



Groupe d'Etats contre la corruption  
*Group of States against corruption*

**DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS**  
**DIRECTORATE OF MONITORING**



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**Theme II**

## **Third Evaluation Round**

# **Evaluation Report on the Czech Republic on Transparency of party funding**

(Theme II)

Adopted by GRECO  
at its 50<sup>th</sup> Plenary Meeting  
(Strasbourg 28 March – 1 April 2011)

## I. INTRODUCTION

1. The Czech Republic joined GRECO in 2002. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 11E) in respect of the Czech Republic at its 13<sup>th</sup> Plenary Meeting (24-28 March 2003) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 7E) at its 28<sup>th</sup> Plenary Meeting (Strasbourg, 8-12 May 2006). 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)<sup>1</sup>, Articles 1-6 of its Additional Protocol<sup>2</sup> (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)<sup>4</sup> on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to the Czech Republic from 13 to 15 October 2010, was composed of Ms Zorana MARKOVIC, Director, Anti-Corruption Agency (Serbia), Mr Hubert SICKINGER, Senior research fellow, Institute of Conflict Research (Austria) and, the scientific expert, Mr Justin FISHER, Professor, School of Social Sciences, Brunel University (United Kingdom). The GET was supported by Ms Tania VAN DIJK from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2010) 10E, Theme II) as well as copies of relevant legislation.
4. The GET met with officials from the Ministry of the Interior and the Ministry of Finance, as well as representatives of the following five political parties: two governmental parties, the Civic Democratic Party (*Občanská demokratická strana/ODS*) and Public Affairs (*Věci veřejné/VV*), two opposition parties, the Czech Social Democratic Party (*Česká strana sociálně demokratická/ČSSD*) and the Communist Party of Bohemia and Moravia (*Komunistická strana Čech a Moravy/KSČM*), and an extra-parliamentary party, the Green Party (*Strana Zelených*). In addition, the GET met with parliamentarians of the Mandate and Immunity Committee and representatives of civil society (the Czech chapter of Transparency International and the NGO "Renewal"), the media and academia.
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 Czech 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

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<sup>1</sup> The Czech Republic ratified the Criminal Law Convention on Corruption (ETS 173) on 8 September 2000. The Convention entered into force in respect of the Czech Republic on 1 July 2002.

<sup>2</sup> The Czech Republic has not ratified nor signed the Additional Protocol to the Criminal Law Convention (ETS 191).

addressed to the Czech Republic 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 (2010) 10E-Theme I.

## **II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART**

### Legal framework

7. Political parties are governed by of Law No. 424/1991 Coll. on the Association in Political Parties and Movements, as amended (hereafter: the Law on Political Parties and Movements). The law regulates the setting-up of parties and movements, their registration, dissolution and abolishment, suspension of their activities and their funding and financial management. In addition, Law No. 247/1995 Coll. on Elections to the Parliament of the Czech Republic and Law No. 62/3003 Coll. on Elections to the European Parliament, Law No. 130/2000 Coll. on Elections to Regional Governments and Law No. 491/2001 Coll. on Elections to Municipal Councils contain rules on the technical aspects of election processes (whereby the first two also contain provisions on contributions made by the state towards election expenses). Furthermore, the Constitution and Charter of Fundamental Rights and Freedoms (which forms part of the constitutional order of the Czech Republic) contain various provisions guaranteeing political rights and freedoms.

### Definitions

8. The free establishment of political parties and movements is guaranteed by Article 5 of the Constitution. This is complemented by Article 20 of the Charter of Fundamental Rights and Freedoms, which provides that “citizens have the right to form political parties and political movements and to associate in them” (paragraph 2) and “political parties and political movements, as well as other associations, are separate from the state” (paragraph 4). Section 1 of the Law on Political Parties and Movements, reiterates the right of citizens to form political parties and political movements.<sup>3</sup> However, neither the Law on Political Parties and Movements, nor the Charter (or Constitution), contains a definition of a political party or political movement. Simply put, political parties and movements are legal entities (associations), registered in accordance with the Law on Political Parties and Movements. For legal purposes there is no difference between a political party and a political movement.
9. Political parties and movements acquire legal personality upon their registration in the Register of Political Parties and Movements administered by the Ministry of the Interior.

### Founding and registration

10. The founding and registration of political parties is regulated by the Law on Political Parties and Movements. An application to have a political party or movement registered is to be submitted to the Ministry of the Interior by a preparatory committee of at least three citizens aged 18 and over (Section 6, paragraph 2, the Law on Political Parties and Movements). Apart from information identifying the members of the preparatory committee (including their signatures and a statement on which member is entitled to act on behalf of the committee), the application for registration is to include (1) a petition requesting registration of the party/movement, signed by at least a 1000

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<sup>3</sup> Pursuant to both Article 22 of the Charter and Section 1 of the Law on Political Parties and Movements, the right of citizens to organise themselves in political parties and movements may only be restricted in cases provided for by law (for example, Law No. 186/1992 on the status of officers of police of the Czech Republic, as amended by Law No. 26/1993).

citizens (including their names, dates of birth and addresses/domicile) and (2) two copies of the so-called 'articles of association' (statute) of the party/movement.<sup>4</sup> The Ministry of the Interior may only refuse to register a political party or movement – within 15 days of receiving the application for registration – for the specific reasons stated in the law.<sup>5</sup>

11. The name, abbreviation and registered office of the party/movement, its registration number and the dates of its registration, the date of registration of changes to its statutes (and where applicable the date of dissolution of the party/movement and the cause of its deletion from the register), as well as its identification number, the names, dates of birth and addresses of the members of the statutory bodies and the way they may act on behalf of the party (and where applicable suspension of the party/movement's activities, its liquidation and information on insolvency/bankruptcy procedures) are all entered in the Register of Political Parties and Movements.
12. From the moment of its registration, a party or movement is liable for its obligations (up to the value of its assets). Its members are not liable for the obligations of the party / movement (Section 17 of the Law on Political Parties and Movements).
13. In May 2010, there were 104 parties and 49 movements registered in the Czech Republic.

#### Participation in elections

14. The Czech Republic is a parliamentary republic with a multi-party system. Its head of state, the president, is elected by parliament. Parliament is bicameral, composed of the Chamber of Deputies and the Senate.<sup>6</sup>
15. The 200 members of the Chamber of Deputies are elected in 14 constituencies for a four-year term by proportional representation (Articles 16 and 18 of the Constitution).<sup>7</sup> The election threshold for the Chamber of Deputies is five percent.<sup>8</sup> Participation in the elections for the Chamber of Deputies is the exclusive competence of political parties and movements, and coalitions thereof (Section 31 of Law No. 247/1995 on Elections to the Parliament). Electoral lists are open: voters have four preferential votes and can thus change the order on the list.<sup>9</sup> The 81 members of the Senate are elected for a six-year term, with one-third elected every second

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<sup>4</sup> The articles of association or statute must include, *inter alia*, information on organisational units (usually at regional or municipal level) established by the party/movement, especially the extent to which these units are entitled to acquire assets for the party/movement (or manage/dispose of these assets) and may act on behalf of the party.

<sup>5</sup> Registration may - for example - be refused if the abbreviation or name of the party/movement is too similar to that of an already registered party or movement, if the party/movement does not have its seat in the Czech Republic, has established armed units, is not organised on a territorial basis, breaches the Constitution (etc.).

<sup>6</sup> The powers of the Senate include the following: it may propose new laws, elects the President of the Republic in a joint meeting with the Chamber of Deputies and approves the appointment of judges of the Constitutional Court on a proposal of the President. The Senate does not vote on the budget of the Czech Republic and is not expected to supervise the executive directly.

<sup>7</sup> The 14 constituencies are the 14 regions of the Czech Republic. The method used for the election of candidates to the Chamber of Deputies is the D'Hondt method.

<sup>8</sup> The election threshold is 10% for coalitions of two parties or movements, 15% for coalitions of three parties or movements and 20% for coalitions of four or more parties or movements.

