



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

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



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## **Third Evaluation Round**

### **Evaluation Report on Romania on Transparency of Party Funding**

(Theme II)

Adopted by GRECO  
at its 49<sup>th</sup> Plenary Meeting  
(Strasbourg, 29 November – 3 December 2010)

## I. INTRODUCTION

1. Romania joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 13E) in respect of Romania at its 8<sup>th</sup> Plenary Meeting (8 March 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 1E) at its 25<sup>th</sup> Plenary Meeting (14 October 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption, Articles 1-6 of its Additional Protocol<sup>1</sup> (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)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 Romania from 21 to 25 June 2010. The GET for Theme II (23-25 June) was composed of Mr Richard ROGERS, Senior Counsel to the Assistant Attorney General, Department of Justice (United States of America) and Mr Tibor SEPSI, Government adviser, Office of the Prime Minister (Hungary). The GET was supported by Mr Christophe SPECKBACHER from the GRECO Secretariat. Prior to the visit, the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval III (2010) 1E, Theme II), as well as copies of relevant legislation.
4. The GET met with officials from the following state institutions: Ministry of Justice (Department for the Reform of the Judiciary and Countering Corruption and Department for Drafting Legislation), Permanent Electoral Authority, Court of Accounts, Ministry of Public Finance (Department of Tax Legislation), National Integrity Agency, National Anticorruption Directorate, Bucharest Court of Appeal, Administrative section. The GET further met with the representatives of three political parties (one of which submitted responses in writing after the visit), the Romanian Academic Society, the Institute for Public Policy, a Romanian public television channel, a daily newspaper and an internet news agency.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Romanian 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 Romania in order to improve its level of compliance with the provisions under consideration.

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<sup>1</sup> Romania ratified the Criminal Law Convention on Corruption (ETS 173) on 11 July 2002 (it entered into force in respect of Romania on 1 November 2002), and the Additional Protocol to the Criminal Law Convention (ETS 191) on 29 November 2004 (entered into force in respect of Romania on 1 March 2005). Romania did not make any reservations to either instrument.

6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2010) 1E, Theme I.

## II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

### Definition of political party

7. Pursuant to Article 1 of the Law no. 14/2003 on Political Parties (hereinafter, the LPP), political parties are “the associations with political character of the Romanian citizens who have the right to vote and to freely participate in the formation of their political will; they serve the citizens’ political will and accomplish a public mission guaranteed by the Constitution”.

### Founding and registration

8. Pursuant to articles 2 to 11 of Law no. 14/2003, political parties are public law entities which enjoy legal personality. Only political associations which are formed under the law can operate as political parties insofar as they comply, in their campaigning activity, with the requirements inherent to the preservation of national sovereignty, independence and unity of the State, territorial integrity, the rule of law and principles of constitutional democracy. Each political party and political alliance (the association is established in a protocol) must have a full name, an abbreviated name (acronym) and a permanent symbol. These features must be clearly distinguishable from those of previously registered parties (using graphic symbols that have already been used is prohibited). Each political party is required to adopt and lay down in writing its statutes and political program, and to have these approved by the statutory / constituting bodies.
9. The procedure of registration of a political party is regulated by article 18 para. (1) of Law no. 14/2003. Registration is to be made with the Tribunal of Bucharest, and requires the submission of the following documents: a) the registration application, signed by the officer of the political party’s executive body and by at least 3 founding members (who are required to be present); b) the party’s statutes; c) the program of the party; d) the constitutive act along with the list of support signatures of the founding members; e) a statement concerning the location (address) of the central office and the party’s patrimony; f) the evidence regarding the opening of a bank account. Registration takes place after a verification process which must be completed within 15 days and which is detailed under articles 18, 20 and 21 of the Law<sup>2</sup>. Similar rules exist for political alliances in articles 29 and 30 of Law no. 14/2003.
10. The Tribunal of Bucharest keeps a specific register which contains, at the date of 1<sup>st</sup> of March 2010, 47 officially declared political parties.

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<sup>2</sup> According to art. 18 para. (2) and (3) of Law no. 14/2003, the application for registration shall be displayed at the Bucharest Tribunal for 15 days. Within 3 days from the date of filing the registration request, the notice thereof shall be published by the applicant in one of the major, central newspaper. The Bucharest Tribunal examines the application in public session, with the participation of the Public Prosecutor’s representative. Natural or legal persons interested may intervene in the process, if they have a personal legitimate interest to do so in accordance with the Code of Civil Procedure; such a request for intervention shall be communicated *ex officio* to the signatories of the application (article 20). The Bucharest Tribunal is ruling on the application for registration of the party no later than 15 days after the lapse of the period provided in art. 18 para. (2). The persons referred to in art. 18 para. (1) let. a) (the officer of the executive body of the political party and by at least 3 founding members), the Public Ministry or the persons referred to in art. 20 para. (2) (interested natural or legal persons who intervened in the process) may lodge an appeal against the decision of the Bucharest Tribunal to the Bucharest Court of Appeal, within 5 days from the communication (article 21). The latter will consider the matter in open session, no later than 15 days from registration. Its decision is final and irrevocable.

## Participation in elections

11. Romania is a Parliamentary republic in which the President is chosen by direct vote by the citizens. The government is answerable to both the President and the parliament.
12. Participation in elections is not the exclusive right of political parties and individual candidates may present themselves for any local, parliamentary or presidential election. Romania elects on a national level a head of state - the president - and a legislature. The president is elected for a five year term by the people (after a change from four-year terms after the 2004 election). The last presidential elections took place in November and December 2009. The Romanian Parliament (*Parlamentul României*) has two chambers; special arrangements exist for the election of representatives of national minorities. The Chamber of Deputies (*Camera Deputaților*) has 334 members, elected for a four year term by uninominal vote according to the principle of proportional representation, in uninominal colleges. The Senate (*Senatul*) has 137 members, elected for a four year term in the same way as the Chamber. The most recent parliamentary elections were held in November 2008. The proportional representation in parliament and other factors usually result in the absence of a party holding a majority in parliament and the formation of coalition governments. Since November 2007, Romanians elect their representatives also to the European Parliament. The last such elections were held in June 2009. Elections are also held to designate at local level, the local councils and mayors, as well as the county councils and their presidents. The last local elections took place in June 2008.
13. According to art. 29 of Law no. 35/2008 on the election of the Chamber of Deputies and the Senate and for amending Law no. 67/2004 for the election of local government authorities, Law no. 215/2001 on the local government and Law no. 393/2004 on the status of local elected officials, in each uninominal college, each electoral competitor can propose only one candidate who can participate in the parliamentary elections. At the same time, a candidate can represent only one electoral competitor in the elections. Nominations for candidates are submitted to the electoral constituencies operating at the same level with that to which the candidates are to be elected, not later than 40 days before the election date. The candidacy appointment done by the national minority's citizens' organizations is sent to the Central Electoral Bureau.
14. When the candidacies submission is taking place, each political party, political alliance, electoral alliance, organisation of national minority citizens, independent candidate has to provide evidence of the deposit made, in the account of the Permanent Electoral Authority (PEA), in the amount of 5 minimal gross salaries for each candidate (3.000 RON, approximately 700 euro)<sup>3</sup>. To collect the deposits, the PEA opens one account in each county and in Bucharest. The amounts are reimbursed to the organisations of national minority citizens that obtained a mandate of deputy, to the political parties, political and electoral alliances that have totalled 2% or more of the total number of validly cast votes at the national level and to the independent candidates that have totalled 20% or more of the total number of validly cast votes in the uninominal college where they competed.
15. According to art. 30 of Law no. 35/2008, independent candidates must be supported by at least 4% of the total number of voters listed on the permanent electoral lists from the uninominal college they run for (and no less than 2,000 voters for the Chamber of Deputies and 4,000 voters for the Senate). The independent candidates for the constituencies of the Romanian citizens who

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<sup>3</sup> According to art. 2 of the Government Decision no. 1051/2008 on establishing the minimum gross salary per country guaranteed payment, starting January 1, 2009, the gross minimum salary in the country guaranteed payment is set at 600 RON per month [approx. 140 Euros]. The value established by this normative act was not modified for 2010.

reside abroad must be supported by a minimum of 4% of the voters residing in one of the states that are part of the uninominal college for which they run, but not least than 2.000 electors for the Chamber of Deputies and 4.000 for the Senate (art. 30 para. 1<sup>1</sup> from Law no. 35/2008).

16. According to art. 47 of Law no. 35/2008, the electoral threshold to be reached in order to be eligible in the national parliament is: a) for the Chamber of Deputies, 5% of the valid votes cast in all constituencies, for all political parties, political alliances, electoral alliances and organizations of the national minority's citizens; b) for the Senate, 5% of the valid votes cast in all constituencies, for all political parties, political alliances, electoral alliances and organizations of the national minority's citizens; c) for the Chamber of Deputies and Senate, by cumulative fulfilling the condition of obtaining 6 uninominal colleges for the Chamber of Deputies and of 3 uninominal colleges for the Senate, in which candidates of political parties, political or electoral alliances and organizations of the national minority's citizens come first, according to the number of the valid votes, even if the conditions mentioned in let. a) and b) are not fulfilled; d) in the case of the political and electoral alliances, to the 5% threshold set out in pt. a) and b), a 3% of the valid votes cast in all electoral constituencies is added, for the second member of the alliance, and for each member of the alliance, starting with the third, a 1% of the total number of valid votes cast in all electoral constituencies is added, without exceeding 10% of these votes.

#### Party representation in Parliament

17. In the last parliamentary elections of November 2008, the participation of political parties, coalitions of parties and independent candidates was as follows:

No.	Political Formation	Applications in total	Chamber of Deputies	Senate
<b>PARLIAMENTARY PARTIES<sup>1</sup></b>				
1	PSD+PC Alliance	452	315	137
2	PNL	452	315	137
3	PD-L	451	314	137
4	UDMR	449	313	136
5	PRM	441	309	132
<b>NON-PARLIAMENTARY PARTIES<sup>2</sup></b>				
	PNG-CD	452	315	137
7	PVE	118	70	48
8	PPPS	87	63	24
9	PNDC	6	3	3
10	PSR	2	1	1
11	PRE	1	1	0
12	Independents	31	28	3
13	Organisations of the national minorities	18	18	0
	<b>TOTAL for the country</b>	<b>2960</b>	<b>2065</b>	<b>895</b>

<sup>1</sup> PSD – Social Democratic Party; PC – Conservative Party; PNL – National Liberal Party; PD-L – Democratic-Liberal Party; UDMR – Hungarian Democratic Union in Romania; PRM – Great Romania Party

<sup>2</sup> PNG-CD – New Generation Party - Christian Democratic

PVE – Romanian Ecologist Party

PPPS – People's Party and Social Welfare

PNDC – National Christian Democratic Party

PSR – Romanian Socialist Party

PRE - European Romania Party

18. Following the above election, the representation in Parliament is as follows:

Name	Mandates for the Chamber of Deputies		Mandates for the Senate	
	Number	Percentage (%)	Number	Percentage (%)
PD-L	115	36,39	51	37,22
POLITICAL ALLIANCE PSD+PC	114	36,07	49	35,76
PNL	65	20,56	28	20,43
UDMR	22	6,96	9	6,56
TOTAL:	316 (+18 more seats obtained by organisations representing national minorities)	100	137	100

### Overview of the political funding system

#### *Legal framework*

19. From open sources of information, it appears that the various relevant provisions on the financing of parties and campaigns (which existed in the Law on Political Parties of 1996 as amended; Law no. 69 of 1992 on the Election of the President of Romania; Law no. 68 of 1992 on the Election of the Chamber of Deputies and the Senate and the Law no. 67 of 2004 on Local Elections) were consolidated into Law no. 43/2003 (as amended by Law no. 90/2003) on political party and campaign financing, which was then replaced by the currently applicable Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns. This law was then amended in 2008 by three emergency ordinances<sup>3</sup> and the Romanian authorities indicated that it was republished after the on-site visit as Law 334/2006, with a different numbering of articles but no substantive changes (the present report has, however, kept the references and numbering applicable at the time of the on-site visit). The above mechanism on the transparency of political life in Romania is complemented by a system of declaration of assets and interests of elected candidates, currently provided under Law no. 176/2010 *on enhancing integrity in the exercise of public positions and dignities*, amending Law no. 144/2007 *on the setting up of the National Integrity Agency* (NIA). These declarations are collected by the Central Electoral Office (or to the constituency electoral office, depending on the case, together with the candidacy acceptance statement) and then examined by the NIA. A few weeks before the on-site visit, the procedure before the NIA was declared unconstitutional and the collection of declarations and their publication was suspended. A legislative proposal that would answer the concerns of the Constitutional Court was in Parliament at the time of the visit and it was subsequently adopted and entered into force on 6 September 2010.
20. Basically, Law no. 43/2003 introduced a system of public funding with a mechanism for monitoring political funding, first under the responsibility of the Court of Accounts and with the Law no. 334/2006, also under that of the Permanent Electoral Authority (PEA), the former controlling the correct use of public subsidies by the beneficiary parties, and the latter supervising the overall compliance with Law no. 334/2006.

