



Strasbourg, 13 June 2008

Public
Greco Eval III Rep (2007) 8E
Theme II

Third Evaluation Round

Evaluation Report on the Netherlands on "Transparency of Party Funding" (Theme II)

Adopted by GRECO
at its 38th Plenary Meeting
(Strasbourg, 9-13 June 2008)

I. INTRODUCTION

1. The Netherlands joined GRECO in 2001. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2003) 1E) in respect of the Netherlands at its 13th Plenary Meeting (24-28 March 2003) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 2E) at its 25th Plenary Meeting (Strasbourg, 10-14 October 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption¹, Articles 1-6 of its Additional Protocol² (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to the Netherlands from 6 to 9 November 2007, was composed of Mr Ömer GENCKAYA, Professor, Department of Political Science, Bilkent University (Turkey) and Ms Inese TERINKA, Senior Expert, Legal Division, Corruption Prevention and Combating Bureau / KNAB (Latvia). The GET was supported by Ms Tania VAN DIJK and Mr Christophe SPECKBACHER from GRECO's Secretariat. Prior to the visit the GET was provided with a reply to the Evaluation questionnaire (document Greco Eval III (2007) 12E, Theme II) as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: the Ministry of the Interior and Kingdom Relations (Directorate-General for Kingdom Relations and Governance and the Audit Service), the Ministry of Finance (Tax Service) and the Electoral Council. In addition, the GET met with representatives of political parties: a governmental party, *CDA* (Christian Democratic Appeal), and three opposition parties: *D66* (Democrats 66), the *SP* (Socialist Party) and the *VVD* (People's Party for Freedom and Democracy). The GET also met with representatives of the media, academia and the Dutch Chapter of Transparency International.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of Party Funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Dutch authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Netherlands in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2007) 8E-Theme I.

¹ The Netherlands ratified the Criminal Law Convention on Corruption (ETS 173) on 11 April 2002. It entered into force in respect of the Netherlands on 1 August 2002.

² The Netherlands ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) on 16 November 2005. The Additional Protocol entered into force in respect of the Netherlands on 1 March 2006.

II. TRANSPARENCY OF PARTY FUNDING – General part

Definitions

7. The Netherlands does not have a special law governing (the activities of) political parties and movements. Political parties are associations governed by the Civil Code³. A political party has the same legal status as any other association (for example, a football club) and can only be differentiated by its statutory objectives.⁴ For the purpose of the Political Parties Subsidisation Act (*Wet subsidiëring politieke partijen*), a political party has been defined as “an association whose name has been registered in the register for the election of members for the Second Chamber of Parliament, in accordance with Article G1 of the Elections Act”.⁵
8. Political parties (associations) have legal personality. As an association with full legal capacity⁶ a political party is to be established by notarial deed (which is to include the statutes of the association) and is obliged to be registered in the Commercial Register at the Chamber of Commerce. The GET was informed that the Commercial Register would include information on the structure of a political party (association). However, entities directly and indirectly related to political parties are usually autonomous entities with a separate legal personality and would in most cases be registered as such. The party (association) bears rights and obligations independently from its statutory bodies and members: its members and members of its executive board are not personally liable for the association’s obligations (except in case of maladministration by the executive board).

Registration

9. A group of candidates (political group⁷) wishing to participate in the elections under a particular name is required to be an association with full legal capacity (registered in the Commercial Register) and to be registered under that name with the central polling station for the elections in question. It should however be stressed that it is also possible to participate in the elections without being registered in the Commercial Register: in that case the candidate or group of candidates is not required to be an association with full legal capacity and will participate in the elections on a so-called blank list⁸ (i.e. the candidates are mentioned with their name, but there is no name heading the list of candidates indicating which political party/group the list of candidates belongs to).

³ Pursuant to article 26 of the Civil Code an association is a legal person with members, aimed at a certain objective, established by a multilateral legal act and prohibited from distributing profits amongst its members.

⁴ It should however also be emphasised that in order to participate in elections in the Netherlands it is not necessary to be a political party, in the form of a registered association (see paragraph 9 below).

⁵ In turn, article G1 of the Elections Act (*Kieswet*) stipulates that “a political group which is an association having full legal capacity may submit a request in writing to the central polling station for the election to Second Chamber to register the name, by which it wishes to be known on the list of candidates for that election, into the register kept by the central polling stations”. The Elections Act itself thus also does not contain a definition of political parties (but instead refers to political groups) despite the central role political parties play in elections in the Netherlands: its underlying principle of the Elections Act is that lists of candidates for elections are submitted by groups of individual voters.

⁶ The Dutch Civil Code also recognises associations without full legal capacity, which are more informal in nature and which do not have to be registered in the Commercial Register or set up by notarial deed. However, political parties who wish to have their name registered in the official register kept by the central polling station are required to be associations with full legal capacity.

⁷ The Elections Act refers to political groups, not political parties. Although the Elections Act does not define the term ‘political groups’ from article G1 it can be inferred that these are associations with full legal capacity.

⁸ Participation in elections on a blank list does not happen often: it tends to be seen as a disadvantage in campaigning.

10. In order to participate in elections under its own name, a political group/party has to request the central polling station for registration of its name in the register of names, held by the central polling station. With its request to be registered it has to submit, to the central polling station for the elections in question, a copy of its articles of association (notarial deed), proof of entry in the Commercial Register and proof of payment of the deposit.⁹ In addition the political group/party has to appoint two persons as authorised representatives of the political group/party. After every election the central polling station deletes the names of the political groups/parties, which have not submitted a list of candidates, from the register. The relevant central polling station can only refuse to register a political group/party under a certain name for specific reasons provided by law¹⁰: refusal of registration cannot be related to - for example - the group's objectives or conduct.
11. The register kept by the central polling station does not contain information on the group/party's organisational structure, its sub-national branches, companies and/or institutes or organisations under its control. The relevant polling station publishes the names of political groups/parties registered by it, as well as the names of the groups' official representatives (and deputy representatives) in the Official Gazette (*Staatscourant*), 14 days before the nominations of candidates for the elections in question. The Electoral Council, which is the central polling station for elections of the Second Chamber, First Chamber and European Parliament, also publishes the names of political groups/parties and their contact details on its website.¹¹
12. In March 2008, the names of 35 political groups/parties¹² were registered on the website of the Electoral Council for elections for the Second Chamber, 15 for elections for the European Parliament and one political group/party for the First Chamber.¹³

Participation in elections

13. The Netherlands has a bicameral parliament, the *Staten-Generaal* (States General). The Second Chamber has 150 representatives, who are elected for a four-year term. The First Chamber (or

⁹ The deposit for registration is €450 for parliamentary and European elections, €225 for provincial elections and €112.50 for municipal elections. The deposit will be returned once a valid list of candidates is submitted for the election in question (Chapter G of the Elections Act).

¹⁰ Articles G1-G3 of the Elections Act provide that the relevant central polling station can only refuse the request if the name is contrary to public order; identical or largely similar to the name of another political group, which has already been registered or for which a request for registration has already been submitted; misleading for voters in some other way; comprised of more than 35 letters or other characters; identical or largely similar to a legal person which has been banned by a court decision and subsequently dissolved; or, received by the relevant central polling station on the same day as another request for registration of an identical or largely similar name.

¹¹ The Electoral Council keeps a separate register of political groups participating in elections for the European parliament, as well as of political groups who participate only in elections of the First Chamber (Senate) and not also in elections of the Second Chamber. The names of political groups registered in the register for elections to the Second Chamber may also be used for the First Chamber (Senate).

¹² VVD, *Partij van de Arbeid (PvdA)*, *Christen Democratisch Appèl (CDA)*, *Democraten 66 (D66)*, *Staatkundig Gereformeerde Partij (SGP)*, *GROENLINKS*, *SP (Socialistische Partij)*, *ChristenUnie*, *Fortuyn*, *Partij voor de Dieren*, *VERENIGDE SENIOREN PARTIJ*, *Nederland Transparant*, *Partij voor de Vrijheid*, *Stemdirect*, *LRVP – het Zeteltje*, *PVN – Partij voor Nederland*, *EénNL*, *Ad Bos Collectief*, *Groen Vrij Internet Partij*, *SMP*, *Tamara's Open Partij*, *Liberaal Democratische Partij*, *Burgers voor Burgers Nederland*, *NEDERLANDSE KLOKKENLUIDERS PARTIJ (NKP)*, *Sociaal-Liberale Partij*, *DUURZAAM NEDERLAND*, *Islam Democraten (ID)*, *De Groenen*, *Nieuwe Communistische Partij – NCPN*, *Nieuw Rechts (NR)*, *ONS Nederland*, *Partij voor de Jongeren*, *Sociale Volks Partij (SVP)*, *Toekomst 21* and *Nieuw Nederland*.

¹³ Political groups registered for elections of the Second Chamber do not have to register separately for elections of the First Chamber. The *Onafhankelijke Senaatsfractie* was the only political group, which participated in elections of the First Chamber but not the Second Chamber.

Senate) comprises 75 representatives, who are elected indirectly (through members of the provincial councils) for a four-year term.

