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TECHNICAL PAPER

**RECOMMENDATIONS FOR LEGISLATIVE AMENDMENTS TO THE MOLDOVA LAW ON
POLITICAL PARTIES AND OTHER MEASURES TO IMPROVE
POLITICAL PARTY FINANCE REGULATION**

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Introduction/Executive Summary

This Technical Paper provides recommendations for amendments to the Law on Political Parties of the Republic of Moldova, based on the findings and recommendations of the Council of Europe Group of States Against Corruption (GRECO) Third Round Evaluation Report on the Transparency of Party Funding, other reports/analyses on party funding in Moldova, the expert's own analysis of the Moldovan legal and institutional framework for regulating political finance, and the information gathered from an event held in Chisinau on 1 November 2011. In light of the fact that much analysis has already been carried out on the Moldovan framework for regulating political party finance, the paper focuses primarily on recommendations/solutions.

The main recommendations are the following:

- Failure to implement the system of state subsidies envisaged in the law undermines the implementation and enforcement of the entire political financing legal framework. It is crucial that the system is implemented without further delay.
- The legal provisions on state subsidies should be modified to lessen their bias towards incumbent parties, and preferably introduce a system of matching subsidies to reward small private donations.
- Funding rules should be altered to clarify the definition of donation, in particular to account for 'in-kind' donations to political parties, but also to clearly permit loans, regulate membership dues, lower the limits on private donations and introduce measures to reduce (or encourage a reduction in) electoral spending.
- A full system of financial reporting should be established in the law, especially for ordinary (non-election) party finances but also to further clarify election campaign financial reporting.
- Parties should be obliged by law to commission independent audits of their finances.
- The Central Election Commission should be established clearly in the law as the oversight body for political finance regulations. A key recommendation is that in order to fulfil its oversight function effectively, cooperation with non-governmental monitoring efforts should be formalised in the law.
- Sanctions for violations of political finance regulations should be reformed to ensure that all violations are covered, and to introduce a broader range of sanctions that are tailored in a proportionate manner to the severity of violations.

1 DISCLOSURE RULES

Four GRECO Recommendations directly concern disclosure rules:

Recommendation i): "to make it obligatory for political parties' annual financial reports destined for publication and submission to the supervisory authorities to include more precise information, guaranteeing a full overview of the party's assets and its income and expenditure".

Recommendation ii): "to require that all donations received by political parties outside election campaigns that exceed a given amount, as well as the identity of the donors, are disclosed to the supervisory authorities and are made public."

Recommendation iv.i): “to take appropriate measures to ensure that all donations and services provided to parties or candidates in kind or on advantageous terms are properly identified and recorded in full, at their market value, in both parties’ annual reports and campaign funding reports..”

Recommendation vi): “[T]o explore the possibilities of consolidating political parties’ annual reports and campaign funding reports so as to include entities which are directly or indirectly related to them or otherwise under their control.”

1.1 Definition of donation

The consultant believes that it would be advantageous to solve one background issue, which is the definition of ‘donation’ provided by the Law on Political Parties. A donation is currently defined in Article 26.1 as “assets transmitted free of charge and non-conditionally to the political party and accepted by the latter”. The consultant believes that this definition is possibly confusing, in particular the notions ‘free of charge’ and ‘non-conditionally’. ‘Free of charge’ appears to be irrelevant in the case of cash donations, but may be relevant in the case of ‘in-kind’ donations (see below); applying it to all donations is somewhat confusing. The term ‘non-conditional’ appears to be an attempt to legislate that donors must not expect anything in return from parties when they donate. This may appear laudable as an anti-corruption measure; however, in a broad sense a donor may legitimately expect something in return for a donation, in terms of the party pursuing policies in which the donor believes.

More importantly, it is important that the term donation is elaborated in the law to specify what donations include. For example, the UK legislation defines donations taxatively (i.e. by a list) as any of the following: a gift of money or other property; any sponsorship provided to a party; a subscription or other fee paid for affiliation to or membership of the party; money spent (other than by or on behalf of the party) in paying expenses incurred by it; the provision – other than on commercial terms – of property, services or facilities for use by a party. Providing a more detailed list in the law would also provide a better context for regulating in-kind donations (the provision of goods or services to a party for free or on better-than-market terms) and membership fees (see Section 2)

In addition, it is not clear to the consultant whether the wording of the provision in the Electoral Code 38.2, which requires the establishment of an ‘Electoral Account’ (bank account) for *all* electoral campaign donations and spending, implies that in-kind donations or third-party spending are illegal.

Recommendations:

- i) Amend Article 26 to specify what constitutes a donation, to include the following:
 - a. Cash donations: money or a gift provided to the party
 - b. In-kind donations: the provision of property, goods or services to the party at other than commercial (market) terms, or spending on goods and services that would normally be incurred by the party.

Depending on its relevance in the Moldovan context, sponsorship could also be inserted in this list.