<sup>3</sup> In general, political financing legislation is frequently amended by emergency ordinances (source: "Safeguarding the Rule of Law in an enlarged EU: The Cases of Bulgaria and Romania", CEPS Special Report/April 2009; Susie Alegre, Ivanka Ivanova and Dana Denis-Smith, page 63)

21. Law no. 334/2006 (republished after the on-site visit) contains provisions covering the various aspects of political financing and its supervision. Chapters 1 to 5 deal with the private financing of political parties (membership fees, donations, other sources of income), public financing, financing during election campaigns of parties as well as (party- or independent) candidates (contributions for election campaigns, appointment of a financial manager, limits on expenditure, monopoly of parties for the financing of their candidates). Chapters 5 and 6 regulate the control mechanism by the PEA and the applicable sanctions. Chapter 7 contains final transitional provisions on the transfer of responsibilities from the Court of Accounts to the PEA, among other arrangements. An important piece of secondary legislation was adopted with Government Decision no. 749 of 11 July 2007 *On approving the Methodological Norms for applying Law no. 334/2006 on financing activities of political parties and electoral campaigns* (hereinafter Government Decision no. 749 / 2007); this text comprises as an annex a series of implementing measures including, for instance, more precise provisions on donations and the forms to be used for their registration, and the mathematic formula for the calculation of the state subsidy. Additional annexes detail i.a. the procedural steps for controls performed by the PEA.
22. Romania has thus adopted a system of mixed public – private funding of political parties and campaigns where parties, coalitions and candidates may receive donations both from natural and from legal persons, subject to compliance with certain ceilings (also as regards campaign expenditure). Restrictions apply to donations from abroad and from entities like trade unions, religious organisations, public institutions etc. Parties may also generate an income through activities except those which are economic / commercial by nature. Political parties may own movable and immovable property that is necessary for the accomplishment of their specific activity. According to art. 3 para. 1 of Law no. 334/2006, the financing sources are: a) party membership fees; b) donations, legacies and other liberalities; c) income from party activities; d) subsidies from the state's budget.
23. During the electoral campaigns, financing the activity of campaign participants (independent candidates, political parties, electoral/political alliances, organisation/groups of national minorities) can be done through donations and legacies. The annual state grant attributed to parties is also meant to cover electoral expenses. The political parties, electoral/political alliances, organisation/groups of national minorities can also transfer amounts from other funds that represent income from external activities to the campaign.

#### *Public funding of political parties and election campaigns*

24. As regards direct public funding, political parties receive annually a subsidy from the state's budget, under the provisions of the law (art. 14 para. 1, Law no. 334/2006). Currently, out of the 47 registered parties, 4 receive this direct state aid; the GET was told on site that there is no clear estimate of the proportion of private funding compared to public funding, but the PEA considers that the former exceed the latter in electoral years. The subsidy is paid in monthly instalments. The total amount assigned annually to political parties cannot exceed 0,04% of the amount stipulated in the state budget for that year. For political parties that promote women on their electoral lists, the total amount assigned will be increased proportionally with the number of mandates obtained in the elections by the women candidates (art. 14 para. 2, Law no. 334/2006). In case of political or electoral alliances, the grant is divided in accordance with the political agreement or proportionally to the number of seats obtained where no such agreement exists.
25. The political parties, political or electoral alliances, the organisations of national minorities are eligible to public funding if they are in at least one of the following situations: a) they reach the

electoral threshold in parliamentary elections (see paragraph 16); b) they obtain at least 50 county counsellors mandates (including counsellor only for Bucharest Municipality). 75% of the annual budget allocated to the public grant is divided among the political parties proportionally with the number of votes received in parliamentary elections, respectively the average of the votes cast for the Chamber of Deputies and Senate, if they reached the threshold. The remaining 25% is divided among the parties proportionally to the votes received at the local elections.

26. According to art. 20 para. 1 from Law no. 334/2006, the income representing subsidy from the state's budget can have the following destination, which includes the covering of election campaign expenditure: a) expenses for maintenance and operation of premises; b) personnel expenses; c) expenses for media and propaganda; d) expenses for organising political activities; e) expenses for travel inside the country and abroad; f) communications expenses; g) expenses with foreign delegations; h) expenses for fees owed to international political organisations the party is affiliated to; i) investments in movable and immovable property, necessary for the activity of the parties; j) protocol expenses; k) office expenses; l) electoral campaign expenses.
27. The state subsidy cannot be used for purposes other than those mentioned above (art. 20 para. 2, Law no. 334/2006). According to art. 19 of Law no. 334/2006, the payment of the subsidy is subject to compliance of the beneficiaries with certain essential provisions (otherwise, the PEA may suspend the payment of the grant): a) art. 3 para. 3 (the obligation to keep individual accounting records, accordingly to the general accounting provisions); b) art. 4 para. 4 (the obligation of publishing within the Official Journal the total amount of revenues from the membership fees until the 31st of March of the following year and the list of the party members who have contributed within one year time fees exceeding 10 minimum gross salaries); c) art. 9 (the obligation of publishing within the Official Journal the list of natural and legal persons who made donations whose amount exceed 10 times the gross minimum salary at the national level and the total amount of confidential donations; non compliance with the obligation of publishing within the Official Journal the mandatory elements of the: for natural persons - donor's full name, personal identification number, nationality, amount, type and date the donation was made; for legal persons - name, address, nationality, unique registration code, value, type of donation and the date the donation was made); d) art. 11 para. 3 (donations representing material goods necessary for political activity, which are not electoral propaganda materials, coming from international political organisations to which the party is affiliated or from political parties or political formations having political cooperation relations); e) art. 12 para. 1 (performing activities specific to private commercial companies); f) art. 13 para. 4 (the obligation of publishing in the Official Journal the total amount of financial contributions of a non-political organisation, if the political party is associated with the mentioned organization); g) art. 39 (the obligation to submit to the PEA the documents it requested from the political party); h) art. 40 para. 2 (the obligation to electronically submit to the PEA all reports required to be published in the Official Journal of Romania, Part I), until the legal requirements are met.
28. Indirect public support is available in the form of premises and free broadcasting time. The central and local public administration's authorities ensure with priority, no later than 90 days from the request, locations for the central and local headquarters of the political parties, as well as related land space, upon their motivated request (art. 21 para. 1, Law no. 334/2006). Political parties can receive at most one office per territorial-administrative unit of the State (art. 21 para. 2, Law no. 334/2006). Access to radio and television public services within the electoral campaign, as well as to the special assigned places for electoral display is granted and is ensured according to the law's provisions (art. 29 para. 1, Law no. 334/2006). According to art. 38 para. 1 from Law no. 35/2008 on the election of the Chamber of Deputies and the Senate, political parties, political



alliances, electoral alliances, the national minority's citizens' participating in elections for the Chamber of Deputies and Senate and independent candidates have free access to public radio and television services in proportion to the number of candidates proposed.

#### *Private funding*

29. The permissible sources of private funding are enumerated by article 3 of Law no. 334/2006: a) party membership fees; b) income from the parties own activity; c) donations, legacies and other liberalities.
30. As regards membership fees, these are to be determined by the statutes of each party. There is no general ceiling for the overall amounts collectable from this source of income. However, the amount of the membership fees paid by a member per year cannot exceed 48 minimum gross salaries per county (28.800 RON, approximately 6.850 euro). The minimum gross salary per county taken for reference is the one valid at 1<sup>st</sup> of January of that year (art. 4 para. 3, Law no. 334/2006). Contributions from elected representatives are to be handled as "normal" donations. The GET noted that the payment of membership fees shall be based on the tally-sheet or receipt, except for amounts which, in one instalment, exceed 3 minimum gross salaries which are to be paid through a bank account (article 5 para. 4 of Government Decision no. 749/2006).
31. When it comes to income from their own activities, parties are in principle excluded from engaging into business, with the exception of the following sources of income: a) editing, elaborating and disseminating publications or other propaganda and political culture materials; b) organising meetings and seminars with a political, economic or social theme; c) cultural, sports and recreation activities; d) internal services; e) renting locations that are in their patrimony for conferences or social-cultural activities and for organising parliamentary offices (since the State does not provide for a separate funding for the parliamentary groups in Parliament); f) selling of real estate from the party's patrimony (but only after the assets have been in the party's possession for at least 10 years, except in case of dissolution of the party and assets acquired through legacies); g) alienating movable property from the patrimony, unless it represents acts of trade. Moreover, political parties can receive revenues from bank interests (art. 12 paragraph 2, Law no. 334/2006).
32. Donations are regulated in detail under articles 5 to 11 of Law no. 334/2006 and articles 6 to 12 of Government Decision no. 749/2007. The GET noted that there is no definition of donations that would spell out what is to be considered as donations for the purposes of party and election campaign financing; but art. 6 of Government Decision no. 749/2006 provides that "*liberalities received by a political party consist of donations and/or legacies according to the provisions of the Civil Code. Donations also include "hand gifts" whose value exceeds 3 gross minimum wages*" [EUR 420]. The provisions of article 5 of Law no. 334/2006 make clear that the real value of movable and immovable assets donated to a party as well as the value of services provided free of charge fall under the concept of donations. Likewise, discounts that exceed 20% of the value of goods and services offered to political parties (and independent candidates) are considered donations (art. 6, Law no. 334/2006). Voluntary activities are not to be considered donations (art. 8 para. 3, Law no. 334/2006). Loans and fundraising activities are not addressed in the legislation, according to the replies to the questionnaire. But the Romanian authorities underlined that the former are not an allowed source of funding since the list of such sources, contained in Law no. 334/2006, does not deal with these.