14. The right to be elected and the right to vote is granted to Dutch citizens¹⁴ aged 18 years and older, who have not been excluded from the right to vote (Article 56 of the Constitution).¹⁵
15. As indicated above (see paragraph 9) individual persons may stand for election, but in practice candidates are usually nominated by political groups/parties. On the date designated for the nomination for candidates¹⁶, eligible voters may submit a list of candidates at the central polling station of an electoral district. Political groups/parties wishing to compete in the whole country for the elections to the Second Chamber must submit a list in each one of the 19 electoral districts¹⁷, unless the group/party has obtained one or more seats in the last elections to the Second Chamber and the candidates on their list are the same for each electoral district¹⁸ and listed in the same order, in which case the list can be submitted to the principal polling station in the Hague (Chapter H, Elections Act). No more than 30 candidates may be listed on each list (unless the group/party holds more than 15 seats in the assembly for which the election is held, in which case twice amount the candidates as the number of seats the party holds may be listed – up to 80 candidates).
16. Every list of candidates must be accompanied by:
 - a declaration that the candidates accept their nomination;
 - copies of the candidates' identity documents;
 - a deposit¹⁹, which is returned if the list obtains at least 75% of the electoral quota;
 - and, if the party is not yet represented in parliament or the relevant provincial or municipal council, declarations of support of eligible voters (30 declarations per electoral district for a candidate list for the Second Chamber²⁰, 10 to 30 declarations for candidate lists for municipal and provincial elections depending on the number of members of the assembly in question).
17. Elections for the Second Chamber are conducted by party-list proportional representation. Electoral lists are open: if a candidate gets preferential votes amounting to 25% of the votes needed to get a seat s/he can break the original order on the candidate list.²¹ The Dutch system is however not very candidate-oriented, but strongly party-oriented.

¹⁴ Non-Dutch citizens aged 18 years and over can also vote in and be elected (under certain conditions) to municipal councils. Citizens of another European Union member state residing in the Netherlands, aged 18 years and over, not disqualified from voting in the Netherlands or in their own country, may vote in the Dutch elections to the European Parliament, if they do not do so in their own country, and can also stand for election in Dutch elections to the European Parliament.

¹⁵ Excluded from the right to stand for elections and to vote are persons who have been deprived from the right to vote by a court (which is only possible for a limited number of offences, for which the offender has been sentenced to at least one year imprisonment) or who have been declared mentally unfit and placed under legal guardianship.

¹⁶ The day of nominations of candidates is normally (i.e. in case of full-term elections to the Second Chamber, provincial council and municipal council) on the Tuesday between 18 and 24 January, 43 days before voting is to take place.

¹⁷ It should be noted however that even though the country is divided in 19 electoral districts, the votes cast for a list are grouped together, counting as a single list when it comes to allocating seats.

¹⁸ With the exception of the last 5 persons on the list if a list is longer than 30 candidates.

¹⁹ €11,250 for the Second Chamber and European elections, €1,125 for provincial council elections and €225 for municipal elections, unless the party already has seats in the assembly under the same party name.

²⁰ This amounts to 570 declarations of support for lists of candidates, which participate in the whole country (19 electoral districts).

²¹ For municipal councils with at least 19 seats and provincial councils this is also 25% of the votes needed to get a seat; for municipal councils with fewer than 19 seats this stands at 50% and for the European Parliament it is 10%.

18. The election threshold is the electoral quota: The total number of valid votes cast in the entire constituency (country, province or municipality) is divided by the number of seats to be allocated (150 for the Second Chamber, the number of seats vary for municipalities and provinces) and a party wins a seat if it receives more votes than this quota. For the Second Chamber of parliament, this means that a registered list wins a seat if it gets 1/150 part of all the votes cast.

Party representation in parliament

19. In the November 2006 elections of the Second Chamber of the Parliament²² 24 political groups/parties participated, of which ten obtained seats in the Second Chamber:
- Christian Democratic Appeal (*Christen Democratisch Appèl / CDA*) 41 seats
 - Labour Party (*Partij van de Arbeid / PvdA*) 33 seats
 - Socialist Party (*Socialistische Partij / SP*) 25 seats
 - People's Party for Freedom and Democracy (*Volkspartij voor Vrijheid en Democratie / VVD*) 22 seats²³
 - Freedom Party (*Partij voor de Vrijheid / PVV*) 9 seats
 - Green Left (*GroenLinks / GL*) 7 seats
 - Christian Union (*ChristenUnie / CU*) 6 seats
 - Democrats 66 (*Democraten 66 / D66*) 3 seats
 - Party for the Animals (*Partij voor de dieren / PvdD*) 2 seats
 - Political Reformed Party (*Staatkundig Gereformeerde Partij / SGP*) 2 seats
20. Of these ten groups/parties, three - the *CDA*, *PvdA* and the *ChristenUnie* - went on to form the current coalition government.
21. In the last indirect elections of the First Chamber/Senate in May 2007, ten groups/parties obtained seats:
- Christian Democratic Appeal (*Christen Democratisch Appèl / CDA*) 21 seats
 - People's Party for Freedom and Democracy (*Volkspartij voor Vrijheid en Democratie / VVD*) 14 seats
 - Labour Party (*Partij van de Arbeid / PvdA*) 14 seats
 - Socialist Party (*Socialistische Partij / SP*) 12 seats²⁴
 - Green Left (*GroenLinks / GL*) 4 seats
 - Christian Union (*ChristenUnie / CU*) 4 seats
 - Democrats 66 (*Democraten 66 / D66*) 2 seats
 - Political Reformed Party (*Staatkundig Gereformeerde Partij / SGP*) 2 seats
 - Party for the Animals (*Partij voor de dieren / PvdD*) 1 seat
 - Independent Senate Group (*Onafhankelijke Senaatsfractie / OSF*) 1 seat

²² There were 12,264,503 eligible voters for the 2006 elections of the Second Chamber. The turn-out was 80.1%: 9,584,998 persons voted in these elections.

²³ One member of parliament for the *VVD* split from the party after having been elected to the Second Chamber. She remained in parliament after the split and subsequently set up her own party Proud of the Netherlands (*Trots op Nederland / TON*). Consequently, the *TON* currently has one seat in the Second Chamber and the *VVD* has 21 seats.

²⁴ One member of parliament for the *SP* split from the party after having been elected to the First Chamber/Senate. He remained in parliament after the split as an independent member. Consequently, the *SP* has 11 seats in the First Chamber/Senate.

Overview of the political funding system

Legislation on funding

22. The main piece of legislation on the funding of political parties is the Political Parties Subsidisation Act (*Wet subsidiëring politieke partijen*, hereafter PPSA), which entered into force in 1999. Although the act appears to be applicable to all political parties (i.e. associations with full legal capacity) which have been registered in the register of the Electoral Council for elections to the Second Chamber, the obligations imposed by this act are in fact only applicable to political parties receiving state funding. The act is complemented by the Regulation on Subsidisation of Political Parties (*Regeling subsidiëring politieke partijen*), which also entered into force in 1999 and provides further details on the scope and intensity of the review of the financial report (of parties receiving state subsidies) by the accountant. The aforementioned law and regulation is not applicable to political parties (only) active in local or provincial council: municipalities and provinces can establish their own rules in this area.
23. A new law, which is set to replace the PPSA, has been drafted: The (draft) Financing of Political Parties Act. The draft law is expected to be sent to parliament in the second half of 2008. The draft law will principally apply to political parties, which are defined in Article 1 of the draft law as associations, which have participated in the most recent Second or First Chamber elections under the name registered with the Electoral Council (see paragraph 9 above) and which have been allocated one or more seats in the Second or First Chamber. Nevertheless, a number of the provisions are also applicable to candidates on a party list for the Second Chamber, to associations participating in elections to the Second Chamber which have not been allocated any seats, to groups of candidates which participate in elections to the Second Chamber but not under the flag of a political party, and to factions which have split from political parties in the Second Chamber. The transparency requirements of this law will however neither apply to local and regional/provincial branches of political parties represented in the Second and First Chamber, nor to political parties only represented in municipal and provincial councils.

Public funding

24. Political parties (i.e. associations with full legal capacity registered under their name in the register of the Electoral Council) may receive direct public funding from the state if at least one candidate of the party has been elected in either the Second or First Chamber. In order to receive state subsidies the party must furthermore have at least a 1000 members with full meeting and voting rights, who each pay an annual contribution of at least €12.
25. This direct public funding consists of the following three parts:
- A general amount: each political party eligible for public funding may receive an amount of €176,580 per year, which it can spend at its own discretion on the objectives specified in the law (see paragraph 26 below);
 - An amount per seat, which is provided annually to eligible political parties in proportion to the number of seats a party has in parliament: As of 2006 this funding amounted to €51,217 per seat per year;
 - An amount per member, which is provided annually to eligible political parties in proportion to the number of contributing members of the party. The funding a party receives per member per year can be calculated by dividing the amount of €1,933,455 by the total number of members of all political parties together.

26. Pursuant to article 5 of the PPSA, direct public funding is only provided for the following activities:
- political education and training activities;
 - provision of information;
 - maintenance of contacts with sister organisations outside the Netherlands;
 - support of education and training activities of these sister organisations;
 - political-scientific activities;
 - activities to promote the political participation of youth;
 - recruitment of members;
 - involvement of non-members in state-funded activities of the political party;
 - recruitment, selection and supervision of political office-holders;
 - activities in the framework of election campaigns.
27. In addition, political parties can designate a scientific institute²⁵ and a youth organisation²⁶, which are each also eligible for public funding. This public funding for scientific institutes consists of an annual amount of €124,021 and an amount of €12,747 per seat of the party. For youth organisations an amount of €497,146 is divided annually in proportion to the number of seats the party to which the youth organisation belongs has obtained. In addition, parties can obtain funding for youth organisations in proportion to the amount of contributing members these youth organisations have (to this end the same amount of €497,146 is divided by the total membership of all the youth organisations). These subsidies are not paid to youth organisations and scientific institutes directly but to the political parties, which are obliged to transfer it to their youth organisation and scientific institute.
28. In the last few years, the state has annually provided approximately €15 million to political parties. This amount may vary from year to year (depending, *inter alia*, on elections and members of parliament splitting from their party). In 2006, the following amounts of state funding were provided to the parties represented in the First and Second Chamber:

Party	Subsidy party	Subsidy scientific institute	Subsidy youth organisation	Total amount
PvdD	€26.373	-	-	€26.373
OSF	€236.087	€136.768	-	€372.855
CU	€510.366	€162.262	€103.105	€775.734
SGP	€462.276	€149.515	€175.811	€787.602
LPF	€594.045	€175.264	€35.048	€804.357
D66	€552.254	€200.503	€82.056	€834.813
GL	€720.919	€225.997	€61.692	€1.008.608
SP	€944.951	€238.744	€120.446	€1.304.141
VVD	€1.862.190	€463.761	€176.689	€2.502.640
PvdA	€2.804.286	€659.395	€203.570	€3.667.250
CDA	€2.871.387	€684.889	€205.540	€3.761.816
				€15.846.189

29. Parties have to apply for this public funding, by submitting to the Ministry of the Interior and Kingdom Relations an activities plan, a budget and specification of their membership figures and

²⁵ A political scientific institute is a legal person, primarily engaged in political scientific activities.

