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Theme II

Third Evaluation Round

Evaluation Report on Croatia on Transparency of party funding

(Theme II)

Adopted by GRECO
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I. INTRODUCTION

1. Croatia joined GRECO in 2000. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 4E) in respect of Croatia at its 9th Plenary Meeting (13-17 May 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 4E) at its 26th Plenary Meeting (Strasbourg, 5-9 December 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Croatia from 1 to 3 April 2009, was composed of Mr Christopher MAGRI, Project Leader, Internal Audit and Investigations Directorate (IAID), Office of the Prime Minister (Malta) and Mr Remco NEHMELMAN, Associate Professor on Constitutional and Administrative Law, Faculty of Law, Economics and Governance, Institute of Constitutional and Administrative Law, Utrecht University (Netherlands). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2009) 1E, Theme II) as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: the State Electoral Commission, the Central State Office for Administration, the State Audit Office, the Commission for Conflicts of Interest and the Ministry of Finance (Tax Administration). In addition, the GET met with representatives of the following political parties: the Croatian Democratic Union, the Social Democratic Party and the Democratic Centre. Moreover, the GET met with representatives of a non-governmental organisation (GONG), the University of Zagreb (Faculty of Political Science) and the media.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Croatian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Croatia in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2009) 1E-Theme I.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

Legal framework

7. In Croatia, political parties are governed by the 1993 Act on Political Parties (hereafter: APP) and several specific laws such as the 2006 Act on the financing of political parties, independent lists and candidates (hereafter: AFPP), in force since 10 January 2007,¹ which includes provisions on funding sources, transparency, supervision and sanctions. In addition, the 2007 Act on the election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb (hereafter: AEHM), the 2004 Act on financing election campaigns for the election of the President of the Republic (hereafter: AFEP), the 2001 Act on the election of members of representative bodies of local and regional governments (hereafter: AELR) and the 1999 Act on the election of representatives to Parliament (hereafter: AEP) contain regulations on election campaign funding. Furthermore, article 6 of the Constitution contains several provisions concerning political parties, *inter alia*, paragraph 3 which states that “parties must publicise the accounts on sources of their assets and property.”
8. The authorities indicated to the GET that a working group chaired by the Minister of Justice had been established in October 2008, with a mandate to analyse the existing legislation on political financing and to propose possible amendments.

Definition of political parties

9. The free creation of political parties is guaranteed by article 6 of the Constitution. They are defined by section 1 APP as “legal entities who are politically active in compatibility with their objectives stipulated by their programme and statute.” The organisation and the activities of political parties must conform with democratic principles.
10. Political parties are non-profit associations which acquire legal personality upon registration in the Register of Political Parties.² They are obliged to notify the Ministry of Administration of their establishment, activity and structural units (branch-offices, offsets) within 15 days of their establishment. Structural units themselves do not hold legal personality.

Founding and registration of political parties

11. The founding and registration of political parties are regulated by sections 6 to 17 APP. A political party can be established by at least 100 Croatian citizens who are at least 18 years of age and capable of work. Party membership is bound by the same conditions. A party is entered in the register by the Ministry of Administration upon application which includes the party's charter, its programme and statute, the list of founders and members of its administrative bodies, the list of persons authorised to represent the party and proof of Croatian citizenship of founders and members of administrative bodies. The Ministry rejects incomplete or irregular applications – if not corrected within a defined period – as well as applications of parties constituting – according to their programme – a threat to the democratic constitutional order or to the independence, unity or territorial integrity of Croatia.

¹ Published in the Official Gazette 01/07 of 2 January 2007.

² See section 7, paragraphs 2, and 18, paragraph 1 APP; section 2, paragraph 1 AFPP.

12. In 2009, 102 parties were entered in the Register of Political Parties. Information on the Register (e.g. the number of members of political parties, their statutes, organisations, officials etc.) can be obtained by anyone via the Internet.³

Participation in elections

13. Croatia is a parliamentary republic with a multi-party system, whose current Constitution dates from 1990 and was last amended in 2001. Elections are regulated by the Constitution⁴, the Act on the election of representatives to Parliament of 1999 (hereafter: AEP)⁵ and the Law on the election of the representative bodies of local and regional self-government of 2001 (hereafter: LELR). The Head of State is the President, who is directly elected for a term of five years and may be reelected once. The unicameral national Parliament (*Hrvatski sabor*) is currently composed of 153 members, elected on the basis of direct, universal and equal suffrage by secret ballot for a term of four years. Elections are held in ten electoral constituencies inside Croatia (each providing 14 MPs), one constituency for Croatian citizens living abroad (currently providing 5 MPs) and one constituency for members of national minorities in Croatia (providing eight MPs, elected individually by majority voting). Except for the last-mentioned constituency, MPs are elected on the basis of candidate lists of political parties,⁶ of party coalitions and of voters ("independent lists", requiring a minimum of 500 voters' signatures). Mandates of each constituency are divided among those lists of parties, coalitions and voters receiving at least 5 % of valid votes. As regards elections to bodies of local (municipalities and towns) and regional (counties) self-government, the above-mentioned principles – proportional system, 5 % threshold for candidate lists of political parties, party coalitions and voters – apply accordingly. By contrast, under the new provisions of the 2007 Act on the election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb, these heads are elected directly by majority vote (for the first time in 2009).
14. Every citizen of Croatia who has attained 18 years of age has the right to vote – except for those divested of legal capacity by a final court decision – as well as the right to be elected to Parliament. However, the mandate of an MP who performs incompatible offices enumerated by section 9 AEP (*inter alia*, high State positions, the offices of the mayor or the deputy mayor of Zagreb or of a member of a board of directors of a private company, institution or non-budget fund predominantly owned by Croatia) is suspended, and the mandate of an MP ceases if s/he is divested of legal capacity by a final court decision or if s/he is sentenced to an unconditional prison sentence of more than 6 months by a final court decision.
15. Elections are conducted by Constituency Election Commissions, Municipal and Town Election Commissions and Electoral Committees under the supervision of the State Electoral Commission. This Commission – which is composed of the president of the Supreme Court as its chairperson, four president deputies and four more members – is a permanent organ responsible for the preparation, management and supervision of the electoral process, including the supervision of election advertising and the disposition and supervision of election expenditures from the State Budget.
16. Parliamentary elections are held, at the earliest, 30 days after having been called by the President. Candidate lists have to be submitted to the State Electoral Commission for publication

³ <http://www.hidra.hr/stranke/stranke.htm>

⁴ See articles 70 to 73 and 132 of the Constitution

⁵ See sections 4, 15 to 25 and 35 to 43 AEP

⁶ Parties must be registered on the day of publishing the resolution on calling of elections in the Official Gazette "Narodne novine".

within 14 days of the election call. The Commission also publishes for each constituency a collective list of all the legally valid lists, thereby launching the so-called “election advertising campaign” which ends 24 hours before election day. During this period, all the participating parties have the right to express and explain their election programmes and election advertising under the same conditions.

Party representation in Parliament

17. In the parliamentary elections held on 25 November 2007, seats were obtained by the following parties: HDZ (Croatian Democratic Union, 66 seats), SDP (Social Democratic Party, 56 seats), National minorities (8 seats), HNS (Croatian People's Party – Liberal Democrats, 7 seats), HSS (Croatian Peasant Party, 6 seats), HDSSB (Croatian Democratic Alliance of Slavonia and Baranja, 3 seats), IDS (Istrian Democratic Assembly, 3 seats), HSLS (Croatian Social Liberal Party, 2 seats), HSP (Croatian Party of Rights, 1 seat), HSU (Croatian Party of Pensioners, 1 seat). Altogether, 53 parties participated in these elections.

