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## **Third Evaluation Round**

### **Second Compliance Report on Luxembourg**

#### **“Transparency of political party funding”**

Adopted by GRECO  
at its 56<sup>th</sup> Plenary Meeting  
(Strasbourg, 20-22 June 2012)

## I. INTRODUCTION

1. The second Compliance Report evaluates the new measures taken by the Luxembourg authorities since the adoption of the Compliance Report in the light of the reformations put forward by GRECO in its Third Round Evaluation Report on Luxembourg. It is recalled that the Third Evaluation Round concerns two separate themes, namely:
  - **Theme I – Incriminations:** Articles 1a and b, 2 to 12, 15 to 17 and 1901 of the Criminal law Convention on Corruption (ETS 173), Articles 1 to 6 of the Additional Protocol to the Convention (ETS 191) and Guiding principle 2 (incrimination of corruption).
  - **Theme II – Transparency of political party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, and – more generally – Guiding Principle 15 (funding of political parties and election campaigns).
2. GRECO adopted the Third Round Evaluation Report at its 28<sup>th</sup> Plenary Meeting (9-13 June 2008). The report was made public on 25 August 2008 following the authorisation by Luxembourg (Greco Eval III Rep (2007) 6E, [Theme I](#) and [Theme II](#)). The Compliance Report ([Greco RC-III \(2010\) 4E](#)) was then adopted by GRECO at its 47<sup>th</sup> Plenary Meeting (7-11 June 2010) and made public on 11 June 2010, following the authorisation by Luxembourg. In view of the low level of compliance with the recommendations contained in the Third Round Evaluation Report, GRECO decided to apply Rule 32 on non-complying members, and therefore invited the Head of the Luxembourg delegation to submit a report on the state of progress in implementing outstanding recommendations. The Interim Compliance Report was adopted by GRECO at its 20<sup>th</sup> Plenary Meeting (1 April 2011) and made public on 5 April 2011, following the authorisation by Luxembourg ([Greco RC-III \(2010\) 4E Interim Report](#)). In the light of the progress achieved by Luxembourg, GRECO decided no longer to apply Rule 32 on members found not to be in compliance with the recommendations contained in the mutual evaluation report. It is also recalled that the seven recommendations addressed to Luxembourg concerning Theme I had been considered implemented satisfactorily in the context of the compliance procedure.
3. In accordance with the provisions of GRECO's Rules of Procedure, the Luxembourg authorities submitted their second Situation Report with additional information on the measures taken to implement the recommendations which, according to the Interim Compliance Report, had been partly or not at all implemented. The Situation Report was submitted on 22 December 2011, serving as the basis for the second Compliance Report.
4. GRECO instructed Switzerland and the Republic of Moldova to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Ernst GNÄGI in respect of Switzerland, and Ms Cornelia VICLEANSCHI for the Republic of Moldova. They were assisted by the GRECO Secretariat in drafting the Compliance Report.

## II. ANALYSIS

### Theme II: Transparency of political party funding

5. It is recalled that in its Evaluation Report GRECO addressed 10 recommendations to Luxembourg concerning Theme II. After the adoption of the first Compliance Report it had been concluded that recommendation v had been dealt with in a satisfactory manner, that

recommendation i had been partly implemented and that recommendations ii, iii, iv, vi, vii, ix and x had not been implemented. After the adoption of the Interim Compliance Report, GRECO had concluded that in the light of recent developments in Luxembourg recommendations ii, v, viii and ix had been dealt with in a satisfactory manner, recommendations i, iv, vi and x had been partly implemented and recommendations iii and vii had still not been implemented.

6. GRECO makes the preliminary point that a piece of proposed legislation – a text originating in Parliament – geared to amending the Law of 21 December 2007 regulating political party funding and the amended Electoral Law of 18 February 2003 was tabled in the Chamber of Deputies on 16 March 2011; the text is designed to take account of the GRECO recommendations. The Government and the Conseil d'Etat issued their opinions on this bill on 16 and 19 June 2011 respectively. The text which was finally adopted on 16 December 2011 was published in the *Mémorial* (the Official Gazette) on 21 December and came into force on 1 January 2012<sup>1</sup>. Six amendments were submitted, geared to: 1) definitively clarifying the question of publishing political party accounts and balance sheets (on the Chamber of Deputies website) (new Article 6 (2) of the 2007 Law); 2) reinforcing sanctions on individuals in cases of false declarations (new Article 17 of the 2007 Law); 3) reinforcing sanctions applicable to parties in cases of illegal receipt of sums of money (new Article 7 (2) of the 2007 Law); 4) taking account of gifts in kind (new Article 9 (2) of the 2007 Law); 5) clarifying the rules applicable to sums paid back to their parties by elected representatives (new Article 10 of the 2007 Law); 6) stipulating in a new Article 93bis in the Electoral Law of 18 February 2003 that some of the obligations of the 2007 Law are applicable, in some cases, to political parties, candidates or candidate groupings (not covered by the 2007 Law) where they are standing for parliamentary or European elections. The amended version of the 2007 Law is appended to this report in order to clarify the changes.
7. The amendments as adopted on 16 December are the same as those originally submitted by Luxembourg, which GRECO took into account in preparing the Interim Compliance Report adopted in April 2011.