33. Donations must always be identified and the identity of the donor verified by the political party (article 7 of Law no. 334/2006). At the donor's written request, his/her identity may remain confidential to the general public as long as the value of the donation does not exceed 10 MGS [EUR 1400] over a period of one year. Moreover, the total amount of anonymous donations may not exceed 0,006% of the income provided in the state's budget for that year
34. Parties may receive donations both from legal and from natural persons, with the exception of trade unions or religious entities, foreign persons, foreign countries or organisations (goods coming from international political organisations and which are "necessary for the political activity" may be accepted under certain circumstances under the Law no. 334/2006 – art. 11 para. 2).
35. Donations received by a political party in a fiscal year cannot exceed 0,025% of the income provided in the state's budget for that year (0,050% during electoral years) A ceiling also applies to support from a given donor, which may not exceed in one year 200 minimum gross salaries (MGS) [EUR 28,000] in case of a natural person, and 500 MGS in case of a legal person [EUR 70,000]. These limits are increased for the years where multiple elections are held: 400 MGS for natural persons and per election, and 1000 MGS for legal persons and per election. Donations made by several entities which are under the direct or indirect control of the same legal person must altogether comply with these limits.
36. The above limit of 500 MGS is also applicable to assets originating from a non-political group with which the party is associated. The total amount of financial contributions that would be raised through associations with various such formations cannot exceed 0,006% of the income provided in the state's budget for the year under consideration.
37. In principle, legal persons which, at the time of a donation, have debts older than 60 days to the state budget, to the social security budget or to the local budgets, may not make donations to political parties. It is also forbidden for political parties to accept, under any circumstances, directly or indirectly, donations of goods, money or free services done with the obvious intention of gaining an economic or political advantage. (art. 5 para. 7 to 9 of Law no. 334/2006).
38. A series of prohibitions apply to prevent the (mis)use, for party and campaign financing purposes, of financial, human and technical resources belonging to public institutions, autonomous administrations, national companies, trade companies or banks where a majority of ownership is in the hands of a public institution. This applies explicitly to donations or free of charge services from such public institutions. These provisions apply similarly to political and electoral alliances and independent candidates (art. 10 of Law no. 334/2006).
39. Political parties are not subject to the income taxation for all membership fees, donations, legacies, income from activities and the possible public funding received (this results from a combination of article 3 paragraph 5 of Law no. 334/2006, and article 15 of the Fiscal Code. Donations to political parties, entities affiliated with political parties, elected representatives, candidates in elections and election campaigns are not tax deductible by the donor (art. 48 para. 7 of the Fiscal Code).
40. The PEA explained that public subsidies are provided only at the central level of a political party.

## *Election campaigns*

41. As indicated earlier, the public grant to political parties may be used to cover a variety of party expenditure, including electoral costs, and indirect support during campaigns is made available. Part of the above provisions on the financing of political parties is also relevant in the context of election campaigns. Chapter 4 of Law no. 334/2006 provides, in addition, for specific requirements applicable to that context. Some of the principles applicable to party financing are reiterated (e.g. prohibition of sources of donations which are public institutions or otherwise under their control, trade unions, religious organisations, foreign natural or legal persons, as well as foreign foundations (art. 24 and 25). The various provisions under this chapter make it also clear that requirements apply equally to independent candidates.
42. Article 31 of Law no. 334/2006 clarifies the respective financial roles of political parties and their candidates during election campaigns. In principle, candidates proposed for the elections by a political party may finance propaganda activities only through the political party. The latter is required to open a central account in each county electoral constituency for its candidates standing for parliamentary elections, or an account or sub-account for each candidate as the case may be. The law further states that the electoral propaganda activities of each candidate, as well as the donations and the legacies received by each candidate in the name of the party shall be deployed only through the accounts or sub-accounts opened for such purpose. The amounts of money received from the candidates proposed for elections by a political party shall be deemed donations.
43. Political parties and independent candidates are required to choose and appoint a financial manager (a legal or natural person) who will be responsible for the collection of donations or legacies and to keep the evidence of the financial operations (article 26 of Law no. 334/2006), including expenditure. In the case of parliamentary elections, this monopoly for the collection of donations applies after the announcement of the date of elections. The tasks of the financial manager include the following: a) organising the book-keeping for the income received for the electoral campaign, the transfer of other funds coming from the revenues obtained in other periods than the electoral one, as well as expenditure made for the electoral campaign; b) checking the legality of the financial operations made during the electoral campaign, the observance of the legal provisions on the donations registered in the period between the official announcement of the elections date and the end of the electoral campaign; c) submitting to the PEA the report on the observance of the legal conditions regarding the financing of the political parties during the electoral campaign.
44. Together with the political party, the financial manager is responsible for the legality of the financial operations made during the electoral campaign as well as for the observance of the provisions concerning contributions for election campaigns (articles 23 to 25).
45. A political party may have several financial managers, at a central level, for the territorial branches or for the candidates; in this situation their powers of manager shall be clearly delimited and a coordinating financial manager shall be appointed who shall also represent the party in the relationship with the PEA (sending reports, including supplementary documents or explanations). During the campaigns for the elections of the Chamber of Deputies and the Senate, the financial operations of each candidate are registered by a personal financial manager, which may be the same for several candidates. The services of the same financial manager cannot be used by several political parties, with the exception of the situation in which the political parties are part of the same political or electoral alliance. The quality of financial manager is obtained only after the

official registration with the PEA, which is to be made in the period between the moment of the official announcement of the elections date and the beginning of the electoral campaign. Candidates are not allowed to be financial managers.

46. Romanian legislation has opted for a system of ceiling on campaign expenditure. The maximum limits a political party or a political or electoral alliance, or independent candidate can make in each electoral campaign shall be calculated by summing up the maximum values allowed by the law for each candidate proposed for the (local, parliamentary, presidential and European) elections; these vary between 20 minimum gross salaries [EUR 2800] for each candidate counsellor in the communal councils to 10,000 MGS [EUR 1,4 million] for each candidate for the seat of general mayor of the Bucharest municipality. A special ceiling applies to campaign expenditure for the presidential elections, which is 25,000 MGS [EUR 3,5 million] (articles 30, 31 and 33 of Law no. 334/2006).

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

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

##### Books and accounts

##### *Political parties*

47. The GET noted that under Law no. 334/2006, there are two general requirements for the political parties to organise their own accounting books, according to the accounting provisions in force, and these requirements are detailed in the secondary legislation. Article 2 paragraph (3) of Law no. 334/2006 provides that the political parties have the obligation to organize their own accounting books, according to the accounting provisions currently in force. The implementing provisions of Government Decision no. 749/2007, article 5, make it clear that: 1) political parties are obliged to organise their own accounts at central and county branch level, according to the legal provisions. For this purpose, they may create their own special department or hire the services of accounting firms; 2) the accounts of political parties must be kept in accordance with the accounting standards applicable to non-profit organisations, as contained in the Order no. 1829/2003 [this order was however repealed in 2007 – see below] of the Ministry of Public Finance. Income, expenses and results should be presented so as to meet the accounting and reporting requirements for each activity or election, and to identify the branch, organisation or candidate; 3) a record of income is kept separately for each funding source provided by law; 4) all financial transactions of payments and receipts of political parties are carried out through bank accounts, in Lei and foreign currency opened at banks located in Romania, and those in cash according to law; 5) the payment of membership fees shall be based on the tally-sheet or receipt, except for amounts which, in one instalment, are 3 national gross minimum wage or more, which is done under para. (4) (...).
48. The replies to the questionnaire indicate that the rules and practices for keeping books, records, financial accounts and supportive documents of income and expenditure are regulated by Law no. 82/1991 on accountancy, republished, and by the Minister of Public Finances Order no. 1969/2007 regarding approval of accountancy regulations for legal persons without a patrimonial interest. This order of 2007 repealed in fact the above Order no. 1829/2003 of the Ministry of Public Finance.

49. According to art. 20 from Law no. 82/1991, the compulsory accounting books are the following: the Journal Registry, the Inventory Registry and the Big Book. Preparation, editing and maintaining accounting records shall follow the rules developed by the Ministry of Public Finance. The books are used in strict accordance with their intended use and presented in an orderly manner and complete as to allow, at any time, the identification and control of the accounting operations performed (art. 21 from Law no. 82/1991).
50. In order to verify the correct registration in the accountancy of the transactions performed, the trial balance is prepared at least annually, when the financial exercise ends or observing the deadlines for compiling accounting reporting established by law (art. 22 from Law no. 82/1991).
51. Persons using automatic data processing information systems are required to ensure the processing of data recorded in the accounts in accordance with applicable accounting rules, to control and maintain their technical supports (art. 23 from Law no. 82/1991).
52. The Minister of Public Finance (MPF) Order no. 1969/2007 approving the accounting rules for legal persons without patrimonial purpose provides in art. 3 that the legal persons without patrimonial purpose draw up annual financial statements including: balance sheet, the account of the exercise's results, explicative notes to annual financial situations. Organizations and trade unions and other organizations without patrimonial purpose, without economic activity, prepare simplified annual financial statements, including: abbreviated balance sheet, abbreviated account of the exercise's result, explanatory notes to simplified annual financial situations.
53. According to art. 10 from MPF Order no. 1969/2007, the subunits with no legal personality, belonging to the legal persons without patrimonial purpose resident in Romania organize and lead their own accounts up to the trial balance, without having the obligation to prepare annual financial statements.
54. Legal persons without patrimonial purpose organise and lead the accounts usually in distinctive departments, led by the chief financial officer, the accounting officer or other person empowered to perform this position. They should have higher economic education and, together with the coordinated personnel, are charged with keeping the accounting according to the law.
55. All financial transactions have to be based on primary supporting documents, which must contain the following main elements: a) the document name; b) the name and address of the legal person preparing the document; c) the number of the document and date it was prepared; d) the parties involved in the commercial operation (when applicable); e) content of economic/commercial operation (collection, payment); f) quantity and value data related to the operation performed; g) full name and signatures of persons who prepared the supporting documents; h) other details to ensure complete record of transactions. Political parties shall carry out all financial transactions based on the chart of accounts for legal persons without profit-making purpose, as follows: a) "Class I - capital accounts, contributions and reserves"; b) "Class II - accounts for restraint"; c) "Class III - accounts for stocks and production in progress"; d) "Class IV - accounts of third parties"; e) "Class V - treasury accounts"; f) "Class VI - expenditure accounts"; g) "Class VII - income accounts"; h) "Class VIII - special accounts".
56. In accordance with the provisions of the Government Decision no. 749/2007 *on approving the methodological norms for the application of Law no. 334/2006*, political parties are required to show both the revenues, respectively fees, donations and other income, and also the expenses, as follows:

I. Income	<p>Membership fees:</p> <ul style="list-style-type: none"> <li>○ Personal data sheet to record contributions;</li> <li>○ Table with the collected fees for the month/year;</li> <li>○ The list of the party members who paid in the fiscal year.... membership fees of total value that exceeds the range of 10 minimum gross salaries per country;</li> <li>○ The list of party members who paid in the fiscal year.... membership fees of total value that exceeds the range of 48 minimum gross salaries per country;</li> <li>○ The half-yearly situation of the income obtained from membership fees.</li> </ul>
	<p>Donations:</p> <ul style="list-style-type: none"> <li>○ The sheet of donations for natural persons;</li> <li>○ The sheet of donations for legal persons;</li> <li>○ The annual record sheet for the donor - natural person;</li> <li>○ The annual record sheet for the donor - legal person;</li> <li>○ The list of donors - natural persons who made donations in the fiscal year...., donations whose total value exceeds the range of 10 minimum gross salaries per country;</li> <li>○ The list of donors - legal persons who made donations in the fiscal year...., donations whose total value exceeds the range of 10 minimum gross salaries per country;</li> <li>○ The half-yearly situation of income from donations;</li> <li>○ The situation of the confidential donations in the fiscal year....</li> </ul>
	<p>Other income:</p> <ul style="list-style-type: none"> <li>○ The annual situation of income from sources other sources, detailed for each source of income.</li> </ul>
II. Expenditure	<ul style="list-style-type: none"> <li>○ The monthly situation of expenditure, divided by destinations.</li> </ul>

57. The expenditure of political parties is recorded on the basis of the invoices issued by suppliers.
58. Law no. 334/2006 and Government Decision no. 749/2007 do not allow political parties to receive “collective donations” or to take a loan.
59. As for entities related directly or indirectly, and organisations affiliated to political parties, subunits lacking legal personality that belong to legal persons without patrimonial interest having the office or domicile in Romania organise and run their own accountancy down to the level of trial balances,, without drawing up annual financial books. Law no. 334/2006 on financing of political parties and electoral campaigns does not provide practices and rules of records-keeping, financial reports and supportive documents of income and expenditure of organisations affiliated to political parties.