Overview of the political funding system

Sources of funding

18. Since 2006, political financing in Croatia has been subject to a specific law, the Act on the financing of political parties, independent lists and candidates (AFPP), which contains regulations on funding sources, transparency, supervision and sanctions. According to section 2 AFPP, political parties may, for the purpose of fulfilling the political goals defined in their programme and statute, acquire funds from the State Budget and the budgets of local and regional self-government units, from membership fees, voluntary contributions (donations), publishing activities, sales of publicity materials, organisation of party events, property in their ownership and “other legally stipulated sources”. Most of the provisions of this law – except for some party-specific provisions, e.g. on membership fees – apply not only to political parties but also to independent lists and candidates for parliamentary or local/regional elections.⁷
19. Section 15 AFPP enumerates prohibited funding sources for political parties and, following, independent lists and candidates, namely the financing:
 - by foreign States, foreign political parties and foreign legal persons – except for financing of education programmes by foreign States, foreign political parties and foreign legal persons whose basic activity is education in the development and promotion of democratic principles;
 - by State bodies, public companies, legal entities vested with public authority and companies in which the State or a local and regional self-government unit holds majority ownership, and other legal persons in which the State or a local and regional self-government unit holds majority ownership in shares or ownership stakes, and public and other institutions owned by the State and local and regional self-government units;
 - by workers' and employers' associations,
 - by associations, foundations and endowments which are represented by State officials or local and regional self-government officials;
 - by religious communities, humanitarian and other non-profit associations and organisations;
 - by natural and legal persons against whom a procedure for the collection of due and outstanding obligations in relation to the State or a local and regional self-government unit has been initiated;
 - in the form of donations in cash or products via third persons (mediators).

⁷ See section 26 AFPP.

Parties, independent lists and candidates are obliged to immediately inform the State Audit Office and the Ministry of Finance Tax Administration about any possible in payments of contributions from the above-mentioned illegal sources and to transfer such contributions to the State Budget.

20. In addition to the above regulations on permitted and prohibited funding sources, section 16 AFPP provides that parties, independent lists and candidates may neither exert political or any other pressure against natural and legal persons nor promise any political or other counter services, benefits or personal benefits to natural and legal persons when collecting contributions to finance their work.
21. The above-mentioned general rules on political financing are complemented by some specific provisions on the funding of election campaigns contained in various laws: Section 15, paragraph 5 AFPP stipulates that office premises, official vehicles and office equipment of State bodies and local and regional self-government units may not be used for electoral campaign purposes, except by persons regulated by special rules on protected persons. Sections 29 to 34 AEP provide for direct public funding of parliamentary election campaigns and allow parties and independent candidates to use their own financial means. Sections 2 and 3 AFEP provide for direct public funding of presidential election campaigns and allow presidential candidates to use their own funds and donations by domestic physical and legal persons; in contrast, donations by foreign physical or legal persons are prohibited, as well as funds stemming from a number of other sources which are largely identical with those enumerated in section 15 AFPP.⁸ Section 21 AELR provides for direct public funding of local and regional elections, as concerns the election of members of representative bodies of local and regional governments. Finally, section 27 AEHM provides for public funding of campaigns regarding the election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb; section 29 of the same act stipulates that such election campaigns may be financed from the candidates' own funds as well as from donations by domestic natural and legal persons; section 30 enumerates prohibited funding sources which are identical to those enumerated in section 15 AFPP.
22. The financing of entities related, directly or indirectly, to political parties or otherwise under their control, as well as of organisations affiliated with political parties, is not specifically regulated by any of the above-mentioned laws.

Direct public funding

23. Firstly, public funding is provided to political parties and elected representatives for their regular annual financing as detailed below:
 - Funds from the State Budget⁹ are granted to parties represented in Parliament and to independent MPs,¹⁰ to the amount of 0,056% of State Budget current expenditure funds for the previous year. These funds are distributed in proportion to the number of MPs representing the parties at the moment when the Parliament is constituted, regardless of possible cases of later party abandonment or change of party affiliation; in case of subsequent party mergers, funds distributed are retained by the legal successor party. For each MP of the underrepresented gender, parties are entitled to a compensation of 10 % of the amount envisaged for an MP. The decision on the distribution of the funds is taken by the parliamentary "Committee on the

⁸ cf. paragraph 20 above.

⁹ See sections 7 to 11 and 26 AFPP.

¹⁰ In the case of an independent MP, the law specifies that s/he may set up an office and employ staff in order to carry out administrative and expert tasks.

Constitution, Standing Orders and Political System", and the funds are transferred – in equal amounts on a three-monthly basis – to the central party accounts and to separate accounts of independent MPs which they have to keep for the regular financing of their work.

- Funds from the budgets of local and regional self-government units¹¹ are allocated to parties in their representative bodies and to independent members of those bodies,¹² to an amount which is determined by each local and regional self-government unit. Those funds are distributed in the same manner as the above-mentioned funds from the State Budget, and they are paid – in equal amounts on a three-monthly basis – to the giro-accounts of local or regional party branches concerned and to separate accounts of independent members of representative bodies.

24. Secondly, election campaign expenses are compensated from the State Budget as detailed below:

- expenses made by parties holding candidate lists in at least one constituency, by candidates for representatives of national minorities and by independent lists for their parliamentary election campaigns:¹³ Compensations are paid in the same amount as is determined for the regular annual financing on the basis of the AFPP for the year in which elections are held, on condition that the parties or candidates/list concerned had representatives in Parliament before the elections. Compensation is also granted to those parties and candidates/lists who had no representatives in Parliament before the elections but win more than 5% of valid votes in a constituency, in an amount which is determined by a resolution of the Government at least 20 days before elections. Compensation for campaign expenses is paid to central party accounts and directly to independent candidates and candidates for representatives of national minorities.

- expenses made by presidential candidates:¹⁴ Compensation in the amount of 500,000 Croatian Kuna/HRK (67,250 EUR)¹⁵ per election round is granted to each candidate who receives a certain percentage of votes (currently 10%).¹⁶

- expenses made by parties and independent lists for their campaign for the election of members of representative bodies of local and regional governments:¹⁷ Compensation is paid in an amount which is determined by a resolution of the Government at least 20 days before elections, on condition that at least one candidate of a party or independent list is elected to a representative body.

- expenses made by candidates for their campaign for the election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb:¹⁸ Compensation is paid from the budget of the local and regional self-government units to candidates who gain at least 10% of the total number of votes, in an amount which is determined by Government resolution at least 20 days before elections.

¹¹ See sections 12 to 13 and 26 AFPP.

¹² In the case of an independent member, the law specifies that s/he may set up an office and employ staff in order to carry out administrative and expert tasks.

¹³ See sections 29 to 34 AEP.

¹⁴ See section 2 AFEP.

¹⁵ Exchange rate from HRK to EUR on 10 February 2009.

¹⁶ Decision of the government of 30 November 2004.

¹⁷ See section 21 AELR.

¹⁸ See sections 27 and 28 AEHM.

