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Theme II

Third Evaluation Round

Evaluation Report on Luxembourg on the "Transparency of Political Party Funding"

(Theme II)

Adopted by GRECO
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I. INTRODUCTION

1. Luxembourg has been a member of GRECO since 1999. GRECO adopted its first round evaluation report on Luxembourg (Greco Eval I Rep (2001) 2F) at its fifth meeting (Strasbourg, 11-15 June 2001) and the second round evaluation report (Greco Eval II Rep (2003) 5F) at its 18th meeting (Strasbourg, 10-14 May 2004). These, and the corresponding compliance reports, are available on the GRECO web site (<http://www.coe.int/greco>).
2. The current third evaluation round, which started on 1 January 2007, covers the following themes:
 - **Theme I – Incriminations:** articles 1a and 1b, 2-12, 15-17 and 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), articles 1-6 of its Additional Protocol (ETS 191)¹ and Guiding Principle 2 (GPC 2) (incrimination of corruption).
 - **Theme II - Transparency of Political 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 on financing of political parties and election campaigns.
3. The GRECO evaluation team (hereafter the "GET") that visited Luxembourg from 22 to 26 October 2007 in connection with theme II comprised Mr Stéphane GAUVIN, deputy head of the legal department of the French national commission on campaign accounts and political party funding - CNCCFP (France), and Mr Jan MAJCHROWSKI, political scientist, faculty of law and administration, Warsaw University (Poland). The GET was assisted by MM Michael JANSSEN and Christophe SPECKBACHER of the GRECO secretariat. Before the visit, the GET experts received the country's replies to the evaluation questionnaire (Greco Eval III (2007) 3F, theme II) and relevant legislation.
4. The GET met representatives of the following state institutions: general secretariat of the parliament, the prosecution service, investigating judges and the Court of Auditors. It also met members and representatives of the seven political parties active in Luxembourg (CSV, DP, LSAP, Déi Gréng, ADR, KPL, Déi Lenk) and a research lecturer in political science at Luxembourg University.
5. The current report on theme II of GRECO's 3rd evaluation round - Transparency of Political Party Funding – is based on answers to the questionnaire and information supplied during the on-the-spot visit. The main objective of the report is to assess the measures adopted by Luxembourg to comply with the provisions referred to in paragraph 2. The report presents a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Luxembourg on how to improve compliance with the provisions under consideration.
6. The report on theme I – Incriminations – appears in Greco Eval III Rep (2007) 6F-Theme I.

¹ Luxembourg ratified the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191) on 13 July 2005. The two instruments came into force in Luxembourg on 1 November 2005. A reservation has been entered concerning Article 17 of the Convention.

II. TRANSPARENCY OF POLITICAL PARTY FUNDING - GENERAL

Overview of the political system and political party funding

7. The Grand Duchy of Luxembourg is a constitutional monarchy in the form of a parliamentary democracy. Politically and administratively it is divided into three districts - Diekirch, Grevenmacher and Luxembourg – which are themselves composed of 12 cantons and 116 municipalities. The municipalities are self-governing, under the supervision of district commissioners representing the authority of the crown.
8. Setting aside elections to the European Parliament, elections to the Chamber of Deputies, which has 60 seats and is the only house in the country's parliament, are held every five years and to municipal councils every six years. Districts and cantons are purely administrative territorial units which do not require particular general elections to be held. The most recent elections were in June 2004 (Chamber of Deputies and European Parliament) and October 2005 (municipal elections). Of the eight parties that contested the last parliamentary elections, in June 2004, five are represented in the Chamber. One member sits as an independent².
9. Article 51 of the Constitution lays down the method for electing members of parliament³, articles 52 and 53 the qualifications for and exclusions from the right to vote, and article 54 incompatibilities with membership of parliament. Under the electoral legislation of 18 February 2003 there are no minimum conditions for election to parliament, such as number of votes or percentage of votes cast. Section 135 of the law simply requires candidates to be nominated by 100 voters registered in the constituency, an elected member of parliament or three municipal councillors.
10. At the time of the visit, there was no general legislation on political party funding. According to the authorities, the only relevant law is the law of 7 January 1999 on the partial reimbursement of the election campaign expenses of parties and political groups taking part in elections to the Chamber of Deputies and the European Parliament, whose provisions have been incorporated into part III, chapter IX of the electoral legislation of 18 February 2003.
11. Draft legislation on the funding of political parties⁴, and their activities in general, was submitted by the five political groups represented in parliament in March 2007. At the time of the visit the "regulation of political party funding bill" of 21 December 2007 was before the Council of State, which has to be consulted on any draft legislation. It was approved after the visit⁵ and has been taken into account in this report. The new legislation, which came into force on 1 January 2008, responds to demands that have been made since the 1990s, as well as to a number of political funding cases that have sometimes made the headlines, particularly concerning allegations of bribes (in the so-called "Pei" museum affair), drug money (the so-called "Cali cartel" or "Jurado" affair) and payments made by the national farmers' union.

² Christian Social Party: 24; Luxembourg Socialist Workers' Party: 14; Democratic Party: 10; Green Party: 7; Democratic Reform Party: 4; Independent: 1

³ Simple universal suffrage based on a party-list system, in accordance with the rules of proportional representation, the principle of the smallest electoral quota, and any other rules to be determined by law.

⁴ According to the Luxembourg authorities, the authors of the bill have based it on the Council of Europe Committee of Ministers' Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns.

⁵ The opinion was published after the visit, on 6 November 2007, and the draft legislation, as amended in consequence, was finally passed on 21 December 2007 and published in the official journal of 28 December 2007.