<sup>9</sup> If a party / movement / coalition has been elected to the Chamber of Deputies (i.e. if it has passed the election threshold) and a candidate received at least five percent of the number of votes cast for that particular party / movement / coalition within that constituency concerned the seat will be given to this candidate and when more than one candidate has received at least 5 percent of the votes in preferential votes, the seats shall be given in the order of biggest amount of votes (in case of equal number of votes the ranking of the candidates in question on the ballot is decisive).

(even) year, in single-seat constituencies through a two rounds majority system<sup>10</sup> (Articles 16 and 18 of the Constitution). Participation in the elections for the Senate is open to political parties and movements and coalitions thereof, as well as independent candidates (Section 60 of Law No. 247/1995).

16. All citizens of the Czech Republic, who have reached the age of 18 years on the day of the elections, have the right to vote (Article 18, paragraph 3, Constitution).<sup>11</sup> The right to be elected to the Chamber of Deputies is granted to all citizens who have the right to vote and are at least 21 years old on the second day of elections; the right to be elected to the Senate is granted to all citizens who have the right to vote and are at least 40 years old on the second day of elections (Article 19, Constitution).<sup>12</sup>

#### Party representation in Parliament

17. In the last elections for the Chamber of Deputies, which were held on 28-29 May 2010, 26 parties/movements, including coalitions/joint lists of parties/movements, participated in the elections.<sup>13</sup> Five parties passed the five percent election threshold and obtained seats in the Chamber of Deputies:

Party	Seats
Czech Social Democratic Party ( <i>Česká strana sociálně demokratická / ČSSD</i> )	<b>56</b>
Civic Democratic Party* ( <i>Občanská demokratická strana / ODS</i> )	<b>53</b>
TOP 09* ( <i>Tradice Odpovědnost Prosperita 09</i> )	<b>41</b>
Communist Party of Bohemia and Moravia ( <i>Komunistická strana Čech a Moravy / KSČM</i> )	<b>26</b>
Public Affairs* ( <i>Věci veřejné / VV</i> )	<b>24</b>

18. Three parties – indicated above by (\*) – went on to form a coalition government, headed by Prime Minister Petr Nečas: the Civic Democratic Party (ODS), TOP 09 and Public Affairs (VV). The turnout at the May 2010 elections was 62.60% (5,230,859 voters).

<sup>10</sup> For the Senate a 'runoff' voting system is used: if no candidate obtains a 50 percent majority of the valid votes in the first round, the two candidates with highest number of votes from the first round run against each other in a second round.

<sup>11</sup> For the Senate, Czech citizens have to have reached the age of 18 years on the second day of elections. The right to vote is restricted in case of "a statutory restriction of personal freedom due to public health protection" and "legal disqualification" (Section 2 of Law No. 247/1995 on Elections to the Parliament).

<sup>12</sup> The right to be elected is restricted in case of "legal disqualification" (Sections 25 and 57 of Law No. 247/1995, referring to Section 2(b)).

<sup>13</sup> These political parties / movements and coalitions were: (1) the Czech Pirate Party, (2) the Czech National Socialist Party, (3) the Czech National Social Party, (4) Czech Social Democrat Party, (5) Workers' Party of Social Justice, (6) European Centre, (7) Humanism Party, (8) Key movement, (9) Communist Party of Bohemia and Moravia, (10) Conservative Party, (11) Czech Crown (royalist Party of Bohemia, Moravia and Silesia), (12) Christian and Democratic Union – Czechoslovak People's Party, (13) Liberals.CZ, (14) Moravians, (15) National Prosperity, (16) Citizens.CZ, (17) Civic Democratic Party, (18) Association for the Republic – Republican Czechoslovak Party, (19) STOP, (20) Citizens' Rights Party – ZEMANOVCÍ, (21) Free Citizens' Party, (22) the Greens, (23) Sovereignty – block of Jana Bobošíková, Common Sense Party, (24) TOP 09, (25) Public Affairs and (26) Vote the Right Block.

19. As already indicated above, elections for 27 out of the 81 seats in the Senate are held every two years (in the even year). The most recent elections were held in two rounds on 15-16 October 2010, and 22-23 October 2010. The Senate currently comprises the following parties/movements and coalitions:

Party	Seats			
	2006	2008	2010	Total
Czech Social Democratic Party ( <i>Česká strana sociálně demokratická / ČSSD</i> )	6	23	12	<b>41</b>
Civic Democratic Party ( <i>Občanská demokratická strana / ODS</i> )	14	3	8	<b>25</b>
Christian and Democratic Union – Czechoslovak People's Party ( <i>Křesťanská a demokratická unie – Československá strana lidová / KDU–ČSL</i> )	4	-	2	<b>6</b>
Communist Party of Bohemia and Moravia ( <i>Komunistická strana Čech a Moravy / KSČM</i> )	1 <sup>14</sup>	1	-	<b>2</b>
NorthBohemians.cz ( <i>Severočeši.cz</i> )	-	-	2	<b>2</b>
TOP 09 – Mayors and Independents ( <i>Tradice Odpovědnost Prosperita 09 – Starostové a nezávislí / STAN</i> )	-	-	2	<b>2</b>
STAN ( <i>Starostové a nezávislí</i> )	1	-	-	<b>1</b>
Independents	1	-	1	<b>2</b>
<b>Total</b>	<b>27</b>	<b>27</b>	<b>27</b>	<b>81</b>

### Overview of the political funding system

#### Legal framework

20. The Law on Political Parties and Movements, as mentioned in paragraph 7 above, is the key legal instrument regulating party funding in the Czech Republic. Since its entry into force in 1991 it has been amended several times, most recently in 2010 when the amount of public funding provided to parties and movements was reduced by five percent as of January 2011. The law provides for a mixed system of funding: funding of both public and private sources.
21. The Law on Political Parties and Movements is complemented by Decree 273/2005 Coll. of the Minister of Finance of 23 June 2005 (as amended by Decree 40/2010 Coll. of 3 February 2010), on the form for the submission of annual financial reports by political parties and political movements to the Chamber of Deputies. In addition, Law No. 247/1995 Coll. on Elections to the Parliament of the Czech Republic and Law No. 62/3003 Coll. on Elections to the European Parliament contain provisions on public funding provided (for election expenses and entitlement to broadcasting time and campaign hoarding).

<sup>14</sup> By-elections were held in 2007, in which the Communist Party of Bohemia and Moravia obtained a seat.

## Public funding

22. The system for the funding of political parties and election campaigns provides for direct public funding, both in the context of an election campaign and for party activities.
23. Pursuant to Section 20 of the Law on Political Parties and Movements, the direct public funding of party activities consists of:
- a. A permanent contribution: each political party and movement (or coalitions of parties/movements), which received at least 3 percent of the vote in the elections for the Chamber of Deputies, may receive:
- 6 million CZK (approximately €240,000) per year, and;
  - 200,000 CZK (approximately €8,000) per year for every 0,1 percent of the total amount of votes cast up to 5 percent of the votes (i.e. up to a maximum of 1 million CZK – approximately €40,520);
- b. A mandate contribution: each political party or movement of which at least one candidate has been elected to the Chamber of Deputies, the Senate, a regional council or the municipal council of the city of Prague is entitled to receive:
- An amount of 900,000 CZK (approximately €36,000) per year per member of parliament (deputy or senator);
  - An amount of 250,000 CZK (approximately €10,000) per year per member of a regional council or the municipal council of Prague.
24. The Ministry of Finance pays the permanent and mandate contributions (in bi-annual instalments) upon application of the parties and movements concerned. The payment of the contributions shall be suspended if the party or movement has not presented its annual financial report to the Chamber of Deputies, has presented an incomplete annual report or if a legal action has been launched against the party or movement to dissolve it or suspend its activities (see further under the chapter on sanctions below). No further conditions are attached to the provision of permanent and/or mandate contributions to parties and movements.
25. In addition to the funding of party activities, direct public funding in the form of a contribution towards expenses incurred in connection with the elections to the Chamber of Deputies (not Senate) and European Parliament is also provided. Parties, movements and coalitions, which have received at least one and a half percent of the total number of valid votes cast in the elections for the Chamber of Deputies, will be provided with 100 CZK (approximately €4) per vote cast for the party, movement or coalition in question (Section 85, Law No. 247/1995 on Elections to the Parliament). In the context of elections to the European Parliament, parties, movements and coalitions, which have received at least one percent of the total number of valid votes cast for Czech members of the European Parliament, are provided with 30 CZK (approximately €1,20) per vote cast for the party, movement or coalition in question.
26. In 2010, the following amounts of public funding were provided to the parties represented in the Chamber of Deputies<sup>15</sup>:

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<sup>15</sup> As indicated above, public funding is also provided to parties not represented in the Chamber of Deputies.