#### **Recommendation i.**

8. *GRECO recommended 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.*
9. GRECO recalls that the Chamber of Deputies had proposed organising, during the 2011 financial year, training courses for all political parties (whether or not represented in Parliament), in conjunction with the Ministry of State. GRECO stated that “*for the time being, in the absence of a final decision and further information on the agenda and content of the activities envisaged, GRECO cannot conclude that this recommendation has been fully implemented*” (it was thus considered partly implemented).
10. The Luxembourg authorities now indicate that a final decision has been taken on the aforementioned proposal, with two four-hour training sessions having been carried out, one in the south of the country and the other in the centre, on 14 and 17 November 2011 respectively. The training courses were specifically aimed at the various political party leaders responsible for managing and supervising their parties' financial flows, including parties which are not eligible for public grants or are not represented in Parliament. The training was on the following theme:

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<sup>1</sup> [Lien vers les divers documents publiés sur le site de la Chambre](#)

“political party accountancy – mastering accountancy rules and their application in practice”. The authorities stress that the political parties organise their own regular training courses, especially after the renewal of national and municipal mandates.

11. GRECO takes note of the above information, as well as the content of the two training courses held in November 2011, for which a 70-page training document had been prepared. The latter takes systematic account of accountancy principles, considering the specificities of parties in terms of their structures and sources of funding and expenditure. GRECO notes that Luxembourg has finally adopted the measures called for under recommendation i. However, it invites the Luxembourg authorities to remain vigilant and in future not to rely solely on the training activities which the parties claim to conduct themselves, in view of the numerous inadequacies which the Court of Auditors still notes in its latest report on the 2010 financial year<sup>2</sup>, and of the reinforced financial discipline required under the new accounting regulations.
12. GRECO concludes that recommendation i has been implemented satisfactorily.

### **Recommendation iii.**

13. *GRECO recommended 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.*
14. GRECO recalls that in the April 2011 Interim Compliance Report (paragraphs 39 and 40), the authorities had said that the parties still had too many objections, which prevented any immediate progress, but it was agreed that the introduction of a status was inevitable in the medium term. The Institutional and Constitutional Review Committee (CIRC) will continue to study this issue, particularly as part of the general revisions of the Constitution planned for the near future. In the absence of more specific further information, GRECO concluded that this recommendation had not been implemented. It once again recalled the consequences of the absence of a legal status for political parties<sup>3</sup>.

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<sup>2</sup> The Chamber of Deputies publishes the reports of the Court of Auditors and political party accounts at two different addresses: only one is updated with the most recent reports for 2010 and the list of major donors: <http://www.chd.lu/wps/portal/public/FinancementDesPartisPolitiques>

<sup>3</sup> As the Evaluation Report states, “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 (eg how to define a party, what type of structures or activities to include in the definition, etc).

15. The information provided by the Luxembourg authorities adds nothing new, essentially repeating arguments already advanced in the earlier reports (freedom of participation in elections blocking the systematic institutionalisation of parties, and the fact that the spirit of the Law is only to make parties in receipt of a public grant subject to the legal obligations of the 2007 regulations as revised in December 2011). Luxembourg recalls that the CIRC is continuing to scrutinise this matter, but that for the time being parties are required to adopt statutes democratically defining their internal organisation. These texts must be submitted to the Prime Minister, Minister of State, in order to qualify for public funding. There is no deadline defined in law for such submissions since the perspective of obtaining the public subsidy as soon as possible constitutes in itself a sufficient incentive for early submissions. For the financial exercise 2010, the six political parties eligible for public funding had thus submitted their statutes. One other party (which did run for the elections) didn't submit its statutes since it was not eligible to State aid under the Law of 21 December 2007.
16. GRECO notes that there have been no new developments on this issue. It also notes that the existence of political party statutes does not really solve the problem because they do not mention the legal entities established in order to facilitate management and the responsibilities deriving from their existence. As the Evaluation Report stresses (recalled in footnote 3 to the present document), this question of delimiting the concept of a "party" is indeed one of the many questions which the establishment of a status would, in principle, clarify, beyond the respective responsibilities and sanctions applicable in the event of a breach. Luxembourg is therefore encouraged to continue its active efforts in the direction proposed by this recommendation.
17. GRECO concludes that recommendation iii has not been implemented.

#### **Recommendation iv.**

18. *GRECO recommended 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.*
19. GRECO recalls that regulations setting out a detailed standard accounting plan was adopted on 23 November 2010 (applicable from the 2011 financial year onwards). GRECO had noted the major advances introduced under this plan, but had nevertheless noticed that a number of important points still had to be clarified<sup>4</sup>. It thus considered this recommendation partly implemented.