Legal framework and registration

12. The only definition is in the law of 7 January 1999 on the partial reimbursement of the election campaign expenses of parties and political groups taking part in elections to the Chamber of Deputies and the European Parliament, subsequently incorporated into part III, chapter IX of the electoral legislation of 18 February 2003. *For the purposes of this act, political party or political group means an association of individuals, whether or not with legal personality, that contributes, in accordance with the fundamental principles of democracy, to the expression of universal suffrage and the popular will, as laid down in its constitution or political programme.* Apart from the reference to "political group", this definition is repeated in the regulation of political party funding legislation of 21 December 2007, which came into force on 1 January 2008. It should also be noted that the Chamber of Deputies was considering a proposed constitutional amendment at the time of the visit, which would introduce a new Article 32bis stating that political parties contribute to the formation of the popular will and the expression of universal suffrage, and are the expression of democratic pluralism.
13. Hitherto, political parties in the Luxembourg parliament have been reluctant to grant parties any specific form of legal status and at the time of the visit there were no particular conditions governing their recognition and/or registration. The GET was told that parties are generally *de facto* associations with no legal personality, but for the last fifteen years they had been deemed to be subject to the jurisdiction of the courts on the same basis as bodies with formal legal personality. However, the GET was also told that in practice political parties establish and register themselves as non-profit making associations (ASBLs) in order to employ staff and acquire and manage their premises. ASBLs are also used for other purposes, such as forming groupings of locally elected members and offering them political training.
14. The draft legislation under consideration at the time of the visit accompanied the arrangements for the public financing of parties with certain transparency requirements and supervisory machinery, but did not alter the status of parties, though it did state that any political party wishing to benefit from public funding had to lodge a copy of its articles of association and a list of its leading central officials with the President of the Chamber of Deputies. Any changes to the articles of association or the party officials also had to be reported to the Chamber President. The final version of the law approved in December 2007 (section 6) establishes another registration body and goes further by requiring any political party that wishes to benefit from public funding to lodge with the Prime Minister 1. its articles of association, a list of its national officials and any changes to those articles or officials, 2. a list of donors and donations in accordance with section 9, and 3. its balance sheet and accounts, in accordance with section 14. Copies of these documents should also be submitted to the President of the Chamber of Deputies. The office of clerk of the Chamber of Deputies shall make this information freely available to anyone wishing to consult it by publishing it on its Internet site.

Sources of funding

15. According to the replies to the questionnaire, at the time of the visit parties were funded by private donations from individuals and legal persons and by the state.
16. Party representatives whom the team met said that in general apart from election campaigns their parties financed themselves from members' contributions and that the legal persons that made donations were very varied, including banks, service companies, retail chains and construction companies. Under section 8 of the new legislation of 21 December 2007 parties may no longer receive donations from legal persons, whether *de facto* or formally established, and

whether operating under private or public law (as is the case with non-profit making associations – ASBLs). Elected members of parties may contribute part of their parliamentary allowances. It emerged from on-the-spot discussions that significant assistance, either financial or in kind, such as the use of premises or office equipment, comes from parliamentary political groups. Public funding of political groups amounts to € 1.5 million per year and is mainly intended to cover groups' running costs. The GET was also told that a system of press subsidies was introduced in 1976 and by 2007 amounted to about € 6.7 million. The major newspapers are sometimes fairly close to particular parties, even though there is generally not a formal link (although some parties do have an internal press organ). It appears from on-the-spot information that parties do not receive any significant income from commercial or cultural activities or services, though certain ASBLs connected with parties own or manage property holdings. Luxembourg legislation, including the December 2007 law, has nothing to say about funding from abroad. Just one party acknowledged that it had received financial and logistical support from other European political parties or political groups at the last parliamentary elections and the 2004 European ones. Finally, according to an academic researcher, two parties have each created a foundation, in the form of ASBLs that are entitled to public grants.

17. The 1999 legislation simply introduced partial public funding of election campaigns. Under section 93, grants may be paid if the party or political group concerned presents complete lists of candidates for all the constituencies in parliamentary elections or, in the case of European elections, a complete list of candidates in the single constituency. The grant is also only payable if the party or group wins at least one seat or, in the European elections, at least 5% of the votes cast. Total grants in the last elections amounted to € 1.6 million. Grants are determined as follows: a. In parliamentary elections, the basic amount depends on the number of persons elected, ranging from € 50 000 for parties or groups with one to four elected members to € 200 000 for ones with at least 12 members. There is also a supplementary allowance of € 10 000 per elected member. b. For European elections, the basic amount depends on the percentage of votes obtained nationally, ranging from € 12 500 for parties or groups with at least 5% of the national vote to € 74 500 for ones with at least 25% of the vote. There is also a supplementary allowance of € 12 500 per elected MEP.
18. The legislation passed in December 2007 adds the following elements: a. The public funding of parties, subject to certain conditions, such as the lodging of their articles of association and lists of their central officials, maintaining lists of donors and donations over € 250 and keeping accounts. The sums are paid monthly and comprise an annual lump sum of € 100 000 and an additional € 11 500 for each percentage point of the votes cast for the party or group at national and European elections. b. The proportion of public funding cannot exceed 75% of a party's total income. c. A ban on all anonymous private donations and ones from legal persons, while donations in excess of € 250 must be notified with the accounts to the Chamber of Deputies (sections 8 and 9). Personal donations to their party from their pay or allowances from persons holding political office are not covered by the regulations (section 10). According to information received by the GET, the funding should amount to about € 2.5 million a year. Under section 5 of the legislation, the grant is paid in twelve monthly instalments.
19. The GET noted that the upper limit of 75% of total financing that can be met from the public purse seems to have been set to take account both of the present structure of the funding of certain Luxembourg parties and of an anticipated reduction in financing of private origin following the ban on donations from legal persons/businesses and the registration, by name, of donations from private individuals. However, the partial reimbursement of the campaign expenses of parties and political groups standing for the Chamber of Deputies and the European Parliament under the 1999 law (and the amended electoral law of 2003) is explicitly excluded from the calculation

