



Strasbourg, 5 December 2008

**Public**  
**Greco Eval III Rep (2008) 2E**  
**Theme II**

## **Third Evaluation Round**

### **Evaluation Report on Poland on Transparency of party funding (Theme II)**

Adopted by GRECO  
at its 40<sup>th</sup> Plenary Meeting  
(Strasbourg, 1-5 December 2008)

## I. INTRODUCTION

1. Poland joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 11E) in respect of Poland at its 8<sup>th</sup> Plenary Meeting (4-8 March 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2003) 6E) at its 18<sup>th</sup> Plenary Meeting (10-14 May 2004). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team (hereafter referred to as the "GET") carried out an on-site visit to Poland from 23 to 27 June 2008. The GET for Theme II (25-27 June) was composed of Mr Inam KARIMOV, Chief Adviser, Department of Coordination of Law Enforcement Bodies, Executive Office of the President of the Republic (Azerbaijan), Mr Jean-Christophe GEISER, *Collaborateur scientifique*, *Office fédéral de la justice* (Switzerland) and Mr Justin FISHER – AcSS, Professor at Brunel University, School of Social Sciences, Department of Politics & History (United Kingdom). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2008) 1E, Theme II), as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: the National Electoral Commission, the Ministry of Finance, the Supreme Court of Justice, the Central Anti-corruption Bureau, the National Prosecutor's Office and the Parliamentary Commission of the Public Finances. In addition, the GET met with representatives of the following political parties: Civic Platform, Law and Justice, Left Democratic Alliance and Polish People's Party. Moreover, the GET met with expert auditors, with members of the Batory Foundation and the Institute of Public Affairs as well as with representatives of the University of Warsaw and the media.
5. The present report on Theme II of GRECO's Third Evaluation Round – 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 Polish 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 Poland 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 (2008) 2E, Theme I.

## II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

### Legal framework

7. In Poland, political parties are governed by the Political Parties Act of 1997 (hereafter: PPA) and its executive regulations, i.e. a number of ordinances of the Minister of Finance containing more detailed provisions on specific aspects such as accounting and reporting obligations of political parties. The Political Parties Act has been amended on ten occasions, during the years 1998–2005; the last significant changes concerning the principles of political party financing were made in 2001 and introduced a new system of public funding as well as a corresponding control mechanism. The Political Parties Act includes provisions on financing of political parties in general, whereas specific rules on financing of election campaigns are set out by the different election laws, i.e. the Statute on the Election of the President of the Republic of Poland of 1990, the Statute on Elections to Local Self-Governments of 1998, the Statute on Elections to the *Sejm* and to the Senate of 2001 (hereafter: SESS), the Statute on Direct Election of the Village, Town and City Administrator of 2002 and the Statute on Elections to the European Parliament of 2004. Election campaigns are conducted by election committees which are established by political parties or by citizens and which are equally governed by the Political Parties Act, the election laws and specific ordinances. Finally, it should be noted that the Constitution of Poland contains several provisions concerning political parties, *inter alia* article 11, paragraph 2 which states that “the financing of political parties shall be overt”.<sup>1</sup>

### Definition of political parties

8. Article 11 of the Constitution provides that political parties are “organisations associating Polish citizens on principles of voluntary participation and equality for the purpose of influencing State policy by democratic methods.” Section 1 PPA contains a more detailed definition, according to which a political party is “a voluntary organisation, appearing under a specific name, whose objective is participation in public life by influencing State policy by democratic methods or exercising public authority.” According to section 2 PPA, “citizens of the Republic of Poland who have reached the age of 18 years may join a political party as its members.”
9. Political parties acquire legal personality at the moment of their registration in the Register of Political Parties, section 16 PPA.

### Founding and registration of political parties

10. Political parties are founded by common declaration of will of its founding members. Section 8 PPA obliges political parties to base their structures and basic activities on democratic principles, to ensure openness of structures, to form party organs for elections and to adopt resolutions by a majority of the votes cast by their members. The articles of association (internal rules) which are to be adopted by the general assembly or by representatives elected in a democratic procedure must determine the aims, the structure and principles of activity.<sup>2</sup>
11. Pursuant to section 1 PPA, political parties may exercise the rights provided by law after being entered in the Register of Political Parties maintained by the District Court in Warsaw. In order to be registered, a political party has to submit an application<sup>3</sup> specifying the name, abbreviated

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<sup>1</sup> See also article 23a PPA - and article 107 SESS which stipulates that “the financing of an election campaign shall be overt”.

<sup>2</sup> See section 9 PPA, which contains further details.

<sup>3</sup> See section 11 PPA.

name, principal address of the party, as well as the names, surnames and addresses of the members of the body which is authorised by the articles of association to represent the party outside and to incur property liabilities. The application must also include the articles of association of the party and a list of at least 1,000 citizens who are at least 18 years old, have full legal capacity and support the application. It is to be submitted by three members of the representative body mentioned above, who have to take responsibility for the application and certify the data included.

12. If the application has been made in accordance with the legal requirements, the District Court has to register the party without delay.<sup>4</sup> In case of violation of the rules contained in section 11 PPA the court is to refuse the registration, after having granted additional time to the party concerned to comply with the rules. The party has the right to appeal against the court decision. In case of doubt as to whether the aims and activities of a party are compatible with the Constitution, the court submits a motion to the Constitutional Tribunal which will take a final decision on the matter.
13. In December 2007, there were 83 parties registered in Poland. Information on the Register of Political Parties can be obtained by anyone for a charge, in the form of certified copies of the register or of excerpts from the register and the articles of association of political parties.<sup>5</sup>

#### Participation in elections

14. Poland is a parliamentary republic with a multi-party system, whose current constitution dates from 1997. Its Head of State is the President, elected by direct popular vote every five years. Its legislature is the bicameral national Parliament, consisting of the *Sejm* (the Lower Chamber) and the *Senate* (the Upper Chamber). The *Sejm* is composed of 460 deputies who are elected under proportional representation in 41 voting districts (at least seven deputies per district). Mandates are divided between the political parties and election committees of voters which receive at least five percent of the national vote and registered party coalitions which receive at least eight percent; election committees established by voters which are associated in a registered organisation of ethnic minorities are exempt from this threshold.<sup>6</sup> The 100 members of the Senate are elected under a plurality bloc voting method where several candidates (two to four) with the highest support are elected from each constituency. Elections to both chambers of Parliament are conducted jointly, in principle every four years. Candidates for both chambers of Parliament may be nominated by political parties or by election committees of voters.
15. Every citizen of Poland who has attained 18 years of age has the right to vote in elections to the *Sejm* and to the Senate, unless he or she has been deprived either of his or her public rights by a final court decision, or of his or her electoral rights by final decision of the Tribunal of State, or of his or her legal capacity by a final court decision.<sup>7</sup> Under the same conditions, Polish citizens who are qualified according to special provisions of the Statute on Elections to the *Sejm* and to the Senate – and who have not been deprived of their right to be elected by a final court decision, as a result of submission of a false statement on collaboration with the communist security services, have the right to stand as candidates for either the *Sejm* or the Senate, but not

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<sup>4</sup> Section 12 § 1 PPA.

<sup>5</sup> Section 18 PPA.

<sup>6</sup> See sections 133 and 134 SESS.

<sup>7</sup> Sections 6 and 7 SESS.

simultaneously.<sup>8</sup> According to the special provisions a candidate for the *Sejm* must be over 21 years of age and a candidate for the Senate at least 30 years of age on polling day.<sup>9</sup>

16. The election campaign is exclusively conducted by election committees who act on behalf of political parties, of party coalitions and of voters.<sup>10</sup> They engage, in their name, in electoral activities, in particular the nomination of candidates for the *Sejm* and candidates for the Senate. As regards political parties, the organ authorised to represent the party in its external contacts also acts as its election committee. Election coalitions, which may be formed by several political parties in order to submit joint lists of candidates, have to establish an election committee whose – at least ten – members are nominated by the parties' organs authorised to represent them in their external contacts. Finally, election committees of voters may be formed by at least 15 citizens eligible to vote, with the support of at least 1,000 citizens eligible to vote. The creation of an election committee, as well as information on the agent of the committee – who is authorised to act for and in the name of the committee – and on its financial agent – who is responsible for the management of the financial resources of the committee –, must be notified to the National Electoral Commission which will accept the notification within three days if the legal requirements are met. On the day of acceptance of the notification, the election committee acquires legal personality to exercise the duties arising from the Statute on Elections to the *Sejm* and to the Senate. The responsibility for liabilities of an election committee is borne by the political party which created the election committee, jointly by those political parties that are members of a coalition's election committee or jointly by the persons who are members of an election committee of voters.
  
17. As regards the submission of lists of candidates for deputies in the *Sejm*, an election committee has the right to submit in each constituency only one list of candidates to the constituency electoral commission, until the 40<sup>th</sup> day before polling day. A constituency list which is supported by the signatures of at least 5,000 voters who permanently reside in a given electoral constituency is valid if confirmed by a certificate of the National Electoral Commission, issued on a motion of the election committee.<sup>11</sup> Candidates for senators are to be nominated separately, with the support of the signatures of at least 3,000 voters; when an election committee submits more than one candidate for senator, then the submission of each one must be supported by separate lists of signatures of voters.<sup>12</sup> District lists of candidates for deputies and submissions of candidates for senators are verified by the constituency electoral commissions as to their compliance with legal requirements; in case of flaws the election committee concerned is summoned to make the necessary rectifications and in case of failure to do so a denial of registration is issued which can be appealed to the district court or, in certain cases, to the National Electoral Commission. The election campaign starts on the day of proclamation of the President of the Republic's order on elections – which is issued no later than 90 days prior to expiry of four years from the beginning of the term of office of the *Sejm* – and ends 24 hours before polling day.<sup>13</sup>
  
18. Elections at regional and local level are governed by the Statute on Elections to Local Self-Governments of 1998 and the Statute on Direct Election of Village, Town and City Administrators of 2002. Poland is divided into 16 *voivodships* (provinces), in which administrative authority is shared between a government-appointed governor, an elected assembly and an executive

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<sup>8</sup> Section 8 SESS.

<sup>9</sup> Sections 131 and 188 SESS.

<sup>10</sup> See sections 95 – 106 SESS.

<sup>11</sup> See sections 139 – 154 SESS.

<sup>12</sup> See sections 194 – 198 SESS.

<sup>13</sup> Section 85 SESS.

chosen by that assembly. *Voivodships* are further divided into *poviats* (counties) and *gminas* (communes or municipalities). The *gmina* is the basic unit of administrative division in Poland. The legislative and controlling body of each *gmina* is the elected municipal council, and executive power is held by the directly elected mayor of the municipality. The municipal council – as well as the mayor – is elected every four years, at the same time as the corresponding authorities at *voivodship* and *poviat* level. The right to vote and to stand as a candidate in elections to the municipal council, as well as the right to vote in elections of the mayor, is extended to 18 year old citizens of the European Union (21 years in case of candidates) who permanently reside in the given municipality, are entered in the permanent register of voters kept by the municipality and are not deprived of their right to vote or to be elected in their State of origin. Election campaigns at regional and local level are conducted solely by election committees who operate on behalf of political parties, coalitions of parties, associations, social organisations and voters.