- ii) The categories of donation should be elaborated further in templates/guidelines provided by the oversight authority (which the consultant recommends to be the Central Election Commission – see Section 6), especially for in-kind donations.
- iii) The guidelines provided by the oversight authority should elaborate the notion of in-kind donation for example as follows:

- a. An in-kind contribution occurs where an individual or legal entity provides a political party with goods or services for free or at a price lower than market price.
 - b. The contribution is equal to the difference between the price paid for the goods/services by the political party and the market price of those goods/services. For example, if a company provides office space to a political party at a monthly rental of €1000, when the market price would normally be €1500, the political party will report as expenditure €1000 per month (i.e. €12,000 for a whole year), and will also report as an in-kind contribution the difference between the price paid and the market price ($500 \times 12 = €6000$). It is recommended to provide several examples in the guidelines.
 - c. In-kind contributions should be calculated and reported where the difference between the price paid and the market price is more than a certain amount (percentage). This amount should be determined with reference to the level of price stability and consistency in Moldova; 10% may be a reasonable level.
 - d. If possible, the market price of goods and services at the time they were provided should be determined by referring to price data available from the National Bureau of Statistics. Where this is not possible, the political party should calculate the market price based on the average of the prices of three different providers of the good/service at the time it was provided.
 - e. Loans or invoices/debts that have been cancelled (i.e. the party has been released from having to pay them) should also be recorded as in-kind donations. Where loans are provided on terms that are clearly better than market ones, the resulting difference in annual interest payments might be required to be reported as an in-kind donation.
- iv) As indicated in the general definition of in-kind donations above (sub-bullet i.b), such donations should also explicitly include direct spending by third parties on goods and services that would normally be incurred by the party. For example, where a third party (e.g. a company or individual) pays for electoral advertising that calls directly for voters to support a particular political party, the value of the spending constitutes an in-kind donation. Where an organisation campaigns specifically on an issue that the party also campaigns on, this should not generally be included as a donation. This issue will require careful elaboration by the oversight body, but it is regarded as important by the consultant to address the issue of organisations that are formally or informally affiliated with parties incurring expenditure on behalf of parties – which directly underlies GRECO Recommendation vi.
 - v) If the Electoral Code explicitly or implicitly prohibits in-kind donations to political parties, Article 38 should be amended to specify that the Electoral Account must be used (only) for all money donations and all spending incurred directly by the party. The Electoral Code and the reporting templates for election campaign finance should then replicate or cross-reference the provisions of the LPP to ensure that the definition/elaboration of what constitutes a donation and the reporting requirements for donations are the same.

1.2 Annual financial reports

Concerning political party Annual Financial Reports, one of GRECO's main concerns was the lack of specification of what parties must include in the reports. LPP Article 27 requires parties to keep a register of donations, but neither Article 30 (Financial Reporting) nor the Ministry of Justice reporting template for annual financial reports require this register to be included in the Annual Financial Report. In addition, neither Article 30 nor the template requires detailed reporting on political party spending outside the election campaign. In

addition, GRECO noted concerns about the provision to parties of goods or services (e.g. office space) by foundations of 'satellite' bodies on preferential terms, or electoral expenditure being incurred on behalf of parties by non-profit organisations.

Recommendations:

- i) LPP Article 27 should be deleted except for sub-paragraph 3, which should be moved under Article 26.
- ii) LPP Article 30 should state explicitly that the oversight authority establishes binding templates for Annual Financial Reports and election campaign reporting. These templates should require the inclusion of the following:
 - a. Information on assets and liabilities broken down as follows:
 - A list of immovable assets (properties) of the political party, description of the asset, location, value (including how and when this was calculated), share of the party in the asset, and mortgages or other constraints on the asset.
 - A list of movable assets that have a value higher than a reasonable threshold, e.g. €250-300.
 - Deposits in banks and other financial institutions that exceed a certain value (e.g. €100-200).
 - A list of loans and credit facilities to the party provided by banks and other legal entities and by physical entities, including the repayment conditions for loans.
 - b. Information on the party's revenue (income) including a breakdown by type of revenue:
 - State subsidies
 - Membership dues
 - Donations
 - Income from permitted economic activities
 - c. Information on all donations provided to the party that exceed a certain threshold, in a similar way as is already required for election campaign donations – with it being clear that donation means the total amount donated by an individual or legal entity in the reporting year. The threshold should be chosen in order not to overburden parties with reporting requirements for insignificant donations. At a recent conference on Political Finance Reform in Moldova organised by the International Foundation for Electoral Systems (IFES) and held on 28-29 October 2011 – a threshold of 100 MDL appeared to have the consensus of the participants. The consultant believes this threshold (approximately €6.50) is very low and will do little to relieve parties of the burden of reporting very small donations; a threshold of at least €50 would seem more useful.
 - d. Information on structural (i.e. non-campaign related) spending broken down by spending category, for example as follows:
 - Operating expenditure:
 - Costs of staff/personnel (salaries, remuneration, etc)
 - Rent
 - Other direct costs of maintaining permanent party offices, including office supplies (computers, printers, furniture etc)