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<sup>4</sup> GRECO "appreciates the quality and the degree of detail of the accounting format that has been adopted. It also notes that the new law stipulates that the various types of supporting documents (or at least copies thereof) must be kept and archived for at least ten years after the close of the financial year. GRECO also takes note of the assurances given by Luxembourg concerning the consolidation of accounts (part a. of the recommendation); however, these do not answer as yet the various concerns expressed in the Evaluation Report (paragraph 43) since no new measure is reported to address the situation of entities linked with political parties without being explicitly part of these (press companies). As for part b) of the recommendation, there are no further initiatives reported either and arrangements with common criteria are still missing for the valuation of non-financial contributions; in its last report pertaining to the exercise 2009, the Court of Auditors has expressed doubts about the fact that until now, none of the political parties had ever declared a single non-financial contribution. Finally, concerning the last part of the recommendation, the legislative proposal finalised on 14 March, of which a copy was provided to GRECO, adopts the principle of the "ongoing election campaign" and does not provide for a specific

20. The Luxembourg authorities pointed out that in connection with part a) of the recommendation, it should be noted that in its report (2009 financial year) the Court of Auditors had already mentioned perceptible improvements in the keeping of accounts by political parties, even though the Grand Ducal Regulation of 23 November 2010 establishing the standard accounting plan would not come into effect until the beginning of 2011. The political parties would require time to adapt to the new requirements. Where element b) was concerned, thanks to the training sessions mentioned in recommendation i, the political parties had been reminded that gifts in kind were not exempt from the obligations set out in the 2007 Law, and that they should be accounted for at the commercial value of the advantage received (eg a van provided free of charge to a political party by an individual was a gift in kind which should be evaluated according to the rates used by vehicle hire companies). The amendment to Article 9 (3) of the 2007 Law is geared to clarifying the political parties' obligations vis-à-vis the records to be kept on donors and donations. Article 9 (1) of the same text still required political parties to register all donations, including gifts in kind. But the fact is that only gifts in kind of an estimated value of over € 250 must now be evaluated. In connection with part c), the new Article 93bis inserted into the amended Electoral Law defines electoral expenses by forging a direct link with elections. No deadline was set for incurring the expenses, as such a limitation might prove arbitrary, with political parties sometimes having to make financial commitments vis-à-vis elections a long time in advance. For further details, refer to the explanations below on recommendation vi.
21. GRECO takes note of the above information. Important clarifications had been provided on gifts in kind, but the exact scope of political parties' accounting duties has still not been sufficiently spelt out in terms of the various structures directly or indirectly attached to the parties (eg press bodies and the various associations responsible for managing party affairs) (first part of the recommendation). GRECO obviously accepts the principle of the "ongoing election campaign" for political parties which are subject to the 2007 Law, but this still does not answer all the questions linked to campaign accounts already mentioned by GRECO, which concern all the players who are involved in practice in elections in Luxembourg (list of candidates put forward by parties not subject to the 2007 Law, lists of independent candidates, etc).
22. GRECO concludes, as before, that recommendation iv has been partly implemented.

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duration – see also paragraphs 39 and 40 hereinafter. This does not pose any particular problem as long as the rules applicable to the regular financing of political parties are the same as those applicable to election campaign financing (especially in respect of authorised sources of funding) and since Luxembourg has not introduced ceilings on campaign expenditures (which could be circumvented by engaging expenses outside the accountancy criteria of the electoral period). This being said, there are still no plans to define electoral expenditures other than by a reference to the type of election to which they refer (parliamentary and European elections – see recommendation vi hereinafter): political parties have therefore room not to declare certain expenditures, although these would constitute useful data from the perspective of overall transparency and information of the public, but also for supervisory purposes (ensuring, for instance, that expenses are not borne directly by donors or sponsors). Overall therefore, there are still various provisions which need to be introduced or complemented for it be considered that recommendation iv has been fully implemented”.

## Recommendation vi.

23. GRECO recommended 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.
24. GRECO recalls that the Evaluation Report had stressed that in the current state of legislation, independent candidates were not covered by the 2007 regulations and that the rules on election campaign funding by the parties themselves were not sufficiently detailed. In the Interim Compliance Report (para. 40) GRECO had taken note of the draft legislation and observed that if it was adopted it would represent progress, although it would still be too modest: the funding of local election campaigns would still not be regulated, nor would that of election campaigns run by independent lists/candidates. While the parties must submit their campaigning accounts, there is no indication of whether these accounts are checked and published (including the names of major donors), and there would seem to be no obligation on political parties to submit accounts unless they wish to have their postal electioneering expenses refunded. Many other questions also seem to be outstanding, concerning the format for presenting campaign accounts, the use of bank accounts to facilitate fund traceability in the context of judicial checks or investigations, and the rules applicable to specific sources of funding such as loans, etc. GRECO had therefore invited Luxembourg to resume examination of these various aspects, and considered recommendation vi partly implemented.
25. The Luxembourg authorities first of all recall the wording of Article 166 of the Rules of Procedure of the Chamber of Deputies, under Chapter 14 entitled *Partial reimbursement of election campaign expenses for political parties and groupings involved in elections to the Chamber of Deputies and the European Parliament: Art 166 – In accordance with Article 93 of the Electoral Law of 18 February 2003, parties and groupings which have met the conditions shall submit, within two months after the elections, to the Chamber of Deputies and the European Parliament a report on the electoral expenses incurred up to a maximum of the amount of the appropriation established in Article 93. The relevant documentary evidence must be produced. The Bureau of the Chamber shall set the appropriations for each party and political grouping in accordance with the provisions of the said Article 93.* The Luxembourg authorities go on to point out that Article 93bis was added to the Electoral Law as amended on 18 February 2003, with effect from 1 January 2012. This Article reads as follows:

**Art. 93bis.** *The appropriation provided for in Article 93 shall be paid at the request of the political party. The request must be accompanied by a record of the election campaign expenses incurred.*

*Election campaign expenses shall be defined as expenses incurred by the political parties in direct connection with parliamentary or European elections.*