#### *Election campaigns*

60. Rules and practices for keeping books, records, financial accounts and supportive documents of income and expenditure related to campaigns are provided by the Law no. 334/2006 and *Government Decision no. 749/2007 on approving methodology norms for the application of Law no. 334/2006 on financing of political parties and electoral campaigns.*
61. The replies to the questionnaire indicate that in the accountancy of the political parties, and political/electoral alliances, there is no distinction made between regular income and expenditure on one side, and income and expenditure related to electoral campaigns on the other. Income and expenditure from the electoral campaign are registered in a Report of income and expenditure, that after being verified by the Department of control of political parties and electoral campaigns of the PEA, will be included in the book-keeping of the political party.
62. As indicated in the general part, political parties and independent candidates are required to appoint a financial manager who is in charge i.a. of the registration of income during election campaigns.

63. Donations and legacies received from natural or legal persons after the beginning of the electoral campaigns have to be declared to the PEA by the financial representative within 5 working days (art. 23 para. 1, Law no. 334/2006). They can be used to finance the electoral campaign only after being declared to the PEA (art. 23 para. 2, Law no. 334/2006).
64. Law no. 334/2006 prohibits the funding of election campaigns from the following sources: a) foreign natural or legal persons, whether directly or indirectly (art. 24 para. 1, Law no. 334/2006); b) public authorities, public institutions, autonomous administrations, national companies, trade companies or banks where the state or territorial administration units are main shareholders or companies that have activities financed with public funds as well as companies which, in the last 12 month before the beginning of the electoral campaign, had activities financed with public funds (art. 25 para. 1, Law no. 334/2006); c) trade unions or religious cults, associations or foundations from abroad to finance by any means the electoral campaign of a party, an alliance or an independent candidate (art. 25 para. 2, Law no. 334/2006).
65. For each expenditure, it is necessary to have supportive documents that were at the basis of its registration (contract, bill, payment order).

#### Reporting obligations

66. Reporting requirements are provided under Law no. 334/2006 and the implementing provisions of Government Decision no. 749/2007 *on approving methodology norms for the application of Law no. 334/2006 on financing of political parties and electoral campaigns*.

#### *Political parties*

67. Outside election periods i.e. on a permanent basis; the political parties have to submit to the PEA the following reports and information:

Information to be provided regularly by parties to the PEA		
No.	Type of report	Deadlines
1.	Situation of received donations	31 March of the following year
2.	Half-yearly situation of income resulting from membership fees	31 July of the current year 31 January of the following year
3.	Annual situation of other sources of income	31 March of the following year
4.	Monthly situation of the subsidy and expenses incurred	by the 25th day of the following month

#### *Election campaigns*

68. During election campaigns, political parties and candidates have to submit to the PEA the following information:

No.	Type of report	Deadline
1.	The registration of the financial agent	Before the electoral campaign begins
2.	The declaration regarding the compliance with the ceilings provided by art. 30 para. 2 from Law no. 334/2006	By the validation of mandates

69. The financial manager also has to submit to the PEA the following information:

No.	Type of report	Deadline
1.	Donations and legacies received after the beginning of the electoral campaigns	Within 5 working days from their receipt
2.	The report on the compliance with the legal provisions on financing political parties during the electoral campaign	Within 15 days from the publication of the elections' result
3.	The number of propaganda materials produced, divided by categories	Within 5 working days after the electoral campaign was closed
4.	The declaration regarding the compliance with the ceilings provided by art. 30 para. 2 from Law no. 334/2006	Until the mandates are validated
5.	The detailed report of electoral income and expenditure	Within 15 days from the publication of the elections' result

### Third parties

70. Third party support during elections is not regulated.

### Access to, and keeping of accounting records.

71. The PEA, where necessary, may request supplementary statements and documents, and the political parties are required to submit the requested documents within 15 days (as required by art. 39 paras. 1 and 2 of Law no. 334/2006). Besides, the AEP may request for documents and information from natural or legal persons that made donations or provided services (whether for free or not), as well as from any public authority, that has the obligation to provide the necessary support (art 28, para. 5 from the Government Decision no. 749/2007).

72. Accounting records and the supporting documents must be kept for 10 years in the archives of the legal persons without patrimonial purpose, starting from the end of the financial year when kept, except payrolls which are kept for 50 years (art. 24 from Law no. 82/1991 on accounting, as republished).

73. During the election campaigns, the financial agent of each party submits to the PEA, as indicated earlier, a series of reports and statements including the report on election income and expenditure (art. 38 para. 1); the GET was told on site that in practice, these documents are archived and kept by the PEA for 6 months. The authorities stressed after the visit that in fact, all documents must be kept and archived by the PEA for a period of 30 years before submitting them afterwards to the National Archives according to art. 13 para. (1) from Law 16/1996 (Law of the National Archives).

### Publication requirements

74. The replies to the questionnaire were limited to the publication of declarations of assets and interests.

### *Political parties*

75. The GET noted that political parties are required to publish the following information in the Official Journal, in accordance with the respective provisions of Law no. 334/2006 (which are summed up in article 40) and the corresponding precisions contained in Government Decision no. 749/2007:



Type of information	Deadline
Total amount of income from membership fees and the list of members who paid in one year fees whose total value exceeds 10 MGS (EUR 1400), incl. personal identification details (art. 4, Law no. 334/2006)	By 31 March of the following year
List of natural and legal persons who made within one year donations whose total value exceeds 10 MGS (EUR 1400), incl. identification information, as well as the total amount of confidential donations (art. 9, Law no. 334/2006)	By 31 March of the following year
Donations from abroad, which are authorised as far as they are material used for political activities (art. 11, Law no. 334/2006)	By 31 March of the following year
Total amount of income from other sources (art. 12 Law no. 334/2006)	By 31 March of the following year
Total amounts of financial contributions deriving from associations with non-political formations (art. 13, Law no. 334/2006)	By 31 March of the following year

76. Parties are required to send the above information to the PEA and the latter to subsequently publish it on its own website (art. 40 of Law no. 334/2006); in practice, the information is available the same day or the day after, as the PEA indicated.

#### *Election campaigns*

77. The PEA also publishes in the Official Journal, within 30 days following the proclamation of election results, the financial reports pertaining to election campaigns after they have been received in electronic format from the financial managers; besides, the PEA also publishes on-line the lists of all donors who must be reported (within 5 days of the donation) to the PEA after the opening of the official election campaign (article 40 combined with art. 38 para.2 and 23 of Law no. 334/2006).

#### *Other publication requirements*

78. Moreover, the PEA is required to publish an annual report of activity related to the supervision of political financing in the Romania's Official Journal as well as on the PEA's webpage before 31 March of the following year (art. 26 of Law no. 334/2006). In addition, as regards all ad hoc controls carried out besides the general examination of financial reports, the results of each of these controls are to be published within the Romania's Official Journal as well as on the Permanent Electoral Authority webpage in a term of 15 days from that control (article 36 of Law no. 334/2006).

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

##### Auditing

79. Law no. 334/2006 does not impose any internal or external auditing requirement upon parties or coalitions (or campaign participants). It is left up to them to have such audits carried out in the context of their internal policies.

##### Monitoring

80. In accordance with Law no. 334/2006, the Permanent Electoral Authority (PEA) has overall responsibility for controlling the compliance of political parties, political and electoral alliances, independent candidates and election campaigns with the Law. The Court of Account retains "simultaneous" competence in this area as regards the use of the state subsidy possibly allocated (article 35 paragraph 2). The present situation is the result of a compromise since the overall

supervision over the implementation of the Law was the responsibility of the Court of Accounts (COA) until January 2008.

*The Permanent Electoral Authority (PEA)<sup>4</sup>*

81. The PEA is an autonomous administrative institution with legal personality and with general competence that ensures unitary application, in between two electoral periods, of the legal dispositions regarding the organisation and the conduct of elections or consultations of national or local character.
82. The PEA is headed by a president (with the rank of minister). The president is appointed by a joint decision (majority vote) of the Chamber of Deputies and the Senate, upon the proposal of parliamentary groups, from among the personalities with a legal or administrative background or experience. The candidate who meets the Deputies and Senators' majority of votes shall be appointed president. The president is seconded by two vice-presidents (with the rank of state secretary), one is appointed by the President of Romania and the other by the Prime Minister. The president and vice-presidents cannot be members of a political party and their 8-year term may be renewed only once. Article 63 paragraph 8 of Law no. 35/2008 provides for the modalities of termination of their mandates (expiry of mandate, resignation, dismissal for serious grounds).
83. The PEA approves the draft of its own budget (before the general debate of the State budget), and submits it to the Government with the view to include it in the state budget. The President of PEA is a main credit manager. The Decision no. 3/2008 amending and completing the Regulation on organization and functioning of PEA, published in the Official Journal no. 673/2008, provides that the maximum number of positions (excluding officials and the office of President and Vice-president) is 250; currently, 126 of these are filled. The Authority has, at central level, 12 main departments and services. According to the law, the PEA has 8 territorial branches without legal personality; these are subordinated to the PEA and coordinated by one of the Vice-presidents.
84. Within the PEA, the Department of control of financing political parties and electoral campaigns is one of the 12 main departments; it was created in June 2007, by supplying the personnel structure; currently, the Department has 20 positions (including those in the territorial branches), of which 17 are currently filled. Public authorities have the obligation to support the PEA in controlling the political parties funding. The PEA controls the compliance with the legal provisions on party funding annually and upon notification (art. 36 para. 1, Law no. 334/2006), or following a complaint from any person that provides evidence concerning the breach of the law regarding party funding (art. 36 para. 2, Law no. 334/2006). The PEA can also act *ex officio* when it suspects an infringement of Law no. 334/2006.
85. The results of each control are published in the Official Journal of Romania, Part I, and also on the internet page of the PEA within 15 days from the control; the annual report concerning the results of controls is published in the Official Journal of Romania, Part I, and also on the website of the PEA by 31 March of the following year.
86. The GET noted that Government Decision no. 749/2007 (articles 27-30) provides in detail for the powers, access to information and scope of control of the PEA: In particular: a) the PEA must notify 15 days in advance the entities that will be controlled; b) controls may be carried out on-site in some cases (the above deadline does not apply); c) additional information may be asked from the parties at their premises; c) the PEA may check again, after a deadline of up to 15 days,

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<sup>4</sup> [www.roaep.ro/en](http://www.roaep.ro/en)

whether the detected gaps have been filed etc. The scope of control is defined at art. 30 of Government Decision 749/2007; it does not include the control over the correctness of information on expenditure.