- Overheads: utilities (electricity, gas, water, telephones, internet and other similar costs)
 - Other costs of facilities and equipment (for example, vehicles)
 - Costs of general political work – for example market research and policy work
 - Other
 - Spending on asset management
 - Asset purchases (such as buildings, vehicles)
 - Asset maintenance: building maintenance, repairs etc
 - Other expenditure
- iii) Likewise, LPP Article 31 should specify that the oversight body establishes binding templates for reporting on election campaign income and expenditure. The parts of the template concerning donations may be similar to Annual Financial Reports (see above). For expenditure, the template should require that reporting on expenditure is broken down more or less as follows, and this spending includes both spending directly by the political party and spending incurred on behalf of the party by other entities (third-party spending):
- Election rallies and events – including costs of stages, stands and backdrops, appearance fees, hospitality, placards, security, and other
 - Advertising – in TV, radio and electronic media, print media, billboards and other outdoor media, mobile advertising platforms, and other.
 - Cost of preparing promotional materials for distribution – such as party programme/manifesto, posters, flags, T-shirts, etc, and including cost of preparation of material for free slots in TV
 - Transport costs – vehicles, fuel, drivers etc
 - Public opinion and other market research
 - Incremental overhead costs – costs of extra office space rented for campaign purposes, temporary staff hired for campaign purposes (e.g. for door-to-door canvassing, establishment of temporary press centre/s, call centre/s, website, etc. See Section E for guidance.
 - Costs related to outsourcing of campaign activities – hiring of PR company, agency, etc.
 - Other expenses (including a statement of what they were)
- iv) If there is uncertainty whether the oversight authority will establish sufficiently detailed templates for annual financial reporting and election campaign reporting, the relevant LPP articles should specify that the annual and election campaign reports must include information on donations over the threshold mentioned, and a detailed breakdown of spending by category.
- v) A provision should be added, either after Article 26 or 30, requiring any legal entity that provides a money donation to a political party to disclose this in its accounts. Any such donations should require a formal decision of the legal entity where this is relevant (i.e. where there is more than owner) and should be also disclosed as an accompanying document to the accounts.

- vi) Concerning the inclusion of entities that are directly or indirectly related to parties, the LPP already requires the inclusion in party accounts of information on structures/organisations which parties are permitted to establish. The consultant believes that proper regulation and reporting requirements for in-kind donations, including spending by third parties (see Recommendations under Section 1.1.1 above) and the additional provision requiring reporting by donors of donations (see previous recommendation) should establish a sufficient legal framework, given the fact that funding by non-commercial organisations, trade unions, charitable and religious organisations is prohibited already.
- vii) An Article should be added to the LPP stating that all party financial reports and independent audit reports (see Section 5) must be published on a central website of the oversight body, with deadlines for publication stated.

2 MEMBERSHIP DUES

GRECO Recommendation iii) is “to take appropriate measures to limit the risk that members’ subscriptions received by parties may be used to circumvent the transparency rules applicable to donations.”

The only regulation of party membership dues in the LPP is that the maximum amount that an individual may donate to a political party or parties during one year (in 2011 around €108,000 for individuals and €215,000 for legal entities) includes membership dues or subscriptions paid if the donor is a party member. However, there is no limit on the size of membership dues, or any requirement for parties to make public their size. This creates the risk that donations (either from the party member contributing membership dues, or from a third party) will be disguised as membership dues, especially given the very high limits on donations in Moldova (on which see Section 8.2).

Recommendation:

- i) The rules on membership dues for political parties should be public – that is, their size and details such as whether they are a flat rate for all members or differentiated by income level or other criteria, etc. The law should require parties to publish these rules on their website, and/or the oversight body should be required to publish this information alongside all other information on party finances on its website. Parties should also include the same information in their annual reports – following the recommendation on annual reporting in Section 1.2.
- ii) For the purposes of reporting, for any membership due that exceeds a defined threshold, the amount over the threshold should be reported as a donation. The threshold should be chosen on the basis of the best estimate of what is the maximum amount a party in Moldova could reasonably expect members to pay.

3 LOANS

GRECO Recommendation iv.ii is “to take appropriate measures to clarify the legal situation regarding loans.”

There is disagreement among Moldovan stakeholders over whether loans are a legal source of party funding, and they are not explicitly regulated at all either in the LPP or EC.

Recommendations:

- i) Prohibiting parties from using loans as a source of revenue is not good practice. To the extent that disagreement over the legality of loans is the result of ambiguity or lack of clarity in the legal framework, LPP Article 25 should be amended to permit loans explicitly as a source of revenue.
- ii) As already stated in Section 1.2, parties should be required to report loans as a component of their liabilities, including their repayment conditions.
- iii) As recommended in Section 1.1, where loans are provided on better than market conditions, or are cancelled, a corresponding in-kind donation should be reported.