Party/movement	Permanent contribution	Mandate contribution <sup>16</sup>	Campaign contribution <sup>17</sup>	Total
<i>Czech Social Democratic Party (ČSSD)</i>	10,000,000 CZK/ €400,000	159,075,000 CZK/ €6,363,000	115,526,700 CZK/ €4,621,068	284,601,700 CZK/ €11,384,068
<i>Civic Democratic Party (ODS)</i>	10,000,000 CZK/ €400,000	142,783,333 CZK/ €5,711,333	105,779,200 CZK/ €4,231,168	258,562,533 CZK/ €10,342,501
<i>Communist Party of Bohemia and Moravia (KSČM)</i>	10,000,000 CZK/ €400,000	55,825,000 CZK/ €2,233,000	58,976,500 CZK/ €2,359,060	124,801,500 CZK/ €4,992,060
<i>TOP 09</i>	6,666,667 CZK/ €266,667	26,450,000 CZK/ €1,058,000	87,383,300 CZK/ €3,495,332	120,499,967 CZK/ €4,819,999
<i>Public Affairs (VV)</i>	6,666,667 CZK/ €266,667	14,400,000 CZK/ €576,000	56,912,700 CZK/ €2,276,508	77,979,367 CZK/ €3,119,175
<b>Total</b>	<b>43,333,334 CZK/ €1,733,333</b>	<b>398,533,333 CZK/ €15,941,333</b>	<b>424,578,400 CZK/ €16,983,136</b>	<b>866,445,067 CZK/ €34,657,803</b>

27. Political parties and movements (and coalitions) are furthermore eligible for indirect public funding, in the form of free broadcasting time and space to put up posters during the election campaign period (Section 16, Law No. 247/1995 on Elections to the Parliament). All parties and movements, which have registered candidates lists for elections to the Czech parliament, are entitled to free broadcasting time. An amount of 14 hours on the Czech Radio and 14 hours on Czech Television is distributed equally between the running parties, movements and coalitions by drawing lots. In addition, municipalities may provide space for election posters on equal terms for all parties and movements.

#### Private funding

28. Pursuant to Section 17, paragraph 4 of the Law on Political Parties and Movements, political parties and movements can be funded by the following private sources:
- Membership fees;
  - Donations<sup>18</sup> and bequests;
  - Income from letting and selling tangible and intangible assets;
  - Interest on bank deposits;
  - Income from participating in (certain) business transactions<sup>19</sup>;
  - Income from raffles and cultural, social, sport, leisure, educational and political events;
  - Loans and credits.

<sup>16</sup> This mandate contribution includes: (1) a contribution per deputy (in the Chamber of Deputies); (2) a contribution per senator; (3) a contribution per member of the regional councils and (4) a contribution per member of the Prague City Council.

<sup>17</sup> For the May 2010 elections to the Chamber of Deputies.

<sup>18</sup> The Law on Political Parties and Movements does not contain a definition of a donation. The Czech authorities, however, indicate that a definition of a donation (or: the agreement to provide a donation) is provided by the Civil Code (Section 628 of Law No. 40/1964 Coll.).

<sup>19</sup> As regards income from participating in business transactions, paragraphs 2 and 3 of Section 17 provide that a political party or movement is prohibited from conducting business transactions in its own name (and thus has to set up a separate entity to conduct business activities) and can only establish a business (or take part in an existing business) if this business is exclusively devoted to publishing or printing services, radio or television broadcasting, publication and promotional activities, the organisation of cultural, social, sport, leisure, educational or political events and/or the production or sale of articles promoting the party/movement's programme and activities.



29. Both natural and legal persons may donate to political parties, in cash and in kind. Certain restrictions however do apply to sources of private donations. Section 19 of the Law on Political Parties and Movements provides that a political party or movement may not “accept free benefits and gifts” from state entities, state-funded organisations, municipalities (except for the rental of commercial premises), state enterprises and other legal entities in which the state, a state enterprise or municipality has a share of more than ten percent (as well as legal entities which are managed and supervised by the state), charities, other legal entities defined by special regulations, foreign legal entities (except foreign political parties and foundations) and foreign natural persons who do not have permanent residence status in the Czech Republic.<sup>20</sup> Any donation from the aforementioned sources is to be returned to the donor (including the interest accrued thereon) by 1 April the year following the date of donation or – if return to the donor is not possible – to be transferred to the state budget by the same date (Section 19a, the Law on Political Parties and Movements), subject to a fine twice the size of the donation.
30. Even though the Law on Political Parties and Movements does not explicitly stipulate this, donations from persons whose identity is unknown to the party (anonymous donations) are *de facto* prohibited, as the identity of all donors – regardless of the amount of the donation – have to be reported in the parties’ annual financial report.
31. The Law on Political Parties and Movements does not provide for any limits as regards the amount/size/periodicity of private donations or membership fees.
32. Donations to political parties by natural or legal persons are tax deductible, pursuant to Section 15, paragraph 1 and Section 20, paragraph 8 of the Income Tax Act (Law No. 586/992). Donations to elected representatives and election candidates are furthermore not subject to personal income tax, provided the conditions specified in Section 3, paragraph 4, sub-paragraph a of the Income Tax Act are met.

#### Expenditure

33. Neither the Law on Political Parties and Movements nor the Law No. 247/1995 on Elections to the Czech Parliament contains any limits or restrictions on the amount of expenditure a party may incur.

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

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

##### Books and accounts

34. According to Section 17, paragraph 5 of the Law on Political Parties and Movements, all political parties and movements are to keep accounts in compliance with special laws. The accounting requirements for political parties and movements are similar to those of other legal entities and are regulated by the Accounting Act (Law No. 563/1991 Coll.). The Accounting Act requires political parties and movements *inter alia* to keep accurate and understandable records of the financial situation (property and other assets, commitments and other liabilities, costs and revenues and economic transactions relating thereto) of the party or movement. Although the Accounting Act does not require parties / movements to separately account for donations

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<sup>20</sup> Donations by Czech citizens living abroad are not prohibited.

received, in order to fulfil the obligation pursuant to Section 18 of the Law on Political Parties and Movements on the submission of the annual financial report, political parties and movements will have to maintain separate records of private donations received. The accounting records are to be kept for a period of 10 years; secondary documentation for a period of 5 years. Pursuant to both the Law on Political Parties and Movements and the Accounting Act, parties and movements are required to draw up an annual financial statement. The annual financial statement is to be verified by an auditor (see below), who is to be appointed by the executive body of the party/movement.

### Reporting obligations

35. Political parties are obliged to send an annual financial report to the Chamber of Deputies by 1 April of each year (Section 18 of the Law on Political Parties and Movements). This report is to include:
- the annual financial statements, drawn up in accordance with the Accounting Act;
  - the audit report with the unmodified opinion of the auditor on the annual financial statements;
  - the total income<sup>21</sup> and expenditure, including operational costs and wages, taxes and fees and election expenses;
  - all gifts and donations received (including for each donation/gift the names, addresses and, in case of natural persons, dates of birth or, in case of legal persons, the business identification number);
  - inheritances, including information on the identity of the testator if the value exceeds 100,000 CZK (approximately €4,000);
  - membership fees of individual members if they exceed 50,000 CZK (approximately €2,000).
- If donations of a single donor in a given year exceed 50,000 CZK (approximately €2,000), the list of donations is to include a notarised copy of a donation agreement.
36. To facilitate the reporting by the political parties and movements, the Ministry of Finance has elaborated a standardised form for the information and attachments to be submitted (Decree No. 273/2005 Coll. of 23 June 2005, as amended by Decree 40/2010). The annual financial report is to be regarded as completed if it contains all the information specified in the previous paragraph and is presented in the form prescribed by the Ministry of Finance with attachments (Section 18, paragraph 5, the Law on Political Parties and Movements).
37. There is no separate reporting requirement in relation to election campaigns. Donors, whether natural or legal persons, are not subject to any reporting obligations as regards their donations to political parties or movements.