²⁶ A youth organisation is an association which primarily carries out activities to promote political participation of young persons and whose membership consists for two-thirds – at least 100 members - of persons between 14 and 27 years old who each pay at least €5 in membership fee.

that of their youth organisation by 1 November of the year preceding the year for which the subsidy is to be provided. At the latest six months after the end of the calendar year over which the subsidy is calculated, parties are to submit an application to determine the subsidy. This application is to be supplemented with a financial report and an activities report. The Minister of the Interior and Kingdom Relations will determine the amount of subsidy within four months of receiving the application, but can grant advances on the subsidy.

30. In addition, parliamentary groups (factions) are provided with financial support, *inter alia*, to employ personal assistants, pursuant to the Regulation Financial Support Groups (Factions) Second Chamber (*Regeling financiële ondersteuning fracties Tweede Kamer*).
31. Parties represented at local or provincial level may be provided with funding from the municipalities and provinces. The GET was informed that, to the knowledge of the Ministry of the Interior and Kingdom Relations, no direct public funding was being provided by municipalities and provinces, other than the financial support provided to council groups (in a similar manner as the abovementioned financial support provided to parliamentary groups).
32. The draft Financing of Political Parties Act does not propose any significant changes to the current system of public funding: it will only slightly amend the amounts of subsidy to be provided to political parties (as well as their youth organisations and scientific institutes) and proposes to give the Electoral Council (instead of the Ministry of the Interior and Kingdom Relations) the authority to determine and grant the state subsidies. Under the draft law, direct public funding will remain limited to political parties which are represented in the First and/or Second Chamber and which have more than 1000 members with meeting and voting rights who each pay an annual contribution of €12 or more.

Indirect public funding

33. Some form of indirect public funding of political parties is provided in the form of free broadcasting time on television and radio for all parties represented in parliament and who participate in elections in all 19 electoral units. The *SGP* is the only party which has never used this possibility.

Private funding

34. The PPSA does not provide for any restrictions as regards the sources of the private funding. Private funding of political parties may thus consist of:
 - membership fees (and donations by members);
 - so-called party taxes²⁷;
 - fund-raising activities;
 - assets / property and income from these assets or property (including from shares or companies in which the party partakes);
 - donations, bequests and gifts.
35. There are no limits with regard to the amount/size/periodicity of private donations, whether cash or non-cash, nor are there any limits or restrictions on membership fees.

²⁷ Some parties request or demand their elected representatives to give a part of their salary to the party; one party requires its elected representatives to give their whole salary to the party and who are in turn provided by the party with a 'party wage'.

36. There is no ban on anonymous donations, although donations from legal persons amounting in total to €4537,80 or more in a given year are to be made public.²⁸
37. As of the beginning of 2008, donations to a party by individual donors are only tax deductible if the political party has been recognised by the tax authorities as a so-called 'institution for the general benefit' (which also includes churches and charities). Entities related to political parties can also be recognised as institutions for the general benefit. Standard donations are tax deductible if the amount exceeds 1% of a natural person's income (with a minimum of €60 and with a maximum of 10% of his/her income); so-called periodical donations²⁹ are tax deductible without a minimum threshold and also not bound by a maximum. Donations by legal persons are tax deductible if they amount to at least €227,000 up to 10% of the profit of the legal person. Recognition of a political party (or related entity) as an 'institution for the general benefit' by the tax authorities, means that the party is also exempted from paying inheritance tax over any bequests and gift tax over any donations it receives.
38. The draft Financing of Political Parties Act seeks to impose a stricter regulation of the acceptance of private funding by political parties. If adopted as foreseen, the law will prohibit the acceptance of donations – whether by a legal or natural person, whether in-kind³⁰ or monetary – with a value of more than €25,000 by one donor in a given a year, with the exception of state subsidies and contributions by a party's own units, subsidiary institutions and so-called political officers (elected representatives and appointed holders of a political office). Furthermore, the draft law also foresees to impose a ban on anonymous monetary donations of more than €150 and anonymous in-kind donations with a value of more than €700. If an anonymous donation exceeds this threshold, it is to be destroyed or transferred to the Electoral Council. The aforementioned limits on acceptance of donations and the provisions on anonymous donations will also be applicable to:
- candidates placed on the candidate list of a political party participating in elections for the Second Chamber (article 28 of the draft law);
 - subsidiary institutions of the party, which includes youth organisations and scientific institutes (article 29 of the draft law), with the exception of contributions made by the political party itself to the subsidiary institution;
 - associations, registered with the Electoral Council, participating in elections for the Second Chamber (in recognition of the fact that the definition of political party in the draft law is limited to associations having seats in either the Second or First Chamber and having 100 members or more) (article 30 of the draft law);
 - lists of candidates participating in Second Chamber elections without having their name registered with the Electoral Council (article 31 of the draft law).

Expenditure

39. Neither the current PPSA nor the draft Financing of Political Parties Act contains any limits on the total amount of expenditure a political party may incur.

²⁸ However, Article 18 of the PPSA explicitly provides that if the donor objects to this disclosure, its name can be left out of the report (in that case only a description has to be given of the type of entity it is).

²⁹ Periodical donations are donations done by notarial deed, in the form of fixed, regular contributions for a period of at least 5 years, without a service being rendered in return.

³⁰ A subsidiary regulation is foreseen to be drafted on how the value of these in-kind donations is to be assessed.

III. TRANSPARENCY OF PARTY FUNDING – Specific part

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

Books and accounts

40. Parties are subject to the same accounting rules as other associations. Pursuant to the Civil Code, the board of a political party is responsible for the preparation of an annual financial report, including a balance sheet and an description of income and expenditure of the party. The financial report is to be submitted for approval to the general meeting of members of the association/party. If an audit statement is not appended to the financial report, the general meeting of members is required to appoint a committee to examine the financial report.
41. Furthermore, as regards political parties receiving public funding, the state subsidies are, pursuant to article 9 of PPSA, subject to the obligation that “the political party keeps an administration in such a way that the rights and obligations and the payments and revenue relevant for the determination of the subsidy can be found therein”. The financial administration and related documents of a party must be kept for a period of 10 years (article 9, paragraph 2, PPSA).
42. In addition, political parties receiving state subsidies are obliged to instruct an accountant³¹ to carry out an inspection of their financial report. Pursuant to Article 11, paragraph 2, PPSA the accountant is to inspect “whether the financial report satisfies the regulations of the law and whether the activities report, in as far as s/he is in a position to evaluate this activities report, is in line with the financial report”. The accountant is also to inspect the observance of the obligations related to the provision of the subsidy and the accuracy of the reported membership numbers of the party, and if applicable, of the designated political youth organisation (in as far as this is relevant for the determination of the subsidy). The Ministry of the Interior and Kingdom Relations has prescribed a model for the statement of the accountant on the accuracy of the financial report and has issued a ministerial regulation on the scope of the control by the accountant (*Regeling subsidiëring politieke partijen*).
43. Provisions on account offences are contained in the Criminal Code and the Civil Code. The use of false or incomplete information in accounting documents (including annual accounts and annual reports), along with the issue of double invoices, are offences according to the Criminal Code (Articles 225-227b for forgery and Article 326 and 336 for fraud, respectively). Legal persons, such as political parties, can also be held liable for the commission of these offences. Furthermore, civil liability provisions apply in case of false information in the financial report (Article 2:139 Civil Code).
44. The draft Financing of Political Parties Act seeks to impose further requirements as regards the organisation of the financial administration of political parties (i.e. associations, which have participated in the most recent Second or First Chamber elections under the name registered with the Electoral Council and which have been allocated 1 or more seats in those elections). Article 19 of this draft act provides that the financial administration of the party is to provide a reliable picture of the financial position of the party, and which has to include information on the number of members and on subsidies, contributions (including the name, address, amount or value, date and nature of contributions exceeding €150, for monetary donations, or €700, for in-

³¹ This accountant has to be registered in the register of accountants and must be subject to supervision by one of the two professional accounting associations (NIVRA or NOVAA).

kind donations, with the exception of contributions by subsidiary institutions to the party), other income, capital, debts and loans (including the name and address of the creditor, details of the institution and the amount of debt or loan). Pursuant to Article 19, paragraph 2 of the draft law, this information is to be kept for a period of 10 years. Moreover, Article 29 of the draft law stipulates that the obligation to keep the administration in such a way that it present a reliable financial picture of the financial position is also applicable to the political science institute and/or the political youth organisation of the party, if the party is granted subsidy for a political science institute and/or a political youth organisation.

45. As is also stipulated in the current law (see paragraph 42 above), pursuant to article 24 of draft Financing of Political Parties Law, political parties will be obliged to have an inspection of their financial report conducted by an accountant. The accountant is to inspect “whether the financial report satisfies the regulations laid down by or pursuant to the law” and shall provide a written statement on the results of his/her inspection (article 24, paragraphs 5 and 6).