#### *The Court of Accounts (COA)*

87. The Court of Accounts (COA) has general responsibility for the control of the management and use of the state's and public sector financial resources. In the context of political financing supervision, the COA still monitors – despite the transfer of competences to the PEA -- how political parties spend the public subsidy (article 35 paragraph 2). Law no. 94/1992, as subsequently amended, regulates the functioning of the institution. It is led by a plenum consisting of 18 counsellors of accounts, appointed for 9 years appointed by the Parliament, upon the proposal of the permanent commissions for budget, finance and banks of the two chambers. During their mandate, they are independent and irremovable. The executive management of the institution is exercised by a president, assisted by two vice-presidents, who are counsellors of accounts. The COA comprises 12 departments. Each is led by a counsellor of accounts, appointed by the plenum of COA. Out of these, 11 are specialised departments for audit and control and one is the legal department. At local level, the competence of COA is performed through the 42 territorial Chambers of Accounts, structures without legal personality. They are led by a director and a deputy director.
88. The president and the other members of COA are independent in the exercise of their functions and in the decision making process. The specialised personnel of COA (the external public auditors), enjoy stability and independence in the exercise of their prerogatives. The COA may not be influenced by the Parliament, the Government and other public authorities with regard to internal organization and functioning; their activity schedule, except the actions ordered by the Parliament; the planning, reporting and follow-up of the results of their controls. Related to its specific activities, COA decides autonomously on the timetable to be followed.
89. The controls of COA are initiated ex officio. The sole institution able to stop the controls is the Parliament, only when the competences provided by the law are exceeded. The decisions of the Chamber of Deputies and the Senate, requesting COA to perform controls, within their prerogatives, are mandatory. With regard to the cooperation with other institutions, COA cooperates with the Parliament, the Government, ministries as well as all the other public institutions.

#### *Other authorities (police and prosecution services, National Integrity Agency)*

90. As indicated earlier, in its specific activity the Authority can cooperate with various other agencies.
91. According to Law no 176/2010 *on enhancing integrity in the exercise of public positions and dignities* (which amends and complements Law no. 144/2007 *on setting up the National Integrity Agency*, which was the one applicable at the time of the visit), the persons running for the position of president of Romania, deputy, senator, county councillor, president of the county council, local councillor or mayor have the obligation to disclose their assets and interests. Disclosures of assets and interests will be submitted to the Central Electoral Office or, as applicable, to the constituency electoral office, together with the candidacy acceptance statement, in two copies. The Central Electoral Office and the constituency electoral office will send a copy of the disclosure of assets and interests to the National Integrity Agency, within

maximum 48 hours from its submission. Disclosures of assets and interests of the candidates to the position of President of Romania shall be published in the Official Journal, Part III, as well as posted on the Agency's website, within 10 days from the date of their submission or reception, as applicable and it shall be maintained as such. Disclosures of assets and interests of the candidates to positions of deputy, senator, county councillor, president of the county council, local councillor or mayor will be published on the Agency's website, within 10 days from the date of their reception and shall be maintained as such.

92. According to Law 176/2010, the declarations of assets and interests will be submitted within 30 days from the nomination or election in the public function or from the start of the activity. Such persons as provided in the law are obliged to annually submit or update declarations of assets and of interests, no later than 15 June for the previous fiscal year. Within 15 days from ending the mandate or activity, the persons provided in present law have the obligation to submit a new declaration of assets and interests.

### *Statistics*

93. As indicated earlier, until 31 December 2007 the implementation of Law no. 334/2006 was monitored by the COA; this responsibility was then taken over by PEA, the COA monitoring how political parties spend the public subsidy.
94. During the controls undertaken in 2008, 19 political organisations representing 9 political parties of which 3 non parliamentary were verified. In the context of the June 2008 local elections, 46.388 political parties' income and expenditure reports, electoral/political alliances, and independent candidates were verified. On the occasion of the November 2008 elections for the Chamber of Deputies and the Senate, 3.644 political parties, electoral/political alliances and independent candidates' income and expenditure reports that participated in the by-elections were verified.
95. During the controls undertaken in 2009, 31 political organisations representing 8 political parties were subject to controls. For the June 2009 elections for the European Parliament, 9 political parties, electoral/political alliances and independent candidates' income and expenditure reports were verified. For November 2008 Presidential elections, 12 political parties' income and expenditure reports, electoral/political alliances, and independent candidates were verified. Also, income and expenditure reports of political parties, political/electoral alliances and independent candidates that participated in the by-elections between 2008-2009 were verified. To date, the PEA has sent no complaints to the police or the prosecutor's office as a result of controls on political party financing undertaken.
96. In 2009, the Court of Accounts performed controls to 6 political parties on the subsidies received from the 2008 state budget. The controls ascertained that the expenditure from the subsidies were carried out by observing the legal provisions. By the end of December 2008, the COA has never had an opportunity to notify the police or the prosecutor's office on possible breaches of the criminal law.

### **(iii) Sanctions**

97. The replies to the questionnaire only refer to the provisions contained in Law no. 334/2006 and the possible consequences of the control work of the PEA.

## *Sanctions and measures applicable by the PEA*

98. If during their controls, PEA staff come across breaches of Law no. 334/2006 that are misdemeanours, they file a report containing the proposal to apply a sanction; the decision is then taken by a collegial decision of the PEA (art. 29, Government Decision no. 749/2007).
99. Law no. 334/2006 provides for two categories of sanctions: a) a fine of 5000 to 25.000 RON [1200 to 6000 Euros] in the cases provided in article 41 paragraph (1), which lists a series of infringements to the law<sup>5</sup>; b) confiscation of the amounts of money and/or the value of the goods and services that were the object of the misdemeanour if the thresholds of contributions is exceeded; any such possible amounts are then transferred to the general state budget.

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<sup>5</sup>1) financing the political party from sources other than the ones explicitly and limitatively provided by the law (art. 3 para.2); 2) not keeping individual accounting records in accordance with general accounting regulations (art.3 para.3); 3) the amount of the membership fees of a single member is exceeding 48 minimum gross salaries (art.4 para.3); 4) non-compliance with the obligation to publish in the Official Journal the total amount of revenues from the membership fees until the 31<sup>st</sup> of March of the following year and the list of the party members who have contributed within one year time fees exceeding 10 minimum gross salaries (art.4 para.4); 5) non compliance with the mandatory provisions regarding the donations such as: the total donations which can be received by a political party during a fiscal year, the maximum donation which a political party can receive from a natural or legal person etc (the rules on donations of art.5 as a whole); 6) non-registering distinctively of the price sales exceeding 20% of the value of the goods or services provided to political parties or independent candidates (representing donations under the law) (art.6 as a whole); 7) non-registering or non-confirming the donor's identity (art.7 as a whole); 8) inaccurate registration of all donations within the accounting records (art.8 as a whole); 9) non compliance with the obligation of publishing within the Official Journal the list of the natural and legal persons who made donations exceeding 10 minimum gross salaries and the total amount of the anonymous donations (art.9 as a whole); 10) accepting donations or free services from public authorities or institutions or companies to which the state is the shareholder or the main shareholder (art. 10 para.2); 11) accepting donations from a trade union or religious groups (art.10 para.3); 12) accepting donations from a foreign country or organisation or foreign natural or legal persons (with the exceptions of the materials needed by political activities) (art.11 para.1); 13) non compliance with the obligation of publishing within the Official Journal the list of the materials received from foreign country or organisation or foreign natural or legal persons (those allowed by Law) (art.11 para.3); 14) exceeding the threshold provided for the financial contributions of a non-political organisation (if this organisation is linked to the party (art. 12 para.1); 15) exceeding the total threshold of the financial contribution under different types of association with non-political organisations (art. 13 para.1 and 2); 16) performing activities specific to private commercial companies (art.12 para.1); 17) non compliance with the obligation of publishing within the Official Journal and by 31 March the total amount of revenues from other sources (art.12 para.3); 18) changing the destination of the state subsidy received (art. 20 para. 2); 19) not declaring the donations and legacies received after the beginning of the electoral campaigns (art.23); 20) financing directly or indirectly the electoral campaign by foreign natural or legal persons (art. 24 para.1); 21) financing the electoral campaign of a political party or a political alliance or an independent candidate by public authorities or institutions or companies to which the state is the main shareholder or by companies using public funds (art. 25 para.1); 22) financing of the electoral campaign of a political party, a political alliance or an independent candidate by trade unions or religious groups or foreign NGOs (art. 25 para.2); 23) receiving donations or legacies from natural or legal persons through another person other than the financial representative (who is specially appointed by the political party for this purpose) (art. 26 para.1); 24) keeping the financial records by other means than the ones explicitly and limitedly provided by the law (by the financial representative) (art. 26 para.2); 25) using a single financial representative for more than one political party (apart from situations of single political or electoral alliance) (art. 26 para.7); 26) nominating the financial representative as a candidate (art. 26 para.9); 27) not printing on all electoral propaganda materials the mandatory identification information (names of the independent candidate, political party or political or electoral alliance, and of the economic agent producing the materials) (art. 29 para 2); 28) bearing of propaganda material- related expenditure by persons other than the beneficiary of the propaganda (independent candidate, political parties, political or electoral alliance) (art. 29 para 3); 29) non-declaring to the Permanent Electoral Authority, through the financial representative, of the number of propaganda materials under each distinct category (art. 29 para 4); 30) using the propaganda materials of the election of the party's leadership for other purposes or in other situations than those provided by the law (art. 29 para 6); 31) non-observing the legal provisions related to the maximum amounts allowed by Law to be spent for each candidate or independent candidate (art. 30 para.2); 32) financing electoral propaganda activities by a candidate proposed by a political party by other means than through the respective political party (art. 31); 33) non submission, to the PEA, of a detailed report on the electoral revenues and expenses of each political party and independent candidate, by the financial representative, within 15 days from the publishing of the electoral results (art. 38); 34) non-submission to the PEA of the documents that the Authority requested from the political party (art. 39 para.2).

100. The sanctions are applicable to the political party, the independent candidate, the financial agent and/or the donor who has breached the provision, depending on the case (art. 41 para. 2, Law no. 334/2006).
101. Moreover, if by final court decision, one or more candidates who have been elected are convicted of an offence in connection with the financing of political party or the election campaign, their mandate of parliamentarian or as local elected official can be cancelled by the judge (art. 46 para. 1, Law no. 334/2006). There are no similar rules for holders of an Euro-MP mandate, nor for a presidential mandate.
102. The above decisions can be appealed in court.
103. As indicated in the general part, Law no. 334/2006 makes the state subsidy conditional to certain requirements. It can be suspended in case of certain infringements (to art. 3 para (3); art. 4 para. (4); art. 9, art. 11 para. (3); art. 12 para. (1); art. 13 para. (4); art. 39 and art. 40 para. (2)) in order to force offenders to rectify an illegal situation. The PEA shall, first of all, notify the political party about the deficiencies ascertained and their remediation time. The time allowed political parties to address deficiencies cannot exceed 15 days. The decision to temporary suspend granting monthly instalments from the state budget can be challenged within 15 days from the communication before the competent administrative court, which has to decide within 15 days from the notification. The court decision is final and irrevocable.

#### *Sanctions applicable by the Court of Accounts (COA)*

104. Since the COA controls the use of public grants by the parties, the GET assumed that certain sanctions would be applicable by the COA as well as that the later would transmit a case to the PEA. As the GET was told on-site, the COA has lost the power to impose sanctions in its area of competence and it has to file a case with the administrative court for such purposes; the sanctions applicable are those contained in the general legislation on misdemeanours. To date, the PEA has not received any case from the COA.

#### Statistics

105. Between 2008 and 2009, the PEA's Department for political parties financing control undertook several verifications, and many breaches of the law concerning party funding were sanctioned with fines of 5.000 to 25.000 RON, and in some cases, the confiscation of different sums of money or goods was decided. For instance: a) the Great Romania Party was sanctioned with a warning and the confiscation of 3.000 RON (EUR 700); b) the Christian-Democrat – New Generation Party was sanctioned with a fine of 5.000 RON (EUR 1200) and the confiscation of 78.000 RON [EUR 18 000]; c) the Romanian Socialist Party received a fine of 5.000 RON (EUR 1200); d) one independent candidate received a fine of 5.000RON (EUR 1200) ; e) the National Liberal Party has been sanctioned with both a fine of 5.000RON and also confiscation of 70.346RON [EUR 17 000]. In cases when no serious breaches of the law were ascertained, the PEA applied only warnings.