19. As regards elections to the European Parliament, the right to vote extends to 18 year old citizens of the European Union permanently residing in Poland, who are entered in the permanent register of voters and are not deprived of their right to vote in their State of origin. The right to stand as a candidate extends to 21 year old citizens of the European Union who have the right to vote, who have resided for at least five years in the territory of the European Union and have no convictions for an intentional offence prosecuted on public accusation.
20. Elections of the President of Poland<sup>14</sup> are held every 5 years. The right to vote is vested in Polish citizens with the right to vote in elections to the *Sejm* and Senate; candidates for elections must, in addition, be at least 35 years of age. The candidate who obtains more than half of the valid votes is elected; in case none of the candidates obtain such a majority, the President is elected among those two candidates who obtained the greatest number of votes, in a second round. Candidates are submitted to the National Electoral Commission by citizens acting through election committees, and supporting signatures of at least 100,000 Polish citizens having the right to vote in elections to the *Sejm* are required. Election committees of individual candidates are created by at least 15 voters, and they are registered by the National Electoral Commission upon written support of at least 1,000 voters for the candidate. The committees perform electoral activities, conduct the election campaign and finance it. Political parties can only support election campaigns financially and conduct them with the consent and on behalf of election committees.
21. Elections are conducted by the National Electoral Commission as the permanent, supreme institution since 1991, as well as by election commissioners (judges appointed by the National Electoral Commission) and *voivodship*, *poviat*, *gmina* and circuit electoral commissions. One of the tasks assigned to the National Electoral Commission, which is supported by an administrative division called the National Electoral Office, is the supervision of the observance of electoral laws, including political financing regulations.<sup>15</sup>

#### Party representation in Parliament

22. In the elections to the *Sejm* and Senate held on 21 October 2007, seats were obtained by the following parties, coalitions and groups of voters: in the *Sejm*, by *Platforma Obywatelska Rzeczypospolitej Polskiej* (Civic Platform – 209 seats), *Prawo i Sprawiedliwość* (Law and Justice – 166 seats), the coalition “*Lewica i Demokraci* SLD+SDPL+PD+UP” (Left and Democrats – 53 seats), *Polskie Stronnictwo Ludowe* (Polish People’s Party – 31 seats) and the Election Committee of Voters “German Minority” (1 seat); in the Senate, by *Platforma Obywatelska*

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<sup>14</sup> See section 8a of the Statute on the Election of the President of the Republic of Poland.

<sup>15</sup> See section 39 SESS.

*Rzeczypospolitej Polskiej* (60 seats), Prawo i Sprawiedliwość (39 seats) and the Election Committee of Voters “*Cimoszewicz* to the Senate” (1 seat). Altogether, 28 election committees of parties, one committee formed by a coalition of four parties and 23 committees of voters participated in these elections.

## Overview of the political funding system

### Sources of funding

23. Pursuant to section 24, paragraph 1 PPA, the funding of political parties may consist of membership fees, donations, legacies, bequests, revenues from assets and allocations from the State budget, i.e. subsidies and subventions specified by law. A political party is prohibited from engaging in any commercial activities and it may not organise public collections. Funds may be transferred to a political party solely by natural persons, and funds transferred by non-citizens of Poland residing abroad or by foreigners residing in Poland are prohibited.<sup>16</sup> The authorities indicated to the GET that anonymous contributions are excluded, as political parties are obliged to submit each year a report covering the sources of funds received – and including lists of donors – to the National Electoral Commission, and as parties are prohibited from organising public collections. Finally, it should be noted that the financial resources of a political party, except for those deriving from membership fees which remain in territorial units in order to pay for their current activities, may be accrued only in bank accounts.<sup>17</sup>
24. As for the financing of election campaigns, political parties have to create a permanent Election Fund to finance their participation in elections to the *Sejm* and to the Senate, in elections of the President of Poland as well as in local elections.<sup>18</sup> Expenses for election campaigns are made solely from the party’s Election Fund, whose financial resources are accumulated in a separate bank account, by the party’s election committee; the financial resources collected for the Election Fund may be derived only from transfers of the political party’s own resources, from donations, legacies and bequests,<sup>19</sup> and the funds of the election committee may derive only from the Election Fund. The financial agent of the Election Fund realises and is responsible for its financial administration.<sup>20</sup> Election committees of coalitions, representing election coalitions of political parties, are financed from funds accumulated in Election Funds of these parties. Election committees of party coalitions and election committees of voters may accept funds from natural persons with the limitations applicable to political parties mentioned above.<sup>21</sup>
25. Private party funding is restricted to natural persons. Entities such as corporations, foundations, trade unions or associations are not allowed to make contributions to political parties. These entities have no legal recognition in respect of election financing activities.
26. There are no specific provisions for contributions made to individual candidates, because candidates are prohibited from individually spending election funds, as the right to conduct and finance election campaigns is restricted to election committees. A candidate may make contributions to the Election Fund of a party or to an election committee on the grounds of general principles applicable to all natural persons.

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<sup>16</sup> Section 25 §§ 1 and 2 PPA.

<sup>17</sup> See sections 24 § 8 and 26a PPA.

<sup>18</sup> Section 35 PPA.

<sup>19</sup> Section 36 § 1 PPA.

<sup>20</sup> Section 35a § 1 PPA.

<sup>21</sup> See section 111 SESS.

27. The Statute on the Election of the President of the Republic of Poland contains specific regulations which differ from some of the aforementioned principles.<sup>22</sup> Funds of election committees of candidates for the presidency may originate from Election Funds of political parties, from donations by natural persons (limited to 15-times the minimum monthly wage of a worker which is currently 1,126 Polish zlotys – PLN / 327 Euros), from donations by legal persons and other organisational units (limited to 100-times the minimum monthly wage) and from public collections. By contrast, presidential election committees may not receive funds originating from the State budget, State organisational units, from the budget of local government units and affiliated entities, from State enterprises and enterprises with a stake in the State Treasury or local government units and affiliated entities, from entities which within two years preceding the day of ordering of elections used public funding (with the exception of political parties) and from affiliated entities, from foreigners, foreign entities and entities without a seat in Poland, legal persons with participation of foreign entities, foreign diplomatic agencies, consular offices, special missions and international organisations and other foreign agencies enjoying diplomatic and consular immunities and privileges.

#### Public funding

28. There are two forms of direct public funding of political parties or election committees, both of which are covered by the State budget. Firstly, subject subsidies are allotted once, after parliamentary elections have been held, to parties and election committees of voters for each seat gained (*Sejm* or Senate); the method for allocation is specified in section 128 SESS. Secondly, subventions for statutory activities of political parties are paid yearly (in four equal quarterly instalments) during the term of office of the *Sejm*, to those parties which obtained at least three percent of valid votes cast in elections to the *Sejm* or which are members in an election committee of a coalition having obtained at least six percent; the method for allocation, which is based on the principle of gradual reduction, in proportion to the quota of valid votes gained, is specified in section 29 PPA. The financial resources of the subvention must be deposited in a separate bank sub-account of the political party.
29. The authorities indicated that in 2007, public funds (originating from State budget subventions) constituted from 54 to 90 % of revenues of those political parties which are entitled to such funds. Representatives of several large parties met by the GET stated that in 2007, 80 to 90 % of their income derived from public funds. Furthermore, the GET was provided detailed statistics on public subventions and subject subsidies to be paid to political parties and election committees during the period 2006-2008.<sup>23</sup> According to those statistics, seven political parties were entitled to an annual subvention from the State budget during that period, the gross amount of which was 94,833,806 PLN / 27,501,804 Euros in 2006 and in 2007 respectively and 107,262,899 PLN / 31,106,241 Euros in 2008; the biggest shares of those subventions were allotted to *Platforma Obywatelska Rzeczypospolitej Polskiej* (Civic Platform – 22,556,046 PLN / 6,541,253 Euros in 2006 and 2007, 37,966,470 PLN / 11,010,276 Euros in 2008) and to *Prawo i Sprawiedliwość* (Law and Justice – 24,022,896 PLN / 6,966,640 Euros in 2006 and 2007, 35,508,067 PLN / 10,297,339 Euros in 2008). As regards subject subsidies paid in connection with elections, the statistics show that, for example, after the 2007 elections to the *Sejm* and to the Senate the total amount of 74,872,484.96 PLN / 21,713,021 Euros was paid; these subsidies were divided between nine parties and the biggest shares were allotted to *Platforma Obywatelska*

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<sup>22</sup> The GET was informed after the visit that a draft law amending the Statute on the Election of the President of the Republic of Poland was submitted to Parliament on 29 November 2008.

<sup>23</sup> The statistical data provided by the authorities is attached as Appendix A to the present report.



*Rzeczypospolitej Polskiej (29,427,920.77 PLN / 8,534,097 Euros) and to Prawo i Sprawiedliwość (28,285,522 PLN / 8,202,801 Euros).*

30. As regards indirect public funding, all the election committees participating in elections to the *Sejm* are entitled to free airtime on State television and radio stations, for the purpose of election broadcasts and election announcements, from the 15<sup>th</sup> day preceding elections until the end of the election campaign. The time available for campaigning is split evenly among all election committees entitled to take part in the elections. The sequence of election programmes to be broadcast each day is established by way of a draw, in the presence of representatives of all election committees.<sup>24</sup>

#### Private funding

31. The amount of membership fees may not exceed in a year, for one member of a political party, a minimum monthly wage (sum established by separate regulations –the rate applied is the one in force on the day preceding the payment, currently 1,126 PLN / 327 Euros).<sup>25</sup> The authorities indicated that the amount of membership fees is established by an internal party decision, that fees may be flat or differentiated and that some (or even all) members may be exempt from any payment.
32. The total value of contributions made by an individual to one political party, excluding membership fees which do not exceed in the year one minimum monthly wage, may not exceed in a year 15-times the minimum monthly wage, valid on the day preceding the payment. The same threshold applies to an individual's contributions transferred to the Election Fund of one political party. Furthermore, the law prescribes that a single transfer which exceeds the minimum monthly wage may be paid to a political party by cheque, bank transfer or bank card only.<sup>26</sup> Therefore, cash donations to political parties are admitted as long as a single transfer does not exceed this threshold and it is paid to the bank account of the party concerned. By contrast, payments to the Election Fund may be made solely by cheque, transfer or credit card, regardless of the amount.
33. As for contributions to election campaigns of political parties, the aforementioned restrictions also apply in respect of transfers to Election Funds as seen above. The threshold of 15-times the minimum monthly wage p.a. also applies to an individual's contributions to an election committee of a coalition or an election committee of voters, but it increases to 25-times the minimum monthly wage p.a. in case there is more than one election or national referendum held in a given year. Contributions to an election committee of a coalition and to an election committee of voters may be made by cheque, bank transfer, or credit card only.<sup>27</sup>
34. Political parties must not accept anonymous donations nor contributions from legal persons which also excludes donations from non-profit legal persons or associations which do not hold the status of a legal person.
35. Revenue from assets may originate solely from interest on funds accumulated on bank accounts and deposits, from trade in treasury bonds and bills of the State Treasury, from sale of property assets belonging to the party and from activities such as the sale of party statutes and programmes, of objects symbolising the party, of publications promoting the party's objectives

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<sup>24</sup> See sections 180 – 186 SESS.

