



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

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



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Evaluation Report on Spain Transparency of Party Funding (Theme II)

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I. INTRODUCTION

1. Spain joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 1E) in respect of Spain at its 5th Plenary Meeting (11-15 June 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 7E) at its 23rd Plenary Meeting (17-20 May 2005). The afore-mentioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption¹ (ETS 173), Articles 1-6 of its Additional Protocol² (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Spain from 24 to 26 September 2008, was composed of Mr Pietro RUSSO, Magistrate, Supreme Audit Court (Italy), Mr Douglas STEWART, Senior Manager, Risk Services, Deloitte LLP (United Kingdom), and the scientific expert, Mr Yves Marie DOUBLET, Deputy Director, National Assembly, Legal Department, Unit of Legal Studies (France). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2008) 3E, Theme II), as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: the Ministry of the Interior (Directorate General of Internal Policy, Deputy Directorate General of Internal Policy and Electoral Processes), the General Council of the Judiciary, the State Prosecution Service and the Court of Audit. In addition, the GET met with members of the two major political parties represented in Parliament (i.e. Spanish Socialist Workers' Party and People's Party). Moreover, the GET met with external independent auditors, Transparency International, academia and the media.
5. The present report on Theme II of GRECO's Third Evaluation Round – "Transparency of party funding" – was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the authorities of Spain 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 Spain in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme I – "Incriminations" –, is set out in Greco Eval III Rep (2008) 3E, Theme I.

¹ Spain signed the Criminal Law Convention on Corruption (ETS 173) on 10 May 2005; it has not yet been ratified.

² Spain has neither signed nor ratified the Additional Protocol to the Criminal Law Convention (ETS 191).

II. TRANSPARENCY OF PARTY FUNDING - GENERAL PART

Overview of the political/electoral system

7. Spain is a constitutional monarchy in the form of a multi-party parliamentary democracy. Its Parliament (*Cortes Generales*) is made up of two elected chambers: the Congress of Deputies (*Congreso de los Diputados*), which holds the primary legislative power³, and the Senate (*Senado*), which is the chamber of territorial representation. The 350 deputies in the Congress are elected by a d'Hondt system of party list proportional representation. Senators are elected through two different methods: 208 are elected by a majority-direct system (province level) and another 50 are appointed by the respective regional legislatures (Autonomous Community) through a proportional-indirect system⁴. The Congress and Senate serve concurrent terms that run for a maximum of four years. The general election regime is governed by Organic Law 5/1985 on the General Election Regime (LOREG).
8. Spain is divided into 17 Autonomous Communities (*Comunidades Autónomas*)⁵. All Autonomous Communities are ruled by a government (*gobierno or junta*) elected by a unicameral legislature. Elections to Autonomous Communities take place every four years. Virtually all Autonomous Communities (with the exception of Catalonia) have adopted their own electoral law; they generally use the proportional D'Hondt system and the closed, plurinomial party lists.
9. Finally, municipalities are also representative in nature: citizens elect the municipal council (a sort of legislative body), which is then responsible for electing the mayor who can appoint a board of governors out of councillors of his party or coalition as an executive. The only exception to this rule is in municipalities of under 50 inhabitants, which act as an open council, with a directly elected mayor and an assembly of neighbours functioning as control and legislative body. Municipal elections are held every four years. Municipal councillors are allotted using the D'Hondt method for proportional representation, with the exception of municipalities of under 100 inhabitants where bloc voting is used. The number of councillors is determined by the population of the municipality, the smallest municipalities having 5 and Madrid (the biggest) 55.

Participation in elections

10. Elections are to be held on the basis of universal, free, equal, direct and secret suffrage (Article 23, Constitution).
11. Active voting rights (to be able to elect) and passive voting rights (to be eligible) are granted to all Spanish citizens of full age (18 years), excluding only those convicted by final sentence of the courts. The parliamentary mandate is incompatible with a number of high-ranking Government, political and public posts, membership of the armed forces, membership of the assembly of an Autonomous Community (for Deputies) and membership of an electoral commission.

³ Laws are presented and debated in the Congress before passing to the Senate. The Senate may propose amendments and even veto legislation. However, Congress can override a veto immediately through an absolute majority vote, or by a simple majority vote after two months.

⁴ Senators are elected directly from the provinces and indirectly from the autonomous communities. In the provinces, a majoritarian partial block voting system is used. All peninsular provinces elect four senators each; the insular provinces (Balearic and Canary Islands) elect two or three senators per island, and Ceuta and Melilla elect two senators each. Parties nominate three candidates; each voter has three votes (less in those constituencies electing fewer senators), and votes for candidates by name, the only instance of personal voting in Spanish national elections. The autonomous communities receive one senator, plus one for each million inhabitants. They are entitled to determine how they choose their senators, but generally they are elected by the legislature of the respective community in proportion to its party composition.

⁵ Andalusia, Aragon, Asturias, Balearic Islands, Basque Country, Canary Islands, Cantabria, Castille-La Mancha, Castile-Leon, Catalonia, Extremadura, Galicia, La Rioja, Madrid, Murcia, Navarre, Valencia.

12. Candidate lists may be presented by political parties, coalitions and groups of citizens (Articles 43 and 44, Organic Law 5/1985 on the General Election Regime). Candidates to the Congress of Deputies are presented on the basis of closed-party lists⁶ in each of the 52 provinces of Spain. There is a three per cent threshold to obtain representation in the Congress. In practice, however, parties need a higher percentage to win seats. For the Senate, voters select individual names from lists of candidates provided by the parties and may vote for candidates from more than one party. Senators are therefore elected in the provinces under a first-past-the-post system.
13. Officially, the election campaign lasts 15 days (Article 51, Organic Law 5/1985). In practice, informal campaigning begins as soon as the election is called (54 days before polling day) or even earlier. Moreover, the different type of elections described above, i.e. general (parliamentary), autonomic and municipal, do not generally coincide in time, which results, in practical terms, in a continuous campaign period for competing political parties.
14. Elections in Spain are administered by a four level system, consisting of the Central Election Commission (*Junta Electoral Central*), Provincial Election Commissions (*Juntas Electorales Provinciales*), District or Zone Election Commissions (*Juntas Electorales de Zona*) and Electoral Boards (*Mesas Electorales*). Finally, the Ministry of the Interior plays a key role in electoral administration.

Legal framework and registration of political parties

15. Strictly speaking, there is no legal definition of political parties. However, different pieces of legislation, including the Constitution and Organic Law 6/2002 on Political Parties, refer to the status of political parties, as well as their responsibilities. In practical terms (and on the basis of the various legal references to political parties), these can be described as private associations which objective is to express the political will of citizens and to promote their participation in democracy, though *inter alia* the development of political programmes and the proposal and support of candidates for election.
16. The registration of political parties in the Party Register is the responsibility of the Ministry of the Interior. The registration process is governed by Organic Law 6/2002 on Political Parties and Royal Decree 2281/1976 on the Registration of Political Parties. In order to register a political party, the identity of its founders and Board Members, as well as its notarised statutes (including *inter alia* data on the name and address of the party, its objectives and internal rules) must be submitted (Article 3(2) of Organic Law 6/2002 on Political Parties). Information contained in the Party Register is of a public nature and accessible upon request (Article 4, Royal Decree 2281/1976 on the Registration of Political Parties). The website of the Ministry of the Interior⁷ provides a list with the names and addresses of registered political parties, as well as the date of their registration.
17. From the moment of their registration (i.e. 20 days following the submission of the required documents), political parties have legal personality and can acquire rights and obligations.
18. As of 28 February 2009, there were 3,251 registered political parties in Spain; some of them no longer active.

⁶ In closed list systems, political parties order their list of candidates in a given constituency before an election; the voters are therefore to vote for an entire candidate list.