Indirect public funding

25. Pursuant to section 14 AFPP, political parties represented in Parliament are entitled to tax benefits for activities strictly linked to their political activity, in line with the provisions of a special act i.e. the Profit Tax Act. According to these provisions political parties are exempted from any corporate income tax (profit tax) obligations unless they carry out an economic activity and the non-taxation of this activity would result in their obtaining unjustified privileges on the market.¹⁹
26. The GET was informed that according to the Rules of treatment during election campaigns, political parties may benefit from discounts on campaign marketing (usually 50%) via public radio/television. The price and discounts on campaign marketing are fixed by the internal regulations of the broadcasting companies.

Private funding

27. Membership fees are defined by section 3, paragraph 1 AFPP as "a regular financial amount paid by a member of a political party in the manner and under the conditions stipulated by the statute or another legal act of a political party." Political parties are required to keep records of the membership fees received and to issue receipts. The authorities indicated to the GET that there are no legal restrictions as to the amount and calculation of membership fees.
28. Voluntary contributions (donations) are defined by section 3, paragraph 2 AFPP as "temporary or regular in payments provided by natural or legal persons to a political party on a voluntary basis and exceeding the membership fee, as well as the provision of services or products to a political party without compensation." Services referred to in this provision do not include voluntary work rendered by party volunteers. Political parties are required to keep records of the donations received and to issue receipts.
29. Section 5 AFPP specifies that the receipt of donations from unidentified (anonymous) sources is prohibited. Similarly, section 29 AEHM stipulates, with regard to the election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb, that candidates and their deputies are prohibited from accepting donations from anonymous sources.
30. Section 4 AFPP establishes ceilings for the total amount of donations which may be made by one person to a political party in a calendar year, i.e. 90,000 HRK/12,105 EUR in the case of a natural person and 1,000,000 HRK/134,500 EUR in the case of a legal person. Monetary donations must be paid into the central account of a political party.
31. Parties are obliged to inform the State Audit Office and the Ministry of Finance Tax Administration about any donations exceeding the above-mentioned ceilings and about any possible in payments of donations by unidentified (anonymous) sources. Such donations must be transferred to the State Budget within eight days of receipt.²⁰
32. The above-mentioned regulations on donations apply accordingly to independent lists and candidates.
33. The authorities indicated to the GET that there are no specific legal restrictions for income deriving from party property, loans, fundraising activities (respecting the above-mentioned

¹⁹ See section 2, paragraphs 6 and 7 of the Profit Tax Act.

²⁰ Section 6 AFPP.

ceilings) or party business in the form of publishing activities, sales of publicity materials and organisation of party events. Moreover, there are no specific restrictions imposed on contributions made to MPs or made by MPs to political parties.

34. The authorities indicated to the GET that contributions to political parties, independent lists and candidates are not tax deductible.

Expenditure

35. There are no quantitative but only some qualitative restrictions for expenditure of political parties, independent election candidates, independent lists and elected representatives. According to section 2, paragraphs 4 and 5 AFPP political parties may use public and private funds only for the purpose of achieving goals determined by the party programme and statute, and their use for personal purposes is prohibited. Furthermore, section 5 AFEP prohibits that candidates use, for their presidential election campaign, funds from the State Budget or from the budget of local or regional self-government units of which they dispose as State officials or as authorised local officials for regular activities (except if this is allowed by specific regulation). Conversely, funds for the presidential election campaign cannot be used to finance certain projects in exchange for votes for a particular candidate.

Statistics

36. The authorities provided the GET with tables produced by the State Audit Office specifying the income of 15 political parties and nine independent candidates in the parliamentary election year 2007. According to those tables, the total income of those 15 political parties amounted to 184,093,885 HRK/24,760,628 EUR, composed of income from the State Budget (93,975,305 HRK/12,639,679 EUR), income from the budgets of local/regional units (28,157,843 HRK/3,787,230 EUR), income from membership fees (5,362,415 HRK/721,245 EUR), income from donations (31,122,127 HRK/4,185,926 EUR) and other income (25,476,194 HRK/3,426,548 EUR). As regards the nine independent candidates, according to the tables submitted they had a total income of 4,319,451 HRK/580,966 EUR, composed of income from the State Budget (3,627,430 HRK/487,889 EUR), income from donations (151,149 HRK/20,330 EUR) and other income (540,873 HRK/72,747 EUR). The authorities indicated that the category "other income" included income from lease of property, sale of apartments, sale of assets and from interests.

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

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

37. Until the end of 2006, financial operations of political parties were regulated by the provisions of the Act on Political Parties which obliged them to keep business books, to draft financial reports according to the regulations on accounting of non-profit legal entities and to submit annual financial statements to Parliament and to the State Audit Office. In January 2007, those provisions were replaced by the Act on the Financing of Political Parties, Independent Lists and Candidates (AFPP).²¹

²¹ By virtue of entry into force of this law the provisions of Title III FUNDS FOR THE WORK OF POLITICAL PARTIES of the Act on Political Parties have ceased to have effect.

Books and accounts

38. Section 18 AFPP provides that political parties keep business books and submit financial reports in the manner stipulated in accounting regulations for non-profit organisations. Under the Regulation on Accounting of Non-Profit Organisations,²² business books are kept for a business year – which is the same as the calendar year – and are noted in a journal (the book into which business transactions are entered chronologically), the main ledger (the structured bookkeeping record of transactions related to assets, liabilities, own sources, revenues and expenditures) and subsidiary ledgers (analytical bookkeeping records of business events, which are in summary presented in the main ledger and other subsidiary records on the status and changes in the assets and liabilities, which are used for the needs of supervision and monitoring of business operations). In addition, non-profit organisations also have to keep a cash book, a record of issued and received warranties and guarantees, a record of travel orders and use of official vehicles, an outgoing invoices ledger, an incoming invoices ledger and other subsidiary records according to special regulations and their own specific needs.
39. Pursuant to section 20 of the above regulation, revenues and expenditures are presented on an accrual basis, i.e. reciprocal revenues (revenues based on delivered goods and services) are acknowledged in the reporting period to which they refer, on condition that they can be measured regardless of their collection; non-reciprocal revenues (donations, membership fees, assistance, contributions and other similar revenues) are acknowledged in the reporting period to which they refer, on condition that they are available (collected) at the latest by the date of presentation of financial revenues for that period; expenditures are acknowledged in the reporting period to which they refer, regardless of their payment; expenditures for short-term non-financial assets are acknowledged at the moment when the costs were really incurred, i.e. at the moment of sale; and costs of procuring long-term assets are capitalised and expenditures are acknowledged during their useful lives.
40. In addition, a specific ordinance²³ requires political parties, independent lists and candidates for election to keep monthly records on the receipt of membership fees (in the case of parties), donations from natural persons, donations from legal persons, donations in the form of products or services from natural persons and donations in the form of products or services from legal persons – in the manner and form prescribed by the ordinance – and to issue receipts for such in-payments; to draft at the end of the calendar year annual records on the in-payment of membership fees (in the case of parties); and to draft within 30 days of the end of the calendar year an annual report on the receipt of donations (including data on donations from anonymous or prohibited sources and donations exceeding the legal ceilings). Records on donations must indicate, *inter alia*, the date and amount of each donation, the name and address of the donor as well as his/her registration number (in the case of a legal person or a natural person performing an independent professional activity), his/her passport number (in the case of a foreign natural person) and/or his/her tax number or other identification number (in the case of a foreign legal person financing an education programme²⁴). Donations provided in form of products or services are to be described individually and their market value is to be indicated in Croatian currency (Kuna and Lipa).
41. As regards recording obligations of contributors, section 3, paragraph 3 AFPP requires natural and legal persons providing donations in the form of products or services to issue an invoice,

²² Published in the Official Gazette 10/08.