## Immunities

106. These aspects are not regulated in legislation and they contain no further information. The GET recalls that Romanian legislation provides for a general system of immunities from prosecution<sup>6</sup>. Leaving aside the immunity of judges and prosecutors, the scope of persons enjoying immunities is now limited to: a) members of the Romanian Parliament (deputies and senators), who enjoy immunity from arrest, detention or search except in case of *flagrante delicto* (when they can be detained and searched and when the minister of justice shall inform without delay the president of the Chamber in question on the detention and search), as provided by art. 72 of the Constitution; this immunity may be lifted by Parliament in accordance with the procedure governed by the Rules of Procedure for the two Chambers of Parliament<sup>7</sup>; b) the President of the Republic, whose scope of immunity is indirectly defined by the Constitution which provides for a prosecution procedure only for the offence of high treason (Art. 84 of the Constitution); c) the Prime Minister and ministers, who may be subject to criminal investigation according to Law no. 115/1999 on the liability of ministers. Their immunity, granted by Law no. 115/1999, is in fact broader than the immunity granted to MPs. As a result of GRECO's First Evaluation Round report, the Law was amended as it applied also to former members of government; however, the GET has confirmed that following a Constitutional Court's Decision in 2007, Law no. 115/1999 was amended again and the current situation is the same as before GRECO's recommendation.

## Statutes of limitation

107. All the deeds defined and sanctioned in Law no. 334/2006 are administrative misdemeanours ("contraventions") in accordance with art. 44 of the Law, which provides for the additional application of Government Ordinance no. 2/2001 on the juridical regime of contraventions<sup>8</sup>, as amended through Law no. 180/2002. Therefore, the statute of limitation for the application of the contraventional fine for such misdemeanours is 6 months starting from the date of commission of the deed, the enforcement of the sanction being prescribed after a period of one month, if the minute on finding the contravention has not been communicated to the contravening person (articles 13 and 14 of GO no. 2/2001).

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<sup>6</sup> In the First Evaluation Round Report ([link](#)), paragraphs 67-76 and 101-104, and since improvements were necessary, follow-up given to the recommendations was examined in the Compliance Report ([link](#)), paragraphs 56 to 63, and the later Addendum to it ([link](#)), paragraphs 5 to 9.

<sup>7</sup>For instance, deputies may be subject to investigation, and may be criminally prosecuted for actions that are not related to the vote they cast or the political opinions they expressed in the exercise of their mandate, but may not be searched, detained or arrested without the consent of the Chamber of Deputies, after having been heard. The investigation and criminal prosecution may be made only by the Prosecutor's Office attached to the High Court of Cassation and Justice. The High Court of Cassation and Justice shall have jurisdiction over this case (art. 193 of the Regulations of the Chamber of Deputies, <http://www.cdep.ro/pls/dic/site.page?id=240>).

<sup>8</sup> Art. 13: (1) The application of the administrative fine sanction shall be prescribed in a term of 6 months since the date of committing the deed.

(2) In the situation of the continuous contraventions the term stipulated at para (1) shall run since the date of finding the deed. The continuous contravention is the situation in which the breaching of the legal obligation is lasting in time.

(3) When the deed was prosecuted as an offence and after that the legislator establishes that it is a contravention, the prescription of the application of the sanction shall not run during the period when the case was in front of the criminal investigation or prosecution bodies or in front of the court, if the file was lodged within the term stipulated at para (1) and (2). The prescription shall still operate if the sanction has not been applied in a term of one year since the date of committing, respectively of finding the deed, if the law doesn't stipulate otherwise.

(4) Other prescription terms for the application of the administrative sanctions may be stipulated in special laws.

Art. 14: (1) The enforcement of the administrative fine sanction shall be prescribed if the minute on finding the contravention has not been communicated to the contravening person in a term of one month since the date of the application of the sanction.

## IV. ANALYSIS

### General considerations

108. Law no. 334/2006 *on financing the activity of political parties and election campaigns* (hereafter: Law no. 334/2006) is a fine piece of legislation which provides for a variety of measures aimed at increasing the overall transparency of political financing as regards the regular activity of political parties as well as election campaigns. It is at times over-ambitious and imposes many limitations that are probably difficult to enforce in practice, including a complex system of overall limits on campaign income and expenditure and on permissible amounts of anonymous donations calculated in proportion to the income provided in the state budget, a prohibition of donations aimed at obtaining public contracts etc. The Romanian authorities indicated that Law no. 334/2006 was republished after the on-site visit, with a different numbering of articles but no substantive changes were made; the present report has, however, kept the references and numbering applicable at the time of the on-site visit. Important implementing regulations are contained in Government Decision no. 749 of 11 July 2007 *on approving the Methodological Norms for applying Law no. 334/2006* (hereafter: Government Decision no. 749/2007), which thus provides useful guidance to the subjects of the Law. Law no. 334/2006 also provides for a supervisory mechanism under the joint responsibility of the Permanent Electoral Authority (PEA) and the Court of Accounts (COA), which is potentially powerful, and for a broad set of sanctions in case of non-compliance with the law. Despite the fact that more political parties were invited, only three of them accepted to meet the GET, one of which submitted information after the visit. What is particularly striking is the difference between the rather strict requirements of the law and the situation in practice, as described by political parties, media representatives and civil society.

### Transparency

109. The on-site discussions showed that political financing is largely perceived as a particularly problematic and grey area in Romania; the GET was told repeatedly that the information available does not reflect, by far, the reality of the situation of political parties both during and outside election periods. The significant informal economy<sup>9</sup> impacts also on political activities and parties and candidates spend notably more than what their officially declared resources allow. The same applies to donors; election observers have often noted in the last two or three elections that a number of donors had provided support to parties and candidates in amounts that actually exceeded their official income; all this suggests that the informal financing could account for even more than 30% of the real financial activity. The buying of votes also remains an important issue and the authorities are taking action in this respect<sup>10</sup>. The on-site discussions showed that many techniques are used in practice for illegally financing political activities: creation of fictitious positions (including in the Parliament or town hall of the capital city), the buying of support from influential and powerful supporters (in exchange for public responsibilities and future business contracts), public funding attributed directly to local party structures without these having applied for it, creation of related party-structures for instance to disguise the real origin of income or to raise extra funding, misuse of public facilities, blackmailing of major business entities etc. At the same time, it is clear that certain new factors constitute an additional challenge (concentration of the media in the hands of political parties or their executive members, increasing trend of economic entrepreneurs also being politicians who do sometimes use their position to finance

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<sup>9</sup> The representative of the Ministry of Public Finance had no precise or official figure but he mentioned that it represented perhaps about 30% of the GDP.

<sup>10</sup> For instance, in 2009, 3 cases involving 3 defendants were sent to trial; in 2010, 8 cases involving 8 defendants were sent to trial.



their political activities in illegal or questionable ways). The GET was also informed that the requirements of Law no. 334/2006 are circumvented by various means, including the registration as membership fees of donations that would normally exceed the permitted ceiling or the threshold for disclosure, the splitting of donations to avoid disclosure of identity and ceilings on donations etc. The GET is convinced that some of the above issues can already be addressed under the current legislation on political financing or the anti-corruption and anti-money laundering legislation, subject to real political and institutional will from the supervisory bodies (see below, paragraphs 121-123). For instance, Law no. 334/2006 clearly prohibits all forms of misuse of public facilities.

110. The situation is not entirely clear as to the entities which are subjected to Law no. 334/2006 since some political organisations are not considered officially or registered as political parties (this concerns for instance, but not only, some of the organisations of national minorities<sup>11</sup>). The GET could not discuss the situation of each individual organisation that would be involved in political and/or campaign activities and the Romanian authorities may wish to ensure that the Law applies equally to all relevant organisations.
111. It remained particularly unclear to what extent party accounts must be consolidated to take into account the various related structures such as youth/women/businessmen organisations, foundations (some are called institutes) and other entities that parties have created in practice. Foundations, for instance, are considered by some parties as totally independent entities (with their own legal personality); these foundations (one of the parties interviewed confirmed they had established several such structures) are involved in a variety of activities including charity, culture and education, printing and editing, event organising etc.; they can also generate additional income, for instance by subletting their premises. At the same time, the same representatives acknowledged that these foundations are involved in the parties' activity, especially during campaign periods. At the same time, foundations are not considered to be subject to any form of control in the context of Law no. 334/2006 (they are subject to the financial/fiscal control of the Ministry of Finance depending on their financial turnover). This is a crucial issue if party accounts are to reflect faithfully the overall financial situation, resources and expenditure; either they are to be included in the accounts of the party, or their support needs to be accounted for as third party contributions (during election campaigns) and as indicated in paragraph 70, the matter of third party support during elections is not regulated yet in Romania. The GET therefore recommends **i) to clarify how the financial activity of the various types of structures related to political parties is to be accounted for in the accounts of political parties; ii) to examine ways to increase the transparency of contributions by "third parties" (e.g. separate entities, interest groups) to political parties and candidates.**
112. As regards the accounting obligations and format, there was often uncertainty during the on-site discussions as to the applicable standards although, as indicated in the descriptive part, Government Decision no. 749 (article 5) makes it clear, in principle, that political parties' accounts must comply with the accounting regulations for non-profit legal persons contained in the relevant rules issued by the Ministry of Public Finance. The GET understood that in accordance with article 1 of the Order no. 1969/2007 of the Ministry of Finance, all political parties and related entities which have legal personality are in principle required to keep a double entry accounting and to prepare annual financial statements (for the purposes of the Ministry of Finance's general supervision). At the same time, Government Decision no. 749/2007 does require consolidation of accounts at central and county level of the parties and county level structures are keeping the

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<sup>11</sup> Such organisations do not receive public funding through the Permanent Electoral Authority but through the Department for Interethnic Relations which actually finances all the minorities represented in the Council of National Minorities

accounts for all possible local structures since the latter have no financial autonomy nor separate bookkeeping (and the headquarter at county level is the headquarter for all local chapters) – except the local sections in the capital city districts. However, it sometimes happens that these structures only keep their accounts in a simplified form (or keep no accounts at all, in practice), as interlocutors of the GET underlined; the same goes for the other structures and organisations of the party. Given the need to introduce a global disclosure system that would give a faithful picture of the parties overall annual activity, the balance sheet format is not appropriate for county level branches and those located in the large cities where significant financial activity can be deployed during local elections. At the same time, it would appear that local sections seldom use a computerised book-keeping techniques that would facilitate for instance the vertical consolidation of annual accounts in a timely manner. This will need to be borne in mind by the Romanian authorities when introducing the disclosure of general accounts recommended underneath (see paragraph 114). The GET recommends **to ensure that all entities under the control of political parties and county branches (including the district sections in Bucharest) of political parties keep proper books and accounts.**