⁷ http://www.mir.es/DGPI/Partidos_Politicos_y_Financiacion/Registro_Partidos_Politicos/

Party representation in Parliament

19. Following the March 2008 parliamentary elections, the parties represented in Parliament are as follows:

(a) Congress of Deputies:

- Spanish Socialist Workers' Party (Partido Socialista Obrero Español - PSOE) : 169 Deputies
- People's Party (Partido Popular - PP): 154 Deputies
- Convergence and Union (Convergencia i Unió - CiU): 10 Deputies
- Basque Nationalist Party (Eusko Alferdi Jetzalea-Partido Nacionalista Vasco - EAJ-PNV): 6 Deputies
- Republican Left of Catalonia (Esquerra Republicana de Catalunya - ERC): 3 Deputies
- United Left (Izquierda Unida - IU): 2 Deputies
- Galician Nationalistic Bloc (Bloque Nacionalista Galego): 2 Deputies
- Canary Coalition (Coalición Canaria - CC): 2 Deputies
- Union, Progress and Democracy (Unión Progreso y Democracia - UPD): 1 Deputy
- Navarre Yes (Nafarroa Bai - NA-BAI): 1 Deputy

(b) Senate:

- People's Party (Partido Popular - PP): 101 Senators
- Spanish Socialist Workers' Party (Partido Socialista Obrero Español - PSOE) : 89 Senators
- Catalan Agreement on Progress (Entesa Catalana de Progrés – ERC-PSC-ICV-EU1A): 12 Senators
- Convergence and Union (Convergencia i Unió - CiU): 4 Senators
- Basque Nationalist Party (Eusko Alferdi Jetzalea-Partido Nacionalista Vasco - EAJ-PNV): 2 Senators

Overview of the party funding system

20. The rules governing political finance are contained in Organic Law 5/1985 on the General Election Regime (for election campaigns), as well as in the recently adopted Organic Law 8/2007 on Political Parties Funding⁸ (for ordinary funding of political parties). The latter includes detailed provisions on public and private financing sources, accounting obligations of political parties⁹, control and sanctioning mechanisms. At the time of the visit of the GET, only one election for the Parliament had taken place under this law (i.e. in March 2008). The next electoral process to take place in Spain will be the European Parliament elections on 7 June 2009.

Public funding

Direct public funding

21. Direct public funding is provided through (Article 2(1), Organic Law 8/2007 on Political Parties Funding): (a) public subsidies for election expenses; (b) State annual subsidies for operational activities and security expenses (i.e. amounts allocated to political parties to ensure their protection against terrorist attacks); (c) Autonomous Communities and municipal annual subsidies

⁸ Organic Law 8/2007 was adopted in July 2007, to close various loopholes in the previous legal framework in this particular area, i.e. Organic Law 3/1987 on Financing of Political Parties, which allowed for abuses of the system resulting in allegations of corruption instances in connection to political finance (e.g. Filesa, Naseiro case, Casino case, Slot machines case, etc.). The newly adopted legislation aims at increasing the transparency and control system of party funding.

⁹ Under Organic Law 8/2007, the term "political party" is to comprise not only political parties as such, but also federations, coalitions and voter groups.

for operational activities; (d) extraordinary subsidies for advertising purposes; (e) contributions to parliamentary groups at State, Autonomous Community and municipal levels. Furthermore, political parties participating in elections of the municipal council may receive direct public funding from the budget of local communities in the form of a flat equal share for all parties and a variable amount in proportion to the number of seats per party (Article 73, Law 11/1999 on Local Authorities). Finally, the State may grant extraordinary funds for referendum purposes¹⁰.

22. Subsidies are provided on the basis of the number of seats/votes gained in the last elections. Organic Law 5/1985 on the General Election Regime, as well as the different electoral laws at Autonomous Community level (see Annex I for details), establish the exact ratio - EUR per seat/vote obtained by the political party - of the amount to be granted. In practice, only political parties that hold a seat in the respective State/Autonomous Community/municipal legislative body are eligible for direct public funding. In this connection, the accrual and payment of public funds depends on the justification of the acquisition by the elected representatives of their full condition as such and of the effective exercise of the position they have been elected for. There is no maximum limit for a decision to increase public funding of political parties, the minimum limit is set with respect to variations in the consumer price index (CPI) from one year to another. In this connection, Organic Law 8/2007 introduced a 20% increase of the available State subsidies for financing operational activities and security expenses of political parties: in 2008, 78,100,000 EUR were allocated for operational activities and 4,010,000 EUR for security expenses, respectively.
23. Pursuant to Article 126 of Organic Law 5/1985 on the General Election Regime, public subsidies cannot be granted to a political party which has in its management body, electoral list or parliamentary group, a person who has been found guilty of a serious offence (e.g. terrorism, serious offences against public administration, etc.).

Indirect public funding

24. Indirect funding of election campaigns is provided through free airtime in public broadcasting during election campaigns. In this connection, public television cannot accept paid campaign advertising, it has an obligation to provide free time, which is divided among all contestants according to a formula based on the number of votes and seats obtained by each party in the previous parliamentary election. If a party did not run or did not win representation in the last elections, it still has the right to ten minutes of free time. In addition to free time for advertising, public television provides time to political parties in its news and information programmes; this time is also allocated on the basis of the parties' previous election results. The Government cannot carry out public information campaigns during the election period, with the exception of public information campaigns on the electoral process and campaigns that indispensable to safeguard the public interest.
25. Moreover, political parties are entitled to discount postage rates for campaign mailing purposes.
26. Finally, campaign hoarding (billboards), as well as the use of public meeting rooms (e.g. schools, town halls), are provided free of charge by municipalities during election campaigns.

¹⁰ This type of State subsidies have been granted, for example, with respect to the referendum on the EU Constitution, which took place in 2005. The particular conditions and allocation method for the aforementioned funding was regulated by Royal Decree 6/2005 of 14 of January 2005.

Private funding

Political parties

27. Pursuant to Article 2(2) of Organic Law 8/2007 on Political Parties Funding, apart from the abovementioned public contributions, the funding of political party may consist of:
- (a) Membership fees.
 - (b) Income from party property and activities (e.g. promotional, fundraising activities, publications, etc.).
 - (c) Cash and in kind donations from physical (whether nationals or foreigners) or legal persons. If these are given by the latter, its management board is to approve the relevant donation and to attest its legality.
 - (d) Loans and credits.
 - (e) Bequests.
28. A number of restrictions apply to the sources of private funding. In particular, political parties are not permitted to accept the following types of contributions:
- donations from anonymous sources;
 - donations from an individual, whether physical or legal, donor in excess of 100,000 EUR/year (in-kind donations in the form of real estate are excluded from this limit). This restriction is tightened up with respect to donations to election campaigns which must not exceed 6,000 EUR per person (Article 129, Organic Law 5/1985 on the General Election Regime);
 - donations from public sector entities;
 - donations from private companies providing goods or services for public entities or undertakings which are majority owned by or under the control of the State;
 - subrogation of third persons in the payment of goods, works, or any other expense incurred by a political party;
 - donations from foreign Governments, foreign public entities or companies related - directly or indirectly - to them (funds from the EU for elections to the European Parliament are excluded from this prohibition).
29. There are no quantitative restrictions on membership fees, nor on the total amount of loans/credits and income from party and fundraising activities, the party may receive. In qualitative terms, private donations must not be conditioned or tied by the donor to any specific purpose.
30. Finally, political parties cannot be engaged in any commercial activities aiming at earning profits (Article 6, Organic Law 8/2007 on Political Parties Funding).

Associations and foundations related, directly or indirectly, to political parties with representation in the Parliament

31. Pursuant to Organic Law 8/2007 on Political Parties Funding, the donations received by associations and foundations related to political parties are subjected to the limits/prohibitions on private donations which have been described above for political parties, with the following special features:
- they are allowed to receive donations of up to 150,000 EUR per person/year (instead of the 100,000 EUR limit to which other physical and legal persons are subject);
 - any donation from a legal person exceeding 120,000 EUR is to be certified in a notarised document.

Taxation regime

Political parties

32. The donations received by political parties are generally exempt from corporate tax (Article 10, Organic Law 8/2007 on Political Parties Funding).

Donors

33. Donations to political parties by physical persons are deductible from their income tax up to 600 EUR annually. For a private person to qualify for such an exemption, s/he has to show prove that the political party has indeed received his/her contribution. Additional tax exemptions are possible in accordance with Law 49/2002 on Non-Profit Entities and Fiscal Incentives to Sponsorship (Article 12, Organic Law 8/2007 on Political Parties Funding).