²³ Ordinance on the Manner of Keeping Records and Issuing Receipts for Paid Membership Fees and Voluntary Contributions (Donations), published in the Official Gazette 26/07.

²⁴ See section 15, paragraph 4 AFPP; cf. paragraph 20 above.

containing the market value of the product or service as well as an indication that it is provided for a political party (or independent list or candidate) and is not subject to payment.

Reporting obligations

42. Section 19, paragraph 1 AFPP provides that political parties – and, consequently, the independent lists and candidates for election – have to publicly report on the origin and way of using the funds collected throughout the previous calendar year. According to paragraph 2, they are obliged to deliver annual financial statements and financial reports – containing a detailed outline of the sources of funding, information on donors, on the purpose of funds and the activity on which they were spent – to the State Audit Office and the Ministry of Finance Tax Administration in the manner and within the timeframe envisaged for the financing of non-profit organisations. The authorities indicated that this reporting obligation covers all obligatory accounts and records described in paragraphs 39 to 41 above and that source documents must also be submitted annually. The Regulation on Accounting of Non-Profit Organisations specifies that financial reports for a business year are to be submitted in electronic and paper form to the State Audit Office and the institution responsible for data processing for the needs of the Ministry of Finance and the Central Bureau of Statistics within 60 days from the end of the reporting period. In addition, consolidated income statements for the period from 1 January to 30 June are to be submitted to the institution referred to above within 30 days of the end of the reporting period. It is to be noted, however, that non-profit organisations and therefore parties whose property and income were of a value of less than 100,000 HRK/13,450 EUR each in the previous year are exempt from the above-mentioned reporting obligations. Those parties are only required to notify the State Audit Office that they do not submit financial records.²⁵
43. The general reporting rules are complemented by some specific provisions with regard to election campaign financing. Firstly, section 6 AFEP obliges candidates for presidential elections to submit to the State Electoral Commission, at the latest 7 days before the elections, interim reports on the amounts and sources of funds collected for their campaign and, within 15 days after the elections, reports on the amounts and sources of funds used, but there are no more detailed regulations on this reporting obligation. Secondly, similar reporting obligations apply to certain local elections, i.e. to the direct election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb (but not to the election of members of representative bodies of local and regional governments); candidates and their deputies have to submit interim and final reports on campaign funding to the local bodies of the State Electoral Commission.²⁶ Thirdly, in the case of parliamentary elections, parties and independent candidates are not obliged to report but must announce publicly, at the beginning of the election campaign, approximate data on the amounts and sources of their own means that they intend to spend.²⁷
44. As regards the preservation of records, the authorities indicated to the GET that under the provisions of the Regulation on Accounting of Non-Profit Organisations, business books are to be kept for at least eleven years (the journal and the main ledger) for at least seven years (subsidiary ledgers); the originals of financial reports drafted for a business year are to be kept permanently; and the consolidated income statement for the period from 1 January to 30 June is to be kept until the date of submitting financial reports for a business year.²⁸

²⁵ Section 71 of the Regulation on Accounting of Non-Profit Organisations.

²⁶ Section 32, paragraphs 1 and 2 AEHM.

²⁷ Section 31 AEP.

²⁸ See sections 8 and 66, paragraph 2 of the Regulation.

Publication requirements

45. According to section 19, paragraph 1 AFPP political parties – and, consequently, the independent lists and candidates for election – are obliged to publicly present the origin and way of using the funds collected throughout the previous calendar year. Their annual financial statements and financial reports are considered public documents and are to be published on the party web sites. However, parties whose property and income were of a value of less than 100,000 HRK/13,450 EUR each in the previous year are exempt from this disclosure obligation.²⁹ The authorities indicated to the GET that after the 2007 parliamentary elections, the largest parties (seven) publicly displayed their financial reports and the costs of their election campaigns via the Internet.
46. Moreover, some specific disclosure obligations apply with regard to election campaign funding. Firstly, section 6 AFEP requires the State Electoral Commission to publish in the Official Gazette, and in other media, the reports on amounts and sources of funds used by individual candidates for their presidential election campaign, within eight days of receipt of their reports. Similarly, in the case of direct local elections (but not in the case of the election of members of representative bodies of local and regional governments), the provisions of the Act on the election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb require the local bodies of the State Electoral Commission to publish the reports on campaign funding submitted by candidates and their deputies in official local papers and “other relevant public media”.³⁰ Finally, in the case of parliamentary elections, parties and independent candidates themselves have to publish, at the beginning of the election campaign, approximate data on the amounts and sources of their own means that they intend to spend.³¹ However, the authorities indicated to the GET that this is rather a “moral obligation” which is not enforceable and not subject to any more precise rules.
47. In addition, section 20, paragraph 2 AFPP requires the State Audit Office to submit to Parliament a yearly monitoring report on the financial operations of those political parties, independent lists and candidates for election which are – under the provisions of this law – entitled to financing from the State Budget. The authorities informed the GET that the report of the State Audit Office for the year 2007 was approved by Parliament in November 2008 and was published on its web site.

Access to accounting records

48. The State Audit Office and the Ministry of Finance Tax Administration receive the annual financial statements and financial reports – including source documents – of political parties, independent lists and candidates for election. The authorities indicated that, in addition, law enforcement agencies have access to these financial records in the case of suspected irregularities.
49. Furthermore, the State Electoral Commission receives reports on the amounts and sources of funds collected and used by presidential candidates for their election campaigns in view of their publication, but candidates are not obliged to submit any source documents. In the case of direct local elections, the local bodies of the Commission receive the campaign funding reports of parties and candidates.

²⁹ See paragraph 44 above.

³⁰ Section 32, paragraph 3 AEHM.

³¹ Section 31 AEP.

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

Auditing

50. Croatian legislation does not impose on political parties any obligation to carry out an internal auditing of their accounts. The Regulation on Accounting of Non-Profit Organisations leaves it up to the parties to organise freely their book-keeping, which may be entrusted to professional natural or legal persons.

Monitoring

51. Section 17 AFPP states that the State Audit Office and the Ministry of Finance Tax Administration are competent for supervising the financial operations of political parties – and, consequently, the independent lists and candidates for election – on the basis of the annual financial statements and financial reports (containing a detailed outline of the sources of funding, information on donors, on the purpose of funds and the activity on which they were spent) submitted to them.³² Those two institutions are to supervise the financial operations for the previous year in the first half of each calendar year, and the State Audit Office is required to submit to Parliament a yearly monitoring report in respect of parties, lists and candidates entitled to financing from the State Budget.³³ The authorities indicated to the GET that the supervision – as introduced by the AFPP, in force since 10 January 2007 – comprises both an audit of the financial statements of parties and candidates (carried out by the State Audit Office) and inspection activities (carried out by the Tax Administration). As regards the State Electoral Commission and its local bodies, they only publish the reports on the amounts and sources of funds collected and used by presidential candidates/by candidates and their deputies for direct local elections for their election campaigns, but they have no competence to monitor those reports.
52. The auditing by the State Audit Office of financial reports and business operations of parties, independent lists and candidates includes their scope of work and internal organisation, their revenue and expenditure, their financial reports and annual financial statements, as well as their planning and overall accounting. It is performed in the manner and according to procedures regulated by the State Audit Act, the INTOSAI auditing standards (Standards of the International Organisation of Superior Audit Institutions) and the Code of Professional Ethics of State Auditors. Its objectives are to verify the truth and credibility of financial reports, to verify whether acts and other regulations related to organisational and financial operations and accounting were abided by, and to verify the regularity of revenue, expenses and other transactions. The auditing reports are to include a brief description of the areas in which irregularities were determined (each finding is accompanied by an order, proposal or opinion on how to correct the irregularities) and a standardised opinion on financial reports and business operations of the audited entity (unqualified opinion, qualified opinion, adverse opinion or a disclaimer of opinion) which takes account of the materiality of the matter, depending on the size of the audited entity and on the nature of the performed transactions.
53. The State Audit Office³⁴ is composed of a central office and 20 regional offices in county centres. The Office is directly responsible to Parliament, and its president – the Auditor General – is appointed by Parliament for a term of eight years, with a right to re-election. S/he is to be dismissed, *inter alia*, if s/he is found guilty of a crime which makes him/her unworthy to carry out