113. Moreover, Romanian political life remains unstable; it is quite frequent for political figures to move from one party to another. The GET was sometimes told on site that when they do so, party executives sometimes take with them part or all of the accounting and financial documentation although every political party is in principle required to ensure these documents are kept for a period of 10 years, according to the general accounting regulations described by the Romanian authorities; non-compliance with these requirements is subject to administrative and criminal liability (for instance in case of stealing of accounting documents). As indicated in the descriptive part (paragraph 73), the PEA itself is normally required to keep all files for a period of 30 years but in practice the staff do not keep financial records for more than 6 months or so after their submission and they rely, as the GET was told, on the books and data kept by parties and candidates. Given the risks above, it appears imperative that the PEA itself actually retains information for a longer period, especially bearing in mind the extension of the statute of limitation referred to below (see paragraph 127). According to the information gathered by the GET, measures have never been taken against a party on grounds of missing accounting books. The Romanian authorities may wish to take additional measures to ensure the PEA abides by the legal retention requirements.
114. Law no. 334/2006 Article 40 of Law no. 334/2006 imposes on political parties the requirement to publish by 31 March of each year, in the Official Journal, separate declarations on donations, membership fees (a mid term report on membership fees is also required) and an overview of other sources of income (see descriptive part, paragraphs 66 et seq.). The PEA receives these files at the same time and has to publish them on its website. The on-site discussions confirmed that there is no requirement as such for political parties to present to the PEA their overall consolidated accounts and to publish at least a reasonably detailed summary of these (which would include in particular their expenditure). Only the financial statements on the financing of election campaigns are communicated with all income and expenditure elements (and published in the Official Journal and on the website of the PEA). The overall annual accounts of political parties are presented to the Tax authorities (for their specific control purposes) but there is no interaction between the latter and the PEA. Furthermore, interviews with the parties showed that making their accounts available to the public is not a practice followed by them either (sometimes not even internally for transparency purposes in respect of their members). This situation is mostly unsatisfactory from the point of view of article 13 of Recommendation Rec(2003)4. The GET wishes to stress that the regular publication of party accounts is an essential element for the transparency of political life. In view of the above, the GET recommends **to require political**

**parties to present their consolidated accounts to the Permanent Electoral Authority and to make an adequate summary available to the public.**

115. Law no. 334/2006 addresses gratuities, services provided free of charge, and discounts above 20%. At the same time, the implementing and accounting rules are not clear enough to address the various types of discounts, services provided free of charge and other material and non material advantages that are granted in practice to parties or candidates. Representatives of the parties confirmed that this matter is being discussed. Similarly, loans are not listed among the permissible sources of funding of political parties; interlocutors met on site interpreted the situation in different manners (for some of them the issue was viewed as not having been addressed; others considered loans are not permitted for political parties but still permissible for individuals). The Romanian authorities stressed that loans are not listed among the permissible sources of financing of political parties and other campaign participants including candidates themselves and are thus prohibited without exception. The GET could not ascertain whether these divergences of interpretation concerned the concept of loan *stricto sensu* or other similar services (for instance credit lines or cash advances). The above aspects call for additional legal provisions and/or guidance, it being understood that voluntary work – as a separate matter – should not be affected. The GET therefore recommends **to take appropriate measures i) to ensure that in-kind donations to parties and election campaign participants (other than voluntary work by non-professionals) are properly identified and accounted for at their market value, as donations; ii) to clarify the legal situation of loans.**
116. Law 334 / 2006 does not exclude anonymous donations; it only limits the overall amount of such donations that a given beneficiary is entitled to accept (up to 0,006% of the total amount of the state subsidy provided in the State budget for that year). More importantly, the GET was concerned by the way anonymous donations are regulated since article 6 of Government Decision no. 749/2007 sets a threshold for the distinction between “hand gifts” and donations which is currently 3 gross minimum wages [EUR 420]. This means that donations below this threshold do not have to comply with the various requirements of Law no. 334/2006 even as regards registration and accounting, whereas all donations above this threshold need to be registered and thus identified in the accounting documents. The GET takes the view that this goes clearly against the principles of article 12 of Recommendation Rec(2003)4 and that the threshold is not adapted to the economic situation of Romania. It wishes to remind that all donations, whatever the amount, should as a rule be registered and that only identification may be subject to a threshold; furthermore, funds should ideally be collected through modern techniques including bank accounts to increase transparency, to facilitate possible subsequent controls and to avoid the manipulation of cash and the constitution of secret funds. The GET recommends **i) to require that all donations be, as a rule, recorded and included in the accounts of political parties and campaign participants; ii) to introduce a requirement that all donations above a certain threshold be made through the banking system.**
117. The GET could not obtain clarification on other forms of possible party income such as “income from internal services” (which is an authorised source of income) and “collective donations” (which were mentioned in the replies to the questionnaire as a prohibited source of funding – at least in practice). As regards the latter, the GET noted that Law no. 334/2006 does in fact allow political parties to generate an income from the organisation of meetings and events (including “recreational activities”), and thus to possibly raise funds also in cash on those occasions. The above paragraph on the issue of “hand gifts” is a further illustration of the lack of adequate regulations in this area. The GET considers that clarification is needed in the Law and/or its implementing regulations. It recommends **to provide clarification as to the permissible**

**funding generated by “internal services” and the organisation of events, and as to how the income generated hereby is to be accounted for.**

118. Law no. 334/2006 prohibits the financing of political parties or election campaigns from foreign sources (both natural and legal persons). However, the provisions in this area (articles 11 and 24 of the Law) are not stand-alone provisions and the GET was informed that according to the legislation on foreigners, those from the EU are not foreigners for the purposes of Law no. 334/2006. In the GET's view, the rules need harmonisation in order to be clear for everyone and also for practical reasons (for instance to avoid that the prohibitions contained in Law no. 334/2006 be circumvented by using EU citizens or branches of foreign companies located in an EU country as intermediaries for funding from outside the EU territory or to hide the real origin of funds). These matters fall outside the scope of the present evaluation round but the Romanian authorities may wish to clarify the legal situation of foreign funding sources.
119. The campaign accounts submitted to the PEA often show that the overall final balance is negative. Its representatives explained to the GET that the main reason for this phenomenon was that by the time financial managers submit the overall, consolidated statements (within 15 days from the proclamation of election results), parties and candidates have often not managed to pay all the bills and expenses incurred during the campaign. Although in the GET's view, this is not a satisfactory explanation<sup>12</sup>, the current situation shows two shortcomings. Firstly, from the point of view of the transparency of political financing, a requirement is clearly missing to the effect that all debts and liabilities need to be sorted out by the time the statements are addressed to the PEA (alternative solutions are also possible, e.g. postponing slightly the date for the presentation of statements etc.) or that the PEA follows-up on such situations also to avoid illegal sources of funding are used; the Romanian authorities advised that the first solution would affect negatively the electoral process. Secondly, it would appear that (other) parties and candidates rely in practice on additional, undeclared resources since PEA representatives confirmed that in some cases, the debtors have simply no means to repay their debts. Given the importance of the above phenomenon (and the sometimes massive debts that appear in the statements<sup>13</sup>), the overall transparency of campaign financing is severely undermined. The GET recommends **to amend the rules on the presentation of financial statements concerning election campaigns to the Permanent Electoral Authority (PEA) so that all legitimate claims and debts are adequately followed-up by the PEA.**

### Supervision

120. The GET strongly believes that in the context of Romania and the weaknesses identified above, the intervention of a professional body checking compliance with the general applicable accounting standards as well as the rules which are specific to Law no. 334/2006 (and its implementing provisions) would be beneficial. In particular, it would introduce more financial discipline and general order in the party accounts and their consolidation; it would also contribute to progressively eliminate formal mistakes in those accounts, and it would facilitate the subsequent work of the control bodies in the context of the introduction of a disclosure of the overall financial situation. Furthermore, the situation of other countries evaluated to date by GRECO has also shown how crucial appropriate measures are to ensure the independence of

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<sup>12</sup> Election observers further provided another possible explanation, namely that to some extent, media advertising and other services are negotiated secretly to be provided at preferential prices or even for free, and that the corresponding expenditure are just shown in the accounts to preserve the credibility of the accounts.

<sup>13</sup> For instance, the reports pertaining to the last elections showed that one political party has (had) a total debt of EUR 4 million with several legal entities.

auditors from the political parties (professional standards on independence and integrity, reasonable rotation, “four eyes” auditing etc.). The GET recommends **to require that the annual accounts of political parties – to be presented to the Permanent Electoral Authority, as recommended earlier – are subject to independent auditing prior to their submission.** The GET acknowledges that audit requirements need to be combined with flexibility in relation to the different means and needs of the various parties, in particular, to avoid overly cumbersome procedures in respect of small parties with little or no administrative means.

121. The current sharing of responsibilities between the Court of Accounts (COA) and the Permanent Electoral Authority (PEA) is the result of the amendments brought in 2006 to the legal framework on financing political parties, by the new law in this area, Law no. 334/2006. Thus, the PEA was set up in order to play a major (new) role in this area and to take over the central responsibility from the COA for monitoring compliance of parties, political organisations, election campaign participants and donors with Law no. 334/2006. The on-site discussions showed that the COA and PEA stick to a strict and narrow distribution of tasks in practice. The COA only checks whether political parties spend the public subsidy according to the list of expenditure authorised to that effect (article 35 paragraph 2 combined with article 20 paragraph 1 of Law no. 334/2006); the PEA only controls the private sources of funding of parties (but its control does extend both to the income and expenditure related to the financing of election campaigns). For various reasons, the GET considers that the current situation is unsatisfactory: a) a clear separation of tasks between the COA and PEA is difficult to achieve since the COA is required in principle to also exert some form of control over the financing of election campaigns<sup>14</sup>; b) none of the bodies has an overall overview of the actual activity, and overall income and expenditure of political parties, and none of them is thus in a position to exert a meaningful and effective supervision; c) although under such arrangements, a close cooperation between the two bodies is crucial, there is no interaction at all nor exchange of information in practice between the COA and the PEA; d) the COA is apparently not dealing with the possible misuse of general state resources in the context of Law no. 334/2006 despite the many allegations heard by the GET; the institution has been and still seems to be paralysed by political and other factors<sup>15</sup>. All interviews showed that none of the two institutions enjoys any real credibility because of the above circumstances and especially since the PEA’s control does not extend to the expenditure of political parties. The explicit reference to the COA in Law no. 334/2006, with a scope of control which is narrower than its natural competence, ultimately constitutes a limitation. Under these specific circumstances, a better option would certainly be to give to another body than the COA, the clear leading role while the COA would retain outside the context of Law no. 334/2006, its natural competence to monitor the use of public funds.
122. Despite its limited experience in this new task (less than two years), the PEA and its special department for the monitoring of political financing has already managed to substantiate a few insufficiencies and infringements, and to impose a series of sanctions (see paragraph 105 in the descriptive part). The department’s staff have an economics and accountancy background and some of whom are former employees of the COA. The PEA, whose Head has a status equivalent to that of a Minister, also has the reputation of being distant enough from the parties and political institutions of the country<sup>16</sup>. The PEA thus seems to meet the requirements on independence and

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<sup>14</sup> Article 20 paragraph 1 of Law no. 334/2006 includes electoral campaign expenses in the list of authorised usages of the state subsidy and these fall therefore within the COA and the PEA’s competence.

<sup>15</sup> It lost in 2008 the ability to impose penalties and no overview whatsoever of the concrete relevant work carried out in the past or present in the area of party financing supervision was available.