Expenditures

34. Political parties are subject to both qualitative and quantitative expenditure limits in election campaigns.
35. As far as qualitative restrictions are concerned, election expenses can only be incurred in relation to the following items (Article 130, Organic Law 5/1985 on the General Election Regime):
- preparation of envelopes and ballot papers;
 - electoral advertising and direct or indirect publicity aimed at promoting the vote for a given candidacy;
 - renting premises for holding election campaign acts;
 - remuneration or reward of temporary staff working for election campaign;
 - means of transport and travelling expenses of candidates and party leaders, as well of the staff engaged in the election campaign;
 - mailing and postage;
 - interests of the credits received for the election campaign;
 - any other expenditure required for managing the relevant offices and services operative during election campaigns.
36. Furthermore, quantitative limitations apply as follows (Articles 131, 175, 193 and 227, Organic Law 5/1985 on the General Election Regime):
- General (Congress and Senate) elections: a maximum of the result of multiplying 0.24 EUR by the number of residents in the relevant electoral districts where the party presents its list.
 - European Parliament elections: a maximum of the result of multiplying 0.12 EUR by the number of residents in the relevant electoral districts where the party presents its list.
 - Municipal elections: a maximum of the result of multiplying 0.07 EUR by the number of residents in the relevant electoral districts where the party presents its list. Additionally, if the party is presenting candidate lists in at least 50% of the municipalities existing in a given province, the party is entitled to spend 96,162 EUR for each province where it meets the said condition.
37. In the event that two or more elections coincide in time, political parties are not allowed to incur in supplementary election expenses in an amount exceeding 25% of the maximum expenses allowed for general elections.

III. TRANSPARENCY OF PARTY FUNDING - SPECIFIC PART

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

Books and accounts

38. The relevant accounting obligations of political parties with respect to their operational activities are laid out by Organic Law 8/2007 on Political Parties Funding. The accounts and financial reports of political parties are subject to the general accounting principles. In this context, political parties have an obligation to keep accounting books, including accurate records of their income and expenditure (as a minimum, a situation balance sheet and a profit and loss statement are to be kept)¹¹. In particular, accounting books are to record the following information (Article 14(2), Organic Law 8/2007 on Political Parties Funding):
- Annual inventory of party assets.
 - Information on income:
 - o income from membership fees;
 - o income from party property;
 - o public subsidies;
 - o profits from party activities.
 - Information on expenditure:
 - o personnel expenses;
 - o expenses incurred in the purchase of goods and services;
 - o financial expenses from loans;
 - o other administrative expenses;
 - o expenses in connection to party activities.
 - Information on venture capital operations related to:
 - o loans and credits;
 - o investments;
 - o debtors and creditors.
39. Separate bank accounts are to be opened by the political party to track membership fees on one hand, and all other types of private donations, on the other hand (Articles 4 and 8, Organic Law 8/2007 on Political Parties Funding). The relevant financial institutions must provide donors with a document certifying the date in which the donation was made, the amount donated and the fiscal identity of the donor. For donations in kind, the political party is to provide the donor with a document formally attesting that the donation was effectively made and has an irrevocable nature.
40. Furthermore, Organic Law 5/1985 on the General Election Regime requires a separate detailed accounting of revenue and expenditure of election campaigns. Political parties are to engage a so-called "electoral administrator¹²" to manage campaign-related finances (Articles 121-123, Organic Law 5/1985 on the General Election Regime). Likewise, a specific bank account needs to be opened for campaign purposes: all donations and expenses are to be channelled through this type of accounts. With respect to the donations made through these bank accounts, they are to detail the identity of the donor, including his/her name, address and identity card/passport data. With regard to the expenses incurred during election campaigns, once the campaign is over, the money

¹¹ Agreement of the Court of Audit, dated on 28 February 2008, concerning the monitoring of electoral accounting in the General Elections to take place on 9 March 2008.

¹² Any citizen who has reached the age of 18 years and has full legal capacity can act as an electoral administrator. Party representatives can also act as electoral administrators; however, candidates are banned to perform such tasks. If a party presents its candidacy in more than one province, in addition to the electoral administrator, a general administrator is to be appointed to coordinate and consolidate the relevant campaign accounts of the party in question.

deposited in these accounts can only be used in the 90 days following the relevant election and only to pay off any expenditure engaged prior to the closure of the corresponding campaign (Articles 124-126, Organic Law 5/1985 on the General Election Regime). When elections coincide in time, separate accounts and records are to be kept for each of the different elections.

41. The relevant legislation on party funding does not include any specific requirement concerning the statutory bookkeeping periods. Nevertheless, the authorities indicate that political parties would, in principle, be bound by general commercial and taxation principles in this area. Accordingly, the financial administration and related documents (including computer files) of a party would need to be kept for at least six years.
42. As far as violation provisions on the proper maintenance and conservation of accounting and other company records are concerned, the Code of Commerce does not contain direct sanctions; however, if a company goes bankrupt, the lack of appropriate records will be sanctioned by declaring the company fraudulent. By contrast, the Criminal Code provides for a specific "accounting crime" (Article 310)¹³. Furthermore, Articles 200 and 201 of the Company Tax Law and Article 184 of the General Tax Law provide for specific sanctions for account offences.

Reporting obligations

Political parties

43. Political parties receiving public funds are to report separately on their operational activities and on election campaigns. The segregation and separate reporting of operational and campaign finances, respectively, is aimed at better facilitating their auditing. However, both operational and electoral finances are to be aggregated at a later stage and consolidated into the annual accounts of political parties. The financial reporting of parliamentary groups is governed by separate rules.
44. With respect to operational activities, the board of a political party is responsible for the preparation of an annual financial report, including (i) balance sheet (comprising a statement on assets and liabilities); (ii) profit and loss account; and (iii) explanatory notes, containing detailed information on the different donations received from public and private sources. In particular, with respect to private donations, these are to detail the identity of the donor (whether physical or legal person) and the amount of the contribution received. The only exception to disclosure of the identity of the donor is allowed with respect to one single category of income, i.e. income from party property and activities, and only if the amount is below 300 EUR (Article 6, Organic Law 8/2007 on Political Parties Funding). In addition, the explanatory notes are to be accompanied by an annex including thorough information on loans (i.e. identity of the lender, total amount of loan, interest rate, repayment period, debt overhang and any relevant contingency which may impact the initial conditions agreed for the loan in question). These documents are to be submitted to the Court of Audit by 30 June of each year (Article 14, Organic Law 8/2007 on Political Parties Funding).

¹³ The penalty of five to seven months' imprisonment shall be applied to punish any person who is obligated by tax law to keep commercial accounting records, books or tax records and:

- a) Absolutely fails to discharge the said obligation in the procedure for direct evaluation of taxable bases.
- b) Keeps different accounting records referring to the same business and business year, which records hide or simulate the true situation of the company.
- c) Fails to enter economic deals, acts, operations or transactions in general in the mandatory books or enters figures other than the true figures for such items.
- d) Makes fictitious accounting entries in the mandatory books.

45. As far as campaign finances are concerned, electoral administrators are to submit, in the 100-125 days following the relevant election campaign, to the Court of Audit (or the relevant Audit Institution at Autonomous Community level, as applicable), a financial report detailing income and expenses of election campaigns (Article 133, Organic Law 5/1985 on the General Election Regime). The Court of Audit issued in 2007 a set of guidelines¹⁴ detailing the level of itemisation to be contained in the party's campaign report with respect to the May 2007 elections. In particular, the following data were required:

(a) Information on income:

- Donations from physical persons
- Donations from legal persons
- Advance payments
- Loans
- Other income

(b) Information on expenditure incurred:

- Voting papers and envelopes
- Advertising
- Rent
- Salaries
- Transport and travel expenses
- Correspondence and mailing
- Financial expenses
- Other expenditure.

46. Furthermore, Organic Law 5/1985 on the General Election Regime not only requires that financial reports on election campaigns be detailed, but also backed by supporting evidence. In this context, the aforementioned guidelines, issued by the Court of Audit in 2007, further specify the different types of supporting evidence to be reported by political parties, which are to provide details on the size and identity of the funds received/expenses incurred during election campaigns.

Donors

47. All credit institutions having financed loans for election campaign purposes, as well as service providers who have invoiced for an amount exceeding 6,000 EUR, are to report such operations to the Court of Audit (Article 133, Organic Law 5/1985 on the General Election Regime).

Access to accounting records

48. Financial reports of political parties are held by the Court of Audit (or the relevant Audit Institution at Autonomous Community level, as applicable).

49. Law enforcement authorities have access to accounting records of political parties, in case of suspicion of a criminal offence, as do tax authorities for tax inspection purposes.

50. Political parties do not fall under the free access to information regulations. Therefore, detailed financial information (other than what is contained in the annual report on party financing which is published by the Court of Audit), is not accessible to the public.

¹⁴ Decision of 30 March 2007 on Control of Campaign Finances for the elections to be held on 27 May 2007.