4 PAYMENT MECHANISMS FOR DONATIONS

GRECO Recommendation v) is “to promote the use of means of payment for donations to political parties and for political party spending involving, notably, recourse to the banking system in order to make them traceable.”

Recommendations:

- i) A provision should be added to LPP Article 26 stating that a political party must establish a single account for the purposes of receiving donations, and that money donations must be deposited to this account. The same provision should require details of the account to be provided on the party’s website or on the website of the oversight body.
- ii) A provision should be added after LPP Article 26 stating that all money donations to a political party should be required to be conducted where possible through the banking system (bank transfer/direct debit, cheque, bank card) with the requirement that the identity of the donor must be clear from the payment record.
- iii) The same LPP provision should state that where the options under ii) are not practical (e.g. because the donor does not have a bank account, or donations are being collected at a party event), payments in cash to a party must be conducted via the completion of a donation form the format of which is to be determined by the oversight authority and to be preserved by the party as a supporting document for accounting purposes. The template for donation forms should be provided by the oversight body.

5 INDEPENDENT AUDITING OF PARTY ACCOUNTS

GRECO Recommendation vi) is “to introduce independent auditing of party accounts by certified experts.”

The impression of the consultant at the meeting held in Chisinau was that local stakeholders were not fully aware of the benefits of parties being audited by independent professionals. However, independent auditing plays an extremely important role. The chain of verification of party finances may be depicted roughly in the following main phases: determination of person/s within a political party responsible for financing; internal control/audit mechanisms within the party; external audit mechanisms – either by independent auditors or by the official oversight body; and the investigation of allegations of or suspected violations, either by the oversight body or by law enforcement bodies. If any one of these stages does not function properly, the likelihood of effective oversight decreases dramatically.

It follows from the scheme presented above that there are only two possibilities for external audit: by independent auditors or by auditors from the oversight body/bodies. If this task is left entirely to the oversight body, there is a risk that the body will be overwhelmed by the task, especially if it does not have a history of sufficient capacity for the task of audit. Given the current weaknesses in oversight of political party finances in Moldova identified in the GRECO report (see Section 6 below), this risk appears to be high.

Recommendation:

- i) Provisions should be added to LPP Article 30 requiring political parties to commission an audit of their Annual Financial Report, following which the Report and Audit Report are both submitted to the oversight body. The obligation to commission an audit should not apply to very small parties whose revenues/spending are under a certain threshold. This threshold needs to be determined with closer knowledge of the local context.
- ii) Article 30 should also include a provision specifying the procedure/rules for selection of auditors. There are two main possibilities: either the oversight body may select an auditor (preferably by lot) from a list of approved independent auditors, or the party may choose an auditor; the first option is preferable. In either case, clear rules to prevent conflicts of interest should be included, for example that the auditor should not have been a member of the party in the previous five years.
- iii) Auditors should be provided with a clear template and guidelines on what they should focus when auditing political party accounts. This should include requirements that the auditor states that s/he is familiar with the relevant legal acts, and provision of: a definition of the precise objective of the audit (to provide an opinion, to the extent possible given the time allotted for the audit, on the veracity of reporting by parties on their assets, liabilities, revenue and expenditure); a template structure for the audit report; guidance on the audit risks to focus on with respect to donations and expenditure; and specific methods of verification.
- iv) The law might provide for a portion of the state subsidy to be reserved for paying the cost of independent audits, although this issue needs to be resolved in the context of the final rules for allocation of state subsidies.

6 SUPERVISION AND ENFORCEMENT

GRECO Recommendation viii) is “to mandate an independent central body, endowed with sufficient powers and resources and assisted by other authorities where necessary, so as to allow the exercise of effective supervision, the conduct of investigations and the implementation of the regulations on political funding.”

This is probably the most important of all of the GRECO recommendations, given the identification by the Evaluation Report of oversight as the main weakness in party finance regulation in Moldova. GRECO noted the presence of five different bodies each with some role in oversight of party financing:

- the Ministry of Justice, which publishes parties' annual financial reports and in practice also performs a formal verification of these reports;
- the Central Electoral Commission (CEC), which collects financial information on election campaigns with a view to its publication and summary verification;
- the Tax Inspectorate at the Ministry of Finance, which is responsible for verifying parties' annual reports (apart from information on the State grants to be introduced in

future) and which the CEC can also call upon to verify candidates' financial reports and the use made of their campaign funds;

- the Court of Auditors, which will in future be responsible for monitoring the public funding of parties and which may – like the Tax Inspectorate – be called upon by the CEC during election campaigns;
- the prosecution service, to which any suspected breach of the political funding rules can be referred

GRECO was sharply critical of this situation, and the Report is worth citing:

...the multiplicity of bodies has adverse effects in so far as it prevents a single body from assuming effective responsibility for the process. As a result, each body depends on the others and awaits their reports or findings. The outcome is that none of the bodies seems to have a comprehensive global picture of political financing. In the same vein, the GET deems that Parliament's decision to divide the supervision of parties' annual reports into two parts in future and to entrust each part to separate bodies (the Court of Auditors and the Tax Inspectorate) is scarcely convincing.