of this percentage. Nor does the 2007 law make a clear distinction between the funding of political parties and of political groups (see below paragraph 54). The result is that parties' actual dependence on state funding may be very high, and above the 75% level. Loss of public funding by parties that no longer meet the required conditions might be sufficient by itself to cause the disappearance of a political formation, could in turn have unexpected consequences such as a risk of self-censorship on the part of supervisory bodies, in terms of identifying irregularities, deciding on sanctions or enforcing them.

20. According to party representatives, following the entry into force of the new legislation three funding sources will co-exist: the general one under the new law, the one under the 1999 legislation (and the electoral law) on the reimbursement of campaign expenses and the financing of parliamentary groups under the regulations of the Chamber of Deputies. Public funding would therefore represent about € 4 million a year, not counting any contributions from parliamentary groups, allowances repaid by members of parliament and subsidies to newspapers.

III. TRANSPARENCY OF POLITICAL PARTY FUNDING – SPECIFIC ASPECTS

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

Income and expenditure accounts

21. Neither the 1999 legislation on the partial public funding of election campaigns, nor the revised electoral law in 2003, which incorporated the provisions of the 1999 legislation, establishes a general requirement to maintain income and expenditure accounts, lists of contributors or information on the financial situations of political parties or candidates for election. They only cover the reimbursement of postal charges (for a single communication), on the basis of documentary proof, which therefore needs to be retained. Nor are there any requirements for donors or contributors to be registered.
22. Section 11 of the 2007 legislation on party funding requires each political party's central body to keep accounts covering all its income and expenditure, and its assets and liabilities. Every constituency association, local section and sectoral organisation of each party is required to submit an annual report to the party on its financial situation, which must be approved by a general meeting after scrutiny by the Court of Auditors. Irrespective of their degree of autonomy, all sections of each party, without exception, must declare any donations they have received to the competent national body.
23. Section 12 requires accounts and lists of donors to be submitted to the Court of Auditors. Under section 13, the statement of income must include 1. party members' contributions; 2. elected members' contributions; 3. gifts, donations and legacies; 4. income from moveable or fixed assets; 5. income from organised events and publications; 6. various services with a monetary value or that can be expressed in monetary terms; 7. other sources of income; 8. contributions from party sections; 9. public funding. The statement of expenditure must include 1. operating costs; 2. training and research expenditure; 3. expenditure on events and publications; 4. election expenditure; 5. subscriptions to international organisations and associations; 6. donations to other party sections or bodies; 7. expenditure concerning moveable or fixed assets; 8. other expenditure.
24. Section 13 also provides for a regulation that would establish a uniform accounting plan, and specify the form of accounts and balance sheets and how they should be drawn up. At the time of the visit, such a regulation was not yet under consideration. How political party accounts

should be presented in future and what they should include are currently being discussed by the parties, who have commissioned a trust company as consultant to draw up a model accounting system. The Court of Auditors told the GET that in view of the urgency of the situation, particularly the wish to implement the new arrangements by 1 January 2008, they would probably involve a simplified accounting system.

25. The Luxembourg authorities said that as election candidates were included on party lists their campaigns were party matters rather than those of the individual candidates. Their campaign income and expenditure therefore had to appear in the parties' accounts.

Requirement to communicate and publish accounts

26. Sections 8, 9 and 10 of the 2007 law make it a requirement to communicate information. Under the current system, the identity of private individuals who make donations to parties or their component sections in whatever form must be registered. Moreover, each section must declare any donors and the donations it receives to the competent national body, irrespective of the degree of autonomy it enjoys. In addition, party records of donors giving annual donations of more than € 250 are notified to the Prime Minister. As noted earlier, under section 10 personal donations to their party or one of its sections from persons holding political office from their pay or allowances are not considered to be donations.
27. Under section 16 of the new legislation on political party funding, the office of clerk of the Chamber of Deputies shall make the results of audits undertaken by the Court of Auditors and its observations, together with any observations of the parties, available for consultation and shall also publish them on line. Section 17 requires political party accounts and balance sheets to be published each year in the official government journal.

Access to accounting documents

28. Under the ordinary law – criminal law and the statutes of the various judicial bodies - the judicial authorities currently have right of access to financial and accounting documents. Under section 15 of the December 2007 legislation, the Court of Auditors can demand any documentation or information it requires to carry out its responsibilities.
29. There are no rules on the minimum time for which accounting documents must be preserved and none are planned.

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

Audit and oversight

30. The answers to the questionnaire showed that parties and candidates standing for election are not required to have their accounts audited and this is not stipulated in the new political party funding legislation. The GET notes that this applies to party accounts under the new legislation. However, at the draft stage party bodies, local sections and sectoral organisations were required to present to their party an accounting record (*compte rendu de caisse*) that had been audited by so-called *réviseurs de caisse*. A similar wording had been used in the version that came into force after the visit, but the auditing is to be carried out by *commissaires aux comptes*.
31. In the absence of legislation on political party funding, until December 2007 there were no specific supervisory arrangements on the subject, even under the 1999 law on the

reimbursement of campaign expenses. The authorities have also indicated that, more generally, there have never in the past been any investigations, prosecutions or convictions for criminal offences relating to political financing.