Publication requirements

51. The Court of Audit is not subject to a formal obligation to publicise the financial reports from political parties. However, it is required to issue an annual report on party financing within 6 months of the submission of these reports (Article 16(2), Organic Law 8/2007 on Political Parties Funding). This report contains findings and remarks in connection with the monitoring of political finance performed (including instances of malpractice); it also usually comprises an annex with summary information on the annual accounts of political parties. The report is sent to Parliament and subsequently published in the Spanish Official Journal (BOE), as well as on the website of the Court of Audit.
52. Political parties are not legally required to publish their financial reports, nor do they do so in practice either.

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

Internal control

53. There is a broad obligation upon political parties to carry out their own internal controls (Article 15, Organic Law 8/2007 on Political Parties Funding).
54. An internal control report is to be submitted to the Court of Audit, together with the relevant party financial reports described under paragraphs 43 to 46.

External control

55. The Court of Audit is endowed with general authority to monitor political financing. This responsibility is shared with the relevant Audit Institutions of the Autonomous Communities with respect to elections to regional Parliaments. Furthermore, pursuant to Article 132 of Organic Law 5/1985 on the General Election Regime, Election Commissions (see paragraph 14) are also entrusted with certain oversight tasks during election campaigns¹⁵.
56. The aforementioned bodies are to perform their supervisory tasks in full independence. In particular, the Court(s) of Audit are independent bodies under the auspices of the relevant national and regional Parliaments. They select their own working agenda and have their own budget. Likewise, Election Commissions are professional, independent and non-partisan bodies with a mixed composition of judges and professors.
57. The supervision performed by the aforementioned institutions is not only of a formal, but also of a material nature. In this connection, the responsible supervisory bodies are vested with wide investigative powers to call for all necessary documents to verify that the funding received by political parties (whether from public or private sources) complies with the legislation in force (Articles 132 and 134, Organic Law 5/1985 on the General Election Regime; Article 19, Organic Law 8/2007 on Political Parties Funding). Moreover, political parties and any other entity/person who has entered into commercial terms with them, are under a specific obligation to cooperate with the supervisory bodies, as necessary.

¹⁵ Election Commissions are responsible for monitoring compliance of political parties with the relevant rules on funding of election campaigns from the day the corresponding election is called for and until the 100th day following the election poll (Article 132, Organic Law 5/1985 on the General Election Regime). However, in practice, Elections Commissions have not to date perform any control of party finances; their monitoring role has traditionally focused in ensuring transparency of election procedures (e.g. advertising rules, nomination of candidates, etc.).

58. Pursuant to Organic Law 8/2007 on Political Parties Funding, the donations received by associations and foundations related to political parties with representation in the Parliament fall under the same oversight requirements to which the political parties themselves are subjected.
59. In principle, in the event of an irregularity/deficiency in a financial report, the Court of Audit would contact the party to clarify/remedy the situation. If nevertheless the irregularity detected suggests a potential instance of corruption, the Court of Audit will immediately report to the law enforcement authorities, as appropriate. The Court(s) of Audit carry out investigations both *ex officio* and following a citizen complaint.

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

Sanctions

60. Political parties are subject to administrative liability according to the relevant requirements of Organic Law 8/2007 on Political Parties Funding and Organic Law 5/1985 on the General Election Regime. In particular, Article 17 of Organic Law 8/2007 on Political Parties Funding provides for two distinct type of infringements and applicable sanctions: (i) if infringement of limits and restrictions on donations occur, a fine equalling twice the contribution illegally received may be deducted from future subsidies; (ii) the non-submission or the submission of a financial report with incorrect/poor data may lead to the withholding of public funds. The Court(s) of Audit is responsible for imposing the aforementioned range of administrative sanctions. Appeals against the Court(s) of Audit decisions may be lodged before the Supreme Court.
61. In addition, criminal liability of party representatives¹⁶ (e.g. general manager, general representative, electoral administrator) may apply in connection with accounting/bookkeeping offences sanctioned under Article 310 of the Penal Code. Furthermore, Organic Law 5/1985 on the General Election Regime provides that violation of the obligations to keep correct and accurate accounts and to use public funds for the purposes provided by the election law are sanctioned by imprisonment from 6 months to 3 years and a fine ranging from 180 to 1,800 EUR. If the funds have been used for personal enrichment, the imprisonment sanction may be increased, thus consisting of imprisonment from 3 to 8 years (Articles 149 and 150, Organic Law 5/1985 on the General Election Regime). This type of criminal sanction is enforced by the courts; proceedings follow the relevant rules under the Criminal Procedure Code (Article 151, Organic Law 5/1985 on the General Election Regime). Additional sanctions include special disqualification from exercising the right to vote and for standing for election.
62. Associations and foundations related to political parties with representation in the Parliament are subject to the same sanctions as political parties.
63. The Court of Audit indicates that breaches of political funding legislation have occurred in the past: which have mainly concerned instances of non-respect of expenditure limits, lack of transparency in the sources of private funding received, inconsistencies in accounting records, etc. The Court of Audit has ordered a total of 70 sanctions for infringements; for example, in connection with the 2007 elections, it recommended withholding public funds in 35 instances, the total of which amounted to 627,000 EUR.

¹⁶ Spain does not have a system of corporate criminal liability.

Immunities and time limits

64. There are no immunities allowing for any persons to avoid proceedings or sanctions for violating political funding regulations. In Spain, the category of the official involved in a criminal offence does not condition his/her effective prosecution, but has rather an impact on the judicial body who would be responsible for adjudicating the case (i.e. Supreme Court or Higher Courts at regional level).
65. The only exception to the aforementioned principle concerns members of national and regional Parliaments who enjoy immunity for actions in the exercise of their functions. They cannot be prosecuted without the prior authorisation by the competent authority (e.g. the respective chamber in the case of deputies and senators). An exception exists in the event of *flagrante delicto* in which case the beneficiaries of the immunities can be arrested. The Constitutional Court through various decisions has repeatedly provided clear indications on the nature and extent of these immunities, stressing that they are not personal privileges but attached to a function of the parliamentarian in question and with a view to ensuring that these functions are discharged effectively.
66. There are no specific time limits for proceedings connected with administrative infringements of Law 8/2007 on Political Parties Funding. In so far as infringements of the applicable party funding provisions during election campaigns, as regulated by Organic Law 5/1985, constitute criminal offences, these follow the relevant rules laid out in the Penal Code. In this respect, the authorities indicate that the statute of limitations in Spain operates in a flexible manner and thus permits, in principle, the prosecution of offences without risking the final outcome of the process due to the lapse of time. Limitation periods are fixed by Article 131 and are based on the sanctions of the offence. In this context, the offences provided for in Articles 149 and 150 of Organic Law 5/1985 on the General Election Regime, which are punished with imprisonment from 6 months to 3 years have a limitation period of 3 years; those infringements of Article 150(2) sanctioned with imprisonment from 3 to 8 years have a limitation period of 10 years. On the basis of Article 132(2) of the Penal Code, the limitation period is interrupted from the very moment judicial proceedings are initiated against the suspect, in such a way that the offence and the offender are prosecuted as if no time had lapsed between the commission of the offence and the initiation of the corresponding legal action. The limitation periods can also run during periods in which the accused is out of the country or in hiding.

IV. ANALYSIS

67. In Spain, the rules governing political finance are contained in Organic Law 5/1985 on the General Election Regime (for election campaigns), as well as in Organic Law 8/2007 on Political Parties Funding, which entered into force in July 2007. The latter represents an important effort, which is based on a broad political consensus, to increase transparency and accountability in the area of political financing. In this context, the experience developed with the previous regulations in this field, i.e. Organic Law 3/1987, revealed a significant number of irregularities and malpractices by political parties which were systematically criticised by the Court of Audit in its monitoring reports. In particular, the absence of detailed and stringent transparency requirements, coupled with a weak control and sanctioning system, had opened up possibilities for abuse as a series of notorious scandals concerning the illegal financing of political parties have evidenced in the last two decades. In effect, political corruption has been repeatedly identified as one of the most serious concerns in public opinion surveys conducted in Spain¹⁷.

¹⁷ See also First Evaluation Round Report on Spain (Greco Eval I Rep (2001) 1E Final), paragraph 14.

