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**Theme II**

## **Third Evaluation Round**

### **Evaluation Report on Bulgaria Transparency of party funding**

(Theme II)

Adopted by GRECO  
At its 48<sup>th</sup> Plenary Meeting  
(Strasbourg, 27 September – 1 October 2010)

## I. INTRODUCTION

1. Bulgaria joined GRECO in 1999. GRECO adopted the First Round Evaluation Report on Bulgaria (Greco Eval I Rep (2001) 14E) at its 9<sup>th</sup> Plenary Meeting (17 May 2002) and the Second Round Evaluation Report on Bulgaria (Greco Eval II Rep 2004) 13E) at its 24<sup>th</sup> Plenary Meeting (1 July 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Report, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Bulgaria from 21 to 23 October 2009, was composed of Mr Stéphane GAUVIN, Deputy Head, Legal Affairs Department of the National Committee for Campaign Accounts and Political Party Financing (in French: *CNCCFP*) (France), Mr Paulo PINTO DE ALBUQUERQUE, Professor at the Lisbon University (Portugal). The GET was supported by Ms Aleksandra KURNIK and Mr Christophe SPECKBACHER from the GRECO Secretariat. Prior to the visit the GET was provided with replies to the Evaluation questionnaire (document Greco Eval III (2009) 7E, Theme II) as well as copies of relevant legislation.
4. The GET met with officials from the following institutions : the Ministry of Justice, the Ministry of Finance, the Sofia Regional Court, the Supreme Prosecution Office of Cassation, the National Audit Office, the National Revenue Agency, the Central Election Commission, the Commission for Fight against Corruption, Conflict of Interests and Parliamentary Ethics to the National Assembly, the Commission for Public Oversight of Statutory Auditors, statutory auditors and the Institute of Certified Experts-Accountants. In addition, the GET met with representatives of two political parties, and with representatives of academic life and civil sphere: Sofia University "Sv. Kliment Ohridski" and the Bulgarian Chapter of Transparency International.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Bulgarian 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 Bulgaria in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme I - Incriminations, is set out in Greco Eval III Rep (2009) 7E - Theme I.

## II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

### Legal framework

7. In Bulgaria, political parties are governed by the Political Parties Act (hereafter: PPA), which entered into force in 2005, and by more general laws such as the Non-Profit Legal Persons Act of 2000 – which applies to political parties in so far as the Political Parties Act does not provide otherwise – and by the electoral laws (see paragraphs 16 and 25). Furthermore, article 11 of the Constitution contains several provisions concerning political parties.
8. The national currency is the Bulgarian Lev (BGN). For the purposes of the present report, 1 Lev = 0,50 Euros.

### Definition of political parties

9. Under article 11 of the Constitution, “political life in the Republic of Bulgaria is based on the principle of political pluralism”. Political parties are defined by article 2 PPA as “voluntary associations of citizens holding electoral rights according to Bulgarian legislation”. They “contribute to the formation and expression of the political will of citizens through elections or by other democratic means”. Political parties are established pursuant to the Constitution, the laws and in accordance with their statutes (article 4 PPA).
10. In accordance with article 3 PPA, organisations that are not political parties may not participate in elections but the various laws regulating elections also provide for the possibility of coalitions and so-called initiative committees to present candidates and participate in the election via campaigning and funding activities.
11. Under the PPA (articles 20 to 22), parties may set up local chapters along territorial or thematic lines as well as “youth, women’s and other organisations thereof”, but they may not: a) establish workplace chapters at commercial corporations, cooperatives, sole traders, not-for-profit legal entities and religious institutions, at state, regional or municipal administrations (or interfering with the management and operation thereof); b) establish or be part of religious or paramilitary structures; c) carry out any economic activities except those connected with publishing activity and the sale of printed and audio-visual material with propaganda content; c) hold interests in any commercial corporation or cooperative.

### Founding and registration of political parties

12. The founding and registration of political parties are regulated by articles 7 to 20 PPA. Pursuant to article 10 PPA, a political party can be established by at least 500 citizens holding electoral rights according to Bulgarian legislation. The founders, who become a Steering Committee, adopt a Declaration on Establishment, specifying the fundamental principles and objectives of the political party, adopt a statute<sup>1</sup> and elect governing and supervisory bodies.
13. A party is entered in the Register of Political Parties of the Sofia City Court upon receipt of a written application which includes, *inter alia*, designation, seat and statute of the political party,

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<sup>1</sup> Pursuant to article 14 PPA, is to *inter alia* include information of the name, seat, address of the headquarters and objectives of the political party, as well as the procedure for convocation, election and removal of the governing and supervisory bodies, procedure for the commencement and cessation of the membership, procedure for dissolution of the political party and rules governing the property and funds of the political party.

the list of founders and members of its administrative bodies, the list of persons authorised to represent the party and declarations of membership. The Sofia City Court, with the participation of a public Prosecutor, considers the application and delivers a decision within fourteen days after hearing. The political party has legal personality from the moment of registration at the Sofia City Court (article 18, paragraph 4). The Court's decision on entry of the political party into the registrar is promulgated in the State Gazette within seven days after delivery of the above-mentioned decision.

14. In 2009 there were 330 parties entered in the Register of Political Parties of the Sofia City Court.

#### Party representation in Parliament

15. On 5 July 2009, 20 political parties and coalitions, and 357 individual candidates participated in the parliamentary elections. Seats were obtained by the following parties :
  - Citizens for European Development of Bulgaria: 116 seats
  - Coalition for Bulgaria: 40 seats
  - Movement for Rights and Freedom Party (DPS): 38 seats
  - Ataka Party: 21 seats
  - The Blue Coalition: 15 seats
  - Order, Lawfulness, Justice Party: 10 seats

#### Participation in elections

16. Bulgaria is a parliamentary republic with a multi-party system, whose current Constitution dates from 1991 and was last amended in 2007. There is no general election law or Electoral Code like in other countries; elections are regulated by the Election of Members of Parliament Act (hereafter EMPA), the Election of Members of the European Parliament Act (EMEPA), the Local Election Act (hereafter LEA) and the Presidential Election Act (hereafter PEA). During the on-site visit, reference was made also to the Grand National Assembly Election Act (hereafter GNAEA) and the Law on Persons Participating in Referendum Campaigns (LPPRC).
17. Bulgaria's head of State is the President, who is directly elected for a term of five years and may be re-elected once. Bulgarian citizens (by origin), who have lived in Bulgaria for at least five years, who are at least 40 years old and who possess the electoral qualifications to become National Representatives, are eligible for the post of President of the Republic. To be elected, a candidate must have received more than a half of the valid votes, provided that more than one-half of the eligible voters have participated in the polls.
18. The unicameral National Assembly (*Narodno Sabranie*) is composed of 240 members, elected for a term of four years on the basis of general, equal and direct suffrage by secret ballot. According to the EMPA, as amended two months before the parliamentary elections in 2009, and introducing major changes to the electoral system, 209 members of Parliament are elected by a proportional system with candidate lists of political parties or coalitions in multi-mandate constituencies and 31 by simple majority vote in single-mandate constituencies. Elections are held in ten electoral constituencies which correspond to the administrative division of the country, except for the cities of Sofia (where there are three electoral constituencies) and Plovdiv (where there are two electoral constituencies). In the multi-mandate constituencies, the parties and coalition lists which have carried at least 4% of the valid votes are entitled to participate in the allocation of mandates (the Hayer-Niemeyer method). All Bulgarian citizens over 18 years old,

with the exception of those under legal disability or serving prison sentences have the right to vote. Any Bulgarian citizen over the age of 21 who has the suffrage right and who does not possess dual citizenship has the right to be elected to Parliament (article 3, EMPA). The age limits are the same for elections to the European Parliament, with different specific provisions (in particular as regards nationality requirements, article 4, EMEPA). Specific provisions apply also to local elections, where the minimum age is 18 both for voting and standing for elections (article 3 to 4a of the LEA).

19. Candidates for parliamentary election may be nominated by political parties and party coalitions; initiative committees composed of voters may nominate independent candidates. Candidate lists of parties and coalitions are proposed for registration by their central leadership. Coalitions run in the elections with a common candidate list in each multi-member constituency. Parties participating in the coalition may not run in the elections with independent tickets or nominate individual majority candidates. They may run in the elections on their own or in coalition with other parties and coalitions. Any party and coalition may run in the elections only in one single coalition in all constituencies.
20. Parliamentary elections are conducted by Constituency Electoral Commissions (one for each constituency) and District Electoral Commissions (one for each pooling district) under the supervision of the Central Electoral Commission (one for the whole country). This Commission, appointed to serve until the termination of the powers of the National Assembly, is responsible for the preparation, management and supervision of the electoral process. The Central Electoral Commission cooperates with the Council of Ministers and the regional and municipal administration in order to carry out the organisational and technical preparation for the elections. The Commission collects certificates, issued by the National Audit Office, evidencing submission or non-submission within the valid term of financial statements of the political parties for the three preceding consecutive years and for newly registered parties, as from the date of their registration.
21. Parliamentary elections are held, at the earliest, 60 days after having been called by the President. The election campaign starts 21 days prior to election day; campaigning is not allowed on the election day. Candidate lists have to be submitted to the Central Electoral Commission upon registration for participation in elections. The Commission also publishes the candidate lists of parties and coalitions as well as the names of the majority candidates of political parties, coalitions and initiative committees.
22. As regards elections to bodies of local self-government, the election of municipal councillors is administered under the proportional representation system and the election for mayors under the majority system. The Hare-Niemayer method at municipality level applies for the distribution of mandates among the parties, coalitions and initiative committees.
23. There are three election commissions: central (for the whole country), municipal (for every municipality), articleal (for every election article). The candidates for councillors and mayors are nominated and proposed for registration by the central leaderships of the political parties and coalitions which satisfy the requirements of the Political Parties Act and have been registered with the Central Election Commission for the Local Elections and the Municipal Election Commission.
24. The Grand National Assembly, consisting of 400 national representatives, may be convened on special occasions such as: 1) adoption of a new Constitution; 2) amendment of certain fundamental provisions, e.g. those related to the basic civil rights of the Constitution; 3) territorial

changes etc. The Grand National Assembly Election Act establishes the manner of election of members of the Grand National Assembly and the procedure for the termination of their term of office. Pursuant to section 1 GNAEA, the election is conducted on the basis of a general, equal and direct suffrage by secret ballot. A mixed system of election is applied.