Reporting obligations

46. In order to get public funding a party is to submit an application to the Minister of the Interior and Kingdom Relations for determination of the subsidy within 6 months of the end of the calendar year over which the subsidy is to be provided. This application to determine the subsidy is to be submitted together with a financial report and an activities report. The financial report is to include “in accordance with commonly accepted principles and based on the cash system, an expense and revenue statement with related explanatory notes of relevance to determination of the subsidy” (article 10, paragraph 3, PPSA). The financial report is furthermore to include information on the number of members the party has and, if applicable, the designated political youth organisation. The financial report also has to mention donations by legal persons exceeding €4,537.80 in the year in question (but – as mentioned in paragraph 36 and footnote 26 above - if the legal person objects to having his name mentioned in the report only a description of the type of entity has to be included in the report) and contain information on the total amount of donations received other than contributions by members of the party (article 18 PPSA).
47. Moreover, with the application to determine the subsidy to the Minister of the Interior and Kingdom Relations, a political party is obliged to submit the aforementioned written statement of the accountant (see paragraph 42 above) on the accuracy of the financial report and the observance of the obligations connected with the subsidy. The Regulation on Subsidisation of Political Parties (*Regeling subsidiëring politieke partijen*) contains further details on the procedure and content of the inspection of the financial report by the accountant and the written accountancy statement to be provided by him/her.³²
48. If adopted as foreseen, Article 24 of the draft Financing of Political Parties Act will require political parties (see definition in paragraph 44 above) to send a financial report to the Electoral Council by 1 July of each calendar year. This financial report is to provide information on the number of members, subsidies, contributions, other income, capital and debts and loans. As regard

³² The Regulation outlines that:

- in evaluating the financial report the accountant exercises a 95% accuracy threshold;
- in investigating the accuracy of the information on the number of members of the political party and the youth organisation, the accountant can follow a so-called systems approach (in which the accountant assesses the soundness of the administration on members) or data approach (in which the accountant assesses the data with a 95% accuracy threshold);
- the accountant is to inform the political party on inaccuracies / errors in the financial report and will request the party to correct these. If these are not corrected they will be mentioned in the written accountancy statement;
- the Ministry of Interior and Kingdom Relations is to determine to model for the written accountancy statement;
- the activities report is to provide adequate information to assess which activities are eligible for subsidy.

contributions, the financial report is to contain a summary of contributions of in total more than €3000 which the party has received from a single donor in that year, and is also to include information on the name, address, amount or value, date and nature of contributions exceeding €150, for monetary donations, or €700, for in-kind donations. Furthermore, the financial report is to include a summary of debts and loans of €25,000 or more, and is also to include information on the name and address of the creditor, details of the institution and the amount/value of debt or loan.

49. As is also required under the current law, the written statement of the accountant on the accuracy of the financial report will have to be appended to the report.
50. Article 25 of the draft law contains further specifications of the obligations of parties having received subsidies as regards their financial report. It stipulates that the financial report is to be prepared in accordance with “commonly accepted principles of the expenditure and income with the related notes relevant for the determining of subsidy”. Furthermore, it is to contain a specification of the information on the number of members of the party, as relevant for the determination of the amount of subsidy, and, if applicable, the number of members of the youth organisation of the political party. Furthermore, it must be accompanied by an activities report, which is also to be inspected by the accountant (to determine whether it is in conformity with the financial report).
51. As indicated above, these reporting requirements in the draft Financing of Political Parties Act are only applicable to political parties. However, Article 29 of the draft Financing of Political Parties Act also requires subsidiary institutions of a political party (i.e. the party’s scientific institute, youth organisation and legal entities, which structurally carry out work or activities for on behalf of the party to the benefit of the party) to submit a summary report of contributions received of more than €3000 (per contribution) in the preceding calendar year to the Electoral Council by 1 July of each calendar year. This summary report is also to contain information on contributors’ names and addresses, the amount and value of the contributions and the date they have been donated in as far as they amount to more than €150 (monetary contributions) or have a value of more than €750 (in-kind contributions).
52. In addition, the draft law will impose certain reporting requirements in the context of an election campaign. Pursuant to Article 27 of the draft law, a political party which participates in an election of the Second Chamber will be required to submit to the Electoral Council a summary report of individual contributions of more than €3000 the party has received in the period between the first day of the sixth month before the month in which the elections take place until the 21st day before the elections. As regards monetary contributions of more than €150 or in-kind contributions of more than €750 and contributions which have not been made by subsidiary institutions of the party, this summary report is also to contain information the contributors’ names and addresses, the amount and value of the contributions and the date they have been donated. Pursuant to Article 28 of the draft Financing of Political Parties Act this summary report is to explicitly include contributions made to candidates on the candidates list of a political party for their political activities or work in the framework of the election campaign. This summary report is to be submitted to the Electoral Council between the 21st and 14th day before the day of elections.
53. Moreover, associations whose name is registered in the register of the Electoral Council and who participate in the elections of the Second Chamber (but who are not a political party within the meaning of the draft law, because they do not have a seat in parliament yet) as well as groups of candidates participating in elections of the Second Chamber on a so-called blank list (see

paragraph 9 above) will also be required under Articles 30 and 31 of the draft law to submit a summary report of contributions received in an election campaign to the Electoral Council.

54. Donors are not subject to any reporting obligations. The GET was informed that companies listed on the stock exchange would include donations to associations (including political parties) in their financial reports,

Access to financial records

55. Accountants who are – as mentioned before - required to inspect the financial report have full access to the accounting records of political parties. Moreover, law enforcement authorities have access to accounting records of political parties, in case of suspicion of a criminal offence, as do tax authorities for tax inspection purposes.
56. In addition, apart from access by the accountants employed by the party to provide a statement on their financial report and activities report, the draft Financing of Political Parties Act requires parties (and the accountant appointed by them) to co-operate with inspections instituted by or on behalf of the accountant or accountancy service designated by the Electoral Council (and thus providing full access to the parties' financial records to the persons carrying out such inspections). This obligation to co-operate (and to provide access to financial records) applies accordingly to inspections carried out by the Court of Audit (*Algemene Rekenkamer*).

Publication requirements

57. Neither the Ministry of the Interior and Kingdom Relations nor the parties themselves are subject to any requirement to publish the financial reports of political parties. The GET was informed that citizens could apply to the Ministry of the Interior for access to parties' financial reports under the freedom of information law (*Wet Openbaarheid Bestuur*), which is however not applicable to political parties. If the Ministry of the Interior and Kingdom Relations would – after consultation of the parties concerned – answer favourably³³ upon such a request, it is standard practice that the requested information would also be published on the web-site of the Ministry of the Interior and Kingdom Relations. Furthermore, although it would appear from Article 18 PPSA that a party is under a separate obligation to publish donations received from a legal person in excess of €4,537.80, this can actually be done by mentioning these donations in the financial report submitted to the Ministry of the Interior and Kingdom Relations. Finally, the Minister of the Interior and Kingdom Relations is only required to send the parliament an overview of the subsidies that have been granted to political parties (article 17, PPSA). This overview is a public document, but not necessarily published.
58. Also under the draft Financing of Political Parties Act it is not foreseen that either the Electoral Council or political parties themselves are under an obligation to publish the financial reports of political parties. However, Article 24 of draft law does include a requirement upon the Electoral Council to publish the summaries of the contributions of €3000 or more, which parties have received from a single donor in that year, as well as the summaries of debts and loans of

³³ If a political party would claim that disclosure of the financial report would detriment its or a third party's interest, it would be examined whether the interests of the requester in having the information in question outweighs the interests of the political party / third party. It could thus be possible that a request for access to the financial reports of political parties would be refused. However, in response to a request in 2007, the 2006 financial reports of the 10 parties represented in parliament were published on the web site of the Ministry of the Interior and Kingdom Relations.

€25,000 or more (which are to be appended to the annual financial report) in the Government Gazette (with the exception of the address details of natural persons).³⁴

59. In addition, in the context of an election campaign, the draft Financing Political Parties Act foresees in the publication by the Electoral Council of the summary reports of the contributions of more than €3000 received by the party itself as well as candidates on its list in the context of an election campaign for the Second Chamber in the Government Gazette (without the addresses of natural persons) at the latest the 7th day before the day of elections. Similarly, the summary reports of contributions to associations (which do not fall within the definition of political parties under the draft Financing of Political Parties Act but which have been registered in the register of the Electoral Council and participate in the Second Chamber elections), as well as those to the so-called blank lists of candidates for the elections to the Second Chamber would also be required to be published by the Electoral Council 7 days before voting day at the latest.

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

60. Only parties receiving state subsidies are subject to a (limited) form of control. The Ministry of the Interior and Kingdom Relations is responsible for controlling the subsidies and proper use of these subsidies. Much of this task is being carried out by the Audit Service of the Ministry of the Interior and Kingdom Relations. In controlling the proper use of subsidies (the Audit Service of the Ministry of the Interior and Kingdom Relations relies on the aforementioned written statements of accountants (see paragraph 42 above). To this end, article 11, paragraph 5, PPSA, requires the political party to ensure that the accountant concerned co-operates with the inquiries carried out by the Audit Service of the Ministry of the Interior and Kingdom Relations. As indicated before, the control carried out by the Ministry of the Interior and Kingdom Relations is limited to the use of public funds by the party.
61. In theory, the Court of Audit may also investigate whether the subsidies provided to political parties are spent in accordance with the rules and the goals for which they are provided, but in practice the Court of Audit has never done so (and would according to the information received by the GET on the basis of current legislation be unlikely to do so).
62. In future, under the draft Financing of Political Parties Act the Electoral Council is to be responsible for supervision of compliance with the regulations of this act. The Electoral Council comprises seven members³⁵ and is the central polling station for parliamentary elections and elections for Dutch members of the European Parliament, as well as an official independent³⁶ advisory body to the government and parliament on matters related to electoral rights and elections. The members of the Electoral Council are appointed by Royal Decree for a four year term; they can be reappointed twice. If adopted as foreseen, the draft Financing of Political Parties Act will also amend the Elections Act to provide explicitly that members of the Electoral Council can – *inter alia* – not have a position within a political party or a subsidiary institution as referred to in the Financing of Political Parties Law. As before under the PPSA, under the draft Financing of Political Parties Act the Electoral Council is to rely primarily on the written accountancy statements, but the draft act also provides for the possibility that the Electoral

³⁴ Although it would appear from Article 29 of the draft Financing of Political Parties Act that the summaries of contributions of €3000 or more which have to be submitted by subsidiary institutions are not published, the GET was informed that this was an omission in the draft law, which will be repaired.