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<sup>21</sup> To be subdivided into:

- 1) state funding for electoral campaigns;
- 2) the permanent and mandate contributions of the state;
- 3) membership fees;
- 4) bequests/inheritances;
- 5) income from letting and selling tangible and intangible assets;
- 6) interest on bank deposits;
- 7) income from participating in (certain) business transactions;
- 8) income from raffles and cultural, social, sport, leisure, educational and political events;
- 9) loans and credits.

### Access to financial records

38. Naturally the private auditors required to verify parties/movements' annual financial statements have access to the financial records. Tax authorities and law enforcement authorities have access to these records in case of, respectively, a tax inspection of the political party or movement concerned or in case of suspicion of a criminal offence. The Chamber of Deputies (Supervisory Committee, see further below) does not have access to the accounts of parties/movements.

### Publication requirements

39. Political parties and movements are not under an obligation to publish their annual financial report. However, Section 18, paragraph 6 of the Law on Political Parties and Movements explicitly provides that the annual financial reports of the political parties and movements are to be regarded as public records. The Chamber of Deputies does not publish these reports, but once they are submitted to the Chamber any citizen may have access to the full reports (including all information on individual donors, names, addresses etc.) in the library of the Chamber of Deputies and may make copies of the reports.

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

40. The Law on Political Parties and Movements promotes a form of internal financial control over the finances of political parties and movements, by requiring – as already mentioned in paragraphs 34 and 35 above – that the unmodified opinion of an auditor on the annual financial statement be submitted, together with the annual financial report to the Chamber of Deputies (by 1 April each year). The Czech authorities indicate that within the limits of the Auditing Act (Law No. 93/2009 Coll., as amended) – which includes provisions on the independence of an auditor – parties and movements are free in their choice of auditor.<sup>22</sup> In selecting an auditor, parties and movements can make use of the public registry of auditors administered by the Chamber of Auditors.
41. As regards external control, Section 20a, paragraph 4 of the Law on Political Parties and Movements stipulates that the Chamber of Deputies checks once a year if the annual financial reports have been submitted on time and if they were completed. It also checks whether the annual reports presented in the previous year, which were deemed to be incomplete, have now been completed and whether the financial reports which were not submitted at all in previous years have now been submitted (and are complete). This check is carried out by the Supervisory Committee, a committee of the Chamber of Deputies responsible for control over the use of financial resources of the state.<sup>23</sup> The 15 parliamentarians of this committee are supported in their work by a secretary, two assistants and a part-time advisor. After discussing the findings of its rapporteur on this issue, the Supervisory Committee presents its conclusions to the Chamber of Deputies in the form of a draft resolution (on whether the annual financial reports were

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<sup>22</sup> The Czech authorities indicate that the Auditing Act transposes relevant European Union legislation on audits into Czech law. The Act includes provisions regulating the activities of statutory auditors, audit firms and auditor's assistants. As regards the independence of an auditor, it provides that the auditor shall be independent of the audited entity and shall not be involved in the decision-making of that entity. The Auditing Act furthermore prohibits *inter alia* the carrying out of audits by an auditor who has any direct or indirect financial, business, employment or other relationship (from which it can be concluded that the auditor's independence is compromised) with the audited entity ((including the provision of additional non-audit services) or who is dependent, in the long term, on income from services provided to the audited entity.

<sup>23</sup> As of May 2010, this 15-member Committee comprises four deputies of the Czech Social Democratic Party (ČSSD), four of the Civic Democratic Party (ODS), three of TOP 09, two of the Communist Party of Bohemia and Moravia (KSČM) and two of Public Affairs (VV).

submitted on time and were complete), which is subsequently to be adopted by simple majority in the Chamber of Deputies. The adopted resolution is then sent to the government and Ministry of Finance: by law the Chamber of Deputies is to inform the Ministry of Finance of its findings by 7 June of each year at the latest (Section 20a, paragraph 4, the Law on Political Parties and Movements). The GET was informed that if at the time the Supervisory Committee carries out its check on the financial reports a suspicion arises that – for example – the regulations on donations had been violated, it would inform the tax authorities.<sup>24</sup> The GET was informed that the Committee would be in a position to act on information submitted by the public or media that information by a party was inaccurate but had up until now never done so.

42. In 2007, there were 40 complete and 30 incomplete reports submitted on the finances of parties and movements over the year 2006; 64 parties/movements did not submit a report. In 2008 (for the year 2007), there were 67 complete reports, 5 incomplete reports and 65 were not submitted. In 2009 (for the year 2008), there were 64 complete reports, 16 incomplete and 62 were not submitted. In 2010 (for the year 2009), there were 71 complete reports, 18 incomplete and 61 were not submitted. All political parties represented in Parliament presented complete financial reports on time to the Chamber of Deputies: non-submitted reports concerned small, mostly dormant, parties and movements.

**(iii) Sanctions**

43. The Law on Political Parties and Movements provides for three different sanctions for violation of its provisions: (1) fines, (2) temporary suspension of public funding and (3) suspension of activities of the party or movement (which may ultimately lead to dissolution of the party or movement). First of all, pursuant to Section 19a of this Law, in case a political party or movement has accepted a donation contrary to the requirements of the act (i.e. a donation from an impermissible source<sup>25</sup>) and the party or movement in question has not returned this donation (with interest) to the donor (or the state budget, if it cannot be returned to the donor) by 1 April of the year following the donation, the tax authorities can impose a fine of twice the amount of the donation.
44. Secondly, the Ministry of Finance may suspend the public funding (permanent and mandate contributions, see paragraph 23 above, but not the contribution towards electoral expenses) to be provided to a political party or movement for as long as the party or movement has not presented its annual financial report to the Chamber of Deputies or for as long as the report is incomplete. Once the party or movement has rectified this by submitting a complete financial report, the public funding is reinstated (retroactively). Public funding is also suspended in cases where a

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<sup>24</sup> The GET was informed that in 2010, the chair of the Committee submitted copies of certain deeds of gifts to the tax authorities, to see whether they violated tax regulations.

<sup>25</sup> See paragraph 29 above for the list of prohibited sources of funding.

legal action has been brought against the party or movement to suspend its activities<sup>26</sup> or to dissolve it.<sup>27</sup>

45. Thirdly, the government may launch a legal action to suspend the activities of a party or movement (which may ultimately lead to its dissolution), in case a party/movement has not rectified its previous failure to present a complete financial report to the Chamber of Deputies and fails to do so again in the year thereafter, by motioning the Supreme Administrative Court, on a proposal of the Chamber of Deputies. If the government fails to act within 30 days of receipt of the proposal of the Chamber of Deputies, the President of the Republic can submit a motion to the Supreme Administrative Court. Once the Supreme Administrative Court decides on suspension, a party/movement has one year to take action to correct the situation, which led to the suspension of its activities. If it takes no action, the government (or ultimately the President of the Republic) may submit a motion to the Supreme Administrative Court to dissolve the party.
46. Finally, as regards sanctions included in other laws, fines of up to six percent of the party/movement's violations of the requirements of the Accounting Act (e.g. the obligation to keep proper books and accounts) can be imposed. In addition, criminal sanctions in the form of a fine, imprisonment and/or a prohibition to carry out certain activities, can be imposed upon natural persons (i.e. Czech criminal law does not provide for criminal liability of legal persons) for various accounting offences, such as the distortion or destruction of accounting data (Section 254 of the Criminal Code).

### Statistics

47. In the period 2004-2008 the following number of parties and movements had their activities suspended and/or were dissolved for repeated non-submission or incomplete submission of their annual financial report:

Year	Suspension	Dissolution
2004	2	2
2005	3	-
2006	4	1
2007	9	3
2008	10	6

48. The GET was not provided with any information on fines imposed by the tax authorities, as referred to in paragraph 43 above, or on sanctions imposed for accounting violations committed in the context of the funding of political parties and election campaigns.