68. The GET's visit took place before the new system introduced by Organic Law 8/2007 had been tested. Thus, the GET was limited in its review as to the sufficiency of terms of Organic Law 8/2007, as well as the experience already gained in implementation of the previous legal framework and the lessons learned, in particular, the gaps identified and the types of irregularities detected in the last two decades. The following analysis is to be seen against this background; time and experience with the law will show if there are difficulties that are not yet necessarily apparent.
69. The main source of party financing in Spain is public funding; on average, it amounts to some 80% to 95% of the revenues of those political parties with representation in Parliament. Subsidies are provided on the basis of the number of seats/votes gained in elections; in practice, only political parties that hold a seat in the respective legislative body (whether at national or sub-national level) are eligible for public funding. The Parliament is to fix the annual amount to be allocated to political parties from the State budget; there is no maximum limit to any possible increases of this amount (for example, in 2008, a 20% increase occurred as compared to 2007 levels). It would appear that the current funding system benefits mostly big and established parties, as the allocation of public funds is linked to successful participation in elections. In this connection, the GET wishes to draw the attention of the Spanish authorities to Recommendation 1516 (2001) of the Parliamentary Assembly of the Council of Europe on Financing of Political Parties according to which State financial contributions should, on the one hand, be calculated in ratio to the political support which the parties enjoy, evaluated on objective criteria such as the number of votes cast or the number of parliamentary seats won, and on the other hand enable new parties to enter the political arena and to compete under fair conditions with the better established parties. As regards private funding, party membership in Spain is the lowest in Europe; therefore, income from membership fees is extremely modest. The GET was informed that some parties receive a non-negligible amount of funds from other private sources, notably via donations or debt cancellation. Donations to political parties are tax deductible.
70. Spanish legislation establishes a number of restrictions with respect to the income obtained and the expenditure incurred (in connection with elections) by political parties. In particular, the GET was informed that the introduction of rules limiting the value and the source of donations to political parties complied with the legislator's intent to enhance the overall transparency of political financing and to avoid situations that might generate, or be perceived by the general public as being at risk of generating, conflicts of interest. As a general rule, private donations must not have conditions attached by the donor. Likewise, donations from public or private legal entities of foreign nationality are prohibited in Spain. In addition, one of the most innovative features in Organic Law 8/2007 is the introduction of the absolute ban on anonymous donations; this is a major improvement in the system and an important compromise by the different political parties to avoid secret contributions – anonymous donations represented for some political parties up to 70-90% of their private sources of funding. The GET was informed that an agreement was reached among the different parties to increase the maximum amount allowable that may be received from a single source per year upon the condition that all individual contributions be disclosed. For this reason, there is now a cap of 100,000 EUR on the value of donations that political parties are entitled to receive per donor and per year (entities related to the political party may receive individual donations of a maximum of 150,000 EUR per year); this restriction is tighter with respect to donations to election campaigns which must not exceed 6,000 EUR per person. The GET notes, however, that this maximum threshold on individual contributions does not apply to in-kind donations in the form of real estate. Finally, political parties must not engage in any commercial activity aimed at earning profits.

71. Moreover, Organic Law 8/2007 establishes a limitation regime which is applicable to donations from public and semi-public entities. In particular, donations are prohibited from public sector entities, as well as private companies providing goods or services for public entities or undertakings which are majority-owned by or under the control of the State. The authorities highlighted that this particular provision (Article 4(2)c) of Law 8/2007) was introduced to avoid the so-called “pay-to-play” situations, i.e. concealed or selective means of public funding by awarding service contracts as a payback for campaign contributors. The authorities highlight that this is yet one additional preventive instrument in the fight against corruption, which is to be framed in a wider context concerning the adjudication of public contracts. In this connection, the limitation provided for in Article 4(2)c) of Law 8/2007 constitutes one element of the broad arsenal of administrative measures developed to ensure that malpractice in public procurement does not occur, and that the relevant adjudication processes are governed by the principles of objectivity, publicity and transparency; the administrative rules are further complemented by criminal provisions when corruption instances occur. A number of interlocutors met by the GET during the on-site visit anticipated potential ways of circumventing the legislator’s intent, in particular, the general ban on donations from enterprises that have signed contracts with public authorities is not applicable with respect to donations made to entities which are closely related to or come under the influence of political parties (e.g. political foundations). Therefore, contractors’ contributions to political parties may be funnelled instead into political associations or foundations which are exempted from the “pay-to-play” restriction. In addition, the ban on receiving donations from enterprises that have signed contracts with public authorities applies only to current contracts; however, nothing is required in the law concerning “safeguard/cooling-off periods” following the conclusion of the public contract by the relevant private entity in which the risk of funnelling interested money to a given political party (in particular, the one that decided the procurement procedure granting the contract to that particular company) is also high. Similar concerns are of relevance in relation to prospective bidders for public contracts. These are certainly troubling matters that would need to be kept under close review by the authorities as experience with implementation of the law evolves.
72. Concerning restrictions on expenditure incurred in election campaigns, both qualitative (i.e. expenditure relating only to a defined range of items, e.g. envelopes and ballot papers, electoral advertising, renting of premises, etc) and quantitative limits (the maximum expenses allowed, based on a strict mathematical formula linking electoral results with the number of residents in the constituency) are established in Organic Law 5/1985 on the General Election Regime. The Court of Audit (as well as the responsible Audit Institutions at Autonomous Community level) has observed that expenditure ceilings are often exceeded by political parties. While refraining from issuing a formal recommendation in this respect, the GET would find it advisable that the authorities look carefully into this matter in order to seek ways to strike a reasonable balance between establishing a level playing field for the different political parties competing in elections and ensuring that expenditure ceilings are not systematically bypassed through underreporting practice.

Transparency

73. Political parties are required to keep proper books and accounts and to maintain them with due respect for general accounting principles; monetary donations are to be credited to specific bank accounts opened by political parties to this effect. In addition, political parties are required to conduct their financial operations in relation to election campaigns through a separate bank account and to appoint an administrator to manage campaign related finances. It is required that records on income and expenditure be kept in sufficient detail as to show and explain the party’s transactions – at any time – with reasonable accuracy. In particular, political parties are required to

identify in their accounts the source and size of single donations; the only contribution that political parties are entitled to receive without disclosing the identity of the third party purchasing goods or providing services are the benefits acquired from party property and activities (e.g. sale of propaganda material, lottery sale, etc.) not exceeding 300 EUR.

74. Likewise, detailed records on debts and assets are to be included in the accounts of political parties. In this connection, the GET was told that bank loans are an important source of political financing in Spain. An *ad-hoc* enquiry of the Court of Audit concerning this particular matter not only pointed at an increasing indebtedness of political parties (it was estimated that the debt incurred by political parties amounted to 144,800,000 EUR in 2005), but also signalled numerous irregularities in this field. The GET notes, that, a situation of indebtedness may make political parties more vulnerable/dependent vis-à-vis credit institutions. Organic Law 8/2007 now requires that the conditions of contracted loans be specified in financial reports. This would allow the Court of Audit to monitor the conditions and evolution of the debt with credit institutions, including by identifying those instances where the relevant agreements concerning the loan conditions are different from those available on the market, when the debt is not redeemed at its expiry date, or when the debt has been cancelled by the corresponding credit institution. Any irregularity is to be clearly identified in the relevant reports published by the Court of Audit, so that the public is informed of practice in this respect. The GET considers the obligation of political parties to disclose loan conditions to the Court of Audit to be a step forward in enhancing transparency in the obligations contracted by political parties vis-à-vis credit institutions. However, the GET notes that the terms and conditions for granting loans (such as the maximum value of loans, permissible lenders, terms of repayment, etc) are not specifically regulated by law. Situations have occurred in the past where loans have been written off by the lender or credits been granted on extremely generous preferential terms (a wide coverage of such cases has been reported by Spanish media: from 1997 to 1999, it was estimated that debt cancellation amounted a total of 19,100,000 EUR). The GET is concerned that such situations, which run counter to political funding principles such as the thresholds on contributions from individual donors, could well reoccur in the future, and that, although the Court of Audit may be in a position to spot them, it would not be vested with sufficient authority to remedy the problem. Consequently, the GET recommends **to take appropriate measures to ensure that loans granted to political parties are not used to circumvent political financing regulations.**
75. The GET was informed that an important aspect of Organic Law 8/2007 is that it now requires political parties to consolidate in their accounts, the finances of federations, coalitions and voter groups. This is a positive step in the direction of Article 11 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, which addresses the need to consolidate the accounts of political parties. In this connection, the GET was informed that one of the main concerns of the Court of Audit under the previous reporting system was that political parties were not considered as single economic units and therefore, that the financial reports submitted did not provide a complete overview of their political activity. The GET notes that, despite the concern raised by the Court of Audit¹⁸, the current consolidation of the accounts does not include financial data of local branches of political parties; it is up to the parties how they organise the accounts of their respective local units. While it may be too much of an administrative burden on small party branches to report, the lack of data as to how local units raise and spend their funds opens up the possibility to escape administrative control and public scrutiny; this acquires notable relevance with respect to those branches operating in