³⁵ Currently Electoral Council comprises a professor of constitutional law, a professor of comparative politics, two former members of parliament (Second Chamber), the former acting deputy Secretary-General of the Ministry of Education, Culture and Science, a free-lance advisor and the head of elections of one of the municipalities.

³⁶ The GET was informed that the government has no means or powers to influence decisions of the Electoral Council.

Council conducts its own inspections. It explicitly states that a political party is to co-operate with the inspections instituted by or on behalf of the accountant or accountancy service designated by the Electoral Council and with audits by the Court of Audit .

(iii) Sanctions (Article 16 of recommendation Rec(2003)4)

63. The PPSA does not list any sanctions for infringements of the rules on the receipt of subsidies, the publication of donations by legal donors over the disclosure threshold, and the drawing up and submitting the financial report. The one sanction included in the PPSA, namely the cancellation of the subsidy for a given period, can only be imposed if a party has been convicted of discrimination offences. This has however never happened, although the government was forced to (temporarily) discontinue the provision of subsidies to one of the parties represented in parliament as a result of a civil discrimination suit.³⁷
64. In addition, the GET was informed that General Act on Administrative Law (*Algemene Wet Bestuursrecht*) would be applicable to the subsidies and that administrative liability (for certain violations of the PPSA) is thus provided. Pursuant to article 4:69 of the General Act on Administrative Law (and article 9 of the PPSA) it is possible to discontinue to provision of subsidy if the entity receiving the subsidy (the political party) does not keep a sound financial administration. Similarly that would also possible if the party does not submit a financial report to the Ministry of the Interior and Kingdom Relations. However, the subsidy cannot be withheld in the event a party does not comply with the requirement to disclose donations by a legal person of more than €4,537.80.
65. Furthermore, although it would be possible that 'political sanctions' (i.e. a party which has broken the law may lose votes) are taken by the electorate as regards parties which have infringed political finance regulations, as the reports are not published it would be difficult for the electorate to make an informed decision on this. Finally, in case of accounting offences, criminal and civil liability would also be provided for,
66. In addition to the aforementioned sanctions, the draft Financing of Political Parties Act foresees in the possibility to impose criminal sanctions for violation of the various requirements set out in the act, such as the obligation to keep a sound financial administration, to register further details on contributions, debts and loans, to refuse donations in excess of €25,000 by a single donor, to refuse anonymous donations in excess of €150 (or €700 for in-kind donations), to submit the financial report and a summary report in election time (including information on contributions to candidates) and to co-operate with an inspection. The sanctions specified are 6 months' imprisonment, community service or a fine in the fourth category (€16,750) for non-intentional violations, or 2 years' imprisonment, community service or a fine in the fifth category (€67,000) for intentional offences. If the Electoral Council in the performance of its tasks comes across such a possible offence, it is obliged to inform the public prosecutor.

³⁷ A civil law suit was brought against the government and a party, which does not allow women to be placed on its list of candidates. The court ruled in favour of the applicants (a number of NGOs) that by providing subsidy to this party the government had violated its obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women. The decision by the government in September 2005 to discontinue the subsidy on the basis of the ruling of the civil court was contested by the party in question in an administrative procedure and subsequently quashed on appeal by the Council of State in December 2007. The GET was informed that in a separate appeal procedure in the civil case it was confirmed that even if the right of the party to subsidy should be reinstated, the government would still be obliged to take action against the discrimination of women.

Immunities

67. Elected representatives and candidates for election do not benefit from immunities which would allow them to avoid proceeding or sanctions, for example for accounting offences in the current legal framework or for violations in future under the draft Financing of Political Parties Act. The only immunities provided for are those for members of parliament for actions in the exercise of their functions: they cannot be held liable for statements made (orally or in writing) to/in parliament or one of its committees (article 71 of the Constitution).

Statutes of limitation

68. Pursuant to article 4:57 of the General Act on Administrative Law the subsidy can be reclaimed (in whole or in part) – if the party does not comply with the requirements under which the subsidy was provided (for example, it lists too many members on the basis of which the subsidy was calculated) – up until five years from the day on which the subsidy was determined. Under the draft Financing of Political Parties Act the statute of limitations will be two years for the non-intentional violations (misdemeanours) and six years for the intentional crimes.

IV. ANALYSIS

69. The issue of political finance has been a subject of increased interest in the Netherlands in recent years. At the time of the on-site visit of the GET the focus of this interest appeared to be on party taxes (and whether the practice of one party to require its elected representatives to give their whole salary to the party in return for a much smaller ‘party wage’ should be allowed) and the loss of the right to subsidy of one of the parties as a result of a civil suit brought against it for discrimination of women³⁸. In recent months the debate seems to have shifted to the fundraising activities of political parties and other groupings in parliament which do not receive state subsidies and the lack of transparency therein, which at the same time has highlighted the lack of transparency of the finances of more established political parties (to those who are not party members). In spite of this debate, at the time of the on-site visit most interlocutors seemed to think that the risk of dubious political funding was quite low in the Netherlands³⁹. Indeed, scandals involving party funding practices in the Netherlands have been very few and far between. However, as it was also acknowledged on site, under the current legal framework it would actually be quite difficult for questionable funding practices to be brought to light.
70. Political parties in the Netherlands are associations, regulated by the Civil Code. Other than as regards their objectives, they cannot be legally set apart from other associations (for example, a sports club, broadcasting association, historical society or any other club with members): they are not mentioned in the Constitution and also not – despite the key role they play in elections – in the Elections Act (which instead makes scarce reference to ‘political groups’). Because of their status as associations, political parties are by law only required to provide justification as regards their finances to their members and not to the electorate in general.

³⁸ The right to subsidy of this party was reinstated shortly after the visit of the GET, following a decision by the Council of State in December 2007.

³⁹ The reasons provided focused on the perceived lack of interest of the business sector to donate to political parties, which in turn was attributed to the tradition of coalition governments (making it unlikely that a single party could push the wishes of a few interested parties through) and the fact that there are easier and more established ways for influencing the government. In addition, the relatively low cost of election campaigns in the Netherlands was mentioned, which in turn was also attributed to the tradition of coalition governments (parties would be unlikely to overspend on their campaign if there was little chance of governing alone and would have little interest in entering a financial race for the voter’s favour with their potential future coalition partners).

71. With the Civil Code, the most important piece of legislation concerning the finances of political parties is the Political Parties Subsidisation Act (hereafter PPSA), which has been in force since 1999. As can be deduced from its title, the main objective of the PPSA is to ensure the proper use of state subsidies (provided to political parties with more than 1000 members and at least one seat in parliament, and their youth organisations and/or scientific institutes). The objective of the PPSA perhaps explains the limited scope of the transparency requirements in this law, which (as will be discussed in detail below) is not in line with 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.
72. The government provides approximately €15 million in subsidies a year to political parties and their youth organisations and scientific institutes.⁴⁰ The GET was told that parties were very much dependent on these subsidies. However, from the financial reports of the parties, which were provided to the GET, it would seem that in an election year (2006) these subsidies had for most political parties constituted 30% to 40% of their income and outside an election year (2005) anywhere from 40% to 60%.
73. The lack of regulation in this area, other than applicable provisions of the Civil Code and the PPSA as regards parties receiving state subsidies, can traditionally be attributed to considerations of the right to freedom of association and the right to privacy. It was long thought that by placing obligations upon parties regarding the transparency of their sources of funding, the government would interfere with the right to freedom of association, as guaranteed by Article 8 of the Dutch Constitution⁴¹ and Article 11 of the European Convention on Human Rights, and would impede upon the right to privacy of (financial) supporters of political parties. In recent years, however, it has increasingly been recognised that these considerations ignore the special role political parties play in a democratic society, which is very different from that of other associations, and that voters have a legitimate interest in knowing more about possible financial ties of parties – which could very well influence party policies – before making a decision at the ballot box. Indeed, it is the GET's strong belief that an adequate balance can be struck between the legitimate interest of the electorate to have sufficient information on possible financial interests of their potential political representatives and the right to freedom of association and privacy.
74. In recognition of the fact that the present legal system is largely inadequate to ensure any form of transparency of political funding, the Ministry of the Interior and Kingdom Relations has drafted a new law, the Financing of Political Parties Act. If it gets enough support from political parties and other groupings in parliament in the version seen by the GET, this draft law – which will be discussed in further detail below – would, in view of the GET, be a remarkable improvement upon the current system. Shortly after the visit of the GET, in December 2007, representatives of the Ministry of the Interior and Kingdom Relations met with representatives of the parties and other groupings in parliament to discuss the draft law and another meeting of the chairmen and the Minister of the Interior and Kingdom Relations took place in April 2008 on this subject. The GET was not informed about the outcome of these two meetings, but understands that there is now more support than ever before to provide for greater openness about parties' financial sources. The GET welcomes this, although it thinks that the timing of this support – bearing in mind that until now any attempt to further regulate this topic appeared to have failed – can easily be (mis)taken for a desire to find out more about the financial backers of the relatively new parties

⁴⁰ See paragraph 28 above.