#### Overview of the political funding system

25. Rules governing the funding of political parties are contained in the Political Parties Act (PPA), which entered into force in 2005. Different provisions regulate the funding of election campaigns: a) the Local Elections Act – LEA – of 1995 (last amended in September 2007), which regulates the election of municipal councillors, mayors of municipalities, mayors of wards and mayors of mayoralties; b) the Election of Members of Parliament Act – EMPA – of 2001 (amended last in April 2009); c) the Election of Members of the European Parliament Act – EMEPA – of 2007 (amended last in April 2009); d) the Election of the President and Vice President Act – EPVPA – of 1991 (amended last in October 2007). Some of the rules contained in the Grand National Assembly Election Act (hereafter GNAEA) and the Law on Persons Participating in Referendum Campaigns (LPPRC) may also be of relevance.
26. According to article 24 PPA, political parties are financed by direct funding from the state and private funding (the law refers to the parties' "own sources" of income, which include in fact all other forms of private support and profit, including those generated by the parties' own activities).
27. Direct public funding is distributed annually in four equal parts from the central government budget. Public subsidies are provided to those political parties and coalitions registered in the Central Election Commission, which have participated in the latest parliamentary elections, and which have elected National Representatives (article 25 PPA). The total sum provided for in the budget is distributed in proportion to the valid votes received by any party or coalition. As regards coalitions represented in the National Assembly, the state subsidy is distributed among the constituent parties in compliance with the coalition agreement. The Ministry of Finance transfers the share of the subsidy to an account specified by each party in the coalition. A state subsidy is furthermore allocated annually to parties which are not represented in the National Assembly but which have received not less than 1% of all valid votes at the latest parliamentary elections. The aggregate amount committed for subsidising of political parties and coalitions is fixed annually in the State Budget of the Republic of Bulgaria Act, depending on the number of valid votes received at the latest parliamentary elections, with a subsidy of 5% of the national minimum wage applicable for the current calendar year being committed for each vote received. The Minister of Finance determines the manner in which provision of the funds for subsidising political parties.
28. Public funding is granted to support operational activities of political parties, including expenses linked with preparation and participation in elections, organisation of events and other expenses inherent to the activity of the party (article 29 PPA). The GET could not determine the importance of public support in practice, relative to the forms of private funding. It would appear that for some parties, the state grant is the only source of income.
29. According to article 48 of the Local Taxes and Fees Act, donations to political parties that receive a state subsidy are not subject to taxation.

### Other forms of state support

30. Political parties, coalitions and initiative coalitions of independent candidates pay themselves for their advertising and media appearances but they are also provided with some indirect public funding in the form of free airtime on State television and radio stations, for the purpose of election broadcasts and election announcements, from the 21<sup>st</sup> day preceding elections (article 60 EMPA). Political parties, coalitions and candidates for members of Parliament are allocated at least three debates with duration of at least three hours on national radio and television. Representatives of parties, coalitions and initiative committees of independent candidates are entitled to at least one hour of radio and television debates. Candidates in the presidential elections are also provided with free broadcasting time (in equal measure), in the form of television debates and radio broadcast time of 90 minutes once per week (article 11 PEA). The Bulgarian National Television and Radio also cover the election campaign through chronicles and party political broadcast.
31. Under article 31 PPA, political parties which have a parliamentary group or a sufficient number of National Representatives to form a parliamentary group are provided by the State and municipalities with premises for performing their activities, in exchange for a rental charge. Parties which have received more than 1% of the valid votes at the latest parliamentary elections may also be granted this kind of support. The rental charge for the premises as provided is preferential and equal to the amount of depreciation charges where to the operating expenses, if any, are added. The premises provided to political parties may not be sublet to tenants or given out for any other use. They can be used jointly with third parties under contract if this is in support of the party activities. The GET was informed that parliamentary groups are an integral part of the political parties; they do not have a separate budget.
32. The various election acts sometimes provide that candidates are required during their registration to make a deposit which may be reimbursed in certain cases. For instance, under the Election of the President and Vice President Act – EPVPA, article 6a - “upon putting forward a nomination for President and Vice President, the parties, coalitions and initiative committees shall deposit on an account with the Bulgarian National Bank a non-interest-bearing deposit of BGN 5,000. After the announcement of the final election results by the Central Election Commission, the deposits shall be reimbursed to the political parties, coalitions and initiative committees the candidates of which have received at least one percent of the valid votes.

### Private funding under the Political Parties Act

33. As indicated in paragraph 10, parties are not entitled to participate in a business entity nor to perform or get involved in any economic activity except those connected with publishing activity and the sale of printed and audio-visual material with propaganda content. Under article 23 PPA, the parties’ income (“own sources”) includes: a) membership fees; b) own corporeal immovable property; c) donations, legacies, devises and bequests from natural persons; d) interest received from cash deposits with banks and income from securities, in so far as this does not conflict with the requirement not to carry out an economic activity; e) income from publishing activity and the selling of propaganda material.
34. Various restrictions apply to the sources of private funding. In particular, political parties are not permitted to accept: a) any anonymous donations (according to the supplementary provision of the PPA, “anonymous donations” are any “donations in respect of which the identity or business name of the donor are kept confidential vis-à-vis third persons”); b) any funds from any legal

person and from any sole traders; c) any funds from any religious institutions; d) any funds from any foreign governments or from any foreign state-owned enterprises, foreign commercial corporations or foreign non-profit organisations<sup>2</sup>. In addition, both political parties and electoral candidates are not allowed to receive a donation from a given natural person exceeding 10 000 BGN per year. According to the supplementary provisions of the PPA, the expression “funds” applies to both cash and non cash resources provided to a political party on the basis of a gratuitous transaction.

35. Political parties may contract loans from banks to an amount not exceeding two-thirds of the revenue for the last preceding calendar year as reported to the National Audit Office.
36. Donations to political parties by natural persons are not tax deductible. The GET was informed that this is a general rule, applying also to the financing of elections.

#### Private funding under the Local Elections Act (LEA)

37. In accordance with article 68 LEA, local election campaigns may be financed with funds from the parties, coalitions and initiative committees, as well as by donations from natural but also from legal persons. These donations may not exceed BGN 10,000 per natural person and BGN 30,000 per legal person. Funding is prohibited when it comes from: a) commercial companies with more than 5 percent state or municipal participation or related to them persons from companies in which the state has shares with special rights, as well as from state or municipal enterprises; b) foreign natural and legal persons, as well as joint companies with more than 25 percent foreign participation; c) candidates and participants in a procedure for granting of a public procurement which has not yet finished and the term for appeal under the Public Procurement Act has not yet expired, the person performing the public procurement or a legal person in a privatisation procedure; d) organisers of gambling games; e) religious institutions or non-profit legal persons, acting for the benefit of the society; f) foreign governments or foreign state enterprises, foreign companies or foreign non-profit organisations.
38. During the visit, it was sometimes stressed that the prohibition of anonymous donations also applies to local elections, even if this is not settled explicitly in the Local Election Act.

#### Private funding under the Election of Members of Parliament Act (EMPA)

39. This is regulated under Articles 71 and 72 of the EMPA. Accordingly, the election campaign is to be financed through the own resources of the independent candidates and the parties and coalitions, as well as through donations by natural persons. Since the last amendments passed in 2009, donations from natural persons may not exceed BGN 10,000 [EUR 5,000] per natural person (the on-site discussions showed that sometimes, it is considered that this limit is in principle for the aggregated value of donations received in one calendar year, although the EMPA does not mention it); resources may not be provided by a) legal persons and sole traders (such donations were permitted until 2009); b) foreign natural persons; c) religious institutions; d) foreign governments or foreign state-owned enterprises, foreign commercial companies or foreign non-profit organisations.

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<sup>2</sup> article 24 PPA and article 71 EMPA

#### Private funding under the Election of President and Vice-President Act (EPVPA)

40. The election campaign for President and Vice-President of the Republic of Bulgaria is financed by own funds of the parties and coalitions (article 12). The financing of the election campaign of each list of candidates may not exceed 2 million BGN. Candidates for President and Vice-President are free to receive campaign contributions. The amount of a single contribution should not exceed 10 000 BGN for a natural person and 30 000 BGN for a legal person. No foreign state, nor any foreign natural or legal person, nor any joint venture with more than 25 % foreign interest, nor any legal entities with more than 50% state or municipal participation are allowed to finance an election campaign.
41. The EPVPA is silent on various issues such as anonymous donations, the use of bank transfers as opposed to donations in cash etc. There are no provisions either on financial reports to be submitted to the National Audit Office. The GET noted that paragraph 2 of the concluding provisions provides, however, that “the relevant provisions of the Election of Members of Parliament Act shall apply to any matter not settled by this Act”.

#### Private funding under the Election of Members of the European Parliament Act (EMEPA)

42. The matter is regulated under articles 76 of the EMEPA, as amended last in 2009. Accordingly, European parliament election campaigns are funded with resources of the parties, the coalitions and the initiative committees, as well as with donations from individuals and donations may not exceed the amount of BGN 10,000 [EUR 5000] when coming from individuals. Funding of election campaigns may not come from a) legal persons and sole traders (such donations were permitted until 2009); b) foreign natural persons; c) religious institutions; d) foreign governments or foreign state-owned enterprises, foreign commercial companies or foreign non-profit organisations.
43. As from 2009, donors are required to submit a declaration on the origin of the resources donated, all donations and expenses related to the election campaign and exceeding BGN 5 000 [EUR 2500] shall be done via bank transfer, and parties, coalitions and initiative committees shall establish a public register of the election campaign donors. Besides, parties, coalitions and initiative committees shall submit to the National Audit Office, within 5 days of their registration to take part in the elections, their bank accounts with details on the income and expenditure servicing the election campaign. The bank account of a party belonging to a coalition may be used as a coalition bank account.

#### Private funding under the Grand National Assembly Election Act (GNAEA) and the Law on Persons Participating in Referendum Campaigns (LPPRC)

44. As indicated earlier, these two other legal texts sometimes also contain provisions which can be relevant. For instance, under the GNAEA, candidates are prohibited from receiving election related aid, donations and contributions from foreign states, foreign corporate entities or natural persons. According to article 53 GNAEA, the amount of a single contribution should not exceed 100 BGN for a natural person and 2 000 BGN for a legal person. Moreover, election campaign expenditure may not exceed 20 000 BGN.