*Expenses incurred and receipts obtained on the basis of the present Article must be registered in the income and expenditure account as provided for by Article 13 of the 21 December 2007 Law regulating political party funding.*

*Articles 8, 9 and 17 of the 21 December 2007 Law regulating political party funding shall be applicable, unless otherwise provided, to all political parties, groupings of candidates or candidates standing for parliamentary or European elections.*

26. The first paragraph of this provision had previously been included in the Rules of Procedure of the Chamber of Deputies. The text attempts to define electoral expenses by forging a direct link with elections. No deadline was set for incurring the expenses, as such a limitation might prove arbitrary, with political parties sometimes having to make financial commitments vis-à-vis elections a long time in advance (paras. 2 and 3). Lastly, in response to recommendation vi, the new text makes the provisions of Articles 8, 9 and 17 of the 21 December 2007 Law applicable to all political parties, groupings of candidates and candidates standing for parliamentary or European elections (para. 4).
27. GRECO takes note of the above information. It welcomes the progress achieved with the insertion of Article 93bis into the Electoral Law, but it can only repeat that the new regulations do not fully meet the requirements of recommendation vi, incorporating the principles set out in Article 8 of *Recommendation Rec (2003) 4 of the Committee of Ministers to member States on common rules against corruption in the funding of political parties and election campaigns*. Where transparency is concerned, parties, lists and candidates not wishing (or not able) to benefit from a public grant are not subject to the regulations, and the latter still do not cover local elections or specify the extent to which income and expenditure linked to such elections should be taken into account. There is no clear indication of the rules and format applicable to the declaration of election campaign income and expenditure; the fact that only Articles 8 and 9 are mentioned tends to restrict the scope of the information to be declared and suggests that the other rules on funding (sources) and obligations are not applicable. While it is reasonable to assume that the political parties subject to the 2007 Law continue to apply all the provisions, the question of the obligations on other parties and candidate lists (or independent candidates) remains unanswered. During the 2009 parliamentary elections two other parties or candidate lists had stood for election (one of them presenting lists in all constituencies), in addition to the five or six major parties represented in the Chamber. No format or model is laid down for the income and expenditure to be recorded and submitted, nor are there any instructions on the presentation of accounts for different elections held in the same year (such as parliamentary and European elections), or on a mechanism for publishing campaign accounts, which means that only the major parties publish these as part of their annual accounts. In this connection, GRECO stresses the importance of the general public receiving, at the appropriate time (during or just after the campaign/elections), information on the campaign accounts of all parties or (lists of) candidates, otherwise the principle of transparent campaign funding loses its *raison d'être* and it becomes difficult, nay impossible, to draw any electoral conclusions from the irregularities. GRECO stresses that party accounts and balance sheets relating to the 2008 and 2009 financial years only became available to the public online on 22 February 2011, ie 20 months after the June 2009 elections. The Evaluation Report already noted the absence of a supervisory mechanism specifically applicable to campaign accounts. The Chamber's work on the receipt of applications for grants cannot be treated as equivalent to a monitoring mechanism within the meaning of Article 14 of the Council of Europe Recommendation. Sanctions in the field of electoral funding have indeed been introduced under the new Article 93bis of the Electoral Law. However, this leads to inconsistencies with the existing rules on political parties in receipt of annual subsidies (see table in paragraph 39; eg, non-compliance with Article 9 vis-à-vis registering donations is not penalised in the same way under the 2007 Law on political party funding and the 2003 Electoral Law).
28. Lastly, the fact that parliamentarians (or their respective political group) are entitled to receive private support directly (see paragraph 34) confirms the need for Luxembourg to ensure the coherency of the texts and the supervisory procedure; as things stand, such funding is subject to the Rules of Procedure of the Chamber of Deputies, but the rules are different from those on



political funding (2003 Electoral Law and 2007 Law on political party funding), which may cause problems. For instance, because contributions by legal persons to parliamentarians are not explicitly prohibited by the Rules of Procedure while they are forbidden for party funding and, since January 2012, for election campaign funding, it is theoretically possible for parliamentarians to collect funds from legal entities and to pass them on to their parties as a special member's or elected representative's contribution, or to keep the payments to finance part of their campaign on a personal basis. Even if this kind of donation were not prohibited, the fact of elected representatives collecting funds - which are then passed on to the party as personal contributions, as "special" membership fees or in another form - obscures the origin of the payment (whether deliberately or not). Furthermore, there would not seem to be any real machinery for supervising declarations of donations received by parliamentarians, apart from their publication. GRECO has already had occasion to point out that where regulations on the transparency and monitoring of political funding do exist, it would be logical either to make donations to elected representatives subject to these regulations or to prohibit such donations outright.

29. In conclusion, the December 2011 amendments to the Electoral Law constitute a first step towards regulating election campaign funding. However, GRECO regrets that Luxembourg has taken no further account of its comments since the Interim Compliance Report. It once again invites the country to step up its efforts.
30. GRECO concludes, as before, that recommendation vi has been partly implemented.