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<sup>26</sup> Pursuant to Section 14, paragraph 1 of Law 424/1991, a political party or movement may have its activities suspended if they contravene Sections 1-5 (which *inter alia* refer to breaches of the constitution, lack of democratically elected bodies within the party, activities which endanger morality, public order or civil rights), Section 6, paragraph 5 (which refers to the lack of appointment of statutory, arbitration and auditing bodies), Sections 17-19 (which *inter alia* refer to the prohibition on transacting business under the party/movement's own name, the sources of income of a party, the obligation to keep accounts, the prohibition on owning assets outside the territory of the Czech Republic, the obligation to present a - complete - annual financial statement and the prohibition to accept free benefits or gifts from the list of impermissible donors, such as the state, state enterprises etc.) or its own articles.

<sup>27</sup> Pursuant to Section 13, paragraph 1b of the Law on Political Parties and Movements, a party may be dissolved if it fails to present its financial report to the Chamber of Deputies within the time limit set by law (in accordance with Section 18, paragraphs 1 and 2 of the Law on Political Parties and Movements)

## Immunities

49. The Czech authorities indicate that the sanctions stipulated in the Law on Political Parties and Movements can only be imposed upon political parties and movements and thus the obligations contained therein cannot be avoided because of immunity regulations. As for criminal sanctions, pursuant to Article 27 of the Constitution, members of the Chamber of Deputies and the Senate enjoy immunity and may not be prosecuted without the consent of the Chamber of which s/he is a member.<sup>28</sup> Election candidates do not enjoy immunity, unless they are already Members of Parliament.

## Limitation periods

50. Section 19a of the Law on Political Parties and Movements provides that limitation period for the imposition of fines by the tax authorities, as referred to in paragraph 43 above (acceptance of an a donation contrary to the requirements of the Law on Political Parties and Movements, when the party or movement in question has not returned this donation to the donor or transferred it to the state budget), is one year from the moment the tax authorities have learned of this conduct (relative statute of limitation) and three years from the moment the unlawful conduct took place (absolute statute of limitation). Similarly, Section 37 of the Accounting Act provides for a relative limitation period of one year and an absolute limitation period of three years for violations of accounting regulations.
51. The limitation period for the other sanctions (suspension of public funding and suspension of activities) appears to be implied by the procedures outlined in the Law on Political Parties and Movements for the imposition of these sanctions: once the Chamber of Deputies has adopted its resolution that the report is complete, information coming to light thereafter (e.g. that the report contains false information or is incomplete after all) can have no further consequences (unless the Chamber of Deputies revokes its previous resolution and adopts a new one).

## **IV ANALYSIS**

52. The legal framework for the financing of political parties in the Czech Republic dates back to 1991, when the Law No. 424/1991 Coll. on the Association in Political Parties and Movements (hereafter: the Law on Political Parties and Movements) was adopted to regulate various aspects of party life. Initially containing only a few basic regulations on the funding of political parties and movements, the law has over the years been amended and broadened many times.<sup>29</sup> The main features of the current regulations date back to 2000, when the law was substantially changed in reaction to two party funding scandals (which led to the fall of the Klaus cabinet in 1997).<sup>30</sup> The

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<sup>28</sup> If the Chamber denies consent to lift the immunity of one of its members, s/he cannot be prosecuted even when s/he ceases to be a Member of Parliament. See further on this GRECO's First Round Evaluation Report on the Czech Republic (Greco Eval I Rep (2002) 11E, paras. 80 and 95), as well as the subsequent Compliance Report (Greco RC-I (2004) 12E) and Addendum thereto (Greco RC-I (2004) 12E Add) as to recommendation ix.

<sup>29</sup> As regards the financing of political parties, the law initially only required the reporting of donations received in excess of 10,000 CZK (approximately €400) and donations of a single donor if they exceeded 50,000 CZK (approximately €2,000) in a year. It furthermore prohibited donations by state bodies, but did not contain any sanctions and did not require the reports on donations to be made public.

<sup>30</sup> In 1996, the daily newspaper *Dnes* revealed that, in 1995, the ODS had received donations totalling 7.5 million CZK (approximately €300,000) from two non-existent foreign donors. It was ultimately revealed that these donations were a cover for a donation by a businessman, member of a consortium that had won the tender for the purchase of a big steel company during the wave of privatisation in the 1990s. Further investigations revealed that the donation by another member of this consortium was reported in the ODS report as a donation by four anonymous entrepreneurs. A year later, in 1997, the deputy chairman of the ODS (and minister of foreign affairs) resigned. When giving the reason for his resignation, he made a

most recent amendments date back to the end of 2010, when the amounts of public funding provided to parties and movements were reduced by five percent.

53. An important characteristic of the Czech party finance system is the generous public funding provided (see the table in paragraph 26 above for the amounts provided in 2010 to the five parties represented in the Chamber of Deputies).<sup>31</sup> The funding provided consists of three parts: a subsidy for activities of parties/movements (the 'permanent contribution'), a subsidy per seat in Parliament (the 'mandate contribution', which was amended in 2001, to also subsidise seats in the regional councils and the municipal council of Prague) and a subsidy for election campaigns for the Chamber of Deputies and European Parliament. Criticism was expressed of the fact that the subsidy per seat in Parliament had increased substantially over the years (thereby strengthening the position of the large parties/movements). The GET acknowledges, however, that – after a ruling of the Constitutional Court in 2000 – the subsidy for the election campaigns is no longer only provided to parties/movements represented in Parliament (i.e. those who have obtained more than five percent of the votes cast): Any party or movement which has received more than one and a half percent of the votes in the last elections for the Chamber of Deputies (or one percent in case of elections for the European Parliament) is eligible for a contribution towards their election expenses. Similarly, the subsidy for activities is made available to all parties having received three percent of the votes in the last elections for the Chamber of Deputies.
54. The current system of public funding is not without its opponents. Some of the GET's interlocutors found that the funding provided had made parties too dependent on the state and one of the new parties on the scene, TOP 09, which is now a member of the governmental coalition, proposed – in the run-up to the autumn 2009 elections for the Chamber of Deputies (which were eventually held in May 2010) – to halve the public funding provided to political parties. As already indicated above, after the GET's visit a five percent reduction in the public funding provided took effect as of January 2011.<sup>32</sup> The benefits of state funding are obvious: substantial financial support from the state would decrease parties' reliance on large private donations, with all the risks of undesirable influence this entails. However, opponents of state funding pointed out that this argument was undercut by the reality in the Czech Republic: even with the generous public funding provided certain party representatives had appeared to be quite willing to provide political favours in return for donations.<sup>33</sup> In this context, the GET notes that the Law on Political Parties and Movements contains neither rules limiting the value of donations to political parties, nor measures to prevent excessive funding requirements of political parties (such as limits on

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reference to a secret bank account of the party in Switzerland, allegedly used to channel donations from companies, which did not want to be seen as official donors of the party. The two coalition partners of the *ODS* left the cabinet in reaction to the revelations, leading to the fall of the Klaus government.

<sup>31</sup> During the on-site visit several parties represented in the Chamber of Deputies informed the GET that public funding comprised 65 to 85 percent of their income. However, after the visit the Czech authorities provided information for 2009, which indicated that – according to the annual financial reports submitted by the parties in the Chamber of Deputies – public funding represented anywhere from zero percent (for a party which had only been registered half-way through 2009) to 57 percent of their income.

<sup>32</sup> In addition, the GET was informed after the visit that the Ministry of the Interior has prepared a draft law on elections, in which it is proposed to unify the legal provisions on the subsidies for election expenses incurred in relation to elections to the Chamber of Deputies and the European Parliament. The draft foresees a reduction in the subsidy per vote from 100 CZK (approximately €4) to 30 CZK (approximately €1,20) and an increase in the number of parties eligible for this funding (i.e. parties which have received one percent of the vote would be eligible for this subsidy, differing from the one and a half percent as it is now).

