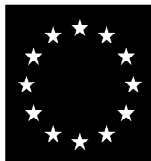


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and Legal Affairs
Directorate of Cooperation
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**Support to Good Governance: Project against Corruption in Ukraine
(UPAC)**

**Technical Paper on Council of Europe standards and evaluations of the
financing of political parties and electoral campaigns**

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I. INTRODUCTION

This technical paper explains the Council of Europe standards relating to the financing of political parties and electoral campaigns, in the light of the Third Round evaluations currently being conducted by the Group of States Against Corruption (GRECO). The Third Round evaluations include scrutiny of the regulation of the financing of political parties and electoral campaigns, in particular through a 'Questionnaire on Transparency of Political Funding'.¹ The Questionnaire is based on the individual provisions of Council of Europe Committee of Ministers Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties². The Recommendation effectively constitutes the only binding international standards on the financing of political parties and election campaigns. This is due to the fact that countries that are members of GRECO become automatically subject to evaluation of their anti-corruption policies, as summarised in the Council of Europe's Twenty Guiding Principles for the Fight against Corruption, Principle 15 of which calls for 'the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption'.

In addition to the Recommendation itself and GRECO Questionnaire, in 2003 the Council of Europe published *Financing political parties and election campaigns – guidelines* (hereafter referred to the Council of Europe Guidelines). These are highly recommended as a source of more detailed information on what the Recommendation implies in terms of practical policy, as well as examples of regulations from a variety of countries.³

II. THE COUNCIL OF EUROPE STANDARDS

2.1 *Background and context*

The standards established by Recommendation (2003)4 establish specific principles by which to assess a country's system for regulating political party and election campaign finance. They do not determine exactly how particular components of regulation should be formulated. For example, while the Recommendations establishes that states should provide support for political parties, it does not provide any detailed recommendation as to what form such support should take, or what should be the exact criteria for distributing such support beyond requiring that criteria should be 'objective, fair and reasonable'.

There are very good reasons why the Recommendation does not attempt to establish such a specific template for regulation. Countries differ in many ways – for example size, electoral and party system, trends in political participation and so on – which should be

¹ The Questionnaire can be found at

[http://www.coe.int/t/dg1/Greco/evaluations/round3/questionnaire\(round3\)_en.asp](http://www.coe.int/t/dg1/Greco/evaluations/round3/questionnaire(round3)_en.asp).

² The Recommendation can be found at http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/1_standard_settings/Rec_2003_4.pdf.

³ The Guidelines are available at

http://www.coe.int/t/e/integrated_projects/democracy/05_key_texts/03_summaries_of_all_publications/Financing%20of%20political%20parties.pdf

reflected in the specific characteristics of political finance regulation. Moreover, even in similar countries, there may be no one 'correct' way to regulate political finance but a range of options among which a political choice must be made. The Recommendation does not provide a template, but it does provide specific principles that party finance regulations should observe. As the Council of Europe states, these are "standards to guide its member states towards finding their own answers" to the questions of how to regulate political party and election campaign finance, not answers on how exactly to regulate in a given country.

The key assumptions or tenets underlying the Council of Europe standards are the following:

- i) Parties need sufficient funds in order to function – and thereby for democracy to function.
- ii) Regulation should establish a level playing field for parties and electoral competition.
- iii) Regulation should preserve the independence of parties – both from the state and from private entities.

In general, the ideal situation in terms of party finance and its regulation is assumed to be where:

- parties receive funds and resources from a mixture of sources, including both public and private;
- the size of private contributions to parties are limited to prevent dependence on particular donors, and to encourage parties to attract large amounts of small contributions – thereby promoting political participation;
- expenditure on election campaigns is restricted in order to prevent it – and therefore the need to attract private donations - from spiralling out of control;
- effective mechanisms and institutions are in place to monitor political party financing, investigate possible violations and impose proportionate and dissuasive sanctions.

2.2. Two cautionary notes

The expert wishes to underline two general points that are of fundamental importance. One concerns the difficulty of establishing functioning regulation, and a related point concerns the purpose of the GRECO evaluation process in this area.

2.2.1 Political finance: wish-lists vs. effective regulation

While effective regulation of political finance is a desirable objective, it is extremely important to design regulations so that they will apply in practice. This means two things:

- The incentives for political parties and other entities to evade regulations and the ease with which they can do so must not be too great. It is advisable to build positive incentives into regulations that encourage compliance, rather

than relying solely on monitoring and enforcement. An example of such incentives might be a system where the state provides subsidies to match contributions to political parties that do not exceed a certain amount, encouraging parties to attract small donations.

- The regulatory framework must establish a mechanism for enforcement and an institution or institutions with sufficient powers, resources and independence to conduct such enforcement.

Historically, political finance regulations have tended to be very poorly enforced, even in many consolidated democracies, and this is all the more true of transition countries. The temptation to write legislation as a wish-list of how reformers would like political finance to function, rather than a tool for establishing functioning regulation, must be avoided.