³² See paragraph 46 above; cf. section 19, paragraph 2 AFPP.

³³ See paragraph 50 above; cf. section 20 AFPP.

³⁴ See sections 10 to 15 of the State Audit Act.

his/her duties. The State Audit Office is financed by the State Budget and there is no dedicated budget for the control of political funding. The auditing is performed by certified State auditors (altogether 232, at the time of the visit) fulfilling certain conditions such as relevant professional experience and no criminal record for commercial crime. One of the Office's seven departments (composed of 30 auditors, at the time of the visit) has a mandate to audit the non-profit associations entitled to financing from the State Budget or from the budgets of local and regional self-government units (approximately 12,000 at the time of the visit). During the on-site visit, the GET was informed that in the financial statements of the 15 parties and nine independent candidates who were subject to a complete audit for 2007 – the first year in which political parties and election candidates had to submit such statements directly to the State Audit Office – a number of irregularities (e.g. incomplete or incorrect recordings, lack of source documents, doubts about the coverage of local party branches) had been detected but for the major part been quickly remedied by the parties and candidates concerned. Nevertheless, several cases had been notified to the General Prosecutor's Office, from which the State Audit Office had not received any feedback;³⁵ no sanctions had been imposed, except for a few cases of independent MPs who had to return public funds spent for private purposes to the State Budget, on the basis of section 24 AFPP.

54. The inspection performed by the Ministry of Finance Tax Administration in the area of political finances consists of a control of donors and of their tax obligations. The Tax Administration is the administrative unit of the Ministry which implements regulations on the payment of taxes and obligatory contributions. It is composed of a central office and 20 regional offices, with 122 subordinated local offices in cities and municipalities. The Tax Administration employs some 600 tax inspectors, some of whom are experienced in the inspection of non-profit associations but not specifically of political parties. According to the authorities, the control by the Tax Administration implies investigations into accounts and source documents of political parties, *ex officio* or on complaint from citizens, as well as cooperation with the Ministry of the Interior, the General Prosecutor's Office and the Office for Money Laundering Prevention. During the visit, the GET was informed that in order to coordinate the newly introduced control activities of the State Audit Office and the Tax Administration, officials of both institutions had organised a meeting and agreed to carry out their respective checks consecutively; in respect of 2007 – the first year for which the Tax Administration had to monitor political parties and independent candidates –, the Tax Administration exclusively inspected political parties and focused on the inspection of big donors, in cases where irregularities had been detected before by the State Audit Office.
55. In case of suspected infringements of political financing provisions contained in the AFPP which might constitute misdemeanours in the meaning of sections 21 to 23 AFPP,³⁶ the State Audit Office or the Ministry of Finance Tax Administration are to submit a request to initiate a misdemeanour procedure before the competent Misdemeanour Court. The authorities indicated to the GET that for the reporting year 2007, all parliamentary parties had submitted annual financial statements and financial reports, and the State Audit Office concluded that the financial reports of the 15 parliamentary parties and nine independent candidates subject to a complete audit were – after correction of the above-mentioned irregularities – realistic and objective and that business operations of parties and candidates were truthfully presented. The authorities furthermore indicated that in one case, a misdemeanour procedure was initiated. Until now, political financing supervision has not led to any conviction for infringements of the relevant provisions.

³⁵ The authorities indicated that the General Prosecutor's Office is not obliged to report to the State Audit Office.

³⁶ See paragraphs 56 to 61 below.

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

56. Whereas the election laws and the Act on financing election campaigns for the election of the President of the Republic do not provide for any administrative or criminal sanctions for violations of political financing regulations, sections 21 to 25 AFPP contain criminal provisions according to which certain acts of political parties, independent lists or candidates, independent MPs or members of representative bodies of local and regional self-government units, or of natural and legal persons, constitute misdemeanours, as detailed below:
57. Under section 21 AFPP,
- use of funds by a party, list or candidate contrary to section 2, paragraphs 4/5 AFPP;
 - failure by a party, list or candidate to keep records and issue receipts of membership fees (in the case of a party) and donations in line with section 3, paragraph 4 AFPP;
 - failure by a party, list or candidate to keep business books (in the case of a party) and to publicly display the origin and manner of using the funds in line with sections 18/19 AFPP;
 - exertion – by a party, list or candidate – of political or any other pressure against natural or legal persons, or promise of political or any other counter-services, benefits or personal gains to natural or legal persons when collecting donations in line with section 16 AFPP;
 - failure by a list or candidate to open a separate account for the financing of electoral campaign costs, in line with section 26 AFPP; and
 - failure by independent MPs or members of representative bodies of local and regional self-government units to open a separate account for the regular financing of their work, in line with section 26, paragraph 5 AFPP
- are punishable by a fine ranging from 50,000 HRK/6,725 EUR to 500,000 HRK/67,250 EUR and, in the case of a political party, by a fine ranging from 10,000 HRK/1,345 EUR to 20,000 HRK/2,690 EUR for persons authorised to act on behalf of and represent a party and for persons responsible for the financial operations of a party.
58. Under section 22 AFPP,
- failure by a party, list or candidate to report donations exceeding the amount defined in section 4 AFPP, as well as any possible donations paid in by unidentified (anonymous) sources, and to pay them into the State Budget, in line with section 6 AFPP; and
 - failure by a party, list or candidate to report the contributions paid from illegal sources and to transfer the paid-in funds to the State Budget, in line with section 15, paragraph 3 AFPP
- are punishable by a fine totalling the triple amount of remitted or received funds and, in the case of a political party, by a fine ranging from 10,000 HRK/1,345 EUR to 20,000 HRK/2,690 EUR for persons authorised to act on behalf of and represent a party and for persons responsible for the financial operations of a party.
59. Under section 23 AFPP, in payments by natural or legal persons, against whom a procedure for the collection of due and outstanding obligations in relation to the State or a local and regional self-government unit has been initiated, to a party (prohibited by section 15, paragraph 1 item 6 AFPP) are punishable by a fine of up to 100,000 HRK/13,450 EUR.
60. In addition, section 24 AFPP stipulates that money collected or spent by parties, lists or candidates in a manner contrary to the provisions of this law is to be seized and paid into the State Budget.

61. The above-mentioned misdemeanours are imposed by the Misdemeanour Courts – at the request of the State Audit Office or the Ministry of Finance Tax Administration – whose decisions may be appealed within eight days to the High Misdemeanour Court.