#### **Recommendation vii.**

31. *GRECO recommended 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.*
32. GRECO recalls that the Interim Compliance Report mentioned an intention to amend the Rules of Procedure of the Chamber of Deputies in response to this recommendation. However, in the absence of any concrete measure, GRECO could only conclude that this recommendation had still not been implemented.
33. The Luxembourg authorities now state that on 13 July 2011, the Chamber of Deputies amended Rule 16 of its Rules of Procedure, adding a new para. 5 worded as follows: *Financial grants to political groups shall be exclusively geared to covering expenditure relating to parliamentary activities, and may not be used to cover expenses incurred by political parties.* Compliance with this provision is subject to checks and controls conducted by the Chamber of Deputies. Luxembourg also mentions the introduction in January 2011 of a mechanism for declaring and publishing parliamentarians' activities and emoluments, as well as contributions from private donors<sup>5</sup>.

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<sup>5</sup> This amendment to the Rules of Procedure was adopted by the Chamber of Deputies in public sitting on 25 January 2011, relating to Rule 167 on introducing a public register setting out all contributions in addition to the resources supplied by Parliament; Rule 167 now reads: **Art. 167.** *The Parliamentary Administration shall keep a register in which all Deputies must declare: - their professional activities and any other remunerated duties or activities; - financial contributions, in cash, staff or in kind, in addition to the resources supplied by Parliament and allocated to the Deputy as part of his/her political activities by third persons, with information on the identity of the latter. Declarations to the register shall be made under the Deputy's personal responsibility and must be updated. The Bureau may periodically draw up a list of items which it considers should be declared to the register.*

34. GRECO takes note with interest of the measures adopted by the Chamber of Deputies in July 2011. Luxembourg has therefore opted for the first alternative proposed in recommendation vii, namely separating the financing of parliamentary groups from that of political parties. GRECO is satisfied with this move, but it does urge Luxembourg to ensure that this separation between the financing of parties and that of groups is effective in practice. GRECO recalls that “(...)the expenditure of parliamentary groups falls outside the court's jurisdiction<sup>6</sup>. 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 (...)” (paragraph 54 of the Evaluation Report).
35. GRECO concludes that recommendation vii has been implemented satisfactorily.

#### **Recommendation x.**

36. *GRECO recommended to i) 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 ii) extend the range of sanctions available, beyond the suspension or reduction of public funding.*
37. GRECO had taken note from the Interim Compliance Report of the planned improvements to the penalty system set out in the bill of March 2011, which was enacted in December 2011, the new Law coming into force on 1 January 2012. GRECO had considered that these proposals were nevertheless insufficient, and concluded that recommendation x had been partly implemented.
38. The Luxembourg authorities once again quote the amendments introduced with effect at 1 January 2012, concerning Article 7 (2) and Article 17 of the December 2007 Law on political party funding (full text appended), and a new Article 93bis added to the 2003 Electoral Law. The penalty system is currently as follows – the Secretariat felt it necessary to draw up a table to provide an overview, which is also useful for recommendation vi (see paragraphs 24 ff. of this report):

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*The register shall be public. It shall be published on the Chamber website and may be consulted in the Parliamentary Administration offices.*

<sup>6</sup> “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 réviseur) and the Chamber's decision concerning the report of the Committee is sent to the Court of Auditors for registration purposes only”.

	Sanctions provided for under the 2007 Law on political party funding (LFPP) – applicable to parties wishing to receive the public grants provided for in the LFPP	Sanctions provided for under the 2003 Electoral Law (LE) – applicable to all parties, candidate groupings and candidates to European and parliamentary elections wishing to receive the public grants provided for in Article 93 LE
Article 7 para. 1 LFPP: Non-compliance with the rules set out in Article 6 LFPP (presentation to the Prime Minister and the Speaker of the Chamber of Deputies of statutes, the record of donors and donations as per Art. 9 LFPP, and communication of any necessary documentary evidence for verification by the Court of Auditors for Article 15 LFPP)	Suspension of payment of public grants until regularisation	[obligations based on the new Article 93bis LE: for granting the appropriation provided for in Article 93 LE, the application must be accompanied by a record of election campaign expenses incurred (...). The expenses incurred and receipts must be entered in the income and expenditure account provided for in Art. 13 LFPP]
Article 7 para. 2 LFPP: unduly received financial grants	Repayment of sums in question to the State Treasury	
Article 17 LFPP : - false declarations in relation to Article 6 paras. 2 and 3 LFPP (record of donors and donations, accounts and balance sheets)	Application of Articles 496-1 to 496-3 of Penal Code in cases of: a) submission of false declarations or deliberately incomplete declarations with an eye to obtaining or retaining a subsidy (Arts. 496-1 and 496-2 para. 1) ; b) use of a subsidy for purposes other than those for which the subsidy was originally granted (Art. 496-2 para. 2); c) acceptance or retention of an undue subsidy (Art. 496-3).	
Article 17 LFPP : - infringements of Article 8 (prohibition of donations from legal persons and anonymous donations)	One month's to five years' imprisonment and fine of between € 251 and € 30.000, or eight days' to two years' imprisonment and fine of between € 500 and 5 000.	Idem (application of Articles 8, 9 and 17 LFPP to all parties, groupings and candidates standing for parliamentary or European elections); Art. 93bis LE
Article 17 LFPP : - infringements of Article 9 para. 3 LFPP (keeping a record of cash donations and gifts in kind exceeding € 250 and presentation in accordance with Article 6)		Idem, in relation to the various requirements of Article 9 overall (application of Articles 8, 9 and 17 LFPP to all parties, groupings and candidates standing for parliamentary or European elections); Art. 93bis LE
Article 7 para. 2 LFPP: in the event of conviction under Article 17 LFPP	The political party must pay the State Treasury three times the amounts unlawfully received	