<sup>25</sup> Section 25 § 4 PPA.

<sup>26</sup> See section 25 §§ 4 and 5 PPA.

<sup>27</sup> See sections 36a PPA and 113 SESS.

and activities, and the performance of petty services for third parties with the use of own office equipment.<sup>28</sup>

36. The provisions of the Political Parties Act and of the election laws do not contain any restrictions imposed on contributions made to members of Parliament. The authorities indicated, however, that the receipt of property benefits by persons exercising public functions is regulated by separate legislation.<sup>29</sup> As regards contributions made by MPs to political parties or to Election Funds, the general principles applicable to all natural persons are valid.
37. Political parties cannot be engaged in any business activities and they may not organise public collections.<sup>30</sup> This prohibition does not include the above-mentioned income earned on political parties' assets and fundraising activities of political parties and election committees – limited to above-mentioned contributions permitted by the law –, but fundraising is subject to formal requirements. All requests and written information supplied by a political party with the aim of obtaining funds must quote the content of certain provisions containing restrictions of political financing, including the annual thresholds for contributions by a natural person to political parties and to election committees as well as the corresponding sanctions in case of violation.<sup>31</sup>
38. Pursuant to section 24, paragraph 7 PPA, political parties can receive loans and credits for statutory purposes. The authorities indicated that parties may therefore obtain loans only from banks. In accordance with section 111, paragraph 6 SESS, election committees may contract bank loans for purposes connected with the election.
39. The authorities indicated to the GET that contributions to political parties or to Election Funds are not tax deductible, as the statutory activities of political parties are not regarded as socially useful activities conducted by a public benefit organisation in the sphere of public tasks as specified in section 4 of the Public Benefit and Volunteer Work Act.
40. Material benefits transferred to or accepted by a political party or by an Election Fund in violation of some of the aforementioned financing restrictions, *inter alia* the prohibition to accept contributions from legal persons, to accept contributions from an individual above certain thresholds, or to organise public collections, are to be transferred to the State Treasury;<sup>32</sup> the authorities indicated to the GET that the same rule applies to anonymous donations. This obligation extends to equivalents if the benefit received has been accepted, utilised or lost. However, no transfer to the State Treasury is required in respect of those benefits which have not been accepted by a political party or which have been returned to the donor within 30 days.

#### Expenditure

41. Assets of a political party may be allocated solely for statutory or charitable purposes.<sup>33</sup> Moreover, a political party is obliged to create an Expert Fund which is financed solely from payments from the party concerned and whose financial resources accrue in a separate sub-account of the party.<sup>34</sup> If the party receives subventions from the State budget, it has to transfer from five percent to 15 percent of the subvention to the Expert Fund. Financial resources

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<sup>28</sup> Sections 24 § 4 and 27 PPA.

<sup>29</sup> Act on Limitation of Officials' Commercial Activities of 21 August 1997.

<sup>30</sup> Section 24 §§ 3 and 6 PPA.

<sup>31</sup> Sections 37a PPA and 117 SESS.

<sup>32</sup> Section 39a PPA.

<sup>33</sup> Section 24 § 2 PPA.

<sup>34</sup> Section 30 PPA.

collected in the Expert Fund may be used for financing expertise in the fields of law, politics, sociology and social-economic matters, as well as for financing educational publications connected with the statutory activity of the political party. The authorities indicated to the GET that in addition, expenses for those purposes may also be made from funds accumulated on other bank accounts of the party. With respect to election committees of a party, of a coalition of parties or of voters, there are quantitative expenditure limits on campaigning for elections to the *Sejm* and the Senate: The maximum limit is the amount (in Polish zloty) equal to the number of voters registered nationwide. Limits of expenses of individual committees are proportional to the number of seats in voting districts for the *Sejm* and Senate, in which the committee submitted candidates.<sup>35</sup>

42. In elections to municipal councils, *poviat* councils and voivodship parliamentary councils, expenses of election committees are equally limited. The threshold is calculated by multiplication of the number of seats in the districts in which the committee submitted candidates by amounts depending on the type and number of residents of the local government unit. In respect of those election committees which also submit candidates for election as *wójt*s (village administrators), town and city administrators (mayors), the threshold increases and is then calculated by multiplication of the number of residents of the unit concerned by amounts depending on the number of these residents.<sup>36</sup>

#### Presidential elections

43. In addition to the above-mentioned specific regulations on the permitted sources of funds for election committees of candidates for the presidency (see paragraph 27 above), the Statute on the Election of the President of the Republic of Poland contains certain restrictions with regard to expenditure. In particular, expenses of such a committee are limited to 14,724,000 PLN / 4,270,000 Euros, and expenses from funds originating from public collections / from legal persons (with the exception of political parties) may not exceed 60% of the statutory limit of the committee's expenses.

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

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

#### Books and accounts

44. Political party accountancy applies the relevant provisions of the 1994 Accounting Act and of the ordinance of the Minister of Finance of 23 January 2003 “on principles of conduct of accountancy by a political party”.<sup>37</sup> The Accounting Act requires political parties to keep proper accounts, setting out all debts and assets as well as all contributions received. Contributions are to be recorded both individually and in integrated form, and donors are to be identified by name, surname, address and number of the bank account from which the transfer of funds was made. The accounts must also include credit contracts and non-monetary donations, with a monetary evaluation according to market prices. Information on the parties' expenditure must include the purpose, amount and seller/supplier of goods/services. Expenses for election campaigns are paid from the Election Fund of a party, whose funds are subject to separate accounts to be kept by the party's election committee on the basis of specific regulations concerning non-business

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<sup>35</sup> Section 114 SESS.

<sup>36</sup> Section 24 of the Statute on Direct Election of the Village, Town and City Administrator.

<sup>37</sup> Published in the Journal of Laws of 2003 No. 11, it. 118.

units.<sup>38</sup> By contrast, the party's accounts cover expenses for election campaigns only in the form of transfer of funds from the Election Fund to the account of the party's election committee.

45. The above-mentioned ordinance of the Minister of Finance sets out detailed rules for documentation and registration, obliging political parties to maintain their accounting records in a reliable, correct, verifiable, legible and permanent manner, based on correct and reliable accounting evidence. It specifies what is to be considered as revenues (in particular, membership fees, donations, legacies and bequests, public subsidies and subventions specified by law, interest on funds accumulated on bank accounts and deposits, revenues from trade in treasury bonds and bills of the State Treasury, revenues from sale of property assets belonging to a political party and revenues from activities mentioned in section 27 PPA) and as costs of a political party (costs connected with performance of statutory tasks, financial costs and other costs, including costs of transfer of property to charity), which must be recorded. The accounting records must also allow to establish the status of receivables and payables with respect to contracting parties, employees and party members. Furthermore, the ordinance obliges political parties to draft annual financial statements comprising a balance sheet (showing balances of assets and liabilities at the day of closure of the books of the previous and current fiscal year), a profit and loss account (showing separately revenues and costs, profits and losses for the previous and current fiscal year) and additional information; additional information must, *inter alia*, include data on the subvention received from the State budget (balance of subvention funds at the start of the reporting period, amount of subvention received during the reporting period, subvention funds transferred to the Expert Fund and to the Election Fund, expenses from subvention funds incurred for statutory purposes, subvention funds used for repayment of bank loans and credits incurred for financing of statutory activity, other expenses charged to subvention funds, balance of subvention funds, at the end of the reporting period) and on State budget subventions transferred to the Expert Fund (balance of the funds of the Expert Fund originating from subventions at the start of the reporting period, funds transferred during the reporting period to the Expert Fund, expenditure incurred during the reporting period from the funds of the Expert Fund originating from subventions, balance of the funds of the Expert Fund originating from subventions, at the end of the reporting period).

#### Reporting obligations

46. The above-mentioned accounting documents of political parties and election committees, including the parties' annual statements, are not subject to any reporting obligation. By contrast, political parties and election committees are required to submit specific reports to the National Electoral Commission as detailed below.
47. As regards political parties, they are firstly obliged to submit a yearly financial report on the subvention received from the State budget and the expenditure charged to the subvention, together with the opinion and report of an auditor appointed by the National Electoral Commission.<sup>39</sup> The report is to cover a calendar year and is to be submitted by 31 March of the following year. Its obligatory content and annexes are specified by ordinance of the Minister of Finance which also contains a specimen of the report.<sup>40</sup> In particular, the report must include information on the amount of the subvention received, on expenses of the political party

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<sup>38</sup> Section 118 SESS and section 84c of the Statute on Elections of the President of the Republic of Poland. – Further regulations are contained in ordinances of the Minister of Finance concerning election committees participating in elections to local and regional elections (ordinance of 23 August 2002) and in elections to the European Parliament (ordinance of 31 March 2004).

<sup>39</sup> Section 34 PPA.

<sup>40</sup> Ordinance of the Minister of Finance of 23 July 2001, published in the Journal of Laws No. 81, it. 881.

(amounts transferred to the Expert Fund and the Election Fund, expenses incurred for statutory purposes – such as remunerations, social insurance and other benefits, consumption of materials and energy, outsourced services, including mass media, taxes and charges –, repaid bank credits with interest, expenses incurred which are not in compliance with the purpose specified in section 28, paragraph 1 PPA i.e. statutory purposes), the unused amount of the subvention and expenses charged to the Expert Fund (for legal, political, sociological and socio-economic expert opinions, for publishing/educational activities and for purposes which are not in compliance with the intention specified in section 30, paragraph 4 PPA).

48. Secondly, political parties have to submit, by 31 March of each year, a report on sources of funds and on expenses charged to the Election Fund in the previous calendar year, together with the opinion and report of an auditor appointed by the National Electoral Commission.<sup>41</sup> The content of the report is specified by ordinance of the Minister of Finance, which also contains a specimen of the report.<sup>42</sup> The report must cover all party income deriving from public as well as private sources including donations and, separately, income and expenditure on the Election Fund; other party expenses are not to be reported. In particular, the information on sources of funds must include funds paid into bank accounts of the party (originating from membership fees, donations, legacies and bequests from natural persons, interest on funds in bank accounts and deposits, possession of and trade in State Treasury bonds and bills, sale of assets belonging to the party, activities mentioned in section 27 PPA, bank credits – with specification of contractual terms, received subject subsidy, received subvention, funds originating from the petty cash register of the party and placed in the party's bank accounts) as well as funds paid to the petty cash register of the party (membership fees and other contributions/donations not exceeding in a single year the minimum monthly wage, funds originating from activities specified in section 27 PPA), furthermore non-monetary values, covering donations in kind, legacies, bequests, services provided free of charge for the party, funds deriving from other sources and, finally contributions made in contravention of PPA regulations and property benefits transferred to the party in contravention of legal regulations, which have been accepted, consumed or lost. In the latter cases, political parties are obliged to submit personal data of the persons from whom the funds originated. All the aforementioned contributions (including illegal contributions) must be reported individually, indicating their nature and amount/value and identifying the contributor. Furthermore, the following source documents are to be attached to the report: bank account agreements for current accounts and for the Election Fund account, bank statements from the operated bank accounts as for the last day of the reporting period and a history of each account, furthermore – if need be – bank credit contracts, contracts and other documents concerning lending of real estate owned by the party and a statement of account operated with a brokerage office confirming revenues from trade in State Treasury bonds and bills.
49. As regards election committees which are formed by political parties, by coalitions of parties or by voters in view of participation in elections, they are equally obliged to submit reports to the National Electoral Commission, within three months after polling day<sup>43</sup> (four months in the event of elections to the European Parliament). The "election reports" must contain information on revenues including donations, expenses and financial liabilities of the election committee concerned and they must be accompanied by the written opinion of a competent auditor (except in case of local elections, but the control body can order expert opinions or reports by an expert auditor). The requirements to be met by the reports are detailed in specific ordinances of the Minister of Finance for each kind of election in which the election committees participate, i.e. for

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<sup>41</sup> Section 38 PPA.