In this context, it is worth referring to two points underlined by the Council of Europe Guidelines:

- First, the Guidelines usefully point out that “[a]n unnecessarily detailed framework of legislation may in fact encourage parties and candidates to evade the rule of law and thus be counterproductive to its intentions.” While it is not the purpose of this paper to develop this point in detail, it is of fundamental importance. For example, countries with regulations requiring detailed disclosure of all donations to parties are all too often the countries whose regulations are ignored or not enforced. The lesson of this is that regulations should be designed to fulfill their role without imposing unnecessary burdens of disclosure or monitoring.
- Second, the Guidelines stress the key point that “Disclosure requires systematic reporting, auditing, public access to records and publicity. Monitoring requires an enforcing agency backed by legal sanctions, and enforcement demands a strong authority endowed with sufficient legal powers to supervise, verify, investigate and if necessary institute legal proceedings.” Without such mechanisms in place, party financing rules will be worth little more than the paper on which they are written.

2.2.2 The purpose of GRECO evaluations of party finance regulation

A point that is directly related to this is that countries undergoing GRECO evaluation of their party finance regulations should not expect to perform well in the initial evaluation. Regulation of political party and election campaign financing has become a prominent issue only in the past decade or two. Some of the most advanced democracies have only moved to regulate party and election campaign finance only in the 5-10 years, for example the United Kingdom. In this situation, countries answering the GRECO questionnaire should not necessarily expect to receive a positive evaluation, and the evaluation should be seen as part of a process by which they can screen their regulatory framework and develop effective regulation. The conclusion of the Technical Paper develops this point further.

III. EXPLANATION OF STANDARDS

This section summarises the standards contained in Recommendation (2003)4. It also provides brief guidance in italics on particular provisions of the Recommendation where the expert feels this is necessary. The breakdown of subsection 1 here is intended for clarification and is not exactly the same as in Recommendation (2003)4.

3.1 Standards in Recommendation (2003)4

3.1.1 General

- State and citizens should both be entitled to support political parties.
- Support by the state or citizens should not interfere with independence of parties.
 - o *Parties need to be independent of both the state and private entities; dependence on the latter especially may lead to or constitute corruption.*

3.1.2 State support for parties

- State should provide reasonable support to political parties; support may be financial.
 - o *State support may be provided in kind, e.g. provision of election campaign slots on public TV.*
- State support should be distributed on the basis of objective, fair and reasonable criteria.
 - o *State subsidies may be for ordinary activities or for electoral campaigns.*
 - o *Examples of criteria for distribution of state subsidies include votes or mandates won in previous election, participation in current election, votes/mandates won in current election.*

3.1.3 Contributions/donations

- Definition of donation: 'any deliberate act to bestow advantage, economic or otherwise, on a political party'.
 - o *Definition should include not only financial contributions but also in-kind donations and provision of goods/services at a discount on normal market prices.*
- Donations over a fixed ceiling should be published.
 - o *Secret donations not covered in Rec(2003)4: in some contexts they should not be outlawed due to possibility of persecution of donors by authorities.*
 - o *Anonymous donations not covered – should be regulated so as not to overburden parties administratively.*

- Limits on donations should be considered.
 - o *Limits may be on total donations to a party, on individual donations from a single donor, or total donations from single donor within a defined period.*
- Measures to prevent circumvention of ceilings.
 - o *E.g. prohibition on splitting donations.*
- Tax deductibility OK, but should be limited.
- Regulation of donations by legal entities:
 - o Donations should be recorded in their books and accounts.
 - o Shareholders should be informed.
 - *These two recommendations are designed to reduce risk of corruption of parties by private companies by forcing companies to record donations and inform shareholders – but don't require companies to secure shareholder approval.*
 - o Limit/prohibit/strictly regulate donations by entities providing goods/services for public administration.
 - o Prohibit legal entities controlled by state/other public authorities from donating to political parties
 - *Definition of controlling stake is important.*
 - o Regulations should apply 'as appropriate' to entities directly or indirectly related to parties, otherwise under control of party or organisations affiliated to political parties (hereafter 'related entities'), with the exception of tax deductibility.
 - *'As appropriate' = should apply to donations as defined above, i.e. deliberate acts to bestow advantage, economic or otherwise, on a political party'.*
- Limit/prohibit/regulate donations by foreign donors.
- Rules should apply *mutatis mutandis* to funding of electoral campaigns of electoral candidates and of political activities of elected representatives
 - o Best solution: a single law covering financing of political parties and electoral campaigns.