## Campaign expenditures

45. Election campaign expenditures are subject to various limits and restrictions. According to article 72 EMPA, the financing of the parliamentary election campaign may not exceed: a) 1 000 000 BGN [EUR 500 000] for parties; b) 2 000 000 BGN for coalitions [EUR 1 000 000] and c) 200 000 BGN [EUR 100 000] for initiative committees. For the presidential elections, the total amount used to finance the election campaign of each list of candidates may not exceed BGN 2 000 000 [EUR 1 000 000] (EPVPA, article 12). As regards the local elections, any candidate for councillor may spend up to 5 000 BGN for election canvassing. Each candidate for mayor (of a municipality, a ward or a mayoralty) may spend an amount specified in article 69 of the LEA, ranging from 5000 BGN to 1 000 000 BGN [EUR 2500 to 500 000] depending on the size of the constituency's population. Under article 78 of the EMEPA, the total amount of funding for the European parliament election campaign may not exceed BGN 2,000,000 [EUR 1 000 000] per candidate list.

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

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

##### Books and accounts

###### *Political parties*

46. Parties are required to designate one or more specific persons (treasurers) to be in charge of the registration of all income and expenditures, and keeping the accounts. The names of such persons, as well as other information (should the party concerned benefit from state subsidies) including their own income and expenditures and their financial interests, are to be communicated to the National Audit Office. Political parties are required to apply a double-entry system of book keeping, in accordance with the provisions of the Accountancy Act - hereafter AA (article 33, paragraph 2 PPA ). Book keeping of political parties use records for chronological and systematic (synthetic and analytic) accounting (article 12 AA). Assets, owner's equity, liabilities, income and expenses are valued and recorded at the time of their acquisition or origination at their historic cost<sup>3</sup> or other cost, in compliance with the applicable accounting standards.
47. Besides, parties are required: a) to draw up a financial statement on the last preceding calendar year (article 34 PPA), including figures related both to headquarters and the regional chapters, and in accordance with the requirements of the Accountancy Act and by the National Accounting Standards. In addition, the financial statement should include a balance sheet, profit and loss account, statement of cash and flows, owner's equity account and notes; b) to keep a public register, accessible via Internet and recording within 14 days: a) the names of donors; b) the type, amount, value and purpose of the donation or legacy, devise and bequest made; c) a declaration by the donor on the origin of the funds, where the donation exceeds 5 000 BGN [EUR 2500] ; d) the designations of the sociological agencies and the advertising agencies, as well as of the public opinion agencies, which work with the party; e) the name, address, headquarters of the political party, the names of the members of the management and control bodies of the party, the names of possible liquidators etc.; f) the corporeal immovable owned; g) all transactions involving movable or immovable property in excess of 5 000 BGN [EUR 2500]; h) the annual financial statements and the reports on the election campaigns (article 29 PPA).

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<sup>3</sup> Historic cost is the acquisition price, the cost or the fair value (article 13, paragraph 2 AA)

48. As regards recording obligations of contributors, the GET was not informed of particular arrangements in this field, apart from the general accounting rules applicable to the entities concerned.

#### *Electoral campaigns*

49. The GET noted that, strictly speaking, there are requirements to keep books and accounts in relation with the financing of election campaigns. Under the PPA and the various election Acts, the applicable reporting duties (see underneath) imply, however, that political parties, coalitions, initiative committees and candidates (depending on the legal text considered) keep such records.

#### Reporting obligations

50. Under the PPA, the NAO is required to issue standardised forms for the financial reports to be submitted. The GET was advised on site that all the forms for the annual reporting and for the reporting of campaign-related financial statements had been issued. Moreover, the NAO provides political parties with advice and assistance in this respect.

#### *Political parties*

51. Article 34 PPA provides that every year before the 31<sup>st</sup> of March, political parties submit to the National Audit Office, both on paper and in electronic format, for verification purposes, their annual financial statements. In addition, a declaration containing a list of the natural and legal persons that have made donations is to be attached to the financial statements.

#### *Electoral campaigns*

52. According to article 37a PPA, political parties are required, within one month after the elections, to submit to the NAO financial reports both on paper and in electronic format, listing the funds raised and spent in the election campaign.
53. The Election of Members of Parliament Act (EMPA) (article 71, paragraph 8) provides that parties and coalitions are obliged to submit to the NAO, within 5 days of their registration for participation in elections, bank accounts of their income and expenditure for supporting the election campaign, as well as individual bank accounts of constituencies. Coalitions may use as bank accounts the existing ones of one of the coalition members.
54. Parties, coalitions and initiative committees establish a public register of the donors of their election campaigns (article 71, paragraph 7).
55. Within a month after the election day, parties, coalitions and initiative committees shall report the funds raised and spent during the election campaign to the NAO, including statements from the bank accounts for participation in the elections (article 73 EMPA).
56. Under article 79 of the Election of Members of the European Parliament Act (EMEPA), political parties, coalitions of political parties and initiative committees are required to submit, within one month after the election day, reports to the National Audit Office on their income and expenditures related to the campaign, accompanied by statements of the bank accounts they had submitted on the occasion of their participation in the elections.

57. Under article 19 of the Election of President and Vice-President Act (EPVPA), all the candidates for President and Vice President shall make, within a month as of the date of the election, a statement before the NAO concerning the sources of financing and the expenses related to their election campaign. The Act does not provide for more detailed rules about the content of this statement and whether, for instance, a list of donors is to be produced.
58. Under the Local Elections Act (LEA), the parties, coalitions and initiative committees are required to communicate to the NAO a) within 5 days of their registration for the election, information about the accounts that will be used for the financing of the campaign (article 70a); b) within one month after the election day: reports on the funds raised and spent during the election campaign, including excerpts from the bank accounts presented initially (article 71). The GET noted that the LEA does not specify further requirements as to the format of these reports.
59. Pursuant to article 52 Grand National Assembly Elections Act (GNAEA), candidates shall “openly report on the financing of their election campaign before the electorate and the respective electoral commissions.”

#### Publication requirements

60. According to article 29, paragraph 2 PPA, political parties are required to keep a public register, recording, *inter alia*, a) the list of donors and the type, amount, value and purpose of the donation, legacy, devise and bequest made; b) a declaration of the donors stating the origin of the funds where the donation exceeds 5000 BGN [2500 EUR]; c) the corporeal immovable property owned; the transactions in respect of movable or immovable property exceeding 5 000 BGN [2500 EUR]; d) the annual financial statements and the financial reports on the election campaigns. This register is to be published on the parties' web site. In addition, article 40, paragraph 2 AA provides that the annual financial statements are to be published within 3 months of their adoption. In case where it is published only on an Internet website, free access at no cost must be provided for a period of no less than three years following the date of publication.
61. In addition, article 34, paragraph 6 PPA requires the National Audit Office (NAO) to publish in the official bulletin and on its website, by 15<sup>th</sup> day of April of each year, the financial statements and declarations of donors, as well as a list of the parties which failed to submit statements within the time limit and a list of the parties which have received a state subsidy during the preceding year. Not later than the 15<sup>th</sup> day of April of each year, the NAO is required to publish in the official bulletin and on the internet site the designations of parties which have failed to submit statements within the time limit.
62. The parties' campaign financial reports are published on its website by the NAO within fifteen days after expiry of the time limit for their submission (which is one month after the end of the campaign).

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

63. As regards the preservation of records, the authorities indicated that under article 42, paragraph 2 of the Accounting Act, financial statements of political parties are to be kept for a term of 10 years.

## Other mechanisms

64. The election acts sometimes regulate additional aspects such as the conditions of access to the media. For instance article 56a of the EMPA provides that printed media shall offer equal terms and rates for paid publications to all parties, coalitions and independent candidates, registered to participate in the elections. The tariffs shall be announced not later than 31 days prior to the date of elections and each publication is to be made under terms of payment in advance of the publication in the respective printed media. Article 11 EPVPA provides that throughout the presidential election campaign, the principle of equal coverage of the candidates in the news programmes of the national mass media shall be observed (this matter is regulated in greater detail in the act). Similar rules on equality of chances are provided in the LEA and EMEPA.

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

#### Auditing

65. Some of the larger political parties have established control commissions which are regulated by the parties' statute. More importantly, political parties are required to have their financial statements audited and certified by an independent financial auditor (before their submission to the National Audit Office – see below) *“if during the reporting period the political party has received or spent amounts and/or other property to a value exceeding BGN 50,000 regardless of the origin thereof”* (article 34 paragraph 2 PPA). The costs of the audit and certification are borne by the parties.

#### Monitoring

66. According to article 33 PPA “the financial control over the activities of political parties and the management of the property allocated thereto shall be exercised by the National Audit Office” (NAO). This applies if parties, during the preceding year: a) have received a state subsidy, or b) have used state-owned or municipal-owned premises, or c) have participated in elections, if such elections were held.
67. The control applies to the annual financial statements, containing a detailed outline of the sources of funding, and the attached list of donors; it is to be done within six months after expiry of the time limit for receipt of the annual financial statements in respect of (article 35 PPA): a) the financial activity, b) revenues, c) expenditures and d) the management of the property of the political parties subject to control.
68. The NAO is entitled : a) to unimpeded access to the service premises and to all documents, statements, assets and liabilities related to the financial activity of the political parties; b) to require, within specific time limits, certified copies of documents and other information in connection with the conduct of the audits, including on an electronic data medium; c) to require oral and written explanations from (current and former) office holders [party officials], on facts ascertained upon the audits, as well as on matters concerning the activity thereof; d) to require data sheets, certified copies of documents and other information from natural persons, legal persons and sole traders outside the political party concerned, related to possible cases of unlawful activity; e) to require and receive information from all authorities in the country, as well as access to the databases thereof in connection with the execution of the audit. In case access to information is denied, the President of the National Audit Office may issue an “order on

conduct of the examination” of legal person or sole trader in connection with the information refused.