<sup>16</sup> The GET was even told that finding persons willing to lead the PEA had been particularly difficult, especially given the difficulty of the mission and the lack of subsequent career prospects.

specialisation of articles 14 and 15 of Recommendation Rec(2003)4. Under article 36 of Law no. 334/2006, the PEA is required to control annually whether each party complies with the Law. Until now, the PEA has focused its control work (including on-site controls since March 2010) on the 3 or 4 political parties represented in Parliament. For all the other registered parties, the supervision was limited to formal checks of the declarations submitted annually or on the occasion of elections. Representatives of the PEA consider that out of the 47 registered parties, 15 in total are really active. There are no concrete plans to pay greater attention to parties other than those represented in parliament and it was indicated that this would depend on the time available in future. This came as a surprise to the GET given the number of issues to be dealt with urgently. Also, it is commonly acknowledged in Romania that parties and candidates spend much more than what is officially declared in the financial statements pertaining to election campaigns. It would also appear that the major parties often exceed by far the expenditure ceilings contained in Law no. 334/2006<sup>17</sup>. Neither the COA in recent years, nor the PEA in the last two years has ever brought such kind of cases to light; for the GET it is therefore clear that the supervision function needs to be made more effective also in respect of campaign financing. At the moment, about half of the positions in the PEA structures have not been filled; moreover, the ability of the PEA to request and obtain additional information is strictly limited to political parties (and does not extend to candidates, financial managers, foundations and other structures with legal personality which are possibly linked to parties, donors etc.). This needs to be addressed as soon as possible to enable the institution to play an effective role, including to carry out a proper monitoring of election campaign financing. In the light of the above developments, the GET recommends **i) to give the Permanent Electoral Authority (PEA), the full responsibility of monitoring compliance with the Law no. 334/2006 on the financing of activities of the political parties and election campaigns; ii) to strengthen the effectiveness of the PEA's supervision over party and election campaign financing, including endowing the PEA with additional control powers regarding party expenditure and entities other than political parties, and sufficient human and other resources to perform this task.**

123. At the same time, cooperation with the COA, but also the tax administration and other pertinent bodies, especially the National Integrity Agency, needs to be strengthened. Under the Law no. 334/2006 the PEA may seek the assistance of any other state institution, but in the GET's view, every institution works in an isolated manner and there are no spontaneous exchanges of information, regular inter-agency meetings or cooperation agreements. Given the extent of problems in the area of political financing and the urgent need to develop the level of financial discipline and of compliance with Law no. 334/2006, combined and concerted efforts need to be a priority. The GET recommends **to strengthen the cooperation and coordination of efforts on an operational and executive level between the Permanent Electoral Authority, the Court of Accounts, the tax administration and the National Integrity Agency.**

### Sanctions

124. Law no. 334/2006 lists a series of infringements and sanctions which apply in relation to most of the requirements of the Law. But there are some exceptions; for instance in case of misuse of public facilities and resources (article 10 paragraph 1 of Law no. 334/2006). The GET was advised by the Ministry of Justice that such acts are nevertheless prosecutable in accordance with the general criminal law provisions (for instance abuse of office, "embezzlement" of public resources etc.), since Law no. 334/2006 does not exclude the applicability of offences contained

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<sup>17</sup> According to election observers, this can be easily substantiated by doing basic estimates of the actual advertising activity during the official election period (the number of billboards, the volume of propaganda gifts distributed by the parties etc.), using the common market prices.

in the Criminal Code (CC); the same goes for special legislation, such as the anti-corruption law of 2000 presented in the other report on Theme I – Incriminations – which contains offences of particular relevance in the context of political financing (for instance certain forms of misuse of his/her influence by an elected official to obtain an advantage for his/her political party or political activities). Law no. 334/2006 itself contains a specific criminal offence (article 36(3)) which punishes false financial statements with imprisonment of 1 to 3 years. The GET was informed that this offence was likely to be removed once the New Criminal Code (NCC) is enforced because it already exists in the CC (and the future NCC). The GET welcomes this step in the direction of greater homogeneity of legislation, but it is concerned that it might not be clear enough for everyone that criminal legislation remains applicable: the removal of all criminal offences from Law no. 334/2006 could be interpreted in quite the opposite way; during the discussions, the PEA itself was unaware of their responsibilities in this regard<sup>18</sup> and the replies to the questionnaire contained no reference at all to criminal sanctions. The GET recommends **to provide in Law no. 334/2006 on the financing of activities of the political parties and election campaigns that the Permanent Electoral Authority report suspicions of criminal offences to the competent criminal law bodies.**

125. The GET noted that the maximum fines applicable by the PEA under Law no. 334/2006, which are the equivalent of EUR 6000, are not effective, proportionate and dissuasive nor adapted to the gravity of the possible infringements (especially where a party does not receive public financial support. In case a financial manager, party or candidate does not submit a financial statement at all or refuses to provide documents requested by the PEA, a fine of EUR 6000, would be almost negligible if this was done to hide important sources of illegal financing. The current offences are thus only administrative misdemeanours, which gives a wrong signal to the public about the importance of party and campaign financing regulations. The GET therefore recommends **to increase the penalties applicable in accordance with Law no. 334/2006 on the financing of activities of the political parties and election campaigns and thus to ensure that all infringements are punishable by effective, proportionate and dissuasive sanctions.**
126. The GET received confirmation during the on-site discussions that the immunity of former members of government against criminal investigation was restored in 2007 in the situation that prevailed before Romania agreed to change it in 2005 following a GRECO recommendation from the First Evaluation Round<sup>19</sup>. Therefore, both the members and the former members of government benefit again from the protection granted under Law 115/1999 on ministerial responsibility, which is described as broader than the immunity regime applicable to parliamentarians (as it prevents any step in the criminal proceedings). The GET understood that objective reasons led to this situation and took note of the Constitutional Court decision, which led to amendments to the legal framework that is to protect former members of government against criminal proceedings and to grant them the same immunity as for serving members. Representatives of the prosecution authorities confirmed that this form of immunity had hindered or delayed the prosecution and any investigative step in various cases involving different forms of corruption (also in connection with political financing). Various interlocutors claimed that members of the political class strongly protect themselves and do use the institutions for such purposes, including the Constitutional Court itself. As far as the Parliament is concerned, it still lacks a set of rules and principles that would clarify the conditions for the lifting of the immunity and establish

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<sup>18</sup> The Ministry of Justice takes the view that the PEA and other state institutions are subject to the general duty for all public authorities to report criminal offences.

<sup>19</sup> This followed a constitutional challenge initiated during criminal proceedings against a high-level political official (for various corruption offences).

that it should not be used to guarantee impunity to all forms of criminal misbehaviour: in comparable situations involving members prosecuted for corruption-related offences (sometimes connected with political financing), the Parliament has sometimes authorised the lifting of immunity and sometimes not, following an in-depth discussion of the merits of the case rather than a formal discussion of the prosecutors' conclusions. This conveys a wrong message about the anti-corruption efforts of Romania. GRECO refrains from issuing a recommendation because these issues are outside the scope of the current evaluation, but it wishes to stress that it is of the highest importance that the Romanian authorities abolish the immunity granted to former members of government and make the necessary amendments to guarantee that the decisions concerning, on one side, the initiation of criminal proceedings against members of government and, on the other side, the withdrawal of parliamentary immunity, are based on the prosecutors' conclusions.

#### Other matters

127. In accordance with the general administrative regulations on misdemeanours, the limitation period for proceedings in case of an infringement of Law no. 334/2006 is 6 months starting from the date of commission of the misdemeanour. Having a system of administrative offences is not a bad approach compared to criminal law sanctions since the latter imply other constraints including a standard of evidence which is less stringent for the purposes of party financing supervision. But the above 6 months period is clearly too short, bearing in mind that the deadline for the submission of financial reports to the PEA is 31 March of the following year. Representatives of the PEA themselves confirmed the inadequacy – in the context of their responsibilities and activities – of this limitation period. Other GRECO countries evaluated to date are confronted with the same issue even though the statute of limitation is one year; Romania thus needs to extend significantly its time limit. Consequently, the GET recommends **to extend the statute of limitation applicable to violations of Law no. 334/2006 on the financing of activities of the political parties and election campaigns.**

#### **V. CONCLUSIONS**

128. Law no. 334/2006 on financing the activity of political parties and election campaigns, republished in 2010 is a fine piece of legislation which provides for a variety of measures aimed at increasing the overall transparency of political life. It is at times over-ambitious and imposes many limitations that are probably difficult to enforce in practice, including a complex system of overall limits on campaign income and expenditure etc. Important implementing regulations are contained in Government Decision no. 749 of 11 July 2007 on approving the Methodological Norms for applying Law no. 334/2006, which thus provides useful guidance to the subjects of the Law. Accounting, reporting and disclosure measures are in place and sources of income are regulated to ensure a certain level of transparency but some important loopholes affect the effectiveness of these measures: for instance, all donations up to the equivalent of EUR 420 fall outside the scope of the regulations and need not to be registered. In-kind donations, loans and movements of assets within political parties need to be (re-)addressed, as well as (re)defining the financial perimeter of political parties. Law no. 334/2006 also provides for a supervisory mechanism under the joint responsibility of the Permanent Electoral Authority (PEA) and the Court of Accounts (COA); however, these supervisory arrangements including the way responsibilities are distributed, are not satisfactory and under the present circumstances, the PEA should take over the lead responsibility in this area and be given the means to comply with this task. The legislation also provides for a broad set of sanctions in case of non-compliance with the law, including a set of fines, but the maximum penalties (EUR 6000) are not adequate enough. It is



important that improvements be rapidly implemented since political financing in Romania has been for many years now a particularly problematic area characterised by many allegations of underground financing.

129. In view of the above, GRECO addresses the following recommendations to Romania:

- i. **i) to clarify how the financial activity of the various types of structures related to political parties is to be accounted for in the accounts of political parties; ii) to examine ways to increase the transparency of contributions by “third parties” (e.g. separate entities, interest groups) to political parties and candidates (paragraph 111);**
- ii. **to ensure that all entities under the control of political parties and county branches (including the district sections in Bucharest) of political parties keep proper books and accounts (paragraph 112);**
- iii. **to require political parties to present their consolidated accounts to the Permanent Electoral Authority and to make an adequate summary available to the public (paragraph 114);**
- iv. **to take appropriate measures i) to ensure that in-kind donations to parties and election campaign participants (other than voluntary work by non-professionals) are properly identified and accounted for at their market value, as donations; ii) to clarify the legal situation of loans (paragraph 115);**
- v. **i) to require that all donations be, as a rule, recorded and included in the accounts of political parties and campaign participants; ii) to introduce a requirement that all donations above a certain threshold be made through the banking system (paragraph 116);**
- vi. **to provide clarification as to the permissible funding generated by “internal services” and the organisation of events, and as to how the income generated hereby is to be accounted for (paragraph 117);**
- vii. **to amend the rules on the presentation of financial statements concerning election campaigns to the Permanent Electoral Authority (PEA) so that all legitimate claims and debts are adequately followed-up by the PEA (paragraph 119);**
- viii. **to require that the annual accounts of political parties – to be presented to the Permanent Electoral Authority, as recommended earlier – are subject to independent auditing prior to their submission (paragraph 120);**
- ix. **i) to give the Permanent Electoral Authority (PEA), the full responsibility of monitoring compliance with the Law no. 334/2006 *on the financing of activities of the political parties and election campaigns*; ii) to strengthen the effectiveness of the PEA’s supervision over party and election campaign financing, including endowing the PEA with additional control powers regarding party expenditure and entities other than political parties, and sufficient human and other resources to perform this task (paragraph 122);**

- x. **to strengthen the cooperation and coordination of efforts on an operational and executive level between the Permanent Electoral Authority, the Court of Accounts, the tax administration and the National Integrity Agency (paragraph 123);**
  - xi. **to provide in Law no. 334/2006 *on the financing of activities of the political parties and election campaigns* that the Permanent Electoral Authority report suspicions of criminal offences to the competent criminal law bodies (paragraph 124);**
  - xii. **to increase the penalties applicable in accordance with Law no. 334/2006 *on the financing of activities of the political parties and election campaigns* and thus to ensure that all infringements are punishable by effective, proportionate and dissuasive sanctions (paragraph 125);**
  - xiii. **to extend the statute of limitation applicable to violations of Law no. 334/2006 *on the financing of activities of the political parties and election campaigns* (paragraph 127).**
130. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Romanian authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2012.
131. Finally, GRECO invites the authorities of Romania to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.