These comments appear to be borne out by independent monitoring. Even in the case of election campaign finance, the reporting rules for which are of relatively high quality, NGO monitoring of party finances during the 2009 and 2010 elections commissioned by the International Foundation for Electoral Systems (IFES) and financed by the United States for International Development (USAID) found that a substantial proportion of donors (8%) provided more to political parties than their total income, non-declaration of many expenses was routine, and the discrepancy between declared and observed costs of the monitored political parties was more than 50 million MDL (approximately €3.1m). Notable was the failure of any oversight body to take any steps to follow up on indications or evidence of violations. In addition, the fact that according to the above-mentioned monitoring report only political competitors can petition the CEC (for example by submitting a complaint about violations of financing regulations) is a barrier to effective enforcement.

GRECO therefore called for the establishment of a single independent oversight authority. At the meeting held in Chisinau, there appeared to be a fairly well-established consensus that this authority should be the Central Election Commission.

The consultant's recommendations are based on the well-established problems already described. They are also, however, motivated by scepticism that any central authority can effectively oversee and enforce political party/election campaign finance regulations, and a strong belief that partnerships must be built with non-governmental monitoring entities.

Recommendations:

- i) EC Article 22 should be amended (and an Article added to the LPP) to specify that the CEC is responsible for tasks relating to implementation, oversight and enforcement of the financing provisions of the two laws. The Tax Inspectorate, Court of Auditors in particular and the Ministry of Justice (and especially the first two) should cease being attributed oversight functions.
- ii) Specifically, the said provision/s should establish that the CEC is responsible for the following:
 - a. Issuing sub-legal acts for the implementation of the two laws, including binding instructions and reporting templates.
 - b. Providing political parties and candidates with guidance in the form of written documents (templates, guidelines) and training on their roles and responsibilities relating to party and election campaign finance.

- c. Acting as the recipient of information disclosed by parties/candidates (e.g. financial reports)
 - d. Mediating or directly providing publication of information on party/election campaign finances
 - e. Auditing political party accounts and/or verification of independent audits of party finances, both with regard to state and private financing
 - f. Receiving and processing complaints
 - g. Conducting investigations of alleged violations or on the basis of reasonable suspicions or indicia
 - h. Imposing sanctions for violations – including the withdrawal of state subsidies - or at least proposing them to a relevant court
 - i. Conducting policy analysis and providing recommendations for improvements in the legal and institutional framework
- iii) It is essential that the CEC budget will cover the extra staff (permanent and temporary) that will be needed for oversight to be conducted effectively – for example 4 permanent staff and 4-8 part-time auditors as estimated in a working group at the IFES conference. If any legislative amendments are necessary or possible to ensure the necessary budget, these should be formulated.
- iv) The CEC should be authorised explicitly to commission independent analyses and monitoring exercises on political party and election campaign finance, based on objective monitoring methodologies that are available (for example the methodology for monitoring election campaign finance elaborated by the Open Society Justice Initiative and available on its website (http://www.soros.org/initiatives/justice/articles_publications/publications/monitoring_20041123)). Specifically, during election campaigns such cooperation could be formalised through the establishment in the EC of a monitoring committee composed of CEC staff and non-governmental experts nominated by the CEC and parties. The task of the committee would be to monitor information in the media and from other sources on problems in election campaign finances (for example alleged or suspected violations), and to commission monitoring as recommended above.
- v) The EC and LPP should explicitly establish that any individual may file a complaint or petition concerning the suspected or possible violation of financing regulations, with standards procedures and deadlines applying for processing and resolving them.

7 SANCTIONS

GRECO Recommendation ix is “to ensure that (i) all infringements of the rules on party funding in general and financing of election campaigns are clearly defined and made subject to effective, proportionate and dissuasive sanctions, which can, if necessary, be imposed after the Constitutional Court has validated the elections; and (ii) the limitation periods applicable to these offences are sufficiently long to allow the competent authorities effectively to supervise political funding.”

The Recommendation is based on the clear reality of Moldovan political finance regulation, which is that: i) only a narrow range of sanctions is employed; ii) sanctions are - partly as a result - either extreme (annulment of a party’s registration for election) or banal (small fines);

iii) in consequence they are not proportional to the violations they are to address; iv) The limitation periods for 'contraventional' offences (3 months) and for execution of sanctions (1 year) are extremely short and are likely to prevent any violations been addressed sufficiently.