69. Pursuant to article 37 PPA, the NAO issues certificates on the annual financial statements of the political parties, as submitted (or not submitted) within the time limit for the last preceding three years, and in respect of the newly registered parties, for the period commencing on the date of the court registration of thereof. The certificate is to be presented by the political party to the competent Central Election Commission upon registration for participation in elections.
70. Pursuant to section 10 of the National Audit Office Act (NAOA), the NAO is headed by a collegial multi-member body, consisting of 11 persons – a president and 10 members. According to section 12 NAOA, the president and members are elected by Parliament for a term of 9 years. The president may not be re-elected. Eligible for president and members of the National Audit Office are persons who: 1) have completed a higher level of education in economics or law and hold master’s degree as a minimum educational qualification and have served in previous employment and/or public service in the relevant specialist area for at least 15 years, for the president, and 10 years, for the members; 2) have not been members of the Government or heads of central government authorities within the executive branch over the last 3 years preceding their election; 3) have not been convicted for any premeditated crime of a public nature or deprived by a court of the right to assume the respective position. The 11 members cannot be dismissed collectively by the Parliament (termination of tenure has only happened on two occasions, when those members had deceased). Section 12 NAOA provides for special circumstances in which the mandates of the president and members of the National Audit Office can be terminated by Parliament prior to the expiration of their term in office: 1) upon their personal request; 2) in case of inability to perform their duties which has continued more than six months; 3) when convicted for any premeditated crime of a public nature or deprived by a court of the right to assume the respective position; 4) due to ineligibility referred to in section 11, paragraph 3<sup>4</sup>, that has arisen after their election; 5) upon entry into force of an act which ascertains any conflict of interest under the Conflict of Interest Prevention and Disclosure Act.
71. On site, the GET was informed that the NAO has a total staff of 500 persons, including the various regional/territorial units; those dealing with the substance of the work have a background of financial, accounting and legal specialists. The Section currently responsible for the supervision of political financing has a staff of 22 persons.

Other authorities involved: prosecution authorities, National Revenue Agency, Election Commissions

72. The audit report is to be transmitted to the Sofia City Prosecution Office within seven days after its adoption should the National Audit Office, in the course of its audit,: a) have ascertained any violations in the raising and spending of funds, in the management of the property as allocated or in the financial reporting; b) there are reasons to believe that a criminal offence has been committed. The NAO may also refer a matter to the prosecuting authorities if a legal person or sole trader targeted by the control activity of the NAO obstructs the examination.
73. The National Revenue Agency (NRA) is entitled to carry out activities within its competence in respect of political parties which have failed to submit to the National Audit Office the financial statements within time limits (article 35a PPA). The Executive Director of the NRA transfers to the

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<sup>4</sup> Any persons who, between themselves, or with respect to the president, are spouses or domestic partners or relatives in a direct line of descent, with no limitations, or laterally, up to and inclusive of the fourth degree, may not be members of the National Audit Office.

National Audit Office information about the action taken, including information on the auditing instruments issued.

74. The Central Election Commission, the Regional Election Commissions and the Section Election Commissions are responsible for the organisation and general monitoring of the elections in accordance with the various election acts. For instance, the Central Election Commission is an ad hoc institution, appointed on the occasion of elections, which is responsible for a wide range of tasks, such as: 1) monitoring the implementation of (parts of) the Political Parties Act; 2) providing methodological guidance and controlling the activities of Constituency and Voting Station Election Commissions; 3) determining and publishing the election results; 4) appointing the Constituency Election Commissions and Voting Station Election Commissions; 5) registering political parties, coalitions of political parties and initiative committees for participation in elections and issuing certificates to them; 6) registering scrutineers for the candidates and providing them with certificates; 7) controlling the progress of the election campaign in national mass media.
75. Any infringements to the election acts are, in principle, determined by the Chair of the Central Election Commission. A statement of findings is then forwarded to the competent Regional Governor who shall then issue a penalty statement.

#### Election campaigns

76. As indicated earlier, under article 73 of the Election of Members of Parliament Act (EMPA), parties, coalitions and initiative committees shall report to the NAO, within one month after the election, about the funds raised and spent during the election campaign including statements from the bank accounts for participation in the elections (article 73 EMPA). As from 2009, the NAO conducts a factual verification of the compliance of the income stated with the actual expenses incurred during the election campaign. A similar mechanism also exists in the Act governing the election of Euro-MPs, but not in the other election Acts, as the GET noted.

#### Overview of the control activity in practice

77. The replies to the questionnaire contained some information about the control activity in practice, including the statistics detailed below (see paragraphs 93 and 94). The GET was informed during the visit about some cases handled by the courts (mostly appeals against decisions of the NAO) due to the late or non-submission of financial statements by political parties (in 2007 and 2008). The GET was also informed that in the same time span, the law was amended to the effect of transferring the liability from natural persons to the political parties themselves. This had consequences not just on the pending cases but also those already adjudicated.

#### **(iii) Sanctions (article 16 of Recommendation Rec(2003)4)**

##### Under the Political Parties Act (PPA)

78. The written statements ascertaining violations are to be drawn up by officials authorised by the President of the National Audit Office (article 44 PPA). This authority is also competent to issue penalty decrees, which may be appealed before the regional court which has territorial jurisdiction (appeals must be lodged within seven days following the issuance of a decree; prosecutors may file an objection within two weeks). In case where the violation constitutes a criminal offence under the criminal code (e.g. fraud, embezzlement), the offenders are prosecutable and liable under these provisions.

79. Pursuant to article 43 PPA, “a political party which fails to submit<sup>5</sup> the financial statements or declaration required by article 34 PPA and which fails to fulfil its obligation to create and keep a public register, is liable to a pecuniary penalty ranging from 5 000 BGN to 10 000 BGN” [EUR 2 500 to EUR 5 000]. Any representative of a political party, who obstructs the conduct of an audit by the National Audit Office, is liable to a fine ranging from 1 000 to 2 000 BGN [EUR 500 to 1000], and in a case of a “repeated commission of such violation”, to a fine ranging from 5 000 to 10 000 BGN [EUR 2 500 to EUR 5 000]. In addition, funds and property received by a political party in contravention of the PPA are to be forfeited in favour of the state.
80. The GET noted that in addition, under article 40 PPA paragraphs 1 and 4, the Sofia City Court is competent to pronounce the dissolution of a political party, i.a. where it has committed systematic violations of the PPA or where it has failed to submit the annual financial statements to the National Audit Office for two successive years.
81. Besides, non-submission and late submission of financial reports to the NAO entail the mandatory loss of state subsidies until the next parliamentary elections (article 36 PPA). Other forms of public support at state or local level (allocation of premises, for instance) are not affected by such decisions; the rules provide, however, for the possibility to review the allocation of such forms of support in case the beneficiaries do not comply with the conditions for allocations (e.g. prohibition of subletting the premises).

#### Under the Election of Members of Parliament Act (EMPA)

82. Article 116 provides that whoever violates the provisions of the EMPA shall be subject to a fine ranging from BGN 500 to BGN 5,000 [EUR 250 to 2500] provided that the violation does not constitute a criminal offence. If the offence was committed wilfully by an official, the fine is BGN 1,000 to BGN 10,000 [EUR 500 to 5000]. Violation protocols are drafted by the Chairpersons of the Central Electoral Commission and Constituency Electoral Commissions and the penalties are imposed by a decision of the regional governor responsible for the constituency where the violation occurred. If the violation protocol is issued against a Regional Governor him/herself, the penalty is imposed by the Minister of Public Administration and Administrative Reform. The above proceedings are regulated by the Administrative Violations and Sanctions Act and the Administrative Procedure Code.

#### Under the Election of Members of the European Parliament Act (EMEPA)

83. Under article 123 of the EMEPA, anyone who violates a provision of this Act shall be punished by a fine from BGN 500 to 5,000 (BGN 1,000 to 10,000 if the offender is an official), unless the act constitutes a criminal offence. Protocols establishing the existence of violations shall be drafted by the Chairpersons of the Central Election Commission and of the Constituency Election Commissions following a resolution of the respective commission within three days of receipt of a notification of suspicion or report concerning a violation. The penalty is pronounced by the competent Regional Governor, within three days of receiving the file. Where the offense is committed by the Regional Governor him/herself, the decision is issued by the Minister of Public Administration and Administrative Reform. These procedures are carried out in accordance with the Administrative Violations and Sanctions Act.

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<sup>5</sup> Besides, article 34 paragraph 5 PPA provides that “Any annual financial statement, which does not correspond to the requirements referred to in Paragraph (1) and/or Paragraph (4) regarding the form, content and manner of presentation of the said statement, as well as where not accompanied by the declaration referred to in Paragraph (4), shall be considered unsubmitted.”

#### Under the Election of President and Vice-President Act (EPVPA)

84. Article 18a provides that persons who violate the provisions of the EPVPA are punishable by a) a fine of up to BGN 5 000 [EUR 2500], b) a fine of BGN 500 to BGN 10 000 [EUR 250 to 5000] if the offence was committed by a public official; c) a property sanction of BGN 500 to BGN 10 000 [EUR 250 to 5000] if the violation is committed by a legal person or a sole proprietor. Administrative violation protocols are established by the chairpersons of the Central Election Commission and of the regional election commissions – on the basis of the rulings of the respective commission – within three days of receipt of an indication or claims concerning a violation (article 18d). The penalty ordinances shall be issued by the competent regional governors within three days of receiving the file. Where a violation protocol concerns a regional governor, the penal ordinance is issued by the Minister of State Administration and Administrative Reform. Procedural aspects are regulated by the Administrative Violations and Sanctions Act.

#### Under the Local Elections Act (LEA)

85. Article 70 of the LEA provides that if a person who has been elected councillor or mayor is found to have used election campaign funds provided in violation of the provisions of article 68 on the prohibited sources of funding, “at the proposal of the parties, coalitions and initiative committees, having taken part in the elections, and the prosecutor”, the respective district court shall declare the election invalid and the received sums shall be adjudicated in favour of the state.
86. Besides, a general sanction mechanism is provided under articles 109 and 110 LEA: “anyone who violates the provisions of this Act shall be punished with a fine of BGN 50 to 2 000 [EUR 25 to 1 000], provided the committed act does not constitute a crime. The fines are BGN 500 to 5000 [EUR 250 to 2 500] if the offender is an official.

#### Immunities

87. The replies to the questionnaire indicate that under article 70 of the Constitution, members of the National Assembly enjoy immunity. They may not be detained, and criminal prosecution may not be undertaken against them, except of course for offences under public law and then solely upon the authorisation from the National Assembly or, should the latter be in recess, from the Chairperson of the National Assembly. No authorisation for detention is required where a National Representative is detained in the act of committing a serious criminal offence, but in such a case the National Assembly or, if the latter is in recess, the Chairperson of the National Assembly, is notified forthwith. Authorisation for undertaking of criminal prosecution is not required if the National Representative concerned grants consent in writing.

