of auditors two powers: a) when there is evidence that an offence may have been committed, the court, and also the electoral commission, must pass on the information to the prosecution service; b) in other cases, breaches of the electoral law may give rise to financial measures. From the general perspective of the fight against corruption, this link with the judicial authorities and the confirmation that criminal offences must be dealt with are important elements and must be retained in the future regulations on party and election campaign financing, even if other penalties are introduced, as recommended later. The court of auditors may propose the following financial measures: a) total loss of reimbursement, for example if donations of illegal origin are discovered, or b) readjustment of the level of declared expenditure, for example where there are no supporting documents or for sums that cannot be deemed to be reimbursable election expenses. These measures are likely to be fairly ineffective in the case of, for example, donations from unauthorised sources or ones that are higher than the level of public funding, and the sanctions do not take account of various other possible breaches, including ones committed by donors, such as the deliberate breaking up of donations into several portions to avoid the € 6 000 ceiling. At the 2009 elections, significant delays in sending in accounts led to a delay of several months in the finalisation and publication of the court of auditors' report and one of the party lists quite simply failed to lodge its accounts, even though the electoral law required it to do so[32] (which also means that its accounts have never been published). These examples highlight the need to limit the risks of one or more lists (and in the future, one or more parties) blocking or delaying the supervisory process. Moreover, when regulations on political party financing are introduced, steps need to be taken to ensure that breaches of them are also liable to suitable penalties. In the light of the foregoing, the GET recommends **that the legislation be supplemented by effective, proportionate and dissuasive sanctions for various breaches, including ones committed by donors, of the regulations on campaign financing and those to come on political party financing.**

[32] Section 11.3 of the election financing law requires all formations that satisfy the required conditions for state funding or have requested advances on such funding to submit accounts, which are thus subject to supervision. Since public funding is granted from the very first vote cast, lists are only exempted from presenting accounts if they fail to receive a single vote.

V. CONCLUSIONS

92. The election financing law of 15 December 2000, which came into force in January 2001, is currently the basic legislation on political financing. It provides for public funding for candidates at elections and its provisions on transparency and oversight by the electoral commission and the court of auditors are intended to ensure that these public funds are used properly. However, it is only concerned with certain private funding sources and electoral expenditure, in practice the part that is eligible for reimbursement by the state. The legislation did not therefore really set out to encourage citizen oversight or control political financing in such a way as to avoid the risk of undue financial influence on government decision making and the exercise of power, which is the primary objective of Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns. This also emerges clearly from the fact that there are no regulations in Andorra on political financing outside the context of elections, not even via the general legislation on associations and on accounting practices. Andorra therefore needs to make considerable changes to its legislation to fill this gap. In particular, political groupings must be required to publish their accounts on a regular basis outside of election periods, including the names of major donors. The opportunity should also be taken to rectify various deficiencies in the way that, for example, support in kind, candidates' personal contributions and the use made in practice of the proceeds of loans and other financial facilities are recorded in the accounts. Other expected improvements include the inclusion, as a rule, of campaign income and expenditure in electoral bank accounts, since these are the sums that are primarily subject to public scrutiny and to publication requirements, and greater financial transparency with regard to the individual candidates on coalition lists. The supervision of political financing needs to be made more effective, and given greater individual authority, notably, *vis-à-vis* parliament, and thus the political parties themselves. Similarly, there needs to be a more extended range of offences and sufficiently proportionate and dissuasive sanctions to limit the risk of breaches of the regulations.

93. In the light of the above, GRECO addresses the following recommendations to Andorra:

i. **(i) regulations be introduced to ensure transparency in the financing of political parties, on an equal basis, consistent with the regulations on campaign financing and in accordance with Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns; (ii) the relations between, on the one hand, the financing of parliamentary groups and, on the other, that of political parties and election campaigns be regulated** (paragraph 80);

ii. **machinery be established to evaluate the overall system of political financing, with a view, over time, to determining with political parties the extent and nature of their obligations and what changes and clarifications are required to the relevant legislation and regulations** (paragraph 81);

iii. **(i) the necessary steps be taken to ensure that appropriate accounting rules and forms clearly apply, outside of election periods, to the financing of all political formations and (ii) rules be established on the retention of accounting documents and supporting material by these formations and election candidates** (paragraph 82);

iv. **the regulations be amended to include in campaign and (in the future) political party accounts (i) contributions in kind, other than voluntary work by non-professionals –**

whether these be donations or services provided free of charge or at preferential rates - with a uniform system for estimating and recording their commercial value; (ii) candidates' personal contributions and (iii) the loans and similar financial services available in practice in Andorra, including when they are granted under advantageous conditions or free of charge and can thus be considered as a form of donation (paragraph 83);

v. **that current and future regulations on the financing of election campaigns and on political parties take appropriate account of the various forms of support from members and sympathisers** (paragraph 84);

vi. **that the regulations specify (i) the arrangements for taking account of the various forms of financial support and support in kind from parties to their candidates and, where relevant, the need to include corresponding amounts in candidates' accounts and (ii) the requirement that as far as possible all support and expenditure must pass through election agents and thus the relevant campaign accounts** (paragraph 85);

vii. **that adequate measures be taken to ensure that the campaign accounts of lists presented by coalitions clearly reflect the financial situation of each candidate, or group of candidates, on these lists** (paragraph 86);

viii. **(i) parties and/or candidates be required to publish individual donations above a certain minimum level, together with the identity of donors; (ii) the future regulations on the financing of political parties provide for the regular and timely publication of political party accounts, accompanied by the identity of major donors** (paragraph 87);

ix. **that a mechanism be established to supervise the financing of election campaigns, and – following future amendments – political parties, and that this machinery be as independent as possible of the political parties and have the necessary authority and resources to ensure proper substantial supervision** (paragraph 90);

x. **that the legislation be supplemented by effective, proportionate and dissuasive sanctions for various breaches, including ones committed by donors, of the regulations on campaign financing and those to come on political party financing** (paragraph 91).

94. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the Andorran authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2012.

95. Finally, GRECO invites the country's authorities to authorise publication of this report as soon as possible, translate it into the country's official language and publish this translation.