⁴¹ Article 8 of the Constitution provides "The right of association shall be recognised. This right may only be restricted by law in the interest of public security."

and groupings in parliament rather than a genuine wish to ensure transparency of the entire political system.

75. The following analysis focuses on the three distinct areas of concern for the present evaluation, namely transparency of political financing, the supervision over such financing and the sanctions applicable when funding rules are being violated and their enforcement. As the GET received only limited information from the Dutch authorities before the visit, a lot of time was taken up on-site to obtain a clear understanding of the present situation. However, the GET has subsequently analysed in-depth the draft Financing of Political Parties Act. Therefore, in the analysis below both the current situation and the proposals for future legislative acts will be discussed, against the background of the information gathered on-site.

Transparency

76. The PPSA requires political parties receiving state subsidies to submit a financial report to the Ministry of the Interior and Kingdom Relations within six months after the end of a calendar year. This very fact highlights the first problem of the PPSA, namely that the law (and any transparency requirements therein) is only applicable to political parties receiving public funding: there is thus no obligation for political parties and other groupings which are represented in parliament but do not receive state subsidies (because they are not associations with full legal capacity and/or do not have a sufficient number of members to qualify for subsidy) to provide any information about their finances.
77. If the draft Financing of Political Parties Act is adopted as foreseen, it will provide for some improvements in this respect, at least in the context of an election campaign: political parties in parliament as well as those participating in elections of the Second Chamber but not yet represented in parliament as well as lists of candidates, which do not have the status of associations with full legal capacity, will have to report on donations (above €3,000) received in the sixth month period before the elections. The GET welcomes this, but also considers that it would be in the interest of the electorate to be able to receive information about the finances of political parties and other groupings in parliament outside the context of an election campaign. In light of this, the GET recommends **to require all entities represented in parliament (political parties and other groupings) to submit an annual financial report.**
78. Furthermore, as regards the content of financial reports, Article 10, paragraph 3 of the PPSA provides that “the financial report shall also encompass an expense and revenue statement with the related notes, prepared in accordance with commonly accepted principles and based on the cash system, which are relevant for the determination of the subsidy”. Some of the financial reports the GET was provided with were very clear and gave a detailed picture of the financial situation of the party also as regards items other than those “relevant for determination of the subsidy”; apart from detailed information on donations – which will be discussed further below – one of the reports examined by the GET also included details on local branches, expenditure, income from shares, donations made by members, and income from fundraising lunches (etc.). However, the level of detail provided in some other reports was insufficient to draw any conclusion as regards financial interests of the party. Apart from information on income in the form of private funding, which will be discussed in further detail below, the GET attaches great importance to the provision of sufficient information on expenses, debts and assets, as this could potentially influence a party’s position on certain policy issues. Furthermore, the way this information is presented is crucial for any form of scrutiny. The GET would therefore find it advisable that a common format for the financial report be adopted, as this would not only facilitate comparisons over the years and across parties and enhance the value of the disclosed

information, but also provide further guidance to political entities as to the scope of their reporting requirement. The GET therefore recommends **(i) to require all entities represented in parliament to report on their financial situation in appropriate detail, including information on income, expenditure, debts and assets, and (ii) to establish a standardised format (accompanied by appropriate guidelines, if necessary) for the financial reports to be submitted by all entities represented in parliament.**

79. As regards the income of political parties, the PPSA places only a weak obligation upon political parties to be transparent in their annual report about sources of income other than subsidies received from the state. Pursuant to article 18 of the PPSA, only the total amount of gifts (other than contributions of members) and gifts of more than €4,537.80 given by a legal person, including the amount, date and name of the legal person, have to be included in the financial report. The GET finds the amount of €4,537.80 relatively high and would find it advisable that certain gifts by natural persons would also be disclosed. In addition, it notes that the PPSA even explicitly provides for an escape clause: if the legal person objects to having its name mentioned in the report only a description of the type of entity it is would have to be included. Furthermore, anonymous donations are not prohibited, although from the interviews conducted by the GET it would appear that a number of political parties have internal regulations not to accept donations from persons whose identity is not known to the party. In addition, the PPSA does not contain a definition of what is to be considered a gift for the purpose of the disclosure requirements, making unclear the extent to which in-kind donations (e.g. computers provided to the party offices, use of premises, professional services rendered free of charge, loans at reduced interest rates etc.) have to be disclosed.
80. If adopted as foreseen, the draft Financing of Political Parties Act will already address part of the aforementioned concerns. It will require political parties to disclose in their financial reports a summary of contributions/donations (whether monetary or in-kind) received from an individual donor, whether a legal or natural person, in excess of €3,000 with details of the identity of the donor and the value of the contribution. Anonymous monetary contributions above €150 and anonymous in-kind contributions with a value of more than €750 will not be allowed.⁴² The law furthermore prohibits individual donations/contributions of more than €25,000 (whether monetary or in-kind) in any given year (with the exception of party taxes or other contributions of the party's elected representatives,⁴³ state subsidies or contributions by units or subsidiary institutions of the party). These requirements will also apply to parties participating in elections for the Second Chamber of parliament but not yet represented in parliament and political groups or lists of candidates which do not have the status of an association with full legal capacity (as will the aforementioned requirement - see paragraph 77 - to disclose contributions received in the context of an election campaign in excess of €3,000).
81. An additional positive aspect of the draft Financing of Political Parties Act is that it contains further clarification of what is to be considered a contribution for the purpose of the law⁴⁴ and addresses the challenging issue of in-kind contributions⁴⁵. The GET welcomes these provisions,

⁴² The identity of donors who donate in an amount of €150 to €3,000 (cash) or an amount of €750 to €3,000 (in-kind) will thus have to be registered by the party, but not disclosed in its financial report.

⁴³ In accordance with the party's internal regulations, which have to be sent to the Electoral Council.

⁴⁴ Pursuant to article 1, paragraph i, of the draft law a contribution refers to "a monetary contribution, other than a subsidy, legacy or member's contribution or a contribution in kind".

⁴⁵ Pursuant to article 1, paragraph j, of the draft law a contribution in kind refers to "goods or services provided on the request of or accepted by a political party", the price of which is not in proportion to the value of the good or service provided. Furthermore, article 21 of the draft law provides that the value of a contribution in kind "is the difference between the market price of the contribution in kind and the value of the service/money given in return". It explicitly excludes personal labour or activities of members of the political party from this definition. It is furthermore indicated further rules will be set by

but also notes certain shortcomings. First of all, anonymous donations below an amount of €150 (monetary) or €700 (in-kind) neither have to be registered nor disclosed. To safeguard the right to privacy of donors and diminish the administrative burden on parties, the GET appreciates that donations below this threshold are not disclosed. However, it has some concerns about the fact that these donations do not even have to be registered and also considers that in extreme cases large donations (even those above the prohibited amount of €25,000) can be split in amounts of €150 to evade the registration and disclosure requirement. As cash donations are allowed, the party itself would in such cases also not be in a position to know who the donor is. In this context, the GET welcomes that a number of parties have their own internal regulation not to accept anonymous donations. Furthermore, regarding the concept of ‘contribution’ in the draft law, the GET notes that as bequests (legacies) are explicitly excluded from the definition of contribution these also do not have to be disclosed. The GET understands that this was formulated in such a way in order to avoid that the prohibition on individual contributions of more than €25,000 would also apply to bequests, but considers that such financial benefits to parties should nevertheless be disclosed⁴⁶, whether by including them in the concept of ‘contribution’ or otherwise. Finally, a strict reading of Article 1, paragraph i⁴⁷, of the draft Financing of Political Parties Act would lead to the conclusion that donations by the party’s own members are not considered to fall within the definition of a contribution (and thus do not have to be disclosed). However, the GET was informed that this referred to fees paid by the members and that donations/contributions provided in excess of the membership fee would have to be disclosed in the same way as donations/contributions by non-members. Although this may merely point to a mistake in the translation provided to the GET, it must be ensured that there is no ambiguity in this respect and that donations by members of the party are treated no differently than donations of non-members.

82. In light of paragraphs 79, 80 and 81, the GET recommends **(i) to require all entities represented in parliament to disclose, at least annually, all donations and bequests received from natural persons (including party members) and legal persons, including information on the source of these donations (at least above a certain threshold), their nature and value; (ii) to lower the current disclosure threshold of €4,537.80 for (corporate) donations in the Political Parties Subsidisation Act to an appropriate level and (iii) to prohibit donations from donors whose identity is not known to the political party/grouping/candidate.**
83. A further shortcoming concerns local and regional branches of the party. The PPSA does not address this issue and the GET was informed by the political parties it met that it was left up to the parties how they organise the accounting of local and regional units and if and how financial information of local and regional units would be included in the financial report submitted to the Ministry of the Interior and Kingdom Relations. Indeed, the GET noted that some parties had included information in their financial report on their local and regional branches, but that this information was absent from other reports.
84. Under the draft Financing of Political Parties Act it is explicitly provided (in Article 23) that Articles 19 to 22 of the draft law will not apply to units of political parties. This means that the local and regional branches of the party will be exempted from the provisions on keeping “such an administration that it presents a reliable picture of the financial position of the party”, registering contributions (above the thresholds set for monetary and in-kind contributions), anonymous

a regulation of the Electoral Council as to what constitutes a contribution in kind and how the value of such a contribution should be determined.

⁴⁶ It is for example not unthinkable that certain conditions could be tied to the bequest.