<sup>42</sup> Ordinance of the Minister of Finance of 18 February 2003, published in the Journal of Laws No. 33, it. 269.

<sup>43</sup> See section 120 SESS, with regard to elections to the *Sejm* and to the Senate.

elections to the *Sejm* and to the Senate,<sup>44</sup> for presidential elections,<sup>45</sup> for elections to the European Parliament<sup>46</sup> and for local and regional elections.<sup>47</sup> Those ordinances also comprise specimens of the required reports.

50. With respect to elections to the *Sejm* and to the Senate,<sup>48</sup> the election reports must contain firstly, general information, including on revenues or proceeds (funds accumulated in bank accounts, including originating from natural persons and from interest on funds in bank accounts, credits, Election Fund or Election Funds of parties participating in an election coalition and other proceeds; value of non-monetary donations received, including value of donations in kind; value of services performed free of charge for the election committee), expenses or costs (consumption of materials and energy; outsourced services, including mass media, execution of election materials, costs of election meetings and travel and other costs; remunerations and derivative costs; other cash expenses), utilisation of non-monetary donations received, expenses incurred above the limit specified in section 114, paragraph 2 (1) or (2) SESS and campaigning expenditure on advertising incurred above the limit specified in section 115 SESS. Secondly, the reports must present detailed information on the turnover in the bank account, on the names of natural persons who made payments to election committees, on payments made above the limit specified in section 113, paragraph 3 SESS, on the names of natural persons from whom donations, legacies and non-monetary bequests were obtained and on the values of these contributions, on the names of natural persons who performed services free of charge for the committee, on received bank credits, repaid and pending for repayment, including the contractual terms, on creditor providers, on entities providing credit guarantees, on creditors, on the Election Funds from which the funds of the committees originate, including specification of the amounts, on liabilities remaining on the last day of the reporting period and on the amount of the surplus mentioned in section 116 SESS. Furthermore, source documents concerning all revenues and expenses of the election committee concerned are to be attached to the report.
51. Apart from the aforementioned obligations to report to the National Electoral Commission, section 27, paragraph 1 of the Act on Corporate Income Tax requires political parties, which are legal entities, to submit an annual corporate income tax statement to the tax authorities, in spite of political parties' exemption from income tax.<sup>49</sup>
52. As regards the preservation of records of political parties and election committees, the authorities indicated to the GET that pursuant to section 86 of the Tax Law, taxpayers are obliged to keep books and to store them and related documents for the prescribed period of tax liability, i.e. at least for five years. By contrast, this rule does not apply to the reports submitted by parties and electoral committees to the National Electoral Commission, as they are not records maintained for tax purposes. The authorities indicated that the National Electoral Commission stores financial statements together with attached documents as permanently archived files for a period of at least five years from the end of the accounting period concerned.<sup>50</sup>

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<sup>44</sup> Ordinance of 23 July 2001, see paragraph 47 above.

<sup>45</sup> Ordinance of 19 July 2000, published in the Journal of Laws of 2000 No. 65, it. 764.

<sup>46</sup> Ordinance of 31 March 2004, published in the Journal of Laws of 2004 No. 53, it. 528.

<sup>47</sup> Ordinance of 23 August 2002, published in the Journal of Laws of 2002 No. 134, it. 1127, as amended.

<sup>48</sup> The other ordinances contain similar provisions with regard to the respective reports of election committees.

<sup>49</sup> See section 17 § 1 it. 39 of the Act on Corporate Income Tax.

<sup>50</sup> On the basis of ordinances of the Minister of Culture and National Inheritance on storing of election documents.

## Publication requirements

53. Whereas political parties and election committees are not themselves required to disclose their financial accounts and reports, the National Electoral Commission has to publish the reports which are submitted to it by those entities. Although the law does not oblige the Commission to publish them via the Internet, the GET was told that in practice reports are made available on its website.<sup>51</sup> More specifically, the political parties' yearly financial reports on the subvention received and the expenditure charged to the subvention are to be published, together with an opinion and report of an expert auditor, by the National Electoral Commission in the Official Journal of Poland ("Monitor Polski") within 14 days following its submission to the commission.<sup>52</sup> The same rule applies to the political parties' yearly reports on sources of funds and on expenses charged to the Election Fund, together with an opinion and report of an expert auditor in case the party concerned has an Election Fund.<sup>53</sup> As regards the election reports of election committees participating in elections to the *Sejm* and to the Senate or in elections to the European Parliament, they are to be published in the same manner – but without the opinion and report of an expert auditor – by the National Electoral Commission within four months after polling day. Election reports concerning presidential elections must be published within seven days after their submission to the Commission.<sup>54</sup> As regards election reports of committees participating in local elections, they are announced in the Public Information Bulletin of the National Electoral Commission in case the committee concerned operates in the territory of more than one *voivodship*; otherwise, the reports are made available by an election commissioner on request by interested entities.<sup>55</sup>

## Access to accounting records

54. The aforementioned publication requirements for reports of political parties and election committees do not extend to source documents which are attached to those reports. By contrast, the authorities indicated to the GET that such source documents constitute public information within the meaning of the Act on Access to Public Information of 2001 and are therefore available to anyone, without a need to show a legal or actual interest.
55. The authorities indicated that legal persons and therefore political parties are subject to tax control. Authorised tax inspectors may demand access to files, books and all kinds of documents connected with the subject of inspection and make extracts, copies, excerpts, notes, printouts and documented collection of data in electronic form; in certain cases, inspectors may demand surrender of such documents for the duration of inspection.<sup>56</sup> Moreover, in case of criminal proceedings the Public Prosecution Service (during investigations) and the courts (in cases pending before them) have full access to accounting records of these entities. Objects which may serve as evidence are to be surrendered upon request (which may also be made by the police, e.g. in cases of urgency) and are subject to seizure in case of refusal.<sup>57</sup>

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<sup>51</sup> <http://www.pkw.gov.pl>

<sup>52</sup> Section 34 § 4 PPA; cf. paragraph 47 above.

<sup>53</sup> Section 38 § 4 PPA ; cf. paragraph 48 above.

<sup>54</sup> Section 121 § 1 SESS, section 87g § 7 of the Statute on the Election of the President of the Republic of Poland, section 94 § 1 of the Statute on Elections to the European Parliament; cf. paragraph 49 above.

<sup>55</sup> Section 84 § 6 of the Statute on Elections to Local Self-Governments.

<sup>56</sup> See sections 281 and 286 of the Tax Law.

<sup>57</sup> Section 217 of the Code of Criminal Procedure.

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

Auditing

56. The following reports of political parties and election committees are subject to an assessment performed by an expert auditor: the political parties' yearly financial reports on the subvention received and the expenditure charged to the subvention, the yearly reports on sources of funds and on expenses charged to the Election Fund of those political parties who have an Election Fund, as well as the election reports of election committees participating in elections to the *Sejm* and to the Senate, in elections of the President of the Republic of Poland or in elections to the European Parliament; election reports of committees created in connection with local elections are not subject to mandatory review, whereas expert opinions and reports of expert auditors may be drafted on order of the body reviewing a report.<sup>58</sup> The auditor has to prepare a report and an opinion which must be submitted to the National Electoral Commission, together with the relevant report of the party or the election committee. The auditor has access to the entire financial documentation of the reviewed entity.<sup>59</sup> The cost of auditing is covered by the National Electoral Office i.e. by the State budget, and the auditor is appointed by the National Electoral Commission from among candidates submitted by the National Board of Auditors in a number agreed with the National Electoral Commission. The authorities indicated to the GET that the National Electoral Commission charges one expert auditor with drafting reviews of one to three reports per year and that in subsequent years, the auditor does not review reports of the same entities. The due pursuit of the profession of expert auditor and compliance with procedures of review of financial reports are controlled by the National Supervision Commission, a body of the National Chamber of Expert Auditors which in turn is supervised by the Minister of Finance.<sup>60</sup>

Monitoring

57. The National Electoral Commission reviews the reports submitted by political parties and election committees along with the attached documents including the auditor's report and opinion, i.e. (1) the political parties' yearly financial reports on the subvention received and the expenditure charged to the subvention, (2) the political parties' yearly reports on sources of funds and on expenses charged to the Election Fund as well as (3) the election committees' election reports.
58. In the event of doubts concerning the accuracy of the information contained in a report, the Commission may ask the political party or election committee concerned to make rectifications or to submit an explanation within a specified time limit; the authorities indicated that if the party or committee does not comply, the National Electoral Commission takes a decision on the basis of the submitted documents. In its examination of election reports, the Commission may order that opinions or expertises be prepared and it may request assistance from State organs when necessary, including law enforcement, criminal justice and tax authorities. According to the authorities, the findings of proceedings conducted by these bodies are used in proceedings conducted by the National Electoral Commission. In contrast, neither the National Electoral Commission nor the National Electoral Office are authorised to conduct investigations themselves. All criminal acts connected with the infringement of principles of financing of political

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<sup>58</sup> See sections 34 § 4 and 38 § 3 PPA, section 120 §§ 1 – 3 SESS, section 87g of the Statute on the Election of the President of the Republic of Poland, section 93 of the Statute on Elections to the European Parliament, section 84a § 3 of the Statute on Elections to Local Self-Governments.

<sup>59</sup> See section 67 of the Accounting Act.

<sup>60</sup> Sections 28a and 30 § 1 of the Law on Expert Auditors and their Self-Governance of 1994, published in the Journal of Laws of 2001 No. 31, it. 359 as amended.



parties and election campaigns are prosecuted on public accusation, and proceedings in such matters are instituted *ex officio*.