32. The 2007 legislation gives the Court of Auditors responsibility for scrutinising accounts covering all expenditure and income, which it exercises directly and annually. The accounts must be submitted to it, with a list of donors. Section 15 authorises the court to ask for any documentation or information it may require and there are penalties for refusal to supply this information. The answers to the questionnaire indicated that the Court of Auditors was not required to report any offences or publish details of any breaches, and that responsibility for ruling on breaches and taking any necessary measures in response lay with the body to which the court addressed its observations (the President of the Chamber of Deputies in the draft legislation, replaced by the Prime Minister in the final version). Under section 18 of the legislation, applications to set aside the Prime Minister's decisions may be lodged with the administrative court. As noted earlier, the Court of Auditors' reports themselves are published.

(iii) Sanctions (Articles 8 and 16 of Recommendation Rec(2003)4)

33. As already noted, so far no penalties have been imposed concerning political funding. The legislation in force at the time of the visit did not in any case provide for administrative or other sanctions for failure to comply with the existing rules on the partial funding of election campaigns under the 1999 legislation. The new draft law on political party funding would have authorised the suspension of support, its reduction in the next financial year, criminal prosecution in the event of false declarations, fines of between € 500 and 25 000 for accepting donations in breach of the law, confiscation of donations and so on. These sanctions would have been applied either by the Bureau of the Chamber of Deputies or the courts, according to circumstances. There would have been no time limit for proceedings.
34. The evaluators note that the final version passed on 21 December 2007 differs radically with regard to sanctions. In particular, the criminal penalties and fines have been abandoned. Section 7 now states that failure to comply with the obligations in the previous section, concerning the lodging of articles of association, details of donors and donations, and accounts and balance sheets with the Prime Minister, will result in suspension of payments until the situation is put in order. The same applies in the event of failure to comply with section 15, on the presentation of information to the Court of Auditors. False declarations in connection with sections 6.2 and 6.3 – the list of donors and donations and the accounts and balance sheets – may result in a reduction in state subsidies in the following year of twice the sums concerned.

Immunities and time limits

35. As noted in the first round evaluation report, other than when an offence is actually being committed members of parliament may not be prosecuted or arrested for criminal offences during the parliamentary session without express parliamentary authority. Following an amendment of 1 June 2006, Article 69 of the Constitution now allows members to be prosecuted during parliamentary sessions. However, it leaves unchanged the provision that members cannot be arrested, other than at the scene of a crime, without parliamentary authority. Moreover, under Luxembourg laws, special judicial procedures apply notably to members of the government.
36. The sanctions finally included in the 2007 legislation on political party funding are purely administrative and, in contrast to the draft law, do not include criminal penalties. There is no specific time limit for proceedings connected with the 2007 law.

IV. ANALYSIS

37. The GET has been confronted by an exceptional situation since the legislation on political party funding was enacted after the evaluation visit. The evaluation report is therefore based on the final version of the law. Clearly, Luxembourg must itself assess the application of the legislation in practice, particularly in the light of the first annual reports that the Court of Auditors is required to produce. In the mean time, the GET has drafted a number of recommendations for improvements that it considers desirable. Some of these could undoubtedly be incorporated in an instrument designed to assist the implementation of the new legislation.
38. First of all, Luxembourg's regulation of political party funding legislation of 21 December 2007, based explicitly on Council of Europe Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, is to be warmly welcomed. The development reflects a growing awareness of the need to regulate the financing of political activities, an area in which there have been a number of scandals over the last two decades, albeit scandals that are considered in Luxembourg to be isolated cases. By introducing public financing for parties' regular activities, coupled with rules on transparency and oversight and sanctions for breach of those rules, the law that came into force on 1 January 2008 fills an important legal vacuum in Luxembourg. The GET notes that the transition from total freedom to finance political parties to a consensual and democratic system of funding has not raised any major problems. Nevertheless, the practical difficulties of implementing the new regulations and their consequences for the day-to-day functioning of political parties, for which they represent a radical change, should not be underestimated. From what has been said by party officials whom the GET met, the new sections 11 to 13 of the December 2007 law, on the registration of income and the preparation and submission of accounts, will probably require a number of adjustments before all the bodies concerned are able to implement the new legislation. In certain cases, parties will first have to appoint accountants as part of their internal organisational structures. It is clear from discussions that there will be a significant need for training on the implications of the new law, given the radical changes that it introduces. The ability of auditors and the designated public supervisory bodies to exercise oversight of a satisfactory standard will depend on the extent to which all the bodies and sections of political parties can apply harmonised accounting practices and procedures. At the time of the visit there were no plans to offer parties such training or to encourage them to introduce it. The GET considers this an important issue, particularly for local financial officials. The GET therefore recommends **that the Luxembourg authorities ensure that adequate training on the new political party funding legislation is provided, particularly as regards its financial and accounting aspects, and that this training is available to local officials.**
39. The GET also takes the view that insufficient attention may have been paid to the linkage between the new legislation and other sources of public funding, such as the partial reimbursement of campaign expenses, indirect financing through parliamentary groups and support to the press.
40. Finally, as noted below (see paragraphs 57-59), parties that have committed gross irregularities under the 2007 law can still ask to benefit from the 1999 law and a partial reimbursement of their election expenses. It will also have to be seen in practice whether the lack of any accounting provisions in the 1999 legislation leads to the abandonment of any distinction between election campaign financing and the funding of political parties, despite the commitment to transparency reflected in the 2007 legislation.