¹⁸ The GET was informed after the on-site visit that the Parliamentary Committee Congress-Senate for relations with the Court of Audit urged the Government, in a Resolution dated 16 October 2007, to amend the Local Regime Act 7/1985 (as amended by Act 57/2003) to comply with the recommendations of the Court of Audit with respect to finances of local branches of political parties.

constituencies of a significant size (municipalities with a considerable number of inhabitants). In this context, the Court of Audit carried an analysis in 2005 with respect to local branches in constituencies of over 20,000 inhabitants; the analysis revealed that over 25% of public funding goes to political parties at local level (around 48,000,000 EUR). The GET was further informed of several instances of malpractice (e.g. accounting documents not meeting general accounting rules, insufficient supporting evidence – receipts, invoices, etc. – submitted, lack of information as to whether excess of funds is disposed of or the debt has been retired) occurring at local level where risks of corruption are particularly high given the important volume of economic operations performed at this level (e.g. licensing, procurement procedures, urban planning, etc.). Moreover, the GET notes that nothing is said in the law concerning the consolidation in political parties' financial records of the accounts of entities, related directly or indirectly, to political parties or otherwise under their control. Furthermore, while foundations and associations linked to political parties – and largely financed from public funds – would fall under the same transparency requirements concerning income which are applicable to political parties (with limited exceptions), they are not under a similar obligation with respect to their related expenditure. In this respect, the GET is concerned about the risk of related entities indirectly shouldering expenditure by the political parties. Moreover, the GET is of the opinion that since generous public funding is provided to political foundations and associations, the general public has every right to know how these entities spent their tax money, in particular to see that public funds are not used for personal gain. The GET, therefore, recommends **to take measures to increase the transparency of income and expenditure of (i) political parties at local level; (ii) entities, related directly or indirectly, to political parties or otherwise under their control**. Whilst recognising the administrative burden new disclosure requirements will place on local parties and related organisations, the Spanish authorities may choose, for example, to introduce a tiered system of disclosure depending on the income and expenditure of the entities.

76. Political parties are to report to the Court of Audit separately on their operational activities and on election campaigns (the final dispatch of public subsidies for electoral expenses is subject to the submission of the corresponding report); however, both operational and electoral finances are to be consolidated at a later stage into the annual accounts of political parties. The GET notes that since no uniform reporting format has been developed by the Court of Audit¹⁹, the financial reports of political parties vary considerably in their content. The way this information is presented is crucial for any form of public scrutiny at a subsequent stage: a common format would facilitate comparisons over the years and across parties and enhance the value of the disclosed information. Moreover, political parties are under no obligation themselves to make their accounts (or a summary of them) public. The Court of Audit is, nevertheless, including in its annual reports aggregated figures on income and expenses of political parties; this information is generally released several years after the actual financial reporting from political parties takes place (under the former legislative framework for party funding, there was no statutory deadline for the Court of Audit to publish its annual reports on political finances). For example, the latest report on political finance which was issued by the Court of Audit in 2008 refers to the 2005 financial year. Organic Law 8/2007 now incorporates a deadline for the Court of Audit to issue its annual reports within six months of the submission of financial reports by political parties. The GET considers that reporting and disclosing of information is the cornerstone in assuring transparency of political funds. In Spain, what the general public and the media see is aggregated information (not readily understandable) that comes too late in the process; for this reason, the GET is doubtful that the information released by the Court of Audit is meaningful enough to help identify questionable

¹⁹ Pursuant to Additional Disposition 8 of Law 8/2007, the Court of Audit is to develop a specific accounting plan for political parties. This has not yet been done; however, in the meanwhile, the Court of Audit has established that the accounts of political parties are to comply with general accounting principles (as a minimum, a situation balance sheet and a profit and loss statement are to be kept by political parties and sent to the Court of Audit for monitoring purposes).

financial ties and possible corruption in the party funding system. In this connection, the authorities were particularly mindful of possible adverse effects (potential intimidation of donors) if a system of full publicity of donors were to be introduced in Spain. The GET is fully aware that the right of the donor to privacy acquires particular importance in certain territories in Spain where this right to privacy is also linked to security concerns. That said, a balance must be found between the legitimate interest of the electorate to have sufficient information on possible financial interests of their political representatives and the right of the donor to maintain privacy. The GET finds that, while respecting that important equilibrium, there is clearly scope for improvement of the current situation in this respect. In the light of the foregoing considerations, the GET recommends **to establish a common format for parties' accounts and returns (at both head office and local level) with a view to ensuring that the information made available to the public is consistent and comparable to the greatest extent possible, and that it is disclosed in a timely manner within the deadlines prescribed in Law 8/2007 on Political Parties Funding, thus allowing a meaningful comparison both over time and between parties.**

Supervision

Internal supervision

77. As regards internal control, Organic Law 8/2007 specifically requires a system of internal supervision of party accounts in order to guarantee an appropriate auditing of the economic and financial activities of the relevant political parties. The Law further provides that the outcome of such control is to be documented through a report of the internal auditor, which is to be attached to the relevant financial reports that political parties send to the Court of Audit. The GET regrets that nothing is said in the law concerning the effective articulation of such a system; it is left to the parties how they organise the internal supervision of their accounts. The authorities explained that this is because political parties are guaranteed, by the Constitution, full autonomy as to their internal functioning. The GET understands this concern, but reiterates that a compromise solution is to be reached to conciliate the principles of freedom of expression and association, which most Constitutions confer to the activity of political parties, and the need to guarantee a proper monitoring - both with respect to internal controls and external oversight - of party funds, in line with Article 14 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns; the GET refers to the experience developed by other GRECO Member States in this respect. It emerged from the discussions held on-site that the political parties have yet to put internal controls in place; it would appear that, at present, parties do not engage external auditors in this task. Most interlocutors (including political parties themselves) agreed that more needed to be done in this area to fulfil the spirit of the law. Furthermore, the GET is worried that, since Organic Law 8/2007 does not establish a deadline for implementation or penalties for failure to comply, this key obligation, which has the potential to improve financial transparency in political parties, is liable to remain a dead letter. If implemented, however, such a system would serve to facilitate the task of the Court(s) of Audit further down the line. Such internal audits – possibly to be complemented by independent auditing – would, moreover, help compensate for the failure to take account of the financial transactions conducted by local structures of the political parties (see paragraph 75 for details). This would undoubtedly reinforce the financial discipline of political parties and decrease possibilities for corruption. For these reasons, the GET recommends **to take measures to enhance the system of internal audit of political parties in order to ensure the independence of this type of control.**

Monitoring by the Court(s) of Audit and enforcement

78. The Court of Audit is endowed with general authority to monitor political financing. This responsibility is shared with the different Audit Institutions of the Autonomous Communities with respect to expenditures incurred in election campaigns at sub-national level. The GET notes that the interlocutors met portrayed the Court of Audit as a highly respected body which has played an essential role in improving the legal framework concerning party funding by not only pinpointing legislative deficiencies/lacunae, risk areas and malpractice in implementation, but also recommending solutions to increase the transparency and accountability of the system. As regards its monitoring/supervisory role, the Court of Audit may, in cases of doubt about the accuracy of financial reports, ask parties to submit further explanations; furthermore, any person/entity having entered into commercial terms with a political party is specifically required by law to cooperate with the Court of Audit, as necessary. The interlocutors met highlighted that the submitted reports are rarely scrutinised beyond the information that parties themselves provide; this is particularly worrying in the case of Spain since the internal control system of political parties is at present rather weak. There have been a number of cases, which were uncovered through investigations of law enforcement bodies, where it was proved that the financial statements provided by certain political parties were not accurate reflections of the money raised and spent.
79. In order to empower the Court of Audit to guarantee implementation of the law effectively, it has now been attributed enforcement (sanctioning) powers. The GET welcomes this development since one of the main criticism in the past concerned the lack of teeth of the Court of Audit (non-binding character of its recommendations; no obligation for third parties, including banks, to submit information in relation to party funding). That said, the GET notes that despite the legislative reform which has conferred to the Court of Audit new responsibilities in this field, no additional financial resources have been provided. At the time of the visit, the team responsible for the control of political financing was composed of eighteen persons, which was considered by representatives of the Court of Audit themselves as insufficient for a large country like Spain, bearing in mind the number of parties being supervised. According to various interlocutors met during the on-site visit, more staff would clearly be needed in order for the Court of Audit to carry out its monitoring properly (including the effective and timely release of its findings, see paragraph 76 for greater details in this respect) and enforcement tasks²⁰. The GET shares this view and recommends **to increase the financial and personnel resources dedicated to the Court of Audit so that it is better equipped to perform effectively its monitoring and enforcement tasks concerning political financing, including by ensuring a more substantial supervision of political parties' financial reports.**
80. The GET considers that an important strength of the Spanish system is the level of institutional cooperation between the authorities responsible for the enforcement of political financing legislation. In particular, the GET learned that the Court of Audit and law enforcement authorities are not only required by law to inform each other about suspicions of criminal offences and about criminal proceedings in the field of political financing, but that they also do so in practice. To this effect, the role of the representative of the State Prosecution Service in the Court of Audit is proving to be crucial to ensure coordination in the investigation and prosecution of irregular practices in the area of political financing. Moreover, any citizen can file a complaint before the Court of Audit if s/he has ground to believe that irregularities in party funding have occurred.