*Art. 70. (1) (prev. text of art. 70, amend. - SG 27/06) A Member of the National Assembly shall be immune from detention or criminal prosecution except for the perpetration of crimes of general nature, when a warrant from the National Assembly or, in between its session, from the Chairman of the National Assembly, shall be required. No warrant shall be required when a Member is detained in the course of committing a grave crime; the National Assembly or, in between its session, the Chairman of the National Assembly, shall be notified forthwith.*

*(2) (new - SG 27/06) Warrant for criminal prosecution shall not be required upon written consent of the Member of the National Assembly.*

88. In addition, according to article 53 of the EMPA, registered candidates for parliament and their canvassers may not be detained or prosecuted (inviolability) during the election campaign except where the acts constitute a serious offence.
89. The GET noted that similarly, during the campaign period, candidates running for European Parliament election as well as their scrutineers (their representatives in the polling stations) may not be detained or prosecuted except in case of *flagrante delicto* (article 59 paragraph 1 of the EMEPA).
90. The GET also took from the [First Evaluation Round Report](#) that in accordance with article 103 of the Constitution, the President of the Republic and the vice President may not be held liable for acts committed in the performance of their duties (inviolability), except for high treason and violation of the Constitution. In these cases, an impeachment procedure can be initiated by the Parliament.

#### Statutes of limitation

91. The replies to the questionnaire were unclear about the statute of limitation applicable in Bulgaria. The GET understands that the prosecution time limit as such is provided under article 34 paragraph 1 of the Administrative Violations and Sanctions Act, according to which: “Administrative-penal proceedings shall not be instituted if a statement of establishment of the violation has failed to be drawn up within three (3) months following the detection of the offender, or if one (1) year has elapsed since the commission of such violation, and in the event of customs, taxation, banking, environmental and currency regulations violations - following the elapse of two (2) years.
92. Article 82 (of the above act), which was mentioned in the replies to the questionnaire, refers to the statute applicable for the execution of penalties: “(1) An administrative sanction shall not be executed [imposed] following the lapse of: a) two (2) years, where the sanction annexed is a fine; b) six (6) months where the sanction annexed is temporary deprivation of the right to exercise a certain profession or activity; c) three (3) months where the sanction annexed is public censure.”<sup>6</sup>

#### Statistics

93. The President of the National Audit Office has issued 92 penalty decrees for the year 2007 and 74 for the year 2008; these concerned the non-submission of financial statements to the National Audit Office within the set time limits.
94. The president of the NAO has also issued 9 penalty decrees with fines against party leaders who had violated the regulations on the allocation, by the state and municipalities, of premises to political parties for the needs of the party (the premises had not been used according to the law, e.g. they were sublet to tenants in exchange for money).

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<sup>6</sup> Article 14 of the Administrative Violations and Sanctions Act defines “public censure” as follows: a public reproof to the violator before the team of employees with whom he or she works, or before the organisation (society) where he or she belongs as a member.

#### IV. ANALYSIS

##### General considerations

95. The financing of political parties in Bulgaria is not an area which was easily accessible and assessable from the standpoint of the GRECO evaluation team (hereafter, the “GET”). It was broadly acknowledged by state institutions, political actors and observers of political life that political financing had been, until now, a large grey area in Bulgaria and that the official financial information submitted by the parties did not reflect – by far – the real situation, in particular the amount of expenditures related to election campaigns (media appearances, billboard advertisements etc.). Like many other countries, Bulgaria has been confronted at regular intervals, with allegations of dubious practices in the area of political financing; including the buying of voters (which implies the existence of double accounting and secret funds). The matter remains sensitive as only two political parties accepted the invitation of the central authorities to meet with the GET. The applicable legislation is difficult to apprehend since it is spread over several texts related either to the routine operations and financing of political parties or – separately – to their election campaign activities. According to political actors and representatives of civil society and state institutions, parties and candidates would have taken advantage of this situation. Insistence was required during the preparation of the on-site visit to obtain the various laws pertaining to the financing of campaigns for the European, national and local elections and these laws have revealed that the information contained in the replies to the questionnaire was not always correct, particularly as regards the permissible sources of funding which differ from text to text. Moreover, some meetings were cancelled at the last minute, including a final meeting for additional clarification with the National Audit Office – NAO (which has the main responsibility for the supervision of political financing in Bulgaria).
96. The Bulgarian legal framework on financing of political parties and election campaigns provides for a mixed system of public and private financing, complemented by caps on donations and campaign expenditure. As indicated in the descriptive part of the present report (paragraphs 25ff), rules governing the funding of political parties are contained in the Political Parties Act (PPA), which entered into force in 2005 and was amended last in January 2009 (with a view to, i.a., prohibiting donations from legal persons and to requiring the registration of donors). Different provisions regulate the various elections but also the funding of elections campaigns: a) the Local Elections Act – LEA – of 1995 (last amended in September 2007)<sup>7</sup>; b) the Election of Members of Parliament Act – EMPA – of 2001 (amended last in October 2009); c) the Election of Members of the European Parliament Act – EMEPA – of 2007 (amended last in October 2009); d) the Election of the President and Vice President Act – EPVPA – of 1991 (amended last in October 2007). During the on-site visit, reference was also made to the Grand National Assembly Election Act (hereafter GNAEA) and to the Law on Persons Participating in Referendum Campaigns (LPPRC); the GET decided to focus on the main acts mentioned above, although it is clear that the harmonisation efforts will have to take the GNAEA and LPPRC into account too. These texts have very much evolved over the years. For instance, the Local Elections Act was amended 24 times since its adoption in 1995; as pointed out by different interlocutors, this happened often too late for these amendments to become fully applicable to the upcoming elections and often for reasons that did not serve the common public interest but those of the ruling parties and coalitions at a given moment.
97. The most obvious consequence of this multiplicity of legal texts is the resulting inconsistency. There are striking examples: donations from legal persons are permitted under certain acts, but

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<sup>7</sup> It concerns the election of municipal councillors, mayors of municipalities, mayors of wards and mayors of mayoralties

forbidden under others; thresholds on donations are sometimes applicable to the aggregated value in one year and sometimes not (which makes it then easy to split large donations to avoid those limits); anonymous donations are permitted under certain acts but prohibited under others; there is uncertainty as to the upper limits on donations and expenditures where two elections are held the same year as well as in respect of upper limits on the self financing of elected officials. This lack of consistency affects the various provisions on transparency, supervision and sanctions which will be examined hereinafter. Moreover, a number of the GET's interlocutors had strongly diverging views on the significance and content of the political financing legislation and on several occasions the interpretation given of the relevant provisions – and their interrelations – was a source of extensive debates. The Bulgarian authorities explained that the most recent amendments of the PPA, the EMPA and EMEPA prevail in principle and that all the diverging provisions would be harmonised in time for the next relevant elections. On its side, the GET is convinced that the various provisions need then to be consolidated and harmonised to avoid legal gaps and contradictions, and to avoid any doubts that could arise from legal uncertainty (for instance in case there would be anticipated elections). A consistent and robust legal framework would also contribute to improve the general understanding and implementation of the legislation. Recent proposals have already been made in Bulgaria to the effect of consolidating in an electoral code the various regulations pertaining to the electoral system. The following paragraphs contain proposals for harmonising the legislation.

#### Transparency

98. The Political Parties Act of 2005 (PPA) applies to political party financing only. A positive feature of the law is that all parties are subjected to the requirement to apply a double-entry bookkeeping in accordance with the Accountancy Act and to draw up a financial statement on the last calendar year according to the requirements of the said Act. This statement is the document that will be submitted to the National Audit Office (NAO) and made publicly available. Persons in charge of the management of the accounts must be appointed. Parties are also required to keep a register which is publicly accessible and contains i.a. all donations received and the identification of the donor accompanied - for contributions in excess of BGN 5000 (EUR 2500) – by a declaration from the donor about the origin of the sums. The GET was advised that in principle, the accounts of the parties must be consolidated so as to include all the territorial branches and structures; local branches sometimes resist these financial integration efforts from their headquarters. Restrictions were made in recent years as to the structures that political parties are allowed to establish and in principle, they may not conduct business activities apart from publishing work and the selling of copyright work. The introduction of limitations, under the PPA, to the involvement of parties in other structures and activities has reportedly improved the situation although some the GET's interlocutors still see room for increasing transparency in the nebula of entities (business entities, sociological institutes, non-profit organisations) which surrounds certain parties. The Bulgarian authorities may thus wish to keep the matter of these links under scrutiny.
99. To understand the content of the legislation, its evolution needs to be known: for instance, because they were at the origin of anonymous party funding problems, fund raising events were removed in recent years from the list of permissible income sources as established by the main piece of legislation – the PPA; however, as fund raising events do not appear at present on the list of prohibited sources of funding, they are sometimes still considered to be permissible; the GET could not determine whether this interpretation results from a lack of awareness of the legal evolution, from an excessively strict reading of the PPA or from the lack of consistency of the various legal provisions. In any event, the issue needs clarification because of the possibilities

this kind of activities offers to collect large sums of donations in cash which might not be accounted for in a proper manner. The GET therefore recommends **to clarify the prohibition of fund raising events.**

100. The GET was also concerned about the way canvassing activities are regulated in various Acts; the legal regime differ<sup>8</sup> but sometimes with different meanings or possible implications; as a result, the GET could not determine precisely what kind of activities are covered in Bulgaria under this concept.<sup>9</sup> The Bulgarian authorities advised the GET that canvassing activities are limited to forms of support which have no financial dimension. This also seems to be a crucial element in the context of Bulgaria given the phenomenon of dormant parties and local political figures whose support would be “hired” (without a formal, visible political agreement) by the leading parties for the time of an election.
101. Moreover, the law provides that parties may formalise their cooperation and establish coalitions; the election Acts (except the EPVPA) foresee that coalitions may then use one of the member parties' existing accounts as account of the coalition but the laws are silent about such aspects as the need for this account to then include the financial activity of all the coalition members and the need for the financial statements of coalitions to be audited in case they exceed the turnover threshold foreseen in the PPA for political parties (see paragraph 111). The GET considers that financial statements can only reflect a true picture of the financial activity deployed during election campaigns if all relevant activities, including those carried out by third parties and partners in a coalition are adequately accounted for. In the light of the above, the GET recommends **i) to regulate third party support received during election campaigns in a way that this support is to be accounted for by those who benefit from it; ii) to examine the advisability of regulating in a more detailed manner the transparency of financial activity and transparency of coalitions.**
102. Despite the commonly acknowledged fact that the transparency of party financing is affected by the importance of the informal economy and an excessive use of cash, the PPA does not really contain provisions encouraging the use of the accounts that the parties are required to open when they apply for registration. In particular, there is no requirement to use bank accounts for collecting donations and performing financial transactions and operations. Following pressure from civil society, a requirement was included (only) in the EMPA and EMEPA (but not the LEA and EPVPA) to the effect that campaign donations and expenses above a certain amount be made through the banking system; the threshold was finally set at BGN 5000 (EUR 2500) which is undoubtedly too high in the context of Bulgaria but it was found that this first step was better than nothing. There is no such requirement as regards the regular financing of political parties under the PPA. Representatives of the NAO complained about the importance of cash use and its impact in practice (donations and expenditures are not systematically recorded; banking information is useless in practice). Furthermore, attempts have failed – in the context of the above amendments of the EMPA and EMEPA – to introduce the principle of a unique campaign account and as a result, a given party (or a coalition or initiative committee) is left with the possibility to use various bank accounts for the financing of the campaign whereas a single account would have clearly contributed greatly to increasing transparency and possible controls in this field. The GET strongly believes that the situation needs to be improved in this respect. It

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<sup>8</sup> For instance, the LEA (article 69) is the only Act which contains limits on canvassing expenditures, besides campaign expenditures.