⁴⁷ See footnote 44 above.

contributions above the aforementioned thresholds and donations from a single donor of more than €25,000 (in a given year). The GET understands that this has been a deliberate choice, in recognition of the fact that party organisations at local and regional level are mainly run by volunteers; to place similar obligations upon them as are placed on the central party organisation would be too burdensome. Although the GET has some sympathy for this argument, it also considers that the funds provided to local and regional/provincial units can easily be passed on to the central party, which – as the party also does not have to report on contributions by its own units – facilitates evasion of the disclosure requirements. In light of this, the GET recommends **(i) to extend the applicability of the future provisions on donations (and possible limits on donations) to local and regional/provincial units of political parties and (ii) to ensure that the accounts of political parties are consolidated to include the accounts of local and regional/provincial units, in line with Article 11 of Recommendation Rec (2003)4 on common rules against corruption in the funding of political parties and electoral campaigns.**

85. Another deficiency of the current legal framework is the issue of entities related, directly or indirectly, to political parties and/or other groupings in parliament. In order to be eligible for tax deductibility of donations, entities have to be registered with the tax authorities as ‘institutions for the general benefit’. The GET understood that often not (only) the central party organisation is registered as an institution for the general benefit, but also other associations and foundations which have the objective – amongst others – to raise funds for the party (or for a particular grouping in parliament)). Some financial reports provided to the GET included an extensive description of entities related to the party (indicating the extent to which the party had a controlling influence in such an entity which was a decisive influence on whether the finances of such an entity would be presented in the financial report). Other reports however contained very little information of this kind (with the exception of information on the parties’ scientific institutes and youth organisations, as is necessary for the determination of state subsidies). The draft Financing of Political Parties Act addresses this issue by requiring the party to designate legal entities which “systematically or structurally carry out activities or work for or on behalf of the party of which the party enjoys an advantage” as subsidiary institutions.⁴⁸ These subsidiary institutions are furthermore also bound by the provision to submit to the Electoral Council a summary report of contributions received in excess of €3,000. The GET commends the Dutch authorities for including this provision in the draft law, which would go a long way in addressing the challenging issue of entities related, directly or indirectly, to a political party. However, as the current legal framework forms the main basis for its recommendations, the GET can only recommend **to take measures to enhance the transparency of fundraising activities by entities related, directly or indirectly, to political parties and other groupings in parliament.**
86. A further very important deficiency is that information on political parties’ financial situation is not readily available to the electorate (or the media). Although the financial reports of parties receiving state subsidies have to be submitted to the Ministry of the Interior and Kingdom Relations, neither the Ministry nor the parties themselves are under any obligation to publish these reports. While it would be possible for a citizen to apply to the Ministry of the Interior and Kingdom Relations under the Freedom of Information Act (*Wet Openbaarheid Bestuur*), parties would have to be consulted on such a request, this procedure could therefore take many months. Citizens can also apply to the parties and other groupings themselves. The GET was informed that, without an obligation to do so, many – but not all – parties would be willing to provide

⁴⁸ If a party has not designated a certain legal entity as its subsidiary institution, the Electoral Council may nevertheless appoint the legal entity in question as a subsidiary institution.

detailed financial information and a number of parties publish their financial reports on their websites. Under the draft Financing of Political Parties Act it is provided that the Electoral Council will publish the summary reports of contributions, which only provide the public with limited information on contributions. The GET considers the public's access to information one of the cornerstones of a transparent system of political funding (and supervision thereover) and finds that it should be unequivocally established that the financial reports of all entities represented in parliament, as referred to in paragraph 77 above, are available to the public. Therefore, the GET recommends **to take measures to ensure that the annual reports of political parties, as well as financial information on parties and other groupings represented in parliament currently not under any reporting requirement, are disclosed to the public.**

87. A final topic of concern to the GET as regards transparency is the issue of local political parties, which are not represented in parliament. Some of these parties, especially in large cities like Rotterdam, have substantial influence and considerable financial resources at their disposal. Considering that the risk of questionable financial dependency is perhaps even greater at local level than it is at national level, the GET finds it advisable that further measures be taken, in consultation with municipalities, to improve the transparency of funding of local parties. In this regard, it also considers it in the interest of 'equality before the law' that if local units of national political parties are to be made subject to stricter disclosure requirements similar conditions would also need to apply to parties operating only at local level in large municipalities. Therefore, the GET recommends **to take measures to enhance transparency of income and expenditure of political parties at local level.**

Supervision

88. As regards internal control, the GET notes with satisfaction that the Civil Code places certain obligations upon political parties as regards maintaining proper accounting records and the reporting to the general members' assembly of the association. To a certain extent the law thus encourages internal party control at least as far as political parties are concerned (i.e. associations with full legal capacity). The GET welcomes that a number of parties have taken further initiatives to strengthen this control, *inter alia* by elaborating manuals for local treasurers, requiring publication on the party's web-site of all donations above €500, stipulating that anonymous donations will not be accepted, requiring local branches and affiliated associations to report in detail on their finances and publishing the financial report on their web-site.
89. As regards external control, pursuant to the current law the Ministry of the Interior and Kingdom Relations is the main institution responsible for monitoring party funding. It is in charge of determining the subsidies to be provided to each of the political parties on the basis of the annual financial reports and activity reports of the parties and mainly checks whether state subsidies have been properly used. In carrying out its controlling function, it relies heavily on the written statements of the auditors appointed by the party (whose main responsibility is towards the party's executive body and not to the Ministry of the Interior and Kingdom Relations). The Audit Service of the Ministry may review the financial reports of political parties. However, by its own admission, this review would be limited to the part relating to subsidies in the financial report and would only assess, on paper, the work done by the accountant hired by the party. In doing so it takes a risk-based approach: the Audit Service generally only carries out such a review, if the party is new, if it has a new accountant or if there were problems in the previous year. Although the current supervisory function of the Ministry of the Interior may very well be adequate for the limited scope of the PPSA, it is not in line with Article 14 of Recommendation Rec (2003)4 relating to the provision of "independent monitoring in respect of the funding of political parties

and electoral campaigns”, including the “supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication”.

90. That said, the GET welcomes that notable improvements concerning the current supervisory mechanism are provided for under the draft Financing of Political Parties Act, which will task the Electoral Council (an independent advisory body to the government on electoral matters and the central polling station for parliamentary elections) with supervision of compliance with the law. The GET notes with satisfaction that most, if not all, interlocutors met on-site portrayed the Electoral Council as a highly respected body, which is currently perhaps little-known to the general public. It is difficult to predict how effective the Electoral Council will be in supervising the financing of political parties. Apart from its powers in the area of political finance, much will depend on the resources provided to the Council as well as its own approach to, and interpretation, of its new role. The GET hopes that the provisions of the draft Financing of Political Parties Act tasking the Electoral Council with supervision over political funding rules will enter into force as soon as possible. However, as these provisions have not entered into force yet, the GET can only recommend **(i) to establish independent monitoring of political funding, including electoral campaigns, in line with Article 14 of Recommendation Rec (2003)4 and (ii) to provide the body to be entrusted with carrying out this monitoring (which is most likely to be the Electoral Council) with adequate powers and financial and human resources.**
91. As regards the (future) powers of the Electoral Council, the draft Financing of Political Parties Act stipulates that it will have the right of inspection (which will further be regulated by a ministerial regulation) and can undertake a comprehensive audit of the finances of political parties. In addition, it is the GET’s understanding that it would also have powers under the General Act on Administrative Law (*Algemene Wet Bestuursrecht*), which would *inter alia* provide the Electoral Council with the authority to obtain requisite information, to enter premises (with the exception of private houses, if the inhabitant does not give his/her permission) and to have access to (and copies of) all business data and relevant documentation.
92. As regards the independence and impartiality of the Electoral Council, the GET welcomes the articles in the draft Financing of Political Parties Act, amending the Elections Law, which seek to ensure impartiality of the Electoral Council and further diminish possibilities of outside influence over its activities. The proposed amendments to the Elections Law will *inter alia* prohibit members of the Electoral Council from holding any positions which could interfere with the proper performance of tasks and/or (confidence in) the impartiality and independence of the Council, provide that membership of the Council is incompatible with certain other functions and positions (amongst which positions in a political party, its subsidiary institutions or as a member of parliament, state secretary or minister) and foresee the publication of the external positions held by members of the Electoral Council. However, the GET also notes that members of the Electoral Council and its Secretariat can be (and are) members of political parties, and may have carried out important functions in or on behalf of these parties. Although the GET accepts that some political experience could be beneficial to the work of the Electoral Council, it also has some concerns that party affiliations may affect confidence in its impartiality. The GET finds it important that a supervisory body not only operates in an impartial manner but is also seen to be operating in such a way. This is crucial for the public’s trust. Therefore, the GET would find it advisable that further measures are introduced to enhance, as much as possible, confidence in the non-partisan approach of the Electoral Council in the monitoring of the political finance rules, for example by requiring that the composition of the Council does not include a disproportionate number of members of the same party affiliation (membership), by having members of the Council abstain from deliberations on the party with which it has an affiliation and/or by establishing clear rules on

actual and potential conflicts of interest for both the Council and its Secretariat. Therefore, the GET recommends **to take further measures to safeguard the independent and impartial functioning of the Electoral Council and its Secretariat in the future supervision of political finance rules.**