39. GRECO notes that the reservations which it expressed in the Interim Compliance Report have not been taken into account. GRECO can therefore only recall that the changes since 1 January 2012 are still insufficient and require additional amendments. The law does not clearly incriminate or still fails to sanction: a) non-compliance with certain important requirements of the 2007 Law on political party funding (particularly all those connected with the keeping of consolidated

accounts and the appropriate format on the part of the party and its various components, and their submission for verification at the proper time – Articles 11 to 14 of the Law); b) non-compliance with the differentiation between donations and payments by elected representatives (Article 10 of the Law), whereas elected representatives are authorised to receive donations directly under conditions which are not always very clear (see paragraphs 34 and 35); c) rules set out in Article 9 paras. 1 and 2 on identification of donors and donations by the central bodies and party components; the Luxembourg authorities had stressed in the Interim Compliance Report that since parties were required to register all donations received with the names of donors, the failure to register a donor's name would result in an incomplete list, therefore constituting a punishable false declaration. However, for reasons of legal certainty of the law (and in order to ensure coherency with the wording of Article 93bis of the Electoral Law – see below), GRECO would in this case prefer Article 17 of the Law to refer to the whole, rather than just para. 3, of Article.

40. Only parties receiving, or wishing to receive, annual public grants are monitored and can be penalised. The latest amendments under the new Article 93bis of the 2003 Electoral Law establish obligations, subject to penalties, for the other political parties too: however, the obligations in question are only those set out in Articles 8 and 9 of the 2007, and once again the mechanism is bound up with public grants. In the absence of a sufficiently clarified monitoring mechanism, the question of implementing sanctions in the electoral field is in any case still unanswered (see paragraphs 24 ff). Moreover, GRECO has already had occasion to stress also that in order to give full force to the provisions of Article 17 referring to penal sanctions (particularly Art. 496-2 para. 2 of the Penal Code) the jurisdiction of the Court of Auditors should be extended, because currently the verification of the use of the subsidy explicitly lies outside its jurisdiction (Article 4 in conjunction with Article 16 of the 2007 Law). In view of the foregoing comments, the first part of the recommendation has still only been partly implemented.
41. Lastly, given that an overview of the penalty system is now available, GRECO notes that while Luxembourg has indeed extended the range of applicable sanctions in line with the second part of the recommendation, some doubt remains as to the appropriateness of the measures. The suspension of public grants to parties is still only foreseen in connection with possible non-submission of the documents stipulated in Articles 6 and 15 of the 2007 Law, but not in the event of non-compliance with other obligations. In such cases, only a referral to the public prosecutor followed by a criminal decision (with all the consequent legal requirements: burden of proof on the authorities, long, cumbersome proceedings, etc) can lead not only to the possible imposition of penalty on the person(s) responsible (natural persons, since in Luxembourg political parties do not have legal personality), but also, as an automatic consequence of such a criminal sentence, to the administrative penalty of paying the State a fine of three times the amounts unlawfully received by the party. The State therefore retains the possibility, still under Article 7 of the 2007 Law, of claiming from the administrative level any financial grants unduly received by the political party, but it is difficult to see how this can be applied to the different breaches of the regulations. The mechanism ultimately lacks flexibility and clarity. Even though GRECO considers this second part of the recommendation to have been implemented, it urges Luxembourg to continue the discussions on the range of applicable sanctions.
42. In the light of the foregoing comments, GRECO concludes that recommendation x remains partly implemented.

### III. CONCLUSIONS

43. **In the light of the conclusions of the Third Round Compliance Report on Luxembourg, the subsequent Interim Report and the foregoing comments, GRECO concludes that Luxembourg has satisfactorily implemented or dealt with a total of thirteen of the seventeen recommendations set out in the Third Round Evaluation Report.** Where Theme I – Incriminations is concerned, all (seven) recommendations have been implemented satisfactorily. In connection with Theme II – Transparency of political party funding, recommendations i, ii, v, vii, viii and ix have been implemented or dealt with satisfactorily. As previously found, Recommendations iv, vi and x have been partly implemented. Recommendation iii has not been implemented.
44. Where incriminations are concerned, the Interim Compliance Report had already noted that between August 2008 and April 2011 Luxembourg had adopted various measures to amend criminal law or provide relevant clarifications, which corresponded to all the improvements advocated in the Evaluation Report.
45. In connection with transparency of political financing, it should be remembered that at the time of the evaluation visit in October 2007, Luxembourg had not yet adopted legislation on the transparency of political funding. Therefore, despite the fact that no fully satisfactory action has been taken on four of the ten recommendations addressed to Luxembourg, the country has nonetheless made considerable progress with the adoption of the 2007 Law regulating political party funding, and various essential support measures such as the adoption of a standardised format for political party accounts, and training activities in this area for party personnel. After some hesitation, the major political parties – those which are represented in Parliament – are now publishing annual accounts, accompanied by lists indicating the identities of the major donors and the conclusions of the annual supervision work conducted by the Court of Auditors. Luxembourg still has to refine the existing mechanism in order to ensure a satisfactory level of transparency vis-à-vis the other political formations and candidate lists participating in the elections, because at present the overall measures only apply to parties and candidates wishing or able to receive public grants, and the arrangements are in any case still far from perfect for financing election campaigns. GRECO encourages Luxembourg to continue the reforms it has launched and to consider more actively the introduction of a status which would confer legal personality on the political parties, because the question of the responsibility and full financial transparency of political parties is currently still wide open.
46. The adoption of the Second Compliance Report completes the compliance procedure for the Third Evaluation Round on Luxembourg. Luxembourg can obviously, if it so wishes, continue to keep GRECO abreast of future developments in implementing the outstanding recommendations.