<sup>9</sup> In the EMPA (article 55) for instance, broad room is given to any citizen (besides the usual campaign participants and their own canvassers) to participate in campaigning activity including on the occasion of meetings, in writing and in the mass media.

recommends i) to require political parties and campaign participants to use – as a rule – the banking system for the receiving of donations and other sources of income, and for the payment of expenditure; ii) to ensure that if a threshold is maintained for donations in small amounts, it is adapted to the economic context of Bulgaria; iii) to introduce the principle of a unique campaign account for the financing of election campaigns.

103. The main lacuna pertaining to transparency of campaign financing is that there are hardly any regulations in this field and those which exist lack harmonisation and consistency (the very different and sometimes election-specific sources of income authorised by law are a typical illustration thereof). There are no precise or consolidated rules on such issues as in-kind donations (interlocutors of the GET confirmed that in practice, in-kind donations do not appear in financial reports – although a specific heading is foreseen to that effect), sponsoring, how support from a party to its candidates is to be accounted for, how cash and anonymous donations are to be dealt with etc. Moreover, responsibilities in the area of record keeping (that will allow to report to the NAO after the election), and on the collection of donations in the case of candidates presented by parties, in the case of (independent) candidates presented by initiative committees, and in the case of candidates running for the presidential elections (although they would be party members) are not clearly established. The GET considers that the legal framework needs to be improved significantly given the fact that the financing of political parties cannot be dissociated from that of the election campaigns. It therefore recommends **to adopt a comprehensive and consistent legal framework for the financing of election campaigns that would spell out clearly in particular the various forms of permissible income and expenditure, the precise manner in which income and expenditure are to be accounted for, and the persons responsible for the collection of donations and the handling of the financial records.**
104. The absence of a consistent prohibition of donations from legal persons is a particular issue. As indicated in paragraphs 33 to 44 of the descriptive part, the financing of political parties (on the basis of the PPA), and of the election campaign of parliamentarians (on the basis of the EMPA and the EMEPA) excludes in principle donations from businesses and legal entities more generally. This is not the case of the laws concerning local elections (the LEA) and the election of the President and the Vice-President (EPVPA). The GET was wondering how the Bulgarian political financing system could ensure in practice a clear separation between party and campaign financing so as to avoid that donations made by legal persons to members of political parties during local or presidential elections reach the coffers of the parties; this could become even more questionable where parliamentary elections are held during the same year as local or presidential elections. The information gathered by the GET during the on-site discussions clearly suggests that political parties receive indirectly support from companies via donations to candidates, which was certainly not the intention of the latest amendments to the PPA, the EMPA and the EMEPA<sup>10</sup>. The GET therefore recommends **to regulate in a consistent and clear manner the prohibition of donations from legal persons in the context of party and election campaign financing, in line with the already introduced amendments to the Political Parties Act, the acts on election of national and European parliamentarians, and the new practice adopted in this regard by the National Audit Office.**
105. Another issue of particular concern is how the income and expenditure pertaining to election campaigns are accounted for. The discussions held on site showed that like in other countries, the activity of campaign participants is not limited to the official campaign period (starting 21 or 30 days before the election day, depending on the case); campaign participants deploy a pre-

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<sup>10</sup> Some of the interlocutors of the GET expected a full harmonisation to happen before the next elections in 2011, whereas other stressed that it was already too late to introduce the changes in time for these elections.

campaign activity and they are involved in financial operations during that period (e.g. taking loans, buying campaign materials, collecting financial support). At the same time, there was some uncertainty as to whether or not pre-campaign activities need to be accounted for in the financial statements concerning election campaigns<sup>11</sup>. This financial activity is, in principle, captured by the annual reports as far as political parties are concerned; one would have, however, to combine this annual report and the financial report(s) of campaign participants who possibly received support from parties, in order to gain a full picture). More importantly, pre-campaign activities of independent candidates not supported by initiative committees remain totally unaccounted for and, therefore, their financial statements cannot reflect the reality. This state of affairs affects the transparency of political financing in Bulgaria in a negative manner. The GET recommends **to spell out clearly that all income and expenditure connected with an election campaign need to be accounted for.**

106. Additional difficulties can arise from the fact that private radio and television operators are not always required to announce early enough the prices for their services; for instance, as regards presidential elections, article 11d of the EPVPA only states that operators concerned have to announce “*in advance*” their terms, conditions and prices. This situation contrasts with the stricter rules applicable to public media prices (an official tariff is to be published 40 days before the elections). The GET was concerned about the possible consequences of the absence of clear deadlines for private broadcast operators to announce their commercial conditions (e.g. risk of late announcement, risks of a duality of conditions and prices depending on whether broadcasting time would be bought before or after a deliberately delayed announcement). The Bulgarian authorities advised after the visit that the concluding provisions of the EPVPA refer to the general applicability of the rules contained in the EMPA for any matter not regulated in the EPVPA, and therefore the above matters would need to be settled accordingly.
107. In accordance with the provisions of the PPA, publication requirements are generally in place as regards the annual financial statements and the campaign financing statements of political parties; the latter are also required to publish on their website the names of all donors (whether or not their contribution exceeds the special threshold of BGN 5000 (EUR 2500) (see paragraph 60 in the descriptive part). The GET was told that even if the parties do not publish all the information required on their website, the public availability of these reports and information is ensured in any event by the NAO, the website of which is generally considered by civil society observers to be up to date. By contrast, there are still a number of entities and campaign participants who do not submit reports, although their number would tend to decrease. The GET was also concerned about the implications of the absence of publication requirements for financial statements concerning election campaigns to be presented to the NAO – depending on the case – by political parties, coalitions, initiative committees and candidates in the electoral laws (EMPA, EMEPA, LEA, EPVPA); in the case of political parties, this bears probably little consequences since the PPA already covers this (although greater consistency would be desirable here); but financial statements to be presented by other categories of campaign participants are not to be published at all. This concerns the campaign of independent candidates presented by initiative committees, but also the candidates for the Presidential elections who run for elections in their own name (although they are very likely to be members of a party, from which they receive support). Although it is a welcome development that the NAO does publish on its own initiative all the financial statements it receives, the GET was informed on site that the current arrangements would not be entirely satisfactory and would not allow the general public to have a full and timely picture of the financial activity of political parties and candidates (whether

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<sup>11</sup> The PPA, LEA and EPVPA refer to funds raised and spent *during (or in)* the election campaign, not *in relation with* the campaign as in the EMPA and EMEPA.

independent or not). The GET therefore recommends **to provide in a consistent manner for the timely publication of financial reports pertaining to election campaigns in general.**

108. The current regulations do not clearly address the (mis)use of public facilities during election periods. The GET was advised that in practice candidates who are already elected officials do use the administrative resources at their disposal (official cars, communication equipment, secretariat services etc.) for political purposes, especially in the context of campaigning activities. As far as parliamentary infrastructures and resources are concerned, a dissociation between the activity of political parties and that of political groups is even more complex since parliamentary groups are considered to be part of the political parties (the parliament does not provide separate funding to the parliamentary activity of political groups and these are normally funded by the parties themselves). However, working facilities and secretarial support are made available by the Parliamentary services. The GET was advised after the visit that the National Assembly adopted a decision on 29 May 2009 restricting the use of administrative resources at their disposal, including the use of official cars, by MPs during election campaign periods. This kind of initiatives are a first step in the right direction that could inspire other state and local institutions. The GET therefore recommends **to provide for clear criteria concerning the use of public facilities for party activity and election campaign purposes.**
109. As mentioned in the descriptive part, the authorities indicated that in accordance with the general provisions of the Accounting Act (article 42, paragraph 2), political parties are required to keep accountancy documents for a term of 10 years. The GET could not determine whether this applies to the various statements and evidentiary documents collected in the context of party and campaign financing (including the lists of donors). The GET considers that in the context of the consolidation and harmonisation of the rules on political financing, the retention of records is a matter that needs to be addressed so that the documentation which is relevant in the context of party and campaign financing be kept for supervisory purposes and future controls by the National Audit Office (NAO). These requirements on record keeping need to take into account the other types of campaign participants (candidates, initiative committees); to circumvent the practical difficulties (inherent for instance to the temporary existence of initiative committees), the retention duty could be shared with the NAO. The GET recommends **to provide for rules on the conservation of relevant financial records and documents, that would apply also in the context of campaign financing.**

### Supervision

110. The system of control over political financing is similar to that of several other GRECO member states insofar as it first involves the certification of accounts by a chartered auditor and subsequently, verification by a public institution. Auditors in Bulgaria, like in other GRECO member states, are subject to the requirements of the national anti-money laundering legislation which implies i.a. customer due diligence procedures and the reporting of suspicions of money laundering to the financial intelligence unit of Bulgaria. The same obligations are applicable to political parties, which is a particular feature compared to other countries; this can be explained by the fact that the financing of political parties and election campaigns is actually exposed to risks of money laundering, as the GET was told repeatedly on site. However, it would appear that the Bulgarian financial intelligence unit has not received in recent years<sup>12</sup> any suspicious transaction report from auditors.