41. In light of the above, the GET recommends **to set up a mechanism to undertake an evaluation of the overall system of political financing, with a view to gradually establishing with political parties the extent and nature of their obligations, determining what changes and clarifications are required to the relevant legislation and regulations, and maintaining a statistical record of breaches of obligations and any sanctions imposed.**

Transparency

42. Clearly the size of the country and the fact that those involved in political activities are all closely acquainted work to the benefit of transparency in Luxembourg. This apparently leads to a certain measure of self-discipline⁶, which explains in part why there have been only few major scandals concerning political funding, but it can nevertheless impede genuine transparency.
43. The GET found that in the absence of a formal status or legal personality, political parties in Luxembourg have to resort to arrangements and expedients that do not encourage transparency in their financing. In particular, since they themselves have no legal personality, they have to use non-profit making associations – ASBLs (in French: *associations sans but lucratif*) – to manage their assets and their operational resources. It appears from the GET's discussions that although the law makes very little distinction between *de facto* and *de jure* legal persons some of those with whom political parties come into contact, such as banks, prefer for reasons of security to deal with formally recognised legal persons. The GET also notes that the 2007 legislation tends to restrict political parties' relations with legal persons, associations, groups and other bodies by banning donations from them, whether or not they have formal legal personality. This means that certain questions will arise concerning the registration of resources and the scrutiny carried out by the Court of Auditors, in so far as parties have established such bodies to facilitate their management. Finally, the absence of legal personality creates a general problem of how to apply sanctions to parties. In current circumstances, while it is easy to suspend or reduce state support it is more difficult to envisage a wider range of measures (see paragraphs 58 and 59). Most of those whom the team met, including political party representatives, supported the idea of a clear status for parties. Quite apart from any practical benefits, this would give both organisations and members a greater sense of responsibility and could have a positive effect on parties' financial and accounting discipline. Some interlocutors thought that the current proposal to amend the constitution to take account of political parties' role could be a precursor to the introduction of a proper legal status. In the GET's opinion, this would have numerous benefits from the standpoint of applying the 2007 legislation and promoting the transparency of political party and election campaign funding, even though new questions would inevitably be triggered (e.g. how to define a party, what type of structures or activities to include in the definition, etc). The GET believes that it should be feasible to define a status that corresponds to the country's current situation, for example one that would be structured around such criteria as participation in legislative and European elections, the presentation of full lists of candidates, etc.. Consequently, the GET recommends **that political parties be granted a clear status that would be recognised by the Luxembourg society, would entail full legal capacity and which could, for instance, be structured around objective criteria such as participation in legislative and European elections or the presentation of full lists of candidates, etc.**
44. The initial version of the 2007 law on party funding gave the impression that it, and in particular its most demanding provisions such as those relating to accounting requirements and the

⁶ The GET was told that parties traditionally meet before each election campaign with a view to establishing a tacit agreement to limit campaign expenses. The most recent agreement, accepted by all the parties bar one, set the campaign ceiling at € 800 000.

registration of donations, mainly applied to parties receiving or wishing to receive state support. The version of the law adopted in December 2007, which is even more ambiguous on this question, does not go beyond the initial draft and therefore, at present, a party that does not benefit from the financing system of the law would not be subject to any other regulations on the transparency of political financing. .

45. The new rules governing political party funding are too recent to determine the degree of transparency that will finally result from the accounting obligations they establish. The GET welcomes the transparency-related provisions of the new law, including the ban on anonymous donations and the requirement to record and report all donors and donations in excess of € 250, the extended definition of the various "components" of political parties⁷, the requirement to register all donations no matter what form they take, and the requirement for all political party central organisations to keep accounts covering all income and expenditure and their assets and liabilities.
46. Nevertheless, certain aspects need to be clarified. First, it must be established whether political party accounts do indeed include all the income and expenditure of their "components" or whether certain income that is not transferred to the central organisation, because it is spent or retained locally, does not have to appear. If this were the case, this would limit overall transparency. On the other hand, the obligation to produce consolidated accounts for all the "components" of parties might seem disproportionate, given the broad definition of such components in the new law, the sums currently involved and the organisational implications for the political parties concerned. Secondly, some uncertainty also remains concerning the precise scope of the law, particularly regarding a). whether political party accounts must include, in one form or another, those of any ASBLs they have established, since these are generally the legal owners of political party assets (see also paragraph 43), and b). the very close links, other than ideological, that several political formations have with the Luxembourg press. In the interest of transparency, political parties might be asked whether or not this extends to legal or financial links and consideration might then be given to showing these links in party accounts. This is an important issue since the press itself benefits from a system of state subsidies. Finally, the 2007 law remains silent about the arrangements for dealing with election expenses, including their precise nature and the time period concerned. This is a significant gap.
47. Finally, section 13.1.6 of the 2007 law requires the inclusion in the accounts of various services with a monetary value or which can be expressed in monetary terms. This provision makes a major contribution to ensuring that political funding is genuinely transparent. In practice, though, common rules on this subject for all political parties need to be drawn up and applied, particularly in order to ensure that their application can be assessed properly by the Court of Auditors.
48. In the light of the foregoing, the GET recommends **that the regulation provided for in section 13 of the 2007 law be introduced and that the current provisions be supplemented by one or more instruments that would a) clarify the applicable accounting obligations and the exact scope of political parties' accounting duties; b) establish uniform arrangements for determining which services and other benefits in kind should be included in parties' income accounts; c) specify the arrangements for dealing with election expenses, such as how they are defined, the period concerned etc.**

⁷ Section 1 of the law of December 2007 defines "components" of political parties as any national, regional, local or sectoral section of a party and any other body contributing to its activities through training, analysis or research, or the management of its assets, whatever the legal form of that section or body.