Immunities and time limits

62. According to section 156, paragraph 1 of the Misdemeanour Act, no person who commits a misdemeanour in Croatia can be granted immunity from prosecution.
63. Pursuant to section 13, paragraph 1 of the Misdemeanour Act, prosecution of misdemeanours cannot be initiated if two years have passed since their commitment, and in any case the limitation of prosecution comes into force four years after the commitment.

Statistics

64. The authorities indicated that so far, i.e. since the entry into force of the AFPP on 10 January 2007, no valid court decision has been reached regarding the violation of its regulations subject to criminal sanctions. On the basis of previous legislation, an MP was convicted in 2007 for spending part of the public funds received for his election campaign (as an independent candidate) for private purposes.

IV. ANALYSIS

65. The GET found that in Croatia, there is short tradition of ensuring transparency in political financing. However, following recent legislative initiatives, the funding of political parties and of election campaigns is now subject to two different sets of rules provided by the 2006 Act on the financing of political parties, independent lists and candidates (hereafter: AFPP) – in force since January 2007 – on the one hand and the different election laws on the other, i.e. the 2007 Act on the election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb, the 2004 Act on financing election campaigns for the election of the President of the Republic, the 2001 Act on the election of members of representative bodies of local and regional governments and the 1999 Act on the election of representatives to Parliament. The election laws contain some rather fragmentary regulations on election campaign funding, whereas the AFPP establishes the main legal framework for transparency, supervision and sanctions in the field of political financing. Most of the provisions of this act apply to both political parties and to independent lists and candidates for election, thus also covering certain aspects of their campaign funding (except for campaigns of presidential candidates which are addressed exclusively by the aforementioned specific act of 2004). For example, independent lists and candidates have to keep separate accounts for financing electoral campaign costs; however, the GET notes with some concern that the law does not provide for any such specific campaign financing regulations for political parties and their candidates (see also paragraphs 73 and 78 below). The provisions of the 2006 AFPP contain lists of permitted and prohibited funding sources (e.g. anonymous donations or donations by foreign legal entities are generally excluded), they establish donation caps, prescribe the transfer of irregular donations received to the State Budget, introduce annual reporting and disclosure obligations, provide for a monitoring mechanism and for criminal sanctions for violations of political financing regulations.
66. In the view of the GET, the adoption of the AFPP in 2006 was a significant step towards improving transparency and accountability in the area of political financing in Croatia. At the same time, the GET is concerned about certain effects of the new regulations. In particular,

dependence on the State by political parties is very significant. It would appear from the information gathered on site that on average, around 70 to 80% of the parties' income comes from the State and from local/regional government units, including annual funding based on sections 7 to 13 AFPP as well as compensation of election campaign expenses based on various election laws. In this connection, the GET wishes to draw the attention of the Croatian authorities to Article 1 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (hereafter: the Recommendation), according to which State support should be limited to reasonable contributions and States should ensure that any such support does not interfere with the independence of political parties.

67. In this context, the GET also noted that no tax benefits are granted to individual donors, and smaller parties especially appear to encounter significant difficulties in raising the resources necessary for their activities and election campaigns. The GET heard from several interlocutors about decreasing trust by the public in the political process, due to a number of scandals and media reporting on political malfeasance – including in the area of political financing – and due to the general public perception that expenses of political parties were excessive but not properly reflected in the financial reports. It might therefore be advisable for the Croatian authorities to consider adopting further measures such as establishing campaign expenditure limits along the lines of Article 9 of the Recommendation. That said, the main challenge on the way to a genuinely transparent system of political funding in Croatia now clearly lies with the effective implementation of the law, which for the most part is new and will still have to prove its efficiency in practice. In addition, the GET identified some incoherencies and specific deficiencies in the legal framework which need to be addressed, as detailed below. The GET very much hopes that its recommendations will be taken into account by the interdepartmental working group which has recently been established under the authority of the Minister of Justice in order to analyse existing legislation on political financing and, if need be, to make suggestions for further amendments.

Transparency

68. The AFPP contains a list of prohibited funding sources (section 15 AFPP) as well as a list of permitted sources of income (section 2 AFPP), which includes funds from the State Budget and the budgets of local and regional self-government units, from membership fees, voluntary contributions (donations), publishing activities, sales of publicity materials, organisation of party events, owned property and other legally stipulated sources. The GET welcomes this approach in recent legislation to enumerate, explicitly, permitted and prohibited funding sources; however the concept of income from "property in their ownership and other legally stipulated sources" in section 2 AFPP potentially undermines the effectiveness of the above-mentioned provisions. Whereas the handling and use of membership fees and donations is closely regulated in other sections of the AFPP – providing for legal definitions, obligations to issue invoices and keep records etc. – there is no corresponding regulation on "property in their ownership and other legally stipulated sources". In this connection, the GET noted during the interviews that no clear and unambiguous information was provided on the extent to which political parties and party officials are allowed to engage in commercial activities. After the visit, however, the authorities indicated that the concept of property and other legally stipulated sources in the meaning of section 2 AFPP is defined in the relevant provisions of the Regulation on Accounting of Non-Profit Organisations, namely in sections 23 and 24 (non-financial property), 31 (financial property), 39 (obligations) and 44 (income). Moreover, the authorities indicated that non-profit associations such as political parties were generally prohibited from carrying out business activities – except for those explicitly mentioned in section 2 AFPP, i.e. publishing, sales of publicity materials and organisation of party events – and that they could not, for example, own

companies or shares in companies or have representatives in supervisory boards of private companies. The GET accepts these explanations.

69. Under sections 18 and 19 AFPP, political parties – and, consequently, the independent lists and candidates for election – have to publicly report on the origin and way of using the funds collected throughout the previous calendar year, and to deliver annual financial statements and financial reports – containing a detailed outline of the sources of funding, information on donors, on the purpose of the funds received and the activity on which they were spent – to the State Audit Office and the Ministry of Finance Tax Administration in the manner and within the timeframe prescribed for non-profit organisations, i.e. within 60 days from the end of the reporting period. This accounting and reporting obligation is further specified by the Regulation on Accounting of Non-Profit Organisations and by an ordinance of 2007³⁷ requiring exact data on donations and membership fees and including three forms (records of membership fees; names of donors – natural and legal persons; services in kind, except for voluntary work rendered by party volunteers – itemised description and indication of the market value in Croatian currency). The GET considers this new regulatory framework as globally satisfactory but its efficiency in practice remains to be proven. Moreover, the GET notes that the current provisions on accounting and reporting obligations make no explicit reference to donations to individual party candidates, nor to the accounts of entities related directly or indirectly to the political party, or under its control. In line with the reasoning underlying the Recommendation, the GET wishes to stress that party accounts need to comprise such information in order to include the support provided by entities such as interest groups, political education foundations, research institutions which are closely related to – or come under the influence of a party – and in order to give a complete and realistic picture of party funding and to prevent circumvention of transparency rules. After the visit, the authorities stated that party accounts already include financial information on party candidates and on the entities referred to above. However, these affirmations do not fully concur with the information received on site, and for the sake of legal certainty such requirements need to be clearly regulated. Consequently, the GET recommends **to ensure that annual accounts of political parties include entities which are related directly or indirectly to the political party or under its control, including the support provided by these entities, and the donations to individual party candidates.**
70. Section 19 AFPP requires political parties – and, consequently, the independent lists and candidates for election – to disclose their annual financial statements and reports on their websites (with the exception of those parties whose property and income were of a value of less than 100,000 HRK/13,450 EUR each in the previous year and are therefore not subject to financial supervision). However, Croatian legislation does not provide for specific timeframes regarding this disclosure. The GET is concerned that parties may use this lack of clear rules to release information as late as possible – in particular, after the end of election campaign periods – or even not at all. For example, the authorities indicated that the seven largest parties published their financial reports and the costs of their election campaigns on the Internet after the 2007 parliamentary elections; the GET notes that altogether 29 out of the 53 parties participating in those elections were subject to financial supervision and therefore obliged to publish their reports. In view of the above, GRECO recommends **that the timeframes for publication of annual reports by political parties, independent lists and candidates be clearly specified by law.**

³⁷ Ordinance on the Manner of Keeping Records and Issuing Receipts for Paid Membership Fees and Voluntary Contributions (Donations), published in the Official Gazette 26/07.