7.1 Existing sanctions

Currently, under the LPP:

- Donations that exceed the permitted ceiling (or rather the part of the donation that is above the ceiling) or are received from impermissible entities are to be transferred to the State budget. The same applies to state budget allocations that are used for purposes other than those permitted by the LPP.
- 'Contraventional' fines, ranging from between €6.5-91 may be imposed for violations of the rules on the organisation and keeping of accounts and the preparation and submission of financial reports, from inaccuracies in reports to failure to file any.

Under the EC:

- If an electoral contestant uses undeclared funds or funds from foreign sources, the CEC (for parliamentary elections) or the competent district electoral council (for local elections) must request the Chisinau Court of Appeal or the relevant district court to annul the contestant's registration.
- Using funds obtained from foreign sources or undeclared funds during an election campaign carries a contraventional fine of €39-52 for natural persons and €390-650 for persons holding positions of responsibility, the latter apparently meaning treasurers appointed by electoral contestants, other persons managing campaign funding, and the contestant's executive officers.

Both the LPP and EC foresee the withdrawal of state subsidies in cases where parties violate financing regulations. Under the LPP, lose their right to state subsidies if they "infringe on the financing provisions of the party". The EC states that parties which during elections exceed the approved expenditure limit or "were financed through the infringement of the law" (which appears to explicitly include "infringement of the procedure for receiving income" - Article 28.5) lose their right to state subsidies. However, the provision of state subsidies has been delayed five times and is currently envisaged from 2013.

Recommendations:

Implementation of state subsidies

- i) It is of fundamental importance that the system of state subsidies is implemented without further delay. Without this system being implemented, the most effective sanctions available in the law are unavailable, undermining a central plank of enforcement. This is in addition to the other fundamental justification for introducing state subsidies – to diversify parties' sources of funding.
- ii) It is not entirely clear in the current law whether state subsidies allocated after an election are to be withheld pending the correction of previous violations, or only withdrawn if violations are committed from the date that the subsidies are determined. The provision of state subsidies, once they are determined following an election, should be conditional on political parties having submitted their financial report for the previous year, as well as their fulfilment of reporting requirements during the election campaign, and this should include the case of parties who have been penalised for exceeding the expenditure limit in a previous election. This can make the link between

financial reporting and the state subsidy as much a 'positive one' (parties receive the subsidy in return for accurate reporting) as a 'negative one' (parties lose the subsidy of they violate reporting requirements).

Coverage and proportionality

- iii) Article 25.7 should be deleted. Instead, a new Article on 'Sanctions' should begin "The violation of the financing provisions of this law are punishable by the following sanctions", followed by paragraphs allocating specific sanctions to specific violations.
- iv) Violations of all of the party funding rules listed in the LPP and EC should be subject to specific sanctions. In addition to the rules for which sanctions are currently envisaged (exceeding donation limits, financing from impermissible sources, use of state subsidies for purposes other than those permitted), sanctions should be established for violations that currently have none explicitly – notably the use of financial resources other than those permitted, failure to submit an Annual Financial Report or the submission of incorrect or incomplete information, and failure to submit information on donations and spending or the submission of incorrect or incomplete information during an election campaign.
- v) A broader range of sanctions should be applied than is currently the case, to include for example:
 - a. Administrative fines
 - b. Larger fines for serious violations
 - c. Forfeiture to the state budget of illegal donations
 - d. Matching fines for violations such as exceeding donation limits
 - e. Withdrawal of state subsidies
 - f. Ineligibility for future funding
 - g. Disqualification of the party or candidate from the election, or loss of mandate(s) if the violation is determined after the result of an election is final
 - h. Criminal sanctions, including imprisonment for significant violations that undermine the integrity of elections, involve other criminal behaviour such as fraud, or a repeated violation.
- vi) Where the limits on donations provided by donors, or the total limit on donations are exceeded, the current sanction (confiscation of the portion of funds above the limit) is inadequate. It is recommended that the entire donation is forfeited, plus a fine equal to the value of the donation or at least to the value of the portion of the donation above the limit.
- vii) Sanctions should be graded so as to be appropriate to the severity of the violation and, where appropriate, defined in a flexible manner so that the institutions that propose them (the oversight body) and confirm them (the courts) have sufficient discretion to tailor the sanction to the severity of the violation. For example:
 - a. In the case of financial reporting, failing to submit a report should be severely sanctioned by withdrawal of the state subsidy, combined with substantial fines on party treasurers if the report is not submitted after formal instruction from the oversight body. Submitting a report that does not contain the required information or has inaccuracies should be subject to sanctions varying from minor fines (for small omissions/inaccuracies) to withdrawal of the state subsidy and substantial fines (for large omissions/inaccuracies), depending on how serious the omissions/inaccuracies were.
 - b. Where donations are received from impermissible sources, sanctions should be softened or even waived if parties return the donation to the state budget quickly

(e.g. within 10 days) and of their own accord (i.e. without the oversight body alerting them to a violation), as opposed for example where a party conceals or deliberately disguises an impermissible donation.