## APPENDIX

### Law of December 2007 regulating political party funding as amended in December 2011, with effect at 1 January 2012 (the changes are indicated in the text)

(...)

[Pro memoria: an Article 93bis has been inserted into the amended Electoral Law of 18 February 2003, worded as follows: *The appropriation provided for in Article 93 shall be paid at the request of the political party. The request must be accompanied by a record of the election campaign expenses incurred. Election campaign expenses shall be defined as expenses incurred by the political parties in direct connection with parliamentary or European elections. Expenses incurred and receipts obtained on the basis of the present Article must be registered in the income and expenditure account as provided for by Article 13 of the 21 December 2007 Law regulating political party funding. Articles 8, 9 and 17 of the 21 December 2007 Law regulating political party funding shall be applicable, unless otherwise provided, to all political parties, groupings of candidates or candidates standing for parliamentary or European elections.*]

#### Chapter I – Definitions

**Art. 1** For the purposes of the application of the present Law:

- “political party” means an association of natural persons, which may or may not enjoy legal personality, and which endeavours, with respect for the fundamental principles of democracy, to promote the expression of universal suffrage and of the people’s will in the manner defined in its statutes or programme;
- “component of a political party” refers to any national, regional, local or sectoral entity of a political party, as well as any body promoting the party’s action by means of training activities, study and research or property management, whatever legal form these activities may take.

#### Chapter II – Public financing of political parties

**Art. 2** Political parties which have

- presented a full list in all four electoral constituencies during legislative elections and a full list in the single national constituency for European elections, and
- obtained at least two percent of all votes in the four electoral constituencies for national elections, as a national average, and also in the single national constituency for European elections, are entitled, in addition to the grant allocated to them in pursuance of Chapter IX of the amended Electoral Law of 18 February 2003, to an annual grant from the State budget, calculated as follows:
  1. a lump sum of € 100 000
  2. an additional amount of € 11 500 for each percentage point of additional votes obtained at national elections
  3. an additional amount of € 11 500 for each percentage point of additional votes obtained at European elections.

For the allocation of the additional amount, each percentage point of additional votes obtained shall be taken into account, up to the second decimal position.

The appropriation, which shall be determined in accordance with the foregoing indents, may not exceed 75% of the total income of a political party's central structure. The political party in question shall bear the burden of proof.

Where a political party no longer meets the conditions set out in indent 1, it shall forfeit entitlement to public funding from the following financial year onwards.

**Art. 3** Calculation of the appropriation shall be based on the official election results as proclaimed by the president of the main polling stations or the main polling station of the electoral constituency.

A change in a party's name during a legislative period shall not affect the allocation of the grant.

Where a political party is disbanded, payment of the grant shall cease from the first day of the month following such disbandment.

Where several political parties group together to form a single party, the grant shall be paid into the latter's account. The same new party shall be responsible for distributing the grant internally.

**Art. 4** Political party funds stemming from public finances in accordance with the provisions of this Law may only be earmarked for expenditure as defined in Article 13 indent 2 of the present Law; such expenditure must be directly linked to the goals set out in the statutes.

**Art. 5** The grant set out in Article 2 shall be paid in monthly instalments of one twelfth. The payment shall proceed on the basis of the data available on the first day of the month for which the grant is paid, and shall proceed automatically, unless a political party wishes to renounce it.

**Art. 6** In order to benefit from public funding, the political party must submit to the Prime Minister, Minister of State:

1. its statutes, a list of its leaders at national party level, and any amendment to the statutes and any change in the said leadership;
2. a record of its donors and donations in accordance with Article 9;
3. its accounts and balance sheets in line with Article 14.

~~Copies of these documents shall be transmitted simultaneously by the political party to the Speaker of the Chamber of Deputies. These data may be freely consulted by any interested person at the Office of the Clerk of the Chamber of Deputies, which shall publish them on its website.~~ Copies of these documents shall be transmitted simultaneously by the political party to the Speaker of the Chamber of Deputies. These data may be freely consulted by any interested person at the Parliamentary Administration Office. Political party accounts and balance sheets shall be published on the website of the Chamber of Deputies.

**Art. 7** Non-compliance with the obligations set out in the previous Article shall lead to suspension of payments pending regularisation. The same may apply in the event of non-compliance with Article 15.

~~Any false declaration in relation to Article 9 indents 2 and 3 shall lead to the reduction of the State grant for the following year by twice the amounts in question. Unduly received financial aid must be repaid to the State Treasury. In the event of a finding against the political party in question on the basis of Article 17, it must pay the State Treasury three times the amounts unlawfully received.~~

### **Chapter III – Donations to political parties**

**Art. 8** Only natural persons are authorised to donate to political parties and their components.

For the purposes of this Law, a “donation to a political party” refers to any voluntary act geared to granting a party a specific advantage of an economic nature which can be evaluated in terms of money.