59. The National Electoral Commission has to decide within four months following the submission of a report whether to accept it – with or without reservations – or to reject it. A report is to be rejected in case of infringement of certain financing regulations specified by the law: (1) the party reports on the receipt of and expenditure on subventions, in case of their utilisation for purposes not connected with the party's statutory activities;<sup>61</sup> (2) the party reports on sources of funds and on expenses charged to the Election Fund, in case of violation of provisions enumerated in section 38a, paragraph 2 PPA (e.g. the receipt of financial resources from illicit sources) and (3) the election committees' election reports, in case of breach of campaign financing regulations of the relevant election law (e.g. the spending of funds for purposes other than election purposes).<sup>62</sup> In case of rejection of a report, a complaint to the Supreme Court may be submitted within seven days by the party or election committee concerned. The Supreme Court examines the complaint pursuant to the provisions of the Code of Civil Procedure in a non-litigious procedure and takes a definite decision within 60 days following the delivery of a complaint.
60. If a report is not submitted in due time or if it is rejected by the Commission, the party or election committee concerned is subject to sanctions specified by the Political Parties Act and the Statute on Elections to the *Sejm* and to the Senate ranging from the loss of the right to receive subventions or subject subsidies from the State budget (or the reduction of a subsidy) to the removal of a party from the register or the forfeiture to the State Treasury of material benefits received in violation of financing regulations. The latter two sanctions are decided upon by the District Court in Warsaw, on the motion of the Commission.
61. The National Electoral Commission, as the supreme institution competent for the conduct of elections, is responsible for a wide range of tasks, such as supervising the observance of electoral laws – including political financing regulations –, supervising the maintenance and updating of the electoral register and of the creation of the list of voters, appointing Constituency Electoral Commissions and determining and publishing the election results.<sup>63</sup> The National Electoral Commission has operated by virtue of regulations of subsequent statutes of elections to the *Sejm* and Senate since 1991. The GET was informed that its participation in the supervision over the financial management of political parties and election committees has been shaped gradually, mainly in the years 1997-2001, i.e. the period following the entry into force of the Political Parties Act and of the corresponding regulations of the different election laws.
62. The Commission is a permanent institution composed of three judges of the Constitutional Tribunal, three judges of the Supreme Court and three judges of the Supreme Administrative Court, who are designated by the presidents of these courts and appointed by the President of the Republic.<sup>64</sup> Membership of the Commission expires by resignation, on reaching the age of 70, death, nomination as a candidate for the the position of President of the Republic, deputy or senator, or following a motion – the grounds for which are not specified by the law – of the president of the court who designated the judge; the GET was informed that so far, none of the members of the Commission has been dismissed from office in this manner. Members have to fulfil their posts in the Commission independently of their judicial functions. They are entitled to monthly remuneration.

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<sup>61</sup> Section 34a § 1a PPA.

<sup>62</sup> See, for example, a Section 122 § 1 (3) SESS, which contains a list of relevant infringements.

<sup>63</sup> See section 39 SESS, which contains a non-exhaustive list of the Committee's duties.

<sup>64</sup> See sections 36 – 43a SESS.

63. The Commission performs its tasks with the aid of the National Electoral Office, which is its executive organ and has the duty to ensure the organisational, financial and technical conditions for the preparation and conduct of elections and referenda.<sup>65</sup> The Head of the Office is the Secretary of the National Electoral Commission and participates in its meetings in an advisory capacity. Organisational units of the Office are teams and branch offices. The Head of the Office is appointed and removed by the Marshal of the *Sejm* upon the motion of the National Electoral Commission. Neither the Head nor employees of the Office may belong to any political party nor perform any political activities. The authorities indicated that the Office employs altogether 388 staff, eight of which work currently in the “Team for Control of Financing of Political Parties and Election Campaigns”. They further stated that employees performing basic tasks at the Office have university qualifications in the field corresponding to their position.
64. Expenses connected with the daily activity of the National Electoral Commission and of the National Electoral Office are covered by the financial resources allocated to the Commission in the State budget. The GET was informed that the funds allocated to the performance of current tasks, including the control of political party and election campaign financing, amount to approximately 42,000,000 PLN / 12,180,000 Euros (other separate funds are allocated to the organisation of elections and referenda).
65. The National Electoral Commission indicated to the GET that during the period 2001-2007, it reviewed 42 party reports on the receipt of and expenditure charged to subventions, 498 party reports on sources of funds and on expenses charged to the Election Fund and 397 election reports of election committees.

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

66. Both the Political Parties Act and the Statute on Elections to the *Sejm* and to the Senate contain a large number of provisions foreseeing administrative and criminal sanctions and measures for infringements of political financing regulations by political parties and election committees as detailed below. These sanctions are not mutually exclusive. Whereas administrative sanctions are imposed on political parties or election committees, criminal liability for infringements of PPA and SESS regulations in the area of political financing is restricted to natural persons. Most of the criminal sanctions apply to any person within or – as far as no specific party/committee obligations are concerned – outside a political party or election committee.

Administrative sanctions

67. A political party which fails to submit its yearly financial report on the subvention received and expenditure charged to the subvention within the statutory time limit, whose report is rejected by the National Electoral Commission or whose complaint against the Commission's decision is rejected by the Supreme Court, loses the right to receive a subvention in the following year.<sup>66</sup> If a political party fails to submit its yearly report on sources of funds and on expenses charged to the Election Fund within the statutory time limit, the National Electoral Commission has to propose a motion to strike off the party from the register to the District Court in Warsaw which takes a decision after hearing the case, on the sole grounds of failure or not to submit the report.<sup>67</sup> If such a report is rejected by the National Electoral Commission or if the party's complaint against the Commission's decision is rejected by the Supreme Court, the party concerned loses the right to

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<sup>65</sup> See sections 54 – 58 SESS.

<sup>66</sup> Section 34c PPA.

<sup>67</sup> Section 38c PPA.

receive subventions in the three following years in which it would be entitled to receive them.<sup>68</sup> In addition, material benefits accepted by a party in violation of specific financing regulations mentioned in the law are subject to forfeiture (in accordance with the relevant provisions of the Code of Civil Procedure) to the State Treasury, if the benefits have not been returned to the donor within 30 days; the decision on forfeiture is taken by the District Court in Warsaw, on the motion of the National Electoral Commission.<sup>69</sup>

68. In the case of an election committee of a political party, of a party coalition or of voters, which fails to submit its election report on revenues, expenses and financial liabilities of the committee within the statutory time limit, the party/parties (or the committee of voters) concerned are denied the right to receive subject subsidies and – in the event of an election committee of a party or a coalition – subventions, for the entire parliamentary term.<sup>70</sup> If an election report or a complaint to the Supreme Court has been rejected, the subject subsidy as well as the subvention due to the party or election committee are reduced by the amount of three-times the funds obtained or spent in violation of the regulations mentioned in the law.<sup>71</sup> Additionally, material benefits transferred to or accepted by an election committee in violation of specific financing regulations mentioned in the law are subject to forfeiture (in accordance with the relevant provisions of the Code of Civil Procedure) to the State Treasury; the decision on forfeiture is taken by the District Court in Warsaw, on the motion of the National Electoral Commission.<sup>72</sup>

#### Criminal sanctions

69. Sections 49a to 49g PPA penalise violations by any person of specific PPA regulations regarding the funding, the expenditure and the reporting obligations of political parties as follows:

- section 49a, public collection of funds: fine;
- section 49b, paragraph 2, failure to deposit financial funds in bank accounts: fine;
- section 49c, paragraphs 1-3, use of funds of a political party for purposes other than statutory or charitable purposes; pursuit of commercial activity on behalf of the political party; transfer to a political party or receipt, on behalf of a party, of funds in violation of section 25 (e.g. funds made by a non-individual or above the prescribed thresholds): fine from 1,000 up to 100,000 PLN (290 up to 29,000 EUR);
- section 49d, failure to prepare the yearly financial report on the subvention received and the expenditure charged to the subvention, obstruction of the preparation or submission of this report, or submission of false information in this report: fine, restriction of liberty or imprisonment of up to two years (the authorities indicated that the responsibility for the submission of this report rests with the body representing the party and therefore the criminal liability in this respect with the members of this body);
- section 49e, use of funds of an Election Fund for purposes other than those referred to in section 35, paragraph 1 (i.e. participation in specified elections): fine from 1,000 up to 100,000 PLN;
- section 49f, paragraphs 1/2, spending party funds, apart from an Election Fund, for financing election campaigns; failure to prepare the yearly report on sources of funds and on expenses charged to the Election Fund, obstruction of the preparation or submission of this report, or submission of false information in this report: fine, restriction of liberty or imprisonment of up to

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<sup>68</sup> Section 38d PPA.

<sup>69</sup> Section 39a PPA.

<sup>70</sup> Section 125 SESS.

<sup>71</sup> Section 126 SESS.

<sup>72</sup> Section 127 SESS.

two years (the responsibility for the submission of this report rests with the body representing the party and therefore the criminal liability in this respect lies with the members of this body);

- section 49g, paragraphs 1-3, failure to deposit financial resources of an Election Fund in a separate bank account (the authorities indicated that criminal liability in this respect lies with the Fund's financial agent, who is responsible for its financial management, but also with other persons who contributed to such breach of the law); contribution to an Election Fund exceeding the limits specified in section 36a, paragraphs 1/2; failure to specify in the bank contract concluded on behalf of an Election Fund that all payments to the Election Fund must be made exclusively by cheque, bank transfer or by credit card: fine (the authorities indicated that criminal liability in this respect lies with the persons representing the party in execution of the bank contract).

70. Sections 223 to 227 SESS penalise violations by any person – except for section 226, paragraph 1 which addresses election committees' financial agents only – of specific SESS regulations regarding the funding, the expenditure and the reporting obligations of election committees as follows:

- section 223, paragraphs 1-5, obtaining or spending funds of an election committee in violation of section 110, paragraphs 1, 2 or 3 (i.e. for purposes other than election purposes, or before the statutory time); exceeding the expenditure limits provided for election committees in sections 114, paragraphs 1/2 and 236; transferring to or accepting on behalf of an election committee funds or in-kind contributions in violation of section 111, paragraphs 2-4 (e.g. funds made by a non-individual); public collection of funds for an election committee; accepting, on behalf of the election committee of a political party, funds from sources other than the Election Fund of this party: fine from 1,000 up to 100,000 PLN;

- section 224, paragraphs 1-3, failure to deposit financial funds of an election committee in a bank account (the authorities indicated that criminal liability in this respect lies with the committee's financial agent, who is responsible for its financial management, but also with other persons who contributed to such breach of the law); failure to specify in the bank contract concluded on behalf of an election committee that all financial contributions must be made exclusively by cheque, bank transfer or by credit card (the authorities indicated that criminal liability in this respect lies with the persons representing the committee in execution of the bank contract); making payments to the election committee which exceed the limits specified in section 113, paragraph 3: fine;

- section 225, paragraphs 1/2, transfer of financial or in-kind resources between election committees, collecting of funds after the election day or spending of funds after submission of the election report; exceeding the limit for election campaign expenditure of an election committee on advertising as specified in section 115: fine;

- section 226, paragraphs 1/2, failure of the financial agent of an election committee to transfer to a charitable institution the excess of financial resources referred to in section 116, within the prescribed time; failure of the financial agent of an election committee to submit the election report on revenues, expenses and financial liabilities of the committee to the National Electoral Commission; preventing (or impeding) a financial agent from performing his aforementioned duties: fine, restriction of liberty or imprisonment of up to two years;

- section 227, paragraph 1, preventing (or impeding) an auditor from preparing his report or opinion on an election committee's election report: fine, restriction of liberty or imprisonment of up to two years.