49. When legislation on political financing is being introduced, it is also important for the bodies and organisations concerned to establish their own internal control systems. Without making internal audit an absolute requirement in the regulations – as noted in the descriptive part of this report, Luxembourg legislation is either fairly unambitious or insufficiently clear on the subject of audit – this point should be drawn to the attention of political parties with a substantial number of "components", as defined in the legislation. This would serve the same purpose as establishing a formal legal status for parties and giving them a sense of greater responsibility for their actions. Currently, parties tend to devolve on complex arrangements part of their management responsibilities and risks associated with this management. The GET therefore recommends **to invite those parties with complex structures or numerous organisational elements to make greater use of internal control systems.**
50. Election expenses are partially reimbursed under the 1999 legislation on presentation of documentary evidence of expenditure and this calls for no particular comments. However, there is currently still a lack of clarity in the regulatory system concerning campaign financing, particularly at the local political level, where individual relationships are at their closest. The GET notes that section 13 of the 2007 law requires parties to include in their accounts a wide variety of income and expenditure. The rules on transparency therefore apply in this case, as do the monitoring arrangements and associated sanctions. It appeared from discussions that as a rule candidates in national elections belong to a party and the latter takes responsibility for organising and running the campaign.
51. However, it is not possible that non-party candidates stand for election, particularly in local elections. It is to take account of such situations that Recommendation Rec 2003(4) applies to both party and campaign funding. There is nothing in the 2007 legislation to require candidates in election campaigns to keep accounts. Even though local party branches are required to register contributions received and present annual reports on their financial situation, duly approved by the general assembly after scrutiny by the Court of Auditors (section 11 of the 2007 law), to their central party organisation, this system does not, by definition, permit the identification of non-recorded transactions such as unregistered cash contributions used to meet campaign expenses that are themselves unregistered. Besides, the 2007 legislation places no limits on income or expenditure connected with political activities. The GET also notes the special treatment accorded to contributions from persons holding office, who do not have to register and declare donations under sections 8 and 9 of the 2007 law. This makes it difficult to identify direct or indirect contributions to candidates from legal persons⁸. The relevant legislation clearly has to take more account of election campaigns. The GET therefore recommends **that the financing of campaigns, including of candidates for elections, be subject to rules on transparency, accounting obligations, control and sanctions similar to those applicable to political parties.**
52. Turning to the publication of accounts, the arrangements in the 2007 legislation, which include the right to consult the Court of Auditors' report on political party funding at the office of clerk of the Chamber of Deputies, followed by publication of the accounts in the official journal, appear very comprehensive. The publication of accounts also concerns political parties' election expenses registered under section 13.2.4. Although nothing appears to be said on how long these documents must remain accessible or be retained in the Chamber of Deputies, the official journal – which is available on line – includes every edition since 1854.

⁸ Legal persons may in practice take part in the financing of campaigns and/or candidates – a primitive form of lobbying in some respects – by initially paying funds to an office holder, who can then pass on all or part of the amount as an office holder's contribution.

Supervision

53. The 2007 legislation introduced a dual system for supervising parties. Responsibility for overseeing compliance with parties' obligations to notify and lodge various items was finally devolved on the Prime Minister⁹. The Court of Auditors is the supervisory authority responsible for monitoring compliance with political bodies' legal requirements with regard to financing. It would appear that the court, which will be the main oversight authority under the new law, has the necessary independence as required in Article 14 of the Recommendation. Some of the experts met by the GET spoke of the high reputation this institution had established since its foundation in 1999. The legislation explicitly grants the Court of Auditors extensive powers of oversight since political parties are required to submit to it any documentation or information it deems necessary, and this is reinforced by the power to apply sanctions if they fail to do so (section 7 and 15 of the 2007 law).
54. However, the expenditure of parliamentary groups falls outside the court's jurisdiction¹⁰. Moreover, as members of parliament themselves have stated parliament does not monitor such financing and expenditure either and groups do not have to justify how they use their resources. This constitutes a gap in the Luxembourg situation since the financial resources and other facilities of these groups benefit the parties considerably and there are currently no criteria for distinguishing between their different activities, as is the case in neighbouring countries with a similar situation. Members of parliament indicated that they had intended the new legislation to make a clear distinction between the financing of political groups and parties, an idea also supported by the Council of State¹¹. However, the GET could not identify any provision to this effect in the new legislation¹². Some of the political party representatives whom the team met thought that the system of support by the groups would continue to be a third source of state funding for political parties. To ensure that there is a fully coherent system for monitoring political funding for the political parties in Luxembourg, the GET recommends **that a clear separation be made between the financing of parliamentary groups and that of political parties, or that the Court of Auditors' jurisdiction be extended to parliamentary groups, as far as is necessary for the proper application of the control system established in the 2007 legislation.**
55. The representative of the Court of Auditors met by the GET also stressed that section 4 of the amended legislation of 8 June 1999 establishing the court required it to ensure that its investigations remained confidential and to report any irregularities of a disciplinary or criminal nature. This general arrangement would also apply to its oversight responsibilities under the 2007 law, which appears to contradict the authorities' point of view as expressed in the replies to the questionnaire (see paragraph 31), according to which the Court of Auditors simply forwards its observations to the recipient of the report. Whatever the case, under section 4 of the Court of Auditors legislation it must inform the Chamber of Deputies and the other bodies concerned of

⁹ The draft legislation available at the time of the visit referred to the Bureau of the Chamber of Deputies but in its opinion of 6 November 2007 the Council of State considered that granting the Bureau the power of oversight and sanction would be incompatible with the separation of powers.