71. The AFPP is complemented by some specific provisions on election campaign funding contained in the various election laws, i.e. the Act on the election of representatives to Parliament (AEP), the Act on financing election campaigns for the election of the President of the Republic (AFEP), the Act on the election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb (AEHM) and the Act on the election of members of representative bodies of local and regional governments (AELR). The GET notes that the current system based on numerous laws is very complicated and contains some incoherencies. Whereas the general transparency rules of the AFPP also apply to parliamentary and local elections, those of the President of the Republic are solely governed by the specific provisions of the AFEP. These provisions are quite fragmentary and differ from the standards set by the AFPP with regard to certain specific aspects such as, for example, the interdiction of anonymous donations (the AFEP does not contain such an interdiction for presidential elections) or the establishment of donation ceilings (the AFEP does not contain any such ceilings). Therefore, the GET can only stress that for the sake of optimum transparency and clarity the different regulations concerning political financing clearly need to be harmonised in order to create a more coherent legal framework.
72. Another example of inconsistency and insufficient regulation concerns the obligation to report and publish campaign financing information. Such a requirement exists only for certain types of election campaigns – e.g. there is no such obligation in the case of elections of members of representative bodies of local and regional governments. Regarding parliamentary elections, parties and candidates are merely required to publish at the beginning of the election campaign approximate data on the amounts that they intend to spend. Furthermore, the GET notes that where a requirement to report and publish exists – e.g. the State Electoral Commission has to publish campaign funding reports of presidential candidates, and the local bodies of the Commission are required to publish campaign funding reports of candidates for election as heads of municipalities, as county prefects and as the mayor of the city of Zagreb –, it is not further itemised, in contrast to the annual reporting under the AFPP. The authorities indicated that this is rather a “moral obligation” which is not enforceable and not subject to any precise rules. Information gathered by the GET during the visit clearly suggests that the implementation in practice of this requirement is highly deficient. The GET wishes to stress how important it is that financial information on political parties and election candidates is reported and disclosed on a regular basis, covering not only annual accounts but also campaign financing with regard to all types of elections. In this connection, the GET recalls that GRECO has repeatedly called upon member States to require parties and candidates to publish the donations received, in an easily accessible manner and at regular intervals, defined by law, including during election campaigns. Such timely information – which could also be ensured by the competent monitoring mechanism – would have the clear benefit of increasing the openness of political financing in Croatia, attracting the attention of the media, facilitating public debate and allowing the public and the authorities to uncover potential irregularities in the funding of parties and elections at an early stage. The information gathered by the GET clearly suggests that such an involvement of the public in the control of political financing needs to be actively encouraged. Consequently, in light of the preceding paragraphs, the GET recommends to **harmonise the provisions on election campaign funding contained in the various election laws and to align these provisions with the standards set by the 2006 Act on the financing of political parties, independent lists and candidates, addressing, *inter alia*, the level of detail, the frequency of reporting on and the publication of donations received by parties, lists and candidates, including during the electoral campaign period.**

Supervision

73. The annual financial statements and financial reports of political parties – and, consequently, the independent lists and candidates for election – are checked by the State Audit Office and the Ministry of Finance Tax Administration in the first half of each calendar year for the previous year, see sections 17 to 20 AFPP. By contrast, the current legislative framework does not foresee specific monitoring of election campaign funding, although at least in connection with certain types of elections, parties and candidates have to submit reports on campaign financing to the State Electoral Commission or its local bodies. According to the applicable election laws, the role of these bodies in respect of political financing is limited to publishing the reports submitted to them, namely the reports on the amounts and sources of funds collected and used for election campaigns of presidential candidates or of candidates for direct local elections; in the case of parliamentary elections and elections of members of representative bodies of local and regional governments, no reports are submitted to any public agency at all. It is clear that transparency of political financing would benefit significantly if campaign funding were subject to proper independent scrutiny exercised during or shortly after an election, in contrast to the current situation where campaign financing is controlled only in the following calendar year together with other party income and expenditure. In this connection, the GET is particularly concerned about the funding of presidential candidates, which is completely out of the scope of application of the AFPP and therefore not subject to any control at all. During the interviews, the GET was informed of examples of highly superficial funding reports submitted by candidates for President to the State Electoral Commission in 2005 – e.g. one candidate simply indicated that all his income derived from contributions by one political party – which did not lead however to any further inquiries or verifications as the existing legislation does not provide for any such scrutiny. The information gathered by the GET clearly indicates that the current situation is not in line with the principle enounced in Article 14 of the Recommendation which makes reference not only to the supervision of party accounts but of electoral campaigns as well. Consequently, the GET recommends, as a complement to the recommendation given in paragraph 72, **that the supervision of the annual financial reports of political parties, independent lists and candidates be complemented by specific monitoring of their campaign financing, to be effected during or shortly after presidential, parliamentary and local elections.**
74. According to the authorities, the supervision under the current regime comprises both an audit of the financial statements, transactions and activities of parties and candidates (carried out by the State Audit Office) and inspection activities (performed by the Tax Administration). During the on-site visit, the GET was informed that in the financial statements of the 15 parties and nine independent election candidates subject to complete auditing for 2007 – the first year in which parties and candidates had to submit such statements directly to the State Audit Office – a number of irregularities (e.g. incomplete or incorrect recordings, lack of source documents, doubts about the coverage of local party branches) had been detected but for the major part been quickly remedied by the parties and candidates concerned. Nevertheless, the entire reports and the findings of the State Audit Office had been submitted to the General Prosecutor's Office, from which the State Audit Office had not received any feedback; no sanctions had been imposed, except in a few cases of independent MPs who had to return public funds spent for private purposes to the State Budget. As regards the Tax Administration, it exclusively examined political parties, focusing on the big donors, in cases where irregularities had been detected before by the State Audit Office. The GET welcomes, in principle, the introduction of the new monitoring regime but cannot disregard that in its present form this mechanism does not work effectively for a number of reasons detailed below.