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<sup>12</sup> According to the annual activity reports available on the FIU's website ([www.fia.minfin.bg](http://www.fia.minfin.bg))

111. The (annual) certification of financial statements is regulated under the PPA and applies to the regular annual financial activity of political parties. The law focuses on parties which have a significant activity and this is determined by reference to the financial turnover (BGN 50,000 i.e. € 25,000 of income or expenditure). Efforts have been made lately to implement European and international audit standards and certified auditors are themselves subject to the authority of their professional body and of a special commission (the *Commission for the Public Oversight of Statutory Auditors*). Despite these professionalisation efforts, it would appear that auditors accept a margin of accuracy and tolerance (between the examined statements and the real situation) which can be as high as 50 to 70%. It was acknowledged that this was too high as compared to the declared objective of 5%, but at the same time, auditors claimed that their task was not to look beyond the statements submitted to their audit (the informal part of the financial activity). The GET does not disagree with the fact that the ideal objective of a 5% precision-margin might be difficult to achieve in the current context of an extensive informal, cash-based economy<sup>13</sup> but a tolerance of 50% to 70% puts into question the usefulness of the certification in itself. The Bulgarian authorities have assured the GET, that such high figures would be isolated exceptions that do not reflect the commonly accepted standards. This could call for an increase in the auditors' individual responsibility and the introduction of criteria to limit the margin of discretion of the auditors, so that they could contribute in a more meaningful manner to the control machinery. It would appear that until now, there has been a dialogue between the representatives of the profession and the National Audit Office, but there would still be room for discussing in more detail such issues as the specificities of political parties as subjects of the audit, or the outcome of the audit findings and their communication to the NAO. The attention of the GET was drawn to the absence of clear requirement in the PPA, that the audit report be sent to the NAO together with the financial statements of a political party (although in practice, the NAO does require the submission of audit reports). A strengthening of the role of auditors in the control of political financing would normally imply that these audit statements are attached systematically to the parties' annual statements which are sent to the NAO.
112. As regards the independence of auditors, the profession relies mostly on the general standards of its Code of Ethics, under which it would constitute a conflict of interest if an auditor had professional dealings with a political party of which s/he is a member. The GET was told repeatedly, including by members of the profession, that more could be done in the context of customer relationship with the parties, given their specific nature, to increase the auditors' independence (e.g. through reasonable rotation or the appointment of a second auditor). In the light of the above, the GET recommends **i) to examine the advisability of raising the standards and the quality of audit certification of financial statements submitted in the context of party financing and of increasing coordination with the profession; ii) to strengthen the independence of the political parties' external audit of accounts.**
113. Under the PPA, the National Audit Office (NAO) is the public body responsible for the supervision of party financing. As indicated earlier, all registered political parties are required to submit a financial statement to the NAO. A particular feature of the Bulgarian system is that under article 37 PPA, political parties must present to the Central Election Commission a certificate issued by the NAO which establishes that the party – within the last three years (or the last two years for a new party) – has submitted its annual financial report(s); the GET understood that without a “clean record”, parties may not register for the elections, although the decision rests ultimately with the competent Election Commission. The Bulgarian authorities confirmed that this had proven to be a powerful tool to force political parties to submit their financial report(s) in time: in

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<sup>13</sup> For instance, according to a European-wide study released in October 2009, the informal economy in Bulgaria would amount to 37% of the GDP (source [http://www.novinite.com/view\\_news.php?id=108634](http://www.novinite.com/view_news.php?id=108634))

2008, 47 % of registered parties did not comply with this requirement and in 2009, the figure was only 25%. Nevertheless, the NAO performs a financial control only insofar as the parties concerned benefit from the public grant or material support in the form of free premises, or they have participated in an election in the previous year. Therefore, although the NAO does not exert a financial control in respect of all political parties, the criteria adopted by the law seem to take into account all the active political entities.

114. The overview of results of the NAO's control work (see paragraphs 93 and 94 in the descriptive part) shows that at the time of the on-site visit, the few infringements detected were mostly of a formal nature (it being understood that violations committed by political parties in the raising and spending of funds and the management of property allocated are to be notified to the prosecutor's office). The GET was told that criticism had already been voiced in Bulgaria on the lack of results of the institution in this part of its activity, in particular since it was felt that the NAO never reacted even to public allegations of serious violations committed by parties or their candidates. The discussions held on site confirmed that the NAO's contribution to the overall transparency of political financing is perceived as rather modest. Besides, the representatives of the NAO were unable to present a clear overview of the most frequent problems encountered in this respect. The reasons for this situation are not to be found in its institutional position since in the GET's views, the NAO seems to meet the requirements of article 14 of Recommendation Rec(2003)4: it enjoys satisfactory guarantees of independence as well as the reputation of being reasonably distant from the parties and parliament. The institution is staffed with specialists in the area of financial control. It has, under article 35 PPA, powerful tools to obtain from political parties and any natural and legal person, or sole entrepreneur outside the parties, as well as from all state authorities, all the pertinent information; refusals to provide data and documents or obstruction to the NAO's control work is prosecutable. The NAO explained that the 22 staff of the division responsible for the supervision of party financing were not sufficient to deal with this type of work, which constitutes a significant burden in addition to their regular work. Especially in the context of elections, more staff would be needed but no measures have been taken or were envisaged until now for the temporary transfer of staff from other sections in case of occasional work overload; the size of the NAO structures offers, indeed, room for flexibility<sup>14</sup>. The GET also had the strong impression that the NAO too, is affected (like other state agencies) by the tendency to place on other institutions the responsibility for possible insufficiencies or providing of accurate information. In particular, the NAO representatives stressed that they had no means to really know about the occurrence of infringements unless irregularities are reported to them by the media or other actors in the field. Whatever the reasons of this over-prudent attitude, the GET believes that measures need to be taken to increase the effectiveness of the NAO, especially given the critical perception of political financing matters in Bulgaria. The Bulgarian authorities indicated after the visit that in February 2010, the results of controls performed for the first time in respect of campaign financing specifically (for the parliamentary and European elections of 2009) were released, showing that the NAO had uncovered 11 cases involving irregularities<sup>15</sup>; this is a move in the right direction, which should also inspire future action. Consequently, the GET recommends **to provide for additional support to the National Audit Office to enable it to fulfil in an effective manner its control function in respect of party and election campaign financing.**
115. The National Revenue Agency (NRA) was included in 2009 in the PPA as a subsidiary supervisory body, responsible for inspecting in its area of competence political parties which

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<sup>14</sup> The NAO has a total of 500 staff, including at the 28 regional offices and some sub-regional structures.

<sup>15</sup> These concern parties which had declared less income than actually spent amounts (6 cases), illegal donations (2 cases) and unregistered/undisclosed donations (3 cases).

benefit from the state grant but have not submitted their financial statements to the NAO. It would appear that the scope of this involvement is limited to such matters as compliance with taxation and social contribution rules. The NRA considers that disclosing infringements in the area of party financing is not part of its duties, whereas in the GET's view, this could be a way to make a meaningful contribution to the control of party funding. The GET therefore recommends **to provide for more effective ways of cooperation between the National Revenue Agency and the National Audit Office under the Political Parties Act.**

116. As for the supervision of campaign financing of political parties and other campaign participants, the system in place is affected by two major flaws: a) the existing reporting duties are inconsistent and not entirely clear; b) the scope of the NAO's duty to control financial statements is not always specified. In accordance with article 37a PPA, political parties are required within one month after the election, to submit financial reports to the NAO, concerning the funds raised and spent in the election campaign. Strictly speaking, the PPA requires the NAO to examine only the annual reports of the political parties; it is silent on whether the submitted election campaign reports are subject to verification as it formally only states that these are destined to publication on the NAO's website. For the campaign of candidate MPs, the EMPA (article 73) contains more specific provisions, since political parties as well as coalitions and initiative committees have to submit their election campaign reports within the same deadline as above, and these must include bank statements. In respect of Euro-MPs, the EMEPA (article 79) provides in principle the same as the EMPA; but for some reasons, representatives of the NAO consider that the EMPA only places a reporting duty on political parties. The EMPA and the EMEPA require the NAO to conduct a verification. As regards the control over the financing of local elections, the LEA places the reporting duty on the same categories of campaign participants as the EMPA and EMEPA but it does not provide for any verification by the NAO. As regards campaign financing for the election of the President and Vice-President, the EPVPA (article 19) provides for a mere statement to be made before the NAO by the candidates themselves, who participated in the election; the law is also silent about any control of these statements. Furthermore, where the control by the NAO is provided for (EMPA, EMEPA), the laws refer to a *factual verification of the compliance of the income stated with the actual expenses incurred during the campaign*, which can be understood in different ways (a merely formalistic check, or an in-depth verification of income and expenditure, including of expenditure actually incurred).
117. The NAO confirmed the need to harmonise the various laws and the fact that the Office does not have enough legal tools and powers to control campaign financing declarations such as those available in respect of the annual declarations of the parties under the PPA. At the same time, there is no ongoing monitoring of the financial activity during the election campaigns generally. Overall, in the opinion of the GET, there is room to improve the above arrangements. Finally, the fact that the various election Acts (EMPA and EMEPA, LEA, EPVPA to name just these four texts) refer to the Central (or regional/local) Election Commission(s) as the entity(ies) responsible for identifying and acting on violations of these Acts – including by imposing penalties – has been a subject of extensive discussions on site; these showed that there is an imperative need to make clear provision in the PPA for the supervision of campaign financing by the NAO. The GET therefore recommends **to provide for an adequate and consistent supervision over the financing of election campaigns of political parties, candidates and other campaign participants, under the clear responsibility and leadership of the National Audit Office.**
118. Finally, the NAO has reportedly issued various standardised forms for the reporting of party and campaign finances, accompanied by explanatory documents. It also provides upon request technical advice to the parties and their local chapters. The GET welcomes this approach which

would merit to be maintained and possibly adjusted in light of the needs of parties and candidates after the harmonisation of legislation.