¹⁰ This is the opinion of the Court's representatives, which is not shared unanimously within the country. As far as legal provisions are concerned, the GET noted that the Chamber's Internal Rules (sections 163 and 164) do not refer to the direct control by the Court but, indeed, to a control by a "Committee of Accounts" of the Chamber (assisted by a so called *reviseur*) and the Chamber's decision concerning the report of the Committee is sent to the Court of Auditors for registration purposes only.

¹¹ In its opinion of 6 November 2007, the Council of State said that given the legal basis for these parliamentary grants, it was clear that they could only be used to finance parliamentary activities and must not be diverted to fund other party political activities.

¹² The initial draft included a section 2 which stated that the financial support to groups must not be used to cover the expenditure of the political parties that made up these groups, but this did not appear in the final version.

any such irregularities. The GET was told that these notions have not been clarified. One way or another, the 2007 law does not appear to be sufficiently clear about the relationship between the court's monitoring activities and the application of administrative or criminal sanctions, for example, in the case of corruption involving an elected member. Section 16 of the December 2007 legislation simply sets out – in a way that is sometimes difficult to understand – the arrangements for presenting its audits, and any observations by the parties, to the various bodies concerned, including the Prime Minister. The GET considers that clarifications are rapidly required and that it must be clearly stated that the court is required to contact the criminal authorities directly to report possible criminal offences. The GET recommends **to clarify the action to be taken in response to irregularities identified by the Court of Auditors in the course of its monitoring of political financing, making it clear that it is required to report suspected offences, including corruption, directly to the law enforcement authorities.**

56. The court's representatives told the GET that it has the necessary legal powers to carry out its new responsibilities and commercial or professional confidentiality do not appear to be grounds for refusing to co-operate. It has a team of forty and has appointed a special group of five auditors, some of whom have been "borrowed" from the private sector, which initially included the president of the court himself. Nevertheless, these resources are fairly limited and at first at least will only enable the court to monitor parties' central accounts and carry out checks on donations on a sample basis. For reasons of access to information and for other reasons, it will still be difficult to exercise oversight of any financing from legal persons, including ASBLs linked to parties, or from abroad, and of certain forms of donations¹³. In the short run, the main challenge will be to assist the Court of Auditors to carry out its responsibilities by ensuring that the balance sheets and accounts it is now required to scrutinise are in a standardised and computerised format. As noted earlier, at the time of the visit a single accounting format was under consideration but the Court of Auditors expressed concerns that the bodies and sections required to submit their own data to their parties' central organisations will do so in very varied, and not necessarily computerised, forms. Finally, the rules applicable to the first audits, particularly concerning the taking into account of parties' and their sections' existing assets, need to be specified. The GET therefore recommends **that a) steps be taken to ensure that accounting and financial information submitted by party sections and bodies to their central organisations is in a form that facilitates the Court of Auditors' oversight functions; b) the Court of Auditors or the government specify the rules applicable to the first audits, particularly regarding the manner in which assets are to be accounted for.**

Sanctions

57. The GET notes that the 2007 law on party funding has not changed the arrangements of the January 1999 legislation for the partial reimbursement of election expenses. The latter is therefore still not accompanied by penalties, even if those whom the team met thought that the risks of fraud were fairly minimal and that the general sanctions applicable under the electoral law, which includes the provisions of the 1999 law, might apply in certain cases. Be that as it may, the relationship between the two laws has not been clarified and the GET wonders whether parties that have committed irregularities for which they have been sanctioned under the 2007 legislation on political party funding might still benefit from the election reimbursement arrangements under the 1999 law. In the interests of consistency and logic, the Luxembourg authorities will need to bear this in mind.

¹³ In practice, it is sometime difficult in Luxembourg to distinguish between legal persons (from whom donations are not allowed) and individual persons. At the time of the visit, a powerful foreign steel manufacturer was offering substantial funding to the various Luxembourg parties, oversight of which would require the assistance of foreign audit bodies.

58. At the time of the visit, the evaluators found the initial provisions on sanctions in the draft 2007 legislation on funding confusing and deficient, while the maximum fine of € 25 000 was not considered to represent a significant deterrent. Nor were their nature (administrative or penal) or the procedure for imposing them entirely clear. The final version of the legislation is more coherent in this regard. As noted in the descriptive part, section 7 now provides for two types of sanction: a). suspension of payments until satisfactory completion of the obligation to submit articles of association, lists of central officials, lists of donors and donations and accounts; suspension may also be ordered for failure to supply documentation or information requested by the Court of Auditors; b). reduction in state subsidies in the following year of twice the sums concerned in the event of false declarations regarding donors, donations, balance sheets or accounts. The GET is pleased to note that payments are made in twelve monthly instalments, which means that sanctions can be effectively applied in "real time". As the Council of State has noted, in certain cases articles 196 and 197 of the Luxembourg criminal code – on forgery and using forged documents – may apply to cases where donations such as anonymous donations and those from legal persons are accepted in breach of the law.
59. The nature of the sanctions, which no longer include fines, as was the case in the initial draft, means that they will only be effective in the case of parties that receive funding. The lack of any clear system of legal personality and responsibility of political parties may complicate the introduction of appropriate sanctions. As recommended in this report, this is a subject that needs to be settled. Consideration should therefore again be given to introducing a system of fines, or other penalties. Furthermore, the GET has not had an opportunity to discuss on site the new provisions introduced after the visit. This makes it difficult to ascertain whether all the possible breaches of the new legislation, apart from the requirements of section 6, are punishable by effective, proportionate and dissuasive sanctions. This applies particularly to breaches of the rules on the forms of and arrangements governing gifts, donations, legacies and so on. For example, donations from legal persons, including *de facto* legal persons, and anonymous donations are prohibited but the cross-references between sections of the legislation¹⁴ makes it difficult to determine with certainty whether they are liable to sanctions. The GET recommends **that the Luxembourg authorities a) ensure that all political parties - whether or not benefiting from public funding - which fail to comply with the various requirements of the 2007 legislation are subject to sanctions that are effective, proportionate and dissuasive and b) extend the range of sanctions available, beyond the suspension or reduction of public funding.**