²⁰ The GET was informed after the visit that an assessment process concerning the human resources needs of the responsible unit dealing with party funding in the Court of Audit had been initiated and is ongoing; as a consequence of this process, additional personnel had been recruited for executive/legal analysis tasks to better enable the Court of Audit to meet its multifaceted responsibilities under Law 8/2007, including that of releasing annual party funding reports in a timely manner (i.e. within six months of the submission of financial reports by political parties, as prescribed by the Law).

81. Finally, the GET explored the way in which the Court of Audit at central level and the relevant Audit Institutions of the Autonomous Communities were coordinating their respective supervisory tasks concerning electoral expenditure. Although the Court of Audit referred to a practice of coordination meetings, it would appear that, at present, there are no uniform guidelines laying down the necessary required/standardised parameters with respect to auditing procedures and, in particular, the type of checks (with a particular emphasis on common risk areas) used for supervising the financial activities of political parties during election campaigns. The GET would find it advisable if, with due respect for the self-governing powers of the relevant Audit Institutions of the Autonomous Communities, a common auditing framework for election campaigns could be agreed and thereby effectively established.

Sanctions

82. Under Article 17 of Organic Law 8/2007, the Court of Audit can impose financial sanctions in the case of unlawful contributions; the type of possible financial sanctions is subsequently specified. In particular, where infringements of limits and restrictions on donations occur, a fine of twice the contribution illegally received may be deducted from future subsidies. Where a party has failed to file accounts without legitimate reason or where such accounts are so poorly presented as to prevent the Court of Audit from performing its task, the Court of Audit can recommend that State subsidies be withheld. While the GET's welcomes the introduction by Organic Law 8/2007 of a deterrent system for infringements of rules concerning the funding of political parties (which were lacking in the previous legislative framework), in the GET's view, there are some important shortcomings connected with the aforementioned administrative sanctions.
83. Firstly, the available sanctions are directed solely at the recipient of the contribution, i.e. the political party, and not at the donor/other entities upon which the law imposes obligations and whose infringements may thus go unpunished; the introduction of additional types of sanctions in such cases would be necessary. Secondly, the sanctions are exclusively financial in nature; there are no criminal penalties available for the recipient of the contribution, even though receiving an illegal donation may have a criminal element to it. Criminal sanctions are, however, possible under Organic Law 5/1985 in connection with infringements of the funding of political parties during election campaigns. In particular, general administrators of the political parties (or persons authorised to manage party accounts) may be sanctioned with imprisonment (from 6 months to 3 years) and a fine (ranging from 180 to 1,800 EUR) for violation of the obligations to keep correct and accurate accounts and to use public funds for the purposes provided by the election law; aggravated sanctions apply if the funds have been used for personal enrichment. Whereas the GET agrees that in cases of minor violations of the law the institution of criminal proceedings may well be disproportionate – also considering that a criminal sanction should be an *ultimum remedium* – and perhaps also involve an unnecessarily slow and cumbersome procedure, it considers that in cases of a certain gravity the mere withholding of public funds may well lack the necessary dissuasive effect. In the GET's view, additional efforts are to be undertaken to better develop the existing arsenal of available sanctions in cases of breaches of party funding rules in order to ensure that such sanctions respond effectively to the seriousness of the infringement (a flexible system of criminal/administrative/civil penalties is to be set in place) and apply to all possible perpetrators (i.e. political parties and non-parties obliged by the legislative provisions). More generally, the GET notes that Organic Law 8/2007 does not specify penalties for all the possible infringements included in its provisions. In the light of the aforementioned identified shortcomings of the sanctioning system, the GET recommends **to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available and by**

enlarging the scope of the sanctioning provisions to cover all persons/entities (including individual donors) upon which Organic Law 8/2007 imposes obligations.

V. CONCLUSIONS

84. Spain enacted in mid-2007 a new law regulating the funding of political parties, i.e. Organic Law 8/2007. This development reflects a growing awareness of the need to regulate the financing of political activities, an area in which there has been a series of notorious scandals in the last two decades. A number of important improvements have been introduced into the new law to better guarantee the transparency of political financing: in particular, anonymous donations are now prohibited; moreover, the size and identity of the private donations that political parties may receive are to be identified in party accounts. It is nevertheless regrettable that such accounts are not consolidated to also include the accounts of local branches – as appropriate – and entities, related directly or indirectly, to political parties or otherwise under their control (e.g. political foundations). Moreover, as experience with implementation of the law evolves, the authorities should remain alert on possible circumventions of its provisions, for example, in relation to election campaign expenditure limits, loans, and donations from public and semi-public entities. While the transparency measures have been increased on paper, it remains critical that they are effectively conveyed to the public. In this connection, reporting and disclosing of information is the cornerstone in assuring transparency of political funds. In Spain, what the general public and the media see concerning the finances of political parties is aggregated information (not readily understandable) that comes too late in the process: it is crucial that the information contained in the relevant reports of the Court of Audit on political finance is meaningful enough to help identify questionable financial ties and possible corruption in the party funding system. With respect to supervision of political finance, the Court of Audit, which has traditionally played a key role in detecting shortcomings and risk areas in the system, is now vested not only with monitoring, but also with enforcement powers. That said, it is of pivotal importance that this body is attributed additional resources so that it is better equipped to perform its tasks concerning political financing, including by ensuring a more substantial supervision of political parties' financial reports and by presenting and publicising its findings in a timely manner. Close cooperation and coordination between central and Autonomous Community levels is key in identifying and addressing risk areas concerning party funding. Moreover, it is essential that the obligation for political parties to develop their own internal control systems is promptly implemented in practice; this would undoubtedly reinforce the financial discipline of political parties and decrease possibilities for corruption. Finally, the sanctioning system available needs to be further regulated, including by clearly defining infringements of political finance rules and by coupling such breaches with effective, proportionate and dissuasive sanctions.

85. In view of the above, GRECO addresses the following recommendations to Spain:
- i. to take appropriate measures to ensure that loans granted to political parties are not used to circumvent political financing regulations (paragraph 74);**
 - ii. to take measures to increase the transparency of income and expenditure of (i) political parties at local level; (ii) entities, related directly or indirectly, to political parties or otherwise under their control (paragraph 75);**
 - iii. to establish a common format for parties' accounts and returns (at both head office and local level) with a view to ensuring that the information made available to the public is consistent and comparable to the greatest extent possible, and that it is disclosed in a timely manner within the deadlines prescribed in Law 8/2007 on**

Political Parties Funding, thus allowing a meaningful comparison both over time and between parties (paragraph 76);

- iv. **to take measures to enhance the system of internal audit of political parties in order to ensure the independence of this type of control** (paragraph 77);
 - v. **to increase the financial and personnel resources dedicated to the Court of Audit so that it is better equipped to perform effectively its monitoring and enforcement tasks concerning political financing, including by ensuring a more substantial supervision of political parties' financial reports** (paragraph 79);
 - vi. **to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available and by enlarging the scope of the sanctioning provisions to cover all persons/entities (including individual donors) upon which Organic Law 8/2007 imposes obligations** (paragraph 83).
86. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Spain to present a report on the implementation of the above-mentioned recommendations by 30 November 2010.
87. Finally, GRECO invites the authorities of Spain 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.