- c. Similarly, for failing to remain within spending or donation limits, or using state subsidies for purposes other than those permitted, sanctions should be set according to the seriousness of the violation – for example depending on by how much the limits were exceeded.
- viii) In particular, the current provisions envisaging the possible withdrawal of state subsidies for any infringements are unworkable and unfair, as they imply a major sanction for violations ranging between the insignificant and banal at one extreme, to major/fundamental/criminal at the other. Withdrawal of subsidies should only apply to certain non-minor offences such as failure to submit a financial report; submission of a financial report with serious omissions or inaccuracies; failure to commission an independent audit, or grossly exceeding spending/donation limits. On the other hand, where violations are repeated, it might be considered to remove the eligibility of the party for future funding for a certain period.
- ix) The wording of LPP Article 28.4 – “...the party may regain its right after the next election...” is ambiguous (if the translation is correct) and should be changed to “...the party regains its right after the next election...”
- x) LPP Article 28.5, which states that a party regains its right to state subsidies ‘after correcting the violation’ should be clarified so that it is exactly clear who determines whether a party has corrected the violation (and how), and when the state subsidy will begin to be paid again.
- xi) The current EC Article 35.2 should be amended so that a party/candidate’s registration for an election may be annulled only if the extent of undeclared funds or funds from foreign sources used is major. Violations involving smaller amounts should, again, be addressed using the range of sanctions outlined above. On the other hand, if the violation is serious but the election results are finalised before the oversight body manages to issue a decision, the EC should have the right to apply to a court for the cancellation of the party/candidate’s election. Not being an expert on Moldovan law, the expert leaves this to the judgment of local experts.

7.2 Limitation periods

Recommendations:

- i) To the extent that limitation periods for offences relating to violations of party funding regulations apply, they should be increased dramatically. Party funding violations are often revealed with a several-year gap (for example following an election where a ruling party is defeated). It is recommended that limitation periods should be at least 2 years for the initiation of proceedings and 4 years for the execution of offences.
- ii) The way in which limitation periods is to be altered will depend on how the sanctions for violations of party funding regulations are themselves altered – in particular, whether different types of fine (e.g. administrative or criminal) are introduced. The expert leaves this to the expertise of local experts.

8 OTHER COMMENTS AND RECOMMENDATIONS

In addition to the recommendations that are directly or closely related to GRECO Recommendations, the consultant also has the following comments and recommendations.

8.1 System of state assistance (subsidies and interest-free loans)

The criteria for allocating state subsidies are unusually advantageous for governing (or more broadly, incumbent) parties, allocating funds only on the basis of mandates secured in the last general parliamentary and local elections. The current system would result in one party (the Communists) receiving very large state subsidies, exceeding its declared income from private sources in 2011 (and declared election expenses for the November 2010 parliamentary elections) by four times.

Interest-free loans to parties are also envisaged during election campaigns, with the state reimbursing the loans according to a formula under which the more votes the party receives the more the state pays off, with electoral contests who fail to receive more than 3% of the relevant vote having to pay off the loans in full. However, these loans have been little used, and this form of assistance appears practically not to function. This is hardly surprising, given the fact that parties which fail to win over 3% of the vote must pay the loans back faster than other parties, and moreover receive no state subsidy.

There are (probably legitimate) concerns in Moldova about making state subsidies less dependent on performance in elections, for example by providing a lump sum subsidy to every party that is registered for an election (as is the practice in some countries). However, the consultant believes that alterations to the current system could lessen its bias towards establishment parties without encouraging abuse of the system by parties established solely to draw state subsidies.

Recommendations:

- i) The current system of interest-free loans (EC Article 37.1) should be abolished.
- ii) The current formula for allocating subsidies should be altered so that for example half of the subsidy is allocated according to mandates held, but the other half is allocated according to the actual number of votes secured either in national or local elections.
- iii) Serious consideration should be given to the introduction of a 'matching subsidy' mechanism. Under this system, direct state subsidies would be lowered, and private donations raised by parties would be matched by subsidies from the state up to a) a certain size of donation and b) a certain maximum total subsidy per party. This could encourage/stimulate more small donations and by implication broader participation in political parties by ordinary citizens.
- iv) It is recommended to consider limiting the total state subsidy receivable by any political party relative to the funding it raises from private sources. Given the absence of state subsidies to date, a reasonable restriction might be to limit the subsidy to 1.5 times the total amount of funds raised from private sources, although this figure is largely speculative and detailed discussion in the local context would be necessary to determine if such a limit is advisable, and if so at what level. Alternatively, and if it is deemed more appropriate, a cap on the maximum state subsidy (for example 15m MLD as discussed at the IFES Conference) might be considered.
- v) LPP Article 29.1 states that political parties will use funds from state subsidies for a list of purposes. It is not clear whether there is a translation issue, but the provision should read that parties *may* use subsidies *only* for such purposes. Given the length of the list of permitted uses, it may be better to consider defining only the uses that are prohibited (as is currently the case for electoral funds).