<sup>33</sup> To illustrate this, the GET was told that in September 2009, in the run-up to the elections for the Chamber of Deputies (which eventually only took place in May 2010), a journalist from *Dnes* pretended to be a businessman willing to offer parties a million CZK (approximately €40,000) if they would oppose moves to clamp down on the gaming industry. Three parties were caught on a hidden camera taking the bait to varying degrees (the Communist Party, Christian Democrats and TOP 09). This resulted in the resignations of certain prominent politicians.

expenditure on electoral campaigns). Considering that unlimited private donations negate the levelling of financial opportunities afforded by state funding and do little to restrict the scope of improper influence over politics, the GET considers that limits on expenditure for electoral campaigns – even if these are not without their own problems – as mentioned in Article 9 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Election Campaigns, would be a possibility worth exploring in the Czech context. From the information gathered on site it would appear that at least a number of the parties are not indisposed towards this idea.

55. Against this background the following analysis focuses on three distinct areas of concern for the present evaluation, namely transparency of political financing, the supervision over such financing, the sanctions applicable when funding rules are violated and their enforcement. In short, the GET is of the opinion that the Czech Republic has a reasonably solid legal framework regulating the financing of political parties (and movements) and election campaigns. However, considering the requirements of 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 Election Campaigns there are some clear shortcomings.

### Transparency

56. As regards the transparency of party funding, the GET notes that all political parties and movements are required to keep records of their finances (pursuant to Section 17 of the Law on Political Parties and Movements and Law No. 563/1991 on Accounting). The GET was informed that political parties and movements would be regarded as a single accounting entity: The annual accounts of the parties and movements would have to include all regional and local tiers of the party structure. The GET welcomes this.
57. The Law on Political Parties and Movements furthermore requires all registered political parties and movements regardless of whether they receive public funding or not, to submit a report on their finances to the Chamber of Deputies by the first of April the following year. There is no separate reporting requirement for election campaigns. As described in paragraph 35 above, the annual financial report is to include information on income – whereby the Law on Political Parties and Movements provides for both a list of permitted and prohibited sources of income (see paragraphs 28 and 29 above) – and expenditure.<sup>34</sup> The GET was pleased to note that, in order to assist parties and movements in fulfilling their reporting requirements (and to facilitate the comparisons over the years and across parties), the Ministry of Finance has developed a standardised format for the submission of the annual reports (Decree No. 273/2005 of 23 June 2005, as amended by Decree 40/2010 of 3 February 2010). The GET found some of the information on income contained in the reports remarkably detailed: as there is no disclosure threshold, *all* donations – regardless of their amount – have to be reported, including donors' names and addresses.<sup>35</sup> When looking through the reports, the GET indeed came across donations as small as 100 CZK (approximately €4) listing donors' first names, surnames, dates of

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<sup>34</sup> Income is to include (1) all donations/gifts received (including the names of the donors, addresses, dates of birth, or in case of a legal person, business identification numbers); (2) public funding provided in the context of electoral campaign; (3) the permanent and mandate contributions provided by the states; (4) the total sum of membership fees and details of the members whose membership fee exceeds 50,000 CZK (approximately €2,000); (5) bequests/inheritances, including information on the identity of the testator if the value of the bequest exceeds 100,000 CZK (approximately €4,000); (6) income from the lease or sale of moveable assets and real estate; (7) interests on deposits; (8) income from the organisation of raffles, cultural, sports recreational, educational and political events; (8) credits and loans. Expenditure is to include the total sums of (1) operational expenses; (2) salary costs; (3) tax and fee expenses and (4) election expenses.

<sup>35</sup> Although this is not made explicit in the law, from this obligation it follows that anonymous donations are prohibited.



birth and addresses (or in the case of legal entities, their business names, address and identification numbers). Although the GET has some concerns that this level of transparency could represent an infringement of the privacy of small donors and that the abundance of disclosed information makes it actually more difficult to review the finances of political parties, none of this was considered a problem by those interviewed on site (other than the fact that this information was not available electronically, see further below). In addition, none of the parties regarded these reporting requirements as an administrative burden.

58. Despite the high level of detail in which donations are to be reported/disclosed, the GET finds that in certain other areas the income of political parties is less transparent. First of all, whereas all donations have to be reported/disclosed, membership fees only have to be identified in the report if they exceed 50,000 CZK (approximately €2,000). It would appear that, in the absence of definitions in the Law on Political Parties and Movements of what is to be regarded as a gift/donation or a membership fee, some parties routinely treat donations by members as membership fees. In addition, concerns were raised by a number of interviewees (which reflect concerns in other countries) that large donations (also of non-members) could be split and concealed as membership fees below the disclosure threshold of 50,000 CZK. Whereas the GET certainly does not advocate that information on members is to be made public as a matter of course, it is of the opinion that further measures need to be taken to reduce the potential risk that rules on disclosure of information on donations are being circumvented in such a way (for example by introducing clear definitions of membership fees and donations in the Law on Political Parties and Movements). The GET therefore recommends **to take measures to ensure that donations by party members are adequately reflected in the financial reports of political parties and movements.**
59. Secondly, as indicated above, the Law on Political Parties and Movements does not clarify what constitutes a donation. The reference to a gift is, however, meant to include donations in kind (as can also be deduced from the above-mentioned standardised format, which contains a separate annex for the reporting of “donations other than money”). Nevertheless, it would appear that insufficient detail is available in respect of the value of in-kind donations, in particular concerning goods and services provided at reduced rates. In this context, several of the GET’s interlocutors stated that what parties/movements declared spending on campaigning fell considerably short of the estimated costs of the relevant advertising campaigns (and it was suspected that many advertisements were provided free of charge or at reduced rates by companies). Related to this, is the fact that the Law on Political Parties and Movements does not address the issue of loans. Due to the unusual length of the campaign period for the May 2010 elections for the Chamber of Deputies, several parties/movements are assumed to have taken out loans to finance their campaigns. While the total sum of debts of political parties/movements is to be reflected in the financial report, this is not done in great detail. It would in any case appear to be less clear that loans granted under more favourable conditions than those applicable on the market, as well as written-off loans, do amount to donations. In light of the above, the GET recommends **to establish precise rules for the valuation and reporting of in-kind donations, including loans (whenever their terms or conditions deviate from customary market conditions or they are cancelled) and other goods and services (other than voluntary work by non-professionals) provided below market value.**
60. The GET learned that political parties and movements can obtain income from business activities. In 1994, the Law on Political Parties and Movements was amended to prohibit any type of entrepreneurial activity. This amendment was successfully challenged before the Constitutional Court and therefore, since 1996, parties and movements may engage in certain business

activities, as long as a separate entity is set up to do so.<sup>36</sup> Even though not many parties appear to engage in business activities, several interlocutors of the GET raised concerns that the financial ties between these companies and the party/movement were opaque and that the transparency requirements of the law could be circumvented by holdings of parties/movements in commercial companies. In the GET's view, it would further the transparency of party funding if, at the very least, the accounts of companies (or as a minimum a summary of those accounts), which have been set up by political parties/movements or in which a party/movement participates, were made public together with the reports of the parties and movements themselves. Therefore, the GET recommends **to seek ways to consolidate the books and accounts of political parties and movements to include the accounts of entities related, directly or indirectly, to a political party or movement or otherwise under its control.**