Sanctions

93. The PPSA currently does not provide for a comprehensive sanctioning mechanism for violations of the provisions of the act. The only sanctions stipulated in the law itself are the loss of state subsidy for the period of one to four years, if the party has been held liable for discrimination in accordance with articles 137c to g or article 429quater of the Criminal Code. Furthermore, the GET understood that the relevant articles of the General Act on Administrative Law are also applicable to the provision of subsidies to parties, which entails that if the party does not comply with the requirements of the subsidy (if – for example – it lists too many members), the subsidy can be withheld or (partly) reclaimed.⁴⁹ However, if a party does not comply with the requirements unrelated to the subsidy, for example on the disclosure of accurate information on donations, no measures can be taken against the party. Therefore, the GET recommends **to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements.**
94. The draft Financing of Political Parties Act, if adopted as foreseen will go a long way in meeting the aforementioned recommendation, by – in addition to the sanctions already foreseen in the current system (i.e. discontinuation of subsidies pursuant to the General Act on Administrative Law and in case of a conviction for discrimination) – introducing criminal sanctions for, *inter alia*, the requirement to ensure a sound financial administration, to not accept anonymous donations above a certain threshold, to submit an annual financial report as well as a summary report of contributions received in the context of elections. As criminal liability of legal entities is already provided for under Dutch law, the GET would assume that it will be possible to impose these sanctions also on political parties (and not only on natural persons), although the reference in the draft law to community service and prison sentence is slightly confusing in this regard. The draft law is even more unclear when it comes to infringements of the obligations placed upon non-party entities. The GET would assume that all entities on which the draft law imposes obligations can be held criminally liable, but it also notes that article 34 of the draft law (on sanctions) does not refer to the provisions on other (non-party) entities (apart from the provisions on individual candidates of a political party and subsidiary institutions of a political party to register contributions received etc.). It is thus unclear if – for example – associations registered to participate in elections of the Second Chamber but not yet represented in parliament (as referred to in Article 30 of the draft law) or natural persons leading the lists of candidates participating in the elections on so-called blank lists (as referred to in Article 31 of the draft law) can be penalised for not submitting a summary report of their contributions in the context of an election campaign. In light of this situation, the GET recommends **to clarify the provisions on sanctions in the draft Financing of Political Parties Act, ensuring that sanctions for violations of political funding rules can be imposed upon all entities on which the draft law imposes obligations.**
95. Furthermore, while the draft law provides for criminal sanctions for intentional or negligent violations of the provisions of the (draft) Financing of Political Parties Act, the GET has some concerns that this sanctioning regime would not be sufficiently flexible to deal with less severe

⁴⁹ The GET was informed that, although this rarely happened, subsidies to parties had been withheld or (partly) reclaimed in the past. The GET was not provided with further information on situations in which this had occurred.

infractions of the (draft) law, such as late submission of reports, incompleteness of the reports or acceptance of an anonymous donation only slightly above the threshold. The GET was informed on-site that in cases of minor violations of the law, which would not be criminally prosecuted, the Electoral Council would make a public announcement on these violations. Whereas the GET agrees that in cases of minor violations of the law the institution of criminal proceedings may well be disproportionate – also considering that a criminal sanction should be an *ultimum remedium* – and perhaps also involve an unnecessarily slow and cumbersome procedure, it considers the mere publication of a violation to be disproportionately soft and by no means dissuasive. In the GET's view the sanctioning regime as foreseen in the draft Financing of Political Parties Act would be made more efficient and effective if small or procedural violations of the law would not only be brought to the attention of the public (or in more severe situations be referred to law enforcement authorities), but could also directly be addressed by the Electoral Council itself by imposing – for example – administrative sanctions. In light of this, the GET recommends **(i) to introduce appropriate (flexible) sanctions for less serious violations of political financing rules, as a complement to the criminal sanctions foreseen under the draft Financing of Political Parties Act, and (ii) to consider providing the Electoral Council with the authority to impose sanctions for the less serious violations of political financing rules.**

Other issues

96. In the opinion of the GET it is important that any change to the regulatory system is supported by meaningful, timely and accurate guidance to help political parties, other groupings in parliament and candidates alike to comply with the regulations on political finance. In light of the substantial changes to the current legal system foreseen by the draft Financing of Political Parties Act and possible further amendments on the basis of recommendations adopted by GRECO, the GET would find it advisable that the body tasked with supervision over the political finance regulations would be placed in a position to provide training and advice to candidates for election, elected representatives, political parties and other groupings in parliament with a view to supporting these entities to comply with the political funding regulations as well as on their right to obtain public funding⁵⁰. The GET therefore recommends **to provide advice and training to political parties and election candidates on the applicable political funding regulations.**
97. The GET noted with satisfaction the interest of the media in transparency of political finance. Nevertheless, the GET was informed that, even if the media report on problems surrounding party financing, this is not seen as an important issue by the electorate (and is also currently seen by some voters as an attempt to place the new groupings and/or political parties in parliament in a negative light). The GET has some concerns about this situation, as punishment of dubious funding practices at the ballot box is a very effective and dissuasive sanction. In addition, once the draft Financing of Political Parties Law enters into force, the Electoral Council will publish information on minor violations of the law. This already very mild sanction (see paragraph 95 above) will be even less effective if voters do not attach any importance to such information. Therefore, the GET hopes that the ongoing debate on political funding in the Netherlands and the process of adoption of the draft law will also raise public awareness of this issue.
98. Finally, the GET wishes to emphasise that a political party is not like any other association: it has a unique role in a democratic society. Given this unique role and its importance in the Dutch electoral system, which is not recognised in the Elections Law nor in any other law and also

⁵⁰ The GET was informed that certain factions in parliament did not apply for state subsidies, as they were not aware that they would be eligible for such funding.

considering that certain important political entities do not take the form of an association, the GET is of the opinion that it would be useful to give consideration to a separate law regulating the activities of political parties and other political entities. With due consideration to the right of freedom of association as guaranteed by article 11 of the European Convention on Human Rights, such a law could provide for a clear and unambiguous definition of a political party and would help clarify the rights and obligations applicable to political parties and other entities participating in elections, as currently spread out over the Elections Law (registration), the Civil Code, the General Act on Administrative Law and the PPSA (or in future the Financing of Political Parties Act). In conclusion, it would be useful if the status of political parties would be clarified by a separate law and the GET therefore invites the Dutch authorities to give due consideration to the introduction of such a law.

V. CONCLUSIONS

99. The current legal framework in the Netherlands on the financing of political parties is not in line with the requirements of Recommendation Rec (2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns, as regards transparency, supervision of financing rules and sanctions for violations of these rules. In particular, the present legal framework does not ensure that the electorate has sufficient access to information on the financial interests of political parties (and other groupings in parliament) and it does not provide for adequate supervision or an effective, proportionate and dissuasive sanctioning mechanism. As public access to information is one of the cornerstones of an effective system of supervision over political funding, it should, first and foremost, be ensured that all entities represented in parliament report annually on their financial situation in appropriate detail and that these reports are made available to the general public. Furthermore, the Netherlands should establish independent monitoring of political finance rules, in line with article 14 of Recommendation Rec (2003)4, and should make infringements of political finance rules subject to effective, proportionate and dissuasive sanctions.
100. GRECO welcomes that the Minister of the Interior and Kingdom Relations – in recognition of the fact that there is significant room for improvement of the current legal framework on financing of political parties – has proposed a new law, the (draft) Financing of Political Parties Act. This law appears to address a number of concerns expressed in this report and is thus regarded by GRECO as a first and significant step in the right direction.
101. In view of the above, GRECO addresses the following recommendations to the Netherlands:
- i. **to require all entities represented in parliament (political parties and other groupings) to submit an annual financial report** (paragraph 77);
 - ii. **(i) to require all entities represented in parliament to report on their financial situation in appropriate detail, including information on income, expenditure, debts and assets, and (ii) to establish a standardised format (accompanied by appropriate guidelines, if necessary) for the financial reports to be submitted by all entities represented in parliament** (paragraph 78);
 - iii. **(i) to require all entities represented in parliament to disclose, at least annually, all donations and bequests received from natural persons (including party members) and legal persons, including information on the source of these donations (at least above a certain threshold), their nature and value; (ii) to lower the current disclosure threshold of €4,537.80 for (corporate) donations in the Political Parties**

Subsidisation Act to an appropriate level and (iii) to prohibit donations from donors whose identity is not known to the political party/grouping/candidate (paragraph 82);

- iv. (i) to extend the applicability of the future provisions on donations (and possible limits on donations) to local and regional/provincial units of political parties and (ii) to ensure that the accounts of political parties are consolidated to include the accounts of local and regional/provincial units, in line with Article 11 of Recommendation Rec (2003)4 on common rules against corruption in the funding of political parties and electoral campaigns (paragraph 84);**
- v. to take measures to enhance the transparency of fundraising activities by entities related, directly or indirectly, to political parties and other groupings in parliament (paragraph 85);**
- vi. to take measures to ensure that the annual reports of political parties, as well as financial information on parties and other groupings represented in parliament currently not under any reporting requirement, are disclosed to the public (paragraph 86);**
- vii. to take measures to enhance transparency of income and expenditure of political parties at local level (paragraph 87);**
- viii. (i) to establish independent monitoring of political funding, including electoral campaigns, in line with Article 14 of Recommendation Rec (2003)4 and (ii) to provide the body to be entrusted with carrying out this monitoring (which is most likely to be the Electoral Council) with adequate powers and financial and human resources (paragraph 90);**
- ix. to take further measures to safeguard the independent and impartial functioning of the Electoral Council and its Secretariat in the future supervision of political finance rules (paragraph 92);**
- x. to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements (paragraph 93);**
- xi. to clarify the provisions on sanctions in the draft Financing of Political Parties Act, ensuring that sanctions for violations of political funding rules can be imposed upon all entities on which the draft law imposes obligations (paragraph 94);**
- xii. (i) to introduce appropriate (flexible) sanctions for less serious violations of political financing rules, as a complement to the criminal sanctions foreseen under the draft Financing of Political Parties Act, and (ii) to consider providing the Electoral Council with the authority to impose sanctions for the less serious violations of political financing rules (paragraph 95);**
- xiii. to provide advice and training to political parties and election candidates on the applicable political funding regulations (paragraph 96).**

102. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Netherlands to present a report on the implementation of the above-mentioned recommendations by 31 December 2009.

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