V. CONCLUSIONS

60. Luxembourg's initiative, which consisted in adopting the law on political party funding legislation of 21 December 2007, based on 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, is to be welcomed. This legislation, which came into force on 1 January 2008, introduces public funding of routine party activities. At the same time, it introduces rules on transparency and monitoring, and penalties for breaches of the regulations, which fill an important gap in Luxembourg legislation. Some gaps still remain, in so far as insufficient account is taken of the financing of election campaigns and of candidates for election, which means that the new regulations offer little or no coverage of non-party candidates and party members competing at local level.

¹⁴ Section 7 refers to section 6, which itself refers to sections 9 and 14, the second of which refers to sections 11 to 13.

61. Turning to the question of transparency, because the law breaks such new ground certain clarifications are still required, particularly on the precise extent of parties' accounting obligations, how to assess benefits in kind, the applicable accounting formats and parties' internal audit practices. Still more important is parties' lack of any real legal status or personality, as a result of which they use associated non-profit making bodies to manage their business affairs. Responsibility for monitoring party financing lies with the Court of Auditors. This will probably be complicated by the fact that parties will continue to receive support from unmonitored parliamentary groups and by the urgent need to standardise the form in which the accounts of various party bodies and sections are maintained. There are also concerns about the action the Court of Auditors itself can take when its audits reveal criminal offences. The types of sanctions contained in the new 2007 legislation – suspension or reduction of public funding – will only have an impact on parties that benefit from such sources of finance. It still needs to be determined whether there are effective means of enforcing all the obligations resulting from the new law. Some form of general machinery to evaluate the political financing would provide an opportunity to assess, and if necessary, clarify, existing arrangements.
62. In the light of the foregoing, GRECO addresses the following recommendations to Luxembourg:
- i. **to ensure that adequate training on the new political party funding legislation is provided, particularly as regards its financial and accounting aspects, and that this training is available to local officials** (paragraph 38);
 - ii. **to set up a mechanism to undertake an evaluation of the overall system of political financing, with a view to gradually establishing with political parties the extent and nature of their obligations, determining what changes and clarifications are required to the relevant legislation and regulations, and maintaining a statistical record of breaches of obligations and any sanctions imposed** (paragraph 41);
 - iii. **that political parties be granted a clear status that would be recognised by the Luxembourg society, would entail full legal capacity and which could, for instance, be structured around objective criteria such as participation in legislative and European elections or the presentation of full lists of candidates, etc** (paragraph 43);
 - iv. **that the regulation provided for in section 13 of the 2007 law be introduced and that the current provisions be supplemented by one or more instruments that would a) clarify the applicable accounting obligations and the exact scope of political parties' accounting duties; b) establish uniform arrangements for determining which services and other benefits in kind are to be included in parties' income accounts; c) specify the arrangements for dealing with election expenses, clarifying their precise nature, the time period concerned, etc.** (paragraph 48);
 - v. **to invite those parties with complex structures or numerous organisational elements to make greater use of internal control systems** (paragraph 49);
 - vi. **that the financing of campaigns, including of candidates for elections, be subject to rules on transparency, accounting obligations, control and sanctions similar to those applicable to political parties** (paragraph 51);
 - vii. **that a clear separation be made between the financing of parliamentary groups and that of political parties, or that the Court of Auditors' jurisdiction be extended to**

parliamentary groups, as far as is necessary for the proper application of the control system established in the 2007 legislation (paragraph 54);

- viii. to clarify the action to be taken in response to irregularities identified by the Court of Auditors in the course of its monitoring of political financing, making it clear that it is required to report suspected offences, including corruption, directly to the law enforcement authorities (paragraph 55);**
- ix. that a) steps be taken to ensure that accounting and financial information submitted by party sections and bodies to their central organisations is in a form that facilitates the Court of Auditors' oversight functions; b) the Court of Auditors or the government specify the rules applicable to the first audits, particularly regarding the manner in which assets are to be accounted for (paragraph 56);**
- x. to a) ensure that all political parties - whether or not benefiting from public funding - which fail to comply with the various requirements of the 2007 legislation are subject to sanctions that are effective, proportionate and dissuasive and b) extend the range of sanctions available, beyond the suspension or reduction of public funding (paragraph 59).**

- 63. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the Luxembourg authorities to present a report on the implementation of the above-mentioned recommendations by 31 December 2009.
- 64. Finally, GRECO invites the Luxembourg authorities to authorise publication of this report as soon as possible, translate it if necessary into the other national languages and publish these translations.