75. Firstly, as regards the competent monitoring agencies, the Tax Administration – which is part of the Ministry of Finance – can hardly be regarded as an independent body, in contrast to the State Audit Office which is directly answerable to Parliament. Secondly, the respective roles of both bodies are not defined by law – and were considered to be unclear by at least some of their representatives met on site. Thirdly, the financial scrutiny exercised by the State Audit Office appears to satisfy accountancy standards, but its staff is mainly specialised in auditing only. According to several interlocutors, the submitted reports are not scrutinised beyond the information that parties or candidates themselves provide. For example, there is no verification of whether an election campaign could have been financed by non-declared funding. In this connection, it should also be noted that the timeframe for checking the financial statements by both the State Audit Office and the Tax Administration – i.e. six months after the end of the reporting period – might be too short and it is doubtful whether a material in-depth control can possibly be performed under the current circumstances. Fourthly, the two monitoring bodies have no competence to impose (administrative) sanctions for violations of transparency regulations themselves and the current procedures for reporting to law enforcement agencies have not proved to be efficient, although a number of interlocutors pointed to significant irregularities in the financial statements of parties and candidates. Against this background, the GET can only conclude that measures need to be taken to allow for more pro-active, specialised and substantial monitoring, including a material verification of the information delivered by parties and candidates. Moreover, the coordination between the bodies concerned needs either to be improved or, preferably, replaced by a system where all the supervisory functions are entrusted to one single agency. In any case, the monitoring body or bodies need to enjoy an appropriate level of independence and be given sufficient resources (including personnel which is specifically trained in the supervision of political financing) to carry out pro-active and substantial checks – of both annual reports and campaign financing or parties and candidates (see paragraph 73 above) –, as well as investigative powers and the mandate to impose sanctions in case of violation of political financing regulations. In light of the preceding paragraphs, the GET recommends **to ensure that an independent mechanism/bodies is/are in place for the monitoring of the funding of political parties, independent lists and candidates and of their electoral campaigns, and which is/are given the mandate, the authority, as well as the financial and personnel resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose administrative sanctions.**

Sanctions

76. Whereas the election laws do not provide for any administrative or criminal sanctions for violations of political financing regulations, sections 21 to 25 AFPP contain criminal provisions according to which certain acts of political parties, independent lists or candidates, independent MPs or members of representative bodies of local and regional self-government units, or of donors (natural and legal persons), constitute misdemeanours. These misdemeanours are punishable by financial sanctions of varying severity (e.g. in the case of failure by a party, list or candidate to keep business books – in the case of a party – and to disclose the origin and the use of the funds in line with sections 18 and 19 AFPP, sanctions range from 50,000 HRK/6,725 EUR to 500,000 HRK/67,250 EUR and, in the case of a political party, by a fine ranging from 10,000 HRK/1,345 EUR to 20,000 HRK/2,690 EUR for responsible persons). In addition, section 24 AFPP stipulates that money collected or spent by parties, lists or candidates in a manner contrary to the provisions of this law is to be seized and transferred to the State Budget. The GET notes that these provisions cover the violation of relevant funding rules of the AFPP, including accounting, reporting and disclosure obligations. However, the GET is concerned about two obvious shortcomings which are explained below.

77. Firstly, there are only penal sanctions but no administrative or civil sanctions available for the infringement of political funding rules. The GET furthermore learned from the officials interviewed that until now the – relatively new – penal sanctions have never been applied in practice. Generally, the GET has some doubts as to the usefulness of criminal sanctions alone in this area, due to the very nature of criminal proceedings (burden of proof, the time spent on processing criminal cases), and is concerned that the current sanctioning regime does not appear sufficiently flexible to deal with less severe infractions of the law, such as late submission of reports, incompleteness of the reports or acceptance of a donation only slightly above the threshold. The GET is of the opinion that the existing criminal sanctions need to be supplemented by administrative and, possibly, civil sanctions.
78. Secondly, the lack of sanctions for violations of campaign financing regulations contained in the various election laws – namely the Act on the election of representatives to Parliament, the Act on the election of heads of municipalities, of county prefects and of the mayor of the city of Zagreb, the Act on the election of members of representative bodies of local and regional governments and, in particular, the Act on financing election campaigns for the election of the President of the Republic, – or yet to be developed (see paragraphs 71 and 72 above) is clearly not in line with the principle enounced in Article 16 of the Recommendation which refers to the infringement of funding rules for both political parties and electoral campaigns. The GET wishes to emphasize that effective enforcement of political financing regulations is a crucial precondition for ensuring public confidence in the political process. Consequently, in light of the preceding paragraphs, the GET recommends **to establish, in addition to the existing criminal sanctions, a) more flexible sanctions with regard to the infringement of rules concerning the funding of political parties, independent lists and candidates, including administrative sanctions, and b) effective, proportionate and dissuasive sanctions for infringements of existing and yet-to-be established regulations concerning election campaign funding under the various election laws.**

V. CONCLUSIONS

79. In Croatia, there is short tradition of transparency in political financing. However, the authorities are to be commended for the recent adoption of the Act on the financing of political parties, independent lists and candidates, in force since January 2007, which is in many respects in line with the standards established by Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, as regards transparency, supervision and sanctions. Nevertheless, deficiencies in the legal framework and practice remain which are, *inter alia*, related to the limited scope of party accounts (individual party candidates and entities related to a party or under its control are not implicated); the lack of regular disclosure of donations made to political parties and candidates; the fragmentary regulations on transparency of election campaign funding as contained in the various election laws; the lack of pro-active and in-depth monitoring; and the limited arsenal of sanctions for violations of political financing regulations, barely applied until now. Such deficiencies may open up possibilities for abuse and do not provide sufficient tools to effectively detect and unveil potential instances of improper influence in political financing. Further improvements to the present regime aimed at enhancing the transparency and accountability of political financing and ultimately strengthening public trust in the political process are therefore clearly required. Above all, the Croatian authorities face the challenging task of ensuring that existing – and yet-to-be established – regulations are implemented in practice. In this process, the further development of independent and powerful mechanism/bodies for monitoring both general party funding and election campaign financing will

be of crucial importance. Given that an interdepartmental working group – chaired by the Minister of Justice – with the mandate to analyse existing legislation and suggest further amendments has recently been established, the present report and its recommendations should be seen as a timely contribution to the reform process, and the Croatian authorities are encouraged to pursue their efforts to establish and implement a comprehensive system of transparency of political financing.

80. In view of the above, GRECO addresses the following recommendations to Croatia:
 - i. to ensure that annual accounts of political parties include entities which are related directly or indirectly to the political party or under its control, including the support provided by these entities, and the donations to individual party candidates (paragraph 69);
 - ii. that the timeframes for publication of annual reports by political parties, independent lists and candidates be clearly specified by law (paragraph 70);
 - iii. to harmonise the provisions on election campaign funding contained in the various election laws and to align these provisions with the standards set by the 2006 Act on the financing of political parties, independent lists and candidates, addressing, *inter alia*, the level of detail, the frequency of reporting on and the publication of donations received by parties, lists and candidates, including during the electoral campaign period (paragraph 72);
 - iv. that the supervision of the annual financial reports of political parties, independent lists and candidates be complemented by specific monitoring of their campaign financing, to be effected during or shortly after presidential, parliamentary and local elections (paragraph 73);
 - v. to ensure that an independent mechanism/bodies is/are in place for the monitoring of the funding of political parties, independent lists and candidates and of their electoral campaigns, and which is/are given the mandate, the authority, as well as the financial and personnel resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose administrative sanctions (paragraph 75);
 - vi. to establish, in addition to the existing criminal sanctions, a) more flexible sanctions with regard to the infringement of rules concerning the funding of political parties, independent lists and candidates, including administrative sanctions, and b) effective, proportionate and dissuasive sanctions for infringements of existing and yet-to-be established regulations concerning election campaign funding under the various election laws (paragraph 78).
81. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Croatian authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2011.
82. Finally, GRECO invites the authorities of Croatia to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.