8.2 Limits on private donations

The law currently establishes limits on the amount individuals or legal entities may donate to a party per year – approximately €107,500 for individuals and €215,000 for legal entities in 2011. In addition, the total donations a party may receive in a given year may not exceed 0.1% of the project state budget revenue for that year – approximately €2 million in 2011.

Recommendation:

- i) The consultant agrees with other analyses that individual donations are extremely high, especially for a country with the income levels of Moldova. If limits are to be set – and recent analysis indicates that limits are a good idea given an apparent concentration of donations among a small circle of donors in 2010 compared to 2009 – they should be set a number of times lower, especially for individuals. The recommendations agreed on at the IFES Conference - an annual ceiling on contributions of 50,000 MDL (c. €3,100) for individuals and 100,000 MDL (c. €6,200) for legal entities - appear generally reasonable if the system of state subsidies is introduced. However, a higher limit might be more realistic given the radical nature of the reduction, and the consultant is not convinced of the ability of nascent parties to emerge without sufficient funds being supplied by a small (and possibly very small) number of persons, or that such funding is necessarily a sign of corruption.
- ii) The mentioned limits should apply not only to money donations, but also include in-kind donations.

8.3 Limits on spending

The consultant notes two important facts according to the IFES-commissioned monitoring financed by USAID: i) Most of the official budgets of political parties are spent on media promotion; ii) Parties appear to be in a race to cover exponentially increasing campaign costs. Currently, the only restrictions on spending are a prohibition on provision of goods and benefits to voters, a prohibition on the use of money deposited in the Electoral Fund for personal interests, the (broad) definition of the purposes for which state subsidies may be used and the limits established by the CEC on the amount that parties may receive to their Electoral Fund (for example c. €780,000 for the April 2009 elections). However, it should be noted that the latter limit is not in fact a limit on total spending or income, but merely on the contents of the Electoral Fund; if there are significant in-kind donations, this may raise both spending and income.

Recommendations:

- i) The consultant agrees with recommendations to increase the transparency of media (advertising) pricing during election campaigns by requiring the publication of the terms on which media advertising is provided. This *might* reduce spending by discouraging media from charging excessive prices for electoral advertising. However, if (as the IFES-commissioned analysis suggests) it would reduce hidden donations, this implies that advertising prices would go up, as the hidden donations are the result of media space being provided under market price.
- ii) In addition, more radical restrictions on campaigning activities could be considered, for example limits or a ban on private TV commercials. Given the ease with which such restrictions may be monitored, they tend to be an effective way of reducing spending, and there are other arguments in favour of them especially where parties already are allocated free time on television. However, they may be less attractive if there is a tendency for incumbent political parties to take advantage of the state/public media during elections (hidden advertising), or the campaigning opportunities of opposition parties are otherwise illegitimately restricted.

8.4 Other issues

- i) LPP Article 25.6 states that ‘Public or private financing cannot limit the independence of political parties.’ The consultant believes that this provision is so general as to be meaningless as a legal provision, and should be deleted.
- ii) LPP Article 27.2 – “Political parties cannot receive anonymous donations or donations which exceed the limitations provided by the law” repeats provisions of Article 26, and the second part is tautologous. It is recommended to delete the Article.
- iii) The second part of EC Article 38.6 (“Legal and natural entities may not order electoral advertising materials for the electoral contestants and cover the expenses related to their production without electoral contestants’ consent, and may not use the funds that are not wired to “Electoral Fund” of respective contestant) does not make sense in the English translation, and it is assumed that it should be rephrased “... and electoral contestants may not use funds that are not wired to the Electoral Fund.”.

9 CONCLUDING REMARKS: THE IMPORTANCE OF A MULTIFACETED APPROACH TO POLITICAL FINANCE REGULATION

The recommendations presented in this Technical Paper may be seen in general as advocating that regulation of political party finance to become:

- more multi-faceted, in the sense that regulations to introduce state subsidies should be implemented in order to diversify parties’ sources of funding, and sanctions for violations should be diversified in order to make them proportional to a wider range of violations.
- supervised more monolithically, by establishing the Central Election Commission as the oversight body for both election campaign finance and ordinary (structural) party finance.
- overseen through a combination of both state supervision (Central Election Commission) and non-governmental monitoring, the latter to be encouraged formally by the former

As correctly pointed out by a local expert at the recent IFES conference, it is a common fallacy to believe or assume that political finance regulation and oversight can ensure complete information for regulators and control of the process of party funding. Political parties will always search for ways to circumvent political finance regulations, and this should be seen as a natural consequence of the role that they play in a democracy. International experience shows clearly that oversight authorities always lack the capacity (if not the independence) to reveal violations of political finance regulations, and the best model on offer is where lively non-governmental monitoring (either by the media or NGOs) yields information that oversight bodies then pursue.