## Immunities

71. Members of Parliament are granted immunity from the day of election until the day of expiry of their mandate. The immunity can be lifted by a two-third majority vote of Parliament, on the motion of the Prosecution Service; the case is then passed on to the ordinary criminal courts. Criminal proceedings instituted against a person before the day of his or her election are – as a rule – suspended until the day of expiry of the mandate.

## Statutes of limitation

72. According to the general provisions contained in sections 101 and 102 of the Penal Code, statutes of limitation are for five years in respect of all the above-mentioned criminal offences provided in sections 49a to 49g PPA and 223 to 227 SESS. If, however, criminal proceedings have been instituted against a person during this period of five years, the term is prolonged for a further five years.

## Statistics

73. As regards the political parties' obligation to submit financial reports to the National Electoral Commission, statistics covering the period 2001-2005<sup>73</sup> show that the majority of parties complied with this requirement within the prescribed time limit and that the majority of reports were accepted by the Commission without reservations. However, as far as the reports on sources of funds and on expenses charged to the Election Fund are concerned, several parties submitted no such report at all (e.g. 12 out of 88 parties in 2005) or submission was too late (e.g. seven parties in 2005) and the Commission accepted a number of reports with reservations (e.g. 12 in 2005) and rejected others (e.g. 16 in 2005); furthermore, complaints to the Supreme Court were for the most part rejected (e.g. all ten complaints submitted in 2005), and each year a number of applications to strike off a party from the register were submitted to court (e.g. 17 applications in 2005); the GET was furthermore informed that all the requests for striking off a party from the register were granted by the court (altogether 111 during the period 2001-2007). As concerns the obligation to report on the subvention received and the expenditure charged to the subvention, during the period 2001-2005 all the political parties eligible for a subvention complied with this requirement and no report was rejected by the Commission; however, several reports were accepted with reservations only (e.g. in two out of six cases, in 2005).
74. Concerning the election committees' obligation to submit election reports to the National Electoral Commission, statistics covering different election types during the period 2001-2005<sup>74</sup> show that the large majority of committees complied with this requirement but that with regard to certain elections, a large number of reports were rejected or were accepted only with reservations (e.g. 11 out of 25 reports regarding the 2005 presidential elections were rejected; 12 out of 30 reports regarding the 2002 local elections were rejected and another 12 reports accepted with reservations). Furthermore, almost all complaints submitted to the Supreme Court were rejected (altogether two out of 46 complaints were found justified).
75. According to statistical data on detection of criminal offences regarding political financing regulations provided by the Political Parties Act and the Statute on Elections to the *Sejm* and to

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<sup>73</sup> The statistical data provided by the authorities is attached as Appendix B to the present report.

<sup>74</sup> See Appendix B.

the Senate,<sup>75</sup> the number of offences detected and the number of proceedings instituted have been increasing slightly over recent years. For example, during the period 2001-2002 no such offence based on the SESS provisions had been detected and four and five proceedings had been instituted in 2001 and 2002 respectively, whereas in 2007 five offences were detected and 11 proceedings were instituted. As for offences based on the PPA provisions, none had been detected and no proceedings had been instituted during the period 2001-2003, as compared to one offence detected and two proceedings instituted in 2007. Generally speaking, offences detected and proceedings instituted are more frequent with regard to SESS provisions than to PPA provisions, however, the authorities indicated to the GET that so far there has been only one final and valid conviction – in 2003 – where a fine was imposed on the perpetrator on the basis of SESS provisions.

#### **IV. ANALYSIS**

76. In Poland, the financing of political parties and of election campaigns is subject to two different sets of rules provided by the Political Parties Act of 1997 (hereafter: PPA) on the one hand and the different election laws on the other, i.e. the Statute on the Election of the President of the Republic of Poland of 1990, the Statute on Elections to Local Self-Governments of 1998, the Statute on Elections to the *Sejm* and to the Senate of 2001 (hereafter: SESS), the Statute on Direct Election of the Village, Town and City Administrator of 2002 and the Statute on Elections to the European Parliament of 2004. The Political Parties Act includes provisions on financing of political parties in general, whereas specific rules on financing of election campaigns are set out by the election laws. In addition, a number of ordinances of the Minister of Finance contain more detailed provisions on specific aspects such as accounting and reporting obligations of political parties and election committees, which conduct election campaigns for political parties, for party coalitions or for groups of citizens. Expenses for election campaigns of a political party (or a party coalition) are paid solely from the party's permanent Election Fund. The last significant changes concerning the principles of political financing were made in 2001, when a new system of considerable public funding of political parties (having obtained at least three percent of votes in parliamentary elections) was introduced, together with numerous regulations and procedures aiming at preventing political parties from being financed by illegal sources. The rules forbid collective or institutional contributions as well as anonymous contributions and they place a strict limit on the sum that any one individual may contribute during a year. These rules are supported by the use of the banking system as a means of transferring all monies. Furthermore, political parties and election committees are subject to a number of reporting obligations in respect of public and private funding and of their expenditure.
77. In the view of the GET, the aforementioned legal amendments of 2001 were a significant step towards improving transparency and accountability in the area of political financing in Poland. At the same time, the GET is concerned about certain effects of the new regulations. Firstly, State dependence by political parties is considerable. On average, around 80% of the parties' income comes from the State. In this connection, the GET wishes to draw the attention of the Polish authorities to Article 1 of the Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (hereafter: the Recommendation), according to which State support should be limited to reasonable contributions and States should ensure that any support from the State does not interfere with the independence of political parties. Secondly, it would appear that the new funding system benefits mostly big and established parties, as the allocation of public funds is linked to successful participation in

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<sup>75</sup> The statistical data provided by the authorities is attached as Appendix C to the present report. - It should be noted, though, that the provisions comprised by the submitted statistical data are not completely identical with those identified in the present report as dealing with political financing regulations.

parliamentary elections. Furthermore, the strict rules on reporting have led to some unintended breaches by parties for which the penalties – including a significant fall in State income for a number of parties – have been severe. In the view of the GET, this severe legislation – and its strict application by the monitoring body (the National Electoral Commission) and by the Supreme Court – may create incentives for breaching donation rules. This risk is amplified by the thresholds for contributions per individual, by the expenditure limits for presidential and parliamentary elections – which are, according to some of the interlocutors met by the GET, unrealistically low – and by the fact that the amounts of public funding are not regularly adjusted in line with inflation and are therefore falling in real terms. On the other hand, the GET also noted that there appears to be general agreement between parties, regulators and observers that the legislative amendments have been successful in reducing risks of corruption in the area of political financing in Poland, and it acknowledges the efforts made to create a strict legal framework which fulfils many requirements of the articles of the Recommendation under evaluation, i.e. Articles 8, 11, 12, 13b, 14 and 16. That said, the GET identified some incoherencies and specific deficiencies which need to be addressed as detailed below.

78. First of all, the GET notes that the current system of numerous laws (the Political Parties Act and the different election laws) and ordinances, with many cross-references, is very complicated and contains some incoherencies. The aforementioned laws differ from each other with regard to certain specific aspects such as, for example, the timeframe for the submission of various financial reports to the National Electoral Commission; another example, which was mentioned by party representatives, is the issue of donations in-kind, whose value needs not to be indicated in the local election reports, in contrast to other financial reports. Furthermore, it was particularly highlighted by numerous interlocutors that the Statute on the Election of the President of the Republic of Poland is less precise in wording and less restrictive than the other (more recent) relevant laws. For example, public collections – and therefore anonymous contributions – as well as donations from legal persons remain permissible in presidential campaigns, within specified limits; moreover, there is no limit on 'in-kind' donations. It was pointed out that negative effects of such shortcomings are amplified when presidential elections coincide with parliamentary ones, the outcome being, as practice shows, a lack of transparency in respect of both elections. The GET heard that currently some political parties plan to prepare a single election code, but several interlocutors consider such an approach to be unrealistic. The GET is of the firm opinion that for the sake of best possible transparency and clarity the different regulations on political financing clearly need to be harmonised in order to create a more cohesive and simpler legal framework and to remove the deficiencies contained in the Statute on the Election of the President of the Republic of Poland. In the view of the GET, such legislative amendments would not necessarily imply the establishment of one single election code.<sup>76</sup> The GET recommends **to harmonise the provisions on political financing contained in the Political Parties Act, in the election laws and in the relevant ordinances of the Minister of Finance and, in particular, to align the relevant provisions of the Statute on the Election of the President of the Republic of Poland with the standards set by the other election laws.**
79. The GET is aware that, even in the case of a harmonisation of the different regulations on political financing as recommended, the system of reporting obligations of political parties and election committees will presumably remain rather complicated. Currently, political parties are bound to general accounting rules contained in the Accounting Act and to specific reporting obligations provided by the Political Parties Act, which requires parties to prepare (1) annual reports on sources of funds and on expenses charged to the Election Fund and, in the event of

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<sup>76</sup> The GET was informed after the visit that a draft law amending the Statute on the Election of the President of the Republic of Poland and aiming to align its provisions with the standards set by the other election laws was submitted to Parliament on 29 November 2008.

parties which receive public subventions, (2) annual reports on the subvention received from the State budget and the expenditure charged to the subvention; moreover, after elections, election committees must deliver financial election reports. All these reports are to be submitted to the National Electoral Commission which monitors the compliance with political financing regulations. During the interviews held on-site, party representatives complained about the strict and allegedly formalistic control of those regulations and about difficulties in interpreting the laws. It was pointed out, for example, that there is no clear definition of terms such as “donation” or “legacy”, and that the application of the rules is made even more difficult by the frequent amendments (e.g. the Political Parties Act has been amended on ten occasions during the years 1998–2005). The GET notes, on the one hand, that the legislator has to a certain extent already remedied these difficulties by giving the National Electoral Commission the right to accept financial reports with reservations and to ask parties and election committees to make rectifications or submit further explanations; on the other hand, it appears that the Commission has a large margin of discretion in this respect. Therefore, the GET wishes to stress that parties and election committees need to be given the right to ask advice from the Commission. Further appropriate solutions to interpretation difficulties would be the issuing of (non-binding) opinions by the Commission as well as the organisation of information sessions or training for political parties and election candidates. As the information made available to the GET clearly suggests that a correct understanding of current legislation is generally lacking, the GET recommends **to entrust the National Electoral Commission with the responsibility to assist political parties and election committees to observe the political financing regulations, *inter alia*, by providing advice upon request of parties and election committees.**