61. Turning to the accessibility of the reported information, as stated in paragraph 57 above, parties and movements are required to send their annual financial reports to the Chamber of Deputies. The Law on Political Parties and Movements provides that these reports are to be "regarded as public records: it is possible to search them and make copies, duplicates or excerpts".<sup>37</sup> The GET finds that the very fact that only one copy of the annual financial report of each of the parties/movements is accessible in the library of the Chamber of Deputies does not enhance transparency and does not allow the public, civil society and the media to exercise any meaningful oversight over the financing of political parties. The GET was furthermore informed that some of these reports were barely legible (pages missing, bad copies etc.). Considering that since this provision was introduced in the law, other ways have become available to make information more easily accessible to the public, the GET finds there is no excuse for such data to only be available in hard copy. In the opinion of the GET, it would greatly benefit the transparency of party funding if the financial reports of parties and movements would be published on-line (with greater regularity in respect of donations, see further below). Therefore, the GET recommends **to ensure that the financial reports of political parties and movements are published in a way that provides for easy access by the public.**
62. The GET took note of the fact that the campaign for the May 2010 elections for the Chamber of Deputies was of an unusually long duration: Early elections had been called for October 2009, but – after the constitutionality of the election process was challenged – only took place in May 2010. Several interlocutors interviewed by the GET stated, that as political parties/movements had been running their election campaigns for an unprecedented 9 months, they were likely to be in financial trouble. However, it will be almost a year after the elections before further information becomes available (in the parties/movements' annual financial reports) on how political parties/movements have financed their campaigns. Whereas, as already indicated above, these reports contain a large amount of data on donations, information on expenditure is less detailed. Campaign expenditure is included in these reports as an aggregate amount ('costs of elections') without any further breakdown. Furthermore, detailed as the information on donations presently is, the GET finds that the political 'momentum' is lost if information on, in particular, large donations only becomes available long after the elections, thereby preventing the public from punishing parties at the ballot box in case of dubious funding practices. The GET considers that, for the sake of transparency, donations (at least those above a certain value, to be determined by balancing transparency with a need to protect personal privacy) would need to be reported at

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<sup>36</sup> The permitted activities are: publishing and printing, radio and television broadcasting, publication and promotional activities, the organisation of cultural, social, sport, leisure, educational or political events and/or the production or sale of articles promoting the party/movement's programme and activities

<sup>37</sup> The resolutions of the Chamber of Deputies on the reports of political parties (i.e. whether parties/movements have fulfilled their legal obligation to submit complete reports) are published in the Official Gazette.

more regular intervals defined by law, especially in the period before elections, as this would provide for a more solid basis for an assessment of campaign funding practices at the very time when a party/movement's income is arguably of the most interest to the electorate. Consequently, the GET recommends **to require (i) more detailed disclosure of campaign expenditure in the annual financial reports and (ii) more frequent reporting on and disclosure of donations above a certain value received by political parties and movements, in connection with election campaigns.**

63. The above-mentioned May 2010 elections for the Chamber of Deputies were somewhat of a novelty in Czech politics, not only as regards the length of the campaign, but also regarding campaigns of candidates. Czech elections are traditionally party-centred: only political parties and movements (and coalitions thereof) can present candidate lists for elections to the Chamber of Deputies (and while independent candidates can run for the Senate, the majority of candidates for the Senate run on a party platform). In the 2010 elections for the Chamber of Deputies several candidates on electoral lists carried out individual campaigns in tandem with the ones ran by the party/movements on whose list they appeared, primarily to get preferential votes. The Law on Political Parties and Movements does however not address donations paid directly to candidates or expenditure incurred by them. In practice, it seems to depend solely on the policies of the party/movement in question, if a candidate can run his/her own campaign and if the income and expenses for the individual campaign is reflected in the report of the party or movement. In the GET's view this practice is clearly detrimental to the transparency of the finances of campaigns and allows the rules on prohibited donations to be circumvented. Consequently, in light of Article 8 of Recommendation Rec(2003)4, the GET recommends **to subject, to the greatest extent possible, election candidates campaigning separately from political parties/movements to transparency standards, which are comparable to those applying to the political parties/movements themselves.**

### Supervision

64. The GET notes that the Law on Political Parties and Movements places certain obligations upon all political parties and movements as regards internal financial control, in that they must have their financial statements endorsed by an auditor. The party is free to choose its auditor from the names in the public registry of auditors administered by the Chamber of Auditors. The activities of auditors are regulated by the Auditing Act, which – as appeared after the visit – contains various provisions on the independence of auditors (*inter alia* providing that auditors cannot perform audits if they have any sort of relationship with the audited entity which may compromise their independence, including the provision of additional non-audit services). Further details on the independence of auditors are reportedly outlined in the Code of Ethics for auditors. It would nevertheless appear that auditors can be (active) members of the party to whom they provide their services and can serve as party auditors for an unlimited number of years. In this context, the GET also learned that two major parliamentary parties shared the same auditor, which is hardly likely to enhance trust in the auditing process. In general, the GET came across a clear lack of confidence in the audit of financial statements. It was told that the control exercised by auditors was not thorough and amounted to little more than an accounting process. The Czech authorities, however, indicate that additional requirements as regards the independence of auditors would likely amount to an undue, indirect interference by the state in the internal affairs of a party or movement.<sup>38</sup> Nevertheless, in light of the above-mentioned concerns, the GET is

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<sup>38</sup>In this context, a decision of the Constitutional Court of October 1995 (Decision No. Pl. ÚS 26/94) was brought to the attention of the GET. According to the Czech authorities, this decision *inter alia* stipulates that the state must respect the autonomy of political parties and that state control should be limited to supervision over the allocation and distribution of

strongly of the opinion that further measures to strengthen the audit process and (the perception of) the independence of auditors (such as requiring auditors to be rotated after having served the party/movement a consecutive number of years and/or requiring large parties to appoint a second auditor of a different company) need to be explored. Consequently, the GET recommends **to consider taking further measures to strengthen the independence of auditors who are to certify the accounts of parties and movements.**

65. The above-mentioned lack of confidence in the audit process is compounded by the fact that external control of political financing in the Czech Republic relies to a large extent on the auditor's opinion of the financial statements. External control over party funding is exercised by the Supervisory Committee of the Chamber of Deputies, which in its current term has 15 members appointed by the political groups represented in parliament.<sup>39</sup> As elections were held for the Senate on the dates of the on-site visit, the members of parliament comprising the Supervisory Committee were – due to their campaigning duties – not in a position to meet with the GET. From the information provided in writing by the Supervisory Committee after the visit and discussions with other interlocutors, the GET was however able to get a clear picture of the control carried out by the Supervisory Committee. In its own words the Supervisory Committee checks that the submitted financial report is complete (i.e. that it contains all the information required by law, including the above-mentioned statement of a certified auditor, is submitted on time on the form prescribed by the Ministry of Finance with the required appendices and contains no indication that the party/movement has accepted a donation or gift from an impermissible source). After checking that the submitted reports meet the legal requirements, the Committee proposes a draft resolution to the Chamber of Deputies, stating which parties have fulfilled their legal obligation and which have not. The GET was informed that if the Supervisory Committee comes across irregularities in the report – for example, in respect of an inadmissible donation – it may inform the tax authorities. However, in the opinion of the GET, a possible investigation by the tax authorities cannot be seen as proper supervision of the finances of political parties.<sup>40</sup>
66. In reality, the media is the most active in examining the financing of the political parties and politicians and have up until now been the only ones uncovering cases of dubious funding practices. Reliance on the media – or for that matter the public or civil society – to discover and publish irregularities in the financing of political parties/movements and election campaigns presupposes that they have ready access to relevant information, which (as has already been highlighted above) is not the case in the Czech Republic. The GET was informed that the Supervisory Committee would be authorised to act upon information received (in writing or in person) by members of the public or media and that it would consider this information in the context of adopting a resolution on the annual financial reports. To this day the Supervisory Committee has never received such information.
67. In short, the GET finds that the mechanism described above has three major flaws. First, the control exercised by the Supervisory Committee is only of a formal nature, which in light of the frequently expressed doubts during the on-site visits of the accuracy of parties' financial reports – especially in the context of elections – is a particular problem. Secondly, the Supervisory Committee is composed of political party representatives (with a majority vote for the

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public funding. Denying the freedom of parties and movements to select an auditor by parties and movements would, following this reasoning, unduly interfere with the autonomy of political parties. The GET was, however, not provided with a translation of this decision (or summary thereof).

<sup>39</sup> The Supervisory Committee is composed of four members of parliament of the *ODS*, four of the *ČSSD*, three of *TOP 09*, two of *VV* and 2 of *KSČD*.