Donations from a legal person are not permitted. The same applies to gifts from associations, groupings or bodies lacking legal personality.

Anonymous donations are prohibited.

**Art. 9** The identities of natural persons who make any kind of donation to political parties and/or their components shall be registered by the beneficiary.

Any party component must declare donors to the competent national body, together with any donations which it has received, regardless of its statutory autonomy.

~~Political parties shall keep a record of donors and annual donations exceeding € 250, which record shall be submitted annually, together with the party's accounts and balance sheets, to the Prime Minister, Minister of State, with copies to the Speaker of the Chamber of Deputies, in accordance with Article 6.~~  
Political parties shall keep a record of donors, listing cash donations and evaluations of gifts in kind exceeding € 250. Records of cash donations and gifts in kind exceeding € 250 shall be submitted annually, together with the party's accounts and balance sheets, to the Prime Minister, Minister of State, with copies to the Speaker of the Chamber of Deputies, in accordance with Article 6.

**[NB/ Article 9 also applies to all political parties, candidate groupings and candidates standing for parliamentary or European elections – new Article 93bis of the Electoral Law]**

~~Art. 10 Payments made personally by representatives from their remuneration or allowances to a political party or its components shall not be considered as donations. Payments made personally by representatives to their political party or its components from their remuneration or allowances received as political representatives shall not be considered as donations provided they do not exceed the amounts set by rules of procedure of the political parties or their components. Payments in excess of these totals shall be considered as donations.~~

### **Chapter IV – Political party accounts**

**Art. 11** The central structure of each political party is required to keep accounts covering all income and expenditure, as well as its assets and liabilities.

All entities constituted at the level of the electoral constituencies, all local sections and all sectoral organisations of a party are required to present to their respective political party an annual report on the financial situation as validated by the general assembly, after verification by the auditors.

Regardless of statutory autonomy, all party components without exception must declare to the competent national body any donations which they have received.

**Art. 12** The political party's central structure is required, by 1 July each year, to close the accounts for the previous financial year. The financial year runs from 1 January to 31 December each year. The



accounts closed by the political party comprise all of its income and expenditure and all its assets and liabilities. The accounts and the list of donors shall then be forwarded to the Court of Auditors for verification and supervision by the end of the month following their closure by the competent body of the political party.

**Art. 13** The income account comprises:

1. members' contributions
2. elected representatives' contributions
3. gifts, donations and legacies
4. income from moveable and immoveable property
5. income from events and publications
6. various services which have a pecuniary value or can be expressed in pecuniary terms
7. miscellaneous receipts
8. contributions from party components
9. public grants.

The expenditure account comprises:

1. operational expenses
2. training, study and research expenses
3. expenditure connected with events and publications
4. electoral expenditure
5. contributions to international organisations and associations
6. grants allocated to other party components
7. expenditure connected with moveable and immoveable property
8. miscellaneous expenditure.

A Grand Ducal regulation may establish a standard accountancy plan, specify the format of accounts and balance sheets and determine the procedure for keeping accounts.

**Art. 14** The accounts and balance sheets mentioned in Articles 11, 12 and 13 shall be submitted within a month from their closure by the competent body of the political party to the Prime Minister, Minister of State, and the Speaker of the Chamber of Deputies, who shall transmit them for verification to the Court of Auditors, together with the record of donors.

**Art. 15** Political parties are required to communicate to the Court of Auditors any document or information which the latter deems necessary for carrying out its duties.

**Art. 16** The Court of Auditors shall forward, by 31 December of the year following the financial year under supervision, its observations, its report on compliance with the provisions of Article 2 para. 3 and Articles 6, 8, 9, 10, 11, 12 and 13 of the present Law, accompanied where appropriate by the replies of the political parties concerned, to the Speaker of the Chamber of Deputies, who shall notify it to the Bureau of the Chamber of Deputies and the political party chairs. The Speaker of the Chamber of Deputies shall transmit the report to the Prime minister, Minister of State. Copies of these documents shall be simultaneously transmitted by the political party to the Speaker of the Chamber of Deputies. These data may be freely consulted by any interested person at the Office of the Clerk of the Chamber of Deputies, which shall publish them on its website.

**Art. 17** ~~The political parties' accounts and balance sheets shall be published in *Mémorial B* each year. False declaration in relation to Article 9 indents 2 and 3 and infringements of the provisions of Article 8~~

and 9 indent 3 are subject to the penalties set out in Articles 496-1, 496-2 and 496-3 of the Penal Code. Article 23 paras. 2 and 3 of the Code of Criminal Investigation shall be applicable.

**[NB: Article 17 also applies to all political parties, candidate groupings and candidates standing for parliamentary and European elections – new Article 93bis of the Electoral Law]**

#### **Chapter V – *Political parties' right of appeal***

**Art. 18** For the purposes of implementing the present Law, political parties shall have a right of appeal to the Administrative Court.

#### **Chapter VI – *Transitional and final provisions***

**Art. 19** The statutes and the list of leaders at the party's central level must be submitted to the Prime Minister, Minister of State, within three months of the entry into force of the present Law.

**Art. 20** The present Law shall enter into force on 1 January 2008.

(...)