3.1.4 Election campaign expenditure

- Should consider limits on campaign expenditure
 - o *These are important if the need for private funding is to be limited.*
 - o *Limits may be financial or qualitative (prohibition on TV advertising).*
- Records should be kept of all expenditure on electoral campaigns for each party, list of candidates and each candidate.
 - o *This is not same as requiring their disclosure – but is necessary for disclosure of expenditure and/or its supervision/audit to be possible.*

3.1.5 Accounts and disclosure

- Parties and entities controlled by or related to them should be required to keep proper books and accounts.
 - o *This is not same as requiring their disclosure – but is necessary for disclosure of expenditure and income and/or their supervision/audit to be possible.*
- Accounts should specify all donations (including the nature and value of each donation) and identity of sources of donations over a certain value.
- Accounts should be
 - o presented at least annually to an independent authority;
 - *See comment under f) below.*
 - o made public (or at least a summary of accounts including records of electoral campaign expenditure as appropriate and of donations) at least once a year.
 - *This is a key provision – for public scrutiny to be possible, essential that the summary includes at least: total expenditure; total income and breakdown into different categories of income; all individual contributions over a reasonable threshold and the identity of the donors.*

3.1.6 Supervision

- Should be independent monitoring of funding of political parties and electoral campaigns, including i) supervision of accounts of political parties and election campaign expenses and ii) their presentation and publication.
 - o *There must be an authority responsible for monitoring and enforcing political finance regulations that is sufficiently functionally independent, allocated adequate powers and equipped with sufficient resources and staff.*
 - o *Authorities may be e.g. Ministry of Finance, Supreme Audit Institution, anti-corruption agency, Electoral Commission.*
- Should promote specialisation of judiciary, police or other personnel in fight against illegal funding of parties and electoral campaigns.

3.1.7 Sanctions

- Infringement of party and electoral campaign funding rules should be subject to “effective, proportionate and dissuasive sanctions”.
 - o *Sanctions range from fines/forfeiture of illegal donations to imprisonment/cancellation of election results.*
 - o *Important issues: to whom sanctions may be applied; sanctions must not serve as a tool for harassing opposition.*

IV. THE GRECO QUESTIONNAIRE

This section briefly summarises the Questionnaire used by GRECO for its Third Round evaluation of the transparency of party funding. It should be noted that the Questionnaire in fact examines not only transparency of party funding, but the regulation of party finance and election campaign finance in general. However, the Questionnaire devotes more attention to the issues of accounting, disclosure, monitoring, enforcement and sanctions than it does to the regulations on political finance *per se* – that is the restrictions and rules on how parties and election campaigns may be financed.

4.1 *Contents of the Questionnaire*

The GRECO questionnaire consists of two parts. The first 'General part' contains questions about the legal status and definition of political parties and about funding rules, in other words following the provisions of Recommendation (2003)4 up to sub-item d) as summarise in Section B.1 above. In particular the questionnaire requires information on the following:

- an overview of the laws and regulations on financing at national level of parties, related entities, electoral campaigns of political parties, and candidates for election;
- restrictions and/or limits on various sources of funding for the above, including on contributions and donations;
- laws/regulations on public funding;
- detailed regulations of private funding, for example from anonymous sources, entities providing goods or services to public administration etc;
- limits on private contributions;
- tax deductibility;
- quantitative and qualitative restrictions on expenditure by parties, related entities, electoral campaigns or candidates for election;
- any differences in rules at sub-national level.

The second 'Specific part' of the Questionnaire contains more detailed questions on the rules that are in place on transparency, supervision and sanctions:

- the keeping of books and accounts by political parties and related entities – including details of what must be recorded;
- the duties of contributors (donors) to record contributions they make to parties, related entities and candidates for election;
- duties of contributors, parties, related entities and candidates for election to report income and expenditure to competent authorities;
- how long records must be held by all the above-mentioned entities;
- whether and how parties, related entities and candidates are required to make their financial reports public;
- access by competent authorities to accounting records;
- whether parties, related entities, electoral campaigns and electoral candidates are subject to internal audit requirements;
- the mechanism for - and authority responsible for - monitoring adherence to political financing laws/regulations in general, and checking relevant accounting records and supporting documentation;

- details on this mechanism/authority – e.g. independence, structure, resources, powers;
- procedures for addressing suspected infringements of political financing regulations;
- information on numbers of investigations, prosecutions and convictions for such infringements since 1996;
- requirements on the competent authority to make reports on party finance public;
- what sanctions (administrative, civil or criminal) are envisaged by law for what violations of political financing laws and regulations, who can impose them, and on whom they can be imposed;
- immunities and statutes of limitation relating to violations of political financing laws and regulations;
- information on sanctions imposed since 1996.

V. CONCLUSION: ISSUES FOR AUTHORITIES UNDERGOING EVALUATION

In conclusion, and as Section A.2.b already stated, most countries are likely to do relatively poorly in an evaluation of party finance regulations such as the one being conducted by GRECO. The expert wishes to stress that the best response to this fact is to regard the evaluation not only as a process of external review, but first and foremost as a useful *domestic* policy tool for a country to screen its own regulations, which can then be used to yield reforms.

For example, the recent GRECO Third Round Evaluation of Finland included quite extensive criticisms of and recommendations for the country's regulation of political party financing, significant in light of the fact that Finland has a better record than any other country in the Transparency International Corruption Perceptions Index. In this context it should also be noted that according to the GRECO evaluation report the Finnish Government openly acknowledged the shortcomings in its system and included in its programme of action the need to implement legal and procedural amendments in the light of GRECO recommendations.