<sup>40</sup> The GET was informed that the Supervisory Committee had in 2010 asked the tax authorities to see whether certain deeds of gifts to political parties were not in violation of the tax legislation

governmental coalition), which means that in reality the parties control themselves. As such, it does not represent an effective, independent control mechanism, as required by Article 14 of Recommendation Rec(2003)4. An indication of this is that no party in the Chamber of Deputies has ever had its state funding suspended. While this may be because all accounts of parliamentary parties have always been in order, the GET feels anything but confident that – in as far as it would be possible for irregularities to be brought to light in the current process – these irregularities would indeed be disciplined by the Supervisory Committee (in particular if it concerns a party which is a member of the governmental coalition).<sup>41</sup> In this context, the GET's attention was drawn to Decision No. Pl. ÚS 26/94 of the Czech Constitutional Court of October 1995, in which provisions of the law giving the Supreme Audit Office the task of monitoring the funding of parties and movements were apparently declared unconstitutional. According to the Czech authorities this decision would be an impediment for the setting up of a mechanism to monitor the funding of political parties/movements, as any type of control by a governmental or other public authority would likely be regarded as an undue interference in the affairs of these private entities (and thus declared to be unconstitutional). No translation of this decision was however provided and the exact ramifications of this decision for the monitoring of party funding could thus not be assessed by the GET. However, the GET recalls that, in recognition of the special role parties have in a democratic society (which is very different from that of other associations), several GRECO member states with a similarly strong tradition regarding the autonomy of political parties have found ways to establish an appropriate mechanism for the monitoring of the funding of political parties while respecting their status as private associations. Finally, the GET finds the process by which members of the public or media/civil society representatives may make a complaint unclear. In light of this, the GET recommends to **(i) ensure that an independent mechanism is in place for the monitoring of the funding of political parties/movements and election campaigns (including those of candidates), in line with Article 14 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) provide this mechanism with the mandate, the authority, as well as adequate resources to effectively and pro-actively supervise the funding of political parties/movements and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions, and (iii) establish a clear process for the submission (and subsequent) investigation of citizens' and media complaints as regards the funding of political parties/movements and election campaigns.**

### Sanctions

68. The range of sanctions for violations of party funding rules, as provided for by the Law on Political Parties and Movements is rather limited. As described in paragraph 43-46 above, the sanctions provided for by this Law are (1) fines, which can be imposed by the tax authorities (for donations from prohibited sources, if these have not been returned to the donor or transferred to the state budget); (2) suspension of public funding for as long as the party has not presented its annual financial report (or has not complemented its incomplete report), and; (3) suspension of the parties' activities (which may ultimately lead to dissolution of the party) for repeated failure to submit a complete financial report. These sanctions can only be imposed upon political parties. In the opinion of the GET, the current sanctioning regime needs to be improved in three respects.

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<sup>41</sup> In this context, the GET took note of the information provided that a rapporteur presents a resolution on parties' compliance with the Political Parties Law to the Supervisory Committee, which – after a discussion and possible amendments – votes on it (if at least a third of its members are present). To adopt a resolution a majority vote of the members of the Committee is needed. If the full Committee meets, the parties who make up the governmental coalition always have a majority vote. The resolution is then sent the Chamber of Deputies, which adopts its own resolution.

First of all, the sanctioning regime is incomplete, in that not all potential infringements of the Law on Political Parties can be adequately dealt with. The GET, for example, heard repeated allegations that state-owned companies would donate to political parties/movements through intermediaries, but under the current regimes it would not be possible to impose sanctions on donors who donate through intermediaries. Also the above-mentioned disguising of donations as membership fees is not something that can be addressed. Secondly, and related to this, the GET finds the sanctions insufficiently flexible: (temporary) suspension of public funding allows parties/movements to test the legality of their actions, safe in the knowledge that they can rectify their mistakes (and that the public funding will be reinstated retroactively). Suspension of activities or dissolution, on the other hand, is a rather severe sanction. Other, more incremental sanctions could usefully be introduced in order to adequately cover the range and gravity of possible violations of political financing rules. Thirdly, no sanctions can be imposed on individual candidates on an electoral list, who may accept donations contrary to the requirements the Law on Political Parties and Movements places on political parties. Consequently, the GET recommends **to (i) introduce appropriate (flexible) sanctions for all infractions of the Political Parties Law, in addition to the current range of sanctions and (ii) provide for the possibility to impose sanctions for violations of Law No. 424/1991 Coll. on the Association in Political Parties and Movements on candidates on an electoral list.**

## V. CONCLUSIONS

69. The legal framework for the financing of political parties and election campaigns in the Czech Republic reflects several of the principles of the Council of Europe's Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns. Rules are in place obliging political parties and movements to keep proper books and accounts, which are consolidated to include local and regional structures of the parties and movements, and requiring them to report annually on their financial situation (including on donations, in remarkable detail). However, further measures need to be taken to enhance the transparency of the financing of parties and movements, *inter alia* by ensuring easier access by the public to the financial reports of parties and movements, requiring more frequent reporting of donations received in connection with election campaigns and – in light of the May 2010 elections to the Chamber of Deputies – providing for more transparency of the funding of election candidates who campaign separately from parties/movements. The main deficiency of Law No. 424/1991 Coll. on the Association in Political Parties and Movements, however, resides in the lack of substantial and pro-active monitoring. The current system – in which the Supervisory Committee of the Chamber of Deputies checks whether the annual financial reports meet the legal prerequisites – falls short of the requirements of Article 14 of Recommendation Rec(2003)4. Establishing an effective supervisory mechanism and ensuring adequate enforcement of the rules on party/movement and election campaign funding must therefore be a matter of priority. Finally, the current system would benefit from the introduction of more flexible sanctions for violations of Law No. 424/1991 Coll. on the Association in Political Parties and Movements, whereby it would also be possible to impose sanctions on candidates on electoral lists.
70. GRECO welcomes that the need to enhance the transparency of party funding has been recognised by the Czech government in its anti-corruption strategy, adopted in January 2011, and trusts that the present report and its recommendations are a timely and complementary contribution to the legislative proposals mentioned in this strategy.
71. In view of the above, GRECO addresses the following recommendations to the Czech Republic:

- i. to take measures to ensure that donations by party members are adequately reflected in the financial reports of political parties and movements (paragraph 58);**
  - ii. to establish precise rules for the valuation and reporting of in-kind donations, including loans (whenever their terms or conditions deviate from customary market conditions or they are cancelled) and other goods and services (other than voluntary work by non-professionals) provided below market value (paragraph 59);**
  - iii. to seek ways to consolidate the books and accounts of political parties and movements to include the accounts of entities related, directly or indirectly, to a political party or movement or otherwise under its control (paragraph 60);**
  - iv. to ensure that the financial reports of political parties and movements are published in a way that provides for easy access by the public (paragraph 61);**
  - v. to require (i) more detailed disclosure of campaign expenditure in the annual financial reports and (ii) more frequent reporting on and disclosure of donations above a certain value received by political parties and movements, in connection with election campaigns (paragraph 62);**
  - vi. to subject, to the greatest extent possible, election candidates campaigning separately from political parties/movements to transparency standards, which are comparable to those applying to the political parties/movements themselves (paragraph 63);**
  - vii. to consider taking further measures to strengthen the independence of auditors who are to certify the accounts of parties and movements (paragraph 64);**
  - viii. to (i) ensure that an independent mechanism is in place for the monitoring of the funding of political parties/movements and election campaigns (including those of candidates), in line with Article 14 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) provide this mechanism with the mandate, the authority, as well as adequate resources to effectively and pro-actively supervise the funding of political parties/movements and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions, and (iii) establish a clear process for the submission (and subsequent) investigation of citizens' and media complaints as regards the funding of political parties/movements and election campaigns (paragraph 67);**
  - ix. to (i) introduce appropriate (flexible) sanctions for all infractions of the Political Parties Law, in addition to the current range of sanctions and (ii) provide for the possibility to impose sanctions for violations of Law No. 424/1991 Coll. on the Association in Political Parties and Movements on candidates on an electoral list (paragraph 68).**
72. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Czech Republic to present a report on the implementation of the above-mentioned recommendations by 31 October 2012.

73. Finally, GRECO invites the Czech authorities to authorise the publication of this report as soon as possible, to translate it into the national language and to make this translation public.