Annex I: Public funding for campaign purposes

Type of election		Concept subsidised and amount
General	Congress	<p>Art. 175 LOREG *</p> <p><u>Seat:</u> 12,020.24 €</p> <p><u>Vote:</u> 0.45 € per vote got by each candidacy having obtained a seat.</p> <p><u>Electoral mailings:</u> 0.12 € per elector provided a parliamentary group is constituted</p>
	Senate	<p>Art. 175 LOREG</p> <p><u>Seat:</u> 12,020.24 €</p> <p><u>Vote:</u> 0.18 € per vote got by each candidate having obtained a seat.</p> <p><u>Electoral mailings:</u> 0.12 € per elector provided a parliamentary group is constituted</p>
European Parliament		<p>Art. 227 LOREG</p> <p><u>Seat:</u> 32,202.22 €</p> <p><u>Vote:</u> 1.07 € per vote got by each candidacy having obtained a seat.</p> <p><u>Electoral mailings:</u> 0.15 € per elector, provided the candidacy has obtained at least 1 seat and at least 15% of the valid votes issued</p> <p>0.11 € per elector, provided the list has obtained at least 1 Deputy and at least 3% of the votes</p> <p>0.03 € per elector, provided the candidacy has obtained at least 1 seat and at least 3% of the votes</p> <p>0.02 € per elector, provided the candidacy has obtained at least 1 seat and at least 1% of the votes</p>
Municipal		<p>Art. 193 LOREG</p> <p><u>Vote:</u> 0.30 € per vote obtained by each candidacy, provided at least one candidate has been proclaimed</p> <p><u>Seat:</u> 150.25 € per elected councillor</p> <p><u>Electoral mailings:</u> 0.12 € per elector provided that candidacy (1) is presented in 50% of municipalities with more than 10,000 inhabitants of corresponding province and (2) has obtained representation in at least 50% of them.</p>

* LOREG: Organic Law 5/1985 on the General Election Regime.

AUTONOMOUS COMMUNITY AND ELECTORAL ACT	CONCEPT SUBSIDISED AND AMOUNT
<p>PAIS VASCO Act 5/1990, of 15/VI amend. Act 15/98, of 19/ VI. amend. Act 6/00, of 4 October</p>	<p>Art. 151.1 <u>Seat</u>: 18,030.36 €. <u>Vote</u>: 0.60 € per vote obtained by each list with seat. Also, subsidy of 30,050.60 €, for electoral district for those having obtained at least 1 seat in each district. Art. 151.2 <u>Electoral mailings</u>: 0.15 € for elector if a representative is obtained.</p>
<p>CATALUÑA No Electoral Act</p>	<p>In the elections of 1984 (R.D. 617/84, 28 March), 1988 (Act 9/88, 12 April), 1992 (Decree 3/92, 20 January), 1995 (Decree 254/95, 25 September), 1999 (Decree 231/99, 24 August), 2003 (Decree 208/2003, 22 September) and 2006 (Decree 333/2006, 5 September) the seats and the votes of the lists having obtained seats were subsidised.</p>
<p>GALICIA Act 8/1985, of 13/VIII. amend. Act 15/92, of 30/XII, amend. Act 12/2004, of 7/XII</p>	<p>Art. 44.1 <u>Seat</u>: 12,020.24 €. <u>Vote</u>: 0.45 € per vote got by each candidacy having obtained at least one seat. Art.44.2 <u>Electoral mailings</u>: 0.12 € for elector, if representation is obtained.</p>
<p>ANDALUCIA Act 1/1986, of 2/I. amend. by Act 5/1994, of 3/V. Act 6/94, of 18/IV</p>	<p>Art. 45.1 <u>Seat</u>: 13,823.27 €. <u>Vote</u>: 0.51 € per vote got by each candidacy having obtained at least one seat. Art. 47.1 <u>Electoral mailings</u>: See new wording with scale set forth.</p>
<p>ARAGON Act 2/1987, of 16/II. amend. Act 4/91, of 20/III, Act 4/92, of 17/III , Act 3/95 of 29/III and Act 10/99 of 14/IV</p>	<p>Art. 39.1 <u>Seat</u>: 6,010.12 €. <u>Vote</u>: 0.36 € per vote got by each candidacy having obtained a seat. Art. 39.2 <u>Electoral mailings</u>: 0.12 € for elector if there is parliamentary group</p>
<p>PRINCIPADO DE ASTURIAS Act 14/1986, of 26/XII. amend. Act 3/91 of 25/III</p>	<p>Art. 37 1 <u>Seat</u>: 6,010.12 €. <u>Vote</u>: 0,30 €. For each vote obtained in all the electoral districts for each candidacy having obtained seat.</p>
<p>ILLES BALEARS Act 8/1986, of 26/X. amend. Act 4/95, of 21/III amend. Act 5/95. of 22/III</p>	<p>Art. 29.1 <u>Seat</u>: 9,015.18 €. <u>Vote</u>: 0.30 € per vote got by each candidacy with seat. Art. 29.3 a <u>Electoral mailings</u>: 0.12 € per elector provided a seat is obtained.</p>
<p>CANARIAS Act 7/2003, of 20 March</p>	<p>Art. 31.1 <u>Seat</u>: 17,484.00 €. <u>Vote</u>: 0.65 € per vote got by each candidacy having obtained seat. Art. 31.2d <u>Electoral mailings</u>: see new wording with the scale set forth.</p>
<p>CANTABRIA Act 5/1987, of 27/III amend. Act 4/91, of 22/III , amend. Act 6/99, of 24/III , amend. Act 1/00, of 24/V</p>	<p>Art. 39.1 <u>Seat</u>: 4,507.59 €. <u>Vote</u>: 0.36 € per vote got by each candidacy having obtained seat.</p>
<p>CASTILLA Y LEON Act 30/87, of 30/III amend. Act 4/1991, of 20/III. amend. Act 13/98, of 23/XII additional to Budget</p>	<p>Art. 45 <u>Seat</u>: 6,010.12 €. <u>Vote</u>: 0.36 € per vote got by each candidacy having obtained seat. Art. 45.2 <u>Electoral mailings</u>: 0.15 € for elector provided a seat is obtained.</p>

AUTONOMOUS COMMUNITY AND ELECTORAL ACT	CONCEPT SUBSIDISED AND AMOUNT
CASTILLA-LA MANCHA Act 5/86, of 23/XII amend. Act 5/1990, of 26/ XII on Budget amend. Act 1/91, of 15/III amend. Act 5/94, of 16/XII on Budget. amend. Act 8/98, of 19/XI	Art. 50.1 <u>Seat:</u> 9,015.18 €. <u>Vote:</u> 0.42 € per vote got by each candidacy having obtained seat. Art. 50.2 <u>Electoral mailings:</u> 0.12 € for elector provided a seat is obtained.
EXTREMADURA Act 2/1987, of 16/III. amend. Act 2/91, of 21/III	Art. 52 <u>Seat:</u> 6,010.12 €. <u>Vote:</u> 0.24 € per vote got by each candidacy having obtained seat.
MADRID Act 11/1986, of 16/XII amend. Act 4/91, of 21/III amend Act 15/95, of 21/IV amend. Act 12/03, 26 August	Art. 22.1 <u>Seat:</u> 8,414.16 €. <u>Vote:</u> 0.42 € per vote got by each candidacy, provided it has obtained at least 3% of the votes issued. Art. 22.2 <u>Electoral mailings:</u> 0.18 € for elector (at least 3% of the votes)
MURCIA Act 2/1987, of 24/II amend. Act 1/1991 of 15/III amend. Act 9/95, of 24/IV	Art. 35.1 <u>Seat:</u> 4,507.59 €. <u>Vote:</u> 0.24 € per vote got by each candidacy having obtained seat Art 35.3 <u>Electoral mailings:</u> 0.15 € for elector provided a seat is obtained
NAVARRA Act 16/1986, of 17/ XI amend. Navarra's Law 11/91, 16/III amend. Navarra's Law 13/98, of 6/X	Art.44.1 <u>Seat:</u> 4,507.59 €. <u>Vote:</u> 0.36 € per vote got by each candidacy having obtained seat. Art.44.2 <u>Electoral mailings:</u> 0.09 € for elector, provided 1 seat is obtained.
LA RIOJA Act 3/1991, of 21/III	Art.47.1 <u>Seat:</u> 5,709.61 €. <u>Vote:</u> 0.45 € per vote got by each candidacy having obtained seat. Art.47.2 <u>Electoral mailings:</u> 0,12 € for elector, provided 2 seats are obtained.
VALENCIA Act 1/1987, of 31/III	Art.41.1 <u>Seat:</u> 6,101.12 €. <u>Vote:</u> 0.30 € for each candidate having obtained seat. <u>Vote:</u> 0.30 € for each vote obtained by each candidacy having obtained at least 3% of the valid votes issued within the Community.