### Sanctions

119. The system of sanctions is very much “party-based” in that the only penalties which are specific to political financing infringements are those provided under the PPA; the latter applies only to political parties and the sanctions are very much worded in this spirit. In particular, the PPA is silent as to possible infringements by donors and individual party members (except party leaders who would obstruct control by the NAO). The GET was informed that to some extent, the current situation was the result of a change of approach in 2009 since until that year, the PPA provided also for penalties in respect of natural persons. Following proceedings initiated against a few political leaders (including some convictions which were appealed) because their party had not submitted its financial reports, amendments to the PPA were passed and with the retroactive effect of administrative law (by virtue of the Law on administrative infringements - article 3 paragraph 2), the proceedings in question had to be interrupted and the persons already convicted were released from liability. The GET considers that the system of offences would need to be complemented with provisions addressing also individual infringements (including those committed by party members or party officials in charge of party accounts); this could also have a positive effect on the quality of management and financial discipline within the parties. The experience in other countries has shown that ineligibility – as one of the sanctions that can be imposed on an elected official or candidate – can be a powerful tool, also from a preventive point of view.
120. Furthermore, the sanctions currently available under the PPA are not always proportionate and dissuasive enough. The PPA (article 40) stipulates that in case of i.a. systemic violations of the Act or failure to submit annual financial statements to the NAO during two consecutive years, the party may be dissolved by the Sofia City Court; this kind of sanction is probably too severe to be of any real use in practice. Therefore, the most effective measure remains the loss of the entire state grant, but this again, is a severe measure since under article 36 paragraph 1, the entitlement to the grant is definitely lost until the next elections (and not in proportion to the seriousness of the offence or temporarily until certain deficiencies have been addressed). Parties that do not (yet) receive state support can only be sanctioned by the confiscation of illegal donations, or a fine of BGN 5000 to 10 000 (EUR 2500 to 5000) in case they do not submit one of the financial statements required under the Act. Party members found guilty of obstruction are subject to a fine of BGN 1000 to 2000 (EUR 500 to 1000). This shows that the maximum amount of fines appears to be rather moderate and that violations of a number of specific requirements of the PPA are not punishable, such as the refusal to publish or make publicly accessible the register of the party, the non – or inadequate registration of donations or expenditure, not to mention the keeping of secret funds and dual accounting. Furthermore, the confiscation of illegal donations is an important element in the arsenal of sanctions, but this should probably remain an additional penalty in order to preserve the dissuasiveness of sanctions. The GET was advised that in some cases, criminal law provisions would be applicable (on forgery of documents, tax fraud etc.). This is all the more important as the NAO is normally required to notify the prosecutor’s office of all cases of violations by parties in the raising and spending of funds, in the management of the property allocated or in the financial reporting. In the light of the above concerns, the GET recommends **i) to complement the existing arsenal of sanctions available under the Political Parties Act by further sanctions which can be imposed also on natural persons, including persons in charge of party accounts; ii) to provide for a broader range of penalties that would be more proportionate and dissuasive, and would address further**

**important requirements of the Act such as accepting an illegal donation, the improper identification of donors, the inadequate or non-registration of elements of income and expenditure.**

121. From a strictly legal point of view, the only sanctions applicable in relation to campaign financing are the general ones contained in the (main) electoral Acts (EMPA, EMEPA, LEA, EPVPA); these do not address the specificities of the political financing requirements: the only penalties applicable under the EMPA for any violation of this Act is a fine of BGN 500 to BGN 5000 (EUR 250 to 2500) or where the offense is committed wilfully by an official, a fine of BGN 1000 to 10 000 (EUR 500 to 5000); here too, the range of sanctions is not always adequate; for instance, not complying with the ceiling on expenditure apparently is not subject to any other sanction besides a fine which may remain comparatively insignificant. Moreover, interlocutors of the GET stressed during the on-site visit that although sanctions apply literally to *anyone* who infringes the law, this kind of formula is too broad to be effective in practice (for instance against publishers and advertisers). The GET was also told that the existing sanctions are not effective. For instance, in the local elections of 2007, 70% of initiative committees and candidates, and 40% of coalitions did not submit financial statements; most of these infringements were, reportedly, not sanctioned (a few cases might have been initiated against parties under the PPA provisions). This is further compelling evidence of the inadequate current campaign financing regulations in the area of supervision and sanctions. The GET wishes to stress, once again, that given the relationships between the financing of election campaigns and that of political parties, a consistent approach is clearly needed in respect of these two areas. Consequently, the GET recommends **to provide for effective, proportionate and dissuasive sanctions – similar to those recommended in connection with the Political Parties Act – which would be applicable in case of infringements to the regulations on the financing of election campaigns.**
122. Under the Bulgarian Constitution and the internal rules of the Parliament, immunities from prosecution exist for parliamentarians, and for the President and Vice President of the Republic; it would appear that in the case of the latter, the immunity is absolute and cannot be lifted, which could give rise to impunity in the context of infringements connected with political financing. Besides, immunities also exist under the EMPA for candidates (and their canvassers) to parliamentary elections and under the EMEPA candidates (and their electoral committee) to the European parliament elections. The rules are not always consistent when it comes to the other supporting persons who enjoy immunities (canvassers in one case, members of the initiative committees in the other) and as regards the circumstances under which immunity from prosecution is not available (e.g. when the offence constitutes a serious crime and when the offender is apprehended in the act). The GET wonders whether in the current context, it is fully justified to maintain the immunity of candidates as well as their canvassers or the members of their electoral committee; it did not reach a clear conclusion in this area. However, the apparent inconsistency of rules is an issue of concern and the GET encourages the Bulgarian authorities to keep this matter in mind in the context of the desirable general harmonisation of political financing regulations.
123. During the on site discussions, it was also pointed out that the current rules probably do not allow to deal satisfactorily with the succession of parties, in particular to avoid that a given party evades the consequences of its actions through a voluntary dissolution and the reestablishment under a different name. The Bulgarian authorities may wish to further look into this matter too.

124. Finally, the GET understands that the statute of limitation applicable in relation to the administrative offences contained in the PPA and the various election acts is governed by article 34 paragraph 1 of the Administrative Violations and Sanctions Act; accordingly, proceedings may not be initiated if a statement establishing the existence of a violation was not drawn up within three months following the detection of the offender, or if one year has elapsed since the commission of the violation. In the opinion of the GET, these requirements are too strict in the context of political financing, should a violation be detected or reported only several months after it was committed (and also the fact that no mechanism for the suspension of the statute seems to be provided in relation with article 34 of the above-mentioned Act). The GET therefore recommends **to extend the statute of limitation applicable to violations of the Political Parties Act of 2005 and the various election acts.**

## V. CONCLUSIONS

125. With the Political Parties Act of 2005 and the various acts pertaining *inter alia* to the parliamentary, European Parliament, local and presidential elections, Bulgaria has managed to introduce a set of essential measures for the transparency and supervision of party financing and election campaigns. However, this legal framework calls for a comprehensive harmonisation and various specific improvements to ensure that the financial statements of parties and candidates reflect adequately and truly the origin of income, and that these statements are accessible to the public in a timely manner. Clear criteria are also needed to avoid that public facilities be misused for party activity and election campaign purposes. Moreover, the way the relevant legislation is drafted and prepared, under the main responsibility of the political parties themselves, suggests that so far, this legislation has been politically instrumentalised. For instance, the Local Elections Act was amended 24 times since its adoption in 1995 – often too late for these amendments to become fully applicable to the upcoming elections and for reasons of the ruling parties' own interests, as pointed out during the on-site discussions. The National Audit Office which has the lead responsibility in the control of party financing, needs further support in order to perform its tasks effectively; this is a crucial matter given the widespread perception that the financial statements of political parties and campaign participants generally do not reflect – by far – the reality. The range of sanctions concerning financial irregularities needs to be complemented with more proportionate and dissuasive penalties. It does not come as a surprise that the sanctions available under the Political Parties Act have been used until recently to address exclusively formal requirements of the law (late or non-submission of financial statements, misuse of premises) whilst at the same time a transfer of liability from party members to the parties themselves has affected the outcome of proceedings initiated in 2007 and 2008. Overall, the situation in Bulgaria calls for rapid and meaningful improvements.

126. In view of the above, GRECO addresses the following recommendations to Bulgaria:

- i. **to clarify the prohibition of fund raising events** (paragraph 99);
- ii. **i) to regulate third party support received during election campaigns in a way that this support is to be accounted for by those who benefit from it; ii) to examine the advisability of regulating in a more detailed manner the transparency of financial activity and transparency of coalitions** (paragraph 101);
- iii. **i) to require political parties and campaign participants to use – as a rule – the banking system for the receiving of donations and other sources of income, and for the payment of expenditure; ii) to ensure that if a threshold is maintained for**

donations in small amounts, it is adapted to the economic context of Bulgaria; iii) to introduce the principle of a unique campaign account for the financing of election campaigns (paragraph 102);

- iv. to adopt a comprehensive and consistent legal framework for the financing of election campaigns that would spell out clearly in particular the various forms of permissible income and expenditure, the precise manner in which income and expenditure are to be accounted for, and the persons responsible for the collection of donations and the handling of the financial records (paragraph 103);
- v. to regulate in a consistent and clear manner the prohibition of donations from legal persons in the context of party and election campaign financing, in line with the already introduced amendments to the Political Parties Act, the acts on election of national and European parliamentarians, and the new practice adopted in this regard by the National Audit Office (paragraph 104);
- vi. to spell out clearly that all income and expenditure connected with an election campaign need to be accounted for (paragraph 105);
- vii. to provide in a consistent manner for the timely publication of financial reports pertaining to election campaigns in general (paragraph 107);
- viii. to provide for clear criteria concerning the use of public facilities for party activity and election campaign purposes (paragraph 108);
- ix. to provide for rules on the conservation of relevant financial records and documents, that would apply also in the context of campaign financing (paragraph 109);
- x. i) to examine the advisability of raising the standards and the quality of audit certification of financial statements submitted in the context of party financing and of increasing coordination with the profession; ii) to strengthen the independence of the political parties' external audit of accounts (paragraph 112);
- xi. to provide for additional support to the National Audit Office to enable it to fulfil in an effective manner its control function in respect of party and election campaign financing (paragraph 114);
- xii. to provide for more effective ways of cooperation between the National Revenue Agency and the National Audit Office under the Political Parties Act (paragraph 115);
- xiii. to provide for an adequate and consistent supervision over the financing of election campaigns of political parties, candidates and other campaign participants, under the clear responsibility and leadership of the National Audit Office (paragraph 117);
- xiv. i) to complement the existing arsenal of sanctions available under the Political Parties Act by further sanctions which can be imposed also on natural persons, including persons in charge of party accounts; ii) to provide for a broader range of penalties that would be more proportionate and dissuasive, and would address further important requirements of the Act such as accepting an illegal donation, the

**improper identification of donors, the inadequate or non-registration of elements of income and expenditure** (paragraph 120);

- xv. **to provide for effective, proportionate and dissuasive sanctions – similar to those recommended in connection with the Political Parties Act – which would be applicable in case of infringements to the regulations on the financing of election campaigns** (paragraph 121);
  - xvi. **to extend the statute of limitation applicable to violations of the Political Parties Act of 2005 and the various election acts** (paragraph 124).
127. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Bulgarian authorities to present a report on the implementation of the above-mentioned recommendations by 30 April 2012.
128. Finally, GRECO invites the authorities of Bulgaria to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.