#### Transparency

80. As regards the permitted funding sources of political parties and election campaigns, the GET noted that bank loans are an important source of financing politics in Poland. The legislation allows political parties to contract loans for statutory purposes (section 24, paragraph 7 PPA) and election committees, for purposes connected with an election (section 111, paragraph 6 SESS). The conditions of contracted loans must be specified both in the political parties' financial reports (section 38, paragraph 1 PPA) and in the committees' election reports (section 120, paragraph 1 SESS). However, the terms and conditions of granting loans to parties and committees (such as the maximum value of loans, permissible lenders, registration of loans, last date for contracting loans before an election, terms of repayment etc.) are not specifically regulated. The GET was told that the aforementioned reports are normally approved even though the loan is not yet paid. Therefore, situations may arise where, for example, loans are repaid *after* the elections by election candidates from their own resources or by external persons or where loans are written off by the lender (apparently some banks are closely connected to political parties and may thus grant credits on preferential terms). The GET is concerned that such situations, which run counter to political funding principles such as the restriction of campaign financing to the election committees' funds, the prohibition on contributions from legal persons and the thresholds for an individual's contributions, would not be detected in the monitoring process. It would appear, however, that there is no such risk in cases of loans granted to political parties for the purpose of election campaign financing, as those loans are paid off from the Election Fund and are therefore under sufficient control. Consequently, the GET recommends **to take appropriate measures to ensure that loans granted to political parties for statutory purposes and to election committees of voters are not used to circumvent political financing regulations, by ascertaining in particular whether loans are reimbursed in conformity with the terms under which they were granted.**



81. As indicated above, current legislation obliges political parties to submit to the National Electoral Commission annual reports on sources of funds and on expenses *charged to the Election Fund* in the previous calendar year and, in the case of parties which receive public subventions, annual reports on the subvention received from the State budget and the expenditure *charged to the subvention*. The level of detail required by the Political Parties Act and by specific ordinances of the Minister of Finance is quite high. However, those reports are incomplete in so far as they do not cover all the expenses incurred by a party throughout the year but only those which are charged to subventions and to the Election Fund. In this connection, it should be added that according to general accounting rules political parties are furthermore obliged to prepare an annual statement covering all sources of income and all expenses incurred; however, this annual statement is neither subject to disclosure obligations nor to supervision by the National Electoral Commission or any other comparable monitoring body. The GET concludes that the current situation is not fully in line with the requirements of the Recommendation, according to which political parties should be obliged to present their (complete) accounts to an independent monitoring body (Articles 13a and 14b) and to make them – or a summary of them – public (Article 13b). Consequently, the GET recommends **to require that the financial reports of political parties which are subject to supervision by an independent monitoring body also cover those expenses for statutory activities which are not charged to subventions received from the State budget.**
82. The GET notes that according to the authorities' explanations, no reference to entities related, directly or indirectly, to a political party or otherwise under its control is necessary in Polish legislation on political financing because contributions to political parties and election committees may only be made by natural persons<sup>77</sup> and election campaigns may only be carried out by election committees and not by any other entity.<sup>78</sup> The system aims at excluding any financial relations between political parties and other entities, and violations of these rules are punishable under criminal law provisions.<sup>79</sup> Given the fact that the party financing system is, since the legal reforms of 2001, to a large extent based on public funding and on very strict rules for private financing (which prohibit, *inter alia*, any contributions by legal persons), and considering that political parties are legal persons which have to account for their sources of income and are therefore subject to financial control, the GET accepts this explanation.
83. As regards the disclosure of political financing information, the GET notes that contrary to Article 13b of the Recommendation, political parties are not obliged to make public their accounts (or a summary of them). By contrast, Polish legislation obliges the National Electoral Commission to publish various financial reports – enumerated in paragraph 79 above - submitted by political parties and election committees. However, the GET notes that the different reports are published separately and within different time frames. Therefore, there is not one single document which would allow the public to get a complete, overall picture of the financial situation of a political party and its election committee. The GET takes the view that the current publication regime is rather confusing and does not guarantee easy access to party financing information, all the more so as the National Electoral Commission is not obliged to publish various reports via the Internet (representatives of the Commission indicated that in practice reports are made available on its website,<sup>80</sup> but evidence gathered during the on-site visit indicates that only rather general summary documents are published online). The transparency of political financing could be significantly increased by, for example, merging and simplifying the different reports for disclosure purposes. In light of the foregoing, the GET recommends **to take appropriate**

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<sup>77</sup> See sections 24 and 25 PPA.

<sup>78</sup> See, for example, section 95 SESS.

<sup>79</sup> See, for example, sections 49a and 49c PPA; section 229 SESS.

<sup>80</sup> <http://www.pkw.gov.pl>

**measures to ensure that the financial reports of political parties and election committees are made public in a coherent and comprehensible manner and thus make the data on political financing more accessible.**

84. Furthermore, the GET notes that declarations in respect of donations are made annually in the political parties' financial reports and, after elections, in the election committees' election reports, both of which are to be submitted to the National Electoral Commission. Whilst the process would appear to be open and subject to control by the Commission, the GET is of the opinion that in order to ensure a good level of transparency, the obligatory declaration – and disclosure – of donations would need to be more regular, for example once a quarter. If the declaration is insufficiently regular, the political 'moment' can pass should donations generate public interest, thus preventing the political penalties that can arise when there is any breach of the rules or suspicious activity. Therefore, the GET is convinced that transparency in election financing would benefit significantly from reporting on private funding at more regular intervals defined by law, including before elections, as is the case in some other GRECO member States. Such an approach would have the clear benefit of increasing the openness of political financing and of allowing the public and the authorities to uncover potential irregularities in the funding of parties and of elections at an early stage. Consequently, the GET recommends **to require more frequent declarations on donations received by political parties and election committees as well as their publication, at regular intervals to be defined by law.**

#### Supervision

85. The monitoring in respect of the funding of political parties and election campaigns has been entrusted to the National Electoral Commission – assisted by the National Electoral Office –, which is a permanent institution responsible for the overall administration of elections in Poland. In the field of political financing the main tasks of the Commission consist in publishing the financial reports submitted by parties and election committees and in controlling their compliance with the applicable financing regulations. The interviews held with various interlocutors left the GET with the clear impression that the Commission, which is composed solely of judges, can be regarded as an independent monitoring body which has at its disposal well-qualified personnel at the National Electoral Office; its activities go beyond what is legally required and have gained wide-spread approval. However, the GET noted that according to representatives of the Commission and of civil society, the financial and human resources affected to the control of political financing are insufficient. It was stressed that despite the legislative reforms which conferred to the Commission new responsibilities in this field, no additional financial resources were provided. At the time of the visit, the team responsible for the control of political financing was composed of eight employees, which was considered by representatives of the Commission themselves as insignificant for a large country like Poland bearing in mind the number of parties, election committees and election-related events to be supervised. According to various interlocutors met during the visit, more staff would clearly be needed in order to carry out proactive and in-depth monitoring. The GET shares this view and recommends **to increase the financial and personnel resources dedicated to the National Electoral Commission's unit responsible for the control of political financing.**
86. The review of political parties' and election committees' financial reports by the National Electoral Commission is conducted largely on the basis of satisfying accounting procedures. Auditing is outsourced to private accountancy firms. This creates a level of scrutiny that may satisfy accountancy norms, but not political ones, since the auditors lack the requisite skills to investigate possible breaches in respect of donations and expenditure. Moreover, the GET learned in this context that the auditors work for rather low fees as they are paid from the –

currently quite limited – budget of the Commission. The GET is of the opinion that measures need to be taken to allow for more pro-active and specialised auditing, possibly in-house. In any case, it is to be ensured that the supervision carried out by the monitoring body itself (currently the Commission) is pro-active and substantial, including a material verification of the information delivered. According to numerous interlocutors, the submitted reports are not scrutinised beyond the information that parties or committees themselves provide. For example, there is no check which would allow to verify whether an election campaign could have been financed by non-declared funding; furthermore, the information gathered by the GET clearly suggests that there is no sufficient verification of donations in-kind, although their commercial value was frequently not indicated in the reports, but only the paid price or fee. Therefore, it would appear that the current monitoring mechanism does not ensure that financial statements are accurate reflections of the money raised and spent. It should be added that the Commission may, in cases of doubt about the accuracy of financial reports, ask parties and committees to submit further explanations, but it has no powers to carry out any investigations. The GET is of the opinion that a prerequisite for effective supervision over political financing is the mandate – coupled with the necessary skills – to investigate possible breaches of financing regulations. The GET was interested to learn that representatives of the Commission clearly shared this opinion, however, they took the view that such widened tasks should be assigned to a specialised supervisory body and not to the Commission, whose main functions are related to the organisation and conduct of elections. Furthermore, the GET wishes to stress that good cooperation between the authorities responsible for the enforcement of political financing legislation (i.e. the monitoring body, law enforcement and tax authorities) is of crucial importance. The GET also learned in this connection that the National Electoral Commission and law enforcement authorities are obliged to inform each other about suspicions of criminal offences and about criminal proceedings in the field of political financing respectively. However, representatives of the Commission indicated that so far they have never been notified of such issues; furthermore they stated that no document or established system for efficient cooperation or exchange of information exists and that they would expect the law enforcement bodies to react more speedily and to be more active. In light of the above, the GET recommends **(i) to ensure more substantial and pro-active auditing and monitoring of political parties' and election committees' financial reports, including a material verification of the information submitted as well as investigation of financing irregularities and (ii) to take adequate measures to enhance the cooperation between the authorities responsible for the enforcement of political financing legislation.**

### Sanctions

87. The GET notes that both the Political Parties Act and the Statute on Elections to the *Sejm* and to the Senate provide a broad range of administrative and criminal sanctions and measures for infringements of political financing regulations by political parties and election committees. Administrative sanctions such as the loss of the right to receive public funding or striking off from the register are imposed on political parties or election committees. Criminal sanctions apply to natural persons and range from a fine to restriction of liberty or imprisonment for up to two years. According to statistics provided by the authorities, administrative sanctions are frequently applied, whereas criminal investigations are rare; the authorities indicated to the GET that so far there has been only one conviction (on the basis of SESS provisions). In the view of the GET, the arsenal of sanctions available is quite comprehensive and does not show any significant shortcomings. The GET is confident that enhanced cooperation between the authorities responsible for the enforcement of political financing as recommended (see paragraph 86 above) will also increase awareness about criminal sanctions in this area. As outlined above, party representatives complained about the harsh administrative sanctions which were inflicted even in cases of minor and unintended mistakes relating to the complicated reporting regulations. The

GET recalls, however, that as a result of legal amendments aimed at avoiding disproportionate sanctioning, the National Electoral Commission may accept a financial report with reservations and ask the party or committee concerned to make rectifications or submit further explanations. The GET was informed that this opportunity is frequently made use of and is therefore confident that this practice – coupled with further harmonisation of the applicable laws and with training and advice provided for parties and election committees, as recommended (see paragraphs 78 and 79 above) – will help avoid unintended mistakes in reporting.

## V. CONCLUSIONS

88. Overall, Polish political financing legislation is of a good standard and largely in conformity with the requirements of Recommendation (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. Poland has in recent years taken positive steps towards enhancing transparency of political financing. Important components of the system are considerable public funding of political parties, restrictive rules on private funding and a set of reporting obligations for political parties and election committees. Annual financial reports as well as election reports are to be submitted to the National Electoral Commission, which is tasked with controlling compliance with detailed financing regulations. The Commission has adopted a strict interpretation of financing regulations, generally endorsed by the Supreme Court, leading to frequent infliction of severe administrative sanctions. Nevertheless, the current legislative framework consisting of the Political Parties Act, several election laws and a number of ordinances, which has been subject to numerous recent amendments and appears to be unnecessarily complicated, warrants further harmonisation and some specific improvements. The main deficiency, however, resides in the lack of substantial and pro-active monitoring which would go beyond the formal examination of submitted information. Although the National Electoral Commission can be regarded as an independent and committed monitoring body, it would require more powers and resources in order to detect illegal practice and circumvention of transparency rules. The loopholes identified in the existing legislative framework and practice in Poland (e.g. the mainly formalistic supervision of the reports of political parties/election committees, the low level of disclosure obligations, some deficiencies in the financing provisions of the Statute on the Election of the President of the Republic of Poland and the insufficient regulations on loans and credits) are a potential source of abuse and do not provide sufficient tools to effectively detect and unveil possible instances of improper influence in political financing. Further improvements to the present regime are therefore required in order that the overall cohesive legal framework may prove its full efficiency in practice.
89. In view of the above, GRECO addresses the following recommendations to Poland:
- i. **to harmonise the provisions on political financing contained in the Political Parties Act, in the election laws and in the relevant ordinances of the Minister of Finance and, in particular, to align the relevant provisions of the Statute on the Election of the President of the Republic of Poland with the standards set by the other election laws** (paragraph 78);
  - ii. **to entrust the National Electoral Commission with the responsibility to assist political parties and election committees to observe the political financing regulations, *inter alia*, by providing advice upon request of parties and election committees** (paragraph 79);

- iii. **to take appropriate measures to ensure that loans granted to political parties for statutory purposes and to election committees of voters are not used to circumvent political financing regulations, by ascertaining in particular whether loans are reimbursed in conformity with the terms under which they were granted (paragraph 80);**
  - iv. **to require that the financial reports of political parties which are subject to supervision by an independent monitoring body also cover those expenses for statutory activities which are not charged to subventions received from the State budget (paragraph 81);**
  - v. **to take appropriate measures to ensure that the financial reports of political parties and election committees are made public in a coherent and comprehensible manner and thus make the data on political financing more accessible (paragraph 83);**
  - vi. **to require more frequent declarations on donations received by political parties and election committees as well as their publication, at regular intervals to be defined by law (paragraph 84);**
  - vii. **to increase the financial and personnel resources dedicated to the National Electoral Commission's unit responsible for the control of political financing (paragraph 85);**
  - viii. **(i) to ensure more substantial and pro-active auditing and monitoring of political parties' and election committees' financial reports, including a material verification of the information submitted as well as investigation of financing irregularities and (ii) to take adequate measures to enhance the cooperation between the authorities responsible for the enforcement of political financing legislation (paragraph 86).**
90. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Polish authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2010.
91. Finally, GRECO invites the authorities of Poland 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.

## APPENDIX A

### Statistical data 2006-2008 Public funding of political parties and election committees

#### 1. Subject subsidies to political parties and election committees of voters

**Table 1. Subsidies in connection with elections to the *Sejm* and to the Senate held in 2005**

Political party or election committee	Amount of subsidy (in PLN)
Prawo i Sprawiedliwość	29,983,932.00
Platforma Obywatelska Rzeczypospolitej Polskiej	27,190,281.49
Samobrona Rzeczypospolitej Polskiej	14,388,643.01
Sojusz Lewicy Demokratycznej	13,413,141.79
Liga Polskich Rodzin	9,998,887.52
Polskie Stronnictwo Ludowe	6,584,633.24
KWW „Mniejszość Niemiecka”	283,421.58
KWW Nowy Senat 2005	178,203.08
KWW prof. Mariana Miłka	113,734.44
KWW Macieja Płażyńskiego	104,002.85
KWW Bogdana Borusewicza	44,565.62
KWW Kazimierza Juliana Kutza	24,095.67
<b>Total</b>	<b>102,307,542.29</b>

**Table 2. Subsidies in connection with by-elections to the *Sejm* and to the Senate held in 2007**

Political party	Proportion	Amount of subsidy (in PLN)
Sojusz Lewicy Demokratycznej	94%	47,811,94
Socjaldemokracja Polska	2%	1,017.28
Partia Demokratyczna	2%	1,017.28
Unia Pracy	2%	1,017.28
<b>Total</b>		<b>50,863.78</b>

**Table 3. Subsidies in connection with elections to the *Sejm* and to the Senate held in 2007**

Political party or election committee	Amount of subsidy (in PLN)
Platforma Obywatelska Rzeczypospolitej Polskiej	29,427,920.77
Prawo i Sprawiedliwość	28,285,522.00
Sojusz Lewicy Demokratycznej	7,360,870.76
Polskie Stronnictwo Ludowe	6,239,731.85
Socjaldemokracja Polska	1,813,547.87
Partia Demokratyczna	1,226,811.79
Unia Pracy	266,698.22
KWW „Mniejszość Niemiecka”	201,281.67
KWW Cimoszewicz do Senatu	50,100.03
<b>Total</b>	<b>74,872,484.96</b>

## 2. Annual subventions for statutory activities of political parties

Table 1. Subventions for 2006 and 2007

Political party	Amount of <i>annua</i> <sup>81</sup> subvention (in PLN)
Prawo i Sprawiedliwość	24,022,896.00
Platforma Obywatelska Rzeczypospolitej Polskiej	22,566,046.00
Samoobrona Rzeczypospolitej Polskiej	12,768,664.00
Sojusz Lewicy Demokratycznej	12,676,961.00
Liga Polskich Rodzin	9,427,806.00
Polskie Stronnictwo Ludowe	8,396,348.00
Socjaldemokracja Polska	4,975,085.00
<b>Total</b>	<b>94,833,806.00</b>

Table 2. Subventions for 2008

Political party	Amount of annual subvention (in PLN)
Platforma Obywatelska Rzeczypospolitej Polskiej	37,966,470.00
Prawo i Sprawiedliwość	35,508,067.00
Polskie Stronnictwo Ludowe	14,201,376.00
Sojusz Lewicy Demokratycznej	13,515,020.00
Socjaldemokracja Polska	3,329,788.00
Partia Demokratyczna — demokraci.pl	2,252,503.00
Unia Pracy	489,675.00
<b>Total</b>	<b>107,262,899.00</b>

<sup>81</sup> The amounts are exactly the same in 2006 and 2007.

## APPENDIX B

### Statistical data 2000-2005

#### Control of financing of political parties and election campaigns

#### 1. Political Parties

**Table 1. Annual reports on sources of funds and on expenses charged to the Election Fund (section 38, paragraph 1 PPA)<sup>82</sup>**

Year	Number of political parties in the register at the end of the year	Number of reports submitted		Number of parties which failed to submit reports	Decisions of the NEC (National Electoral Commission)			
		Within statutory term	After the lapse of statutory term		Number of adopted resolutions	Reports accepted without reservations	Reports accepted with indication of irregularities	Rejected reports
2001	87	47	4	36	51	16	-	35
2002	73	58	7	11	65	38	13	14
2003	87	59	1	29	60	43	5	12
2004	91	76	3	16	79	64	8	7
2005	88	70	7	12	77	49	12	16

Year	Reports rejected by the NEC	Complaints to the Supreme Court against decisions of the NEC rejecting a report			Number of applications to the Court for striking off a party from the register (art. 38c)
		Number of filed complaints	of which		
			Rejected	Considered justified	
2001	35	11	11	-	32
2002	14	6	5	1	13
2003	12	7	7	-	19
2004	7	3	3	-	13
2005	16	10	10	-	17

**Table 2. Annual reports on subventions received and expenditure charged to subventions (section 34, paragraph 1 PPA)**

Year	Number of parties eligible for subvention	Decisions of the NEC			
		Number of adopted resolutions	Reports accepted without reservations	Reports accepted with indication of irregularities	Rejected reports
2001	0	-	-	-	-
2002	10	10	8	2	-
2003	10	10	6	4	-
2004	7	7	4	3	-
2005	6	6	4	2	-

<sup>82</sup> Political Parties Act of 27 June 1997.



## 2. Reports of election committees on revenues, expenses and liabilities of the committee for election purposes

Table 1.

Election type	Number of election committees registered in the election	Decisions of the NEC			
		Number of adopted resolutions	Reports accepted without reservations	Reports accepted with indication of irregularities	Rejected reports
Elections of the President of the Republic of Poland in 2000	21	21	0	-	21
Elections to the <i>Sejm</i> and to the Senate in 2001	97	93	35	39	19
Local elections in 2002	35	30	6	12	12
Elections to the European Parliament in 2004	31	30	27	1	2
Elections of the President of the Republic of Poland in 2005	26	25	14	-	11
Elections to the <i>Sejm</i> and to the Senate in 2005	128	126	99	13	14

Table 2.

Election type	Reports rejected by the NEC	Complaints to the Supreme Court against decisions of the NEC rejecting a report			Number of committees failing to submit reports
		Number of complaints filed	Complaints found justified	Rejected complaints	
Elections of the President of the Republic of Poland in 2000	21	15	0	15	0
Elections to the <i>Sejm</i> and to the Senate in 2001	19	13	0	13	4
Local elections in 2002	12	4	1	3	5
Elections to the European Parliament in 2004	2	2	1	1	1
Elections of the President of the Republic of Poland in 2005	11	5	0	5	1
Elections to the <i>Sejm</i> and to the Senate in 2005	14	7	0	7	2

## APPENDIX C

### Statistical data 2001-2007

**Extract from the Statistical System for Police Criminality „Temida”:  
Offences criminalised by the Political Parties Act (PPA) and the Statute on Elections to the Sejm of the  
Republic of Poland and to the Senate of the Republic of Poland (SESS)**

Type of Offence	Proceedings		Offences		Indictment act
	instituted for the first time	concluded	confirmed	detected	
<b>2001</b>					
sections 49a, 49c, 49d, 49e, 49f PPA	0	0	0	0	0
sections 219, 221, 223, 226-229 SESS	4	1	0	0	0
<b>2002</b>					
sections 49a, 49c, 49d, 49e, 49f PPA	0	0	0	0	0
sections 219, 221, 223, 226-229 SESS	5	6	0	0	0
<b>2003</b>					
sections 49a, 49c, 49d, 49e, 49f PPA	0	0	0	0	0
sections 219, 221, 223, 226-229 SESS	9	7	2	2	0
<b>2004</b>					
sections 49a, 49c, 49d, 49e, 49f PPA	0	0	2	2	2
sections 219, 221, 223, 226-229 SESS	1	4	3	3	3
<b>2005</b>					
sections 49a, 49c, 49d, 49e, 49f PPA	1	2	1	1	1
sections 219, 221, 223, 226-229 SESS	7	9	5	5	4
<b>2006</b>					
sections 49a, 49c, 49d, 49e, 49f PPA	2	0	0	0	0
sections 219, 221, 223, 226-229 SESS	1	4	3	2	2
<b>2007</b>					
sections 49a, 49c, 49d, 49e, 49f PPA	2	3	1	1	1
sections 219, 221, 223, 226-229 SESS	11	10	5	5	5